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Pénale
Internationale**



**International
Criminal
Court**

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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 the 192 Applications for Victim's 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 (“Rules”) and the “Order inviting the parties’ observations on victims applications (“Order”)¹ issued by Trial Chamber III (“Chamber”), the Office of the Prosecutor (“Prosecution”) submits the following observations on the applications for participation in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* transmitted to the parties by the Victims Participation and Reparations Section (“VPRS”) on 14 July 2010.²

2. For the reasons detailed below, the Prosecution requests the Chamber to grant all the applicants presented *except* applicants a/0005/10 and a/0008/10. The Chamber should request these two Applicants to provide further information on the link between the harm suffered and the charges confirmed against Jean-Pierre Bemba Gombo (“Accused”).

II. Background

3. On 16 July 2010, the Chamber forwarded to the parties and requested observations on 191 applications for participation as victims in the case.³

4. Out of the 191 applicants, 189 are natural persons and two are organizations (a/0665/09 and a/0007/10).

¹ ICC-01/05-01/08-833, Order inviting the parties' observations on 192 victims' applications, 16 July 2010.

² ICC-01/05-01/08-824-Conf-Exp, Transmission to the parties of redacted versions of 192 applications for participation in the proceedings, 14 July 2010.

³ ICC-01/05-01/08-833 at para. 3. In fact, though para. 1 of the Order refers to 192 applications, there are 191 applications for participation, and not 192 applications. Two annexes contain identical applications submitted by a single applicant. On 15 July 2010, the Prosecution received (ICC-01/05-01/08-824-Conf-Exp) 198 annexes (ICC-01/05-01/08-796-Conf-Exp-Anx2-Red ICC-01/05-01/08-796-Conf-Exp-Anx2-Red to ICC-01/05-01/08-796-Conf-Exp-Anx199-Red) for 191 applicants, and not 192 applicants as indicated in the Chamber’s order. Two annexes were identical (annexes 152 and 153: applicant a/0663/10). Separate applications for reparation were transmitted for applicants a/0014/10, a/0015/10, a/0018/10, a/0020/10, a/0024/10 and a/0025/10, in addition to their application for participation in the proceedings.

5. All applicants request to be allowed to participate in the trial proceedings in the prosecution of the Accused.

III. Legal criteria for victim participation in the proceedings

6. The Prosecution considers that victims' participation before the Court is an essential feature of the Rome Statute ("Statute") system and an important contribution to international justice. Under the Statute, victims are actors in the administration of international justice rather than its passive subjects. Their participation is a statutory right, not a privilege bestowed on a case-by-case basis.

7. Established jurisprudence requires that an applicant meet the following requisites before the Court will authorize an applicant's participation as a victim in the proceedings:

- (i) he/she qualifies as a victim under the definition of this term provided by Rule 85 of the Rules; and
- (ii) his/her personal interests are affected by the proceedings at hand; that is, by the issues, legal or factual, raised therein pursuant to Article 68(3) of the Statute.⁴

8. In relation to the first requisite - qualification of a victim under Rule 85 of the Rules - the following four criteria must be satisfied for victim status to be warranted, regardless of the stage of the proceedings in which the applicants wish to participate:

⁴ ICC-01/04-01/06-1432, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victim's Participation of 18 January 2008, 11 July 2008, at paras. 1-2.

- (i) the applicant must be a natural person as set forth in Rule 85(a) of the Rules or an organization or institution as set forth in Rule 85(b) of the Rules;
- (ii) the applicant must have suffered personal harm;
- (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and
- (iv) there must be a causal link between the crime and the harm the applicant personally suffered,⁵ as well as between the crime and the applicant's personal interests.⁶

9. Additionally, applicants must provide proof of identity to prove their status. This requirement has been put in place by all Chambers as a minimum safeguard to guarantee the accuracy of applications.⁷

IV. Factual analysis of the applications⁸

10. Without qualification, the following natural persons meet all the requirements for participation at trial: applicants a/0553/08, a/0431/09, a/0661/09, a/0662/09, a/0663/09, a/0664/09, a/0667/09, a/0800/09, a/0801/09, a/0001/10, a/0002/10, a/0003/10, a/0004/10, a/0006/10, a/0010/10, a/0011/10, a/0012/10, a/0013/10, a/0014/10, a/0016/10, a/0017/10, a/0018/10, a/0019/10, a/0021/10, a/0023/10, a/0024/10, a/0129/09, a/0155/10,

⁵ See, e.g., ICC-01/04-01/06-601-tEN, Decision on applications for participation in proceedings a/0004/06 to a/0009/06, a/0016/06, a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 in the case of The Prosecutor v. Thomas Lubanga Dyilo, 20 October 2006, p. 9; ICC-01/04-01/06-228-tEN, Decision on the Applications for Participation in the Proceedings of a/0001/06, a/0002/06 and a/0003/06 in the case of the Prosecutor v. Thomas Lubanga Dyilo and of the investigation in the Democratic Republic of the Congo, 28 July 2006, page 7.

⁶ See ICC-01/04-01/06-1432 OA9 OA10, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, para. 2.

⁷ ICC-01/04-374, Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation, 17 August 2007; ICC-02/04-01/05-252, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, 10 August 2007, at paras. 16 to 21 and; ICC-01/04-01/06-1119, Decision on victims' participation, 18 January 2008, at para. 87.

⁸ Due to the extent of the redactions applied to the applications, the Prosecution can only rely on the date of birth of the applicant and the nature of the identification documents provided to conduct a *prima facie* assessment of proof of identity.

a/0156/10, a/0157/10, a/0158/10, a/0159/10, a/0160/10, a/0162/10, a/0165/10, a/0166/10, a/0167/10, a/0168/10, a/0169/10, a/0170/10, a/0171/10, a/0172/10, a/0174/10, a/0175/10, a/0178/10, a/0179/10, a/0180/10, a/0182/10, a/0183/10, a/0184/10, a/0185/10, a/0186/10, a/0187/10, a/0188/10, a/0189/10, a/0190/10, a/0191/10, a/0192/10, a/0193/10, a/0194/10, a/0195/10, a/0196/10, a/0197/10, a/0198/10, a/0199/10, a/0200/10, a/0201/10, a/0202/10, a/0203/10, a/0204/10, a/0205/10, a/0206/10, a/0207/10, a/0209/10, a/0210/10, a/0211/10, a/0212/10, a/0213/10, a/0214/10, a/0215/10, a/0297/10, a/0298/10, a/0299/10, a/0300/10, a/0302/10, a/0303/10, a/0304/10, a/0305/10, a/0306/10, a/0308/10, a/0309/10, a/0310/10, a/0311/10, a/0312/10, a/0313/10, a/0314/10, a/0315/10, a/0316/10, a/0317/10, a/0319/10, a/0320/10, a/0322/10, a/0323/10, a/0324/10, a/0325/10, a/0326/10, a/0327/10, a/0329/10, a/0330/10, a/0331/10, a/0644/10, a/0645/10, a/0646/10, a/0647/10, a/0648/10, a/0649/10, a/0650/10, a/0651/10, a/0652/10, a/0653/10, a/0654/10, a/0655/10, a/0657/10, a/0658/10, a/0659/10, a/0660/10, a/0661/10, a/0662/10, a/0663/10, a/0664/10, a/0665/10, a/0666/10, a/0667/10, a/0668/10, a/0670/10, a/0671/10, a/0672/10, a/0673/10, a/0674/10, a/0675/10, a/0676/10, a/0677/10, a/0678/10, a/0679/10, a/0680/10, a/0681/10, a/0682/10, a/0683/10, a/0684/10, a/0685/10, a/0686/10, a/0687/10, a/0688/10, a/0689/10, a/0690/10, a/0691/10, a/0692/10, a/0693/10, a/0694/10, a/0695/10, a/0696/10, a/0697/10, a/0698/10, a/0699/10, a/0702/10, a/0703/10, a/0704/10, a/0705/10 and a/0706/10.

11. In addition to the applicants listed above, two applicants (a/0665/09 and a/0007/10) are organisations requesting participation in these proceedings. Applicant a/0665/09 is a Non-Governmental Organisation (“NGO”), whose representative alleges that *Mouvement de Libération du Congo* (“MLC”) troops occupied and pillaged its offices in Bangui at times within the time frame alleged in the charges.⁹ Applicant a/0007/10 is a school, whose representative alleges that MLC troops pillaged its premises in Bangui on 15 March 2003, also within the time frame alleged in the

⁹ The representative alleges that he fled Bangui on 5 January 2003. Upon his return on 15 March 2003, he discovered that the NGO Offices had been completely pillaged.

charges.¹⁰ Both entities claim material loss. Accordingly, the Prosecution submits that these legal persons meet the requirements of participation.¹¹

12. The applications submitted by applicants a/0025/10, a/0161/10, a/0163/10, a/0164/10, a/0181/10, a/301/10 and a/332/10 provide specific dates on which they allegedly suffered harm perpetrated by MLC troops in the Central African Republic ("CAR"). They identify MLC soldiers as responsible for the harm they allegedly suffered in locations in the CAR referred to in the Confirmation Decision. The crimes committed against these applicants also fall within the scope of the charges confirmed by the Pre-Trial Chamber.¹² However, the dates of victimization alleged by these applicants range from 20 October 2002 to 18 March 2003.¹³ The time-frame upheld in the Confirmation Decision, "*on or about 26 October 2002 to 15 March 2003*,"¹⁴ has been accepted by this Chamber as factually supported and sufficiently specific.¹⁵ The Prosecution considers that the charged time-frame being "*on or about 26 October 2002 to 15 March 2003*" permits applicants to claim victim status if they allege they were victims of acts that occurred close to the specified dates and within a general margin of appreciation.

¹⁰ The representative alleges that on 15 March 2003, MLC troops pillaged and destroyed his school in Bangui.

¹¹ The Prosecution recalls that Trial Chamber I in the *Lubanga* case granted procedural status to a legal person to participate as a victim in that case. See ICC-01/04-01/06-1556-Corr-Anx-1, Annex to the Corrigendum to the Decision on the applications by victims to participate in the proceedings, 13 January 2009, at para. 111.

¹² These Applicants allegedly suffered rape, pillaging and murder of relatives. All applicants identify the MLC soldiers as perpetrators. A number of factors may account for the nature of the dates provided by these applicants. These factors may include but are not limited to; lapse of memory given the passage of time of these events as well as the effect of traumatising and their attendant consequences on these victims.

¹³ Applicant a/0025/10 acts on behalf of her niece and adopted daughter, claiming physical and psychological harm caused by rape, which she attributes to the MLC "*around*" 20 October 2002. Applicant a/0161/10 states that "*once in October/ and once on 20 October 2002*" soldiers from Zaire (i.e., the DRC) raped her and pillaged her house in Bégoua, causing her physical and psychological damage and material loss. Applicant a/0163/10 states that on 22 October 2002, Banyamulenge pillaged her home in Bégoua and kidnapped her niece; she later discovered that the niece had been raped. Applicant a/0164/10 states that she was raped by Banyamulenge on 22 October 2002. Applicant a/0181/10 asserts that on 18 March 2003, he witnessed Bemba's troops rape his wife and pillage his property in Lobaye. He was taken into captivity, and on his return home discovered his daughter had been killed by the Banyamulenge. Applicant a/0301/10 asserts that on 16 March 2003, at a (redacted) location in DRC, Bemba's men raped her and two other women passengers of a boat taken hostage from Nzinga, (30km from Mongoumba) and pillaged their property.

¹⁴ 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, at para. 254

¹⁵ 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.

13. Since these applicants meet all other requirements for participation at trial, and the dates are sufficiently close to the alleged dates and within an appreciable margin provided by “*on or about*”, the Prosecution submits that these applicants should be allowed to participate in the proceedings. Alternatively, the Prosecution notes, the particular circumstances of this case - in particular, that the troops are identified as being from outside the CAR and they did not regularly make day trips across from the Democratic Republic of the Congo to the CAR to commit incidental crimes - make it clear that any discrepancies in dates would be attributable to inadvertent error by the applicants. But should the Chamber consider these dates insufficient for participation of these applicants, the Prosecution suggests that these applicants be requested to provide additional information.

14. The applications submitted by applicants a/0015/10, a/0020/10, a/0173/10, a/0176/10, a/0177/10, a/0181/10, a/307/10, a/318/10, a/321/10, a/0328/10, a/0656/10 and a/0669/10 provide identity documents that are not on the list of documents previously cited as acceptable by the Pre-Trial Chamber and endorsed by the Chamber.¹⁶ These Applicants submitted electoral cards, work contracts and student identity cards as proof of identity.¹⁷ The documents should be considered as proof of identity because, as the Chamber recognises, the list of documents developed as proof of identity is not exhaustive. The Chamber’s list is merely a sample of the types of documents that have been used by Chambers of this Court in determining proof of identity.¹⁸ If the Chamber concludes that any or all of these proofs of identity are insufficient, the Prosecution suggests that these applicants be requested to provide additional information.

¹⁶ 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.

¹⁷ Applicant a/0015/10 submits an electoral card. Applicant a/0020/10 submits a student identity card 2008-2009. Applicant a/0173/10 provides a redacted electoral card. Applicant a/0176/10 also provides a redacted electoral card. Applicant a/0177/10 provides a redacted student card. Applicant a/0181/10 provides a redacted electoral card. Applicant a/307/10 provides a redacted student identity card. Applicant a/318/10 provides a redacted student identity card. Applicant a/321/10 provides both a redacted electoral card and a work contract (*Contrat d’engagement*) and Applicant a/0328/10 provides a redacted student card.

¹⁸ ICC-01/05-01/08-699 at para.36.

15. The applications submitted by applicants a/0005/10 and a/0008/10 do not assert in their individual accounts any crime related to a count confirmed by the Confirmation Decision.¹⁹ The Prosecution suggests that these applications be deferred until clarification is obtained on the link between harm suffered and the charges confirmed against the Accused.

V. Conclusion

16. For the foregoing reasons, the Prosecution requests the Chamber to grant the following applicants authorization to participate as victims in the proceedings at the trial stage: a/0553/08, a/0431/09, a/0661/09, a/0662/09, a/0663/09, a/0664/09, a/0665/09, a/0667/09, a/0800/09, a/0801/09, a/0001/10, a/0002/10, a/0003/10, a/0004/10, a/0006/10, a/0007/10, a/0010/10, a/0011/10, a/0012/10, a/0013/10, a/0014/10, a/0015/10, a/0016/10, a/0017/10, a/0018/10, a/0019/10, a/0020/10, a/0021/10, a/0023/10, a/0024/10, a/0025/10, a/0129/09, a/0155/10, a/0156/10, a/0157/10, a/0158/10, a/0159/10, a/0160/10, a/0161/10, a/0162/10, a/0163/10, a/0164/10, a/0165/10, a/0166/10, a/0167/10, a/0168/10, a/0169/10, a/0170/10, a/0171/10, a/0172/10, a/0173/10, a/0174/10, a/0175/10, a/0176/10, a/0177/10, a/0178/10, a/0179/10, a/0180/10, a/0181/10, a/0182/10, a/0183/10, a/0184/10, a/0185/10, a/0186/10, a/0187/10, a/0188/10, a/0189/10, a/0190/10, a/0191/10, a/0192/10, a/0193/10, a/0194/10, a/0195/10, a/0196/10, a/0197/10, a/0198/10, a/0199/10, a/0200/10, a/0201/10, a/0202/10, a/0203/10, a/0204/10, a/0205/10, a/0206/10, a/0207/10, a/0209/10, a/0210/10, a/0211/10, a/0212/10, a/0213/10, a/0214/10, a/0215/10, a/0297/10, a/0298/10, a/0299/10, a/0300/10, a/0301/10, a/0302/10, a/0303/10, a/0304/10, a/0305/10, a/0306/10, a/0307/10, a/0308/10, a/0309/10, a/0310/10, a/0311/10, a/0312/10, a/0313/10, a/0314/10, a/0315/10, a/0316/10, a/0317/10, a/0318/10, a/0319/10, a/0320/10, a/0321/10, a/0322/10, a/0323/10, a/0324/10, a/0325/10, a/0326/10, a/0327/10, a/0328/10, a/0329/10, a/0330/10, a/0331/10, a/0332/10, a/0644/10, a/0645/10, a/0646/10, a/0647/10, a/0648/10, a/0649/10, a/0650/10, a/0651/10, a/0652/10, a/0653/10, a/0654/10, a/0655/10, a/0656/10, a/0657/10, a/0658/10,

¹⁹ ICC-01/05-01/08-424.

a/0659/10, a/0660/10, a/0661/10, a/0662/10, a/0663/10, a/0664/10, a/0665/10, a/0666/10, a/0667/10, a/0668/10, a/0669/10, a/0670/10, a/0671/10, a/0672/10, a/0673/10, a/0674/10, a/0675/10, a/0676/10, a/0677/10, a/0678/10, a/0679/10, a/0680/10, a/0681/10, a/0682/10, a/0683/10, a/0684/10, a/0685/10, a/0686/10, a/0687/10, a/0688/10, a/0689/10, a/0690/10, a/0691/10, a/0692/10, a/0693/10, a/0694/10, a/0695/10, a/0696/10, a/0697/10, a/0698/10, a/0699/10, a/0702/10, a/0703/10, a/0704/10, a/0705/10 and a/0706/10, pursuant to Rule 89(1) of the Rules and Article 68(3) of the Statute.

17. The Prosecution submits that applicants a/0005/10 and a/0008/10 should be requested to provide further information on the link between the harm suffered and the charges confirmed against the Accused, with the assistance of the VPRS.



Luis Moreno Ocampo, Prosecutor

Dated this 19th day of August 2010

At The Hague, The Netherlands