

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 21 August 2013

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

**Decision on the Defence Motion on the Questioning of Defence Witnesses by
the Legal Representatives of Victims**

Order to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

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

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

Other

Victims Participation and Reparations Section

Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on the Defence Motion on the Questioning of Defence Witnesses by the Legal Representatives of Victims.

I. Background and Submissions

1. On 16 July 2013 the Chamber issued its "Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case",¹ in which it, *inter alia*, decided that the presentation of evidence by the Defence for Mr Jean-Pierre Bemba ("defence") would conclude on or before 25 October 2013.²
2. On 19 July 2013 the defence filed the Defence Motion on the Questioning of Defence Witnesses by the Legal Representatives of Victims.³ In this filing, the defence raises concerns about the manner in which the legal representatives for victims have been questioning witnesses during the defence case, contending that "when both LRVs are permitted to question every Defence witness, on all aspects of their testimony, without necessarily requiring authorisation for each question, in an adversarial style with leading questions, there is effectively no distinction being drawn between the role o[f] the LRVs and that of the prosecution".⁴ The defence submits that the current practice of the legal representatives is undermining the fairness of the trial, is inconsistent with the principle of equality of arms and with the statutory restrictions on the role of the victims at trial.⁵

¹ Decision on the timeline for the completion of defence's presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731.

² ICC-01/05-01/08-2731, paragraphs 22 and 38(b) and (d).

³ ICC-01/05-01/08-2733-Conf.

⁴ ICC-01/05-01/08-2733-Conf, para. 48.

⁵ ICC-01/05-01/08-2733-Conf.

3. The defence submits that the legal representatives have in effect been allowed to become active parties,⁶ which has significantly lengthened the proceedings and impacted the right of the accused to a fair and expeditious trial.⁷ In particular, the defence alleges that the practice of allowing "follow-up" questions is inconsistent with the practice of other Chambers of the Court, and has resulted in overly repetitive and non-neutral questioning.⁸ The defence also submit that the legal representatives should be restricted to questioning only those witnesses who can testify about issues relevant to the geographical regions in which their clients are located.⁹ Lastly, the defence submits that the two-hour limit for the legal representatives' questioning is no longer appropriate where the defence's own estimate is three hours.¹⁰
4. Based on the above, the defence requests the Chamber to order the legal representatives to ask only those questions for which they have received authorisation from the Chamber; or, in the alternative, require the legal representatives to seek leave from the Chamber to ask follow-up questions.¹¹ In addition, the defence asks the Chamber to restrict the legal representatives to asking questions concerning the geographical scope of their mandates and to prevent repetitive, leading or any non-neutral questions, or discussion of their personal background.¹² The defence further requests the Chamber to order the legal representatives to comply with the Chamber's instruction concerning the style and manner of questioning of vulnerable witnesses or those who require special assistance.¹³ Finally, the defence requests the Chamber to restrict the legal representatives' questioning to a total of one hour for the remainder of the defence witnesses.¹⁴

⁶ ICC-01/05-01/08-2733-Conf, para. 2.

⁷ ICC-01/05-01/08-2733-Conf, paras 45 – 48.

⁸ ICC-01/05-01/08-2733-Conf, paras 7 – 37.

⁹ ICC-01/05-01/08-2733-Conf, paras 41 – 43.

¹⁰ ICC-01/05-01/08-2733-Conf, para. 44.

¹¹ ICC-01/05-01/08-2733-Conf, page 20.

¹² ICC-01/05-01/08-2733-Conf, paras 38 – 43 and page 20.

¹³ ICC-01/05-01/08-2733-Conf, page 20.

¹⁴ ICC-01/05-01/08-2733-Conf, page 20.

5. On 9 August 2013, the legal representatives filed a joint response, in which they ask the Chamber to deny the defence motion in its entirety.¹⁵ The legal representatives submit that the fact that the Chamber does not explicitly authorise each follow-up question does not mean that the questioning is not under the strict control of the Chamber.¹⁶ They further emphasize that their questioning is generally aimed at bringing to light the truth of the harm suffered by their clients.¹⁷
6. The legal representatives submit that asking questions relating to credibility is not the sole prerogative of the parties, as it may be relevant when testimony appears to contradict the victims' interests.¹⁸ The legal representatives refer to jurisprudence of Trial Chambers I and II in this regard.¹⁹ The legal representatives also take issue with the defence request to restrict questioning on the basis of the geographical location of the groups of victims, submitting that the grouping of victims by geographical location is solely for the purpose of facilitating their representation and should not affect the questions they are allowed to ask.²⁰ Finally, the legal representatives oppose the defence request to shorten their questioning time for the remaining witnesses.²¹
7. The prosecution did not file a response to the defence motion.

II. Analysis and Conclusions

8. The Chamber notes that Rule 91(3) of the Rules provides that the Chamber *may* decide to require the legal representatives to provide written questions in

¹⁵ Réponse des Représentants légaux des victimes à la « Defence Motion on the Questioning of Defence Witnesses by the Legal Representatives of Victims – ICC-01/05-01/08-2738-Conf, notified on 12 August 2013, ICC-01/05-01/08-2738-Conf.

¹⁶ ICC-01/05-01/08-2738-Conf, para. 7.

¹⁷ ICC-01/05-01/08-2738-Conf, para. 17.

¹⁸ ICC-01/05-01/08-2738-Conf, para. 25.

¹⁹ ICC-01/05-01/08-2738-Conf, para. 25.

²⁰ ICC-01/05-01/08-2738-Conf, paras 28 – 29.

²¹ ICC-01/05-01/08-2738-Conf, para. 34.

advance of testimony. While this Chamber has chosen to require the legal representatives to submit a list of questions for the Chamber's approval prior to questioning a witness, it has also allowed the legal representatives to ask follow-up questions arising from testimony.

9. This Chamber has previously held that the scope of questioning by legal representatives is limited to questions which are relevant to the interests of the victims they represent, including "questions that have the purpose of clarifying the witness' evidence and [] elicit[ing] additional facts, notwithstanding their relevance to the guilt or innocence of the accused".²² The Chamber also held that legal representatives must request leave to ask additional questions at the end of the questioning by the prosecution, and that "such request must explain both the nature and the details of the proposed questioning as well as specify in what way the personal interests of the victims are affected".²³

10. During the course of the defence presentation of evidence, the Chamber has always been mindful of the need to restrict the legal representatives to only those questions which are relevant to the interests of the victims they represent. Far from allowing "virtually unrestrained" questioning, as alleged by the defence, the Chamber has carefully considered the legal representatives' applications to question each defence witness, and has issued oral and written decisions authorising some questions and not others, on the basis of, *inter alia*, whether the questions were sufficiently linked to the personal interests of the victims. Although it is true that, in order to expedite the proceedings, the Chamber has not requested a new application each time the legal representatives wish to ask follow-up questions, the Chamber has

²² Decision on Directions for the Conduct of the Proceedings, 19 November 2010, ICC-01/05-01/08-1023, para. 20.

²³ ICC-01/05-01/08-1023, para. 19.

closely monitored the nature of the follow-up questions and has requested clarification when the relationship of the questions to the personal interests of victims was not clear.

11. The Chamber will continue to exercise control over the form and manner of the legal representatives' questioning in order to ensure that the questions are not repetitive, irrelevant or otherwise inappropriate. For these reasons the Chamber is of the view that the defence's proposed additional restrictions on the legal representatives' ability to question the remaining witnesses are unwarranted. The Chamber also declines to reconsider the questioning time for the legal representatives for the remaining defence witnesses, as it does not find the two hours it previously authorised to be excessive.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 21 August 2013

At The Hague, the Netherlands