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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

**Prosecution's Observations on 212 Applications for Victims' Participation in the
Proceedings**

Source: The Office of the Prosecutor

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

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I. Introduction

1. Pursuant to Rule 89(1) of the Rules of Procedure and Evidence, the Trial Chamber III's ("Chamber") "Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims' application to the Registry"¹ ("Decision") and the Chamber's order in its "Decision setting a timeline for the filing of observations on pending victims' applications"² ("Order"), the Office of the Prosecutor ("Prosecution") submits the following observations on 212 applications for participation in the trial proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

2. For the reasons detailed below, the Prosecution supports the Chamber granting authorisation to participate as victims in the above-mentioned proceedings, pursuant to Article 68(3) of the Rome Statute ("Statute"), to applicants listed in sections A and B below.

3. The Prosecution submits that applicants listed in section C below should be requested to provide clarifications or submit further documents or information to establish the causal link between the harm suffered and the crimes committed against them or their family members.

4. The Prosecution submits that redactions applied to the applications submitted by applicants listed in Section D below make it difficult to determine whether they meet all the requirements for participation. The Prosecution does not object to the

¹ ICC-01/05-01/08-1590-Corr, Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims' applications to the Registry, 21 July 2011.

² ICC-01/05-01/08-1726, Decision setting a timeline for the filing of observations on pending victims' applications, 9 September 2011, at paras. 7 and 8(a).

Chamber determining that non-redacted versions of these applications satisfy the requirements or requesting additional information.

5. The Prosecution submits that applicants listed in Section E below do not meet all the requirements for participation.

6. With regard to the legal criteria for victims' participation in the proceedings, the Prosecution reincorporates here the submissions set out in its previous observations.³

II. Background

7. On 24 September 2010, the Chamber ordered transmission of applications to the parties on an ongoing basis and requested the parties to submit their observations on each transmitted set.⁴ On 9 September 2011, the Chamber, having approved the timeline proposed by the Victims Participation and Reparation Section ("VPRS") for the submission of nine sets of 200 to 350 of the expected 2830 further applications, ordered the Prosecution and the Defence to submit their observations within 21 days of notification.⁵

8. On 30 September 2011, the Registry provided the Prosecution with 212 redacted versions of the thirteenth set of applications.⁶

³ ICC-01/05-01/08-858, Prosecution's Observations on the 192 Applications for Victim's Participation in the Proceedings, 19 August 2010, at paras. 6-9; ICC-01/05-01/08-946-Corr, Corrigendum to Prosecution's Observations on 218 Applications for Victim's Participation in the Proceedings, 14 October 2010, at paras. 5-12; ICC-01/05-01/08-952, Prosecution's Observations on 176 Applications for Victims' Participation in the Proceedings, 14 October 2010, at paras. 5-11.

⁴ ICC-01/05-01/08-T-25-CONF-ENG ET, p. 23 line 23 to p. 24 line 3, 24 September 2010.

⁵ ICC-01/05-01/08-1726, at paras. 3, 4, 7 and 8(a).

⁶ ICC-01/05-01/08-1807, Thirteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 30 September 2011.

III. Factual analysis of the applications

A. Applications that meet the requirements for victim participation

9. The Prosecution submits that the following Applicants meet all of the requirements under Article 68(3) of the Statute for participation in the trial proceedings of this case: a/0704/11, a/0705/11, a/0706/11, a/0707/11, a/0708/11, a/0709/11, a/0711/11, a/0712/11, a/0713/11, a/0714/11, a/0716/11, a/0717/11, a/0718/11, a/0719/11, a/0720/11, a/0722/11, a/0723/11, a/0724/11, a/0725/11, a/0753/11, a/0755/11, a/0756/11, a/0758/11, a/0759/11, a/0761/11, a/0762/11, a/0763/11, a/0765/11, a/0766/11, a/0770/11, a/0771/11, a/0773/11, a/0775/11, a/0776/11, a/0777/11, a/0778/11, a/0779/11, a/0780/11, a/0781/11, a/0782/11, a/0783/11, a/0784/11, a/0786/11, a/0787/11, a/0788/11, a/0790/11, a/0791/11, a/0792/11, a/0793/11, a/0794/11, a/0795/11, a/0796/11, a/0797/11, a/0798/11, a/0799/11, a/0800/11, a/0801/11, a/0802/11, a/0803/11, a/0804/11, a/0805/11, a/0806/11, a/0807/11, a/0808/11, a/0809/11, a/0810/11, a/0811/11, a/0812/11, a/0813/11, a/0814/11, a/0815/11, a/0816/11, a/0817/11, a/0818/11, a/0819/11, a/0820/11, a/0821/11, a/0822/11, a/0823/11, a/0824/11, a/0825/11, a/0826/11, a/0827/11, a/0828/11, a/0829/11, a/0830/11, a/0831/11, a/0833/11, a/0834/11, a/0835/11, a/0836/11, a/0837/11, a/0838/11, a/0839/11, a/0840/11, a/0841/11, a/0842/11, a/0843/11, a/0844/11, a/0847/11, a/0848/11, a/0849/11, a/0850/11, a/0851/11, a/0852/11, a/0853/11, a/0854/11, a/0855/11, a/0856/11, a/0857/11, a/0859/11, a/0860/11, a/0861/11, a/0862/11, a/0863/11, a/0864/11, a/0865/11, a/0866/11, a/0867/11, a/0868/11, a/0869/11, a/0870/11, a/0871/11, a/0872/11, a/0873/11, a/0874/11, a/0876/11, a/0877/11, a/0878/11, a/0879/11, a/0880/11, a/0881/11, a/0883/11, a/0884/11, a/0885/11, a/0888/11, a/0889/11, a/0890/11, a/0891/11, a/0892/11, a/0894/11, a/0895/11, a/0896/11, a/0897/11, a/0898/11, a/0899/11, a/0900/11, a/0902/11, a/0903/11, a/0905/11, a/0907/11, a/0908/11, a/0909/11, a/0910/11, a/0911/11, a/0923/11, a/0929/11, a/0930/11, a/0931/11, a/0932/11, a/0933/11, a/0934/11, a/0935/11, a/0936/11, a/0938/11, a/0939/11, a/0940/11, a/2153/10, a/2158/10, a/2166/10, a/2862/10.

10. The Prosecution notes that several of the above applicants do not provide a specific date for the exactions listed in their applications.⁷ Instead they refer to the event of *tabaski* celebration in 2003. The Prosecution observes that this celebration, as also indicated by some of the applicants themselves,⁸ took place in the month of February 2003. Therefore, the Prosecution considers that all of these applicants have fully met the requirement of time, establishing, *prima facie*, the causal link between the harm suffered and the crimes committed within the time-frame alleged by the Prosecution and upheld by the Chamber, “*i.e.* on or about 26 October 2002 to 15 March 2003”.⁹

11. The Prosecution specifies that, regarding Applicants a/2153/10, a/2158/10 and a/2166/10, its above submission and categorization relates only to the crime of pillaging described in their respective applications. The Prosecution submits that the descriptions provided by the same applicants in relation to the crime of arson should not be taken into account, as they relate to a crime that does not form part of the charges against the Accused.

12. In regard to Applicants a/0783/11, a/0853/11, a/0884/11 and a/2166/10, the Prosecution notes that whilst, as victims of, respectively, pillaging for Applicant a/0783/11, rape and pillaging for Applicant a/0853/11, pillaging for Applicant a/0884/11 and pillaging for Applicant a/2166/10, they meet all the requirements for participation, these applicants may be invited to provide further information or documentation to clarify or establish the following: (i) for Applicant a/0783/11, whether the death of his grandfather was caused by the Banyamulengue; (ii) for

⁷ See for example the applications of Applicants a/0775/11, a/0777/11, a/0778/11, a/0779/11, a/0780/11, a/0781/11, a/0782/11, a/0783/11, a/0784/11, a/0876/11, a/0889/11, a/0890/11, a/0891/11, a/0896/11, a/0897/11, a/0898/11, a/0900/11, a/0902/11, a/0905/11, a/0907/11, a/0908/11, a/0910/11.

⁸ See for example the applications of Applicants a/0889/11, a/0890/11, a/0891/11, a/0896/11, a/0897/11, a/0898/11, a/0900/11, a/0902/11, a/0905/11, a/0907/11, a/0908/11, a/0910/11.

⁹ ICC-01/05-01/08-836, Decision on the defence application for corrections to the Document Containing the Charges and for the prosecution to file a Second Amended Document Containing the Charges, 20 July 2010, at para. 51.

Applicant a/0853/11, to provide documentation establishing the death of her deceased father; (iii) for Applicant a/0884/11, to clarify whether he intends to claim harm suffered as a result of his father's death and provide relevant information and documentation in that regard and; (iv) for Applicant a/2166/10, to provide documentation or information establishing kinship with her deceased mother.

B. Applications that are deemed to meet the requirements for victim participation

13. Applicant a/0510/11 provides no specific date for the events described in his application. However, the information provided by this applicant indicates that the looting took place sometime within the five-month period from December 2002 until April 2003. The Prosecution notes that the applicant identified the *Mouvement de Libération du Congo* ("MLC") as the perpetrators of the crime. Therefore, the Prosecution considers, in line with the Chamber's decision,¹⁰ that this identification, coupled with the presence of the MLC at the given location and the information on the time of the event from December 2002 until April 2003, demonstrates that the crime happened within the general margin of appreciation of the time-frame alleged by the Prosecution and upheld by the Chamber, "*i.e.* on or about 26 October 2002 to 15 March 2003".¹¹ The Prosecution, therefore, submits that the applicant has established, *prima facie*, the causal link between the harm suffered and the crimes committed within the above confirmed time-frame.

14. Applicant a/0893/11 provides a "*Déclaration de Reconnaissance*" signed and stamped by the "*Chef du Quartier*", for identification purposes. The Prosecution notes that the document is not listed in the Chamber's decision. However, the document contains similar features to the examples listed by the Chamber, more specifically to

¹⁰ ICC-01/05-01/08-1017, Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, at paras. 54- 55.

¹¹ ICC-01/05-01/08-836, at para. 51.

the “*Attestations d’Etat Civil*” signed and stamped by the “*Chef du Quartier*”, and as such is considered sufficient to establish the applicant’s identity.¹²

15. The Prosecution notes a discrepancy in Applicant a/0875/11’s year of birth.¹³ However, the Prosecution submits that the discrepancy does not affect the merits of his application which, therefore, may be deemed to meet the requirements for victim participation.

C. Applications in respect of which decision should be deferred until additional information is provided

16. Applicant a/0501/11 filed an application on behalf of his brother. Although this applicant has attached proof of his identity as well as that of consent and kinship with alleged victim, he has not provided any identification document to establish the victim’s identity. The Prosecution suggests that the applicant should be asked to provide documents to establish his brother’s identity as the victim of the crimes committed by MLC troops.

17. Applicant a/0710/11’s date of birth on his attached electoral card is illegible. It is therefore not possible to establish his identity and the Prosecution suggests that he is asked to resubmit a clearer version of the same document or additional documentation and information that would make it possible to establish his identity.

18. The Prosecution submits that Applicant a/0721/11 should further clarify whether the applicant’s sister was a rape victim and whether her subsequent death was a result of such victimization.

¹² ICC-01/05-01/08-1017, at paras. 40-42.

¹³ The year of birth provided in the application form of this applicant is 1977 whilst that given in his redacted birth certificate is 1979.

19. Applicant a/0785/11 attached a health card to her application as proof of identity. The Prosecution notes that this document is incompatible with the Chamber's decision¹⁴ and submits that the applicant should provide further additional documents or information to establish her identity.

20. Applicant a/0904/11 provides only the year 2003 with no further specific information on the month or date of the events. The Prosecution considers that the charged time-frame permits applicants to claim victim status if they allege they were victims of acts that occurred within a general margin of appreciation. The year "2003", however, is too vague to satisfy the requirement. In respect to this applicant, the Prosecution finds that it is difficult to establish the causal link between his personal victimization and the crimes charged within the given time-frame. The Prosecution suggests that the decision on his application be deferred and the applicant be given the opportunity to clarify or provide further information on the date of the events.

21. Applicant a/0916/11 provides no information on the location of the crimes. He also claims compensation for the harm suffered because of the rape of his sisters but provides no documentation to support this claim. The Prosecution submits that the decision on his application be deferred and the applicant be given the opportunity to clarify or provide further information on the location of the crimes and to provide the required documents to support his claim for the harm suffered as a result of his sisters' victimization.

22. The Prosecution notes that, based on the information provided by Applicant a/3194/10, it is difficult to establish whether the perpetrators of the crimes were the MLC troops or "*Forces Armées Centrafricaines*". It is therefore submitted that the decision on his application be deferred and the applicant be given the opportunity to

¹⁴ ICC-01/05-01/08-1017, at paras. 40-42.

clarify or provide further information on the perpetrators in order to establish, *prima facie*, the nexus between the harm suffered by him and the charges against the Accused.

23. Applicant a/3239/10 filed an application on behalf of his dead sister who he claims was used as a sex slave for months by the MLC and who died in April 2003, two weeks after being freed by the MLC. However, this applicant provides no death certificate for his sister and no document to establish kinship to her. The Prosecution submits that the decision on his application be deferred and the applicant be given the opportunity to provide the required documents in order to support this application on behalf of his sister.

D. Applications in respect of which the Prosecution leaves it to the Chamber to determine whether the requirements for participation are met or whether additional documents or information should be sought

24. The applications submitted by Applicants a/0752/11, a/0754/11, a/0757/11, a/0760/11, a/0764/11, a/0767/11, a/0772/11, a/0789/11, a/0886/11, a/0887/11, a/0912/11, a/0913/11, a/0914/11, a/0915/11, a/0917/11, a/0918/11, a/0919/11, a/0920/11, a/0921/11, a/0922/11, a/0924/11, a/0925/11, a/0926/11 and a/1439/10 contain redactions which make it difficult to determine the location of the crimes. The non-redacted portions of these applications appear to largely meet the requirements for participation in these proceedings. The Prosecution leaves it to the Chamber to make a determination as to whether there is a sufficient link between the harm alleged by the applicants and the charges in these proceedings or to request additional information.

25. The redactions applied to the documents submitted by Applicants a/0768/11 and a/0937/11, for identification purposes, make it difficult to determine, respectively, the type of the document attached and the victim's identity. However,

the non-redacted portions of these applications appear to largely meet the requirements for participation. Therefore, the Prosecution leaves it to the Chamber to make a determination as to whether the applicants provided adequate proof of identity or to request additional documents or information.

26. Applicant a/0882/11 provides no information on the year of birth or nationality on his application form. The attached birth certificate indicates 1975 as the year of birth and Central African as his nationality. However, the redactions applied to the information on the name of the victim render it difficult to establish his identity. Therefore, the Prosecution leaves it to the Chamber to make a determination whether the unredacted information in the application clearly establishes his identity or to request additional documents or information.

E. Applications that do not meet the requirements for victim participation

27. Applicant a/0774/11 is not able to identify the perpetrators of the crimes. In her application she refers to them as rebels coming from Bangui. The Prosecution submits that it is therefore not possible to establish, *prima facie*, that the crimes suffered by her were committed by the MLC. Applicants a/2135/10 and a/2174/10 provide information related to the crimes of arson, an event which does not amount to any of the crimes charged against the Accused. The Prosecution submits that these applicants do not meet the requirements for victim participation in the trial proceedings.

IV. Conclusion

28. The Prosecution submits that applicants listed in sections A and B above meet all the requirements under Article 68(3) of the Statute to participate as victims in the trial proceedings.

29. The Prosecution submits that applicants listed in section C above should be requested to provide clarifications or submit further information to establish the causal link between the harm suffered and the crimes committed against them or their family members.

30. The Prosecution leaves to the Chamber to make a determination as to whether applicants listed in Section D above provided adequate proof of identity or to request additional documents or information.

31. The Prosecution submits that applicants listed in Section E above do not meet all the requirements for participation.



Luis Moreno-Ocampo, Prosecutor

Dated this 24th Day of October 2011

At The Hague, The Netherlands