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

Date: **04 November 2008**

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Mauro Politi

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

Public Redacted Version of ICC-01/05-01/08-206-Conf

**Prosecution's Observations on the Applications for Participation in the Proceedings of
24 Applicants**

Source: The Office of the Prosecutor

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

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Procedural Background

1. On 12 September 2008 the Single Judge on behalf of the Pre-Trial Chamber (hereinafter referred to as “PTC”) issued the Decision on Victim Participation (hereinafter referred to as “First Decision”).¹ In this Decision, the Single Judge decided that the Registry shall submit complete applications for participation in the proceedings to the PTC no later than 3 October 2008 or no later than 30 days before the confirmation hearing in the event the hearing is postponed.²

2. On 3 October 2008 24 applications (hereinafter referred to as “applications”) for participation in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* were filed with the PTC in accordance with rule 89(1) of the Rules.

3. On 23 October 2008 the PTC issued the “Second Decision on victims’ participation requesting observations from the parties by no later than 4 November 2008 (hereinafter referred to as “Second Decision”).³ In this decision, the PTC requested that the parties submit their observations on three issues (i) on the possibility of granting the applicants the status of victims authorised to participate in the proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, (ii) the appropriateness of the participation of 24 applicants at the confirmation of charges phase of the proceedings and (iii) the impact of the participation of 24 applicants on the fairness of the proceedings and the rights of the suspect.⁴

4. On 24 October 2008, the Victims Participation and Reparations Section (hereinafter referred to as “VPRS”) transmitted to the Prosecution and the Defence redacted copies of the applications.

Request for Confidentiality

5. The Prosecution respectfully requests that this filing be received as “Confidential” since it relates to material that is currently confidential.

¹ ICC-01/05-01/08-86.

² ICC-01/05-01/08-103-tENG-Corr, p. 5.

³ ICC-01/05-01/08-184.

⁴ ICC-01/05-01/08-184, p. 8, para.c.

Prosecution's Observations

(i) On the Possibility of Granting the Applicants the Status of Victims Authorised to Participate in the Proceedings in the Case of The Prosecutor v. Jean-Pierre Bemba Gombo,

6. To determine whether an applicant may participate in the proceedings pursuant to Rule 89 (2) of the Rules, the PTC must first consider whether the applicant qualifies as a “victim” as defined in Rule 85. According to Rule 85 (a) of the Rules, “victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”.
7. Pre-Trial I (hereinafter referred to as “PTC I”) determined that, for an individual to be granted victim status four criteria must be satisfied: (a) the victim must be a natural person; (b) he or she must have suffered harm; (c) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (d) a causal link between the crime and the harm must exist.⁵
8. The Appeals Chamber clarified in the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008” that the harm suffered “can attach to both direct and indirect victims” so long as it is “personal to the individual”.⁶
9. Furthermore, PTC I, in its 17 August 2007 Decision, established criteria that need to be fulfilled in order to guarantee completeness of the applications, and listed the specific information that the applicants must provide.⁷

⁵ See ICC-01/04-101, para. 94.

⁶ See ICC-01/04-01/06-1432 OA9 OA10, at para. 32.

⁷ ICC-01/04-374, para 12:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;
- (v) proof of identity;
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;

Summary of the Applications

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship.
 - (viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.

⁸ The numbering of the annexes listed in this section reflects the numbering of those annexes as filed by the Victims Participation and Reparations Section.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Factual Analysis of the Applications

34. The Prosecution submits that all the applicants qualify as natural persons within the meaning of Rule 85 (a), and that all applicants, except for Applicant a/0287/08, claim to have suffered personal harm. However, as redactions are applied to the day and month in which the crimes were allegedly committed, the Prosecution will not comment on whether the crimes alleged occurred during the relevant time period and leave it to the Chamber to so assess. Furthermore issues arise with regard to the other requirements for an applicant to qualify as a victim pursuant to Rule 85(a) of the Rules, as submitted below.

35. Applicant a/0280/08 indicates the perpetrators of the alleged crimes committed against him as Bozize's troops. Therefore the harm suffered by the applicant did not result from a crime with which the suspect is charged. The applicant *prima facie* does not qualify as victim in the case *The Prosecutor v. Jean-Pierre Bemba Gombo*.¹

36. The Prosecution has noted inconsistencies and lack of information in some applications.

37. Application a/0271/08 contains an inconsistency with regard to the age of the applicant. It is indicated in the form that applicant a/0271/08 is [REDACTED]

[REDACTED]

38. Applicant a/0273/08, with regard to the date of the crimes indicated the year as 2008, and then stated that [REDACTED]

Furthermore, there is no full clarity as to the identification of the perpetrators, as he mentioned both the army of the state and the "libérateurs".

39. Application a/0287/08 mentions the crimes committed against [REDACTED]

[REDACTED]

[REDACTED]

40. Applicant a/0291/08 does not identify the perpetrators of the alleged crimes committed against him, as he mentioned both the “Banyamulenge” and Bozize’s troops as the armed groups occupying the town of [REDACTED].

41. Applicant a/0295/08 does not identify the perpetrators of the crimes from which he suffered harm. He merely referred to “soldiers”.

42. The Prosecution submits that the applicants referred to in this section do not currently meet the criteria set forth in Rule 85(a) of the Rules to qualify as victims, for the reasons stated above.

43. However, in order to facilitate victims’ participation, the Prosecution does not oppose the participation of those mentioned in paragraphs 37 to 41.

(ii) The Appropriateness of the Participation of 24 Applicants at the Confirmation of Charges Phase of the Proceedings and

44. In the Prosecution’s view, victims whose personal interest are affected within the meaning of Article 68 (3) have the right to participate at the confirmation hearing through expressing their views and concerns.

(iii) The Impact of the Participation of 24 Applicants on the Fairness of the Proceedings and the Rights of the Suspect.⁹

45. In order to ensure that participation occurred in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial, the Prosecution submits that it is important to assess in each case whether the interests asserted by victims do not, in fact, fall outside their personal interests and belong instead to the role assigned to the Prosecutor.¹⁰

⁹ ICC-01/05-01/08-184, p. 8, para.c.

¹⁰ ICC-01/04-01/06-1432 OA9 OA10 - "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008"

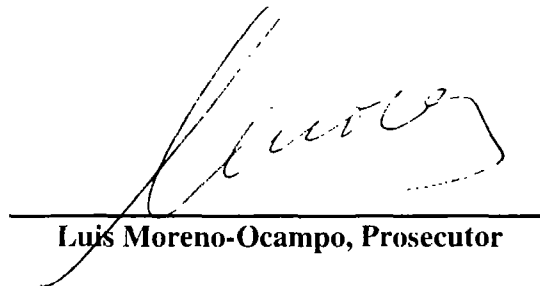
46. As stated in the Appeal Chamber, tendering evidence as to the guilt and innocence is primarily within the remits of the parties.¹¹

47. Under the Statute, while the parties may submit evidence, including at the request or order of the PTC, victims independently present their “views and concerns”. The Prosecution observes that a victim’s “views” are their opinions or personal perspectives on a matter under consideration; “concerns” give victims the opportunity to inform the PTC about the effect of the proceedings on their personal interests.

Request

48. For the foregoing reasons, the Prosecution respectfully requests that PTC III:

- a) Reject application a/0280/08 for victim participation, as the applicant does not qualify as victim in the case of The Prosecutor v. Jean-Pierre Bemba Gombo;
- b) Request the missing information and necessary clarifications from applicants a /0271/08, a/0273/08, a/0279/08, a/0287/08, a/0291/08, and a/0295/08 for the reasons stated above;
- c) Consider that the participation of the victims is appropriate at the confirmation hearings.
- d) Consider that when victims participants present their views and concerns, the fairness of the proceedings and the rights of the accused are not negative impacted.



Luis Moreno-Ocampo, Prosecutor

Dated this 4th day of November 2008

At The Hague, the Netherlands

¹¹ Ibid.