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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 176 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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Introduction

1. Pursuant to Rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and the oral order (“Order”)¹ issued by Trial Chamber III (“Chamber”) at the status conference held on 24 September 2010, the Office of the Prosecutor (“Prosecution”) submits the following observations on the applications for participation in the trial proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, transmitted to the parties and legal representatives by the Victims Participation and Reparations Section (“VPRS”) on 1 October 2010.²

2. For the reasons detailed below, the Prosecution requests the Chamber to grant authorization to participate as victims in the above-mentioned proceeding, pursuant to Article 68(3) of the Rome Statute (“Statute”), to 156 applicants, as they *prima facie* meet the requirements. The Prosecution submits that Applicants a/1369/10, a/1269/10, a/1626/10 and a/1598/10 can be presumed to meet the requirements, although they omit information in their applications. The Prosecution further submits that redactions make it difficult to assess whether Applicants a/1387/10, a/1410/10, a/1411/10, a/1305/10, a/1307/10, a/1313/10, a/1342/10, a/2216/10 and a/2220/10 meet the requirements. The Prosecution leaves it to the Chamber to determine whether Applicants a/1398/10, a/1399/10, a/1729/10 and a/1743/10 should provide additional documentation to prove their identity. The Chamber should defer its decision on the Applications of a/1333/10, a/1423/10, a/1426/10 and a/1309/10, pending further information.

¹ ICC-01/05-01/08-T-25-CONF-ENG, 24 September 2010, page 24, lines 4-6. The Chamber requested the parties to present their observations on each set of victims’ applications within ten days of the notification.

² ICC-01/05-01/08-914, Fourth transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings, 1 October 2010.

Background

3. On 24 September 2010, the Chamber requested the parties to present their observations on each set of victims' applications that would be transmitted within 10 days of their notification.³

4. As regards the applications transmitted on 1 October 2010, all the 176 applicants are natural persons. All applicants request to be allowed to participate in the trial proceedings against Jean-Pierre Bemba Gombo ("Accused").

Legal criteria for victim participation in the proceedings

5. The Prosecution considers that victims' participation before the Court is an essential feature of the Rome 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.

6. The Prosecution supports victims' participation when all statutory requirements are met. Consistent with its view of the unique and necessary perspective victims lend to the proceedings, the Prosecution supports a liberal approach in permitting applicants to amend or clarify deficient applications, if possible.

7. The Appeals Chamber has determined that an applicant must meet the following requirements before the Court will authorize participation as a victim in the proceedings under Article 68(3) of the Statute:

³ ICC-01/05-01/08-T-25-CONF-ENG, 24 September 2010, page 24, lines 4-6.

- (i) the applicant qualifies as a victim pursuant to Rule 85 of the Rules;
- (ii) the applicant's personal interests are affected by legal or factual issues raised in the proceedings at hand.⁴

8. With respect to first requisite - qualification as 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 applicant wishes to participate:

- (i) the applicant must be a natural person as set forth in Rule 85(a) 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

9. Applicants are required to make a *prima facie* showing that these four requisites are met.⁶ In reviewing applications, Chambers will generally not delve into the credibility of applicants' statements or require rigorous corroboration.⁷ Rather, Chambers will "assess the applicants' statements first and foremost on the merits of

⁴ ICC-01/04-556 OA4 OA5 OA6, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I Decision of 24 December 2007, 19 December 2008, at para. 45; ICC-01/04-01/06-1335 OA9 OA10, Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled "Decision on Victims' Participation, 16 May 2008, at para. 36.

⁵ 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, page 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 ICC-02/05-01/07-58, Decision on 6 Applications for Victims' Participation in the Proceedings, 17 June 2010, at para. 7; ICC-01/04-01/07-579, Public Redacted Version of the "Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case", 10 June 2008, at para. 67.

⁷ ICC-01/04-01/07-579, at para. 67.

their intrinsic coherence, as well as on the basis of the information otherwise available” to the Chamber.⁸

10. The first step in the determination of whether the applicant is a “natural person” within the meaning of Rule 85 of the Rules is an inquiry into whether the applicant has provided adequate proof of identity.⁹ Chambers have recognized that a balance must be achieved between the need to establish an applicant’s identity with certainty, on the one hand, and the applicant’s personal circumstances, on the other.¹⁰ Bearing in mind that the chaotic circumstances present in a given situation may preclude applicants from obtaining or producing copies of official identity papers and to ensure that victims are not unfairly deprived of the opportunity to participate, Chambers have considered non-official identification documents or, in appropriate cases, a statement signed by two credible witnesses attesting to the identity of the applicant.¹¹ Further, “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.”¹²

11. The established jurisprudence requires that there be a causal link between the charges and the harm. Whether the applicant is seeking to participate in the pre-trial or trial proceedings in a particular case, the harm suffered by the applicant must have a demonstrable link to the charges to be tried in the case.¹³ “If the applicant is unable to demonstrate a link between the harm suffered and the particular crimes charged, then even if his or her personal interests are affected by an issue in the trial,

⁸ *Ibid*, paras. 67, 132

⁹ ICC-02/04-179 OA, Judgment on the appeals of the Defence against the decisions entitled “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, 23 February 2009, at paras. 35-38; ICC-01/04-01/06-1119, Decision on victims’ participation, 18 January 2008, at para. 87.

¹⁰ ICC-01/04-01/06-1119, at para. 87.

¹¹ *Ibid*, at para. 88; ICC-01/04-01/07-579, at paras. 44-59.

¹² ICC-02/05-02/09-147-Red, Public Redacted Version of “Decision on the 52 Applications the Pre-Trial Stage of the Case” for Participation at the Pre-Trial Stage of the Case”, 9 October 2009, at para. 6; *see also* ICC-02/04-179 OA, at paras. 35-38.

¹³ 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, at paras. 2, 62-65 (“For the purposes of participation in the trial proceedings, the harm alleged by a victim and the concept of personal interests under article 68(3) of the Statute must be linked with the charges confirmed against the accused.”).

it would not be appropriate under Article 68(3) of the Statute, in conjunction with Rules 85 and 89(1) of the Rules, for his or her views and concerns to be presented.”¹⁴

Factual analysis of the applications

A. Applications that *prima facie* meet the requirements for victim participation

12. The Prosecution submits that the following Applicants, all natural persons, unqualifiedly meet all of the requirements under Article 68(3) of the Statute for participation in the proceedings at the trial stage: a/0742/10, a/0743/10, a/0745/10, a/0758/10, a/0799/10, a/0851/10, a/0853/10, a/0854/10, a/0871/10, a/0882/10, a/0883/10, a/0902/10, a/0930/10, a/0938/10, a/0951/10, a/0955/10, a/0963/10, a/0964/10, a/0968/10, a/0971/10, a/0972/10, a/0973/10, a/0974/10, a/0983/10, a/0999/10, a/1011/10, a/1030/10, a/1039/10, a/1288/10, a/1299/10, a/1300/10, a/1301/10, a/1302/10, a/1303/10, a/1304/10, a/1306/10, a/1308/10, a/1310/10, a/1311/10, a/1312/10, a/1315/10, a/1316/10, a/1317/10, a/1318/10, a/1320/10, a/1321/10, a/1322/10, a/1323/10, a/1324/10, a/1325/10, a/1326/10, a/1328/10, a/1329/10, a/1330/10, a/1331/10, a/1332/10, a/1334/10, a/1335/10, a/1336/10, a/1337/10, a/1338/10, a/1339/10, a/1340/10, a/1341/10, a/1395/10, a/1396/10, a/1394/10, a/1388/10, a/1400/10, a/1380/10, a/1381/10, a/1382/10, a/1383/10, a/1384/10, a/1385/10, a/1389/10, a/1390/10, a/1391/10, a/1392/10, a/1393/10, a/1407/10, a/1408/10, a/1409/10, a/1343/10, a/1347/10, a/1348/10, a/1349/10, a/1351/10, a/1413/10, a/1386/10, a/1346/10, a/1412/10, a/1345/10, a/1352/10, a/1728/10, a/1731/10, a/1732/10, a/1733/10, a/1734/10, a/1735/10, a/1736/10, a/1737/10, a/1738/10, a/1739/10, a/1740/10, a/1742/10, a/1744/10, a/1745/10, a/1759/10, a/1778/10, a/1800/10, a/1815/10, a/1926/10, a/1940/10, a/1949/10, a/1955/10, a/1977/10, a/1987/10, a/2011/10, a/2212/10, a/2222/10, a/2241/10, a/1414/10, a/1415/10, a/1416/10, a/1417/10, a/1418/10, a/1419/10, a/1420/10, a/1421/10, a/1422/10, a/1424/10, a/1425/10, a/1427/10, a/1436/10, a/1438/10, a/1478/10, a/1490/10, a/1493/10, a/1499/10, a/1513/10, a/1515/10, a/1521/10, a/1545/10, a/1561/10, a/1573/10, a/1577/10, a/1585/10, a/1597/10, a/1599/10, a/1722/10, a/1724/10, a/1725/10, a/1726/10.

¹⁴ ICC-01/04-01/06-1432 OA9 OA10, at para. 64.

13. The applications submitted by Applicants a/1410/10 and a/1727/10 respectively provide a vaccination card and a medical document, both issued by the Central African Republic (“CAR”) Ministry of Health, as proof of identity.¹⁵ These items are not included in the list of documents previously cited as acceptable to establish the identity of the victim, by the Pre-Trial Chamber (“PTC”)¹⁶ and endorsed by the Chamber.¹⁷ However, as the Chamber has recognised, the list of documents developed as proof of identity is not exhaustive; it is merely a sample of the types of documents that have been used by Chambers of this Court in determining proof of identity.¹⁸ In the Prosecution’s view, the above-mentioned documents should be considered as sufficient proof of identity. These applicants should therefore be allowed to participate in the trial proceedings. Alternatively, if the Chamber concludes that any or all of these identity documents are insufficient, the Prosecution submits that these applicants be requested to provide adequate proof of identity.

B. Applications that omit relevant information but may be presumed to meet the requirements for participation

14. Applicants a/1369/10, a/1269/10, a/1626/10 and a/1598/10 claim that they were subject to sexual violence, but do not specifically allege that they were raped by the troops of the *Mouvement de Libération du Congo*. In light of the similarity of the crimes allegedly suffered by these applicants to the crime of rape with which the Accused is charged,¹⁹ the Prosecution submits that these applicants’ claims indicate a causal link between the charges and the harm they suffered. They, therefore, should be allowed to participate in the trial proceedings. Alternatively, should the Chamber consider this information insufficient, the Prosecution suggests that these applicants be requested to provide clarification with regard to the crimes that they suffered.

¹⁵ Applicant a/1727/10 submitted a document titled “Carte individuelle de traitement à l’ivermectine”.

¹⁶ ICC-01/05-01/08-320, Fourth decision on victims’ participation, 12 December 2008, at paras. 36.

¹⁷ 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.

¹⁸ ICC-01/05-01/08-699, at para.36.

¹⁹ 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, page 185.

C. Applications bearing redactions that may be sufficient to meet the requirements for participation

15. The non-redacted portions of applications from Applicants a/1387/10, a/1410/10,²⁰ a/1411/10, a/1305/10, a/1307/10, a/1313/10, a/1342/10, a/2216/10 and a/2220/10 appear to largely meet the requirements for participation in the trial proceedings against the Accused. However, because of redactions the Prosecution cannot determine whether the crimes against the applicants were committed within the locations of the charges confirmed against the Accused.²¹ The Prosecution therefore submits that the Chamber may determine that there is a sufficient link between the crimes alleged by the applicants and the charges in the instant case. Alternatively, the Prosecution suggests that these applicants be requested to provide additional information.

D. Applications in respect of which, the Prosecution leaves it to the Chamber to determine whether they meet the requirements

16. The applications submitted by Applicants a/1398/10, a/1399/10, a/1729/10 and a/1743/10 provide statements of the chief of their village attesting to their identities. These items are not included in the list of documents previously cited as acceptable to establish the identity of the victim, by the PTC²² and endorsed by the Chamber.²³ The Prosecution is aware that, according to the established jurisprudence of the PTC²⁴ and the Chamber,²⁵ where it is not possible for an applicant to produce one of the documents listed as acceptable, a statement signed by two witnesses attesting to the identity of the applicant will be considered. However, the Prosecution observes

²⁰ The Prosecution further notes that Applicant a/1410/10 provided identity documents (para.12) that are not on the list of documents considered as acceptable by the PTC and endorsed by the Chamber.

²¹ The Prosecution notes that the territorial scope of the charges confirmed against the Accused includes a substantial part of the territory of the CAR. See ICC-01/05-01/08-424, at paras. 117, 150, 188, 277, 322, 333, 486.

²² ICC-01/05-01/08-320, at para. 36.

²³ ICC-01/05-01/08-699, at para. 36.

²⁴ ICC-01/05-01/08-320, at para. 37.

²⁵ ICC-01/05-01/08-699, at para. 36.

that the chief of the village ("*chef de village*") is an official representative at the first level of the politico-administrative structure in CAR, and is elected by his subordinates for a 10-year mandate. As such, his statement can be considered an official document. The Prosecution, therefore, leaves it to the Chamber to determine whether these applicants have proved their identities, or should be requested to provide additional documentation.

E. Applications in respect of which, decisions should be deferred until additional information is provided

17. Applicant a/1333/10 appears to largely meet the requirements for participation in the trial proceedings against the Accused. However, this applicant did not specify the location in which the crimes against her were committed. The Prosecution therefore cannot comment on whether there is a sufficient link between the crimes alleged by the applicant and the charges in the instant case. The Prosecution suggests that this application be deferred until the outstanding information is obtained.

18. Applicants a/1423/10 and a/1426/10 indicate the date of victimization respectively in February 2010 and on 15 March 2010. The time-frame alleged by the Prosecution and upheld in the Confirmation Decision is "on or about 26 October 2002 to 15 March 2003,"²⁶ which the Chamber accepts.²⁷ The Prosecution notes that the indication by the applicants of the year 2010 is likely due to an oversight. However, the Prosecution deems it appropriate that these applications be deferred and that the applicants be given the opportunity to clarify the year of their victimization.

19. Applicant a/1309/10 also appears to meet the requirements for participation. However, this applicant submits as proof of identity a birth certificate in which the

²⁶ ICC-01/05-01/08-424, at para. 254.

²⁷ 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.

year of birth does not match that provided in the relevant section of the application form. The Prosecution therefore suggests that this application be deferred and that the applicant be given the opportunity to clarify this matter.

Conclusion

20. The Prosecution submits that the following Applicants, all natural persons, unqualifiedly meet all of the requirements under Article 68(3) of the Statute for participation in the proceedings at the trial stage: a/0742/10, a/0743/10, a/0745/10, a/0758/10, a/0799/10, a/0851/10, a/0853/10, a/0854/10, a/0871/10, a/0882/10, a/0883/10, a/0902/10, a/0930/10, a/0938/10, a/0951/10, a/0955/10, a/0963/10, a/0964/10, a/0968/10, a/0971/10, a/0972/10, a/0973/10, a/0974/10, a/0983/10, a/0999/10, a/1011/10, a/1030/10, a/1039/10, a/1288/10, a/1299/10, a/1300/10, a/1301/10, a/1302/10, a/1303/10, a/1304/10, a/1306/10, a/1308/10, a/1310/10, a/1311/10, a/1312/10, a/1315/10, a/1316/10, a/1317/10, a/1318/10, a/1320/10, a/1321/10, a/1322/10, a/1323/10, a/1324/10, a/1325/10, a/1326/10, a/1328/10, a/1329/10, a/1330/10, a/1331/10, a/1332/10, a/1334/10, a/1335/10, a/1336/10, a/1337/10, a/1338/10, a/1339/10, a/1340/10, a/1341/10, a/1395/10, a/1396/10, a/1394/10, a/1388/10, a/1400/10, a/1380/10, a/1381/10, a/1382/10, a/1383/10, a/1384/10, a/1385/10, a/1389/10, a/1390/10, a/1391/10, a/1392/10, a/1393/10, a/1407/10, a/1408/10, a/1409/10, a/1343/10, a/1347/10, a/1348/10, a/1349/10, a/1351/10, a/1413/10, a/1386/10, a/1346/10, a/1412/10, a/1345/10, a/1352/10, a/1728/10, a/1731/10, a/1732/10, a/1733/10, a/1734/10, a/1735/10, a/1736/10, a/1737/10, a/1738/10, a/1739/10, a/1740/10, a/1742/10, a/1744/10, a/1745/10, a/1759/10, a/1778/10, a/1800/10, a/1815/10, a/1926/10, a/1940/10, a/1949/10, a/1955/10, a/1977/10, a/1987/10, a/2011/10, a/2212/10, a/2222/10, a/2241/10, a/1410/10, a/1414/10, a/1415/10, a/1416/10, a/1417/10, a/1418/10, a/1419/10, a/1420/10, a/1421/10, a/1422/10, a/1424/10, a/1425/10, a/1427/10, a/1436/10, a/1438/10, a/1478/10, a/1490/10, a/1493/10, a/1499/10, a/1513/10, a/1515/10, a/1521/10, a/1545/10, a/1561/10, a/1573/10, a/1577/10, a/1585/10, a/1597/10, a/1599/10, a/1722/10, a/1724/10, a/1725/10, a/1726/10, a/1727/10.

21. Though Applicants a/1369/10, a/1269/10, a/1626/10 and a/1598/10 omit information in their applications, the Prosecution submits that they can be presumed to meet the requirements; alternatively, the Chamber may request additional information.

22. The Prosecution submits that redactions to applications by Applicants a/1387/10, a/1410/10, a/1411/10, a/1305/10, a/1307/10, a/1313/10, a/1342/10, a/2216/10 and a/2220/10 make it difficult to state with certainty that the applicants meet the requirements. The Chamber may determine that the non-redacted applications meet the requirements. Alternatively, the Chamber may request additional information.

23. The Prosecution leaves it to the Chamber to determine whether Applicants a/1398/10, a/1399/10, a/1729/10 and a/1743/10 have proved their identities or should provide additional documentation.

24. The Prosecution submits that applications made by Applicants a/1333/10, a/1423/10, a/1426/10 and a/1309/10 should be deferred until further information is obtained.



Luis Moreno-Ocampo, Prosecutor

Dated this 14th Day of October 2010

At The Hague, The Netherlands