



Original: **English**

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

Date: **9 October 2009**

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge Joyce Aluoch

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

Public

Observations on legal representation of unrepresented applicants

Source: Office of Public Counsel for Victims

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

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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I. INTRODUCTION

1. On 7 October 2009, Trial Chamber III held a Status Conference in preparation of the trial. During the status conference, the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”), sought clarification from the Chamber on the issue of legal representation of unrepresented applicants.

2. The Presiding Judge requested the Principal Counsel to file written submissions on the matter by Friday, 9 October 2009¹.

3. Therefore, the Principal Counsel of the Office respectfully submits the following observations.

II. OBSERVATIONS ON LEGAL REPRESENTATION OF APPLICANTS

4. On 12 September 2008, the Single Judge of the then Pre-Trial Chamber III issued a decision in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, according to which, “[w]ith a view to providing as soon as possible legal representation to victims applying to participate in the proceedings, the Single Judge requests the Registry to provide the victims with assistance pursuant to rule 90(2) of the Rules. Where no legal representative has been appointed by the victims, the Office of Public Counsel for Victims shall, as assigned by the Registry, act as legal representative of the victims from the time they submit their applications for participation, until a legal representative has been appointed.”²

¹ See the transcripts of the status conference held on 7 October 2009, No. ICC-01/05-01/08-T-14-ENG ET WT, page 25 lines 16 to 25.

² See the “Decision on victim participation” (Pre-Trial Chamber III, Single Judge), No. ICC-01/05-01/08-103-tENG-Corr, 12 September 2008, par. 10.

5. As a result, the Office is currently representing 35 victims in the proceedings, 20 of whom have already been authorised to participate by virtue of the Fourth Decision on Victims' Participation³ while the remaining 15 still have the status of applicants.

6. Some of the participating victims for whom the Office has been originally appointed by virtue of the Single Judge's decision have confirmed their wish to continue to be represented by the Principal Counsel. Some applicants have also signed a power of attorney in favour of the Principal Counsel. The Office is therefore now appearing in the proceedings as legal representative.

7. The Registry also communicated applications of unrepresented victims to the Office up until the confirmation of the charges hearing. Indeed, the Registry considered that the decision of the Single Judge applied only to the period related to the confirmation of the charges.

8. During the period from the confirmation of the charges hearing up until the transmission of the case record to the Trial Chamber, applications continued to be filed with the Registry. Some of the applicants may therefore not be represented.

9. As a result, an issue arises in relation to the legal representation of unrepresented applicants for the period commencing from the filing of their applications with the Registry up until a decision of the relevant Chamber is issued on their status.

³ See the "Fourth Decision on Victims' Participation" (Pre-Trial Chamber III, Single Judge), No. ICC-01/05-01/08-320, 12 December 2008.

10. The practice has shown that such period is critical for the determination of the future status of the victims, insofar as there might be a need for the applicant to complete his/her application, as well as to intervene in substantive or procedural matters when his/her interests are concerned. In this respect, the Principal Counsel recalls that such need arose in the *Lubanga* case since the applicants effectively needed assistance concerning issues such as protection,⁴ redactions of application forms, issues linked to the dual status of victim/witness,⁵ and the possibility for applicants to file submissions in response to the observations by the parties under rule 89 of the Rules of Procedure and Evidence⁶.

11. Concerning the practice of the Court in this matter, the Principal Counsel notes the constant jurisprudence of the Chambers in the other cases and situations, according to which, the OPCV has continuously been appointed as legal representative of applicants pending a decision of the Chamber on their status or the appointment of another legal representative by the persons concerned.⁷

⁴ See the "Order scheduling a hearing" (Trial Chamber I), No. ICC-01/04-01/06-1027, 14 November 2007. The Legal representatives of what were applicants at this point in time, were ordered by the Chamber to file observations, on *inter alia*, the issue of protective measures.

⁵ See the "Decision on certain practicalities regarding individuals who have the dual status of witness and victim" (Trial Chamber I), No. ICC-01/04-01/06-1379, 5 June 2008. The discussions which preceded the submission of the two Confidential Joint Reports (see documents No. ICC-01/04-01/06-1117-Conf dated 16 January 2008 No. ICC-01/04-01/06-1177-Conf dated 18 February 2008) were held with the participation of legal representatives of applicants. In this regard, see also the transcripts of the hearing held by Trial Chamber I on 4 December 2007, No. ICC-01/04-01/06-T-62-ENG RT.

⁶ The Trial Chamber instructed the legal representatives of applicants to submit their replies to the Prosecution and Defence's Observations on applications for participation. In this regard, see, *inter alia*, the oral order issued by Trial Chamber I during the status conference held on 18 November 2008, transcripts No. ICC-01/04-01/06-T-98-ENG ET WT, pp. 5-7. See also the "Order for transmission of additional documents on applications for participation a/0403/08, a/0407/08 and a/0408/08" (Trial Chamber I), No. ICC-01/04-01/06-1533, 4 December 2008.

⁷ See, *inter alia*, the "Decision on the treatment of applications for participation" (Trial Chamber II), No. ICC-01/04-01/07-933, 26 February 2009; "Decision on legal representation, appointment of counsel for the defence, criteria for redactions of applications for participation, and submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07" (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/05-312, 17 September 2008; the "Order on the request by the OPCV for access to certain documents regarding applications a/0026/06, a/0145/06, a/0203/06 and a/0220/06" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-395, 17 September 2007; the "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation" (Pre-Trial Chamber I), No. ICC-01/04-374, 17 August 2007; the "Decision on

12. The Principal Counsel also points out the Decision of Trial Chamber I in which it indicated its agreement with the general approach of Pre-Trial Chamber I consisting in “*order[ing] the Registrar to appoint automatically the [OPCV] as the legal representative for victim applicants who were without a legal representative.*”⁸

13. The Principal Counsel submits that the principle of fairness in the proceedings entails that applicants should benefit from legal representation insofar as they are very likely to need assistance in the process leading to the determination of their status by a Chamber.

14. In relation to the possibility for the Office to represent unrepresented applicants in the case, the Principal Counsel notes that in the case *The Prosecutor v. Jean-Pierre Bemba Gombo*, conflicts of interest seem unlikely to arise due to the homogeneousness of the group of victims and the ambit of the charges. The Principal Counsel also notes that no conflicts of interest currently arise in the context of the assistance provided by the OPCV to the legal representative and to victims in relation to the case.

15. However, the Principal Counsel wishes to inform the Chamber that its resources are not unlimited and neither the Chamber nor the Registrar are in the position to know *a priori* the extent of the workload of the Office at a particular moment in time. Moreover, they are not in a position to know about the specific

victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06”, No. ICC-02/04-101, 10 August 2007, p. 62; the “Decision on legal representation, appointment of counsel for the defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06”, 1st February 2007, No. ICC-02/04-01/05-134 par. 13, as well as the operative part of the said Decision.

⁸ See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents” (Trial Chamber I), No. ICC-01/04-01/06-1211, 6 March 2008, par. 34.

constraints related to the support and assistance the Office is able to provide to victims or legal representatives in other cases. Therefore, the Office respectfully submits that a consultation with the Principal Counsel should be undertaken prior to the Chamber taking any decision or order involving the assistance the OPCV may provide to victims.

16. Finally, the Principal Counsel wishes to respectfully request the Chamber to decide on the matter as soon as possible in order to permit the Office, should it be required to act as legal representative for the applicants, to organise its resources to insure that effective representation and assistance is provided to victims in accordance with its mandate.

For the foregoing reasons, the Principal Counsel respectfully seeks guidance from the Chamber in relation to the issue of legal representation of unrepresented applicants. Should the Chamber consider that the Principal Counsel of the Office should be appointed, the latter respectfully requests the Chamber to consult with her beforehand to assess the extent of the assistance the Office could provide, taking into account its resources as well as any possible conflicts of interest.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 9th day of October 2009

At The Hague, The Netherlands