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Date: 6 April 2018

TRIAL CHAMBER III

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Chang-ho Chung
Judge Kimberly Prost

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

**Public redacted version of “Report on applications to participate in the proceedings”, dated 10 December 2009 and registered on 11 December 2009,
ICC-01/05-01/08-653-Conf-Exp**

Source: Registry

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

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

A. Background and content of this report

1. This report is submitted pursuant to the Registry's obligations under Rule 89(1) of the Rules of Procedure and Evidence; and under Regulation 86(5) of the Regulations of the Court which require the Registrar to present applications to participate in proceedings to the Chamber, together with a report thereon; and the Chamber's intention indicated during the first status conference held on 7 October 2009 to deal with new applications to participate in proceedings as quickly as possible.¹ It is the first report transmitting applications for participation to the Trial Chamber in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.
2. The present report relates to new applications received subsequent to the deadline established by Pre-Trial Chamber III for participation in the confirmation of charges hearing. The Registry will await the Chamber's instructions as regards any further reports it may request on applications already filed in the record of the case with the Pre-Trial Chamber.
3. The report covers 86 applications to participate in proceedings. Of these, 85 are natural persons and one ([REDACTED]) is an organisation or institution.
4. All the applications that are the subject of this report appear to the Registry to be linked to the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, by reference to Public Redacted Annex B to the "Prosecution's Submission of the Document Containing the Charges as Confirmed by the Pre-Trial Chamber filed in accordance with the Chamber's Order of 7 October 2009".²
5. The Registry has also received five applications that do not appear to be linked to the case, because the alleged acts are not included in the confirmed

¹ ICC-01/05-01/08-T-14-ENG, page 20, lines 6 to 11

² ICC-01/05-01/08-593 dated 4 November 2009

charges and/or the person alleged by the applicant to be responsible is a person other than Jean-Pierre Bemba or the forces accompanying him.³ In relation to a further two applications, the Registry is requesting further information from the applicant in order to establish whether or not they might be linked with the case. The Registry does not propose to file applications that clearly do not appear to be linked with the case, unless otherwise instructed by the Chamber.

6. In accordance with the recommendations contained in the “Registry’s report on the status of applications for participation in the proceedings or for reparations received by the Victims Participation and Reparations Section” dated 5 October 2009,⁴ and in the absence of any contrary instructions, the Registry is filing herewith only applications that appear to be complete, as defined in paragraphs 27 to 34 below. The VPRS has also received six applications that appear to be incomplete, in relation to which missing documents or information are still awaited.
7. In accordance with the reporting system already used with Trial Chambers I and II for applications to participate in proceedings, this report provides an overview of the 86 applications transmitted, while the following documents are provided as annexes:
 - **Annex 1:** Reports under regulation 86.5 on an applicant-by-applicant basis, comprising an overview of each of the applications along with boxes summarising matters contained in the actual applications and drawing attention to specific relevant issues, in accordance with the practice developed before Trial Chamber I and followed by other Chambers.
 - **Annex 2:** Recommendations of the Registry on the establishment of a redaction regime for victims’ applications.

³ This is further elaborated in paragraph 17 of this report.

⁴ ICC-01/05-01/08-541-Conf-Exp

- **Annexes 3 to 88:** The 86 applications for participation, together with supporting documentation provided by the applicants or their legal representatives.
8. With a view to assisting the Chamber, the applications have been grouped into four groups, reflecting the alleged geographical movement of the MLC troops, as set out in the Prosecutor's "Second Amended Document Containing the Charges",⁵ Annex B. At paragraphs 18 to 21 of the document, the Prosecutor describes how MLC troops first participated in fighting in Bangui and its outskirts (particularly "PK12") (paragraph 18). After this, it is said that the MLC troops divided into two groups, with each group following one of the two roads leading to the North of the CAR (paragraph 19). One group moved along the road leading to Damara, and subsequently continued to Sibut. A second group moved along the road to Boali, continuing to Bossembélé, Bossangoa and Bozoum. On withdrawing from the CAR in March 2003, the MLC troops retreated South, including passing through the town of Mongoumba (paragraph 21). Consequently, the applications have been grouped in the following manner, and the relevant applications listed in the table below:
- Group A, containing applications relating to alleged crimes in Bangui and PK12, whether on arriving or on leaving the DRC
 - Group B, containing applications relating to alleged crimes in or around Damara and Sibut
 - Group C, containing applications relating to alleged crimes in or around Boali, Bossembélé, Bossangoa and Bozoum
 - Group D, containing applications relating to alleged crimes in or around Mongoumba

⁵ ICC-01/05-01/08-593-Anx-Red dated 4 November 2009

	LOCATION OF ALLEGED CRIME	APPLICATIONS
GROUP A	Bangui / PK12	a/0511/08, a/0512/08, a/0513/08, a/0515/08, a/0516/08, a/0517/08, a/0550/08, a/0562/08, a/0563/08, a/0564/08, a/0565/08, a/0566/08, a/0567/08, a/0568/08, a/0569/08, a/0570/08, a/0571/08, a/0572/08, a/0130/09, a/0131/09, a/0132/09, a/0133/09, a/0134/09, a/0135/09, a/0136/09, a/0137/09, a/0138/09, a/0139/09, a/0427/09, a/0429/09, a/0432/09, a/0653/09
GROUP B	Damara / Sibut	a/0293/08, a/0543/08, a/0573/08, a/0574/08, a/0575/08, a/0576/08, a/0577/08, a/0578/08, a/0579/08, a/0582/08, a/0583/08, a/0584/08, a/0585/08, a/0586/08, a/0141/09
GROUP C	Boali / Bossembélé / Bossangoa / Bozoum	a/0541/08, a/0542/08, a/0546/08, a/0547/08, a/0548/08, a/0549/08, a/0551/08, a/0552/08, a/0555/08, a/0556/08, a/0557/08, a/0559/08, a/0560/08, a/0587/08, a/0588/08, a/0589/08, a/0590/08, a/0591/08, a/0592/08, a/0593/08, a/0594/08, a/0595/08, a/0596/08, a/0597/08 a/0598/08, a/0599/08, a/0600/08, a/0601/08, a/0602/08, a/0603/08, a/0604/08, a/0605/08, a/0606/08, a/0430/09, a/0651/09, a/0652/09, a/0428/09
GROUP D	Mongoumba	a/0624/08, a/0625/08

B. Explanation of information contained in the application-by-application reports

a. Information contained in the boxes under the heading “Informations concernant le demandeur” (Information concerning the applicant)

9. This part includes basic personal information regarding the applicant:⁶ the name, date of birth, sex, age at the time of applying, place of residence, ethnic group and type of applicant (whether the applicant is a natural person or an organisation or institution). This information is extracted from information provided under Part A of the standard application form.

10. The last box, headed “Statut du demandeur” (Status of the applicant) is used when another person acts on behalf of the applicant. It indicates whether the applicant is a child, disabled or deceased, or otherwise that there is a person acting on behalf of the applicant. Where the applicant is acting on his or her own behalf, no information is included in the box even where the applicant is under 18 years of age.

11. A number of the applications are submitted on behalf of deceased persons, where the victim is said to have died as a result of the alleged crime. The Registry notes that there is no consistent practice on the participation of persons acting on behalf of deceased persons where the deceased person is considered to be the victim, as distinct from situations where a close relative is considered a victim in their own right as a result of suffering caused by the death. In the instant case, Pre-Trial Chamber III found that a victim does not cease to be a victim because of his or her death, and recognized a number of deceased victims.⁷ In the Lubanga case, Trial Chamber I accepted one deceased person as a victim, with his uncle

⁶ In the reports, the “applicant” is the person whose details are provided in Part A of the standard application form, even if another person has presented the application on his or her behalf.

⁷ Fourth Decision on Victims’ Participation, ICC-01/05-01/08-320, 12 December 2008, paragraphs 39 and 40. The Chamber established three requirements for a deceased person to be recognized as victim, namely, that the deceased was a natural person, that the death of the person appears to have been caused by a crime within the jurisdiction of the Court and finally, that a written application on behalf of the deceased person has been submitted by his or her successor.

acting on his behalf.⁸ On the other hand, both Pre-Trial Chamber I and Trial Chamber II have declined to accept deceased persons as victims, and have held that a close relative may participate only in their own name on the basis of their own suffering as a result of the death.⁹

12. In this regard the Registry would like to draw the Chamber's attention in particular to application [REDACTED]. This application had been filed with the Pre-Trial Chamber, who had accepted the person submitting the application, [REDACTED], as a victim himself. [REDACTED].¹⁰ Subsequently, the person submitted an additional application, in which he provided certain further information regarding [REDACTED], and in which the Office of Public Counsel for Victims, his legal representative, confirms that he still intends to act also in the name of [REDACTED]. This second application is therefore filed herewith together with the original application, for the Chamber's consideration as to whether to also accept the [REDACTED] as a victim.

13. Information concerning any proof of identity that has been provided by the applicant is indicated on the second page, in the box entitled "Documents joints" (Documents attached to the application). Where no proof is provided, or any comments relating to such documents and their conformity with the Chamber's requirements, are indicated in the box entitled "Commentaires" (Comments).

⁸ [REDACTED]

⁹ For example "Motifs de la décision relative aux 345 demandes de participation de victimes à la procédure », ICC-01/04-01/07-1491-Red of 23 September 2009, paragraphs 49 to 56. However, Judge Kaul issued a Partly Dissenting Opinion in which he referred to the Fourth Decision on Victims' Participation of Pre-Trial Chamber III on that specific matter.

¹⁰ ICC-01/05-01/08-320-Conf-Anx, page[REDACTED]

b. Information contained in the boxes under the heading “Personne agissant au nom du demandeur” (Person acting on behalf of the applicant)

14. This part includes basic information about a person acting on behalf of the applicant, if applicable: the name, place of residence and link with the applicant. The information in this part is extracted from information provided under Part B of the standard application form.

15. Information concerning any proof of identity or proof of the link with the applicant is indicated on the second page, in the box entitled “Documents joints” (Documents attached to the application). Where no proof is provided, or any comments relating to such documents, are indicated in the box entitled “Commentaires” (Comments).

c. Information contained in the boxes under the heading “Description du crime et du prejudice allégué” (Description of the crime and the harm alleged)

16. This part includes information regarding the events and harm alleged. Most of this information is extracted from that provided under Parts D and E of the standard application form. Two of the boxes do not comprise information extracted from the application forms, and further explanations are provided below as to the information provided in these boxes.

17. As regards the person alleged to be responsible for the alleged crime (“auteur”), in some applications the applicant does not specifically name Jean-Pierre Bemba or the MLC, but mentions the “banyamulengués” as being responsible,¹¹ in some cases noting their Congolese nationality. Since this is term commonly used in the CAR to describe the Congolese forces accompanying Mr.

¹¹ For instance, applicants [REDACTED]

Bemba, these applications have been included on the basis that this gives an indication of an intention to refer to the MLC forces accompanying Mr. Bemba. In such cases, a note is made in the “commentaries” box.

“Type d’acte » (Type of act)

18. This box contains an indicative list of acts constituting crimes within the jurisdiction of the Court, that the harm alleged by the applicant might possibly constitute. The Registry would like to stress that in providing such a list, it looks solely at the alleged act itself, and does not make any assessment at all as to the presence of the contextual or mental elements of the crime such as would be necessary to determine whether the acts constitute genocide, a crime against humanity or a war crime. Nor is the list of acts provided for each applicant intended to be an exhaustive list of those that might arise out of the set of facts alleged. However where applications are submitted in relation to a case, efforts are made to include those acts which appear to be linked to the crimes contained in the arrest warrant or summons.

19. In the instant case, there are three main types of acts included in the five counts in the confirmed charges: rape (in counts one and two), murder (in counts three and four) and pillage (in count five).¹² In the “type d’acte” box, the acts alleged by the applicants have been characterized as “viol/autres formes de violences sexuelles” if rape is alleged, as “homicide intentionnel” if murder is alleged and “destruction ou appropriation de biens/pillage” if pillage is alleged.

¹² Second Amended Document Containing the Charges, ICC-01/05-01/08-593-Anx-Red, 4 November 2009, pages 35 to 38.

20. As regards pillage, the Registry notes that in several cases, the applicant alleged the occupation of their home for a period of days, weeks or months. In such cases, “destruction ou appropriation de biens/pillage” has been entered in the “type d’acte” box. However, the Registry makes no finding as to whether any appropriations might be justified by military necessity.¹³

21. All of the applications filed with this report, with the exception of the two applications mentioned in the following paragraph, allege one or more of these acts.

22. The Registry draws to the attention of the Chamber the alleged acts described in applications [REDACTED] and [REDACTED]. In both of these applications, the only act alleged is the shelling of their houses. Whilst this might not be considered to fall within any of the three crimes falling within the confirmed charges, it also appeared possible that this might be considered as an attempted murder, and these two applications have therefore been included for the Chamber’s consideration.

23. In a number of cases a person submitting an application on behalf of a victim has also mentioned harm they themselves allege to have suffered. In such cases this has been noted under “commentaries” as the Chamber may wish to consider that person also to be a victim.

“Type de préjudice » (Type of harm)

24. In this box the types of harm that are alleged by the applicants have been categorised as follows:

- Préjudice physique (physical harm)
- Préjudice moral (psychological harm)
- Préjudice matériel (material harm)

¹³ Elements of Crimes, Elements of Article 8(2)(e)(v), footnote 61.

- Atteinte grave aux droits fondamentaux (substantial impairment of fundamental rights)

25. The latter category, “atteinte grave aux droits fondamentaux” (substantial impairment of fundamental rights), has been recognized as a type of harm within the meaning of Rule 85 by Trial Chamber I,¹⁴ however the scope of this term has not yet been elucidated by jurisprudence from the Chambers. The Registry has therefore reviewed the meaning given to this concept by various regional and international courts and instruments. This research indicated that many of the rights included in the major human rights instruments might be considered to constitute fundamental rights. In the other cases and situations before the Court, the Registry has indicated a “substantial impairment of fundamental rights” where alleged crimes that appear to have interfered with children’s rights to education and a family life or with the fundamental rights to liberty and security of the person, or the associated right of persons deprived of their liberty to be treated humanely. Where these rights appear to have been substantially impaired the Registry has included substantial impairment of fundamental rights as a possible form of harm. The Registry provides this information in order to explain the basis on which this type of harm has been included in the possible types of harm suffered by each applicant.

26. In certain instances, an applicant alleges that certain acts were committed that might constitute a crime within the Court’s jurisdiction and that might be expected to cause harm, but does not specify any harm. The Registry has drawn attention to such instances in the “Commentaires” (Comments) section of the reports.

¹⁴ ICC-01/04-01/06-1119, paragraph 92. The Trial Chamber was guided by Principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly Resolution 60/147, 16 December 2005.

d. Information contained in the boxes under the heading “Éléments formels” (formal elements)

27. This part includes information relating to the signatures and other formalities relating to the application, and any attempts made by the Registry to seek further information or documentation and the results of such efforts, as well as any documents accompanying the application. Since this does not comprise information extracted from the application forms, the Registry would like to provide further explanations as to the information provided in each box.

“La demande est-elle complete” (is the application complete ?), “Signatures ou marques d’identification ?» (signatures or identification mark ?) and “Commentaires” (Comments)

28. According to regulation 86.4 of the Regulations of the Court:

“The Registrar may request further information from victims or those presenting an application in accordance with rule 89, sub-rule 3, in order to ensure that such application contains, to the extent possible, the information referred to in sub-regulation 2, before submission to a Chamber. The Registrar may also seek additional information from States, the Prosecutor and intergovernmental or non-governmental organisations.”

29. Further, Regulation 86 sub-regulation 2 sets out what information should be contained in an application. In the Fourth Decision on Victim’s Participation, the Single Judge of Pre-Trial Chamber III stated the criteria he would adopt for considering an application from the CAR to be complete, including a list of documentation that would be accepted as proof of identity.¹⁵ This was based on a

¹⁵ ICC-01/05-01/08-320 dated 12 December 2008, paragraph 81. The information required is as follows: (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. Criteria regarding

report provided by the Registry, in Annex 2 to its report on applications dated 17 October 2008, entitled “Rapport sur les documents d’identification disponibles et utilisés en République centrafricaine” (report on identification documents available and used in the Central African Republic).¹⁶ The approach taken by the Single Judge was very similar to that taken by Trial Chamber I in its decision of 18 January 2008,¹⁷ which sets out the criteria to be adopted for determining whether an applicant is a victim in the context of the DRC, including the possibility of producing a statement signed by two witnesses attesting to the identity of the applicant in the event that an applicant is unable to produce a document of the kind listed in the Chamber’s decision. In the absence of any differing instructions, the Registry has continued to apply the criteria established by the Single Judge of the Pre-Trial Chamber in the present case.

30. Upon receiving an application, the Registry reviews the application in order to ascertain whether the application is complete according to these criteria. If any information or documentation is missing, the Registry sends a request to the legal representative, if there is one. Where there is no legal representative, the Registry communicates the request directly to the person or organisation that presented the application. In most instances, for security reasons and because of their relationship of trust with the applicant, this is done with the assistance of an intermediary organisation that had assisted the applicant in filling in the application and presenting it to the Court.

31. For the purposes of managing the process of requesting and receiving further information or documentation, the Registry has developed a standard form which, when used, is referred to in the “Documents joints” (documents attached to the application) box as “fiches de suivi” (follow up forms). The

proof of identity, including a list of 22 documents that would be accepted as proof of identity and guidance as to what would be accepted in cases where none of the listed documents could be produced, can be found in paragraphs 36 to 38.

¹⁶ ICC-01/05-01/08-168-Conf-Exp

¹⁷ ICC-01/04-01/06-1119, paragraphs 87 to 92

Registry uses these forms to indicate what information or documentation is missing, what further information has been requested, and how and when any additional information or documentation is actually received. In some cases, the forms are completed and signed by Registry staff in the field when they are directly given information or documents.

32. In relation to certain applications there are only minor inconsistencies, such as in the spelling of a name, or a specific piece of information is missing that may not necessarily render the application incomplete. For instance, two applicants ([REDACTED] and [REDACTED]) mentioned that the alleged incidents took place in October 2002, but not the exact date. The Registry has filed such applications, always drawing attention to such matters in the “commentaires” (comments) box, but if the Chamber prefers to request the Registry to go back to the applicant to request further information, this can be done.

33. Any information received subsequent to the original application will appear in the report, and attention may be drawn to the fact that the information was received at a later date than the application if it appears relevant to highlight to the Chamber.

34. The Registry has sought to make clear in the applicant-by-applicant reports whether or not the application appears to be complete and whether it has been signed, and (under “Commentaires” (comments)) draws to the Chamber’s attention the following matters:

- Missing information, and whether or not it renders the application incomplete in the context of the particular application;
- The fact that further information or documentation has been requested but not received;

- The fact that further information or documentation has been requested and subsequently received and reflected in the relevant box in the report, where it is considered that this should be drawn to the attention of the Chamber;
- Any discrepancies in information received, such as between dates or other information contained in different documents received from the applicant, including between the application form itself and documents received at the same time or subsequently;
- Comments relating to signatures: however no mention is made of a failure to provide signatures or initials which are requested in the application form but which are not required under regulation 86(2) or another source. Examples of information that would not be highlighted include instances where a signature is not witnessed (as requested in part J of the form) or where an applicant has not signed or initialed the bottom of each page (this is requested in the form solely for the purpose of ensuring that pages of the same application are kept together when transmitted to the Court).

“Personne ayant assisté le demandeur” (person who assisted the applicant)

35. The name of the person who has assisted the applicant to fill in the application form is included, and the organisation with which that person is affiliated, if any.

“Documents joints” (documents attached to the application)

36. Any supporting documentation received from the applicant is listed, including proofs of identity, as well as any follow up form recording the manner in which any further information was received.

e. Information contained in the boxes under the heading “Représentation légale” (legal representation)

37. This part indicates whether or not the applicant has a legal representative and, if so, the name of the legal representative. The information in this part is extracted from information provided under Part G of the standard application form and/or any power of attorney provided.

f. Information contained in the boxes under the heading “Requêtes formulées par le demandeur” (requests made by the applicant)

38. The first section of this part indicates in what stages of the proceedings the applicant has requested to participate. The information in this part is extracted from information provided under Part C of the standard application form.

39. The second section of this part indicates whether or not the applicant is making a request for non-disclosure of their identity, or other information, to one or more party. The information in this part is extracted from information provided under Part H of the standard application form and/or any other information provided.

C. Protection

40. Of the applicants who are the subject of this report, 19 applicants expressly request that their identities be kept from the general public, 19 applicants requested that their identities be kept from states and other participants, 59 requested that their identities be kept from the defence and 79 requested that their identities be kept from the prosecution.

41. A majority of the applicants dealt with in this report have therefore requested that their information be kept from one or other party, indicating some concern for their security. Even as regards those who have not made such a request, the Registry considers that at this early stage a cautious approach should be taken. This is appropriate given that the applications have not yet been considered by the Chamber, but also because the Registry does not believe

that all of the applicants had an opportunity to discuss this question with a lawyer before submitting their applications. Further, it is possible that there was a misunderstanding on the part of the applicants of the meaning of “defence” and “prosecution”. The Registry therefore recommends that, for the purpose of allowing observations to be provided, the parties be provided redacted versions of the applications. Should the applications, or some of them, be accepted by the Chamber then the nominated legal representatives could be requested to clarify or confirm the requests of their clients.

42. Should the Chamber decide to order the Registry to prepare versions of the applications with such information as might serve to reveal the identity of the applicant redacted, the Registry would propose to follow the approach set out in the catalogue annexed to this report (Annex 2), which has been developed by the VPRS and the VWU for the purposes of providing clear guidance for redactions of victims’ applications in all the situations and cases, including how the guidelines would be applied in relation to the present case. The Registry would appreciate guidance from the Chamber on this matter before preparing any redactions.

43. Should the Chamber require redacted versions of the applications to be transmitted, the Registry is ready to prepare these within a period of two weeks of receiving instructions as regards the nature of the redactions.


E. Legal representation

44. Of the 54 victims accepted to participate in the confirmation of charges hearing in the case, 34 were represented by Maitre Marie-Edith Douzima, including those who had previously been represented by Maitre Goungaye, deceased, and 20 were represented by the OPCV.

45. Three applicants who are the subject of this report have chosen Maitre Marie-Edith Douzima as their legal representative.

46. 56 of the applicants who are the subject of this report had appointed Maitre Goungaye as their legal representative. [REDACTED].

47. In light of the above, the Registry will be in a position to make recommendations on common legal representation, including the applicants formerly represented by Maitre Goungaye, after its current mission to CAR, which ends on 11 December 2009, is completed, in accordance with the Chamber's decision of 9 December 2009.¹⁸



Marc Dubuisson, Director, Division of Judicial Services
per delegation of Herman von Hebel, Registrar

Dated this 6 April 2018

At The Hague, The Netherlands

¹⁸ ICC-01/05-01/08-651-Conf-Exp, paragraph 18 (d)