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

Date: **25 November 2008**

PRE-TRIAL CHAMBER III

Before: Single Judge Hans-Peter Kaul

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

Public Redacted Version of ICC-01/05-01/08-286-Conf

Prosecution's Observations on the Applications for Participation in the Proceedings of 34 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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I. Procedural background

1. On 12 September 2008 the Single Judge on behalf of the Pre-Trial Chamber III (hereinafter referred to as the “PTC III”) issued the Decision on Victim Participation (hereinafter referred to as “First Decision”).¹ In the First Decision, the Single Judge decided that the Registry shall submit complete applications for victim participation by a prescribed date.²

2. On 23 October 2008 the PTC III issued the “Second Decision on the question of victims’ participation requesting observations from the parties” (hereinafter referred to as “Second Decision”).³ In this decision, the PTC III requested that the parties submit their observations on twenty-four victim participation applications and their annexes by 4 November 2008. The PTC III also required that the parties address three issues namely, (i) the possibility of granting the applicants the status of victims authorized to participate in the proceedings in the case of *The Prosecutor v. Jean Pierre Bemba Gombo*, (ii) the appropriateness of the participation of the applicants at the confirmation of charges phase of the proceedings, and (iii) the impact of the participation of the applicants on the fairness of the proceedings and the rights of the suspect.

3. On 4 November 2008 the Defence filed the “Defence Objections and Observations to 24 Applications to Participate in Pre-Trial Proceedings as Victims”⁴ and the Office of the Prosecutor (hereinafter referred to as the “Prosecution”) filed the “Prosecution’s Observations on the Applications for Participation in the Proceedings of 24 Applicants”.⁵ The PTC III decision on those applications remains pending.

4. On 17 November 2008 the Single Judge on behalf of the PTC III issued the “Third Decision on the Question of Victims’ Participation Requesting Observations from the Parties”.⁶ In the Third Decision the Single Judge requested that the parties submit their observations on 34 additional victim participation applications and their annexes (hereinafter referred to as “Third

¹ ICC-01/05-01/08-86.

² ICC-01/05-01/08-103 p.5.

³ ICC-01/05-01/08-184.

⁴ ICC-01/05-01/08-205-Conf.

⁵ ICC-01/05-01/08-206-Conf.

⁶ ICC-01/05-01/08-253.

Decision”). The Single Judge asked that the same issues be addressed in the parties’ observations and gave a deadline of 25 November 2008.⁷

5. On 17 November 2008 the Victims Participation and Reparations Section (hereinafter referred to as “VPRS”) filed its “Transmission of redacted applications to participate in the proceedings”. The redacted applications and annexes, however, were registered and notified on 18 November 2008.⁸

II. Request for confidentiality

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

III. Prosecution’s observations on the possibility of granting the applicants the status of victims authorized to participate in the proceedings in the case of The Prosecutor v. Jean Pierre Bemba Gombo

7. To determine whether an applicant may participate in the proceedings pursuant to Rule 89(2) of the Rules of Procedure and Evidence (hereinafter referred to as the “Rules”), the Single Judge 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”.

8. The Pre-Trial Chamber I (hereinafter referred to as the “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.⁹

9. The Appeals Chamber clarified in the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victim’s Participation of 18 January 2008”

⁷ ICC-01/05-01/08-253, p.8 paragraph b.

⁸ ICC-01/05-01/08-256-Conf and Annexes 1 to 34 respectively

⁹ See ICC-01/04-101, paragraph 94.

that the harm suffered “can attach to both direct and indirect victims” so long as it is “personal to the individual”.¹⁰

10. Furthermore, the 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.¹¹

IV. [REDACTED]

[REDACTED]

11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁰ See ICC-01/04-01/06-1432 OA9 OA10, at paragraph 32.

¹¹ ICC-01/04-374, paragraph 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;
- 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 thumbprint of the applicant on the document, at the very least, on the last page of the application.

[REDACTED]

13. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

14. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

15. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

16. [REDACTED]
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[REDACTED]
[REDACTED]

[REDACTED]

17. [REDACTED]
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[REDACTED]

18. [REDACTED]
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[REDACTED]
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[REDACTED]

19. [REDACTED]
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20. [REDACTED]
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[REDACTED]

21. [REDACTED]
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[REDACTED]
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[REDACTED]

22. [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

23. [REDACTED]
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[REDACTED]

[REDACTED] [REDACTED]

24. [REDACTED]
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[REDACTED] [REDACTED]

25. [REDACTED]
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[REDACTED] [REDACTED]

26. [REDACTED]
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[REDACTED] [REDACTED]

27. [REDACTED]
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33. [REDACTED]
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34. [REDACTED]
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35. [REDACTED]
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36. [REDACTED]
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37. [REDACTED]
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38. [REDACTED]

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39. [REDACTED]

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40. [REDACTED]

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41. [REDACTED]

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[REDACTED]

44.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

V. Factual analysis of the applications

45. The Prosecution submits that all the applicants qualify as natural persons within the meaning of Rule 85 (a) of the Rules, and that all applicants claim to have suffered personal harm. Issues, however, 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.

46. Applicant a/0456/08 indicates the perpetrators of the alleged crimes committed against him as Miskine'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 a victim in the case *The Prosecutor v. Jean-Pierre Bemba Gombo*.

47. The Prosecution submits that the applicant referred to does not currently meet the criteria set forth in Rule 85(a) of the Rules to qualify as victims, for the reasons stated above.

48. Application a/0480/08 contains an inconsistency with regard to the age of the applicant. It is indicated in the application form that [REDACTED]
[REDACTED]

49. However, in order to facilitate victims' participation, the Prosecution does not oppose the participation of the applicant mentioned in paragraph 48.

VI. The appropriateness of the participation of 34 applicants at the confirmation of charges phase of the proceedings

50. In the Prosecution's view, victims whose personal interests are affected within the meaning of Article 68 (3) of the Rome Statute (hereinafter referred to as the "Statute") have the right to participate at the confirmation hearing through expressing their views and concerns.

VII. The impact of the participation of 24 applicants on the fairness of the proceedings and the rights of the suspect.¹²

51. 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.¹³

52. As stated in the Appeal Chamber, tendering evidence as to the guilt and innocence is primarily within the remit of the parties.¹⁴

53. 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

¹² ICC-01/05-01/08-184, p. 8, paragraph c

¹³ 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".

¹⁴ Ibid.

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.

VIII. Request

54. For the foregoing reasons, the Prosecution respectfully requests that the Single Judge:

- a) Reject application a/0456/08 for victim participation, as the applicant does not qualify as a victim in this case;
- b) Consider that the participation of the victims is appropriate at the confirmation hearing; and
- c) Consider that when victim participants present their views and concerns, the fairness of the proceedings and the rights of the accused are not negatively impacted.



Luis Moreno-Ocampo, Prosecutor

Dated this 25th day of November 2008

At The Hague, the Netherlands