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Criminal
Court

Original: **English**

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

PRE-TRIAL CHAMBER III

Before:

Judge Fatoumata Dembele Diarra, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

Confidential
Ex parte only available to the Registry

Report to Pre Trial Chamber III
on applications to participate in proceedings in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence and Regulation 86 paragraph 5 of the Regulations of the Court

Source: **Victims Participation and Reparations Section**

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

Registrar
Silvana Arbia

Division of Victims and Counsel
Didier Preira

Victims Participation and Reparations Section
Fiona McKay

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Report on Victims' Applications under Regulation 86.5, Regulations of the Court

A. Background and content of this report

1. The present report is submitted in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence and Regulation 86 sub-regulation 5 of the Regulations of the Court.

2. The following documents are provided in annex:
   - **Annex 1:** Reports under Regulation 86 sub-regulation 5 of the Regulations of the Court on an applicant-by-applicant basis, comprising overviews of 24 applications filed on 3 October 2008[1] along with boxes summarising matters contained in the actual applications and drawing attention to specific issues. The 24 applications are the following: a/0271/08, a/0272/08, a/0273/08, a/0275/08, a/0277/08, a0278/08, a/0279/08, a/0280/08 and a/0283/08 to a/0298/08.
   - **Annex 2:** Report on forms of proof of identity documents that are available in the Central African Republic,
   - **Annex 3:** Catalogue of official identity documents available in Central African Republic, the Registry notes that the individuals who have provided a copy of their identity documents have not given their consents to those documents being distributed. The Registry therefore recommends that they be treated in a confidential manner.

3. The present report covers the 24 complete applications to participate in the proceedings that were received by the Victims Participation and Reparations Section (VPRS) of the Registry by the deadline set by the Single Judge of 3 October 2008.

B. Explanation of information contained in the application-by-application reports

4. Since this is the first time a report under Regulation 86 sub-regulation 5 of the Regulations of the Court has been presented to this Chamber, the following explanation is provided as regards the information included in the report.

[1] ICC-01/05-01/08-137-Conf-Exp

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5. The format used for the reports under Regulation 86 sub-regulation 5 on the 24 applications presents the information contained in the applications on an applicant-by-applicant basis. It is possible for different information to be provided, but the content of the attached reports has been designed based on information commonly requested of VPRS by Pre-Trial and Trial Chambers. The purpose of the reports on applications prepared by the Registry is to assist the Judges in their consideration of the applications. It is hoped that the format will facilitate the Chamber's consideration of the applications. If the Chamber considers that it would be more helpful for the information contained in the applications to be presented in a different way, or would like different information to be included, the VPRS stands ready to assist in any way possible.

a. Information contained in the boxes under the heading "Information concerning the applicant"

6. This part includes basic personal information regarding the applicant:[2] the name, date of birth, sex, age at the time of applying, place of residence, ethnic group and type of applicant (whether the applicant is a natural person or an organisation or institution). This information is extracted from information provided under Part A of the standard application form.

7. The last box concerning the "status of the applicant" indicates where the applicant is a child, disabled or deceased, where there is a person acting on their behalf. Where the applicant is acting on his or her own behalf, no information is included in the box even where the applicant is under 18.

8. Information concerning any proof of identity that has been provided by the applicant is indicated on the second page, in the box entitled "Documents attached to the application". Where no proof is provided, or any comments relating to such documents, are indicated in the box entitled "Comments".

[2] In the reports, the "applicant" is the person whose details are provided in Part A of the standard application form, even if another person has presented the application on his or her behalf.

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b. Information contained in the boxes under the heading "Person acting on behalf of the applicant"

9. This part includes basic information about a person acting on behalf of the applicant, if applicable: the name, place of residence and link with the applicant. The information in this part is extracted from information provided under Part B of the standard application form.

10. Information concerning any proof of identity or proof of the link with the applicant is indicated on the second page, in the box entitled "Documents attached to the application". Where no proof is provided, or any comments relating to such documents, are indicated in the box entitled "Comments".

c. Information contained in the boxes under the heading "Description of the harm alleged"

11. This part includes information regarding the harm alleged, extracted from information provided under Parts D and E of the standard application form. Two of the boxes do not comprise information extracted from the application forms, and further explanations are provided below as to the information provided in these boxes.

<u>"Type of crime"</u>

12. This box contains an indicative list of acts constituting crimes within the jurisdiction of the Court, that the harm alleged by the applicant might possibly constitute. The purpose of this is to assist the Chamber in assessing whether or not the harm alleged by the applicant might result from the commission of a crime within the jurisdiction of the Court, as required by Rule 85 of the Rules of Procedure and Evidence. The Registry would like to stress that in providing such an indicative list, it is looking solely at the alleged act itself, and is not making any assessment at all as to whether the wider elements of the crime are present, including the context in which the crime was committed such as whether it might meet the conditions for being considered a crime against humanity or a war crime. Nor is the list of acts provided for each applicant intended to be an exhaustive list of those that might arise out of the set of facts alleged.

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"Type of harm"

13. In this box the types of harm that are alleged by the applicants have been categorised as follows:

- Physical injury
- Mental pain or anguish
- Loss of or damage to property
- Substantial impairment of fundamental rights [3]

d. Information contained in the boxes under the heading "Formal elements"

14. This part includes information relating to the signatures and other formalities relating to the application, and any attempts made by the Registry to seek further information or documentation in accordance with Regulation 86 sub-regulation 4 of the Regulations of the Court and the results of such efforts, as well as any documents accompanying the application. Since this does not comprise information extracted from the application forms, the Registry would like to provide further explanations as to the information provided in each box.

"Is the application complete », « Signatures ou identification mark » and « Comments »

15. According to Regulation 86 sub-regulation 4 of the Regulations of the Court:

"The Registrar may request further information from victims or those presenting an application in accordance with rule 89, sub-rule 3, in order to ensure that such application contains, to the extent possible, the information referred to in sub-regulation 2, before

[3] This phrase is included in Principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by UN General Assembly Resolution 60/147 of 16 December 2005, hereafter, "The Basic Principles'. It originated in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985. The VPRS did not find published records of the origins and intended meaning of the phrase in either instrument, and it appears that there was no clearly defined list of what might be considered "fundamental rights" and likewise no recorded shared understanding as to the meaning of the concept of "substantial impairment". A survey of the use of these or similar terms in different regional and international courts and instruments conducted by VPRS found that many of the rights included in the major human rights instruments might be considered to constitute fundamental rights. The right to education is included in many of these instruments, and has in some contexts been referred to as a fundamental right. The right of a child to family life is another right mentioned in several instruments. In view of the fact that many of the applicants that are the subject of this report are alleging to have been abducted whilst aged under 15, as well as the fact that many of them mention specifically that as a result of this they were unable to pursue their education, the VPRS has included substantial impairment of fundamental rights as a possible form of harm. The VPRS provides this information in order to explain the basis on which this type of harm has been included in the possible types of harm suffered by each applicant, and will be happy to provide the Chamber with further detail, including the instruments and jurisprudence surveyed, if requested.

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submission to a Chamber. The Registrar may also seek additional information from States, the Prosecutor and intergovernmental or non-governmental organisations."

16. As regards what constitutes a complete applications, Regulation 86 sub-regulation 2 sets out what information should be contained in a standard application form, and in her decision of 12 September 2008, the Single Judge indicated that what is considered a complete application should be defined by reference to the decision of Pre-Trial Chamber I dated 17 August 2007 in which it set out, at paragraph 12, the information that should be included for an application to be considered complete.[4]

17. Upon receiving an application, the VPRS reviews the application in order to ascertain whether the application is complete according to these criteria. If any information or documentation is missing, the Section sends a request to the legal representative, if there is one. Where there is no legal representative, the Section communicates the request directly to the person or organisation that presented the application. In most instances, for security reasons and because of their relationship of trust with the applicant, this is done with the assistance of an intermediary organisation that had assisted the applicant in filling in the application and presenting it to the Court. The VPRS does not currently have staff based in the Central African Republic, although it hopes to have shortly, but has been able to rely on the assistance of the ICC Field Office in Bangui for receiving documents and transmitting them to the seat of the Court in The Hague.

18. For the purposes of managing the process of requesting and receiving further information or documentation, the VPRS has developed a standard form that is referred to in the "documents attached to the application" box as "fiche de suivi" (follow up forms). The VPRS uses these forms to indicate what information or documentation is missing and requested, and also to record what information is missing, and how and when any information or documentation is actually received.

19. Any information received subsequent to the original application will appear in the report, and attention is drawn to the fact that the information was received at a later

[4] ICC-01/05-01/08-103, paragraph 8

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date than the application if it appears relevant to highlight to the Chamber. For example, if no date is given for the alleged crime in the original application but is subsequently provided, the date will be shown in the box under "Description of the harm alleged", the fact that the information was requested and received subsequently will be recorded under "Comments" and the document recording the receipt of the further information will be listed under "Documents attached to the application".

20. At the same time, the VPRS has sought to make clear in the applicant-by-applicant reports whether or not the application appears to be complete and whether it has been signed, and (under "Comments") draws to the Chamber's attention the following matters:
   - Missing information that makes the application incomplete;
   - The fact that further information or documentation has been requested but not received;
   - The fact that further information or documentation has been requested and subsequently received and reflected in the relevant box in the report, where it is considered that this should be drawn to the attention of the Chamber;
   - Any discrepancies in information received, such as between dates or other information contained in different documents received from the applicant, including between the application form itself and documents received at the same time or subsequently;
   - Comments relating to signatures: however failure to comply with certain requests in the standard application forms that are not required under regulation 86(2) or otherwise are not recorded. Examples of information that would not be highlighted include instances where a signature is not witnessed (as requested in part J of the form) or where an applicant has not signed or initialed the bottom of each page (this is requested in the standard application form solely for the purpose of ensuring that pages of the same application are kept together when transmitted to the Court).

<u>"Person who assisted the applicant"</u>

21. The name of the person who has assisted the applicant to fill in the application form is included, and the organisation with which that person is affiliated, if any.

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"Documents attached to the application"

22. Any supporting documentation received from the applicant is listed, including proofs of identity, as well as any follow up form recording the manner in which any further information was received.

23. In order to assist the Chamber in evaluating proofs of identity submitted by applicants, the Registry is annexing to this report a short overview of proof of identity documents that are available in the Central African Republic. The report summarises: a) the main types of official document that are issued by the governmental and administrative authorities in the CAR, as well as b) some alternative types of document that have been presented by some applicants, either because they have not been able to provide official documents in the first category or in addition to documents in the first category. The second category includes identity cards issued by employers or educational establishments, or other documents relating to a profession or status (such as a status as a priest, parliamentarian or magistrate). The Registry notes that the other Chambers that have considered applications to participate in proceedings have decided that requirements as regards proof of identity must be adapted to the factual circumstances in the region where official documents may be difficult or expensive to obtain and many citizens may have difficulty in obtaining or producing them. As a result, each one has agreed to accept voters' cards, identity cards issued by workplaces, educational establishments, international humanitarian organizations, churches or local authorities, or other documents that are not official identity documents or not issued by governmental authorities.[5] As regards the CAR, whilst during a recent mission a representative of the VPRS heard anecdotal evidence from lawyers and other interlocutors to the effect that many citizens, particularly outside the main urban areas, did not have official identity documents, VPRS has not yet had the opportunity to seek statistical information from the national authorities or other reliable sources on this issue. VPRS will continue to conduct research into this issue and will convey any findings to the Chamber.

[5] In the Uganda situation ICC-02/04-125 of 14 March 2008 at paragraphs 6-7, in the DRC situation ICC-01/04-374 of 17 August 2007 at paragraphs 13-15, and ICC-01/04-01/06-1119 of 18 January 2008 at paragraphs 87-89.

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e. Information contained in the boxes under the heading "Legal representation"

24. This part indicates whether or not the applicant has a legal representative and, if so, the name of the legal representative. This includes, where relevant, the fact that the Office of Public Counsel for Victims has been appointed in accordance with the Decision of the Single Judge of 12 September 2008. The information in this part is extracted from information provided under Part G of the standard application form and/or any power of attorney provided.

f. Information contained in the boxes under the heading "Requests made by the applicant "

25. The first section of this part indicates in what stages of the proceedings the applicant has requested to participate. The information in this part is extracted from information provided under Part C of the standard application form. The Registry would draw the Chamber's attention to the fact that in the experience of the VPRS, this question is frequently not well understood by applicants, who often do not have even a basic understanding of the different stages of a criminal process. In this regard, it is noted that applicant a/0275/08 does not complete this part of the form at all, and applicant a/0277/08 indicates that he only wishes to participate in the trial. The VPRS has contacted the Legal Representative of those two applicants asking for clarification on this question and is awaiting a response.

26. The second section of this part indicates whether or not the applicant is making a request for non-disclosure of their identity, or other information, to one or more party. The information in this part is extracted from information provided under Part H of the standard application form and/or any other information provided.

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Didier Preira

Head, Division of Victims Counsel

Dated this 17 October 2008

At The Hague, The Netherlands