

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/08

Date: 24 May 2012

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

**Public Document
with Confidential Annex**

**Decision on the presentation of views and concerns by victims a/0542/08,
a/0394/08 and a/0511/08**

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Ms Petra Kneuer

Counsel for the Defence

Mr Aimé Kilolo Musamba

Mr Peter Haynes

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Mr Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber III ("Chamber") of the International Criminal Court ("Court") in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case"), issues the following Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08 ("Decision").

I. Background and submissions

1. On 22 February 2012, the Chamber, the Presiding Judge partly dissenting,¹ issued its Decision on supplemented applications by the legal representatives of victims ("legal representatives") to present evidence and the views and concerns of victims ("22 February 2012 Decision"),² in which the Majority decided, *inter alia*, that the victims registered under the numbers a/0542/08, a/0394/08 and a/0511/08 shall be authorised to present their views and concerns in person, and clarified that any procedural issues relating to the implementation of the Decision would be addressed in a separate filing.³
2. On 26 March 2012, following the suggestion by the Office of the Prosecutor ("prosecution") that victims authorised to give evidence or to present their views and concerns could do so respectively *via* video-link and in writing⁴ and further to the clarification by the Chamber that this suggestion does not exclude other options that could be considered to that effect,⁵ the legal representatives filed their confidential "Soumission des Représentants

¹ Partly Dissenting Opinion of Judge Sylvia Steiner on the Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, ICC-01/05-01/08-2138, 23 February 2012, ICC-01/05-01/08-2140. In the view of the Presiding Judge, at paragraph 11: "the strict limitations imposed by the Majority to the presentation of evidence by victims and the "case-by-case" analysis of the victims' right to present their views and concerns reflect a utilitarian approach towards the role of victims before the Court, which has no legal basis and appears to unreasonably restrict the rights recognised for victims by the drafters of the Statute."

² Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012 (notified on 23 February 2012), ICC-01/05-01/08-2138.

³ ICC-01/05-01/08-2138, paragraph 55.

⁴ Prosecution's consolidated observations on the Legal Representatives' applications to present evidence and the views and concerns of victims, 9 February 2012, ICC-01/05-01/08-2126-Conf, paragraphs 15, and 17 to 19.

⁵ Email from the Assistant Legal Officer, Trial Chamber III, to the legal representatives' Case Manager of 22 March 2012 at 14.03.

légaux concernant les modalités pour la présentation des vues et préoccupations des victimes”.⁶

3. At the public status conference of 27 March 2012,⁷ the legal representatives elaborated upon the submissions set out in their filing. At the outset, Maître Marie-Edith Douzima-Lawson (“Maître Douzima”) argued that the presentation of views and concerns in writing should be excluded. For that purpose, she emphasised that since the victims have already presented their participation forms as well as a written document outlining the elements that they were going to present, asking these victims for a third time to present their observations and concerns in writing would be “overkill [and] redundant”.⁸ Rather, Maître Douzima suggested that the victims should present their views and concerns “before the parties”, which would enable the Chamber and the parties to assess their credibility *via* their behaviour and their expressions.⁹ Finally, she underlined that in light of the total number of victims participating in the *Bemba* case and the anticipated schedule for the presentation of evidence by the defence, the presentation of views and concerns in person would be without prejudice to the expeditiousness and fairness of the trial.¹⁰
4. Maître Assingambi Zarambaud (“Maître Zarambaud”) supported Maître Douzima’s submissions. To that end, he argued that the Chamber should authorise the victims to present their views and concerns orally, including by video-link if necessary.¹¹

⁶ Soumission des Représentants légaux concernant les modalités pour la présentation des vues et préoccupations des victimes, 26 March 2012, ICC-01/05-01/08-2176-Conf.

⁷ Transcript of hearing on 27 March 2012, ICC-01/05-01/08-T-219-ENG-ET.

⁸ Transcript of hearing on 27 March 2012, ICC-01/05-01/08-T-219-ENG-ET, page 4, lines 9 to 20.

⁹ Transcript of hearing on 27 March 2012, ICC-01/05-01/08-T-219-ENG-ET, page 5, lines 11 to 15.

¹⁰ Transcript of hearing on 27 March 2012, ICC-01/05-01/08-T-219-ENG-ET, page 5, line 16 to page 6, line 2.

¹¹ Transcript of hearing on 27 March 2012, ICC-01/05-01/08-T-219-ENG-ET, page 8, lines 4 to 23.

5. The prosecution clarified that its reference to a video-link was intended to accelerate and facilitate the proceedings and submitted that it had no objection to the submissions formulated by the legal representatives or the appearance of the victims in the courtroom.¹² The defence left it to the Chamber to determine the appropriate method of participation.¹³

II. Analysis and conclusions

6. The purpose of the present Decision is to determine the modalities of the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08, and to address a number of related procedural issues. To this end, in accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 64(2) and (6)(f), 68(1) and (3) of the Statute and Rules 87, 88, 89(1) of the Rules of Procedure and Evidence ("Rules").

Modalities of the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08

7. In the circumstances of the present case and pursuant to Articles 64(2) and 68(3) of the Statute and Rule 89(1) of the Rules, the Majority of the Chamber, Judge Steiner dissenting,¹⁴ deems it appropriate to hear the views and concerns of victims a/0542/08, a/0394/08 and a/0511/08 by means of video-link technology. While the victims' views and concerns will be broadcast to the Chamber, the parties and the public *via* video-link, the Chamber recalls that in accordance with the 22 February 2012 Decision, the victims will not provide evidence. Therefore, any statement

¹² Transcript of hearing on 27 March 2012, ICC-01/05-01/08-T-219-ENG-ET, page 9, lines 10 to 22.

¹³ Transcript of hearing on 27 March 2012, ICC-01/05-01/08-T-219-ENG-ET, page 11, lines 7 to 10.

¹⁴ See footnote 1 above. The Presiding Judge, in line with her views expressed in her partly dissenting opinion, would call the victims to present their views and concerns by way of their appearance in person in the courtroom in The Hague, rather than by way of video link.

that they provide will not be given under oath. Further, the victims will not be questioned by the parties and their views and concerns will not form part of the evidence of the case.¹⁵

8. The respective legal representative will be responsible for guiding the victim through his or her presentation of views and concerns, but shall limit the intervention to questions that would facilitate this presentation. In this respect, and in accordance with the estimation of time provided at the status conference of 27 March 2012, the legal representatives shall further ensure that the presentation of views and concerns does not exceed one hearing day per victim.¹⁶ In addition, in accordance with its responsibilities under Articles 64(2) and 68(3) of the Statute and Rule 89(1) of the Rules, the Chamber may address the victims at any time it deems it appropriate.

Preparation of victims a/0542/08, a/0394/08 and a/0511/08 for the presentation of their views and concerns

9. The Chamber recalls that in accordance with its Decision on the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial ("Unified Protocol"), the Unified Protocol does not apply to victims appearing before the Court to present their views and concerns.¹⁷
10. However, in conformity with the Victims and Witnesses Unit ("VWU")'s mandate, this specialised unit of the Registry shall be responsible for arranging all logistics involved, including transportation for the victims to

¹⁵ ICC-01/05-01/08-2138, paragraph 19.

¹⁶ Transcript of hearing on 27 March 2012, ICC-01/05-01/08-T-219-ENG-ET, page 6, lines 13 to 19.

¹⁷ Decision on the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial, 18 November 2010, ICC-01/05-01/08-1016, paragraph 8.

the location where the video-link technology will be installed, and for taking all necessary measures to ensure the victims' physical and psychological well-being. In addition, while the victims presenting views and concerns will not be subject to the formal familiarisation procedure applicable to witnesses, the VWU shall arrange for the victims to receive certain minimal guidance and explanation relating to the process of providing their views and concerns.

11. The legal representatives, as deemed appropriate after consultation with the VWU, shall determine whether it is preferable to be present at either the location where the video-link will be broadcast from or in the courtroom in The Hague.

Communication to the parties of information pertaining to the victims' identities

12. In accordance with the Chamber's previous finding that victims will not be permitted to present their views and concerns unless they relinquish their anonymity *vis-à-vis* the parties,¹⁸ and noting that the victims have consented to the disclosure of their identities to the parties,¹⁹ the present Decision now addresses the provision to the parties of the relevant information pertaining to the identities of victims a/0542/08, a/0394/08 and a/0511/08. In line with the procedure applied in the context of victims that had been authorised to give evidence, the Chamber needs to ensure that the parties are provided, for their information, with the relevant portions of the *ex parte* annexes to the Chamber's decisions on victims' applications

¹⁸ Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims, 21 December 2011, ICC-01/05-01/08-2027, paragraph 19.

¹⁹ Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d'autoriser des victimes à témoigner et à faire valoir leurs vues et préoccupations devant la Chambre, 23 January 2012 (notified on 24 January 2012), ICC-01/05-01/08-2061-Conf, paragraph 7; Complément de la requête afin d'autorisation de présentation d'éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes du 6 décembre 2012, 23 January 2012, ICC-01/05-01/08-2058-Conf, paragraph 16.

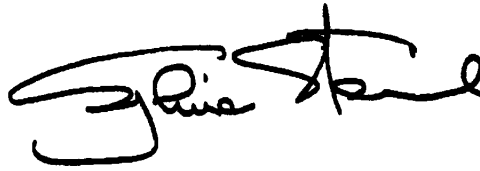
(see confidential Annex to the present Decision), less redacted versions of the victims' application forms, and less redacted versions of the victims' written statements. When providing less redacted versions of the statements, the legal representatives shall ensure that any redactions to information pertaining to the victims' identities are lifted while any redactions to the identities of third parties and the victims' exact addresses should be maintained.

13. For the foregoing reasons, the Chamber hereby:

- a. Authorises victims a/0542/08, a/0394/08 and a/0511/08 to present their views and concerns by means of video-link technology, and is minded to hear the victims during the week of 25 June 2012;
- b. Orders the Registry to start making all necessary arrangements for implementing the video-link during the week of 25 June 2012;
- c. Orders the legal representatives and the VWU to liaise in order to make the necessary arrangements for the broadcasting of the views and concerns of the victims by means of video-link technology and to determine whether the legal representatives should be present at the location where the video-link will be broadcast from or in the courtroom in The Hague;
- d. Orders the legal representatives in consultation with the VWU to inform the Chamber, no later than 15 June 2012, about any recommended protective and/or special measures for the victims called to present their views and concerns;
- e. Orders the legal representatives to provide the parties and the Chamber, no later than 15 June 2012, with the order of appearance of the three victims. This information may be communicated by way of email sent to the Legal Adviser to the Trial Division;

- f. Orders the Victims Participation and Reparations Section to provide the parties, no later than 15 June 2012, with less redacted versions of the application forms of victims a/0542/08, a/0394/08 and a/0511/08;
- g. Orders the legal representatives to confidentially file, in accordance with the guidance provided in paragraph 12 above, no later than 15 June 2012, less redacted versions of the written statements pertaining to victims a/0542/08, a/0394/08 and a/0511/08.

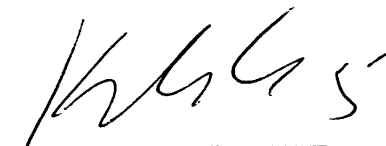
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 24 May 2012

At The Hague, The Netherlands