

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 19 November 2010

**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**

**Public Document  
URGENT**

**Decision on the legal representation of victim applicants at trial**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Ms Petra Kneuer

**Counsel for the Defence**

Mr Nkwebe Liriss  
Mr Aimé Kilolo Musamba

**Legal Representatives of the Victims**

Ms Marie-Edith Douzima Lawson  
Mr Assingambi Zarambaud

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod Jacome

**Detention Section**

**Victims Participation and Reparations Section**

Ms Fiona McKay

**Other**

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, (“Bemba case”) issues the following Decision on the legal representation of victims applicants at trial.

1. On 9 December 2009, the Chamber issued its “Decision on the Observations on legal representation of unrepresented applicants”<sup>1</sup> whereby the Chamber ordered, *inter alia*, that:

- (i) the Office of Public Counsel for Victims (“OPCV”) shall continue to represent the victims applicants it currently represents until the Chamber issues a decision on their application to participate; and
- (ii) the OPCV shall represent those victims applicants who have not chosen a legal representative until a decision is made on their application to participate.

2. On 11 June 2010, the Victims Participation and Reparation Section (“VPRS”) filed its “Second report to Trial Chamber III on applications to participate in the proceedings,” *ex parte*, Registry only, in which 192 victims’ applications for participation were transmitted to the Chamber (“second set”).<sup>2</sup>

3. On 7 September 2010, Trial Chamber III issued its “Decision setting a time-limit for the submission of new victims’ applications for participation”<sup>3</sup>, whereby the date of 15<sup>th</sup> September 2010 was set as the time limit for filing of applications

<sup>1</sup> Decision on the Observations on legal representation of unrepresented applicants, 9 December 2010, ICC-01/05-01/08-651.

<sup>2</sup> Second report to Trial Chamber III on applications to participate in the proceedings, 11 June 2010 (notified on 14 June 2010), ICC-01/05-01/08-796-Conf-Exp.

<sup>3</sup> Decision setting a time-limit for the submission of new victims’ applications for participation, 7 September 2010, ICC-01/05-01/08-875.

with a view to participate in the initial stages of trial proceedings;

4. During the status conference held on 24 September 2010, the Chamber informed the parties that an approximate number of 850 victims' applications to participate in the proceedings would be notified to the parties in sets and on a rolling basis. The Chamber further ordered the parties to submit their observations on each set within 10 days of being notified.<sup>4</sup>

5. On 24 September 2010, the VPRS filed its "Third report to Trial Chamber III on applications to participate in the proceedings", *ex parte*, Registry only,<sup>5</sup> and transmitted 218 victims' applications for participation to the Chamber ("third set").<sup>6</sup>

6. Pursuant to an Order of the Chamber as it was then constituted, the VPRS transmitted to the parties redacted copies of the relevant applications on 24 September 2010.<sup>7</sup>

7. On 1 October 2010, the VPRS filed its "Fourth report to Trial Chamber III on applications to participate in the proceedings", *ex parte*, Registry only,<sup>8</sup> and transmitted 176 victims' applications for participation to the Chamber<sup>9</sup> ("fourth set") as well as redacted copies of these applications to the parties.<sup>10</sup>

<sup>4</sup> Transcript, ICC-01/05-01/08-T-25-Conf-ENG, 24 September 2010, pages 23 and 24.

<sup>5</sup> Third report to Trial Chamber III on applications to participate in the proceedings, 24 September 2010 (notified on 24 September 2010), ICC-01/05-01/08-904-Conf-Exp.

<sup>6</sup> Third transmission to the Trial Chamber of applications for participation in the proceedings, 24 September 2010 (notified on 24 September 2010), ICC-01/05-01/08-900-Conf-Exp and its annexes.

<sup>7</sup> Third transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings, 24 September 2010 (notified on 24 September 2010), ICC-01/05-01/08-903.

<sup>8</sup> Fourth report to Trial Chamber III on applications to participate in the proceedings, 1 October 2010 (notified on 1 October 2010), ICC-01/05-01/08-915-Conf-Exp.

<sup>9</sup> Fourth transmission to the Trial Chamber of applications for participation in the proceedings, 1 October 2010 (notified on 1<sup>st</sup> October 2010), ICC-01/05-01/08-913-Conf-Exp and its annexes.

<sup>10</sup> Fourth transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings, 1 October 2010 (notified on 1 October 2010), ICC-01/05-01/08-914.

8. On 8 October 2010, the VPRS filed its “Fifth report to Trial Chamber III on applications to participate in the proceedings”, *ex parte*, Registry only,<sup>11</sup> and transmitted 104 victims’ applications for participation to the Chamber<sup>12</sup> (“fifth set”) and transmitted to the parties redacted copies of these applications.<sup>13</sup>

9. On 8 October 2010, the VPRS transmitted 82 victims’ applications for participation to the Chamber<sup>14</sup> (“sixth set”) and transmitted to the parties on the same day the redacted copies of these applications.<sup>15</sup> Subsequently, on 11 October 2010, the VPRS filed its “Sixth report to Trial Chamber III on applications to participate in the proceedings”, *ex parte*, Registry only.<sup>16</sup>

10. On 11 October 2010, the prosecution and the defence submitted their observations on the third set of applications for victims’ participation in the proceedings.<sup>17</sup>

11. On 15 October 2010, the VPRS filed its “Seventh report to Trial Chamber III on applications to participate in the proceedings”, *ex parte*, Registry only,<sup>18</sup> and

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<sup>11</sup> Fifth report to Trial Chamber III on applications to participate in the proceedings, 8 October 2010 (notified on 8 October 2010), ICC-01/05-01/08-934-Conf-Exp and its annexes.

<sup>12</sup> Fifth transmission to the Trial Chamber of applications for participation in the proceedings, 8 October 2010 (notified on 8 October 2010), ICC-01/05-01/08-932-Conf-Exp and its annexes.

<sup>13</sup> Fifth transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings, 8 October 2010 (notified on 8 October 2010), ICC-01/05-01/08-933 and its annexes.

<sup>14</sup> Sixth transmission to the Trial Chamber of applications for participation in the proceedings, 8 October 2010 (notified on 8 October 2010), ICC-01/05-01/08-936-Conf-Exp and its annexes.

<sup>15</sup> Sixth transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings, 8 October 2010 (notified on 8 October 2010), ICC-01/05-01/08-937 and its annexes.

<sup>16</sup> Sixth report to Trial Chamber III on applications to participate in the proceedings, 11 October 2010 (notified on 11 October 2010), ICC-01/05-01/08-942-Conf-Exp and its annexes.

<sup>17</sup> Prosecution’s Observations on 218 Applications for Victim’s Participation in the Proceedings, 11 October 2010, ICC-01/05-01/08-946; *Corrigendum* to Prosecution’s Observations on 218 Applications for Victim’s Participation in the Proceedings, 14 October 2010, ICC-01/05-01/08-946-Corr; Defence Response to the Third Transmission of Victims’ Applications for Participation in the Proceedings, 11 October 2010, ICC-01/05-01/08-945.

<sup>18</sup> Seventh report to Trial Chamber III on applications to participate in the proceedings, 15 October 2010 (notified on 15 October 2010), ICC-01/05-01/08-954-Conf-Exp and its annexes.

transmitted 373 victims' applications for participation to the Chamber<sup>19</sup> and transmitted to the parties redacted copies of these applications.<sup>20</sup>

12. On 14 and 21 October 2010, the prosecution filed its observations on the fourth set as well as on the fifth and sixth sets of applications.<sup>21</sup>

13. The defence filed its observations on the fourth, fifth and sixth set of applications for victims' participation on 22 October 2010, 4 November and 15 November 2010 respectively.<sup>22</sup>

14. On 28 October 2010, the prosecution filed its observations on the seventh set of applications for victims' participation.<sup>23</sup>

15. On 29 October 2010, the VPRS filed its "Eighth report to Trial Chamber III on applications to participate in the proceedings," *ex parte*, Registry only,<sup>24</sup> and transmitted 280 victims' applications for participation to the Chamber<sup>25</sup> and

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<sup>19</sup> Seventh transmission to the Trial Chamber of applications for participation in the proceedings, 15 October 2010 (notified on 18 October 2010), ICC-01/05-01/08-956-Conf-Exp and its annexes.

<sup>20</sup> Seventh transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings, 15 October 2010 (notified on 15 October 2010), ICC-01/05-01/08-955 and its annexes.

<sup>21</sup> Prosecution's Observations on 176 Applications for Victims' Participation in the Proceedings, 14 October 2010, ICC-01/05-01/08-952; Prosecution's Observations on 104 Applications for Victims' Participation in the Proceedings, 21 October 2010, ICC001/05-01/08-966; Prosecution's Observations on 82 Applications for Victims' Participation in the Proceedings, 21 October 2010, ICC-01/05-01/08-967.

<sup>22</sup> Defence Observations on the "Fourth Transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings", 22 October 2010, ICC-01/05-01/08-968; Observations de la Défense sur les 104 demandes de participation à la procédure en qualité de victimes, 4 November 2010, ICC-01/05-01/08-995; Observations de la Défense sur les 82 demandes de participation à la procédure en qualité de victimes, 15 November 2010, ICC-01/05-01/08-1009.

<sup>23</sup> Prosecution's Observations on 373 Applications for Victims' Participation in the Proceedings, 27 October 2010, ICC-01/05-01/08-979.

<sup>24</sup> Eighth report to Trial Chamber III on applications to participate in the proceedings, 29 October 2010 (notified on 29 October 2010), ICC-01/05-01/08-983-Conf-Exp and its annexes.

<sup>25</sup> Eighth transmission to the Trial Chamber of applications for participation in the proceedings, 29 October 2010 (notified on 29 October 2010), ICC-01/05-01/08-981-Conf-Exp and its annexes.

transmitted to the parties redacted copies of these applications.<sup>26</sup>

16. On 10 November 2010, the Chamber issued its “Decision on common legal representation of victims for the purpose of trial” whereby it, *inter alia*, authorised the Registry to designate two common legal representatives from the Central African Republic (“CAR”) to represent the totality of the victims allowed to participate in the case and recalled that where it is appropriate, the OPCV may appear before the Chamber in “respect of *specific* issues.”<sup>27</sup>

17. On 11 November 2010, the prosecution submitted its observations on the eighth set of applications for victims’ participation in the proceedings.<sup>28</sup>

18. On 16 November 2010, the Registry filed its “Notification of designation of common legal representatives”<sup>29</sup> whereby it informed the Chamber that Ms Marie-Edith Douzima Lawson and Mr Assingambi Zarambaud were designated as common legal representatives of current and future victims.

19. On 18 November 2010, the Chamber issued its “Decision on 772 applications by victims to participate in the proceedings” whereby the Chamber decided on the six first sets of victims’ applications and authorised 624 victims to participate in the proceedings.

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<sup>26</sup> Eighth transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings, 29 October 2010 (notified on 29 October 2010), ICC-01/05-01/08-982 and its annexes.

<sup>27</sup> Decision on common legal representation of victims for the purpose of trial, 10 November 2010, ICC-01/05-01/08-1005, paragraph 29.

<sup>28</sup> Prosecution’s Observations on 280 Applications for Victims’ Participation in the Proceedings, 11 November 2010, ICC-01/05-01/08-1006.

<sup>29</sup> Notification of designation of common legal representatives, 16 November 2010, ICC-01/05-01/08-1012 and Corrigendum to Notification of designation of common legal representatives, 17 November 2010, ICC-01/05-01/08-1012-Corr.

20. The Trial Chamber notes that, pursuant to Article 68(3) of the Rome Statute, “the Court shall permit the victims to present their views and concerns 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.”

21. While it has issued on 18 November 2010 a decision on six sets of applications for participation, a decision of the Chamber on the seventh and eighth sets is still pending. The decision on the remaining two sets will not be issued prior to the opening of the trial on 22 November 2010, pending the filing by the defence of its observations thereon. The Chamber notes that the defence observations in relation to the seventh and eighth sets of applications are to be submitted by 26 November 2010 and 8 December 2010, respectively.

22. The Chamber nevertheless underlines that the applications for participation contained in the seventh and eighth sets have been received within the time limit set in the 7 September 2010 Decision.<sup>30</sup> Thus, as the trial is scheduled to start on 22 November 2010 and in order not to prejudice these applicants (“the Applicants”), among whom some may later be granted participating status, it is appropriate, under such exceptional circumstances, to allow the Applicants to be represented at the commencement of the trial pending a decision on their application to participate in the proceedings, and to make opening statements, if they so wish.

23. The Chamber recalls that such opening statements, if any, are not considered

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<sup>30</sup> ICC-01/05-01/08-875, paragraph 9.



as evidence for the purposes of the trial. The Chamber further underlines that their representation at this stage does not extend to the right to be allowed to put questions to witnesses. Accordingly, the Chamber is of the view that allowing Applicants whose applications have been already filed to be represented at the commencement of the trial and to make opening statements is not prejudicial to, or inconsistent, with the rights of the accused.

24. The Chamber notes that, at this stage, a large number of the Applicants have either not chosen a legal representative or mentioned in their applications their willingness to be represented by the OPCV. In these instances, the Chamber recalls that, in compliance with the 9 December 2009 Decision, these Applicants are represented by the OPCV until a decision is made on their application to participate. In some instances however, the Applicants expressed their wish to be represented either by one of the two common legal representatives designated by the Registry or by another legal representative.

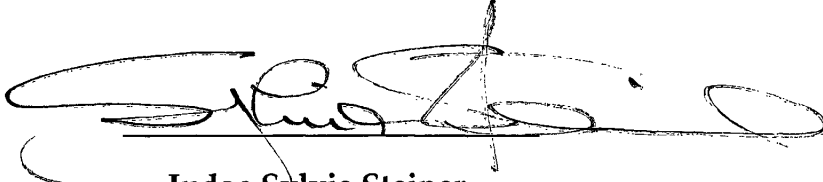
25. However, the Chamber is of the view that, in the present circumstances and in light of the time constraints, it is to the benefit of the Applicants to be represented by the OPCV in court at the commencement of the trial until a decision on their applications to participate in the trial proceedings is issued, at which point they will be represented by one of the two common legal representatives designated by the Registry.

26. Although the Chamber acknowledges the time constraints thereby imposed on the OPCV, it is of the view that the OPCV, which already represents a vast majority of the Applicants, and which used to represent a number of the victims who have now been granted participating status, is in a better position to effectively express the Applicants views and concerns at the opening of the trial


and until such time as the Chamber reaches a decision on their applications to participate.

27. For the above reasons, the Trial Chamber hereby authorises the OPCV to represent in court the Applicants referred to in the seventh and eighth sets of applications for participation, and to make opening statements during the opening session of the trial on 22 November 2010 on their behalf, until a decision on their applications to participate in the proceedings is issued by the Chamber.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 19 November 2010

At The Hague, The Netherlands