

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-01/05-01/08  
Date: 12 December 2008

**PRE-TRIAL CHAMBER III**

**Before: Judge Hans-Peter Kaul, Single Judge**

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

**Public  
With confidential Annex**

**Fourth Decision on Victims' Participation**

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  
Karim A. A. Khan  
Aimé Kilolo-Musamba

**Legal Representatives of the Victims**

Nganatouwa Goungaye Wanifiyo  
Marie Edith Douzima-Lawson

**Legal Representatives of the Applicants**

**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**

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**Registrar**

Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Simo Vaatainen

**Detention Section**

**Victims Participation and Reparations  
Section**

Fiona McKay

**Other**

1. **Judge Hans-Peter Kaul**, acting as Single Judge on behalf of Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”) with respect to victims’ issues in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*,<sup>1</sup> hereby renders the decision on victims’ participation in the present case.

## **I. Procedural History**

2. On 12 September 2008 the then Single Judge Fatoumata Dembele Diarra<sup>2</sup> 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.”<sup>3</sup>

3. On 3 October 2008 24 unredacted applications for participation in the present case have been filed with the Chamber in accordance with rule 89(1) of the Rules of Procedure and Evidence (the “Rules”). After having received the redacted versions of those applications<sup>4</sup> and the related *ex parte* report<sup>5</sup> by the Registrar pursuant to regulation 86(5) of the Regulations of the Court (the “Regulations”), the Chamber

<sup>1</sup> Pre-Trial Chamber III, “Decision Designating a Single Judge on Victims’ Issues”, ICC-01/05-01/08-204.

<sup>2</sup> Pre-Trial Chamber III, ICC-01/05-01/08-86.

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

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

<sup>5</sup> ICC-01/05-01/08-168-Conf-Exp and its annexes.

invited the Prosecutor and the Defence to provide observations on those redacted applications<sup>6</sup> which were duly submitted on 4 November 2008.<sup>7</sup>

4. On 31 October 2008 the Chamber postponed the date of the confirmation hearing to 8 December 2008<sup>8</sup> thus allowing further victims to apply for participation in the present case until 7 November 2008.

5. On 7 November 2008 the Chamber received another 34 applications of victims wishing to participate in the present proceedings, in unredacted<sup>9</sup> as well as redacted form<sup>10</sup> together with the related *ex parte* report<sup>11</sup> by the Registrar pursuant to regulation 86(5) of the Regulations.

6. On 11 and 12 November 2008 the Office of Public Counsel for Victims (the "OPCV") submitted additional information concerning the applications a/0455/08 to a/0467/08.<sup>12</sup>

7. On 17 November 2008 the Single Judge issued the "Third Decision on the Question of Victims' Participation Requesting Observations from the Parties" (the "Third Decision on Victims")<sup>13</sup> inviting the Prosecutor and the Defence to provide observations on the additional 34 redacted applications of victims which were duly submitted on 25 November 2008.<sup>14</sup>

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<sup>6</sup> ICC-01/05-01/08-184.

<sup>7</sup> ICC-01/05-01/08-205-Conf and ICC-01/05-01/08-206-Conf.

<sup>8</sup> ICC-01/05-01/08-199.

<sup>9</sup> ICC-01/05-01/08-224-Conf-Exp and its annexes.

<sup>10</sup> ICC-01/05-01/08-226-Conf-Exp and its annexes.

<sup>11</sup> ICC-01/05-01/08-228-Conf-Exp and its annex.

<sup>12</sup> ICC-01/05-01/08-234-Conf-Exp and ICC-01/05-01/08-240-Conf-Exp.

<sup>13</sup> ICC-01/05-01/08-253.

<sup>14</sup> ICC-01/05-01/08-284-Conf and ICC-01/05-01/08-286-Conf.

8. On 17 and 20 November 2008 the OPCV submitted further additional information concerning various applications of victims submitted to the Chamber on 3 October and 7 November 2008.<sup>15</sup>

9. On 19 November 2008 the Prosecutor submitted the Amended Document Containing the Charges on which he intends to bring Jean-Pierre Bemba Gombo (“Mr Jean-Pierre Bemba”) to trial.<sup>16</sup>

10. On 2 December 2008, the Single Judge Ekaterina Trendafilova acting on behalf of the Chamber,<sup>17</sup> postponed the confirmation hearing until January 2009.<sup>18</sup>

## **II. The Law**

11. The Single Judge notes articles 21, 57(3)(c), 61, 67 and 68 of the Rome Statute (the “Statute”), rules 16, 85, 89, 90, 91, 92 and 121 of the Rules, regulations 86 of the Regulations and articles 1 and 8 of the Code of Professional Conduct for counsel (the “Code of Professional Conduct”).

12. The Single Judge recalls article 68(3) of the Statute which reads:

“3. 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).

<sup>15</sup> ICC-01/05-01/08-255-Conf-Exp and its annexes; ICC-01/05-01/08-265-Conf-Exp and its annexes

<sup>16</sup> ICC-01/05-01/08-264-Conf-AnxA. Public redacted version in ICC-01/05-01/08-169-Anx3A of 17 October 2008

<sup>17</sup> Pre-Trial Chamber III, “Decision designating a Single Judge”, ICC-01/05-01/08-293.

<sup>18</sup> Pre-Trial Chamber III, “Decision on the Postponement of the Confirmation Hearing”, ICC-01/05-01/08-304.

13. The Single Judge also recalls rule 85 of the Rules which stipulates:

“For the purposes of the Statute and the Rules of Procedure and Evidence:

(a) “Victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;

(b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.”

14. The Single Judge further recalls rule 89 of the Rules which provides:

“1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, 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. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

3. An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of the victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.

4. Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.”

15. The Single Judge further is well aware of the jurisprudence of other chambers of the Court and will apply, pursuant to article 21(2) of the Statute, principles and rules of law as interpreted in the Court’s decisions, if deemed applicable to the present case.<sup>19</sup>

<sup>19</sup> Most notably Pre-Trial Chamber I, “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 4, APRS 5 and VPRS 6”, ICC-01/04-101-tEN, *id.*, “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, ICC-01/04-01/07-474, *id.*, “Decision on the Request of the Legal Representative of Applicants on application process for victims’ participation and legal representation”, ICC-01/04-374; *id.*, “Public Redacted Version of the ‘Decision on the 97

16. Lastly, mindful of article 21(3) of the Statute, the Single Judge takes note of international instruments in particular with respect to rights of victims, such as the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” (the “1985 Declaration of Basic Principles”)<sup>20</sup>, the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (the “Basic Principles and Guidelines”)<sup>21</sup> and the “Convention of the Rights of the Child”.<sup>22</sup>

17. The Single Judge further takes note of the principle of “fair trial” and the “right to an effective remedy” enshrined in international instruments, such as articles 2(3)(a) and 14(1) of the International Covenant on Civil and Political Rights,<sup>23</sup> articles 6(1) and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>24</sup> article 7(1)(a) of the African Charter on Human and Peoples’ Rights<sup>25</sup> and articles 8(1) and 25(1) of the American Convention on Human Rights.<sup>26</sup>

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applications for Participation at the Pre-Trial Stage of the Case”, ICC-01/04-01/07-579; Pre-Trial Chamber II, “Decision on victims’ 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-02/04-101; *id.*, “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06”, ICC-02/04-125; Trial Chamber I, “Decision on victims’ participation”, ICC-01/04-01/06-1119; Appeals Chamber, “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, ICC-01/04-01/06-1432; *id.*, “Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I’s Decision of 3 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I’s Decision of 6 December 2007”, ICC-02/05-138, *id.*, “Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the ‘Directions and Decision of the Appeals Chamber’ of 2 February 2007”, ICC-01/04-01/06-925.

<sup>20</sup> United Nations General Assembly, A/RES/40/34 of 29 November 1985.

<sup>21</sup> United Nations General Assembly, A/RES/60/147 of 21 March 2006.

<sup>22</sup> Convention on the Rights of the Child, adopted by resolution 44 25 of 20 November 1989 at the 44<sup>th</sup> session of the United Nations General Assembly, UN Treaty Series, vol. 1577, p. 3.

<sup>23</sup> International Covenant on Civil and Political Rights (ICCPR), adopted and opened for signature on 19 December 1966, UN Treaty Series, vol. 999, p. 171.

<sup>24</sup> Convention on Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, UN Treaty Series, vol. 213, p. 221.

<sup>25</sup> African Charter on Human and Peoples’ Rights, concluded at Nairobi on 27 June 1981, UN Treaty Series, vol. 1520, p. 217.

<sup>26</sup> American Convention on Human Rights, also referred to as the pact of San José, Cost Rica, adopted on 22 November 1969, UN Treaty Series, vol. 1144, p. 143.

### **III. Conclusions of the Single Judge**

18. At the outset, the Single Judge wishes to lay out the considerations which have guided him in reaching his determinations in the present decision.

19. The Single Judge bears in mind that the issue of victims' participation forms a new feature in international criminal proceedings which has been encapsulated in various provisions of the Court's legal texts. However, many aspects of it require further clarification.

#### **A. Terminology**

20. For the purpose of this decision, the Single Judge wishes to clarify that he considers all persons applying as victims, as referred to in the Court's legal texts. However, a distinction must be drawn between victims applying to participate and victims recognised as participants in the present proceedings.

#### **B. Late submission of additional information**

21. The Single Judge notes with concern that some of the additional information provided by the OPCV pertaining to several victim applications submitted on 3 October and 7 November 2008 has been submitted for the Single Judge's consideration after the deadline of 7 November 2008, namely by submissions on 17 and 20 November 2008 as referred to in paragraph 8 above.<sup>27</sup> This additional information consists mainly of identity documents of victim applicants. The Single Judge is concerned that the additional information by OPCV has been provided in a

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<sup>27</sup> The Chamber's "Decision on Victim Participation" of 12 September 2008 establishes that complete applications for participation be submitted to the Chamber "no later than 30 days before the confirmation hearing in the event the hearing is postponed". Following a postponement of the confirmation hearing from 4 November 2008 to 8 December 2008 (ICC-01/05-01/08-199), the last possible point in time to submit complete applications was on 7 November 2008.



manner which rendered it impossible for the Chamber or the Single Judge to order its timely transmission to the parties for their observations.

22. Mindful of the difficulties the OPCV might face in the field, and considerate of the fact that the applications have been submitted to OPCV late in time, the Single Judge, however, emphasises that a timely submission of *all* relevant material, necessary to assess the applications under examination and in order to give the parties an opportunity to make observations thereon, is imperative for all concerned, including the OPCV, when assisting in the process of victims' applications. With regard to such assistance, it is the responsibility of both the Registry and the OPCV to ensure that *all* information considered relevant is submitted to the Chamber at the earliest possible opportunity.

23. Consequently, the Single Judge, in principle, will not consider any information submitted after the deadline established by the Chamber.<sup>28</sup> However, taking into account the unexpected postponement of the confirmation hearing until January 2009,<sup>29</sup> the Single Judge will on an exceptional basis take the additional information provided by OPCV on 17 and 20 November 2008 into consideration. Mindful of the fact that the parties will not have had an opportunity to provide their observations on this particular additional information, the Single Judge will only consider it if it pertains to and clarifies information already contained in the applications transmitted to the parties for observations, such as the identity of the victim applicant. In case the additional information by OPCV contains new information, the Single Judge will not take it into consideration.

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<sup>28</sup> See also Pre-Trial Chamber I, ICC-01/04-01/07-579, para. 47.

<sup>29</sup> Pre-Trial Chamber III, "Decision on the Postponement of the Confirmation Hearing", ICC-01/05-01/08-304

### C. General observations by the Defence

24. The Defence, while accepting article 68(1) of the Statute, has raised the issue of redactions applied in the victim applications transmitted as being inconsistent with the rights of the Defence in both its submissions of 4 and 25 November 2008<sup>30</sup> and requests that for this reason the applications be dismissed.

25. The Single Judge recalls the Chamber's duty to take appropriate measures to protect *inter alia* the safety, privacy, physical and psychological well-being of victims according to articles 57(3)(c) and 68(1) of the Statute. The Single Judge also reiterates the Chamber's previous findings setting out the principles pertaining to and the reasons justifying the transmission of redacted victim applications to the Defence.<sup>31</sup>

26. The Defence also raised the argument of lack of sufficient time allocated to properly review 34 victim applications transmitted on 17 November 2008 until 25 November 2008.<sup>32</sup> It contends this timing to be inconsistent with the rights of the accused and that "it should be considered *per se* unfair to impose the distraction of victims applications upon a person defending against charges".<sup>33</sup>

27. The Single Judge first emphasises that the time limit set by the Single Judge applied to both parties who both submitted observations. The Single Judge further observes that the Defence advanced this argument only on 25 November 2008, the very last day of the time limit in question. He further observes that the Defence did not duly request an extension of time pursuant to regulation 35 of the Regulations. The Single Judge also observes that the Defence did reply to specific applications. The argument by the Defence can therefore not be sustained.

<sup>30</sup> ICC-01/05-01/08-205-Conf, paras 4-15; ICC-01/05-01/08-284-Conf, para. 6.

<sup>31</sup> Pre-Trial Chamber III, ICC-01/05-01/08-184, paras 11 to 16; *id.*, ICC-01/05-01/08-253, paras 10 to 15.

<sup>32</sup> ICC-01/05-01/08-284-Conf, paras 5, 7, 8 and 16.

<sup>33</sup> *Ibid.*, paras 7 and 8.

#### **D. Victims recognised as participants in the present proceedings**

28. At the outset, the Single Judge wishes to clarify that every individual victim application is assessed in the confidential Annex to the present decision. This approach seems necessary as those applications contain confidential information of the victim applicants which, to a certain extent, can be shared with the parties but not with the public.

29. Pursuant to rule 89(1) of the Rules, the parties have had the opportunity to provide observations on all 58 applications of victims wishing to participate in the present case. The Single Judge takes note of the observations submitted and will revert to them, as appropriate, when dealing with the individual applications.

30. In order for a victim to participate in the present proceedings, it must first be determined whether the victim applicant qualifies as a victim of the case. Pursuant to rule 85 of the Rules, the Single Judge must therefore ascertain whether (1) the victim applicant is a natural person as set forth in rule 85(a) of the Rules or an organisation or institution as set forth in rule 85(b) of the Rules, (2) a crime within the jurisdiction of the Court appears to have been committed, (3) the victim applicant has suffered harm, and (4) such harm arose “as a result” of the alleged crime within the jurisdiction of the Court.<sup>34</sup>

31. The Single Judge notes the absence of any statutory provision as regards the required standard of proof. The Single Judge therefore concurs with Pre-Trial Chamber II in that the Chamber has broad discretion in assessing the soundness of a given statement or related piece of evidence.<sup>35</sup> The Single Judge will, however, only

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<sup>34</sup> Pre-Trial Chamber II, ICC-02/04-101, para. 12.

<sup>35</sup> *Ibid.*, para. 13.

recognise a victim for the purpose to participate in the present proceedings if the victim applicant can prove to a satisfactory level by way of his or her application, as viewed by an objective observer, that all constituent elements set out in rule 85 of the Rules are met. Each application is assessed on the merits of its intrinsic coherence. The burden of proof lies with the victim applicant requesting to participate in the present case.

32. Applications lacking sufficient information to prove satisfactorily the elements as set out in paragraph 29 remain pending and a decision thereupon is deferred until such proof is submitted.

#### 1. Natural person or organisation or institution as set forth in rule 85 of the Rules

33. Pursuant to rule 85 of the Rules, victims are “natural persons” or “organizations or institutions” which own “property dedicated to religion, education, art or science or charitable purposes” or “historic monuments, hospitals and other places and objects for humanitarian purposes”.

##### *a) Natural person*

##### *aa) General*

34. Each victim applicant must prove his or her identity satisfactorily. The Single Judge considers that some kind of proof meeting a few basic requirements must be submitted. However, bearing in mind the principle that victims apply to the Court from different regions of the world in which different security situations, political, social and personal circumstances prevail, the Single Judge is of the view that it is appropriate to take a flexible approach which is adapted to the realities in the individual situation country. An official identity document which may be obtainable easily in one situation country, may not be in another. Taking into account these considerations, the Single Judge holds the view that the Victims Participation and

Reparations Section (the “VPRS”) will be requested also in the future to submit a thorough report on the availability of official identity documents in the situation country in question when submitting to the Chamber the first applications for participation.

35. With this in mind, the Single Judge has carefully considered relevant information in annexes 2 and 3 of the aforementioned report by the VPRS.<sup>36</sup> He has taken note of the victim applicants’ personal circumstances and is well aware of the difficulties victim applicants in the Central African Republic (the “CAR”) may encounter in obtaining or producing copies of official identity documents, such as a passport, bearing in mind that some victim applicants may have lost their identity documents in the course of the events between October 2002 and March 2003 in the CAR. As the VPRS submits, numerous CAR citizens, living in rural areas, do not possess any official identity document. Others face difficulties in obtaining identity documents due to e.g. cumbersome administrative procedures, the high costs incurred and a lack of transport means to reach the competent authorities. In addition, the VPRS informed the Single Judge that in the CAR the following documents are currently used as substitute for official identity documentation: «carte professionnelle», «carte d’association», «récépissé de dépôt de demande de carte nationale d’identité», «carte de commission d’emploi», «carte de député», «déclaration de naissance», and «carte d’identité pastorale».

36. After careful consideration, and having had due regard to the practice established by other chambers of the Court, the Single Judge accepts the following documentation as proof of identity, as indicated in the report of the VPRS: (i) «certificat de nationalité», (ii) «permis de conduire», (iii) «passeport», (iv) «livret de famille», (v) «extrait d’acte de mariage», (vi) «acte de mariage», (vii) «extrait d’acte de décès», (viii) «acte de décès», (ix) «jugement supplétif», (x) «extrait d’acte de

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<sup>36</sup> ICC-01/05-01/08-168-Conf-Exp.

naissance», (xi) «acte de naissance», (xii) «nouvelle carte d'identité», (xiii) «ancienne carte d'identité qui n'est plus en vigueur», (xiv) «carte professionnelle», (xv) «carte d'association», (xvi) «récépissé de dépôt de demande de carte nationale d'identité», (xvii) «carte de commission d'emploi», (xviii) «carte de député», (xix) «déclaration de naissance», (xx) «carte d'identité pastorale», (xxi) «testament», and (xxii) «livret de pension».<sup>37</sup>

37. The Single Judge wishes to clarify that in those instances where it is not possible for a victim applicant to acquire or produce a document of the kind set out above, the Single Judge will consider a statement signed by two witnesses attesting to the identity of the victim applicant and including, where applicable, the relationship between the victim applicant and the person acting on his or her behalf. The statement should be accompanied by proof of identity of the two witnesses as set out above.

38. Pursuant to rule 89(3) of the Rules, an application may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, where necessary, a victim who is disabled. The Single Judge wishes to specify that in this case the identity of both the victim applicant and the person acting with his or her consent or on his or her behalf must be confirmed by one of the above listed documents. Finally, following the practice of Pre-Trial Chamber I and II,<sup>38</sup> the Single Judge is of the view that the link existing between a child applying for participation and the person acting on his or her behalf (kinship, guardianship, or legal guardianship) as well as the link existing between a disabled applicant and the person acting on his or her behalf (legal guardianship) should be confirmed within the meaning of regulation 86(2)(e) of the Regulations.

<sup>37</sup> ICC-01/05-01/08-168-Conf-Exp-Anx2.

<sup>38</sup> Pre-Trial Chamber I, ICC-01/04-374, para. 13, Pre-Trial Chamber II, ICC-02/04-125, para. 7.

*bb) Deceased persons*

39. In case an application is made on behalf of a deceased person, the Single Judge recognizes this person as a victim of the case provided that (1) the deceased was a natural person, (2) the death of the person appears to have been caused by a crime within the jurisdiction of the Court and (3) a written application on behalf of the deceased person has been submitted by his or her successor.

40. The Single Judge is aware that rule 89(3) of the Rules establishes that a person may act “with the consent of the victim” or “on behalf of a victim, in the case of a victim who is a child or (...) a disabled person”. However, the Single Judge holds that the question whether a deceased person may be recognized as a victim of the case must be decided in conformity with internationally recognized human rights and related jurisprudence pursuant to article 21(3) of the Statute. The Single Judge finds it self-evident that a victim does not cease to be a victim because of his or her death.

41. With this in mind, the Single Judge takes note of application a/0477/08 in which the victim applicant alleges the harm she suffered on account of the death of her father as well as the harm sustained by her father.

42. The Single Judge notes that the victim applicant appears to submit an application by way of acting on her own behalf but also on behalf of her deceased father.

43. The Single Judge further notes from the information provided that the victim applicant is a natural person and that the deceased father was a natural person at the time of the crime(s) allegedly committed.

44. The Single Judge is of the view that, albeit a deceased person cannot be a participant in the proceedings, his or her rights can be represented in proceedings before the Court by his or her successor, if the successor is a victim recognized as participant in the proceedings. Taking into consideration article 21(3) of the Statute, the Single Judge notes the jurisprudence of the Inter-American Court of Human Rights (IACtHR) which has found in the *Case of Aloeboetoe et al. v. Suriname* that

“[t]he damages suffered by the victims up to the time of their death entitle them to compensation. That right to compensation is transmitted to their heirs by succession. The damages payable for causing loss of life represent an inherent right that belongs to the injured parties. It is for this reason that national jurisprudence generally accepts that the right to apply for compensation for the death of a person passes to the survivors affected by that death. (...)”<sup>39</sup>

45. In the *Case of Garrido and Baigorria v. Argentina*, the IACtHR held:

“The Court has stated, and now reiterates, that the right to compensation for damages suffered by the victims up the time of their death, is transmitted to their heirs by succession. On the other hand, the damages owed to the victims next of kin or to injured third parties for causing the victim’s death are an inherent right that belongs to the injured party.”<sup>40</sup>

46. The Single Judge observes that, although this jurisprudence refers to the right to compensation, it is relevant in the present case. It is deemed appropriate, that the successors of a deceased person exercise the rights of deceased persons in proceedings in order to safeguard claims for any future reparations. As other chambers of the Court have stated previously the personal interests of victims to

<sup>39</sup> IACtHR, *Case of Aloeboetoe et al v Suriname*, Judgement of 10 September 1993, para 54.

<sup>40</sup> IACtHR, *Case of Garrido and Baigorria v Argentina*, Judgement of 27 August 1998, para. 50. This approach has also been followed by the European Court of Human Rights (ECtHR). see *Keenan v The United Kingdom*, Judgement of 3 April 2001, Application no 27229/95, paras 135 et seq. This has also been discussed in doctrine: “Among the cases decided by the Inter American Court of Human Rights to the end of 2004, few direct victims have survived the breaches to bring an international Complaint. In cases where they have not, various family members and other dependants of the deceased have been the claimants. In such cases, they have sought remedies for: (1) injuries to the deceased prior to death, (2) wrongful death, and (3) consequential damages they have suffered in their own right”, in D. Shelton, *Remedies in International Human Rights Law*, OUP 2005, 2<sup>nd</sup> edition, p. 242.



participate in the proceedings before this Court is to be found *inter alia* in the right to receive reparations.

47. Therefore, although a deceased person cannot present his or her “views and concerns” in the proceedings, the Single Judge sees no impediment that the rights of the deceased victim are exercised by their successors during the proceedings, if these successors are victims recognized as participants in the proceedings, as in the present case.

48. The successors must clearly indicate in the application form whether they act on their own behalf and on behalf of the deceased person.

49. Further, the applicant must provide the sufficient information on: (i) the identity of the deceased person, (ii) the identity of the successor, and (iii) the kinship between the successor and the deceased.

50. The Single Judge emphasizes that all other criteria established by rule 85 of the Rules apply equally.

51. In addition, immediate family members and dependants of a deceased person may also allege to have been personally subjected to emotional suffering resulting from the death of his or her relative, provided that the person concerned has made an application to that effect and submitted sufficient information.<sup>41</sup>

52. In light of the above and having reviewed all 58 victim applications, the Single Judge concludes that all victim applicants are natural persons pursuant to rule 85(a)

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<sup>41</sup> See also Pre-Trial Chamber I, ICC-01/04-01/07-579, para. 63.

of the Rules and have provided sufficient information proving satisfactorily their identity.

*b) Organisation or institution*

53. In case where an application is made on behalf of an organisation or institution as specified in rule 85(b) of the Rules, the Single Judge will consider any constitutive document in accordance with the law of the CAR. Further, the Single Judge will consider any document proving that the person submitting the application on behalf of that organisation or institution has indeed the right to make such a request. The criteria pertaining to the identity of a victim applicant (see paragraphs 36 and 37) equally apply to the person acting on behalf of an organisation or institution.

54. With reference to a/0297/08, the Single Judge notes that the victim applicant submitted an application to participate in the present proceedings. He further notes that this victim applicant alleges that both his house and the church in which he exercised his duties as a priest have been pillaged and has provided information as to the property pillaged. The Single Judge therefore considers that the victim applicant wishes to be acting on behalf of the church in which he exercises his duties as a priest as well as on his own behalf.

55. The Single Judge observes that the victim applicant used one and the same application form to submit both requests as outlined above. However, the Single Judge notes that the victim applicant failed to provide sufficient information with regard to the institution, the church, on behalf of which he wishes to act. He neither provided any information as regards the exact location of the church nor any information as regards his legal standing to act on behalf of that church. The Single Judge therefore cannot conclude that this person can indeed act on behalf of the church in question.

56. In conclusion, lacking any satisfactory information with regards a/0297/08 pertaining to the request of the church to participate as victim in the present proceedings, the Single Judge defers a decision on the part of the application which has been made on behalf of the church. The applicant may submit further information later in the proceedings.

## 2. A crime within the jurisdiction of the Court appears to have been committed

57. All victim applicants aver to have been victims of (a) crime(s) within the jurisdiction of the Court.

58. In the amended document containing the charges the Prosecutor alleges that Mr Jean-Pierre Bemba committed jointly with another person on or about 26 October 2002 to 15 March 2003 crimes against humanity and war crimes on the territory of the CAR through acts of rape, torture, murder, outrages upon personal dignity and pillaging in violation of articles 7(1)(g), 8(2)(e)(vi), 7(1)(f), 8(2)(c)(i), 7(1)(a), 8(2)(c)(ii) and 8(2)(e)(v) of the Statute.

59. The Single Judge emphasises that, for a crime to fall within the Court's jurisdiction, it must meet the following three criteria: (i) the crime must be one of the crimes set out in article 5(1)(a) to (1)(c) of the Statute (jurisdiction *ratione materiae*), (ii) the crime must have been committed within the timeframe specified in article 11 of the Statute (jurisdiction *ratione temporis*) and (iii) in case a situation has been referred to the Prosecutor by a State Party<sup>42</sup> or the Prosecutor has initiated an investigation *proprio motu*<sup>43</sup>, the crime must satisfy one or other of the two criteria laid down in article 12(2) of the Statute; namely, it must either have been committed on the

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<sup>42</sup> Article 13(a) of the Statute.

<sup>43</sup> Article 13(c) of the Statute.

territory of a State Party to the Statute (jurisdiction *ratione loci*) or by a national of that State (jurisdiction *ratione personae*), or have been committed on the territory of a State which has made a declaration under article 12(3) of the Statute or by nationals of that State.<sup>44</sup> In case a situation has been referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations<sup>45</sup>, the condition specified under (iii) must not be met.

60. As regards the first condition, jurisdiction *ratione materiae* refers to the crimes which the Court may investigate and prosecute and which are enlisted in article 5(1)(a) to (1)(c) of the Statute, namely genocide, crimes against humanity and war crimes.

61. However, the Single Judge holds that not *any* incident purported by victim applicants falling under the jurisdiction *ratione materiae* may serve as a basis to fulfil this criterion, but a link between the incident described by the victim applicant and the present case must be established.<sup>46</sup>

62. In this respect, the Single Judge takes note of the Appeals Chamber judgment of 11 July 2008 in which certain aspects of the issue of victims' participation at the trial stage formed the subject-matter under judicial consideration. As has been determined by the Appeals Chamber, "whilst the ordinary meaning of rule 85, does not *per se* limit the notion of victims to the victims of the crimes charged, the effect of article 68(3) of the Statute is that the participation of victims in the trial proceedings,

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<sup>44</sup> Pre-Trial Chamber III, "Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba", ICC-01/05-01/08-14-tEN, para.12.

<sup>45</sup> Article 13(b) of the Statute

<sup>46</sup> In this spirit, see also Appeals Chamber, ICC-01/04/01.06-1432, para. 2, Pre-Trial Chamber I, ICC-01/04-01/07-579, para. 65, Pre-Trial Chamber II, ICC-02/04-101, para. 11, Judge Blattmann, Dissenting Opinion to the Decision of Trial Chamber I, "Decision on victims' participation", ICC-01/04-01/06-1119, paras 7, 11, 15, 16.

pursuant to the procedure set out in rule 89(1) of the Rules, is limited to those victims who are linked to the charges”.<sup>47</sup>

63. The Single Judges holds that this approach must apply *mutatis mutandis* at the pre-trial stage of proceedings: in the absence of a decision confirming the charges brought against Mr Jean-Pierre Bemba, the scope of the case is delineated by means of the document containing the charges pursuant to article 61(3)(a) of the Statute. This document contains, *inter alia*, a statement of the facts, including the time and place of the alleged crimes, which provides a sufficient legal and factual basis to bring the person to trial.<sup>48</sup> In the view of the Single Judge it is those facts contained in the document containing the charges which define and delineate the scope of the present proceedings. The legal characterisation of the facts remains to be determined ultimately by the Chamber pursuant to article 61(7) of the Statute. Therefore, any legal characterisation of the incidents advanced by the victim applicants is only an indicative but not a decisive factor. The Single Judge will have to ascertain whether the incidents described by the victim applicants fall within the factual scope of the case to be examined during the confirmation hearing by the Chamber.

64. In light of the above, it is for the Single Judge to analyse the statements of each victim applicant in light of the criteria mentioned above and to determine whether the alleged incidents described may be regarded as crimes within the jurisdiction of the Court.

65. The Single Judges observes that the incidents described by all victim applicants relate to the commission of acts such as rape, killing and pillaging. All victim applicants purport to have suffered from either one or several of those crimes. The Single Judge finds that the first condition has been met.

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<sup>47</sup> Appeals Chamber, ICC-01/04-01/06-1432, para. 58.

<sup>48</sup> See regulation 52(b) of the Regulations.

66. As regards the second condition, jurisdiction *ratione temporis* denotes the temporal scope of the Court's jurisdiction. According to article 11 of the Statute, the Court has jurisdiction only with respect to crimes committed after the entry into force of the Statute. The Single Judge notes that the Statute entered into force for the CAR on 1 July 2002, in accordance with article 126(1) of the Statute, that country having signed the Statute on 7 December 1999 and deposited its instrument of ratification on 3 October 2001. The crimes alleged by all victim applicants have occurred between on or about 26 October 2002 and 15 March 2003. The Single Judge notes that the second condition has been met.

67. With respect to the third condition, namely the two alternative criteria set out in article 12(2) of the Statute, the Single Judge notes that the crimes alleged by victim applicants are stated to have been committed on the CAR territory. The Single Judge therefore concludes that the third condition has also been met.

### 3. The victim applicant has suffered harm

68. Further, victim applicants must evidence that they have suffered harm. Whereas rule 85(a) of the Rules refers to the notion of "harm", rule 85(b) of the Rules establishes that victim organisations or institutions must have sustained "direct harm".

69. The Single Judge takes note of the Appeals Chamber judgment clarifying that

"31. [t]he word "harm" in its ordinary meaning denotes hurt, injury and damage. It carries the same meaning in legal texts, denoting injury, loss, or damage and is the meaning of "harm" in rule 85 (a) of the Rules."<sup>49</sup>

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<sup>49</sup> Appeals Chamber, ICC-01/04-01/06-1432.

70. Guided by the 1985 Declaration of Basic Principles and the Basic Principles and Guidelines, the Single Judge further notes that “harm” pursuant to rule 85 of the Rules may include physical injury, emotional suffering and economic loss. This has been elucidated by the Appeals Chamber which considers that

“32. (...) the [m]aterial, physical, and psychological harm are all forms of harm that fall within the rule if they are suffered personally by the victim.”<sup>50</sup>

71. The Appeals Chamber has further clarified that the alleged harm must be suffered by the victim applicant, thus making it “personal harm”.<sup>51</sup>

72. The Single Judge is of the view that victim applicants must provide sufficient information proving to a satisfactory level the personal harm suffered, to the extent possible. In addition, the Single Judge considers that emotional suffering may be claimed by immediate family members and dependants, as long as the relationship has been sufficiently established.

73. In light of the above and after review of all victim applications, the Single Judge considers that all victim applicants recognized for the purpose of participating in the present case have satisfactorily evidenced that they have suffered personal harm, be it physical injury, emotional suffering or economic loss.

#### 4. Harm “as a result” of the alleged crime within the jurisdiction of the Court

74. Rule 85 of the Rules requires that the harm must have been a consequence, a result of the alleged crime(s) suffered by victim applicants.

<sup>50</sup> Appeals Chamber, ICC-01/04-01/06-1432.

<sup>51</sup> Appeals Chamber, ICC-01/04-01/06-1432, para. 32.

75. The Single Judge takes note of the approach taken by Pre-Trial Chamber II, finding that

“(...) the alleged harm will be held as “resulting from” the alleged incident when the spatial and temporal circumstances surrounding the appearance of the harm and the occurrence of the incident seem to overlap, or at least to be compatible and not clearly inconsistent.”<sup>52</sup>

76. The Single Judge adds that the circumstances surrounding the crime(s), as ascertained before, must be appropriate to bring about the harm alleged and are not entirely outside the range of expectation or probability, as viewed *ex post* by an objective observer.

77. In case two or more distinct incidents referred to by a victim applicant are alleged to be the cause of the harm purportedly suffered, the Single Judge is of the view that the required causality cannot be ruled out because other events, besides those under judicial examination, may have contributed to the harm purportedly sustained. The Single Judge finds that the incidents forming the factual basis of the alleged crime(s) must not have played a substantial part or be the predominant cause as long as they have, at least in part, as viewed *ex post* by an objective observer, contributed to the harm allegedly suffered. A determination by the Single Judge will be made in light of the particular circumstances of the case.

78. After review of all victim applications, the Single Judge finds that the element of causality has been satisfactorily met in all applications of victim applicants recognised for the purpose of participating in the present case.

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<sup>52</sup> Pre-Trial Chamber II, ICC-02/04-101, para. 14.



## E. Complete applications

79. After having set out the legal requirements of rule 85 of the Rules and having reviewed all applications, the Single Judge wishes to clarify the standard regarding the completeness of applications he applies. According to rule 89(1) of the Rules, victim applicants wishing to participate must submit a written application to the Registrar who shall transmit the application to the relevant Chamber. Pursuant to regulation 89(5) of the Regulations, those applications are submitted together with a report thereon. In order for the Single Judge to make an informed decision those applications must contain *all* the information necessary. Noting rule 85 of the Rules, the Single Judge is of the view that those applications must contain *as a minimum* sufficient information in relation to the four criteria established in that provision (see paragraph 30 above). The Single Judge will only then be in a position to thoroughly assess the applications.

80. In this respect, the Single Judge concurs with the findings of Pre-Trial Chamber I as regards the application process.<sup>53</sup> The Single Judge emphasises that for efficiency purposes it is the responsibility of the Registry, notably the VPRS, to ensure that *all* applications are filled in with pertinent information and completely and, in case of missing information, request such information or documentation in time before the application is submitted to the relevant Chamber. If those requests prove to be unsuccessful within a reasonable period of time, the Registrar shall transmit those applications to the relevant Chamber for its consideration.

81. The Single Judge further concurs with the findings of Pre-Trial Chamber I as regards the information which must be covered by the applications submitted.<sup>54</sup> An application is considered complete if it contains the following information, supported by documentation, if applicable:

<sup>53</sup> Pre-Trial Chamber I, ICC-01/04-374, paras 4 to 11.

<sup>54</sup> Pre-Trial Chamber I, ICC-01/04-374, para. 12; *id.*, ICC-01/04-01/07-579, para. 44.

- (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 thumb-print of the Applicant on the document, at the very least, on the last page of the application.

82. Further, for the sake of efficiency and fairness of proceedings, the Single Judge reminds all concerned once again that victim applications should be submitted at the earliest possible opportunity.

## **F. Modalities of participation**

83. At the outset, the Single Judge wishes to point at the nature and stage of proceedings, namely the proceedings leading to the confirmation of charges, in which the question of victims' participation arises. Whereas at the trial stage a determination on the innocence and guilt of the accused is made, the Single Judge notes, in contrast, the limited scope and purpose of the present pre-trial proceedings in which the "Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged".<sup>55</sup> In this context, the Single Judge also recalls the Chamber's previous findings:

"11. The Chamber further emphasises that the search for truth is the principal goal of the Court as a whole. In contributing to this ultimate goal, the Pre-Trial Chamber, in particular, shall prevent cases which do not meet the threshold of article 61(7) of the Statute to proceed to the trial stage. (...)  
(...)"

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<sup>55</sup> Article 61(7) of the Statute.

14. The Chamber emphasises, moreover, that, as decided earlier by the Appeals Chamber, its role is particularly important since, under articles 61(7) and 61(9) of the Statute, it defines the parameters of the trial and therefore the extent of the Trial Chamber's authority. By setting the parameters of the trial, it simultaneously determines the extent of the Trial Chamber's authority to determine the truth which is the ultimate goal of any procedure before this Court.

15. Furthermore, if in the exercise of its filtering function the Chamber decides not to confirm the charges, this decision ends the prosecution of the suspect, thus avoiding superfluous proceedings as any warrant of arrest and other restrictive measures cease to have effect in accordance with article 61(10) of the Statute.”<sup>56</sup>

84. The Single Judge also recalls his previous findings in the Third Decision on Victims”:

“7. The Single Judge notes that the hearing on the confirmation of charges and related proceedings leading to it form a particular “[stage] of the proceedings” within the meaning of article 68(3) of the Statute. The Single Judge holds the view that this provision gives the Single Judge the authority to determine whether the presentation and consideration of views and concerns of victims during the stage of confirmation of charges pursuant to article 61 of the Statute is appropriate and not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Furthermore, this provision gives the Single Judge the authority to determine where it is appropriate that such views and concerns may be presented by the legal representatives of victims during the stage of confirmation of charges pursuant to article 61 of the Statute.”<sup>57</sup>

85. Under the regime of the Statute, victims are not assigned the role of mere observers. To the contrary, pursuant to article 68(3) of the Statute, they may participate in the proceedings before the Court by expressing “their views and concerns”. However, given the discretionary language of article 68(3) of the Statute, the Single Judge is called upon to interpret and concretise this right further. In so doing, the Single Judge must strike a careful balance between the rights of victims on the one hand and the rights of the person charged on the other.

<sup>56</sup> Pre-Trial Chamber III, “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties”, ICC-01/05-01.08-55.

<sup>57</sup> Pre-Trial Chamber III, ICC-01/05-01/080-253.

86. The Single Judge wishes to recall once again article 68(3) of the Statute which provides that “[w]here 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.”

87. Alongside jurisprudence regarding the right to a remedy for victims of violations of international human rights,<sup>58</sup> the Single Judge further recalls the principle enunciated in paragraph 11(a) of the Basic Principles and Guidelines providing that remedies for gross violations of international human rights law and serious violations of humanitarian law include, *inter alia*, “equal and effective access to justice”. Principle 4 of the 1985 Declaration of Basic Principles stipulates that “[Victims] are entitled to access to the mechanisms of justice and to prompt redress, (...) for the harm that they have suffered.” Article 12(2) of the Convention on the Rights of the Child similarly provides that “a child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body (...)”.

88. While these provisions do not establish *expressis verbis* a right to participate in (international) criminal proceedings, they provide guidance in interpreting article 68(3) of the Statute.

89. At first, the Single Judge must ascertain whether “the personal interests of the victims are affected”. This possible impact by the proceedings before the Court in general must be ascertained, regardless of the particular stage of proceedings in which participation is sought. The Statute remains silent as to how the notion of

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<sup>58</sup> ECtHR, *Gül v Turkey*, Judgement of 14 December 2000, Application no 22676/93; *Mahmut Kaya v Turkey*, Judgement of 28 March 2000, Application no 22535/93

“personal interests” is to be interpreted. However, if affirmed, the Single Judge is, in principle, duty-bound to grant participatory rights to the victims (“shall”), provided that the stage of proceedings in question should be determined appropriate by the Single Judge and the manner in which those rights are exercised is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

90. In the opinion of the Single Judge, the personal interests of victims stem from at least two motivations, namely the right to reparations and the right to justice. As has been asserted in other cases before the Court, the personal interests of victims are affected as those victims could be awarded reparations in case of conviction. However, given the fact that participation is not a prerequisite to claim later reparations the Single Judge believes that the personal interests of victims affected can go further than that. As can be identified from several victim applications, victims of the case have sometimes expressed their genuine wish to see justice being rendered. Thus, their motivation to participate in the present proceedings is not limited to reparations. This goal comes even more to the fore when proceedings are conducted before this Court. A case before the International Criminal Court is only admissible if the State, which has jurisdiction over it, is unwilling or unable to investigate or prosecute.<sup>59</sup> Precluding victims from exercising their participatory rights before this Court could be perceived as denying them “effective access to justice”. The Single Judge therefore accepts that the pursuit of justice is one of the motives of victims applying for participation. In this respect, the Single Judge stresses that victims participating in proceedings are not to be regarded as auxiliaries of the Prosecutor. They are independent actors<sup>60</sup> whose concerns may be different from those of the Prosecutor.<sup>61</sup>

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<sup>59</sup> Article 17(1) of the Statute

<sup>60</sup> Pre-Trial Chamber I, ICC-01/04-101-tEN, para. 51.

<sup>61</sup> Pre-Trial Chamber I, ICC-01/04-01-07-474, para. 155, ECtHR, *Berger v France*, Judgement of 3 December 2002, Application no 48221/99, para. 38.

91. Bearing in mind the nature of the present proceedings and the issues under examination, the Single Judge is of the view that the confirmation of charges hearing against Mr Jean-Pierre Bemba Gombo affects the personal interests of the victims of the present case. All victims of the case have satisfactorily evidenced to have been affected by the incidents occurred between on or about 26 October 2002 and 15 March 2003 on the territory of the CAR. These incidents form the basis of the proceedings in the present case concerning the confirmation hearing. Victims participating at the confirmation hearing have an interest to see the charges brought against Mr Jean-Pierre Bemba Gombo confirmed. Therefore, the Single Judge considers that the personal interests of the victims of the case are affected by the present proceedings.

92. As mentioned above, the Single Judge is consequently, in principle, duty-bound to grant participatory rights to the victims. These have been described in a rudimentary fashion in the Statute ("views and concerns"). However, these participatory rights are to be further determined subject to the following considerations: they shall be permitted to be presented and considered (i) at stages of the proceedings determined to be appropriate by the Court, and (ii) they shall be presented in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

93. The Single Judge considers that, in principle, participation already during the proceedings concerning the confirmation of charges is deemed appropriate. However, the following considerations must be borne in mind:

94. The proceedings leading to the confirmation of charges have only a limited purpose and scope. As the Chamber has previously held, "in contrast to the trial phase, the Chamber does not have to determine the guilt of the person prosecuted

beyond reasonable doubt. It has simply to determine whether there are substantial grounds to believe that the person prosecuted committed the crimes charged".<sup>62</sup> In other words, in contributing to the ultimate goal of establishing the truth, the Pre-Trial Chamber exercises a filtering function, selecting only those cases for which sufficient evidence has been presented to establish substantial grounds to believe that the person committed each of the crimes charged from those which do not meet this threshold provided in article 61(7) of the Statute.<sup>63</sup> The confirmation hearing is not conceived to be a "mini-trial" before the actual trial.<sup>64</sup>

95. Taking into consideration the limited purpose and scope of the pre-trial proceedings as described above, and the need to ensure fair, efficient and expeditious conduct of proceedings, the Single Judge is of the view that participatory rights of victims must be equally limited. In addition, they must serve the purpose of contributing to the determination by the Chamber as stipulated in article 61(7) of the Statute.

96. Further, such participatory right must not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. The Single Judge believes that this consideration exerts further limitations on the manner the participatory rights of victims may be exercised. The person charged, while benefiting fully from the presumption of innocence until proved guilty,<sup>65</sup> faces at the confirmation hearing for the first time the charges and evidence brought against him as presented by the Prosecutor pursuant to article 61(3) of the Statute. His accuser is the Prosecutor on whom the onus lies to prove the guilt of the accused.<sup>66</sup> Further, any intervention of victims must be such as to not jeopardise or infringe on the fairness and

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<sup>62</sup> Pre-Trial Chamber III, ICC-01/05-01/08-55, para. 10

<sup>63</sup> *Ibid*, para. 11.

<sup>64</sup> See also Pre-Trial Chamber I, ICC-01/04-01/07-474, para. 100.

<sup>65</sup> Article 66(1) of the Statute.

<sup>66</sup> Article 66(2) of the Statute.

expeditiousness of proceedings, both tenets of paramount importance to all proceedings before the Court.

97. Concluding, the Single Judge wishes to recall that the Statute does not establish a purely adversarial system of criminal proceedings in which third actors cannot participate. The fact that the participation of victims has been foreseen in the Statute proves that this was not the intention of the historic legislator.

98. Mindful of these considerations, after having balanced the competing interests of victims on the one hand and the person charged on the other, after having had due regard to the special circumstances of the case, namely the advanced stage of the proceedings and possible commencement of the confirmation hearing in January 2009, the Single Judge holds that the participatory rights of victims recognised as participants in the present proceedings, comprise the following:

99. At the outset, the Single Judge wishes to clarify that no differentiation is made between victims whose identity is known to the Defence and those for whom anonymity has been granted by the Chamber. A differentiation in participatory rights should not be to the detriment of those requesting protective measures. As explained above, anonymous victims are not to be perceived as a party to the proceedings and do not assume the role of the accuser. Therefore, the Single Judge deems it appropriate to take a systematic approach when determining the participatory rights of recognised victims.

100. However, after having reviewed all victim applications and decided on whether to recognise victims for the purpose to participate in the present proceedings, the Single Judge is of the view that for reasons of fairness of the proceedings the names of victims who are also witnesses and whose identity and



statements have been disclosed by the Prosecutor to the Defence, should be shared with the parties but not with the public. To this end, the Defence and the Prosecutor should be provided anew with the application forms of those witnesses disclosing information pertaining to their identity. This, however, does not affect other redactions contained in those applications which are “strictly necessary”<sup>67</sup> pursuant to rule 87 of the Rules.

### 1. Public hearing on the confirmation of charges

101. The Single Judge considers that legal representatives of victims recognised as participants in the present proceedings have the right to attend the public parts of the hearing on the confirmation of charges against Mr Jean-Pierre Bemba. In case the Chamber decides to hold parts of the hearing *in camera* or *ex parte*, the Chamber reserves its position on whether to grant legal representatives of victims the right to attend those sessions.

102. The Single Judge holds that pursuant to rule 89(1) of the Rules, legal representatives of victims recognised as participants in the present proceedings are granted the right to explain the reasons for their participation in a brief opening statement (20 minutes in total) at the confirmation hearing. They will also be allowed to make a closing statement.

### 2. Access to public decisions and documents

103. The Single Judge notes rule 121(10) of the Rules, according to which the record of all proceedings before the Pre-Trial Chamber “may be consulted by victims and their legal representatives participating in the proceedings pursuant to rules 89 to 91”. The Single Judge is of the view that legal representatives of victims recognised as participants in the present proceedings must gain proper knowledge of the case

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<sup>67</sup> Pre-Trial Chamber III, ICC-01/05-01/08-253, para. 14.

and prepare themselves for the confirmation hearing. Therefore they must be granted access to all public decisions and documents<sup>68</sup> contained in the record of the case effective as of the date of their recognition to participate in the present proceedings pursuant to rule 121(10) of the Rules, subject to any restrictions concerning confidentiality and protection of national security information. The right of access to decisions and documents does not extend to those filed on a confidential basis or, if applicable, under seal and/or *ex parte*.

### 3. Access to public evidence

104. With a view to their proper preparation for the confirmation hearing and possible claim of reparations at a later stage, the Single Judge is of the view that victims should have access also to evidence adduced by the parties. Therefore, the Single Judge holds that legal representatives of victims recognised as participants in the present proceedings must have access to all public evidence disclosed by the Prosecutor and the Defence which is contained in the record of the case effective as of the date of their recognition to participate in the present proceedings. The right of access to evidence does not include the right of access to evidence filed on a confidential basis.

### 4. Access to transcripts

105. The Single Judge further considers that due to their presence in court, legal representatives of victims recognised as participants in the present proceedings must have access to the transcripts of the public part of the hearing on the confirmation of charges as well as previously held public hearings and status conferences. In case the Chamber decides to hold parts of the hearing *in camera* or *ex*

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<sup>68</sup> The term "document", pursuant to regulation 22 of the Regulations, includes any motion, request, response, reply, observations, representation and any other submission in a form capable of delivering a written record to the Court.

*parte*, the Chamber reserves its position on whether to grant legal representatives of victims the right to access those transcripts.

## 5. Notifications

106. The Single Judge holds that pursuant to rule 92(6) of the Rules legal representatives of victims recognised as participants in the present proceedings must be notified of all public decisions and filings filed effective as of the date of their recognition to participate in the present proceedings. However, if a party or participant wishes to notify legal representatives of victims of a confidential document, this filing shall include the names of the legal representatives of the victims and be notified by the Registrar accordingly.

107. Further, this right includes that legal representatives of victims recognised as participants in the present proceedings be notified in a timely manner of the confirmation hearing and any postponement thereof as well as the date of delivery of the decision in accordance with rule 92(5) of the Rules.

## 6. Oral submission during the confirmation hearing

108. The Single Judge is of the view that in order to render effective participatory rights of victims recognised as participants in the present proceedings, the legal representatives of victims should be entitled to make succinct oral submissions on issues of law and fact raised during the confirmation hearing, if (i) victims prove first by way of application that their interests are affected by the issue under examination and (ii) it is deemed appropriate by the Chamber. Therefore, legal representatives of victims must be entitled to make succinct oral submissions on issues of law and fact if granted by and subject to any other direction of the Chamber.

## 7. Questioning of witnesses

109. As neither the Prosecutor nor the Defence will call witnesses to testify in Court in the present case, the Single Judge does not deem it necessary to pronounce on a possible right to question witnesses.

## 8. Written submissions

110. The Single Judge is of the view that legal representatives of victims recognised as participants in the present proceedings have a right to make succinct written submissions to specific issues of law and fact if (i) victims prove first by way of application that their interests are affected by the issue under examination and (ii) it is deemed appropriate by the Chamber.

## 9. Obligation of legal representatives of victims

111. The Single Judge wishes to recall the obligations of legal representatives of victims emanating from the Code of Professional Conduct, in particular concerning respect for professional secrecy and confidentiality enshrined in article 8 of the Code of Professional Conduct.

## **FOR THESE REASONS, THE SINGLE JUDGE**

- a) decides** to recognize as of this day victim applicants a/0271/08; a/0272/08; a/0273/08; a/0275/08; a/0277/08; a/0278/08; a/0279/08; 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/0291/08; a/0292/08; a/0294/08; a/0296/08; a/0298/08; a/0390/08; a/0391/08; a/0393/08; a/0394/08; a/0395/08; a/0396/08; 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; 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/0478/08; a/0479/08; a/0480/08 and a/0481/08 as victims of the case for the purpose of participating in the proceedings concerning the confirmation hearing in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*;

- b) **decides** to recognize as of this day victim applicants a/0293/08 and a/0297/08 as victims of the case for the purpose of participating in the proceedings concerning to the confirmation hearing in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, insofar as the victim applicants act on their own behalf;
- c) **decides** to recognize as of this day victim applicant a/0477/08 as victim of the case for the purpose of participating in the proceedings concerning the confirmation hearing in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, acting both on her own behalf and on behalf of her deceased father;
- d) **rejects** the applications of victims a/0280/08, a/0392/08 and a/0456/08 to participate in the proceedings concerning to the confirmation hearing in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*;
- e) **defers** a decision on victim applications a/0295/08 until missing information and documents in support thereof, as established by this decision and detailed in its Annex, is submitted;
- f) **orders** the Registrar to assist those victims mentioned under letter (c) and/or their legal representatives in the pending application process to ensure timely submission of missing information and/or documentation;

- g) **orders** the OPCV to provide support and assistance to victims and, as the case may be, their legal representatives in accordance with regulation 81(4) of the Regulations;
- h) **orders** the Registrar to transmit on a confidential basis to the Prosecutor and the Defence victim applications a/0284/08, a/0285/08, a/0288/08, a/0459/08, a/0465/08 and a/0467/08 without redacting identifying information pertaining to the victim and to attach to the relevant applications, in addition, the pertinent additional information contained in annexes 8, 9 and 14 of the filing dated 17 November 2008 (ICC-01/05-01/08-255-Conf) submitted by the OPCV;
- i) **orders** the Prosecutor and the Defence to keep the information shared confidential and to ensure that it is not passed on to the public;
- j) **orders** the legal representatives of victims recognized as participants in the present proceedings to keep any information shared confidential and to ensure that it is not passed on to the public;
- k) **grants** the participatory rights to victims of the case as elaborated in paragraphs 101 to 110 of the decision as of this day;
- l) **orders** the Registrar to make all necessary arrangements and to provide the legal representatives of victims recognized as participants in the present case access to all public record of the case, including the public evidence disclosed by the Prosecutor and the Defence;

**m) orders** the Prosecutor, the Defence and any other participant, as the case may be, to refer to victims recognized as participants in the present case only by reference to their application number as assigned by the Registrar.

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



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Judge Hans-Peter Kaul  
Single Judge

Dated this Friday, 12 December 2008

At The Hague, the Netherlands