

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 December 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

Decision on

**“Requête de la Représentante légale des victimes sollicitant l’accès à la requête
non expurgée de « Defence Request for Relief for Abuse of Process » Conf-
Exp + Conf-Exp-Anxs I, II, III & X + Conf-Anxs IV, V, VI, VII, VIII & IX
ainsi qu’aux annexes I, II, III et X”**

Decision 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 Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson

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

Victims Participation and Reparations Section

Other

Trial Chamber III ("Trial Chamber" or "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 "Requête de la Représentante légale des victimes sollicitant l'accès à la requête non expurgée de « Defence Request for Relief for Abuse of Process » Conf-Exp + Conf-Exp-Anxs I, II, III & X + Conf-Anxs IV, V, VI, VII, VIII & IX ainsi qu'aux annexes I, II, III et X".

I. Background and submissions

1. On 15 December 2014, the defence for Mr Jean-Pierre Bemba Gombo ("defence") filed its "Defence Request for Relief for Abuse of Process" ("Defence Request"),¹ in which, arguing that Mr Jean-Pierre Bemba Gombo's ("Mr Bemba") right to a fair, impartial and independent trial has been irreparably ruptured,² it requests that the Chamber stay the proceedings and order his immediate release.³
2. On 18 December 2014, the Legal Representative of Victims, Maître Marie-Edith Douzima-Lawson ("Me Douzima") filed her "Requête de la Représentante légale des victimes sollicitant l'accès à la requête non expurgée de « Defence Request for Relief for Abuse of Process » Conf-Exp + Conf-Exp-Anxs I, II, III & X + Conf-Anxs IV, V, VI, VII, VIII & IX ainsi qu'aux annexes I, II, III et X" ("Me Douzima's Request"),⁴ in which she requests that the Chamber (i) grant her access to the *ex parte* version of the Defence Request and to its Annexes I, II, III and X ("Items"); and (ii) grant her an extension of time to respond to the Defence Request, in accordance

¹ Defence Request for Relief for Abuse of Process, 15 December 2014, ICC-01/05-01/08-3217-Conf-Exp, with Confidential Redacted Version ICC-01/05-01/08-3217-Conf-Red, Confidential *ex parte* Annexes I, II, III and X and Confidential Annexes IV, V, VI, VII, VIII and IX.

² ICC-01/05-01/08-3217-Conf-Red, paragraph 1.

³ ICC-01/05-01/08-3217-Conf-Red, paragraph 143.

⁴ "Requête de la Représentante légale des victimes sollicitant l'accès à la requête non expurgée de « Defence Request for Relief for Abuse of Process » Conf-Exp + Conf-Exp-Anxs I, II, III & X + Conf-Anxs IV, V, VI, VII, VIII & IX ainsi qu'aux annexes I, II, III et X", 18 December 2014, ICC-01/05-01/08-3219-Conf.

with Regulation 34(b) of the Regulations of the Court ("Regulations").⁵ Specifically, Me Douzima requests that the time limit for her response should start running as of the date she is granted access to the totality of the Items.⁶

3. Me Douzima refers to Article 68(3) of the Rome Statute ("Statute"), which allows that the views and concerns of victims may be presented and considered where their personal interests are affected.⁷ Me Douzima requests access to the non-redacted versions of the Items in the interests of individuals whom she represents, including persons with the dual status of victims and witnesses and victim a/0391/08, which she notes are referred to in the Defence Request and Annex IX thereto.⁸⁹
4. Me Douzima submits that the current classification of the Items prevents her from accessing potentially relevant information concerning the personal interests of the victims she represents.¹⁰ She further argues that the redacted version of the Defence Request does not allow her to identify *a priori* the reasons justifying her lack of access to the Items.¹¹ Me Douzima submits that Annex IX, showing various sums allegedly received by some victims, is likely to prejudice their personal interests,¹² as it tends to discredit the witnesses by alleging that they received undue payments from the prosecution.¹³ Me Douzima argues that the identification of information relevant to the personal interests of victims in Annex IX raises the question of whether such information is also contained within the Items.¹⁴ She maintains that, even if the redacted information in the Defence

⁵ ICC-01/05-01/08-3219-Conf, page 8.

⁶ ICC-01/05-01/08-3219-Conf, page 8.

⁷ ICC-01/05-01/08-3219-Conf, paragraph 6.

⁸ ICC-01/05-01/08-3219-Conf, paragraphs 6, 9 and 13.

⁹ ICC-01/05-01/08-3219-Conf, paragraph 9.

¹⁰ ICC-01/05-01/08-3219-Conf, paragraph 10.

¹¹ ICC-01/05-01/08-3219-Conf, paragraph 11.

¹² ICC-01/05-01/08-3219-Conf, paragraph 13.

¹³ ICC-01/05-01/08-3219-Conf, paragraph 14.

¹⁴ ICC-01/05-01/08-3219-Conf, paragraph 15.

Request is not specifically relevant to the victims she represents, it most likely has an indirect link to the Annexes to which she has access.¹⁵

5. Accordingly, Me Douzima's argues that it is essential for her to have access to the Items in order to fully comprehend the relevance of the defence's submission to the personal interests of victims and witnesses allowed to participate in the proceedings.¹⁶ She further submits that her being granted access to the Items would not affect the rights of the accused, especially as she is already aware of the defence arguments.¹⁷ Lastly, Me Douzima submits that the interests of the victims and witnesses she represents cannot be defended accurately and specifically if she only has access to a partial and incomplete version of the allegations contained in the Defence Request and its Annexes.¹⁸
6. Following the Chamber's instructions,¹⁹ on 22 December 2014 the Office of the Prosecutor ("prosecution") provided its submissions via email. The prosecution submits that unless it is informed by the defence of the underlying reasons for the redactions to the Defence Request, it is not in a position to offer any meaningful proposals regarding the redactions and any input from the prosecution without this information would be purely speculative. Regarding the *ex-parte* confidential annexes to the Defence Request, the prosecution submits that such access is not necessary for Me Douzima to effectively respond to the Defence Request.²⁰ However, the prosecution submits that it does not object to Me Douzima being granted access to the annexes if the Chamber deems it necessary.²¹

¹⁵ ICC-01/05-01/08-3219-Conf, paragraph 15.

¹⁶ ICC-01/05-01/08-3219-Conf, paragraph 15.

¹⁷ ICC-01/05-01/08-3219-Conf, paragraph 17.

¹⁸ ICC-01/05-01/08-3219-Conf, paragraph 19.

¹⁹ Email of 18 December 2014 at 15.47, from the Chamber to the parties and participant ordering, pursuant to Regulation 34 of the Regulations of the Court, that any responses be filed by Monday, 22 December 2014.

²⁰ Email of 22 December at 13.51, from the prosecution to the Chamber.

²¹ *Ibid.*

7. The same day, the defence filed its response to Me Douzima's Request,²² requesting the Chamber to dismiss it in its entirety.²³ Firstly, the defence submits that the Items' classification is justified in order to limit access to information which is protected in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu and Narcisse Arido* ("case ICC-01/05-01/13").²⁴ Accordingly, the defence submits, the question of access falls within the mandate of Pre-Trial Chamber II and Trial Chamber III has no competence to adjudicate Me Douzima's Request.²⁵ Secondly, the defence submits that Me Douzima became aware of the redactions and the existence of *ex parte* annexes on 11 November 2014, and that her failure to file her request in a timely manner undermines its substance.²⁶
8. Lastly, the defence submits that the Items are not relevant to the interests of victims in the *Bemba* case.²⁷ The defence submits that the Chamber having given no indication in early November 2014 that the defence should alter the classification of any of the Items, reflects that the Items are not relevant to the personal interests of victims participating in the *Bemba* case.²⁸ As to Me Douzima's submission that the identification of information relevant to the personal interests of victims in Annex IX raises questions about the presence of such information within the Items, the defence submits that this assumption is incorrect.²⁹ The defence states that the material redacted from the Items has no link to the interests of victims in the *Bemba* case and Me Douzima's representation of these individuals is

²² Defence Response to the 'Requête de la Représentante légale des victimes sollicitant l'accès à la requête non expurgée de « Defense Request for Relief for Abuse of Process » Conf-Exp + Conf-Exp-Anxs I, II, III & X + Conf-Anxs IV, V, VI, VII, VIII & IX ainsi qu'aux annexes I, II III et X", 22 December 2014, ICC-01/05-01/08-3220-Conf.

²³ ICC-01/05-01/08-3220-Conf, page 7.

²⁴ ICC-01/05-01/08-3220-Conf, paragraph 8.

²⁵ ICC-01/05-01/08-3220-Conf, paragraph 8.

²⁶ ICC-01/05-01/08-3220-Conf, paragraphs 9 to 11.

²⁷ ICC-01/05-01/08-3220-Conf, paragraph 12.

²⁸ ICC-01/05-01/08-3220-Conf, paragraph 13.

²⁹ ICC-01/05-01/08-3220-Conf, paragraph 15.

in no way compromised by the Pre-Trial Chamber's classification of the material contained therein.³⁰

II. Analysis and Conclusions

9. In accordance with Article 21(1) of the Statute, the Chamber has considered Articles 64(2) and (6)(c) and 68(3) of the Statute and Regulations 23 *bis* and 24(2) of the Regulations.

10. The Chamber notes that, pursuant to Article 64(2) and (6)(c) of the Statute, it shall ensure that the trial is fair and expeditious and conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses while, at the same time, provide for the protection of confidential information. Further, in accordance with Article 68(3) of the Statute, victims shall be permitted that their views and concerns be presented and considered by the Court "[w]here the personal interests of victims are affected".

11. After examining the Items in detail, the Chamber notes that the redactions applied to the Defence Request and the Annexes classified *ex parte*, refer to information and documents related to case ICC-01/05-01/13. Further, the Chamber concurs with the prosecution and defence that the redacted information they contain is not relevant to the interests of the victims represented by Me Douzima or necessary for her to respond to the Defence Request.

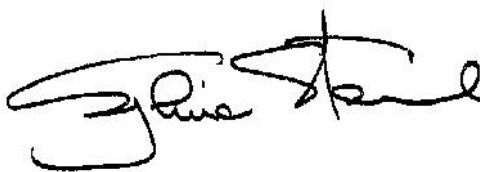
12. The Chamber further notes that it considered Me Douzima's submission that Annex IX to the Defence Request refers to victims she represents. However, the Chamber does not consider this sufficient to alter its view that the redactions applied to the Defence Request and the Annexes

³⁰ ICC-01/05-01/08-3220-Conf, paragraph 15.

classified *ex parte* do not affect Me Douzima's ability to respond to the Defence Request.

13. In light of the above, the Chamber REJECTS Me Douzima's Request in its entirety.

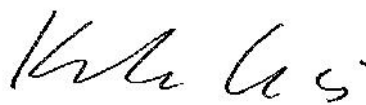
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 24 December 2014

At The Hague, the Netherlands