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**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

**Defence Response to the application of the Legal Representative of Victims Mr
Zarambaud to question witness 0033**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

A. INTRODUCTION

1. This response is filed pursuant to Rule 91(3)(a) of the Rules of Procedure and Evidence, and paragraphs 18-20 of the *Decision on the Directions for the Conduct of Proceedings* of 19 November 2010.¹ It is filed in opposition to the *Requête du Représentant légal de victimes afin d’être autorise à interroger le témoin W33*, dated 26 May 2011 (“Application”).²

2. Hitherto, the defence has refrained from formally opposing the requests of the Legal Representatives to question witnesses, mainly because the witnesses to date have either been alleged victims of crimes themselves, or were residents of the Central African Republic (“CAR”) during the war and were thus, what might broadly be termed victims of events, irrespective of whether they directly suffered from criminal activity.

3. However, the remainder of the prosecution case is substantially comprised of so-called “insider witnesses” whose function is to provide the court with evidence of the history and constitution of the MLC, the position of Jean Pierre Bemba within the organization, and contemporaneous events in the Democratic Republic of Congo (“DRC”).

4. Of course these witnesses are expected to give evidence of Mr Bemba’s alleged superior responsibility for the crimes committed in the CAR, arguably the critical issue between the prosecution and the defence in the case. None of them have any concurrent interest with the victims represented before the court, and none can give direct evidence of events in the CAR.

5. As such, on a proper and strict interpretation, they are collectively unlikely to be able to give evidence which impacts upon the *personal* interests of the victims.

¹ ICC-01/05-01/08-1023

² ICC-01/05-01/08-1458-Conf

Whilst of course, it is in the financial or general interests of victims to see the prosecution secure a conviction against the accused, it is submitted that that in no way justifies the Legal Representatives of Victims being given leave to examine witnesses,³ and certainly not licence to literally cross-examine⁴ in support of the prosecution case, or simply to seek to adduce evidence prejudicial to the accused.

B. JUSTIFICATION IN THE CASE OF THE CURRENT WITNESS

6. Witness 0033 was indeed the [REDACTED] [REDACTED] during the events. He has no direct knowledge of any events in the CAR, and witnessed no crimes being committed. His evidence is at best of tangential interest to the Victims represented by Mr Zarambaud, and many of the proposed questions do nothing to advance the personal interests of his clients at all.

³ICC-01/04-01/06-1119, Decision on victims' participation, 18 January 2008, paragraph 96 : "Following an initial determination by the Trial Chamber that a victim shall be allowed to participate in the proceedings, thereafter in order to participate at any specific stage in the proceedings, e.g. during the examination of a particular witness or the discussion of a particular legal issue or type of evidence, a victim will be required to show, in a discrete written application, the reasons why his or her interests are affected by the evidence or issue then arising in the case and the nature and extent of the participation they seek. A general interest in the outcome of the case or in the issues or evidence the Chamber will be considering at that stage is likely to be insufficient. These applications will necessarily be examined on a case-by-case basis, since the question of whether "personal interests" are affected is necessarily fact-dependent." Also citing the same decision; ICC-01/05-01/08-807, Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceeding, 12 July 2010.

⁴ Victims may not ask leading questions. See, for example, ICC-01/05-01/08-T-34-Red-ENG, 24 November 2010, p. 34 and ICC-01/05-01/08-T-61-Red-ENG, 8 February 2011, p. 32. See also ICC-01/04-01/07-1665-Corr, Directions for the conduct of the proceedings and testimony in accordance with rule 140, 20 November 2009, para. 91 (IV. Scope and Mode of Questioning / E. Questions by Victims' Legal Representatives): 3. *Mode of questioning*, 91. The Victims' Legal Representatives **shall conduct their questioning in a neutral manner and avoid leading or closed questions, unless specifically authorised by the Chamber** to deviate from this rule. If the Victims' Legal Representative is authorised to challenge the credibility/accuracy of a witness's testimony, leading, closed as well as questions challenging the witness's reliability are allowed, subject to the same limitations as outlined in relation to cross-examination. See also, Oral decisions, ICC-01/04-01/06-T-207-ENG 09 July 2009, p. 45-46 and ICC-01/04-01/06-T-169-ENG, 6 May 2009, p. 11-13 and ICC-01/04-01/06-T-130-ENG, 18 February 2009, p. 88-89.

7. The Justification section of the Application has at its heart a fundamental error. This witness had nothing to do with military intelligence, and no knowledge of military matters. [REDACTED]

[REDACTED]⁵. The suggestion, moreover, that he had [REDACTED] in the CAR is a simple misstatement of the contents of his interviews.

8. The mere fact, moreover, that he was a [REDACTED] [REDACTED] in no way satisfies the foundational basis for questioning by the Legal Representative of Victims.⁶

C. ANALYSIS OF PROPOSED QUESTIONS

9. **Question 1** is wholly inadmissible. It is relevant to no issue in the case, and most certainly has no connection to any personal interest of the Victims represented by Mr Zarambaud. One is bound to ask rhetorically, “what interest can an alleged victim of a crime in Bangui, who has never met Mr Bemba, have in the fears of a Congolese former political ally of his in Kinshasa that he might be acquitted of the charges he faces?”.

10. The Question is, moreover, solely designed to elicit prejudicial material, namely that the accused has a certain disposition which ought to make the Chamber think badly of him⁷.

⁵ CAR-OTP-0009-1121; CAR-OTP-0009-0066

⁶ See Application, section « Justification »

⁷ The victims should not be permitted to ask questions which go to the character of the accused. *Prosecutor v. Kaing Guek Eav (alias Duch)*, Decision on Civil Party Co-Lawyers’ Joint Request for a Ruling on the Standing of Civil Party Lawyers to Make Submissions on Sentencing and Directions concerning the questioning of the accused, experts, and witnesses testifying on character, 9 October 2009, at paras 44-48.

11. This witness has no basis of knowledge to answer **Question 2**. He didn't see the soldiers and has no knowledge of military matters.⁸ The question thus calls for speculation.

12. **Question 3** and its various components have no relevance to the personal interests of the victims whatsoever. Even if they did, the form in which the question is suggested should be disallowed. It is perfectly simple for experienced counsel to ask the questions, for example, "what army rank did Bemba hold? Who appointed him to that rank? On what date approximately?" without the preamble of reading into the transcript no fewer than 4 passages from the witness' interviews, thereby putting all the necessary ideas into his mind before asking the questions.

13. The defence has no objection to **Question 4.1**. The passage from the witness' interview which precedes it is, however, irrelevant to the personal interests of the Victims, outside the date period of the charges,⁹ and merely intended to prejudice the accused. Question 4.1 can be put without the passage being read as a preamble.

14. **Question 4.2** has no relevance to the personal interests of the Victims, in its present form, and, is merely intended to adduce evidence prejudicial to the accused. Were it put in the form, "do you know from which regions the troops under Mustapha's command in the CAR came?" the defence would have no objection to its being put.

15. The way in which the **Questions 5.1- 5.3** are sequenced, and especially the way in which the various quotations from interviews are used to introduce them is misleading, and not a fair reflection of the witness' account in interview. Ultimately, he recalled that the unit named "*Effacer le Tableau*" had nothing to do with operations

⁸ CAR-OTP-0009-1096; CAR-OTP-0009-0042 ; and CAR-OTP-0009-1139; CAR-OTP-0009-0085

⁹ The Trial Chamber has previously rejected such questions; see, ICC-01/05-01/08-T-108-Red-ENG, 11 May 2011, p. 25: "Turning to the proposed questions, the Chamber, with the Presiding Judge dissenting, allows the questions to be asked under the following conditions: First, in relation to Maître Zarambaud's list of questions, questions 1 to 6 are not allowed as they are outside the scope of the charges brought against the accused. These aforementioned questions are therefore rejected."

in the CAR¹⁰. Accordingly, however they might have behaved, whatever Mr Bemba may have known of their behaviour, and however he might have reacted, is irrelevant to the personal interests of the Victims in the CAR and merely prejudicial to the accused, as these events are outside the geographical and temporal frame of the charges.

16. **Question 6** is irrelevant to the personal interests of the victims. Even if it is not, then the questions can be put in an open form without reading out two, apparently unconnected, passages of the witness' interview as a preamble. Indeed in its present form, the question is impossible to answer, as it is not clear which of the 2 statements counsel wants the witness to confirm.

17. The defence does not suggest that it is outside the interests of the Victims to explore the investigations and trials held in the DRC after the events, however, **Question 7** is not in a proper form and should not be permitted. The question is ultimately a compound leading question, and it is prefaced by counsel's summary of the witness' evidence, a further miscontextualised quotation, and a third passage from the witness' interview. It would be perfectly straightforward for counsel to ask simple open questions along the lines of, "Were trials held in relation to the events? How many people were tried? What were they tried for? What sentences did they receive? Why do you think these trials were organised?"

18. **Question 8** is not in the personal interests of the victims. Indeed it is not in anybody's interests. It is a wholly irrelevant question which is moreover, completely outside this witness' knowledge or expertise. How can he possibly explain how Mustapha's forces came to be defeated by Bozize's rebels, and what relevance does it have even if he can?

19. **Question 9** is not relevant to the personal interests of the victims. It is moreover, impossible to answer in its present form, as the witness cannot possibly

¹⁰ CAR-OTP-0009-1180; CAR-OTP-0009-0187

know which of 5 statements he is being asked to confirm. Again, even if the interests of the victims is demonstrated, the questions could and should be put in open form without reference to the transcripts of the witness' interview.

20. **Question 10** is again a compound question, incapable of a sensible answer. It is not irrelevant to the personal interests of the victims, but the questions should be rephrased, broken down and put in an open way without reading transcripts as a preamble.

C. RELIEF SOUGHT

21. In light of the above, the Defence respectfully requests that the Chamber limit the questioning of the Legal Representative of Victims, Mr Zarambaud, in the terms set out above.



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Done at The Hague, the Netherlands

1 September 2011