

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 10/11/2014

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 “OPCV concerns in relation to the Defence’s Submission No.
ICC-01/05-01/08-3185-Conf”**

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

Fatou Bensouda

Jean-Jacques Badibanga

Counsel for the Defence

Peter Haynes QC

Kate Gibson

Melinda Taylor

Legal Representatives of the Victims

Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

Applicants

(Participation/Reparation)

The Office of Public Counsel for the Victims

Paolina Massidda

The Office of Public Counsel for the Defence

Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations Other
Section**

A. SUBMISSIONS

1. The Office of Public Counsel for Victims (“OPCV”) is not a party or participant in the present proceedings.

2. OPCV has failed even to attempt to demonstrate that the “concerns” enumerated either affect or advance the general interests of its clients.¹ To the contrary, its submissions appear to defend a verification system which is predicated on an objective conflict of interest between their duties to their client and (under Article 8 of the Code) their duty to the Court.

3. The Trial Chamber has a positive not passive duty to ensure a fair trial.

4. The right to a fair trial includes the right to an independent Defence, which must have the right to raise any matters concerning the best interests of the client without fear of threats or retaliation. The OPCV filing, particularly its unsubstantiated and frivolous reference to violations of the Code of Professional Conduct for Counsel,² is inimical to the fairness of the proceedings, and should be struck from the record.

5. In any event, the OPCV “concerns” appear to be predicated on a misunderstanding of plain English. The terms “rigorous” and “comprehensive” are synonyms. If something is dealt with in a rigorous way, this means that the attention afforded has been “comprehensive”, leaving no room for inconsistencies.³

6. Nor is it controversial to assert that the Registry is in a more objective position to investigate or verify whether applicants provided false information, than the applicants’ own lawyers. It is difficult to conceive that the ICC would

¹ ICC-01/05-01/08-3198-Conf.

² ICC-01/05-01/08-3198-Conf, para. 8.

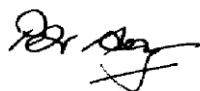
³ See, for example, <http://en.m.wikipedia.org/wiki/Rigour>.

entrust the Defence with the role of investigating its own client, in the same manner that it seems incongruous that the OPCV would wish to exercise this role, given the scope for the conflict of interest.

7. Regardless, it is unacceptable for a non-participant to use its access to confidential filings to impugn the Defence before the Chamber whilst important issues and closing submissions are pending in the present case.

8. However, without prejudice to the Defence's principal position, given the stage of the case and the issues still pending before the Chamber, and the resources and time available to the Defence at the present time, the Defence appends as Annex A, a revised version of filing ICC-01/05-01/08-3185-Conf with the "concerning" language deleted.

The whole respectfully submitted.



Peter Haynes QC

Counsel for Mr. Jean-Pierre Bemba

The Hague, The Netherlands

10 November 2014