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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 269 Applications for Victims'
Participation in the Proceedings**

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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 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”) the Office of the Prosecutor (“Prosecution”) submits the following observations on 269 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 the 227 Applicants listed in sections A and B below to participate as victims.

3. The Prosecution submits that Applicants listed in sections C and D below should be requested to submit adequate proof of identity or additional documents and further 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 E below make it difficult to determine whether they 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.

¹ 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, ICC-01/05-01/08-1590, Public Document with confidential ex parte annexes only available to the Registry and the respective common legal representative, 21 July 2011.

5. With regard to the legal criteria for victims' participation in the proceedings, the Prosecution reincorporates here the submissions set out in its previous observations.²

II. Background

6. 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.³ On 7 June 2011, the Chamber informed the parties that, before the start of the summer recess (15 July at the latest), the Victims Participation and Reparation Section ("VPRS") will transmit an additional batch of around 250 to 400 applications received after 1 February 2011. With respect to this transmission, the Chamber instructed that the parties will have until 16 September 2011 to file their observations.⁴

7. On 15 July 2011, the Registry provided the Prosecution with 269 redacted versions of the eleventh set of applications.⁵

8. Out of the 269 Applicants, one of them (Applicant a/0744/10) is an institution.

² Prosecution's Observations on the 192 Applications for Victim's Participation in the Proceedings, ICC-01/05-01/08-858, paragraphs 6-9, Public Document, 19 August 2010; Corrigendum to Prosecution's Observations on 218 Applications for Victim's Participation in the Proceedings, ICC-01/05-01/08-946, paragraphs 5-12, Public Document with Public Annex A, 14 October 2010; Prosecution's Observations on 176 Applications for Victims' Participation in the Proceedings, ICC-01/05-01/08-952, paragraphs 5-11, Public Document, 14 October 2010.

³ Trial Chamber III, Status Conference Transcript (ENG) ICC-01/05-01/08-T-25, page 24 lines 23-25 and page 25 lines 1-3, 24 September 2010.

⁴ Information related to forthcoming transmissions of applications for victims' participations, Email from the Legal Officer of the Pre-Trial Division addressed to the parties in the proceedings, 7 June 2011.

⁵ Eleventh transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, ICC-01/05-01/08-1605, Public Document with confidential annexes available to the Defence, the Office of the Prosecutor and the Legal Representatives of the Applicants, 15 July 2011.

III. Factual analysis of the applications

A. Applications that meet the requirements for victim participation

9. The Prosecution submits that the following 213 Applicants meet all of the requirements under Article 68(3) for participation in the trial proceedings of this case:

a/0595/08, a/0022/10, a/0726/10, a/0744/10, a/1022/10, a/1353/10, a/0186/11, a/0187/11, a/0188/11, a/0189/11, a/1984/11, a/0191/11, a/0192/11, a/0193/11, a/0195/11, a/0196/11, a/0197/11, a/0198/11, a/0199/11, a/0202/11, a/0203/11, a/0206/11, a/0207/11, a/0208/11, a/0209/11, a/0210/11, a/0211/11, a/0212/11, a/0213/11, a/0215/11, a/0216/11, a/0217/11, a/0219/11, a/0220/11, a/0221/11, a/0222/11, a/0223/11, a/0224/11, a/0225/11, a/0226/11, a/0227/11, a/0229/11, a/0230/11, a/0231/11, a/0232/11, a/0234/11, a/0235/11, a/0236/11, a/0237/11, a/0238/11, a/0239/11, a/0240/11, a/0241/11, a/0242/11, a/0243/11, a/0244/11, a/0246/11, a/0247/11, a/0248/11, a/0250/11, a/0251/11, a/0252/11, a/0253/11, a/0254/11, a/0258/11, a/0259/11, a/0272/11, a/0273/11, a/0274/11, a/0275/11, a/0276/11, a/0277/11, a/0278/11, a/0279/11, a/0281/11, a/0282/11, a/0283/11, a/0284/11, a/0285/11, a/0286/11, a/0287/11, a/0288/11, a/0289/11, a/0290/11, a/0291/11, a/0292/11, a/0293/11, a/0294/11, a/0295/11, a/0296/11, a/0297/11, a/0299/11, a/0300/11, a/0301/11, a/0302/11, a/0303/11, a/0304/11, a/0305/11, a/0306/11, a/0308/11, a/0309/11, a/0310/11, a/0313/11, a/0314/11, a/0315/11, a/0316/11, a/0319/11, a/0320/11, a/0321/11, a/0322/11, a/0323/11, a/0324/11, a/0325/11, a/0326/11, a/0327/11, a/0328/11, a/0329/11, a/0330/11, a/0331/11, a/0332/11, a/0333/11, a/0335/11, a/0336/11, a/0337/11, a/0338/11, a/0339/11, a/0340/11, a/0341/11, a/0342/11, a/0343/11, a/0345/11, a/0346/11, a/0347/11, a/0348/11, a/0349/11, a/0350/11, a/0351/11, a/0352/11, a/0353/11, a/0354/11, a/0355/11, a/0356/11, a/0357/11, a/0358/11, a/0359/11, a/0360/11, a/0361/11, a/0362/11, a/0363/11, a/0365/11, a/0366/11, a/0369/11, a/0370/11, a/0372/11, a/0373/11, a/0374/11, a/0375/11, a/0376/11, a/0378/11, a/0380/11, a/0381/11, a/0382/11, a/0383/11, a/0384/11, a/0386/11, a/0387/11, a/0388/11, a/0389/11,

a/0390/11, a/0391/11, a/0392/11, a/0393/11, a/0394/11, a/0395/11, a/0396/11, a/0398/11, a/0399/11, a/0400/11, a/0402/11, a/0403/11, a/0405/11, a/0406/11, a/0407/11, a/0409/11, a/0412/11, a/0413/11, a/0421/11, a/0423/11, a/0424/11, a/0425/11, a/0426/11, a/0427/11, a/0428/11, a/0431/11, a/0432/11, a/0433/11, a/0434/11, a/0435/11, a/0436/11, a/0437/11, a/0438/11, a/0439/11, a/0440/11, a/0441/11, a/0442/11, a/0443/11, a/0444/11, a/0445/11, a/0446/11, a/0447/11, a/0448/11, a/0449/11 and a/0450/11.

B. Applications that, though incomplete, may be deemed to meet the requirements for victim participation

10. Applicants a/0228/11, a/0280/11 and a/0419/11 presented, for identification purposes, documents not listed in previous Chamber's decisions.⁶ The documents however, contain similar features to those contained in the examples provided by the Chamber in these decisions. The Prosecution accordingly considers them sufficient to establish their identities.

11. Sections F and G are missing from Applicant's a/0418/11 application form. However, the Prosecution, in line with the Chamber's decision,⁷ considers this application complete.

12. The Prosecution notes that the date of the event given in the additional statements of Applicants a/2156/10, a/2161/10 and a/2169/10 is different from the one indicated in their original applications. The statement of Applicant a/1261/10 refers to

⁶ Decision on 772 applications by victims to participate in the proceedings, ICC-01/05-01/08-1017, paragraphs 40 and 42, Public Document with confidential ex parte annexes only available to the Registry and the respective common legal representative, 18 November 2010. Applicant's a/0280/11 document also states that the issuing authority has verified the Applicant's identity through his birth certificate.

⁷ Decision on 772 applications by victims to participate in the proceedings, ICC-01/05-01/08-1017, paragraph 39, Public Document with confidential ex parte annexes only available to the Registry and the respective common legal representative, 18 November 2010.

a three months absence from his house during the period in which, in section D of his application, he states that the events happened (*i.e.* between 25 October 2002 and 15 March 2003.) Applicants a/2156/10, a/0410/11, a/0411/11, a/0415/11 and a/0416/11 mention only the month of March 2003 as the time of the events. However, these Applicants identify the perpetrators as the *Mouvement de Libération du Congo* ("MLC") troops. The Prosecution considers that the MLC's presence and the specific given locations of the events demonstrate that the crimes 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'.⁸ For all of the Applicants in this paragraph, the Prosecution considers that, in line with the Chamber's Decision,⁹ they have established, *prima facie*, the causal link between the harm suffered and the crimes committed within the confirmed time-frame.

13. In regard to Applicant a/0379/11 the Prosecution notes that whilst the Applicant meets the requirements for victim participation, she has not provided any documents in relation to her father's death, and the date of death in the Applicant's sister's death certificate is not clear and is partially redacted. Also, whilst Applicant a/0719/10 meets the requirements for participation, it is not clear from the information she provides whether the death of her husband is attributed to the MLC. Therefore, while the Prosecution supports these applications, it is suggested that these applicants be invited to provide further information and documents in relation to the death of their close relatives.

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

⁸ 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, ICC-01/05-01/08-836, paragraph 51, Public Document, 20 July 2010.

⁹ Decision on 772 applications by victims to participate in the proceedings, ICC-01/05-01/08-1017, paragraphs 54 and 55, Public Document with confidential ex parte annexes only available to the Registry and the respective common legal representative, 18 November 2010.

14. Applicants a/0271/11 and a/0311/11 state that they do not remember the date in February when the events occurred and provide no year for such events. Also, the name of the document on page 2 of Applicant a/0311/11's application is illegible. Applicant a/0312/11 merely states that the events took place in 2002 without any further specific time-frame. Applicant a/0318/11 states that the events took place in 2003 without any further specific time-frame. Applicants a/0205/11 and a/0257/11 both state that they do not remember the date of the events. Applicants a/0204/11 and a/0233/11 provide no date or month for the events. Applicants a/0218/11 and a/0245/11 provide no date or year for the events.

15. As stated in paragraph 12, the time-frame alleged by the Prosecution and upheld by the Chamber, is 'on or about 26 October 2002 to 15 March 2003'. 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. However, in respect to all of the Applicants in the above paragraph, the Prosecution submits that it is difficult to establish the causal link between their personal harm and the crimes charged within the alleged time-frame. The Prosecution suggests that the decision on all of these applications be deferred and the Applicants be given the opportunity to clarify or provide further information on the dates of the events.

16. The year of birth in the identification documents presented by Applicants a/0194/11, a/0404/11, a/0408/11 and a/0430/11 is different from the one written in their respective application forms.¹⁰ In addition to the discrepancy above, the Prosecution notes that Applicant a/0430/11 has not specified the location of the crimes and that, based on the information provided, it is unclear whether Applicant a/0408/11 is also a rape victim.

¹⁰ In the case of Applicant a/048/11, the discrepancy makes a difference of 20 years.

17. Therefore, the Prosecution suggests that the decision on all of these applications be deferred and that the respective Applicants be given the opportunity to clarify or provide further information on the existing discrepancies, location of the crimes or on the ambiguity of the rape victim status.

D. Applications in respect of which decision should be deferred until additional documents are provided

18. Applicant a/0307/11 provides as proof of identity a vaccination card which, in line with the Chamber's decision,¹¹ is considered insufficient to establish his identity. The date of birth in the identification card provided by Applicant a/1410/10 is illegible. The Prosecution also notes that in relation to this Applicant, it is difficult to assess the spatial requirement due to the redactions to the location of the crimes. Applicant a/0429/11 provides no proof of identity. From the information provided by Applicant a/0417/11, it is unclear whether the death of his son is attributed to the MLC soldiers. In regard to all Applicants listed in this paragraph, the Prosecution suggests that the decision on their applications be deferred and the Applicants be requested to submit adequate proof of identity or additional documents and further information to establish the causal link between the harm suffered by the Applicants and the crimes committed against them or their family members.

E. 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

¹¹ Decision on 772 applications by victims to participate in the proceedings, ICC-01/05-01/08-1017, paragraph 42, Public Document with confidential ex parte annexes only available to the Registry and the respective common legal representative, 18 November 2010.

19. The applications submitted by Applicants a/1748/10, a/2194/10, a/0255/11, a/0256/11, a/0260/11, a/0261/11, a/0262/11, a/0263/11, a/0264/11, a/0265/11, a/0266/11, a/0267/11, a/0268/11, a/0269/11, a/0270/11, a/0364/11, a/0367/11, a/0368/11, a/0371/11, a/0414/11 and a/0420/11 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.

20. In addition to the difficulty in determining the location of the crime for Applicant a/0262/11, the date of birth on his birth certificate is illegible. For Applicant a/0401/11, the year of birth is partially redacted on the birth certificate. The identifying document for Applicants a/0214/11 and a/0249/11 is fully redacted. 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 the applicants provided adequate proof of identity or to request additional documents or information.

Conclusion

21. The Prosecution submits that the 227 Applicants listed in sections A and B above meet all the requirements under Article 68(3) to participate as victims in the trial proceedings.

22. The Prosecution submits that Applicants a/1410/10, a/0194/11, a/0204/11, a/0205/11, a/0218/11, a/0233/11, a/0245/11, a/0257/11, a/0271/11, a/0307/11, a/0311/11,

a/0312/11, a/0318/11, a/0404/11, a/0408/11, a/0417/11, a/0429/11 and a/0430/11, listed in sections C and D above, should be requested to submit adequate proof of identity or additional documents and further information to establish the causal link between the harm suffered and the crimes committed against them or their family members.

23. The Prosecution leaves it to the Chamber to make a determination as to whether Applicants a/1748/10, a/2194/10, a/0214/11, a/0249/11, a/0255/11, a/0256/11, a/0260/11, a/0261/11, a/0262/11, a/0263/11, a/0264/11, a/0265/11, a/0266/11, a/0267/11, a/0268/11, a/0269/11, a/0270/11, a/0364/11, a/0367/11, a/0368/11, a/0371/11, a/0401/11, a/0414/11 and a/0420/11 listed in section E above, provided adequate proof of identity or sufficient information to demonstrate a link between the harm alleged by them and the charges in these proceedings, or to request additional documents or information.



Luis Moreno-Ocampo, Prosecutor

Dated this 19th day of September, 2011

At The Hague, The Netherlands