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**Cour
Pénale
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**International
Criminal
Court**

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

Date: 10/08/2012

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**

Confidential

**Defence Response to the Request by the Legal Representatives of victims for leave
to examine witness 53**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for the Victims **The Office of Public Counsel for the Defence**

States' Representatives

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**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. On 7 August 2012, both the Legal Representatives of Victims sought leave from Trial Chamber III ('the Chamber') to question the Defence Military Expert, General Jacques Seara ('Witness D-53').¹

2. The Defence files the present response pursuant to Rule 91(3)(a) of the Rules of Procedure and Evidence; paragraphs 18-20 of the *Decision on the Directions for the Conduct of Proceedings of 19 November 2010*;² and paragraph 14 of the *Decision (i) ruling on legal representatives' applications to question Witness 33 and (ii) setting a schedule for the filing of submissions in relation to future applications to question witnesses*.

B. SUBMISSIONS

(a) Questioning of Defence witnesses by the Legal Representatives

3. Article 68(3) of the Statute of the International Criminal Court ('Statute') provides that the participation of victims in the proceedings must not be in a manner which is 'prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.'

4. On 7 June 2012, the Chamber rendered *its Decision on the 'Submissions on Defence Evidence'*.³ In this decision, the Chamber:

- (a) granted the Defence request to present **230 hours** of witness testimony;⁴

¹ ICC-01/05-01/08-2255-Conf, Requête du Représentant legal de victimes afin d'être autorisé à poser des questions au témoin 53 ('Maitre Zarambaud's Application'); ICC-01/05-01/08-2257-Conf, Requête du Représentante legale de victimes afin d'être autorisée à interroger le témoin 53 ('Maitre Douzima-Lawson's Application').

² ICC-01/05-01/08-1023

³ ICC-01/05-01/08-2225

- (b) acknowledged that the Prosecution presented **228 hours** of witness testimony over a period of **16 months**;⁵
- (c) held that “a reasonable estimate for the presentation of the defence evidence at this stage is **eight months**”⁶; and
- (d) **ordered** that the Defence use the allocated number of hours in the most efficient manner possible and, in any case, **that the Defence presentation of evidence not exceed eight months**”.⁷

5. As such, the Defence has been ordered to present the same amount of testimony in half the time as the Prosecution. The Defence does not assert that this timeframe should automatically preclude the questioning of its witnesses by the Legal Representatives of Victims, but is extremely concerned that lengthy questioning on their behalf will prevent the accused from obtaining the attendance and examination of witnesses on his behalf, as is his right pursuant to Article 67(1)(e) of the Statute. On this point the Defence notes, for example, that Maitre Douzima-Lawson is proposing to ask 18 series of questions, the majority of which first involve a summary or recitation of a section of Witness D-53's expert report.

(b) Failure to provide sufficient reasons to demonstrate that the victims have a personal interest in examining Witness D-53

6. In any event, neither Maitre Douzima-Lawson nor Maitre Zarambaud have provided sufficient reasons to demonstrate that the victims they represent have a personal interest in examining Witness D-53.

7. Maitre Zarambaud attempts to justify his request on the following basis:⁸

⁴ ICC-01/05-01/08-2225, para. 10.

⁵ ICC-01/05-01/08-2225, para. 9.

⁶ ICC-01/05-01/08-2225, para. 11.

⁷ ICC-01/05-01/08-2225, para. 23 (b).

⁸ ICC-01/05-01/08-2255-Conf, page 1.

« La déposition de ce témoin vise à établir si les troupes du MLC envoyées en Centrafrique par l'accusé Jean-Pierre BEMBA étaient demeurées sous le commandement militaire de ce dernier, ou si le commandement militaire de ces troupes avait été transféré aux Autorités centrafricaines. En d'autres termes, cette disposition vise à disculper l'accusé Jean-Pierre BEMBA des crimes qui lui sont reprochés. Il s'ensuit que le représentant légal soussigné a le plus grand intérêt à interroger ce témoin, aux noms des victimes qu'il représente. »

8. It cannot be the case that simply because a witness is providing exculpatory testimony, this gives rise to a 'personal interest' on the part of participating victims. Parties to the proceedings must be motivated by their duty to assist the Chamber in establishing the truth of the events in question, and not simply by ensuring that an accused is not acquitted.

9. It has been held at the ICC held that under no circumstances should legal representatives take on the role of Prosecutor.⁹ In seeking to question a witness solely on the basis that he provides exculpatory evidence is a clear example of Maitre Zarambaud seeking to act as Prosecutor *bis*, and hence falling outside the confines of his role in these proceedings. He has therefore failed to provide any legitimate basis for his request to examine Witness D-53.

10. Maitre Douzima-Lawson asserts only that:¹⁰

« Les intérêts personnels des victimes que je représente sont concernés par le rapport de cet expert militaire étant donné que l'accusé est poursuivi devant la Cour en sa qualité de commandant en chef de l'ALC. Les victimes ont le droit de comprendre le rôle joué par l'accusé, où se situe sa responsabilité et je sollicite par conséquent l'autorisation d'interroger ce témoin. »

11. Maitre Douzima-Lawson is in effect arguing that the victims have a personal interest in any witness whose testimony concerns the command responsibility of

⁹ ICC-01/04-01/07-2844, 20 April 2011, para. 8: citing ICC-01/04-01/07-1665 (20/11/09), para. 83 ("The victims are not parties to the trial and certainly have no role to support the case of the Prosecution"); ICC-01/04-01/07-T-188-CONF-ENG-CT (15/10/10), p. 18 (Legal Representative (Victims) permitted on a case by case basis, to call evidence, but is not to act in this regard, as a Prosecutor *bis*).

¹⁰ ICC-01/05-01/08-2257-Conf, page 1.

the accused, because the accused is charged as a commander. This circular and vague reasoning is wholly insufficient and fails to demonstrate any actual personal interest on the part of the victims she represents. Maitre Douzima-Lawson also relies on an unspecified right of the victims to 'understand' the role played by the accused and his alleged responsibility. She does not give any basis for this right, nor explain how questioning on the part of both the Defence and the Prosecution will be insufficient to ensure an understanding of the relevant command issues at play.

12. In any event, even if the Chamber accepts the justifications put forward by both Maitre Douzima-Lawson and Maitre Zarambaud, the interests of the victims they represent have been served through their examination of the Prosecution Military Expert, General Opande.¹¹

(c) Objections to Specific Questions

Maitre Zarambaud's Application

13. **Question 1.1:** The Defence requires that Maitre Zarambaud provide a reference for his quote in order to make submissions on Question 1.1.

14. **Question 1.2:** This question is based on a mischaracterization of the witness' expert report.

15. **Question 1.3:** This question is based on a mischaracterization of the witness' expert report.

16. **Question 2.1:** This question is irrelevant and should be disallowed.

¹¹ ICC-01/05-01/08-T-198-CONF-ENG ET 07-12-2011.

17. **Question 2.2:** This question is irrelevant and should be disallowed.
18. **Question 2.3:** There is no objection to Question 2.3 beyond the general objections outlined above.
19. **Question 2.4:** The subject matter of the question is unobjectionable, but given its compound nature, it should be rephrased out of fairness to the witness.
20. **Question 3.1:** The question is leading and should be re-phrased or disallowed.
21. **Question 3.2:** The question is leading and should be re-phrased or disallowed.
22. **Question 4.1:** The question is irrelevant, and leading, and should be disallowed.
23. **Question 4.2:** The question is irrelevant, and leading, and should be disallowed.
24. **Question 4.3:** (there does not appear to be a Question 4.3).
25. **Question 4.4:** There is no objection to Question 4.4 beyond the general objections outlined above.
26. **Question 4.5:** The subject matter of the question is unobjectionable, but given its compound nature, it should be rephrased out of fairness to the witness.

Maitre Douzima-Lawson's Application

27. **Question 1:** The subject matter of the eventual question is unobjectionable, but the passage cited as a preamble is unnecessary.
28. **Question(s) 2:** The first series of questions is irrelevant.
29. **Question 3:** There is no objection to Question 3 beyond the general objections outlined above.
30. **Question 4:** There is no objection to Question 4 beyond the general objections outlined above.
31. **Question 5:** There is no objection to Question 5 beyond the general objections outlined above.
32. **Question 6:** The subject matter of the eventual question is unobjectionable, but the passage cited as a preamble is unnecessary.
33. **Question 7:** The form of the question is improper. The lengthy quotation in the first two paragraphs is unnecessary. The first question is leading, and the second question is irrelevant.
34. **Question(s) 8:** The form of the eventual questions is unobjectionable, but the passage cited as a preamble is unnecessary.
35. **Question 9:** There is no objection to Question 9 beyond the general objections outlined above.

36. **Question(s) 10:** The form of the eventual questions is unobjectionable, but the passage cited as a preamble is unnecessary.

37. **Question(s) 11:** There is no objection to Question 11 beyond the general objections outlined above.

38. **Question(s) 12:** There is no objection to Question 12 beyond the general objections outlined above.

39. **Question(s) 13:** There is no objection to Question 13 beyond the general objections outlined above.

40. **Question 14:** The question is irrelevant and should be disallowed.

41. **Question 15:** The lengthy preamble is unnecessary, and the question requires the witness to speculate and should be disallowed.

42. **Question(s) 16:** There is no objection to Question 16 beyond the general objections outlined above.

43. **Question(s) 17:** There is no objection to Question 17 beyond the general objections outlined above.

44. **Question(s) 18:** There is no objection to Question 18 beyond the general objections outlined above.

45. **Question(s) 19:** The first question appears irrelevant, and the second is repetitive of what is contained in the expert report, and should be disallowed.

C. RELIEF REQUESTED

46. On the basis of the arguments set out above, the Defence respectfully requests that the Chamber:

DENY the *Requête du Représentant legal de victimes afin d'être autorisé à poser des questions au témoin 53*; and the *Requête du Représentante legale de victimes afin d'être autorisée à interroger le témoin 53* in their entirety.

The whole, respectfully submitted.



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 10th of August 2012
At The Hague, The Netherlands