

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 January 2009

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
URGENT**

**Sixth Decision on Victims' Participation Relating to Certain Questions Raised by
the Office of Public Counsel for Victims**

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
Karim A. A. Khan
Aimé Kilolo-Musamba
Pierre Legros

Legal Representatives of the Victims

Marie Edith Douzima-Lawson

Legal Representatives of the Applicants

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

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 requested on 7 January 2009 by the Office of Public Counsel for Victims (the “OPCV”) to be granted further participatory rights during the upcoming confirmation hearing.² Even though this request has been addressed to the full Chamber, the Single Judge considers that he was meant to be seized of.

1. The Single Judge recalls the “Fourth Decision on Victims’ Participation” of 12 December 2008³ in which he, *inter alia*, recognised victim applicants as victims of the case for the purpose of participating in the present proceedings and further granted them participatory rights as elaborated in paragraphs 101 to 110 of said decision.

2. For the sake of clarity, the Single Judge recalls some of the participatory rights granted to victims recognised for the purpose to participate in the present proceedings which are pertinent to the questions under examination:

“1. Public hearing on the confirmation of charges

101. The Single Judge considers that legal representatives of victims recognised as participants in the present proceedings have the right to attend the public parts of the hearing on the confirmation of charges against Mr Jean-Pierre Bemba. In case the Chamber decides to hold parts of the hearing *in camera* or *ex parte*, the Chamber reserves its position on whether to grant legal representatives of victims the right to attend those sessions.

(...)

2. Access to public decisions and documents

103. The Single Judge notes rule 121(10) of the Rules, according to which the record of all proceedings before the Pre-Trial Chamber “may be consulted by victims and their legal representatives participating in the proceedings pursuant to rules 89 to 91”. The Single Judge is of the view that legal representatives of victims recognised as participants in the

¹ Pre-Trial Chamber III, “Decision Designating a Single Judge on Victims’ Issues”, ICC-01/05-01/08-204.

² ICC-01/05-01/08-347.

³ Pre-Trial Chamber III, ICC-01/05-01/08-320.

present proceedings must gain proper knowledge of the case and prepare themselves for the confirmation hearing. Therefore they must be granted access to all public decisions and documents⁴ contained in the record of the case effective as of the date of their recognition to participate in the present proceedings pursuant to rule 121(10) of the Rules, subject to any restrictions concerning confidentiality and protection of national security information. The right of access to decisions and documents does not extend to those filed on a confidential basis or, if applicable, under seal and/or *ex parte*.

3. Access to public evidence

104. With a view to their proper preparation for the confirmation hearing and possible claim of reparations at a later stage, the Single Judge is of the view that victims should have access also to evidence adduced by the parties. Therefore, the Single Judge holds that legal representatives of victims recognised as participants in the present proceedings must have access to all public evidence disclosed by the Prosecutor and the Defence which is contained in the record of the case effective as of the date of their recognition to participate in the present proceedings. The right of access to evidence does not include the right of access to evidence filed on a confidential basis.

(...)

6. Oral submission during the confirmation hearing

108. The Single Judge is of the view that in order to render effective participatory rights of victims recognised as participants in the present proceedings, the legal representatives of victims should be entitled to make succinct oral submissions on issues of law and fact raised during the confirmation hearing, if (i) victims prove first by way of application that their interests are affected by the issue under examination and (ii) it is deemed appropriate by the Chamber. Therefore, legal representatives of victims must be entitled to make succinct oral submissions on issues of law and fact if granted by and subject to any other direction of the Chamber."

3. In its filing of 7 January 2009, the OPCV requests the Single Judge to decide on the following three issues:

"Sur la première question, de pouvoir intervenir sur les questions liées à la juridiction et à l'admissibilité lors de l'audience de confirmation des charges se celle-ci devait l'estimer opportun dans le cadre de la défense des intérêts des victimes qu'elle représente ; et, afin de lui permettre d'exercer ce droit de manière effective, de prévoir dans l'agenda de l'audience de confirmation des charges un laps de temps réservé à la présentation des dites observations ainsi que d'ordonner la transmission

⁴ The term "document", pursuant to regulation 22 of the Regulations, includes any motion, request, response, reply, observations, representation and any other submission in a form capable of delivering a written record to the Court.

de tout document portant sur ces questions et qui aurait été déposé au dossier de l'affaire de manière confidentielle.

Sur la deuxième question, d'ordonner au Greffe de notifier au Conseil principal avant l'audience de confirmation des charges l'ensemble des conclusions portant sur toute question de droit et/ou de fait éventuellement déposées à titre confidentiel par le Bureau du Procureur et la Défense ;

D'ordonner au Bureau du Procureur et à la Défense de fournir au BCPV les listes des éléments de preuves publics qu'ils entendent utiliser lors de l'audience de confirmation des charges, dans l'ordre dans lequel ils entendent les présenter lors de ladite audience.

Sur la troisième question, d'ordonner au Bureau du Procureur de transmettre au Conseil principal du BCPV toutes les déclarations faites en qualité de témoins par les victimes a/0459/08, a/0465/08 et a/0467/08 que celle-ci représente ;

D'autoriser cette dernière à assister aux audiences que se tiendraient éventuellement à huis clos et qui concerneraient les déclarations des dites victimes. De plus, dans le cas où la Chambre autorisait le Conseil principal à assister aux dites audiences que se tiendraient le cas échéant à huis clos, d'ordonner au procureur de fournir au Conseil principal du bureau tout document confidentiel inclus à la liste des éléments de preuves déposés par le Bureau du Procureur afférant aux trois personnes qui cumulent le double statut de victime et de témoin, ainsi que de lui fournir une liste indiquant dans quel ordre ces documents seront utilisés au cours de l'audience de confirmation des charges."

4. The Single Judge notes articles 19(3), 61, 67 and 68 of the Rome Statute (the "Statute") and rules 85, 89, 91, 92 and 121 of the Rules of Procedure and Evidence (the "Rules").

5. With regard to the first question the OPCV raises, namely the issue of possible intervention during the confirmation hearing in relation to questions of jurisdiction and admissibility, the Single Judge wishes to clarify that at this point in time such questions have not been the subject of judicial examination. Due to the hypothetical nature of the question, the Single Judge holds that adjudication at this point in time is premature. Moreover, the Single Judge refers to his ruling in the Fourth Decision

on Victims' Participation concerning oral submissions during the confirmation hearing (see paragraph 2 above).

6. Concerning the OPCV's request to access documents related to the question of jurisdiction and admissibility which may have been filed on a confidential basis, the Single Judge recalls his ruling in the Fourth Decision on Victims' Participation concerning access to public decisions and documents as well as public evidence (see paragraph 2 above).

7. With regard to the second question the OPCV raises, namely the issue of access to written submissions on points of fact and/or law pursuant to rule 121(9) of the Rules which the OPCV alleges having been filed on a confidential basis by the Prosecutor and the Defence, the Single Judge refers to his ruling in the Fourth Decision on Victims' Participation concerning access to public decisions and documents (see paragraph 2 above). In addition, the Single Judge clarifies that at the time of this decision no such filing has been submitted by the parties.

8. With regard to the related issue of receiving a list of evidence which comprises the public evidence in the order the parties wish to present them during the confirmation hearing,⁵ the Single Judge clarifies at the outset that such list must not be confused with the list of evidence as provided for in article 61(3)(b) of the Statute and rule 121(3) of the Rules. The Single Judge observes that this informal list of evidence described by the OPCV is as such not foreseen in the Statute, the Rules or the Regulations of the Court. Further, he wishes to inform the OPCV that at the time of this decision no such list exists. However, in case such an informal list is introduced by a party during the confirmation hearing thus contributing to a

⁵ "(...) le Conseil principal du Bureau demande respectueusement à la Chambre d'ordonner au Bureau du procureur et à la Défense de fournir au BCPV les listes des éléments de preuves publics que ceux-ci entendent utiliser lors de l'audience de confirmation des charges, dans l'ordre dans lequel ils entendent les présenter lors de ladite audience.", ICC-01/05-01/08-347, para. 21 and p. 11.

practical organisation of proceedings, the Single Judge is of the view that such list may be shared with the legal representatives of victims. Therefore, the Single Judge considers that adjudication at this point in time is premature.

9. With regard to the third question the OPCV raises, namely the issue of access to the statements of those victims, represented by the OPCV during the confirmation hearing, who are also witnesses whose statement has been subject to disclosure according to rule 76 of the Rules between the parties, the Single Judge holds that all information necessary for the proper preparation of the OPCV to present the views and concerns of those victims is contained, in principle, in the relevant victim applications. Moreover, the Single Judge recalls that the OPCV has access to all public decisions, documents and evidence in the present case. In case the OPCV lacks necessary information to prepare for the confirmation hearing, it may approach its clients at any time.

10. The Single Judge is of the view that information in a statement of a witness who has also been recognised as victim of the case for the purpose of participating in the proceedings concerning the confirmation hearing has been provided by that person in his or her capacity as witness and not as victim. The OPCV acts as legal representative of the victim and not of the witness, even though that person may be one and the same. Therefore, the Single Judge does not deem it appropriate to grant the OPCV access to previous statements of those victims who are also witnesses in the present case. The Single Judge points out that this consideration is without prejudice to any possible position of the Chamber with regard to other issues⁶ emanating from the dual status of victims.

⁶ See e.g., Pre-Trial Chamber I, Decision on the Application for Participation of Witness 166, ICC-01/05-01/08-632.

11. In addition, the Single Judge points out that such witness statements are filed on a confidential basis. In this regard, the Single Judge refers to his ruling in the Fourth Decision on Victims' Participation concerning access to public evidence (see paragraph 2 above).

12. Furthermore, the Single Judge takes note that the OPCV also requests to attend closed sessions during which those witness statements are discussed. Further, the OPCV requests access to all related documents and list of evidence submitted by the Prosecutor, be it confidential or not. The Single Judge refers to his ruling in the Fourth Decision on Victims' Participation concerning the right to attend the public hearing on the confirmation of charges and access to public decisions and documents as well as evidence (see paragraph 2 above).

13. Finally, the Single Judge has not failed to note that the request submitted by the OPCV on 7 January 2009 seems to be characterized by a tendency to disregard the letter, spirit and guidance provided in the Fourth Decision on Victims' Participation of 12 December 2008 with a view to securing further participatory rights during the confirmation hearing. The Single Judge, who finds such a tendency quite questionable, would like to remind the OPCV of its obligation to fully and correctly implement any decision of the Chamber and/or the Single Judge with regard to victims' participation.

FOR THESE REASONS, THE SINGLE JUDGE

rejects the requests of the Office of Public Counsel for Victims in their entirety.

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



Judge Hans-Peter Kaul
Single Judge

Dated this Thursday, 8 January 2009

At The Hague, the Netherlands