

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 17 November 2008

PRE-TRIAL CHAMBER III

Before: Judge Hans-Peter Kaul, Single Judge

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

Public

**Third Decision on the Question of Victims' Participation Requesting
Observations from the Parties**

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

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Nkwebe Liriss
Tjarda E. Van der Spoel
Aimé Kilolo-Musamba

Legal Representatives of the Victims

Legal Representatives of the Applicants
Nganatouwa Goungaye Wanifiyo

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

Judge Hans-Peter Kaul, acting as Single Judge for Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”) with respect to victims’ issues in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*,¹ has been seized on 7 November 2008 of the “Transmission of applications” submitted by the Registrar.²

1. On 12 September 2008 the then Single Judge Fatoumata Dembele Diarra³ issued the “Decision on Victim Participation”, deciding:

“a) that the Registry shall submit complete applications for participation in the proceedings to the Chamber no later than 3 October 2008, or no later than 30 days before the confirmation hearing in the event the hearing is postponed;

b) that the Victims Participation and Reparations Section shall, where necessary, suggest any redactions it considers necessary for the protection of victims, on submitting the applications for participation;

c) that the Victims and Witnesses Unit shall assist the Victims Participation and Reparations Section in determining the necessary redactions for the protection of victims;

d) that the Registry shall assist the victims for the purpose of ensuring their legal representation, and that where no legal representative has been appointed by the victims, the Office of Public Counsel for Victims shall, as assigned by the Registry, act as legal representative of the victims from the time they submit their applications for participation.”⁴

2. On 3 October 2008 24 applications for participation in the present case have been filed with the Chamber in accordance with rule 89(1) of the Rules of Procedure and Evidence (the “Rules”). After having received the redacted versions of those applications⁵ and the related report⁶ pursuant to regulation 86(5) of the Regulations of the Court (the “Regulations”), the Chamber invited the Prosecutor and the

¹ ICC-01/05-01/08-204.

² ICC-01/05-01/08-224-Conf-Exp and its annexes.

³ ICC-01/05-01/08-86.

⁴ ICC-01/05-01/08-103-tENG-Corr, pp. 5 and 6.

⁵ ICC-01/05-01/08-140-Conf-Exp and its annexes.

⁶ ICC-01/05-01/08-168-Conf-Exp and its annexes.

Defence to provide observations on those applications⁷ which were duly submitted on 4 November 2008.⁸

3. On 7 November 2008 the Chamber received another 34 applications of victims wishing to participate in the present proceedings, in unredacted as well as redacted form.⁹ It further received the "Transmission of report to Pre-Trial Chamber III on applications to participate in the proceedings a/0390/08 to a/0396/08 and a/0455/08 to a/0481/08"¹⁰ pursuant to regulation 86(5) of the Regulations.

4. On 11 and 12 November 2008 the Office of Public Counsel for Victims (the "OPCV") submitted additional information concerning the applications a/0456/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08 and application a/0455/08¹¹ (the "Additional Information").

5. The Single Judge notes articles 21(2), 57(3)(c), 61, 67, 68(1), 68(3) of the Rome Statute (the "Statute"), rules 87(1), 89(1) of the Rules, and regulations 80, 81(4), 86(5) of the Regulations.

6. The Single Judge recalls in particular article 68(3) of the Statute which reads:

"Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered *at stages of the proceedings determined to be appropriate by the Court* and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims *where the Court considers it appropriate*, in accordance with the Rules of Procedure and Evidence (emphasis added)."

⁷ ICC-01/05-01/08-184.

⁸ ICC-01/05-01/08-205-Conf and ICC-01/05-01/08-206-Conf.

⁹ ICC-01/05-01/08-226-Conf-Exp and its annexes.

¹⁰ ICC-01/05-01/08-228-Conf-Exp and its annex.

¹¹ ICC-01/05-01/08-234-Conf-Exp and ICC-01/05-01/08-240-Conf-Exp.

7. The Single Judge notes that the hearing on the confirmation of charges and related proceedings leading to it form a particular “[stage] of the proceedings” within the meaning of article 68(3) of the Statute. The Single Judge holds the view that this provision gives the Single Judge the authority to determine whether the presentation and consideration of views and concerns of victims during the stage of confirmation of charges pursuant to article 61 of the Statute is appropriate and not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Furthermore, this provision gives the Single Judge the authority to determine where it is appropriate that such views and concerns may be presented by the legal representatives of victims during the stage of confirmation of charges pursuant to article 61 of the Statute.

8. The Single Judge notes that as the hearing on the confirmation of charges is approaching, this makes it necessary to take appropriate decisions at a later stage not only on the applications but also on whether views and concerns may be presented by victims or their legal representatives at this stage. To this end, the Single Judge holds the view that the Prosecutor and the Defence must first be given the opportunity to express their opinion as to (i) whether the applicants should be granted the status of victim in the present case, and (ii) whether it is appropriate and not prejudicial to or inconsistent with the rights of the accused and a fair trial that the applicants, who are granted the status of victim in the present case, present during the stage of confirmation of charges their views and concerns, where their personal interests as victims are affected.

9. The Single Judge recalls that according to rule 89(1) of the Rules, the “Registrar shall provide a copy of the application to the Prosecutor and the Defence, who shall be entitled to reply within a time limit to be set by the Chamber.” Therefore, the Single Judge is of the view that the Prosecutor and the Defence should submit meaningful observations on the questions as set out in paragraph 8.

10. The Single Judge notes that according to articles 57(3)(c) and 68(1) of the Statute the Court shall take appropriate measures to protect *inter alia* the safety, privacy, physical and psychological well-being of the victims in a manner that is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial. The Single Judge is of the view that redactions are an appropriate protective measure at this stage of the proceedings.

11. The Single Judge is aware that the Prosecutor as an organ of the Court has a duty under the Statute to take necessary measures or request authorisation of such measures for the protection of any person including victims. The Single Judge is, however, of the view that it is not prejudicial or inconsistent with the duties of the Prosecutor that redacted applications be provided to his Office.

12. The Single Judge further considers that providing the applications to the Defence redacted does not unnecessarily restrict its rights and therefore cannot be perceived as prejudicial, or inconsistent with the rights of the accused and a fair and impartial trial taking into consideration the necessity to respect the proportionality principle as reflected in the last sentence of article 68(1) of the Statute.¹²

13. In the opinion of the Single Judge, this approach is justified in view of (i) respecting the principle of fair and equal treatment of the Prosecutor and the Defence;¹³ (ii) taking into consideration the authority and influence of Mr Jean Pierre

¹² Appeals Chamber, "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81", ICC-01/04-01/06-773, para. 34.

¹³ PTC II, "Decision on legal representation, appointment of counsel for the defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06", ICC-02/04-01/05-134, para. 25; PTC II, "Decision on legal representation, appointment of counsel for the defence, criteria for redactions of applications for participation, and submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07", ICC-02/04-01/05-312, p. 7.

Bemba as President of the Mouvement de Libération du Congo over this movement to locate and reach the applicants, (iii) further considering the personal situation of the victims who do not benefit from any other protective measure provided by the Court or the (local) government, (iv) reflecting the express desire of most of the applicants that their identity and other related identifying information are not revealed, whether to the Prosecutor, the Defence, other participants or the public, and lastly (v) the fact that the decision granting the victim status to the applicants is still pending.

14. However, the Single Judge is of the view that the scope of redactions should not be excessive and “cannot exceed what is strictly necessary (...) and must allow for a meaningful exercise by the Prosecution and the Defence of their right to reply to the application for participation.”¹⁴ Having reviewed the extent of the suggested redactions by the Victims Participation and Reparations Section (the “VPRS”) and the Victims and Witnesses Unit (the “VWU”) on the applications received, the Chamber considers that the redactions proposed for those applications do not appear to “exceed what is strictly necessary”. The Single Judge thus authorises the redactions as proposed by VPRS and VWU.

15. The scope of redactions proposed by VPRS and VWU equally applies to the Additional Information submitted by OPCV. The Single Judge is of the view that the Registrar shall transmit to the parties the redacted Additional Information together with the redacted applications concerned.

¹⁴ PTC I, “Decision on Protective Measures Requested by Applicants 01/04-1/dp to 01/04-6/dp”, ICC-01/04-73, p. 4; PTC II, ICC-02/04-01/05-134, para. 23.

FOR THESE REASONS, THE SINGLE JUDGE

- a) **orders** the Registrar to provide the Prosecutor and the Defence immediately with a redacted copy of the 34 applications together with the Additional Information in redacted form, where applicable;

- b) **grants** the Prosecutor and the Defence to submit their observations on the 34 applications and the Additional Information, by no later than **Tuesday, 25 November 2008** on the following issues, namely
 - (i) on the possibility of granting the applicants the status of victims in the proceedings before the Chamber in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, and
 - (ii) on the question whether it is, in the view of the Prosecutor and the Defence, appropriate and not prejudicial to or inconsistent with the rights of the accused and a fair trial that those among the 34 additional applicants, who are granted the status of victim in the present case, present during the stage of confirmation of charges their views and concerns, where their personal interests as victims are affected.

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



Judge Hans-Peter Kaul
Single Judge

Dated this Monday, 17 November 2008

At The Hague, the Netherlands