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No.: **ICC-01/05-01/08**
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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

**Public Document
With a Confidential Annex A**

**Defence Response to the Third Transmission of Victims' Applications for
Participation in the Proceedings**

Source: Defence team of Mr Jean-Pierre Bemba Gomba

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

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Section**

Other

I. Procedural Background

1. Trial Chamber III (hereinafter "the Chamber") is currently in the process of reviewing the applications of 192 victims seeking the right to participate in the present proceedings.¹
2. On 7 September 2010, the Defence was alerted for the first time to the fact that approximately 900 additional applications had been received by the Registry and would, in due course, be transmitted to the Chamber.²
3. During the Status Conference on 24 September 2010, the Chamber issued an oral decision, ruling that 850 victims' applications would be notified to the parties, in redacted form, on a rolling basis, in batches of 200 to 300 applications. The parties would then have 10 days within which to present their observations.³
4. Accordingly, on 24 September 2010, the Registry transmitted the *Third transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings* (hereinafter "the Third Transmission").⁴ The Third Transmission appended confidential annexes containing the 218 applications from individuals seeking to participate as victims in the present proceedings.⁵
5. Following a request from the Defence, a Status Conference was convened. After submissions were presented as to the inability of the Defence to deal

¹ Decision setting a time-limit for the submission of new victims' applications for participation, ICC-01/05-01/08-875, 7 September 2010, para. 5.

² Decision setting a time-limit for the submission of new victims' applications for participation, ICC-01/05-01/08-875, 7 September 2010.

³ Transcript, ICC-01/05-01/08-T-25-CONF-ENG, 24 September 2010, pp. 23- 24.

⁴ ICC-01/05-01/08-903

⁵ ICC-01/05-01/08-903-Conf-Anx1 to ICC-01/05-01/08-903-Conf-Anx128

with the sheer volume of applications in light of its limited resources, the Chamber ruled as follows:⁶

"Pursuant to Regulation 35(2) of the Regulations of the Court, the Chamber hereby grants the Defence an extension of the time limit to present with the assistance and support of the time limit to present with the assistance and support of the Office of Public Counsel for the Defence observations on the set of 218 victims' applications for participation received by filing 903 to 11 October 2010. "

6. In the present instance, with the assistance of OPCD, the Defence has been able to submit a response to which an appended annex discretely addresses each and every victim application provided in the Third Transmission. This exercise, however, has been carried out to the complete detriment of Defence investigations and trial preparation – both of which have effectively ceased.

II. General Observations

(a) Timing of the Submission of Applications

7. The Defence stresses the inherent unfairness of the introduction of at least 900 victims' applications at such a late stage in the proceedings and so close to the date on which the Chamber proposes to fix the start of the evidential hearings.
8. Article 68(3) of the Statute provides that the Court shall permit the participation of victims "in a manner which is not prejudicial to, or inconsistent with the rights of the accused to a fair and impartial trial." The accused is has now been placed a position where he will receive up to 900 or even 1,000 applications at a time when the (already-delayed) commencement of the trial is imminent. The accused has also been allocated an extremely short time frame within which to review these applications, with the Chamber

⁶ ICC-01/05-01/08-T-27-CONF-EXP-ENG, 30 September 2010, p. 21.

being open in its assessment that the timetables imposed “will place a heavy burden on the parties; in particular, on the Defence.”⁷ The Defence reiterates the submissions made in its *Requête de la Défense en vue d’obtenir l’extension de délai pour présenter ses observations sur les demandes de participation des victimes*,⁸ that in order to review the applications within the required timeframe all other pre-trial preparations have been put on hold.

9. The Defence also notes that date stamps on the applications themselves make it clear when they were received by the Registry in The Hague. Although some were received in July or August 2010, a majority were received in April and June 2010. As such, the Registry has allocated itself more time to organise and circulate the applications than the Defence has been given to (a) review the applications, (b) analyse them against the charges in this case, and (c) make written submissions. The Defence submits that the timing of the provision of these applications, namely the fact that applications which were received in April and June 2010 were not provided to the Defence until late September, is not consistent with the rights of the accused to have adequate time for the preparation of his defence, pursuant to Article 67(b).
10. The Defence, furthermore, draws the Chamber's attention to the observations of its former Presiding Judge at the Status Conference which was held on 7 October 2009:⁹

“The Chamber is, obviously, going to have to deal with those applications as quickly as possible, because one of the issues in relation to the suggested trial date is whether or not the victims’ applications have been dealt with and sufficient time has been afforded to participating victims to prepare for the trial. So we will need to process those applications as quickly as possible.”

⁷ Transcript, ICC-01/05-01/08-T-25-CONF-ENG, 24 September 2010, p. 24

⁸ ICC-01/05-01/08-925, 6 October 2010.

⁹ ICC-01/05-01/08-T-14-ENG ET WT 07-10-2009 20/36.

11. Given that the Chamber, as previously constituted, set the original trial date for 27 April 2010,¹⁰ it is respectfully submitted that applications filed with the Registry after this date ought not to be entertained.
12. that the Chamber should determine a date by which all applications for participation as a victim in the present proceedings should be or should have been submitted, and order that any applications received after this date be rejected. Applicants should also not be permitted to submit additional information after this date. The Defence reiterates its view that setting a deadline for applications would be consistent with ensuring that the accused has adequate time for the preparation of his defence, pursuant to Article 67(b).

(b) Redactions

13. The Defence reiterates the objections it made in its *Observations sur les 192 demandes de participation à la procédure en qualité de Victimes*,¹¹ and adds that redactions to the dates and places of alleged crimes make it impossible for the Defence, to conduct its own independent investigation as to the credibility of events detailed in the application. Furthermore, in many of the 218 applications, the location of the alleged crime is either completely or partially redacted, preventing the Defence from being able to determine whether there is any link between the allegations contained in the application and the *Revised Second Amended Document Containing the Charges* (hereinafter 'DCC').¹²
14. The Chamber has previously held that redactions do not prejudice the rights of the Defence. However, it is also clear that the Defence also has a right to

¹⁰ ICC-01/05-01/08-598.

¹¹ ICC-01/05-01/08-859, 29 August 2010, para. 7.

¹² ICC-01/05-01/08-856-Conf-AnxA, 18 August 2010.

review and make submissions on these applications, pursuant to Rule 89(1). The most significant aspect of this review is assessing whether there is, in fact, a link between the crimes alleged and the charges as set out in the DCC. When a redaction as to the date or location of an alleged crime prevents the Defence from making this assessment, the Defence is in effect precluded from making a submission on this application, giving rise to prejudice.

15. The Defence therefore respectfully submits that if the key information necessary to determine whether there is a link between the application and the case is redacted, the application must be rejected on the basis that one of the parties has been prevented from providing submissions on the participation of the applicant. In the alternative, the Defence should be provided with the **unredacted** version, and given a reasonable timeframe within which to make additional submissions.

16. A further obstacle is the inconsistent, and often apparently random, use of redactions. The *pro forma* application form gives the applicants an option to tick from which of the parties (if any) they would like their "identity" withheld. They are not given a choice as to the level of redaction or which particular details they would like to withhold. Despite this, there is great discrepancy between the applications as to the degrees of information which has been redacted. With respect to the location of the alleged crimes, in some forms, only the *quartier* is redacted, in some forms the *arrondissement* is redacted, in some forms the name of the village is redacted, and in some forms the entire location is redacted in full, making it impossible for the Defence to determine even whether the crimes occurred in the CAR. In some of the forms, "PK12" or "PK22" is left unredacted. In others, the forms read PK[redacted]. This inconsistency in the application of redactions is not attributable to the will of the applicants, who only elect to which parties their "identity" will be disclosed.

17. As such, the Defence submits that the Chamber should provide precise guidelines to the Victims' Participation and Reparations Section as to what should, and should not be redacted, thereby ensuring a consistent approach, and reducing unnecessary redactions which further undermine the Defence's ability to make an assessment of the applications in question.
18. Although a significant number of the applicants gave their authorisation for their application forms to be provided to the Defence,¹³ the Defence was, nevertheless, provided with redacted versions of these forms. Trial Chamber III is thus requested to order that the Defence immediately be provided with unredacted versions for its review within a reasonable timeframe.
19. The vast majority of applicants also gave their authorisation for their identities and personal details to be revealed to the Prosecution.¹⁴ The Defence requests that the Chamber order that the Prosecution be given unredacted versions of these applications, and order the Prosecution to disclose to the Defence any exculpatory information contained within the unredacted versions of these

¹³ a/1293/10, a/1294/10, a/1295/10, a/1354/10, a/1401/10, a/1401/10, a/1757/10, a/0746/10, a/0748/10, a/0749/10, a/0750/10, a/0751/10, a/0752/10, a/2233/10, a/2237/10, a/2239/10, a/2240/10, a/2292/10, a/2293/10, a/2294/10, a/2295/10, a/2296/10, a/2297/10, a/2298/10, a/2299/10, a/2300/10, a/2301/10, a/2302/10, a/2303/10, a/2282/10, a/2283/10, a/2284/10, a/2286/10, a/2287/10, a/2288/10, a/2289/10, a/2290/10, a/2291/10.

¹⁴ a/1017/10, a/1018/10, a/1019/10, a/1449/10, a/1449/10, a/1451/10, a/1452/10, a/1452/10, a/1455/10, a/1456/10, a/1457/10, a/1458/10, a/1567/10, a/1570/10, a/1572/10, a/1574/10, a/1575/10, a/1578/10, a/1579/10, a/1752/10, a/1753/10, a/1754/10, a/1755/10, a/1756/10, a/1772/10, a/1774/10, a/1776/10, a/1779/10, a/1784/10, a/1784/10, a/1785/10, a/1786/10, a/1787/10, a/1788/10, a/1790/10, a/1791/10, a/1794/10, a/1799/10, a/1804/10, a/1808/10, a/1911/10, a/1919/10, a/1920/10, a/1921/10, a/0840/10, a/0845/10, a/0847/10, a/0848/10, a/0862/10, a/0863/10, a/0864/10, a/0864/10, a/0865/10, a/0887/10, a/0891/10, a/0892/10, a/0894/10, a/0961/10, a/0962/10, a/0966/10, a/0967/10, a/0969/10, a/0977/10, a/0980/10, a/0984/10, a/1006/10, a/1007/10, a/1008/10, a/1009/10, a/1010/10, a/1015/10, a/1016/10, a/1925/10, a/1927/10, a/1929/10, a/1930/10, a/1935/10, a/1937/10, a/1939/10, a/1939/10, a/1941/10, a/1942/10, a/1500/10, a/1504/10, a/1506/10, a/1507/10, a/1511/10, a/1512/10, a/1516/10, a/1517/10, a/1519/10, a/1520/10, a/1525/10, a/1527/10, a/1528/10, a/1529/10, a/1530/10, a/1531/10, a/1532/10, a/1533/10, a/1463/10, a/1466/10, a/1469/10, a/1470/10, a/1471/10, a/1473/10, a/1475/10, a/1477/10, a/1479/10, a/1482/10, a/1483/10, a/1484/10, a/1487/10, a/1488/10, a/1944/10, a/1924/10, a/1956/10, a/2183/10, a/2228/10, a/2230/10, a/2231/10, a/2232/10, a/2245/10, a/1944/10, a/1945/10, a/1946/10, a/1950/10, a/1951/10, a/1460/10, a/1491/10, a/1496/10, a/1535/10, a/1536/10, a/1538/10, a/1543/10, a/1546/10, a/1548/10, a/1550/10, a/1551/10, a/1552/10, a/1553/10, a/1558/10, a/1559/10, a/1560/10, a/1562/10, a/1564/10, a/1565/10, a/1566/10, a/2306/10, a/2307/10, a/1019/10, a/1534/10

statements.¹⁵ On this point, the Defence notes that the Appeals Chamber in *Katanga* held as follows:¹⁶

“The Appeals Chambers therefore considers that it is reasonable that, in particular where the submissions in the victims’ applications for participation indicate that victims may possess potentially exculpatory information, the Prosecutor’s investigation should extend to discovering any such information in the victims’ possession. Such information would then be disclosed to the accused pursuant to article 67 (2) of the Statute and rule 77 of the Rules of Procedure and Evidence.”

(c) Failure of the Applicants to Link the Alleged Harm to Mr. Bemba

20. The Defence submits that a significant flaw in the 218 applications contained in the Third Transmission is that, in the vast majority of applications, no basis is given to substantiate claims that the alleged perpetrators were MLC troops. The DCC is clear that following the attack by the forces of François Bozizé, fighting occurred between Bozizé’s troops and a coalition of other armed groups. This coalition included the “CAR armed forces”, the “FACA who remained loyal to [Patassé]”, the Unité de Sécurité Présidentielle”, the “mercenaries of Abdoulayé Miskine” and “MLC troops”.¹⁷

21. In the majority of applications, no attempt is made to establish or give reasons for why crimes alleged were committed by MLC troops *per se*, as opposed to the multiple other groups present in the same localities, and fighting as either part of the same coalition or on the opposing side. As such, these applications should be rejected on this basis. In the *Al Bashir* case, for example, victims’ applications were rejected on the basis that although the applicants had

¹⁵ *Prosecutor v. Lubanga*, Decision on the defence application for disclosure of victims’ applications ICC-01/04-01/06-1637 21 January 2009, ICC-01/04-01/06-1637, para. 13.

¹⁶ *Prosecutor v. German Katanga & Mathieu Ngudjolo Chui*, ICC-01/04-01/07-2288, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”, 16 July 2010, para. 81.

¹⁷ ICC-01/05-01/08-856-AnxA-Red, 18 August 2010, paras 13, 14.

provided sufficient information to establish that they suffered harm as a result of incidents, they had, nevertheless, failed to provide grounds to establish that the perpetrators were members of forces affiliated to the accused:¹⁸

"while the Applicant provided sufficient information to establish prima facie that he suffered harm as a result of the incidents described in his Application, there is no suggestion that the groups that attacked his village belonged to any of the forces and entities forming the GoS forces, which allegedly committed the crimes listed in the Warrant of Arrest."

22. The same applies to the present case. It may, indeed, be the case that among the applicants there are those who can establish, on a *prima facie* basis, that they were the victims of crimes within the DCC. Nevertheless, these applicants have failed to give any basis for their assertion that the perpetrators of the crimes were MLC troops and not a member of Bozizé's forces, or of any of the other armed groups present in the crime base. As such, the majority of applications should, it is submitted, be dismissed on this basis.

23. For the very few applicants who attempt to give a basis for their assertions that the perpetrators in question were MLC troops,¹⁹ they have asserted that the troops in question were speaking Lingala. Not one of the applicants, however, lists Lingala as a language they either speak or recognise, undermining the purported basis for their identification.

(d) Crimes which do not fall within the DCC

24. Many of the applicants claim to be the victim of crimes with which Mr. Bemba is not charged in the DCC and were specifically rejected in the context of the decision on the confirmation of charges, such as the destruction of property,

¹⁸ *Prosecutor v. Al Bashir*, ICC-02/05-01/09-93, Decision on 8 Applications for Victims' Participation in the Proceedings, , para. 8.

¹⁹ a/1293/10, a/1295/10, a/0748/10, a/0751/10, a/0887/10, a/0962/10, a/0967/10, a/1473/10, a/1536/10, a/1019/10

torture, bodily injury, or even temporary detainment. The Defence recalls the Appeals Chamber decision in the *Lubanga* case, which reversed the Trial Chamber's finding on this point, and held that:²⁰

“In relation to the object and purpose of rule 85, the Appeals Chamber considers that the rule does not have the effect of mandating participation of victims instead the object and purpose of rule 85 is to define who are victims. Thus, 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, pursuant to the procedure set out in rule 89 (1) of the Rules, is limited to those victims who are linked to the charges. Given that the purpose of trial proceedings is the determination of the guilt or innocence of the accused person of the crimes charged, and that the application under rule 89 (1) of the Rules in this context is for participation in the trial, only victims of these crimes will be able to demonstrate that the trial, as such, affects their personal interests. Therefore, only victims who are victims of the crimes charged may participate in the trial proceedings pursuant to article 68 (3) of the Statute read with rule 85 and 89 (1) of the Rules.”

25. A large number of victims claim for the destruction or burning down of their houses. On this point, the Defence notes that the destruction of a house does not fall within the scope of pillage as a crime under the Rome Statute:²¹

(e) Lack of Specificity as to Crimes Alleged

26. An applicant is required to give sufficient facts in order to allow the Chamber to determine whether the elements of an offence charged in the DCC exists. In many applications, only a vague factual overview is provided, with the applicant alleging, for example, that he or she was a victim of “sexual violence”. The Defence submits that an allegation of this nature does not provide substantial grounds for the belief that the crime of rape, as charged in

²⁰ *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-1432, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 17 June 2008, paras 58 – 64.

²¹ ICC-01/05-01/08-807, Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 30 June 2010, paras 89, 90.

the DCC, occurred. Applications which fail to provide the required level of detail have been previously rejected, for example:²²

- a. "Applicant a/0167/06 also makes a legal conclusion in her application that her son was tortured. However, the Applicant does not allege any specific facts, which prima facie would constitute this crime, pursuant to the Statute...
- b. Applicant a/0180/06 also makes a legal conclusion that he, his wife and his children were tortured. However, the Applicant does not allege in his application any specific facts which would, prima facie, constitute this crime pursuant to the Statute."

27. As such, the Defence submits that the applications which do not provide sufficient detail to determine whether a crime charged within the DCC should be rejected by the Chamber pursuant to Rule 89(2). This is particularly so in light of the fact that "the burden of proof lies with the victim applicant requesting to participate in the present case."²³

(f) Failure to link alleged harm to events in case

28. Several applicants refer to alleged incidents which find no mention in the Document Containing the Charges. These applications should therefore be dismissed either because they fail to establish that the victim has suffered harm as a result of a particular crime as charged or because the applicants have failed to establish a personal interest in the evidence which will be heard by the Trial Chamber during the proceedings.

29. The Appeals Chamber has clearly held that in order to participate during the trial proceedings, alleged victims are required to demonstrate that "he or she suffered harm in connection with the particular crimes charged, and if so,

²² ICC-01/04-505, Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/0163/06 to a/0187/06, a/0221/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241/06 to a/0250/06 ICC-01/04-505, 2 July 2008, paras 48 and 74

²³ ICC-01/05-01/08-320, Quatrième décision relative à la participation des victimes, 12 December 2008, para. 31.

whether the personal interests of the applicant are affected”.²⁴ It is notable in this regard that the Appeals Chamber repeatedly uses the narrow terminology “particular crimes charged”²⁵ or “specific charges”.²⁶

30. In terms of the scope of the particular crimes and specific charges in this case, the Pre-Trial Chamber decided that for the purposes of determining whether the form of the Document Containing the Charges satisfies the defendant’s right to be informed of the nature of the charges, the appropriate reference point was the specific alleged incidents delineated under each count.²⁷ In particular, the Pre-Trial Chamber responded to the Defence argument that the phrase “from on or about 26 October 2002 to 15 March 2003” was too broad, by pointing out that Prosecution had provided the Defence “with specific dates for each specific incident under each count”.²⁸ The Pre-Trial Chamber thus considered the operative part of the DCC to be the specific incidents listed under each count on pages 33-37 of the Amended Document Containing the Charges.

31. Accordingly, in order to establish that the applicants have established harm as a result of a specific charge/particular crime charged, the applicant must establish that the harm results from an incident which has occurred on a date and location which is explicitly referred to in the incidents set out in the operative section of the counts.²⁹

32. If the Chamber were to hold otherwise, the requirement that the participation is predicated on the applicants having a personal interest in the outcome of

²⁴ *Prosecutor v. Lubanga*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, 17 June 2008 ICC-01/04-01/06-1432, para 60.

²⁵ *Ibid*, at paras 60 and 64

²⁶ *Ibid*, at para. 63.

²⁷ ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009.

²⁸ *Ibid*, at para 68.

²⁹ For example, for Count 1 (Rape constituting a crime against humanity), this would be limited to 26 or 27 October 2002 – Fou; 26 October 2002, PK 12, 30 October Boy-Rabe, 8 November Pk 12, 5 March, Mongoumba, 26 October and 31 December 2002, Bangui.

the trial proceedings would be negated. On this point, the Appeals Chamber has emphasized that “the purpose of trial proceedings is the determination of the guilt or innocence of the accused person of the crimes charged, and that the application under rule 89 (1) of the Rules in this context is for participation in the trial, only victims of these crimes will be able to demonstrate that the trial, as such, affects their personal interests.”³⁰ It would also impinge on the fairness of the proceedings, as the Defence could potentially be required mid-way through the case to respond to extraneous allegations concerning crime base incidents which are entirely unrelated to the prosecution evidence disclosed during the pre-trial phase of the case.

(g) Legal Language in Applications

33. Each of the 218 applications contained in the Third Transmission was completed after the Decision on Confirmation of Charges³¹ was rendered. Against this background, another significant difficult with many of the applications is the employment of legal language on the part of applicants. Many applicants use legal language, referring to “war crimes”, “crimes against humanity”. More specifically, many refer to Mr. Bemba’s alleged “failure to prevent”, or “effective control” over troops, language which appears to have been tailored to fit the requirements of the crimes under the Statute.

34. By way of a concrete example, perhaps the most relevant question contained in the 19-page *pro forma* victims’ application is “*Selon vous, qui est responsable de l’événement ou des événements et pourquoi ?*” This is a significant question, whereby the applicant is invited to tell the Chamber the basis for bringing an application in the present proceedings. However, in a large number of

³⁰ *Prosecutor v. Lubanga*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, 17 June 2008, ICC-01/04-01/06-1432, at para 62.

³¹ ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009.

applications, it is clear that this question has not been answered by the witness. In 54 applications, the following identical legal language is used:³²

“Les principaux responsables des faits se trouveraient le chef de guerre Jean Pierre BEMBA COMBO et les officier des troupes Banyamulenge que n’avaient pas respect la Convention de Genève signée le 12 Aout 1949 et le Droit Internationale Humanitaire”

35. Despite the fact that without training or coaching there is no way that applicants could provide the exact same answer to such a potentially complex and objective question, the reference to the “Geneva Convention” and its precise date of signing give rise to the significant likelihood that it is not the applicants themselves who are responding to this question. Two problems arise. The first problem is that none of the applicants who give this formulaic answer have provided the Chamber a basis for which to link their applications to the present case. The second problem is that this answer gives rise to a presumption that, in these application forms, it is not the applicants themselves who are responding to the questions, but rather a third party, which undermines the veracity and credibility of the entire application. The Defence submits those applications which contain such legal language and formulaic legal answers should be rejected on this basis.

(h) Identification Documents for Claims of Emotional Harm

36. Another recurring failing in the applications concerns those applicants who are claiming harm on the part of deceased family members. In such cases, the applicant is required to provide sufficient proof of (a) the identity of the

³² a/1452/10, a/1455/10, a/1570/10, a/1572/10, a/1574/10, a/1575/10, a/1772/10, a/1776/10, a/1779/10, a/1784/10, a/1784/10, a/1785/10, a/1786/10, a/1788/10, a/1790/10, a/1791/10, a/1794/10, a/1799/10, a/1804/10, a/1808/10, a/1919/10, a/0840/10, a/0845/10, a/0847/10, a/0848/10, a/0862/10, a/0863/10, a/0980/10, a/0984/10, a/1927/10, a/1929/10, a/1930/10, a/1935/10, a/1937/10, a/1939/10, a/1939/10, a/1460/10, a/1500/10, a/1517/10, a/1530/10, a/1531/10, a/1469/10, a/1471/10, a/1487/10, a/1944/10, a/1924/10, a/1956/10, a/1945/10, a/1946/10, a/1951/10, a/1538/10, a/1543/10, a/1550/10, a/1558/10

applicant; (b) the identity of the victim, and (c) the requisite family relationship between them.³³ This regularly has not been done.

37. In addition to the general and overarching problems which characterise so many of the applications, the Defence also submits that none of the applications fulfil the requirements to warrant the granting of participatory rights as victims in the present proceedings and should, thus, be rejected on the grounds set out in the attached annex.³⁴

FOR ALL THE ABOVE REASONS:

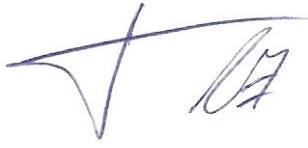
38. The Defence of Mr. Jean-Pierre Bemba respectfully requests as follows:

- a. that the Chamber reject the 218 requests for participation pursuant to Rule 89(2) of the Rules of Procedure and Evidence;
- b. that Trial Chamber III order the immediate disclosure of unredacted versions of those applications for which the victims concerned gave their express approval that they be transmitted to the Defence;³⁵

³³ See, *Prosecutor v. Abu Garda*, ICC-02/05-02/09-147,PTC, 09-10-2009: Decision on the 52 Applications for the Pre-Trial Stage of the Case, para 6: "The majority of the applications refer to alleged emotional harm and economic loss suffered as a result of the death of a family member. In this respect and before examining the merits of each of the applications, the Single Judge deems it necessary to underline the fact that when assessing whether an applicant has suffered harm as a result of the loss of a family member, the Court requires proof of the identity of the family member and of his or her relationship with the applicant. In other words, the Single Judge shall be satisfied that the family member existed and that he or she had the requisite relationship with the applicant." See also, *Prosecutor v. Jean-Pierre Bemba*, PTC, 12-12-2008, para. 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

³⁴ See Confidential Annex A.

³⁵ a/1293/10, a/1294/10, a/1295/10, a/1354/10, a/1401/10, a/1401/10, a/1757/10, a/0746/10, a/0748/10, a/0749/10, a/0750/10, a/0751/10, a/0752/10, a/2233/10, a/2237/10, a/2239/10, a/2240/10, a/2292/10, a/2293/10, a/2294/10, a/2295/10, a/2296/10, a/2297/10, a/2298/10, a/2299/10, a/2300/10, a/2301/10, a/2302/10, a/2303/10, a/2282/10, a/2283/10, a/2284/10, a/2286/10, a/2287/10, a/2288/10, a/2289/10, a/2290/10, a/2291/10.



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At The Hague, The Netherlands