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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

**Submission on the continued application of a ruling on victims' participation
throughout the proceedings in a case**

Source: Legal Representatives of victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08 and a/0271/08, a/0272/08, a/0273/08, a/0275/08, a/0277/08, a/0283/08, a/0284/08, a/0285/08, a/0286/08, a/0287/08, a/0288/08, a/0289/08, a/0290/08, a/0294/08, a/0390/08, a/0391/08, a/0393/08, a/0394/08, a/0395/08, a/0396/08, a/0468/08, a/0469/08, a/0470/08, a/0471/08, a/0472/08, a/0473/08, a/0474/08, a/0475/08, a/0476/08, a/0477/08, a/0478/08, a/0479/08, a/0480/08, a/0481/08

The Office of the Prosecutor

Ms. Fatou Bensouda, Deputy Prosecutor
Ms. Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr. Nkwebe Liriss
Mr. Aimé Kilolo-Musamba

Legal Representatives of Victims

Ms. Marie-Edith Douzima Lawson
Ms. Paolina Massidda

Legal Representatives of 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****REGISTRY****Registrar & Deputy Registrar**

Ms. Silvana Arbia & Mr. Didier Preira

Defence Support Section**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

I. INTRODUCTION

1. On 12 December 2008, applicants a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08 and a/0271/08, a/0272/08, a/0273/08, a/0275/08, a/0277/08, a/0283/08, a/0284/08, a/0285/08, a/0286/08, a/0287/08, a/0288/08, a/0289/08, a/0290/08, a/0294/08, a/0390/08, a/0391/08, a/0393/08, a/0394/08, a/0395/08, a/0396/08, a/0468/08, a/0469/08, a/0470/08, a/0471/08, a/0472/08, a/0473/08, a/0474/08, a/0475/08, a/0476/08, a/0477/08, a/0478/08, a/0479/08, a/0480/08, and a/0481/08 have been granted the status of victims authorized to participate in the proceeding in the case *The Prosecutor v. Jean-Pierre Bemba Gombo*¹.

2. On 18 September 2009, the Presidency constituted Trial Chamber III and transmitted to the latter the record of the case².

3. On 7 October 2009, Trial Chamber III held a first 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”) addressed the issue of the upholding of a ruling on participation of victims throughout the proceedings in the same case³.

¹ See the “Fourth Decision on Victim’s Participation” (Pre-Trial Chamber III, Single Judge), No. ICC-01/05-01/08-320, 12 December 2008.

² See the “Decision constituting Trial Chamber III and referring to it the case of The Prosecutor v. Jean-Pierre Bemba Gombo” (Presidency), No. ICC-01/05-01/08-534, 18 September 2009.

³ 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.

4. As a result, the Presiding Judge requested the Principal Counsel to file written submissions on the matter by 15 October 2009⁴.

5. Since the issue is of general concern for all the victims participating in the case, the Principal Counsel as legal representative of victims a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08, and the legal representative of victims a/0271/08, a/0272/08, a/0273/08, a/0275/08, a/0277/08, a/0283/08, a/0284/08, a/0285/08, a/0286/08, a/0287/08, a/0288/08, a/0289/08, a/0290/08, a/0294/08, a/0390/08, a/0391/08, a/0393/08, a/0394/08, a/0395/08, a/0396/08, a/0468/08, a/0469/08, a/0470/08, a/0471/08, a/0472/08, a/0473/08, a/0474/08, a/0475/08, a/0476/08, a/0477/08, a/0478/08, a/0479/08, a/0480/08, a/0481/08 respectfully submit to the Chamber joint observations on the matter.

II. OBSERVATIONS ON THE APPLICATION OF A RULING ON VICTIMS' PARTICIPATION THROUGHOUT THE PROCEEDINGS IN THE SAME CASE

6. In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I considered that victims allowed to participate at the pre-trial stage of the case were provisionally admitted to participate at the trial stage pending a new decision of the Chamber on each individual application for participation⁵. However, in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II decided to consider as automatically authorized to participate at the trial stage

⁴ *Idem*.

⁵ See the "Decision on victims' participation" (Trial Chamber I), No. ICC-01/04-01/06-1119, 18 January 2008, par. 112 : "*The victims who have the opportunity to participate prior to trial by way of written and oral submissions with the leave of the Chamber are those who currently have been allowed to participate by Pre-Trial Chamber I (i.e. victims a/0001/06 to a/0003/06 and a/0105/06), subject to a review by the Chamber of their applications to participate in light of the criteria set out above, and any other victim granted that status hereafter.*"

individuals who had been granted the status of victims by the pre-trial chamber, without reviewing anew each of their applications for participation⁶.

7. The legal representatives of victims (the “legal representatives”) respectfully submit to Trial Chamber III that the ruling on the status of participation of victims issued at the pre-trial stage in the current case applies before the Trial Chamber.

8. Regulation 86, sub-regulation 8, of the Regulations of the Court provides:

“8. A decision taken by a Chamber under rule 89 [on victims’ applications for participation in the proceedings] shall apply throughout the proceedings in the same case, subject to the powers of the relevant Chamber in accordance with rule 91, sub-rule 1.”

9. Sub-regulation 8 clearly states that a ruling of a Chamber on participation of victims applies throughout the proceedings in the same case, subject to the power of the relevant Chamber to modify a previous ruling under rule 89 of the Rules of Procedure and Evidence (“the Rules”) concerning the *“proceedings and manner in which participation [of victims] is considered appropriate.”*

10. The principle stated in rule 89, sub-rule 1 of the Rules indeed reflects the general principle established in article 68, paragraph 3 of the Rome Statute in accordance to which victims have the right to participate in the proceedings in order to present their views and concerns when their personal interests are affected and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Furthermore, the legal representatives submit that the upholding of the Pre-Trial Chamber ruling on participation of victims by Trial Chamber III would guaranty the interests and the rights of all the participants in the

⁶ See the “Decision on the treatment of applications for participation” (Trial Chamber II), No. ICC-01/04-01/07-933-tENG, 26 February 2009, p. 23: *“The Chamber decides that the victims authorised by Pre-Trial Chamber I to participate in the proceedings are authorised to participate in the trial, without their applications having to be re-registered”* (the “Decision of Trial Chamber II on victims’ participation”).

proceedings, in so far as the Office of the Prosecutor and the Defence, in accordance with rule 89 of the Rules, already submitted their observations⁷ on the victims' applications for participation which were ruled on by the Pre-Trial Chamber.

11. The legal representatives submit that such a practice, if followed by Trial Chamber III, would meet the principle of legal certainty for victims already authorised to participate, and the principle developed by the various chambers of the Court, according to which victims' rights as enshrined in the core instruments of the Court shall be effectively implemented. In addition, such practice would fulfill the Court's requirement to conduct proceedings within a reasonable time and in a manner which is respectful of the judicial economy, in favour of all the participants⁸.

12. Moreover, the legal representatives underline that the Trial Chamber bears the responsibility of issuing a decision on the modalities of participation of victims at the trial stage. In doing so, the Chamber will have the ability to modify or adapt to the proceedings the manner in which victims' participation will be considered appropriate, after conducting a circumstantial assessment that evaluates the personal interests at stake of victims authorised to participate.

13. This interpretation is not only consistent with the general provisions on participation of victims but is also consistent with the principles contained in article 68, paragraph 3 of the Rome Statute. As indicated, the power of the relevant

⁷ See the "Defence Objections and Observations to 24 Applications to Participate in Pre-Trial Proceedings as Victims", 4 November 2008, No. ICC-01/05-01/08-205-Conf and the "Prosecution's Observations on the Applications for Participation in the Proceedings of 24 Applicants", No. ICC-01/05-01/08-206-Conf, 4 November 2008; as well as the "Defence Observations on a Second Batch of Applications to Participate in the Confirmation of Charges Hearing (1 to 34)", No. ICC-01/05-01/08-284-Conf, 25 November 2008 and the "Prosecution's Observations on the Applications for Participation in the Proceedings of 34 Applicants", No. ICC-01/05-01/08-286-Conf, 25 November 2008.

⁸ In this sense, the fact that the trial chamber can limit itself to confirming, rejecting or modifying a ruling on victims' participation issued by the pre-trial chamber in *lieu* of reviewing anew each single application for participation would obviate the need for the Registry, the Chamber itself, and the Office of the Prosecutor and the Defence (for purposes of the observations foreseen under rule 89 of the Rules) to receive twice a large number of applications already analysed, and would further facilitate the assessment of a potentially high number of new applications for participation filed after the decision issued by the pre-trial chamber.

Chamber to change its previous ruling, or one of another Chamber, mandates that said Chamber retain control over the modalities of participation of victims. In this regard, legal representatives observe that this control of the Chamber also includes the possibility to alter a former ruling when the facts put forward by victims in their original application for participation have changed.

14. Consequently, the legal representatives argue that regulation 86-8 of the Regulations of the Court does not require a new ruling by the relevant Chamber when victims have already been authorised to participate in a case when the facts are unchanged⁹. Indeed, victims authorised to participate in the case have already shown not only that their applications met the criteria under rule 85 of the Rules and that such applications were considered complete by the Chamber which issued the ruling on their status, namely Pre-Trial Chamber III¹⁰, but also that their personal interests were concerned by the case against Jean-Pierre Bemba Gombo. Again, the criteria assessed by the Pre-Trial Chamber as well as the reasons that led the Chamber to grant the status of victims to the persons concerned¹¹ remain unchanged and therefore, the legal representatives submit that there is no ground justifying a review by Trial Chamber III of the ruling issued by Pre-Trial Chamber III.

15. Such interpretation is in line not only with the jurisprudence of Trial Chamber II already mentioned¹², but also with the approach taken by Pre-Trial Chamber I in the situation in the Democratic Republic of Congo and by the Appeals Chamber in the *Lubanga* case. Indeed, Pre-Trial Chamber I has indicated that “*where any natural or*

⁹ See paragraph 17 of the current submission concerning persons whose status was denied by Pre-Trial Chamber III.

¹⁰ See the “Fourth Decision on Victim’s Participation”, *supra* note 1.

¹¹ Persons who have been granted the status of victims in the *Bemba* case and hereby represented are the following : a/0278/08, a/0279/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08, a/0298/08, a/0455/08, a/0457/08, a/0458/08, a/0459/08, a/0460/08, a/0461/08, a/0462/08, a/0463/08, a/0464/08, a/0465/08, a/0466/08, a/0467/08 (represented by Paolina Massidda) and a/0271/08, a/0272/08, a/0273/08, a/0275/08, a/0277/08, a/0283/08, a/0284/08, a/0285/08, a/0286/08, a/0287/08, a/0288/08, a/0289/08, a/0290/08, a/0294/08, a/0390/08, a/0391/08, a/0393/08, a/0394/08, a/0395/08, a/0396/08, a/0468/08, a/0469/08, a/0470/08, a/0471/08, a/0472/08, a/0473/08, a/0474/08, a/0475/08, a/0476/08, a/0477/08, a/0478/08, a/0479/08, a/0480/08, a/0481/08 (represented by Marie-Edith Douzima-Lawson).

¹² See the Decision of Trial Chamber II on victims’ participation, *supra* note 6.

legal person applying for the status of victim in respect of a situation also requests to be accorded the status of victim in any case ensuing from the investigation of such a situation, the Chamber automatically takes this second request into account as soon as such a case exists, so that it is unnecessary to file a second application”¹³. Moreover, the Chamber has specified that “[t]he filing of a separate application will be necessary only to obtain the procedural status of victim for reparation proceedings pursuant to rules 94 and 99 of the Rules and regulation 88 of the Regulations of the Court”¹⁴. The Appeals Chamber also indicated that “[i]n circumstances in which the particular victims have already been granted leave to participate in the proceedings before the Pre-Trial Chamber, the application would not need to be a repeat of the original application to participate before that Chamber. The application need not specifically address whether or not the person participating is “a victim” within the meaning of rule 85 of the Rules of Procedure and Evidence in the absence of any appeal relating to that matter. The issue for the Appeals Chamber is more limited. Given that the victims have been granted victim status by the Pre-Trial Chamber, the question to be addressed is whether their personal interests are affected by the interlocutory appeal and whether it is appropriate for them to participate at that stage of the proceedings”¹⁵.

16. Furthermore, with respect to the practical implications that arise from this issue, the legal representatives respectfully argue that the upholding at the trial stage of a ruling on victims’ participation in the proceedings will allow victims to continue exercising their general rights as granted in the legal texts of the Court, as well as allow their interests to be presented and considered in preparation for trial, pending a ruling of the Chamber on the modalities for participation.

¹³ See the “Decision on the Applications for participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 (Public Redacted Version)” (Pre-Trial Chamber I), No. ICC-01/04-101, 17 January 2006, par. 67.

¹⁴ *Idem*, footnote 62.

¹⁵ See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo”” (Appeals Chamber), No. ICC-01/04-01/06-824, 13 February 2007, par. 45.

17. Finally, concerning persons to whom the status of victims has not been granted by Pre-Trial Chamber III, the legal representatives would like to recall the wording of rule 89 sub-paragraph 2 of the Rules, according to which “[a] *victim whose application has been rejected may file a new application later in the proceedings.*” In this respect, the legal representatives would like to draw the attention of the Chamber to the following part of the Decision issued by Trial Chamber II in the *Katanga and Ngudjolo Chui* case which “[o]rders the participation section to verify whether applications for participation which were rejected by the pre-trial chamber would merit reassessment in light of the new criteria for admissibility and registration set out in the present decision and orders that, if so, the said applications be submitted to the chamber [...] together with an explanatory report”¹⁶. Moreover, Trial Chamber II has also instructed “[t]he participation section to submit to it a report summarising, for each application received during the pre-trial stage [and received after the confirmation of the charges], all of its reasons for not having registered it”¹⁷. Therefore, in relation to the situation of applicants they do represent and whose applications have been either put aside at the pre-trial stage or rejected by the pre-trial chamber, the legal representatives respectfully request the Chamber to order the Victims Participation and Reparations Section to proceed with the approach taken by Trial Chamber II as described above.

For the foregoing reasons, the legal representatives of victims respectfully request Trial Chamber III to find that the ruling issued by Pre-Trial Chamber III on victims’ participation in the current case applies throughout the proceedings and consequently, that victims already authorised to participate at the pre-trial stage maintain their status of victims authorised to participate at the trial stage, without the need to review anew their applications for participation.

¹⁶ See the Decision of Trial Chamber II on victims’ participation, *supra* note 6, p. 23.

¹⁷ *Idem*, pp. 23-24.

The legal representatives of victims also request the Chamber to adopt the same procedure adopted by Trial Chamber II in respect of persons whose applications for participation have been either put aside at the pre-trial stage or rejected by Pre-Trial Chamber III.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Me Paolina Massidda
Me Marie Edith Douzima-Lawson

Dated this 15th day of October 2009, in French and in English
At The Hague (The Netherlands)