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TRIAL CHAMBER III

Before: Judge Joyce Aluoch, Presiding Judge
Judge Geoffrey Henderson
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public Redacted Document

Public redacted version of “Prosecution’s consolidated observations on the Legal Representatives’ applications to present evidence and the views and concerns of victims”, 9 February 2012, ICC-01/05-01/08-2126-Conf

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I. Introduction

1. On 21 November 2011, Trial Chamber III (“Chamber”) issued its “Order regarding applications by victims to present their views and concerns or to present evidence”, requesting Mr. Zarambaud and Ms. Douzima, in their capacity as Legal Representatives of victims, (“Legal Representatives”) to file their requests for victims to present evidence and/or their views and concerns in the trial proceedings against Jean-Pierre Bemba Gombo (“Accused”) by 6 December 2011.¹

2. Accordingly, on 6 December 2011, the Legal Representatives filed written applications for victims to present evidence and their views and concerns (“First Applications”).² On 23 January 2012, upon the Chamber’s “Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims” (“Second Order”),³ the Legal Representatives filed supplemented applications (“Supplemented Applications”).⁴ The Legal Representatives requested that the Chamber allow them to call eight victims to testify; two victims were proposed by Mr. Zarambaud and six by Ms. Douzima.⁵ Mr. Zarambaud also submitted written statements of the two victims he proposed to call, while Ms. Douzima submitted written statements of four out of the six victims she proposed to call. On 26 January 2012, Ms. Douzima filed the written statement of one

¹ ICC-01/05-01/08-1935, Order regarding applications by victims to present their views and concerns or to present evidence, 21 November 2011.

² ICC-01/05-01/08-1989-Conf, *Requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes*, 6 December 2011 and ICC-01/05-01/08-1990-tENG, Application by the Legal Representative of Victims for leave to call victims to appear as witnesses and present their views and concerns to the Chamber, 6 December 2011.

³ ICC-01/05-01/08-2027, Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims, 21 December 2011.

⁴ ICC-01/05-01/08-2058-Conf, *Complément de la requête afin d’autorisation de présentation d’éléments de preuve et subsidiairement de présentation de vues et préoccupations par les victimes du 6 décembre 2012*, 23 January 2012 and ICC-01/05-01/08-2061-Conf, *Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d’autoriser des victimes à témoigner et à faire valoir leurs vues et préoccupations devant la Chambre*, 23 January 2012.

⁵ ICC-01/05-01/08-2058-Conf-AnxA-B-Red and ICC-01/05-01/08-2061-Conf-Anx1-4-Red.

of the two remaining victims.⁶ No written statement was submitted in relation to the eighth victim.

3. For the reasons stated below, the Prosecution submits that the evidence that five victims (Victims a/0511/08, a/0866/10, a/0555/08, a/0394/08 and a/1317/10) are expected to provide would assist the Chamber in its determination of the truth. The Prosecution proposes below a priority list of these five victims and leaves it to the Chamber to decide how many of them should be called to testify. The Prosecution also notes that the evidence and/or the views and concerns to be provided by all the victims proposed by the Legal Representatives affect their personal interests as well as those of a large number of participating victims. Furthermore, the Prosecution submits that the presentation of evidence and/or views and concerns by those victims is not prejudicial to the rights of the Accused to a fair and expeditious trial. The Prosecution opposes the testimony of Victims a/2475/10 and a/0542/08 because they do not appear to be of assistance in the Chamber's ability in determining the truth, but does not oppose the submission, in writing, of their views and concerns.

II. Request for Confidentiality

4. The Prosecution requests that these observations be received by the Chamber as "Confidential" since they respond to documents currently classified as "Confidential".

III. Observations

5. As established by the Appeals Chamber, the right to lead evidence pertaining to the guilt or innocence of the Accused lies primarily with the Prosecutor and the

⁶ ICC-01/05-01/08-2066-Conf+Conf-Red-Anx5, *Second Addendum à la "Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d'autoriser des victimes à témoigner et à faire valoir leurs vues et préoccupations devant la Chambre"*, 26 January 2012.

Defence. Victims may be allowed only exceptionally to present evidence.⁷ In its Second Order, the Chamber set forth the requirements for victims to be allowed to testify and/or present their views and concerns:

- a. The victims' testimonies should assist the Chamber in the determination of the truth;
- b. The evidence to be provided by the victims should affect the personal interests of the greatest number of participating victims;
- c. The evidence presented by the victims shall not be cumulative of that which has already been presented in this case (thereby preserving the Accused's right to be tried without undue delay); and
- d. The victims, should they be permitted to testify and/or present their views and concerns, shall not testify anonymously vis-à-vis the parties.⁸

A. Analysis of the victims' written statements provided by the Legal Representatives

i) Victims whose evidence would assist the Chamber in determining the truth

6. The Prosecution submits that all the five victims listed below would provide evidence of assistance in the determination of the truth. The Prosecution, however, lists them in a descending order of priority and leaves it to the Chamber to decide how many of them should be called to testify.

⁷ ICC-01/04-01/06-1432 OA9 OA10, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, para. 93.

⁸ ICC-01/05-01/08-2027, para. 12.

a. Victim a/1317/10

7. This victim, who suffered from pillaging, can testify to the widespread nature of crimes, including killings, rapes and pillaging, perpetrated by the MLC forces in Sibut. Furthermore, he can provide information relevant to the Accused's criminal responsibility, as he personally witnessed the Accused's visit to Sibut. This victim can therefore shed additional light on the case, without duplicating evidence already presented to the Chamber.

b. Victim a/0866/10

8. The testimony of this victim would cover a wide range of crimes. She was a victim of rape by multiple MLC perpetrators and of pillaging in Mongoumba. She also personally witnessed two murders that occurred on 5 March 2003. Additionally, this victim was forced by the MLC troops to carry looted items and was close to them. Therefore, she could provide additional information on the *modus operandi* of the MLC troops, relevant for the identification of the perpetrators of crimes committed in the Central African Republic ("CAR"). The evidence that this victim could provide does not duplicate the evidence presented to date.

c. Victim a/0555/08

9. This victim is a Central African woman who was raped by the MLC soldiers. As she was taken by force by them from Bossembelé to Bossangoa and subsequently forced to accompany them [REDACTED], her account of events relates to crimes committed by the MLC troops in locations including Bossembelé and Bossangoa. This testimony would further assist the Chamber to determine whether the perpetrators were MLC troops and the scope of the geographical area where the MLC soldiers committed crimes in the CAR.

d. Victim a/0511/08

10. This victim personally witnessed the murder of [REDACTED] perpetrated by soldiers of the *Mouvement de Libération du Congo* (“MLC”) in the [REDACTED] arrondissement of Bangui [REDACTED]. Given the type of crime and the location of this incident,⁹ not mentioned by any of the prior witnesses in this case, this victim’s testimony would shed additional light on the widespread nature of the crimes committed by the MLC troops and would not be cumulative with the evidence that was presented thus far to the Chamber.

e. Victim a/0394/08

11. This victim’s house was pillaged by the MLC troops in Damara in December 2002. Additionally, this victim can provide information on other crimes, including murders, that were committed by the MLC in the Damara area from December 2002 until February 2003. The Prosecution submits that his detailed evidence would complement, without duplication, the evidence already provided by some Prosecution witnesses, notably Witness CAR-OTP-PPPP-0063 and CAR-OTP-PPPP-0209, and would assist the Chamber in its determination of the truth.

ii) *Victims whose evidence does not appear necessary for the determination of the truth*

a. Victim a/2475/10

12. This victim proposes to provide hearsay evidence regarding a rape committed by the MLC troops at PK12. This information would largely duplicate evidence already presented by Prosecution’s witnesses. The Prosecution submits that his

⁹ See ICC-01/04-01/06-2058-Conf, para 12-4. The incident occurred in an area of Bangui, [REDACTED].

testimony would not assist the Chamber in its determination of the truth and this victim therefore does not meet the requirements to present evidence before the Chamber.

b. Victim a/0542/08

13. This victim was raped by the MLC in Bossangoa. Although her testimony is relevant to the charges brought against the Accused, it appears that the information she can provide is cumulative of the evidence that Victim a/0555/08 can present. The Prosecution therefore submits that her testimony would not substantially assist the Chamber in its determination of the truth and this victim does not meet the requirements to testify.

B. *The evidence and/or views and concerns to be presented by victims affect the personal interests of a large number of participating victims*

14. In light of its analysis of the victims' written statements, the Prosecution submits that the evidence that Victims a/0511/08, a/0866/10, a/0555/08, a/0394/08 and a/1317/10 would provide if called to testify, and their views and concerns, are sufficiently diverse geographically and represent a number of crimes. They thus affect the personal interests of a large number of participating victims.

C. *Victims' presentation of evidence and/or views and concerns is not prejudicial to the rights of the Accused*

15. Mr. Zarambaud and Ms. Douzima, in the Supplemented Applications, respectively estimated six and four hours sufficient for their examination of each

victim.¹⁰ Furthermore, in the Prosecution's view the victims should submit their views and concerns in writing. Therefore, the presentation of evidence and/or views and concerns by the victims, to the extent supported by the Prosecution, would not be prejudicial to the right of the Accused to an expeditious trial.

16. The Prosecution also notes that the timing of the Legal Representatives' applications and the disclosure of the victims' written statements allow the Accused sufficiently to prepare his defence. Finally, all the victims mentioned in the Supplemented Applications committed themselves to disclose their identities in the event that they are permitted to testify and/or submit their views and concerns, which will enable the Defence to sufficient time to investigate and respond in advance of their appearance at trial.

D. *Testimony via video-link*

17. In light of the information recently transmitted to the parties by the Registry in relation to the lengthy procedure to obtain the new biometric passport in the CAR,¹¹ the Prosecution respectfully suggests that the victims admitted to present evidence before the Chamber be heard via video-link. This proposal would avoid unnecessary delay and also reduce the burden on the victims.

IV. Relief sought

18. In light of the foregoing, the Prosecution does not oppose the presentation of evidence by Victims a/1317/10, a/0866/10, a/0555/08, a/0511/08 and a/0394/08, and leaves it to the Chamber to determine how many of these victims should be called to

¹⁰ ICC-01/05-01/08-2058-Conf, para 15 and ICC-01/05-01/08-2061-Conf, para. 6.

¹¹ See email from the Registry sent to the Chamber, all parties and participants on 26 January 2012 at 16:05.

testify; the Prosecution does not oppose the submission in writing of their views and concerns.

19. The Prosecution does not oppose the presentation in writing of the views and concerns of Victims a/2475/10 and a/0542/08.



Fatou Bensouda, Prosecutor

Dated this 25th Day of July 2016
At The Hague, The Netherlands