

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 11/09/2012

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 for leave to
examine Witness D-65**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document 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
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

A. BACKGROUND

1. On 9 August 2012, the Legal Representatives of Victims ('LRVs') received an email from the Defence entitled 'Updated monthly schedule of Defence witnesses', indicating that Witness D-65 would commence his testimony on Friday 14 September 2012.

2. The LRVs are required to file any application to question witnesses 'at least seven days before the witness is scheduled to testify.'¹

3. On Friday, 7 September 2012, Maitre Zarambaud filed his request to question Witness D-65.² This was received by the Defence on Monday, 10 September 2012. On 10 September 2012, Maitre Douzima-Lawson's filed her request to question Witness D-65,³ namely 5 days before Witness D-65's testimony is scheduled to commence, effectively requiring the Defence to respond within 24 hours.

4. 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*;⁴ 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 of Victims

5. The Defence reiterates its concerns set out in its *Defence Response to the Request by the Legal Representatives for leave to examine Witness D-53*⁵ regarding the

¹ ICC-01/05-01/-08-807-Corr

² ICC-01/05-01/-08-2303-Conf

³ ICC-01/05-01/08-2304-Conf

⁴ ICC-01/05-01/08-1023

⁵ ICC-01/05-01/08-2599-Conf

time frame provided for the presentation of the Defence evidence, and the questioning of its witnesses by the LRVs.

(b) Maitre Douzima-Lawson's Request

6. Since 12 July 2010, the procedure for LRVs to question witnesses in the present proceedings has been clear. If LRVs wish to participate in the trial proceedings, they must:⁶

set out **in a discrete written application the nature and the detail of their proposed questions** to witnesses 7 days before the witness is scheduled to testify

7. In failing to do so, Maitre Douzima-Lawson's request falls outside the procedure prescribed by the Chamber, and should accordingly be dismissed.

8. In any event, Maitre Douzima-Lawson's Request is out of time, and should be denied on that basis. No explanation is given for its lateness and no sensible reasons could, in the Defence submission, be advanced. The LRVs received the Defence witness list in mid-July, almost two months ago. From at least 9 August 2012, Maitre Douzima-Lawson knew the anticipated date of Witness D-65's testimony. Witness D-65 is a notorious figure in the events of PK12. His name feature repeatedly during the Prosecution case, and (as Maitre Zarambaud observes), he famously wrote a book about the events. Accordingly, his account of events is very well known to the LRVs, and would have been for many years.

9. Thirdly, as most recently recalled by Maitre Zarambaud during the examination of the Defence Military Expert, he is 'responsible for protecting the interests of the victims of Bangui and Tarambose and surrounding areas, whereas

⁶ ICC-01/05-01/08-807-Corr, para. 102(h)

[Maitre Douzima-Lawson], my colleague, is responsible for the interests of the victims who live in the interior of the country.’⁷

10. The current witness will be testifying about the events he experienced in Bangui. If there is to be a real definition of ‘personal interest of victims’, and if there is any merit in having two lawyers representing the interests of discrete and different groups of victims, the Defence submits that a distinction should in fact be drawn, and Maitre Douzima-Lawson’s request should be denied on the basis that she has not demonstrated how the interests of the victims in the interior of the country are affected by the testimony of Witness D-65.

(c) Maitre Zarambaud’s Request

11. In addition to the general concerns outlined above, the Defence submits that Questions 4 to 7 should be disallowed on the basis that they are seeking an inadmissible opinion from Witness D-65.

C. RELIEF REQUESTED

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

DENY Maitre Douzima-Lawson’s *Requête de la Représentante légale de victimes relative à l’interrogatoire du témoin 65* ; and

RESTRICT the Maitre Zarambaud’s questioning of Witness D-65 as detailed herein.

The whole respectfully submitted.

⁷ ICC-01/05-01/08-T-234-CONF-ENG ET 22-08-2012



Aimé Kilolo Musamba
Lead Counsel



Peter Haynes
Co- Counsel

Done on the 11th of September 2012
At The Hague, The Netherlands