

**Cour
Pénale
Internationale**



**International
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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

**Reply of the Legal Representative of Victims to the
"Defence Further Submissions on the '*Requête relative à la reprise des actions
introduites devant la Cour par des victimes décédées*'"**

Source: Ms Marie-Edith Douzima-Lawson, Legal Representative of Victims

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. PROCEDURAL BACKGROUND

1. On 8 September 2015, the Defence filed further submissions¹ on the application by the Legal Representative of Victims concerning the resumption of action filed by nine deceased victims before the International Criminal Court² (the “Court”) and the annexes to the application.³ On 11 September 2015, the Legal Representative sought leave of Trial Chamber III (the “Chamber”) to reply to the further submissions filed by the Defence.⁴ On 15 September 2015, the Chamber granted the Legal Representative her request.⁵

II. CONFIDENTIALITY

2. Pursuant to regulation 23 *bis*(2) of the Regulations of the Court, the Legal Representative submits this reply as “confidential”.

III. SUBMISSIONS

3. In accordance with the Chamber’s decision of 15 September 2015, this reply is confined to the new allegations raised by the Defence in its submissions of 8 September 2015.⁶

¹ “Defence Further Submissions on the ‘*Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées*’”, ICC-01/05-01/08-3293-Conf, 8 September 2015.

² “*Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées*”, ICC-01/05-01/08-3256-Conf, 18 June 2015.

³ Redacted confidential annexes 1-9 to the “*Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées*”, ICC-01/05-01/08-3256-Conf-Anx1-Red to ICC-01/05-01/08-3256-Conf-Anx9-Red.

⁴ “*Demande d’autorisation de répliquer aux ‘Soumissions supplémentaires de la Défense concernant la ‘Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées’*”, ICC-01/05-01/08-3296-Conf, 11 September 2015.

⁵ “Decision on ‘*Demande d’autorisation de répliquer aux ‘Soumissions supplémentaires de la Défense concernant la ‘Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées*’ (ICC-01/05-01/08-3296-Conf)’””, 15 September 2015.

⁶ *Ibid.*, para 9.

A. The redactions to the annexes are appropriate and in compliance with the Chamber's instructions

4. The Defence argues that the redactions applied by the Legal Representative to the annexes are "inappropriate". In particular, it considers that the redactions to the identity of seven of the nine deceased victims are unjustified since those victims did not object to the disclosure of that information to the Defence in their applications to participate.⁷ It likewise contends that the redactions to the stamps, signatures and all personal names referred to in the annexes prevents it from making any meaningful submissions on their provenance or authenticity.⁸

5. The Legal Representative recalls that, on 11 August 2015, the Chamber directed her to provide the parties with confidential redacted versions of the annexes to her application.⁹ In accordance with the Chamber's instructions, the following information was redacted: (a) the identity of the deceased persons and (b) the identities and places of residence of (i) the persons appointed to resume action on behalf of deceased victims and (ii) other family members of the deceased.

6. The Legal Representative observes that the identities of the seven deceased victims in respect of whom the Defence considers the redactions to be unwarranted were not excluded from the redactions ordered by the Chamber. The Legal Representative considers that disclosing the deceased victims' identities to the parties poses a risk that the identities and/or places of residence of potential applicants to resume action and their families could be revealed. Accordingly, she considers that these particulars cannot be disclosed to the Defence at this stage, even though some deceased victims agreed to the disclosure of their identities in their applications for participation.

⁷ ICC-01/05-01/08-3293-Conf, paras. 18, 23, 28, 39, 45, 50 and 55.

⁸ *Ibid.*, paras. 20, 25, 30, 35, 41, 47, 52, 57 and 60; ICC-01/05-01/08-3296-Conf, para. 7.

⁹ E-mail from the Chamber to the parties, the Legal Representative and the Registry, sent on 11 August 2015 at 13:36.

Reiterating her stance,¹⁰ she submits that the anonymity of the *nine* deceased victims must be preserved until the Chamber has ruled on the applications to resume action and, if appropriate, until the persons resuming action have been consulted in respect of disclosure of their identities and those of the deceased.

7. The Legal Representative argues, in addition, that the redactions applied to certain names, signatures and stamps are necessary. Contrary to what the Defence alleges, these redactions are *limited*, in the records of family councils and in the *jugements d'homologation* [court orders giving legal effect to those records], to the names and signatures of deceased victims' family members who are mentioned therein. Accordingly they are in compliance with the Chamber's instructions.

8. As regards the stamps specifically, the Legal Representative points out that only stamps belonging to the chiefs of districts and villages where family councils were held have been redacted from the records of these meetings. She considers that disclosing this information would incur the risk that the places of residence of potential applicants to resume action and their families could be revealed given that the names of the districts or villages in question appear on the stamps. The Legal Representative underscores that the name, stamp and signature of the President of the Bimbo *Tribunal de Grande Instance* who validated the family council records as well as the Head Clerk who assisted him have not, on the other hand, been redacted from the court orders or death certificates, so that the parties can be sure of their authenticity.

9. Furthermore, the Legal Representative emphasises that her redactions were applied in consultation with the Victims Participation and Reparations Section and the Office of Public Counsel for Victims as recommended by the Chamber. Furthermore, contrary to the Defence's claim, these redactions are appropriate. They allow the identity and location of potential applicants to resume action and the

¹⁰ "Réplique de la Représentante légale des victimes à la 'Réponse de la Défense concernant la "Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées"', ICC-01/0501/08-3270-Conf, 20 July 2015, paras. 12-14.

families concerned to be kept confidential, thus ensuring their safety and well-being in compliance with article 68(1) of the Statute.

B. The annexes are sufficient to support the applications to resume action

10. The Defence submits that the annexes are not sufficient to support the applications to resume action filed by the successors of deceased victims. It notes, *inter alia*, that the court orders giving legal effect to family council records and the death certificates were not issued at the time of the death of the victims concerned.¹¹ It also notes that the family council records do not supply any details of the responsibilities delegated to the persons designated as successors.¹² In the view of the Defence, it is apparent from these circumstances that the annexes were produced with a view not to administering the deceased victims' estates but purely to resuming the action these victims had brought before the Court.¹³

11. However, citing *Katanga and Ngudjolo Chui*, the Defence claims that the applications to resume action should be dismissed since the family council records do not show that designated successors were *explicitly* mandated to continue proceedings initiated before the Court by the deceased, which is a prerequisite for resuming action.¹⁴ It is paradoxical that, on the one hand the Defence submits that the annexes were drawn up with the sole purpose of applying to resume action and, on the other, it objects to the fact that those records do not state explicitly that the successors were appointed to continue the proceedings before the Court brought by the deceased victims.

12. As she stated in her previous reply, the Legal Representative was appointed by the Chamber on 7 February 2014 to represent the victims assigned to the late Mr Zarambaud,¹⁵ and she needed some time to familiarise herself with their cases.¹⁶

¹¹ ICC-01/05-01/08-3293-Conf, paras. 13, 14 and 16.

¹² *Ibid.*, para. 14.

¹³ *Ibid.*, para. 16.

¹⁴ *Ibid.*, para. 17; ICC-01/05-01/08-3296-Conf, para. 7.

¹⁵ ICC-01/0501/08-3270-Conf, para. 20.

¹⁶ The nine victims who are the subject of her application of 18 June 2015 had been represented by the

Only during that process was she informed that several victims had died and that their families wished to resume proceedings.

13. Unrest in the Central African Republic at the time of the victims' death meant that their families had not been able to take the steps required under Central African law to administer their estates that would have allowed them to continue proceedings before the Court. The families hence obtained the necessary official documentation with the Legal Representative's assistance.

14. The Legal Representative submits that the Bimbo *Tribunal de Grande Instance* required a death certificate to issue an order that would give a family council record legal effect.¹⁷ However, owing to the unrest mentioned in the previous paragraph, the families of the deceased victims had not been able to obtain death certificates within the one-month time limit prescribed under article 148 of the Central African Family Code. They had only certificates attesting that a death had been registered, issued by the chief of the district or village where the person had died or been buried. As a result, under article 179 of the Central African Family Code, they needed to obtain a court order in lieu of a death certificate to fulfil the court's requirement.

15. In the view of the Legal Representative, the Defence misunderstands the scope of the family council records when it alleges that they are not compliant with Central African law¹⁸ and that the persons appointed to them have not been expressly mandated by the families concerned to continue action brought before the Court by the deceased victims.¹⁹

16. Contrary to what the Defence asserts, article 750 of the Family Code does not require the responsibilities of the representative appointed to administer the deceased's estate set forth in a family council record. Furthermore, the Legal Representative points out that the family council records have been given *legal effect*

late Mr Zarambaud before his death.

¹⁷ Article 753 of the Central African Family Code.

¹⁸ ICC-01/05-01/08-3293-Conf, paras. 14 and 15.

¹⁹ *Ibid.*, para. 17.

by the Bimbo *Tribunal de Grande Instance*. Their conformity with Central African law has, therefore, been verified by a competent judicial institution.

17. The Legal Representative submits that these court orders clearly show that the persons chosen by members of the family council and designated as “successors” in the records have been mandated to administer the estates of the deceased victims. Among other responsibilities, such representatives are charged with “[TRANSLATION] the active and passive administration of the deceased’s assets”²⁰ whether tangible or, as is the case of legal proceedings, intangible.

18. The Legal Representative therefore submits that, in accordance with Central African law, the family council records do *indeed* give the designated persons a mandate to resume all proceedings brought by the deceased victims while they were alive, *including* action before the Court. She considers that, by including the family council records and judicial confirmation orders as annexes to her application, she has provided proof of the mandate granted by the families to these persons.

19. Furthermore, the Legal Representative submits that, by filing a request to resume action before the Court through their legal representative, these persons have demonstrated their wish to continue proceedings initiated by the deceased victims. In her request, the Legal Representative informed the Chamber that the members appointed by the nine families concerned had expressed their wish to continue action brought by the deceased.²¹

20. Furthermore, the Legal Representative submits that the Defence has drawn erroneous conclusions from the decision on which it relies. In that decision, the Bench did not reject an application by a person wishing to act on behalf of the deceased victim who had not been *specifically* mandated by the family to resume action. It reserved judgement and requested the Legal Representative to provide it with a statement from the deceased victim’s family specifically mandating a person

²⁰ Article 750 of the Family Code.

²¹ ICC-01/05-01/08-3256-Conf, paras. 11-19.

to continue the action initiated by the victim before the Court.²²

21. The Legal Representative considers, however, that the “specific mandate” criterion applied in *Katanga and Ngudjolo Chui* cannot be used in this case in view of the particular features of Central African inheritance law explained above.²³ In this regard, she observes that the Court’s practice with regard to the resumption of action by the successors of deceased victims is not set in stone²⁴ and can be adapted to suit the circumstances of the case. In *Ntaganda* Trial Chamber VI recently held that, in certain circumstances, an applicant to resume action did not have to prove that he or she had been appointed by the family.²⁵

C. No time limit can be set for filing additional applications to resume action

22. The Defence requested the Chamber to set a deadline of 30 September 2015 for filing any additional applications to resume action.²⁶

23. The Legal Representative notes that, on 11 August 2015, the Chamber instructed her to file any additional requests without specifying a time limit.²⁷ She once again recalls the particularly difficult situation on the ground and the number of deceased victims represented in this case,²⁸ which make gathering the documentation needed to complete applications to resume action a burdensome process.²⁹ She therefore submits that no deadline can be set without risking the unfair exclusion of numerous victims from proceedings should their successors be unable to resume action which those victims brought before the Court.

²² ICC-01/04-01/07-3018, para. 23.

²³ See above, paras. 13-17.

²⁴ Article 21(2) of the Statute provides that the Court “*may* apply principles and rules of law as interpreted in its previous decisions” [emphasis added], but it is not obliged to.

²⁵ Where the applicant is the deceased victim’s spouse, only surviving child or relative. See “Fourth decision on victims’ participation in trial proceedings”, ICC-01/04-02/06-805, 1 September 2015, para. 8 and footnote 10.

²⁶ ICC-01/05-01/08-3293-Conf, paras. 64 and 65.

²⁷ E-mail from the Chamber of 11 August 2015, point 5.

²⁸ To date, the Legal Representative has been informed of the deaths of nearly 130 victims.

²⁹ ICC-01/05-01/08-3270-Conf, para. 24.

IN THE LIGHT OF THE FOREGOING, the Legal Representative of Victims respectfully requests that the Chamber:

TAKE NOTE of the observations expressed in this reply;

DISMISS the Defence's request to set a deadline of 30 September 2015 for the filing of any additional applications to resume action; and

GRANT her application of 18 June 2015.

[signed]

Ms Marie-Edith Douzima-Lawson

Dated this 21 September 2015,
At The Hague, the Netherlands