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Date: **25 July 2011**

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. CALLIXTE MBARUSHIMANA***

Public

**Prosecution's Observations on 124 Applications for Victims'
Participation in the Proceedings**

Source: Office of the Prosecutor

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

Office of the Prosecutor	Counsel for the Defence Nicholas Kaufman
Legal Representatives of the Victims	Legal Representatives of the Applicants
Unrepresented Victims	Unrepresented Applicants (Participation/Reparation)
The Prosecution of Public Counsel for Victims	The Prosecution of Public Counsel for the Defence
States' Representatives	Amicus Curiae
REGISTRY	
Registrar Silvana Arbia Deputy Registrar	Defence Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section Fiona McKay	Other

I. Introduction

1. The Prosecution hereby submits its observations on 124 applications for victim participation in the pre-trial proceedings in the case of *The Prosecutor v. Callixte MBARUSHIMANA* pursuant to Rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and the Single Judge’s Decision requesting the Parties to submit observations on 124 applications for victim participation in the proceedings.¹
2. The Prosecution supports the granting of authorisation to participate as victims in the proceedings, pursuant to Article 68(3), to all the Applicants listed in paragraph 16 below.
3. The Prosecution submits that Applicants a/2153/11, a/2611/11 and a/2195/11 should be requested to provide further documentation proving their identity.
4. The Prosecution submits that Applicants a/2218/11, a/2607/11 a/2621/11, and a/2608/11 should be requested to provide further information to establish the identity of the alleged perpetrators of the crimes.

II. Background

5. On 4 July 2011, the Single Judge requested the parties to submit their observations on 124 applications for participation as victims in the case and ordered the Registry to transmit them to the Prosecution in redacted and non-redacted form and to the Defence in redacted form.²

¹ ICC-01/04-01/10-265.

² *Ibid.*

6. On 5 July 2011, the Registry provided the Prosecution with the 124 applications.
7. All 124 Applicants are natural persons.

III. Legal criteria for victim participation in the proceedings

8. The Prosecution considers that victims' participation before the Court is an essential feature of the Statute and the Rules and an important contribution to international justice. Under the Statute, victims are actors in the administration of international justice rather than its passive subjects. Their participation is a statutory right, not a privilege bestowed on a case-by-case basis.
9. The Prosecution supports victims' participation when all statutory requirements are met. Consistent with its view of the unique and necessary perspective victims lend to the proceedings, the Prosecution supports a liberal approach in permitting applicants to amend or clarify deficient applications, if possible.
10. According to the Appeals Chamber, a person has the right to participate as a victim in the proceedings under Article 68(3) if:
 - (i) he/she qualifies as a victim pursuant to Rule 85; and
 - (ii) his/her personal interests are affected by the proceedings at hand, i.e. by the issues, legal or factual, raised therein.³
11. With respect to the first requisite in terms of Article 68(3)—qualification as a victim under Rule 85—the established jurisprudence is that the following four criteria must

³ See, e.g., ICC-01/04-556 [AC], para. 45; ICC-01/04-01/06-1335 [AC], para. 36.

be satisfied for victim status to be warranted, regardless of the stage of the proceedings in which the applicants wish to participate:

- (i) the applicant must be a natural person as set forth in Rule 85(a) or an organisation or institution as set forth in Rule 85(b);
- (ii) the applicant must have suffered harm;
- (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and
- (iv) there must be a causal link between the crime and the harm.⁴

12. Applicants are only required to make a *prima facie* case showing that the four requirements set out in the preceding paragraph are met.⁵ In reviewing applications, Chambers will generally not delve into the credibility of applicants' statements or require rigorous corroboration.⁶ Rather, Chambers will "assess the applicants' statements first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available" to the Chamber.⁷

13. The second requisite in terms of Article 68(3)—that the applicant's personal interests are affected by legal or factual issues raised in the proceedings at hand—is considered separately from the victim status.⁸ As indicated by the Appeals Chamber, "[c]lear examples of where the personal interests of victims are affected are when their protection is in issue and in relation to proceedings for reparations."⁹ "An assessment will need to be made in each case as to whether the interests asserted by

⁴ See, e.g., ICC-01/04-01/06-601-tEN [PTCI], p. 9; ICC-01/04-01/06-228-tEN [PTCI], p. 7.

⁵ See, e.g., ICC-02/05-01/07-58 [PTCI], para. 7; ICC-01/04-01/07-579 [PTCI], para. 67.

⁶ See ICC-01/04-01/07-579 [PTCI], para. 67.

⁷ ICC-01/04-01/07-579 [PTCI], para. 67, 132.

⁸ See, e.g., ICC-01/04-556 [AC], para. 45; ICC-01/04-101-tEN-Corr [TCI], para. 62 (indicating that "personal interests" requirement constitutes an additional criterion to be met by victims, over and above the victim status accorded them).

⁹ ICC-01/04-01/06-925 [AC], para. 28.

victims do not, in fact, fall outside their personal interests and belong instead to the role assigned to the Prosecutor”.¹⁰

14. The established jurisprudence additionally requires that the harm suffered and the concept of personal interests must be linked to the charges: i.e. the charges confirmed against the accused or, at earlier stages in the proceedings, the offences alleged in the warrant of arrest or summons to appear or the document containing the charges.¹¹

IV. Factual analysis of the applications

15. At the outset, the Prosecution notes that all 124 applicants provide voter’s registration card. The Prosecution refers to its previous submission that these documents should be considered as valid proof of identity for the purposes of participation in the proceedings.¹²

16. The Prosecution submits that the following Applicants meet all of the requirements under Article 68(3) for participation in pre-trial proceedings in this case: a/2151/11, a/2157/11, a/2095/11, a/2158/11, a/2167/11, a/2606/11, a/2159/11, a/2099/11, a/2609/11, a/2633/11, a/2104/11, a/2634/11, a/2152/11, a/2176/11, a/2635/11, a/2620/11, a/2155/11, a/2175/11, a/2174/11, a/2588/11, a/2224/11, a/2173/11, a/2196/11, a/2597/11, a/2614/11, a/2599/11, a/2615/11, a/2616/11, a/2617/11, a/2600/11, a/2602/11, a/2603/11, a/2604/11, a/2149/11, a/2065/11, a/2163/11, a/2619/11, a/2595/11, a/2229/11, a/2575/11, a/2612/11, a/2189/11, a/2179/11, a/2230/11, a/2170/11, a/2587/11, a/2203/11, a/2221/11, a/2234/11, a/2188/11, a/2220/11, a/2178/11, a/2198/11, a/2239/11, a/2187/11, a/2586/11, a/2240/11, a/2177/11, a/2572/11, a/2186/11, a/2197/11, a/2585/11, a/2185/11, a/2573/11, a/2171/11,

¹⁰ *Ibid.*

¹¹ ICC-01/04-01/06-1432 [AC], paras. 2, 62-65 (“For the purposes of participation in the trial proceedings, the harm alleged by a victim and the concept of personal interests under article 68(3) of the Statute must be linked with the charges confirmed against the accused.”).

¹² ICC-01/04-01/10-216, para. 14.

a/2172/11, a/2194/11, a/2589/11, a/2624/11, a/2223/11, a/2193/11, a/2182/11, a/2579/11, a/2578/11, a/2156/11, a/2067/11, a/2169/11, a/2626/11, a/2207/11, a/2181/11, a/2226/11, a/2627/11, a/2192/11, a/2628/11, a/2630/11, a/2191/11, a/2228/11, a/2180/11, a/2205/11, a/2576/11, a/2190/11, a/2212/11, a/2184/11, a/2208/11, a/2574/11, a/2183/11, a/2582/11, a/2168/11, a/2166/11, a/2632/11, a/2593/11, a/2594/11, a/2591/11, a/2590/11, a/2219/11, a/2622/11, a/2623/11, a/2625/11, a/2605/11, a/2206/11, a/2631/11, and a/2583/11.

17. The Prosecution notes there are discrepancies between the names provided by Applicants a/2153/11, a/2610/11, a/2611/11 and a/2195/11 in their application forms and their names as they appear on their voter registration cards. The Prosecution reiterates its submission that the variations in the names appear, *prima facie*, to be spelling mistakes, and that the applications should be granted, in light of the information received by the VPRS that certain names were deformed during electoral operations.¹³

18. The Prosecution notes that Applicants a/2596/11, a/2598/11, a/2584/11 and a/2580/11 provide accounts that contain minor discrepancies in the month of the attacks alleged. The Prosecution submits that those variations are not substantial and do not affect any of the essential requirements for participation as victims. The Prosecution submits therefore that these applications should be granted.

19. Applicants a/2153/11, a/2611/11 and a/2195/11 provide on their applications, dates of birth that are very different from the birth date appearing on the proof of identity. The Prosecution submits that these Applicants should be requested to provide further documentation establishing their identity.

¹³ See ICC-01/04-01/10-261-Conf-Anx102.

20. Applicants a/2218/11, a/2607/11 a/2621/11, and a/2608/11 do not identify the alleged perpetrators, or do not do so clearly. The Prosecution submits that these Applicants should provide further details pertaining to the identification of the alleged perpetrators.
- 21.

V. Conclusion

The Prosecution submits that the Applicants listed in paragraph 16 above meet all the requirements under Article 68(3) to participate as victims in the pre-trial proceedings in this case.

22. The Prosecution submits that Applicants a/2153/11, a/2611/11 and a/2195/11 should be requested to provide further documentation proving their identity.
23. The Prosecution submits that Applicants a/2218/11, a/2607/11, a/2621/11, and a/2608/11 should provide further information regarding the identity of the perpetrators of the crimes alleged.



Luis Moreno-Ocampo, Prosecutor

Dated this 25th Day of July, 2011
At The Hague, The Netherlands