

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: 22 February 2012

**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**

**Decision on the supplemented applications by the legal representatives of  
victims to present evidence and the views and concerns of victims**

**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**

**States Representatives**

**Amicus Curiae**

**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision, with the Presiding Judge partly dissenting, on the supplemented applications by legal representatives of victims to present evidence and the views and concerns of victims (“Decision”). A Partly Dissenting Opinion of Judge Sylvia Steiner will be filed separately.

## **I. Background and submissions**

1. On 21 November 2011, the Chamber issued its Order regarding applications by victims to present their views and concerns or to present evidence (“First Order”),<sup>1</sup> in which it specified the procedure to be followed by the legal representatives of victims if they wish to present evidence or the views and concerns of individual victims in this case.
2. On 6 December 2011, Maître Assingambi Zarambaud (“Maître Zarambaud”)<sup>2</sup> and Maître Marie-Edith Douzima-Lawson (“Maître Douzima”)<sup>3</sup> filed written applications pursuant to the First Order (together, “Applications”), in which they requested authorisation to call 17 victims to testify and/or to present their views and concerns to the Chamber.

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<sup>1</sup> Order regarding applications by victims to present their views and concerns or to present evidence, 21 November 2011, ICC-01/05-01/08-1935.

<sup>2</sup> Requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes, 6 December 2011, ICC-01/05-01/08-1989-Conf. A corrigendum was filed on 12 December 2011: Rectificatif à la justification relative à “Requête afin d’autorisation de présentation d’éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes”, 12 December 2011, ICC-01/05-01/08-1989-Conf-Corr.

<sup>3</sup> Requête de la Représentante légale de victimes afin d’autoriser des victimes à comparaître en tant que témoin et à faire valoir leurs vues et préoccupations devant la Chambre, 6 December 2011, ICC-01/05-01/08-1990. An English translation was filed on 12 December 2011: Application by the Legal Representative of Victims for leave to call victims to appear as witnesses and present their views and concerns to the Chamber, ICC-01/05-01/08-1990-tENG.

3. The defence<sup>4</sup> and the Office of the Prosecutor (“prosecution”)<sup>5</sup> filed their observations on the Applications on 13 and 14 December 2011 respectively. Both parties argued, *inter alia*, that the Applications contained insufficient detail regarding the victims’ proposed evidence for meaningful observations to be made or for the Chamber to make a proper assessment.<sup>6</sup> The parties also argued that the legal representatives’ proposal to call 17 victim witnesses was “excessive”,<sup>7</sup> “unnecessary and disproportionate”,<sup>8</sup> particularly in light of the crime-base evidence already presented by the prosecution.<sup>9</sup>
  
4. On 21 December 2011, the Chamber issued its “Second order regarding the applications by legal representatives of victims to present evidence and the views and concerns of victims” (“Second Order”),<sup>10</sup> in which it (i) ordered the Legal Representatives to file a supplemented Application or Applications containing a short list of no more than eight individuals (together, “Relevant Victims”) along with comprehensive written statements for each Relevant Victim and proposed redactions to any identifying information; (ii) ordered the parties to provide their observations on the supplemented Application(s) no later than seven days after they are notified of the supplemented Application(s), the Relevant Victims’ written statements and relevant additional information to be provided by the Chamber and the Registry, including unredacted or lesser redacted versions’ of the Relevant Victims’ application forms and the relevant portions of the *ex parte* annexes to the Chamber’s victims’ participation decisions (together, “Additional Information”).

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<sup>4</sup> Defence Response to the Request of the Legal Representatives of Victims for victims to present their views or concerns, or to present evidence, 13 December 2011, ICC-01/05-01/08-2004-Conf.

<sup>5</sup> Prosecution’s Observations on the Legal Representatives’ applications by victims to present their views and concerns or to present evidence, 14 December 2011, ICC-01/05-01/08-2009.

<sup>6</sup> ICC-01/05-01/08-2004-Conf, paragraph 17; ICC-01/05-01/08-2009, paragraph 6.

<sup>7</sup> ICC-01/05-01/08-2009-Conf, paragraph 2.

<sup>8</sup> ICC-01/05-01/08-2004-Conf, paragraph 37.

<sup>9</sup> ICC-01/05-01/08-2004-Conf, paragraphs 32-33.

<sup>10</sup> Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims, 21 December 2011, ICC-01/05-01/08-2027.

5. On 23 January 2012, Maître Zarambaud<sup>11</sup> and Maître Douzima<sup>12</sup> filed their supplemented Applications pursuant to the Second Order, proposing to call in total eight victims. Along with the supplemented Applications, Mr Zarambaud submitted written statements for the two victims he proposes to call,<sup>13</sup> while Ms Douzima submitted written statements for four out of the six victims she proposes to call.<sup>14</sup> On 26 January 2012, Ms Douzima filed the written statement for a fifth victim, registered under number a/1317/10.<sup>15</sup>
  
6. By emails of 26 and 27 January 2012, the Chamber instructed the legal representatives to submit, by 31 January 2012, confidential *ex parte* versions of the written statements, along with proposed redactions to any information that could identify the victims, to their addresses and contact details, and to the names of third parties that may be mentioned in the written statements.<sup>16</sup>

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<sup>11</sup> Complément de la requête afin d'autorisation de présentation d'éléments de preuves et subsidiairement de présentation de vues et préoccupations par les victimes du 6 décembre 2012, 23 January 2012, ICC-01/05-01/08-2058-Conf and confidential *ex parte* annexes.

<sup>12</sup> Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d'autoriser des victimes à témoigner et à faire valoir leurs vues et préoccupations devant la Chambre, 23 January 2012 (notified on 24 January 2012), ICC-01/05-01/08-2061-Conf and confidential *ex parte* annexes. On 24 January 2012, Ms Douzima filed a first Addendum à la « Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d'autoriser des victimes à témoigner et à faire valoir leurs vues et préoccupations devant la Chambre », 24 January 2012, ICC-01/05-01/08-2062-Conf and confidential *ex parte* annex. The first addendum contains the last page of victim a/0866/10's written statement that was missing in document ICC-01/05-01/08-2061-Conf-Exp-Anx1.

<sup>13</sup> Mr Zarambaud proposed to call two victims and submitted written statements for the victims registered under the numbers a/0511/08 and a/2475/10.

<sup>14</sup> Ms Douzima proposed to call six victims registered under the numbers a/0866/10, a/0555/08, a/0542/08, a/0394/08, a/1317/10 and a/1356/10 and she filed written statements for victims a/0866/10, a/0555/08, a/0542/08 and a/0394/08.

<sup>15</sup> Second Addendum à la « Requête de la Représentante légale de victimes concernant des informations supplémentaires à sa requête du 6 décembre 2011 afin d'autoriser des victimes à témoigner et à faire valoir leurs vues et préoccupations devant la Chambre », 26 January 2012, ICC-01/05-01/08-2066-Conf and confidential *ex parte* annex. The Second Addendum contains the written statement of victim a/1317/10.

<sup>16</sup> Email from the Assistant Legal Officer of the Chamber to the Legal Representatives' case manager on 26 January 2012, at 17.39 and email from the Assistant Legal Officer of the Chamber to the Legal Representatives' case manager on 27 January 2012, at 15.42.

7. Accordingly, on 31 January 2012, Maître Zarambaud<sup>17</sup> and Maître Douzima<sup>18</sup> filed proposed redacted versions of the written statements for seven victims.<sup>19</sup>
8. On 1 February 2012, the Chamber issued its “Third order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims” (“Third Order”),<sup>20</sup> in which it (i) granted Maître Douzima’s request for an extension of time for the submission of the written statement for the victim registered under the number a/1317/10; (ii) rejected Maître Douzima’s request for an extension of time for the submission of the written statement for the victim registered under the number a/1356/10; (iii) reclassified as confidential redacted the redacted written statements provided by the legal representatives; (iv) specified that unredacted or lesser redacted versions of the Relevant Victims’ application forms and the relevant portions of the *ex parte* annexes to the Chamber’s decisions on victims’ applications will be provided once the Chamber has decided which victims will be authorised to present evidence or their views and concerns; and (iv) ordered the parties to file their observations on the supplemented Applications and the written statements of the Relevant Victims by 12.00 on 9 February 2012.

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<sup>17</sup> Expurgations des annexes du Représentant légal de victimes, Maître Assingambi Zarambaud, conformément à l’Ordonnance de la Chambre du 21 décembre 2011, 30 January 2012 (notified on 31 January 2012), ICC-01/05-01/08-2083-Conf and ICC-01/05-01/08-2058-Conf-Exp-AnxA-Red and AnxB-Red.

<sup>18</sup> Expurgations des annexes de la Représentante légale de victimes, Maître Douzima-Lawson, conformément à l’Ordonnance de la Chambre du 21 décembre 2011, 30 January 2012 (notified on 31 January 2012), ICC-01/05-01/08-2090-Conf, ICC-01/05-01/08-2061-Conf-Exp-Anx1-Red to Conf-Exp-Anx4-Red and ICC-01/05-01/08-2066-Conf-Anx5-Red.

<sup>19</sup> Redacted versions were filed in relation to the two written statements submitted by Mr Zarambaud in his filing of 23 January 2012 (a/0511/08 and a/2475/10), the four written statements submitted by Ms Douzima in her filing of 23 January 2012 (a/0866/10; a/0555/08; a/0542/08; a/0394/08) and the written statement submitted with the Second Addendum filed on 26 January (a/1317/10).

<sup>20</sup> Third order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims, 1 February 2012, ICC-01/05-01/08-2091.

9. On 9 February 2012, the defence<sup>21</sup> and the prosecution<sup>22</sup> filed their observations on the supplemented Applications and the written statements of the Relevant Victims. For the reasons that are set out in more detail below, the defence requests the Chamber to (i) reject the Victims' Requests in their entirety; or, in the alternative, (ii) order that any victims authorised to give testimony are restricted to presenting evidence relevant to the charges as confirmed in the present case.<sup>23</sup> The prosecution submits that it (i) does not oppose the presentation of evidence by five victims, leaving it to the Chamber to determine how many of these victims should be called to testify and; (ii) does not oppose the presentation of the views and concerns of the two remaining victims.<sup>24</sup>

## II. Analysis

10. In accordance with Article 21(1) of the Rome Statute ("Statute"), in making its final determination on which of the victims should be permitted to testify or to express their views and concerns in person, the Chamber has considered Articles 64(2), 64(3)(c), 64(6)(c), (e) and (f), 67(1)(c), 68(1), 68(3) and 69(3) of the Statute, Rules 89(1) and 91 of the Rules of Procedure and Evidence ("Rules") and Regulations 35, 41, 54(e), 54(f) and 81 of the Regulations of the Court ("Regulations").

11. The Chamber has further considered the relevant jurisprudence of the Appeals Chamber,<sup>25</sup> which, while not binding upon this Chamber, is of

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<sup>21</sup> Defence Response to the Supplemental Applications of the Legal Representatives of Victims to present evidence, 9 February 2012, ICC-01/05-01/08-2125-Conf.

<sup>22</sup> Prosecution's consolidated observations on the Legal Representatives' applications to present evidence and the views and concerns of victims, 9 February 2012, ICC-01/05-01/08-2126-Conf.

<sup>23</sup> ICC-01/05-01/08-2125-Conf, paragraph 40.

<sup>24</sup> ICC-01/05-01/08-2126-Conf, paragraphs 18-19. The five victims of the first category include victims a/1317/10; a/0866/10; a/0555/08; a/0511/08 and a/0394/08. The two victims of the second category include victims a/2475/10 and a/0542/08.

<sup>25</sup> Appeals Chamber, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432; Appeals Chamber,

relevance in the present context. Additional guidance can be found in the relevant decisions of Trial Chambers I and II.<sup>26</sup>

12. In light of the above, the Chamber addresses in turn (A) general principles pertaining to the presentation by victims of evidence or the expression of their views and concerns in person; (B) the requirements applicable to the presentation of evidence and the expression of views and concerns in person; and (C) an assessment, victim by victim, of whether the applicable requirements are met.

**A. General principles pertaining to the presentation of evidence by victims or the expression of their views and concerns in person**

*Victims are not parties to the proceedings and are thus not vested with a self-standing right to present evidence*

13. At the outset, the Chamber deems it appropriate to sketch out the relevant general principles established by the Appeals Chamber and endorsed by this Chamber. First and foremost, it was emphasised that “the right to lead evidence pertaining to the guilt or innocence of the accused and the right to challenge the admissibility and relevance of evidence in trial proceedings lies primarily with the parties.”<sup>27</sup>

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Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”, 16 July 2010, ICC-01/04-01/07-2288.

<sup>26</sup> Trial Chamber I, Annex to: Order issuing a public redacted version of “Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119; Trial Chamber I, Decision on the request by victims a/0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial”, 26 June 2009, ICC-01/04-01/06-2032-Anx; Trial Chamber II, Decision on the Modalities of Victim Participation at Trial, 22 January 2010, ICC-01/04-01/07-1788-tENG; Trial Chamber II, Corrigendum-Directions for the conduct of the proceedings and testimony in accordance with rule 140, 1 December 2009, ICC-01/04-01/07-1665-Corr; ; Trial Chamber II, Decision authorising the appearance of Victims a/0381/09, a/0191/08, and pan/0363/09, 9 November 2010, ICC-01/04-01/07-2517-tENG.

<sup>27</sup> ICC-01/04-01/06-1432, paragraph 93; Adopted by this Chamber in Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, paragraph 31. See also ICC-01/04-01/07-2288, paragraph 39.



14. As set out by the Appeals Chamber, this general principle is premised on Article 66(2) of the Statute which provides that “[t]he onus is on the Prosecutor to prove the guilt of the accused”. It is further supported by the disclosure regime established in Rules 76 to 84 of the Rules which indicate that “the scheme is directed towards the parties and not victims”.<sup>28</sup>

*Victims are participants entitled to present their views and concerns in cases where their personal interests are affected. The presentation of views and concerns may include the expression of views and concerns by individual victims in person*

15. Article 68(3) of the Statute establishes the right for victims to have their views and concerns represented and considered “in a manner which is not prejudicial to or inconsistent with the right of the accused and a fair and impartial trial”.

16. As to the modalities of the presentation of their views and concerns, this Chamber, in its previous composition, adopted the approach formulated by Trial Chamber I:<sup>29</sup>

115. By article 68(3) of the Statute it is clear that victims have the right to participate directly in the proceedings, since this provision provides that when the Court considers it appropriate the views and concerns of victims may otherwise be presented by a legal representative.

116. The Chamber is aware, however, that the personal appearance of a large number of victims could affect the expeditiousness and fairness of the proceedings, and given that the victims’ common views and concerns may sometimes be better presented by a common legal representative (i.e. for reasons of language, security or expediency), the Trial Chamber will decide either *proprio motu*, or at the request of a party or participant, whether or not there should be joint representation and joint presentation of views and concerns by legal representatives at any particular stage in the proceedings.

<sup>28</sup> ICC-01/04-01/06-1432, paragraph 93; ICC-01/04-01/07-2288, paragraph 74; ICC-01/05-01/08-807-Corr, paragraph 31.

<sup>29</sup> Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2009, ICC-01/05-01/08-807-Corr, paragraph 27; Trial Chamber I, Decision on victims’ participation, 18 January 2008, ICC-01/04-01/06-1119, paragraphs 115-116.

17. Accordingly, in addition to the representation of the views and concerns of victims by their legal representatives, the Chamber was of the view that this approach would not preclude individual victims from submitting an application to express their views and concerns in person. For these reasons, in its First Order, the Chamber decided to follow the practice of Trial Chamber I and invited the Legal Representatives to file, on behalf of individual victims, written applications to, *inter alia*, express their views and concerns in person.<sup>30</sup>

*Victims may be authorised to present evidence in order to assist the Chamber in the determination of the truth*

18. As acknowledged by the Appeals Chamber, the general principle that victims are not parties to the proceedings and, as such, do not have an automatic right to introduce evidence does not “preclude the possibility for victims to lead evidence pertaining to the guilt or innocence of the accused [...]”.<sup>31</sup> This conclusion was considered to be premised on Article 69(3) of the Statute which vests the Court with “the authority to request the submission of all evidence that it considers necessary for the determination of the truth”. This conclusion was further considered to follow from Article 68(3) which establishes the right of victims to participate. This provision needs to be interpreted so as to make participation by victims meaningful, which includes the possibility for victims to tender evidence relating to the guilt or innocence of the accused. Finally, this conclusion was deemed to be supported by Rule 91(3) of the

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<sup>30</sup> ICC-01/05-01/08-1935, paragraph 3. This decision is consistent with the fact that in a number of decisions on victims’ applications, the Chamber invites victims who wish to appear in person, to file an application to that effect with the Chamber (see Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2012, ICC-01/05-01/08-807-Corr, paragraph 102; Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, ICC-01/05-01/08-1017, paragraph 62 (e); Decision on 653 applications by victims to participate in the proceedings, 25 December 2010, ICC-01/05-01/08-1091, paragraph 37 (f)).

<sup>31</sup> ICC-01/04-01/06-1432, paragraph 3.

Rules which leaves open the possibility for victims to move the Chamber to request the submission of all evidence that it considers necessary for the determination of the truth.<sup>32</sup>As this possibility was acknowledged by the Appeals Chamber and three Trial Chambers of this Court,<sup>33</sup> it is the established jurisprudence of this Court that victims may be authorised to present evidence in order to assist the Chamber in its determination of the truth.

*The distinction between giving evidence and presenting views and concerns in person*

19. Before turning to the requirements applicable to both concepts, the Chamber deems it important to underscore the differences between the presentation by individual victims of evidence and the expression of their views and concerns in person. An instructive illustration to that effect was provided by Trial Chamber I in the following terms:<sup>34</sup>

[...] the process of victims "expressing their views and concerns" is not the same as "giving evidence". The former is, in essence, the equivalent of presenting submissions, and although any views and concerns of the victims may assist the Chamber in its approach to the evidence in the case, these statements by victims (made personally or advanced by their legal representatives) will not form part of the trial evidence. In order for participating victims to contribute to the evidence in the trial, it is necessary for them to give evidence under oath from the witness box. There is, therefore, a critical distinction between these two possible means of placing material before the Chamber.

20. In line with these differences, the presentation by individual victims of evidence on the one hand and the expression of their views and concerns on the other is governed by different requirements, which are elaborated upon below. In particular, the threshold to grant applications by victims to

<sup>32</sup> ICC-01/04-01/06-1432, paragraphs 95-98.

<sup>33</sup> Trial Chamber I, Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 108; Trial Chamber II, Decision on the Modalities of Victim Participation at Trial, 22 January 2010, ICC-01/04-01/07-1788-tENG, paragraphs 81-83, 86, 94, 98-99; Trial Chamber III, Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, paragraphs 29-36.

<sup>34</sup> ICC-01/04-01/06-2032-Anx, paragraph 25.

give evidence is significantly higher than the threshold applicable to applications by victims to express their views and concerns in person. For this reason, victims who fail to reach the threshold to be authorised to give evidence may still be permitted to express their views and concerns in person.

## **B. Requirements for the presentation by victims of their views and concerns and evidence**

### *Presentation of views and concerns*

21. Under Article 68(3) of the Statute, the duty of the Chamber to allow victims' views and concerns to be presented and considered is subject to the condition that they are presented "in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." As previously underlined, "[a]mong the accused's statutory rights is the right '[t]o be tried without undue delay'",<sup>35</sup> the importance of which is demonstrated by the fact that the Chamber has a statutory duty to ensure that the trial proceedings are 'expeditious'.<sup>36</sup>

22. The imperative of expeditiousness therefore requires the Chamber to determine which victims shall be authorised to present their views and concerns in person. In this context, the Chamber agrees with Trial Chamber I that this exercise requires "fact-specific decisions [...] taking into account the circumstances of the trial as a whole."<sup>37</sup> For that purpose and in the circumstances of the present case, the Chamber will consider whether the personal interests of the individual victims are affected and whether the accounts expected to be provided are representative of a

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<sup>35</sup> ICC-01/05-01/08-2027, paragraph 9; Article 67(1)(c) of the Statute.

<sup>36</sup> Article 64(2) of the Statute.

<sup>37</sup> ICC-01/04-01/06-2032-Anx, paragraph 27.

larger number of victims. In particular, the assessment will take into account the nature of the harm suffered and the location of the events alleged by the victims who were proposed to express their views and concerns.

*Requirements for the presentation by victims of evidence*

23. As indicated above, the possibility for victims to testify is subject to a number of conditions and criteria that have been identified by other Chambers of this Court as follows:

- (i) As for any participatory rights that have been recognised for victims, the presentation of evidence needs to be consistent with the rights of the accused and a fair and impartial trial. This requirement includes the accused's right to an expeditious trial, as set out above, as well as the right to have adequate time and facilities to prepare his defence according to Article 67(1)(b) of the Statute.<sup>38</sup>
- (ii) The testimony of the victims authorised to present evidence needs to be considered to "make a genuine contribution to the ascertainment of the truth".<sup>39</sup>
- (iii) Victims are not allowed to testify anonymously.<sup>40</sup>

24. In the view of the Majority, these conditions entail a number of criteria that will assist in determining which victims are best placed to present evidence by personally appearing before the Court. Trial Chamber II identified these criteria as follows:<sup>41</sup>

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<sup>38</sup> ICC-01/04-01/07-2288, paragraph 114.

<sup>39</sup> Trial Chamber II, Directions for the conduct of the proceedings and testimony in accordance with rule 140, 1 December 2009, ICC-01/04-01/07-1665-Corr, paragraph 20.

<sup>40</sup> ICC-01/04-01/07-1665-Corr, paragraph 22.

<sup>41</sup> See ICC-01/04-01/07-1665-Corr, paragraph 30.

a. Whether the proposed testimony relates to matters that were already addressed by the Prosecution in the presentation of its case or would be unnecessarily repetitive of evidence already tendered by the parties.

b. Whether the topic(s) on which the victim proposes to testify is sufficiently closely related to issues which the Chamber must consider in its assessment of the charges brought against the accused.

c. Whether the proposed testimony is typical of a larger group of participating victims, who have had similar experiences as the victim who wishes to testify, or whether the victim is uniquely apt to give evidence about a particular matter.

d. Whether the testimony will likely bring to light substantial new information that is relevant to issues which the Chamber must consider in its assessment of the charges.

25. Against the background of these criteria and in light of the information provided with regard to each Relevant Victim as well as the observations formulated by the parties, the Majority turns to an analysis the supplemented Applications victim-by-victim in order to determine which victims should be authorised to present evidence or to express their views and concerns in person. The Presiding Judge will file a partly dissenting opinion, pertaining to the factual and legal basis for the assessment carried out by the Majority and expressing her preference for the conditions set out by Trial Chamber I.

### **C. Assessment of the proposed victims in light of the applicable requirements**

26. In light of the above, the Majority now considers whether the Relevant Victims fulfil the requirements to be authorised to give evidence or, in the alternative, to express their views and concerns in person.

*Victims proposed by Maître Douzima*

27. Before turning to the merits of Maître Douzima's supplemented Application, the Majority addresses two issues that relate to all victims listed in the supplemented Application.
28. First, the Majority notes that Maître Douzima seeks leave for those victims authorised to appear as witnesses to be additionally allowed to present their views and concerns in person after giving testimony.<sup>42</sup> In this regard, the Majority is of the view that such a possibility should be determined on a case-by-case basis at the end of the victims' testimony.
29. Second,<sup>43</sup> Maître Douzima did not fully comply with the procedure set out in the Second Order requiring the Legal Representatives to explain for each victim and on a victim-by-victim basis, *inter alia*, (i) how the presentation of the victim's testimony and/or views and concerns would affect the overall interests of the participating victims in this case; (ii) the relevance of the victim's testimony to the charges; (iii) how the victim's testimony would assist in the Chamber's determination of the truth in this case; and (iv) the reasons why the victim's testimony would not be cumulative of evidence that has been presented to date.<sup>44</sup> As a result, the defence submits that Maître Douzima's supplemented Application "should be rejected as not conforming with the procedure set out by the Appeals Chamber or the Second Order."<sup>45</sup> Consequently, with regard to Maître Douzima's supplemented Application, the defence argues that it was not in a position to provide its observations on a victim-by-victim basis.

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<sup>42</sup> ICC-01/05-01/08-1990-tENG, paragraph 27; ICC-01/05-01/08-2061-Conf, paragraph 4.

<sup>43</sup> ICC-01/05-01/08-2125-Conf, paragraphs 14 to 19.

<sup>44</sup> ICC-01/05-01/08-2027, paragraph 17.

<sup>45</sup> ICC-01/05-01/08-2125-Conf, paragraph 19.

30. Indeed, Maître Douzima provided collective submissions applicable to all victims included in her supplemented Application. While the Majority agrees with the defence that this approach, strictly, does not comply with the requirements of the Second Order, the Majority is of the view that in order not to prejudice the victims proposed by Maître Douzima, this shortcoming should not serve to exclude the proposed victims. Considering further that the Chamber and the parties have been provided with all relevant information to submit observations or take a decision on the applications, the Majority accepts, on an exceptional basis, to decide on Maître Douzima's supplemented Application on the basis of the written statements and the collective information provided in her filing.

#### **Victim a/0866/10**

31. On the basis of the statement provided, Victim a/0866/10 is a victim of pillage and repeated rape in Mongoumba, including gang rape by a group of *Mouvement de Libération du Congo* ("MLC") soldiers. She also witnessed several instances of pillage and two instances of murder in various locations. Moreover, she was forced by the MLC troops to carry the loot to their base and was able to understand the soldiers as she understands Lingala.<sup>46</sup>

32. The prosecution submits that her testimony would cover a wide range of crimes and she could provide additional information on the *modus operandi* of the MLC troops, relevant for the identification of the perpetrators of crimes committed in the Central African Republic ("CAR"). Accordingly, the prosecution is of the view that the evidence that this victim could

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<sup>46</sup> ICC-01/05-01/08-2061-Conf-Anx I-Red.



provide would not duplicate the evidence that has been presented to date.<sup>47</sup>

33. The Majority is of the view that the evidence that could be provided by Victim a/0866/10 would likely make a genuine contribution to the determination of the truth. For that purpose, considering the fact that the victim was forced to accompany the MLC troops and was able to understand their conversations, the Majority is of the view that, on the assumption that her evidence will reflect her statement, her testimony could bring to light new information that is relevant to the issues to be considered by the Chamber in its assessment of the charges. In these circumstances, the Majority concludes that Victim a/0866/10 shall be authorised to present evidence.

#### **Victim a/0555/08**

34. Victim a/0555/08, according to the information provided in the written statement,<sup>48</sup> was intercepted by MLC soldiers while she was fleeing to the fields. She is a victim of rape, she was taken by MLC soldiers from Bossembélé to Bossangoa and she was forced to accompany MLC soldiers to the Democratic Republic of the Congo ("DRC").

35. The prosecution submits that this victim's testimony would assist the Chamber to determine whether the perpetrators in the locations she was taken to were MLC troops and provide relevant information on the geographical scope of crimes committed by MLC soldiers in the CAR.<sup>49</sup>

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<sup>47</sup> ICC-01/05-01/08-2126-Conf, paragraph 8.

<sup>48</sup> ICC-01/05-01/08-2061-Conf-Anx2-Red.

<sup>49</sup> ICC-01/05-01/08-2126-Conf, paragraph 9.

36. However, the Majority notes that the major part of the events related in the victim's written statement occurred after 15 March 2003 in the DRC. To the extent that such information would not be relevant to the charges, the Majority concludes that the testimony that could be expected from this victim would likely make no genuine contribution to the determination of the truth. In addition, considering the specific nature of the harm suffered by this victim, namely her abduction to the DRC, the Majority is of the view that the account that could be provided by this victim is not representative of a larger number of victims. For these reasons, the Majority decides that Victim a/0555/08 should not be authorised to present evidence or to express her views and concerns in person.

#### **Victim a/0542/08**

37. On the basis of the statement provided, Victim a/0542/08 is a victim of pillage and rape by MLC soldiers in Bossangoa.<sup>50</sup> The prosecution is of the view that the victim does not meet the requirements to testify as the evidence she could provide would be cumulative of evidence that Victim a/0555/08 could present and would therefore not substantially assist the Chamber in its determination of the truth.<sup>51</sup>

38. The Majority is of the view that as the evidence that would be provided by this victim would likely be cumulative of evidence that has already been presented by the prosecution,<sup>52</sup> hearing the testimony of this victim would not make a genuine contribution to the determination of the truth. Accordingly, the Majority decides that Victim a/0542/08 shall not be authorised to present evidence.

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<sup>50</sup> ICC-01/05-01/08-2061-Conf-Anx3-Red.

<sup>51</sup> ICC-01/05-01/08-2126-Conf, paragraph 13.

<sup>52</sup> See for example the testimonies of prosecution Witnesses 80, 81 and 82.

39. Nevertheless, the Majority notes that the harm suffered by Victim a/0542/08 reflects the experience of a significant number of victims in Bossangoa. Since the experience of victims from Bossangoa has not been represented in the proceedings to date, the Chamber is of the view that Victim a/0542/08 should be authorised to express her views and concerns in person.

#### **Victim a/0394/08**

40. On the basis of the statement provided, Victim a/0394/08 is a victim of pillage in Damara and he could provide indirect evidence in relation to the crimes of murder and rape.<sup>53</sup> The prosecution submits that his evidence would “complement, without duplication, the evidence already provided by some Prosecution witnesses, notably [Witnesses 63 and 209] and would assist the Chamber in its determination of the truth.”<sup>54</sup>

41. The Majority, however, is not persuaded by the prosecution’s argument that Victim a/0394/08’s evidence would not be cumulative of evidence that has already been presented by the prosecution. Indeed, Witnesses 63 and 209 have testified about pillage committed in Damara and, as such, the evidence likely to be given by Victim a/0394/08 would not make any substantial contribution to the determination of the truth by the Chamber.

42. However, as the harm suffered by Victim a/0394/08 is illustrative of the harm suffered by a significant number of victims in Damara, the Majority decides that Victim a/0394/08 shall be authorised to express his views and concerns in person.

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<sup>53</sup> ICC-01/05-01/08-2061-Conf-Anx4-Red.

<sup>54</sup> ICC-01/05-01/08-2126-Conf, paragraph 11.

**Victim a/1317/10**

43. Victim a/1317/10 is a victim of pillage and he could provide information about murder, rape and pillage committed by the MLC. Furthermore, he witnessed the alleged visit of Mr Bemba in Sibut.<sup>55</sup>

44. According to the prosecution, the testimony of this victim could provide the Chamber with information relating to the criminal responsibility of the accused and therefore “shed additional light on the case”.<sup>56</sup>

45. The Majority is of the view that the testimony of Victim a/1317/10 could make a genuine contribution to the determination of the truth, notably in relation to issues pertaining to the criminal responsibility of the accused, which, as highlighted by the Appeals Chamber,<sup>57</sup> may include evidence pertaining to the role of the accused. For these reasons, the Majority finds that Victim a/1317/10 should be authorised to present evidence.

*Victims proposed to be called by Maître Zarambaud*

**Victim a/2475/10**

46. On the basis of the statement provided, Victim a/2475/10<sup>58</sup> was injured by gunshot and he could provide indirect evidence regarding the rape of his neighbour’s wife. Maître Zarambaud submits that the evidence that would likely be provided by this witness would not be cumulative of evidence that has already been presented by the prosecution as it would be the first case of a victim who has suffered injuries by gunshot in PK12 and who

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<sup>55</sup> ICC-01/05-01/08-2066-Conf-Anx5-Red.

<sup>56</sup> ICC-01/05-01/08-2126-Conf, paragraph 7.

<sup>57</sup> ICC-01/04-01/07-2288, paragraph 112.

<sup>58</sup> ICC-01/05-01/08-2058-Conf-AnxA-Red.

witnessed a rape of an individual who is not a member of his family. According to Maître Zarambaud, his testimony would further contribute to the Chamber's search of the truth as the defence asserts that the rapes, injuries and murders in PK12 were committed by the rebels of Mr Bozizé. Finally, Maître Zarambaud explains that the events experienced by this witness reflect the experience of a number of victims most of whom, in the absence of any witnesses, face difficulties to prove their accounts.<sup>59</sup>

47. The prosecution is of the view that Victim a/2475/10 does not meet the requirements to present evidence before the Chamber. To that end, the prosecution argues that the information likely to be provided by Victim a/2475/10 would "largely duplicate evidence already provided by Prosecution's witnesses [...] and would not assist the Chamber in its determination of the truth."<sup>60</sup>

48. The defence submits that the victim does not fulfil the requirements to provide evidence as instances of injuries are not relevant to the charges and, as such, the only link to the charges in this case would be "hearsay indirect evidence" in relation to rape.<sup>61</sup>

49. The Majority agrees with the defence and the prosecution that the testimony of Victim a/2475/10 would not assist the Chamber in its determination of the truth as the relevant evidence likely to be provided by him is limited to indirect evidence relating to rape which has already been presented by a number of prosecution witnesses. Considering further that the rape was not suffered by the victim in person, the Majority finds that the victim is not best placed to represent the harm suffered by a significant number of victims. In these circumstances, the Majority

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<sup>59</sup> ICC-01/05-01/08-2058-Conf, paragraphs 13-1 to 13-6.

<sup>60</sup> ICC-01/05-01/08-2126-Conf, paragraph 12.

<sup>61</sup> ICC-01/05-01/08-2125-Conf, paragraphs 22-23.

concludes that Victim a/2475/10 should not be authorised to present evidence or his views and concerns.

### **Victim a/0511/08**

50. On the basis of the statement provided, Victim a/0511/08 was injured by a gunshot fired by MLC soldiers and he was an eyewitness to the murder of his mother.<sup>62</sup> Maître Zarambaud submits that his testimony would not be cumulative of evidence already presented by the prosecution since the events expected to be reported by the victim occurred in a zone that was not mentioned by any of the prosecution witnesses and since it would be the first time that the Chamber would hear a victim who has suffered severe injuries and personally witnessed the murder of his mother. In addition, Maître Zarambaud submits that the testimony of this victim would assist the Chamber in its search for the truth as the events occurred in front of several eyewitnesses and “because the victim received treatment by a European doctor who appears on a photograph with the victim.”<sup>63</sup>

51. The prosecution supports Maître Zarambaud’s assertion that given the type of the crime and the location of this incident, the evidence that would be provided by this victim would not be cumulative with the evidence that has been provided by the prosecution.<sup>64</sup>

52. The defence submits that the victim’s proposed testimony in relation to his injury is irrelevant to the charges while the murder of his mother is cumulative of evidence that has already been presented to the Chamber. In addition, the defence submits that the precise zone of the alleged events is

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<sup>62</sup> ICC-01/05-01/08-2058-Conf-AnxB-Red.

<sup>63</sup> ICC-01/05-01/08-2058-Conf, paragraphs 12-4 to 12-6.

<sup>64</sup> ICC-01/05-01/08-2126-Conf, paragraph 10.

located in Bangui "about which the Prosecution has presented a profusion of evidence."<sup>65</sup>

53. The Majority agrees with the defence that the evidence that could be expected from Victim a/0511/08 would likely be cumulative of evidence that has already been presented by prosecution witnesses. For example, an instance of murder in Bangui was reported by prosecution Witness 87.<sup>66</sup> Accordingly, the Majority decides that Victim a/0511/08 should not be authorised to present evidence.

54. This being said, the Majority is satisfied that the harm suffered by the victim, and in particular the killing of his mother, is representative of the harm suffered by a significant number of victims. Accordingly, the Majority authorises Victim a/0511/08 to express his views and concerns in person.

### III. Conclusion and Orders of the Trial Chamber

55. In light of the foregoing, the Majority, the Presiding Judge partly dissenting, hereby:

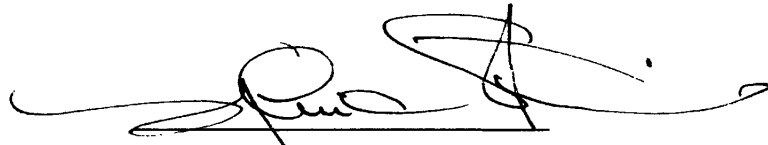
- a. Authorises Victims a/0866/10 and a/1317/10 to present evidence;
- b. Authorises Victims a/0542/08, a/0394/08 and a/0511/08 to express their views and concerns in person;
- c. Decides that any procedural issues relating to the implementation of the present Decision will be addressed separately.

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<sup>65</sup> ICC-01/05-01/08-2125-Conf, paragraph 24.

<sup>66</sup> Transcript of hearing of 11 January 2011, ICC-01/05-01/08-T-44-Red-ENG, page 29, lines 7-24; Transcript of hearing of 12 January 2011, ICC-01/05-01/08-T-45-Red-ENG, page 6, lines 2-14 and page 9, lines 17-21.

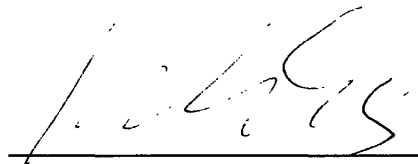
Done in both English and French, the English version being authoritative.



**Judge Sylvia Steiner**



**Judge Joyce Aluoch**



**Judge Kuniko Ozaki**

Dated this 22 February 2012

At The Hague, The Netherlands