



Original: English

No.: ICC-01/05-01/08
Date: 12 December 2011

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 350 Applications for Victims' Participation in the
Proceedings**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Mr. Nkwebe Liriss

Mr. Aime Kilolo Musamba

Legal Representatives of the Victims

Ms. Marie-Edith Douzima-Lawson

Mr. Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massida

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

Mr. Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Ms. Maria-Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

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' application"² ("Order"), the Office of the Prosecutor ("Prosecution") submits the following observations on 350 applications for participation in the trial proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Accused").

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

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).

meet all the requirements for participation. The Prosecution does not object to the Chamber determining that non-redacted versions of these applications satisfy the requirements or requesting additional information.

5. The Prosecution submits that the applicant listed in Section E below does not meet 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 Reparations 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

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).

8. On 18 November 2011, the Registry provided the Prosecution with 350 redacted versions of the sixteenth set of applications.⁶

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/0537/11, a/0540/11, a/0542/11, a/0544/11, a/0547/11, a/0548/11, a/0549/11, a/0554/11, a/1051/10, a/1498/11, a/1499/11, a/1500/11, a/1503/11, a/1504/11, a/1505/11, a/1506/11, a/1507/11, a/1508/11, a/1509/11, a/1510/11, a/1511/11, a/1512/11, a/1513/11, a/1514/11, a/1515/11, a/1516/11, a/1517/11, a/1518/11, a/1519/11, a/1520/11, a/1521/11, a/1522/11, a/1523/11, a/1524/11, a/1525/11, a/1527/11, a/1528/11, a/1529/11, a/1530/11, a/1531/11, a/1533/11, a/1534/11, a/1535/11, a/1536/11, a/1537/11, a/1538/11, a/1539/11, a/1540/11, a/1541/11, a/1542/11, a/1543/11, a/1544/11, a/1545/11, a/1546/11, a/1547/11, a/1548/11, a/1549/11, a/1550/11, a/1552/11, a/1553/11, a/1554/11, a/1555/11, a/1556/11, a/1557/11, a/1558/11, a/1559/11, a/1560/11, a/1561/11, a/1562/11, a/1564/11, a/1565/11, a/1566/11, a/1567/11, a/1568/11, a/1569/11, a/1570/11, a/1571/11, a/1572/11, a/1573/11, a/1574/11, a/1575/11, a/1576/11, a/1577/11, a/1578/11, a/1579/11, a/1580/11, a/1581/11, a/1582/11, a/1583/11, a/1584/11, a/1585/11, a/1586/11, a/1587/11, a/1588/11, a/1589/11, a/1591/11, a/1593/11, a/1597/11, a/1598/11, a/1599/11, a/1600/11, a/1601/11, a/1602/11, a/1603/11, a/1604/11, a/1605/11, a/1606/11, a/1607/11, a/1608/11, a/1610/11, a/1611/11, a/1612/11, a/1613/11, a/1614/11, a/1615/11, a/1616/11, a/1617/11, a/1618/11, a/1619/11, a/1620/11, a/1621/11, a/1622/11, a/1623/11, a/1624/11, a/1626/11, a/1627/11, a/1630/11, a/1631/11, a/1633/11, a/1634/11, a/1636/11, a/1637/11, a/1638/11, a/1639/11, a/1640/11, a/1641/11, a/1642/11, a/1643/11, a/1644/11, a/1645/11, a/1647/11,

⁶ ICC-01/05-01/08-1923, Sixteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 18 November 2011.

a/1648/11, a/1650/11, a/1653/11, a/1654/11, a/1656/11, a/1657/11, a/1658/11, a/1660/11, a/1661/11, a/1662/11, a/1666/11, a/1667/11, a/1668/11, a/1669/11, a/1671/11, a/1673/11, a/1674/11, a/1675/11, a/1676/11, a/1677/11, a/1678/11, a/1679/11, a/1680/11, a/1681/11, a/1682/11, a/1683/11, a/1684/11, a/1686/11, a/1687/11, a/1688/11, a/1689/11, a/1690/11, a/1691/11, a/1692/11, a/1693/11, a/1694/11, a/1695/11, a/1696/11, a/1697/11, a/1698/11, a/1699/11, a/1700/11, a/1702/11, a/1703/11, a/1704/11, a/1705/11, a/1706/11, a/1707/11, a/1708/11, a/1709/11, a/1710/11, a/1711/11, a/1712/11, a/1713/11, a/1714/11, a/1715/11, a/1716/11, a/1717/11, a/1718/11, a/1719/11, a/1720/11, a/1721/11, a/1722/11, a/1723/11, a/1724/11, a/1725/11, a/1726/11, a/1727/11, a/1728/11, a/1730/11, a/1731/11, a/1732/11, a/1733/11, a/1734/11, a/1735/11, a/1736/11, a/1737/11, a/1738/11, a/1739/11, a/1740/11, a/1741/11, a/1742/11, a/1743/11, a/1744/11, a/1745/11, a/1746/11, a/1747/11, a/1748/11, a/1749/11, a/1750/11, a/1752/11, a/1753/11, a/1754/11, a/1755/11, a/1756/11, a/1757/11, a/1758/11, a/1759/11, a/1760/11, a/1761/11, a/1762/11, a/1763/11, a/1764/11, a/1765/11, a/1767/11, a/1768/11, a/1769/11, a/1770/11, a/1771/11, a/1772/11, a/1775/11, a/1777/11, a/1778/11, a/1779/11, a/1780/11, a/1781/11, a/1782/11, a/1783/11, a/1785/11, a/1786/11, a/1787/11, a/1788/11, a/1789/11, a/1790/11, a/1791/11, a/1793/11, a/1794/11, a/1795/11, a/1797/11, a/1798/11, a/1799/11, a/1800/11, a/1801/11, a/1804/11, a/1805/11, a/1806/11, a/1808/11, a/1809/11, a/1810/11, a/1811/11, a/1818/11, a/1819/11, a/1823/11, a/1824/11, a/1827/11, a/1829/11, a/1830/11, a/1831/11, a/1877/11, a/1880/11, a/1881/11, a/2137/10, a/2401/10, a/2686/10, a/2691/10, a/3176/10.

10. With regard to Applicant a/1532/11, the Prosecution submits that as a victim of pillaging she meets all the requirements for participation. Moreover, the applicant filed an application on behalf of her daughter, who was murdered. To this end she provides an “acte de décès” signed and stamped by the “*Chef du Quartier*”. The Prosecution notes that although this document is not included in the list provided by Pre-Trial Chamber III ⁷ and endorsed by the Chamber,⁸ it contains similar features to

⁷ ICC-01/05-01/08-320, Fourth Decision on Victims’ Participation, 12 December 2008, at paras. 36-38.

the examples accepted by the Chamber. The Prosecution therefore submits that it should be considered sufficient to establish the identity and death of the Applicant's daughter and proof of kinship.⁹

11. With regard to Applicants a/1288/11, a/1751/11, a/1766/11, a/1773/11, a/1774/11 and a/1820/11, the Prosecution notes that as victims of pillaging they all meet the requirements for participation. However, their applications are not limited to the harm they suffered for the pillaging.

12. Applicant a/1288/11 should be invited to provide information and/or documentation to establish the identity and the death of his brother and proof of kinship, in order to substantiate his claims on the harm he suffered as a result of his brother's murder.

13. Applicant a/1751/11 claims that his deceased daughter was raped and later died. He should be invited to provide further documentation and/or information to establish her identity, death and kinship. Moreover, more information should be requested in order to assess whether the death of the Applicant's daughter amounts to any of the crimes with which the Accused is charged.

14. Applicant a/1766/11 claims harm suffered for the killing of his son, and provides sufficient evidence to establish his son's identity and death. However, redactions make it difficult to assess whether the applicant provides proof of kinship.

⁸ ICC-01/05-01/08-699, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, 22 February 2010, at para. 36; ICC-01/05-01/08-1017, Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, at paras. 40-42.

⁹ 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 at para. 35; ICC-01/05-01/08-1862, Decision on 270 applications by victims to participate in the proceedings, 25 October 2011, at para. 25.

15. Applicant a/1773/11 claims that he suffered harm as a result of his two daughters' rape. He should be requested to provide proof of identity of his daughters and kinship.

16. With regard to Applicant a/1774/11, the Prosecution notes that he requests compensation for the harm he suffered because of his two daughters' and wife's rape. He should be invited to provide documentation to proof the identity of his daughters and wife, and kinship.

17. Applicant a/1820/11 also applies in relation to the murder of her son and the rape of her daughter. As she fails to provide any documentation in this respect, she should be requested to submit proof of identity and death of her son, identity of her daughter and kinship.

18. With regard to Applicant a/1551/11, the Prosecution notes that he meets the requirements for participation as a victim of pillaging only. His wife's death, due to a stroke after the crimes committed by the *Mouvement de Libération du Congo* ("MLC") troops, does not appear to have resulted from any of the crimes with which the Accused is charged. The Applicant should be invited to provide documentation that can establish an immediate causal relationship between the crimes and his wife's stroke.

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

19. Applicant a/1609/11 provides a "*Carte de Séjour*" as proof of identity. Applicants a/1632/11, a/1813/11, a/1814/11, a/1816/11, a/1817/11, a/1825/11, a/1828/11

provide a “*Déclaration de Naissance*” signed and stamped by the “*Chef du Quartier*”, for identification purpose. Applicant a/1784/11 provides a “*Déclaration de perte*” signed and stamped by the “*Chef du Quartier*”. The Prosecution notes that although these documents are not included in the list provided by Pre-Trial Chamber III¹⁰ and endorsed by the Chamber,¹¹ they contain similar features to the examples accepted by the Chamber. The Prosecution therefore submits that they should be considered sufficient to establish the Applicants’ identity.¹²

20. Applicant a/1776/11 submits an application on behalf of his son, who was victim of killing, and provides an “*acte de décès*” signed and stamped by the “*Chef du Quartier*”. The Prosecution notes that this document is not included in the list provided by Pre-Trial Chamber III¹³ and endorsed by the Chamber.¹⁴ However, for the reason stated in paragraph 19 above, this document, coupled with the birth certificate, should be considered sufficient to establish the identity and death of the Applicant’s son and proof of kinship.

21. Applicant a/1649/11 states that the events happened in March 2003. The Prosecution considers, in line with the Chamber’s decision,¹⁵ that this date, coupled with the Applicant’s statement of the presence of the MLC at the given location, 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”.¹⁶ The Prosecution, therefore, submits that the Applicant has established, *prima facie*, the causal link between the harm suffered by him and the crimes with which the Accused is charged.

¹⁰ ICC-01/05-01/08-320, at paras. 36-38.

¹¹ ICC-01/05-01/08-699, at para. 36; ICC-01/05-01/08-1017, at paras. 40-42.

¹² ICC-01/05-01/08-1590-Corr, at para. 35; ICC-01/05-01/08-1862, at para. 25.

¹³ ICC-01/05-01/08-320, at paras. 36-38.

¹⁴ ICC-01/05-01/08-699, at para. 36; ICC-01/05-01/08-1017, at paras. 40-42.

¹⁵ ICC-01/05-01/08-1017, at paras. 54-55.

¹⁶ 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.

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

22. Applicants a/1635/11, a/1651/11, a/1652/11, a/1655/11, a/1792/11, a/1807/11, a/1812/11, a/1815/11, a/1826/11 do not provide sufficient information as to when the crimes against them were committed by the MLC troops. Therefore, the Prosecution submits that the Chamber defer its decision on their respective applications and give these Applicants the opportunity to provide further information on the time of their victimization.¹⁷

23. Applicant a/1802/11 states that the crimes from which he suffered harm occurred in February 2004. This date is out 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”.¹⁸ The Prosecution, however, observes that the events recounted by the applicant make it likely that crimes happened during relevant time-frame. The Prosecution therefore suggests that the Chamber defer its decision and give the Applicant the opportunity to provide further information on the time of his victimization.

24. Applicant a/1729/11 files an application on behalf of his deceased sister, who was murdered, but only provides her birth certificate. The Prosecution therefore suggests that the Chamber defer its decision and give the Applicant the opportunity to provide proof of the victim's death and kinship.

25. Applicant a/1796/11 does not provide sufficient information as to who were the perpetrators of the crime of pillaging. The Prosecution therefore submits that the

¹⁷ ICC-01/05-01/08-836, at para. 51.

¹⁸ ICC-01/05-01/08-836, at para. 51.

Chamber defer its decision and give the Applicant the opportunity to provide this information.

26. As regards Applicant a/2402/10, the Prosecution notes that the explanations provided for the discrepancy on the Applicant's date of birth are unclear. The Prosecution therefore suggests that the Chamber defer its decision and the Applicant be given an opportunity to clarify this matter.

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

27. The application submitted by Applicant a/2353/10 is based on the killing of two persons. The redactions to that application, as well as an apparent internal inconsistency, make it difficult to determine the identity of the actual applicant.¹⁹

28. The applications submitted by Applicants a/1501/11, a/1502/11, a/1526/11, a/1563/11, a/1590/11, a/1625/11, a/1646/11, a/1659/11, a/1663/11, a/1664/11, a/1665/11, a/1685/11, a/1701/11, a/1822/11 contain redactions that make it difficult to determine whether the identity documents attached to the applications relate to the persons claiming victims' status.

29. As to Applicants a/0083/11, a/1672/11, a/1878/11 and a/1879/11, redactions make it impossible to identify the location where the crimes occurred. The

¹⁹ The form is first filled in by someone who appears to be the nephew of the deceased persons and provides his birth certificate. The annex, a "declaration of kinship", is filled in by the daughter of the deceased, who does not provide any identity document.

Prosecution is therefore unable to assess whether there is a causal link between the harm suffered by these Applicants and the crimes charged.

30. Therefore, for the Applicants in this Section the Prosecution leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested.

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

31. Applicant a/0580/08 states that he was shot but survived. The Prosecution submits that this incident does not amount to any of the crimes charged against the Accused. Therefore the applicant does not meet the requirements for victim participation in the trial proceedings.

IV. Conclusion

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

33. The Prosecution submits that applications made by Applicants listed in section C above should be deferred until further clarifications and/ or information are provided.

34. The Prosecution leaves it to the Chamber to determine whether Applicants listed in Section D above provided adequate documentation or additional documents and/ or information should be requested.

35. The Prosecution submits that the Applicant listed in Section E above does not meet the requirements for participation.



Luis Moreno-Ocampo,
Prosecutor

Dated this 12th day of December, 2011

At The Hague, The Netherlands