

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 October 2008

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra, Presiding Judge
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

Public

**Second Decision on the question of victims' participation requesting
observations from the parties**

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

The Office of the Prosecutor

Fatou Bensouda, Deputy Prosecutor
Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Nkwebe Liriss
Tjarda E. Van der Spoel
Aimé Kilolo-Musamba

Legal Representatives of the Victims

Legal Representatives of the Applicants

Douzima Lawson
Goun Gaye Quanfiyo

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Simo Vaatainen

Detention Section

**Victims Participation and Reparations Other
Section**

Fiona McKay

1. **Pre-Trial Chamber III** (the “Chamber”) of the International Criminal Court (the “Court”) has been seized on 3 October 2008 of the “Transmission of applications” submitted by the Registrar.¹

2. On 12 September 2008 Judge Fatoumata Dembele Diarra, acting as Single Judge on behalf of the Chamber², issued the “Decision on Victim Participation”, deciding:

a) that the Registry shall submit complete applications for participation in the proceedings to the Chamber no later than 3 October 2008, or no later than 30 days before the confirmation hearing in the event the hearing is postponed;

b) that the Victims Participation and Reparations Section shall, where necessary, suggest any redactions it considers necessary for the protection of victims, on submitting the applications for participation;

c) that the Victims and Witnesses Unit shall assist the Victims Participation and Reparations Section in determining the necessary redactions for the protection of victims;

d) that the Registry shall assist the victims for the purpose of ensuring their legal representation, and that 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.³

3. On 3 October 2008 24 applications for participation in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* have been filed with the Chamber in accordance with rule 89(1) of the Rules of Procedure and Evidence (the “Rules”).

4. On 6 October 2008 the Registrar transmitted redacted versions of the applications (the “Redacted Applications”),⁴ without a report on those Applications as required under regulation 86(5) of the Regulations of the Court (the “Regulations”).

¹ ICC-01/05-01/08-137-Conf-Exp and its annexes.

² ICC-01/05-01/08-86.

³ ICC-01/05-01/08-103-tENG-Corr, pp. 5 and 6.

⁴ ICC-01/05-01/08-140-Conf-Exp and its annexes.

5. On 7 and 13 October 2008 the Office of Public Counsel for Victims (the "OPCV") submitted annexes containing additional information concerning applications a/0278/08, a/0279/08, a/0280/08, a/0291/08, a/0292/08, a/0293/08, a/0296/08, a/0297/08 and a/0298/08 (the "Annexes").⁵

6. Only on 17 October 2008 the Registrar submitted to the Chamber a confidential *ex parte* " Report to Pre-Trial Chamber III on applications to participate in proceedings in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence and Regulation 86 paragraph 5 of the Regulations of the Court" with three annexes attached thereto.⁶

7. The Chamber notes articles 21(2), 57(3)(c), 61, 67, 68(1), 68(3) of the Rome Statute (the "Statute"), rules 87(1), 89(1) of the Rules, and regulations 23*bis*(3), 80, 81(4), 86(5) of the Regulations.

8. The Chamber recalls in particular article 68(3) of the Statute which reads:

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered *at stages of the proceedings determined to be appropriate by the Court* and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims *where the Court considers it appropriate*, in accordance with the Rules of Procedure and Evidence (emphasis added).

9. The Chamber notes that as the hearing on the confirmation of charges is approaching, this makes it necessary to take appropriate decisions at a later stage not only on the applications but also on whether views and concerns may be presented by victims or their legal representatives at this

⁵ ICC-01/05-01/08-143-Conf-Exp and its annex ; ICC-01/05-01/08-144-Conf-Exp and its annex ; ICC-01/05-01/08-145-Conf-Exp and its annex ; ICC-01/05-01/08-146-Conf-Exp; ICC-01/05-01/08-150-Conf-Exp and its annex ; ICC-01/05-01/08-151-Conf-Exp and its annex ; ICC-01/05-01/08-152-Conf-Exp and its annexes AnxA-C ; ICC-01/05-01/08-153-Conf-Exp and its annex.

⁶ ICC-01/05-01/08-168-Conf-Exp and its annexes.

stage. Furthermore, the Chamber holds the view that in order to be in a position to permit victims to present their views and concerns during stages determined to be appropriate and in a manner which is not prejudicial to or inconsistent with the rights of the accused, the Prosecutor and the Defence must first be given the opportunity to express their opinion as to whether applicants should be granted the status of victim in the case.

10. The Chamber recalls that according to rule 89(1) of the Rules, the "Registrar shall provide a copy of the application to the Prosecutor and the Defence, who shall be entitled to reply within a time limit to be set by the Chamber." Therefore, the Chamber is of the view that the Prosecutor and the Defence should submit meaningful observations on any application for participation and on the question whether it is, in the view of the Prosecutor and the Defence, appropriate and not prejudicial to or inconsistent with the rights of the accused and a fair trial that the 24 applicants present during the stage of confirmation of charges their views and concerns, where their personal interests as victims are affected.

11. The Chamber notes that according to articles 57(3)(c) and 68(1) of the Statute the Court shall take appropriate measures to protect *inter alia* the safety, privacy, physical and psychological well-being of the victims in a manner that is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial. The Chamber is of the view that redaction is an appropriate protective measure at this stage of the proceedings.

12. The Chamber is aware that the Prosecutor as organ of the Court also has a duty under the Statute to take necessary measures or request the authorisation of such measures for the protection of any person including victims. The Chamber is, however, of the view that it is not prejudicial or inconsistent with the duties of the Prosecutor that redacted applications be provided to his Office due to the reasons listed below.

13. This approach of the Chamber is justified in view of: a) respecting the principle of fair and equal treatment of the Prosecutor and the Defence;⁷ b) taking into consideration the authority and influence of Mr Jean Pierre Bemba as President of the MLC over this movement to locate and reach the applicants and c) reflecting the express desire of most of the applicants that their identity and other related identifying information are not exposed, whether to the Prosecutor, the Defence, other participants or the public.

14. The Chamber considers that in light of these circumstances, providing the applications to the Defence redacted does not unnecessarily restrict its rights and therefore cannot be perceived as prejudicial, or inconsistent with the rights of the accused and a fair and impartial trial taking into consideration the necessity to respect the proportionality principle as reflected in the last sentence of article 68(1) of the Statute.⁸

⁷ PTC II, « 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 », ICC-02/04-01/05-134, para. 25; PTC II, « 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 », ICC-02/04-01/05-312, p. 7.

⁸ Appeals Chamber, « Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81 », ICC-01/04-01/06-773, para. 34.

15. However, the Chamber is of the view that the scope of redactions should not be excessive and “cannot exceed what is strictly necessary (...) and must allow for a meaningful exercise by the Prosecution and the Defence of their right to reply to the application for participation.”⁹ Having reviewed the extent of the suggested redactions by VPRS and VWU on the applications received, the Chamber considers that the redactions proposed for those applications do not appear to “exceed what is strictly necessary”. The Chamber thus authorises the redactions as proposed by VPRS and VWU.

16. The scope of redactions proposed by VPRS and VWU equally applies to the Annexes. The Chamber is aware that the Annexes are currently classified as confidential *ex parte* OPCV and VPRS. For the purpose of the procedure under rule 89(1) of the Rules, in particular providing the Defence with a redacted copy of the Annexes, the Chamber deems it necessary to re-classify it as confidential in accordance with regulation 23bis(3) of the Regulations. Therefore, the Chamber is of the view that the Registrar shall transmit to the Defence the redacted Annexes together with the Redacted Applications.

FOR THESE REASONS THE CHAMBER

a) **decides** to re-classify the following documents as confidential with redacted Annexes:

ICC-01/05-01/08-143-Conf-Exp ;

ICC-01/05-01/08-144-Conf-Exp ;

ICC-01/05-01/08-145-Conf-Exp ;

ICC-01/05-01/08-146-Conf-Exp ;

ICC-01/05-01/08-150-Conf-Exp ;

⁹ PTC I, « Decision on Protective Measures Requested by Applicants 01/04-1/dp to 01/04-6/dp », ICC-01/04-73, p. 4; PTC II, ICC-02/04-01/05-134, para. 23.

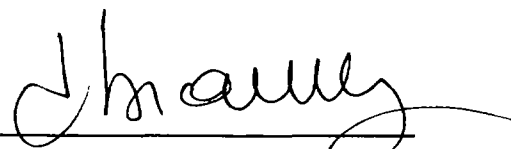
ICC-01/05-01/08-151-Conf-Exp ;

ICC-01/05-01/08-152-Conf-Exp ;

ICC-01/05-01/08-153-Conf-Exp.

- b) orders** the Registrar to provide the Prosecutor and the Defence, by 24 October 2008, with a redacted copy of the applications and the Annexes;
- c) grants** the Prosecutor and the Defence no later than 4 November 2008 to submit their observations on the applications and the Annexes, on the possibility of granting the applicants the status of victims authorised to participate in the proceedings before the Chamber in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, and on the question whether it is, in the view of the Prosecutor and the Defence, appropriate and not prejudicial to or inconsistent with the rights of the accused and a fair trial that the 24 applicants present during the stage of confirmation of charges their views and concerns, where their personal interests as victims are affected.

Done in both English and French, the English version being authoritative.



Judge Fatoumata Dembele Diarra
Presiding Judge



Judge Hans-Peter Kaul



Judge Ekaterina Trendafilova

Dated this Thursday, 23 October 2008

At The Hague, The Netherlands