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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 206 Applications for Victims'
Participation in the Proceedings**

Source: Office of the Prosecutor

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I. Introduction

1. Pursuant to Rule 89(1) of the Rules of Procedure and Evidence (“Rules”), 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’ applications’² (“Order”), the Office of the Prosecutor (“Prosecution”) submits the following observations on 206 applications for participation in the trial proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

2. The Prosecution reincorporates its previous observations regarding the legal criteria for victims’ participation in the proceedings.³

3. 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) to the 197 Applicants listed in sections A and B below.

4. The Prosecution submits that the Applicants listed in section C below should be requested to provide clarifications or submit further information to establish the

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.

² Decision setting a timeline for the filing of observations on pending victims’ applications, ICC-01/05-01/08-1726, paragraphs 7 and 8(a), Public-URGENT Document, 9 September 2011.

³ 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.

causal link between the harm suffered and the crimes committed against them or their family members.

5. The Prosecution submits that redactions applied to the applications submitted by the Applicants listed in Section D 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.

6. The Prosecution submits that the Applicants listed in Section E below do not meet all the requirements for participation.

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 Reparation 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

⁴ 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.

⁵ Decision setting a timeline for the filing of observations on pending victims’ applications, ICC-01/05-01/08-1726, paragraphs 3, 4, 7 and 8(a), Public-URGENT Document, 9 September 2011.

8. On 9 September 2011, the Registry provided the Prosecution with 206 redacted versions of the twelfth 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 186 Applicants meet all of the requirements under Article 68(3) for participation in the trial proceedings of this case:

a/0001/11, a/0002/11, a/0003/11, a/0004/11, a/0451/11, a/0452/11, a/0453/11, a/0454/11, a/0455/11, a/0456/11, a/0458/11, a/0459/11, a/0460/11, a/0461/11, a/0462/11, a/0463/11, a/0464/11, a/0465/11, a/0466/11, a/0467/11, a/0468/11, a/0469/11, a/0470/11, a/0471/11, a/0472/11, a/0473/11, a/0475/11, a/0476/11, a/0478/11, a/0479/11, a/0480/11, a/0481/11, a/0482/11, a/0483/11, a/0484/11, a/0485/11, a/0488/11, a/0489/11, a/0490/11, a/0491/11, a/0493/11, a/0494/11, a/0495/11, a/0496/11, a/0497/11, a/0498/11, a/0499/11, a/0500/11, a/0502/11, a/0504/11, a/0505/11, a/0506/11, a/0507/11, a/0508/11, a/0509/11, a/0512/11, a/0513/11, a/0514/11, a/0515/11, a/0516/11, a/0517/11, a/0519/11, a/0520/11, a/0521/11, a/0522/11, a/0523/11, a/0524/11, a/0525/11, a/0526/11, a/0527/11, a/0528/11, a/0529/11, a/0530/11, a/0532/11, a/0533/11, a/0534/11, a/0535/11, a/0536/11, a/0555/11, a/0556/11, a/0557/11, a/0558/11, a/0560/11, a/0561/11, a/0562/11, a/0563/11, a/0564/11, a/0565/11, a/0566/11, a/0567/11, a/0568/11, a/0570/11, a/0571/11, a/0572/11, a/0573/11, a/0575/11, a/0576/11, a/0577/11, a/0578/11, a/0579/11, a/0580/11, a/0581/11, a/0582/11, a/0583/11, a/0584/11, a/0585/11, a/0586/11, a/0587/11, a/0588/11, a/0589/11, a/0590/11, a/0591/11, a/0592/11, a/0593/11, a/0594/11, a/0595/11, a/0596/11, a/0599/11, a/0600/11, a/0601/11, a/0602/11, a/0603/11, a/0604/11, a/0605/11, a/0606/11, a/0607/11, a/0608/11, a/0612/11,

⁶ Twelfth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, ICC-01/05-01/08-1724, Public Document with confidential annexes available to the Defence, the Office of the Prosecutor and the Legal Representatives of the Applicants, 9 September 2011.

a/0613/11, a/0614/11, a/0615/11, a/0617/11, a/0621/11, a/0622/11, a/0623/11, a/0624/11, a/0625/11, a/0626/11, a/0627/11, a/0628/11, a/0629/11, a/0630/11, a/0631/11, a/0632/11, a/0633/11, a/0635/11, a/0638/11, a/0666/11, a/0668/11, a/0669/11, a/0671/11, a/0672/11, a/0673/11, a/0674/11, a/0675/11, a/0676/11, a/0677/11, a/0678/11, a/0679/11, a/0680/11, a/0681/11, a/0682/11, a/0683/11, a/0686/11, a/0687/11, a/0688/11, a/0689/11, a/0690/11, a/0692/11, a/0693/11, a/0694/11, a/0695/11, a/0696/11, a/0697/11, a/0698/11, a/0699/11, a/0700/11, a/0701/11, a/0702/11, a/0703/11, a/2199/10, a/3174/10, a/3179/10, a/3180/10, a/3181/10 and a/3183/10.

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

10. In regard to Applicant a/0477/11 the Prosecution notes that the Applicant meets all the requirements for participation as a victim of pillaging. However, he also vaguely refers in section C of his application to harm suffered by his mother. The Prosecution submits that he should be invited to provide further information and/or clarification as to the causes of the harm suffered by his mother, and whether he intends to apply on her behalf.

11. Applicant a/0486/11, a victim of pillaging, gives a time frame of the events from 18 January 2002 until 15 March 2003. Although Applicants a/0559/11, a/0569/11 and a/0574/11 do not provide an exact date for the events mentioned in their respective applications, all of them provide sufficient information which, if compared with the specifications provided by other applicants from the same locations, point to 5 March 2003 as the time of the events. Applicants a/0619/11 and a/0620/11 state that the crimes occurred on 18 March 2003. Applicant a/0637/11 does not give a specific date for the crimes suffered by her daughter. However, she states that her daughter

suffered from what Bemba's men did to her, from February 2003 until the day she died.

12. The Prosecution notes that all of the Applicants listed in paragraph 11 identify the "*Mouvement de Libération du Congo*" ("MLC") as the perpetrators of the crimes. Therefore, the Prosecution considers, in line with the Chamber's decision,⁷ that this identification, coupled with the presence of the MLC at the given locations and the respective information on the time of the events, demonstrates 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 The Prosecution, therefore, submits that these Applicants have established, *prima facie*, the causal link between the harm suffered and the crimes committed within the applicable time frame.

13. Applicants a/0531/11 and a/0574/11 presented, for identification purposes, documents not listed in previous Chamber's decisions.⁹ However, the Prosecution notes that these documents contain features similar to the examples provided by the Chamber in these decisions and therefore should be considered sufficient to establish their identities.

14. The Prosecution notes a slight discrepancy regarding Applicant a/0597/11's date of birth.¹⁰ However, the Prosecution submits that it does not affect the merits of

⁷ 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.

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 40 and 42, Public Document with confidential ex parte annexes only available to the Registry and the respective common legal representative, 18 November 2010.

¹⁰ In his application form, the Applicant states that his year of birth is 1968 whilst on his birth certificate the year of birth is 1969.

this application, which may be deemed to meet the requirements for victim participation.

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

15. In his application form, Applicant a/0492/11 provides information on crimes that do not form part of the charges against the accused. However, he also provides information that, if further clarified, may establish that he was a victim of pillaging. For example, in section C of his application, he states that subsequent to his beating by Bemba's men, his wife abandoned him because he became poorer and could no longer provide for the family. The Prosecution suggests that this Applicant be requested to provide further information to establish whether he was also a victim of pillaging, which forms part of the charges against Mr. Bemba ("the Accused").

16. Applicants a/0518/11, a/0610/11 and a/0611/11 do not provide any information in regard to the time frame of the events described in their application forms. 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 the above-mentioned Applicants, the Prosecution finds it difficult to assess whether a causal link between their personal harm and the crimes charged exists. The Prosecution suggests that the decision on their applications be deferred and the Applicants be given the opportunity to clarify or provide further information on the dates of the events.

17. In her previous application, Applicant a/1715/10 asserted that her husband was killed in 2003 and provided, as proof of her husband's death, a death certificate issued by the Mayor. In her additional declaration, the Applicant asserts that her husband was killed in 2002 and provides, as proof of death, a declaration of death by the "*Chef de Quartier*". The Prosecution submits that the apparent discrepancy concerning the date of his death is material, since his death may not fall within the time period of the alleged crimes, and thus calls for further clarification. Therefore, the Prosecution suggests that the decision on her application be deferred and the Applicant be given the opportunity to clarify or provide further information in order to establish, *prima facie*, the nexus between the harm suffered by her and the charges against the Accused.

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

18. Applicant a/0634/11 indicates only her age in the application form. The membership card, provided for her identification, is redacted in a manner that makes it difficult to assess her date of birth. Also, Applicant a/0670/11's birth declaration is redacted in a manner rendering it difficult to determine the Applicant's gender as well as the year of birth. However, the non-redacted portions of these applications appear to largely meet the requirements for participation. Therefore, 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.

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

19. Applicant a/0609/11 provides no information to establish, *prima facie*, that the crimes suffered by him were committed by the MLC. He states that he does not know the origin of the armed men who committed the crimes against him in February 2003. Applicant a/0684/11 states that her house was burnt by the Banyamulengue. The Prosecution notes that this conduct is not included among the crimes charged against the Accused. Therefore, the Prosecution submits that both of the Applicants do not meet the requirements for victim participation in the trial proceedings.

Conclusion

20. The Prosecution submits that the 197 Applicants listed in sections A and B above meet all the requirements under Article 68(3) to participate as victims in the trial proceedings.

21. The Prosecution submits that Applicants a/1715/10, a/0492/11, a/0518/11, a/0610/11 and a/0611/11, listed in section C above, should be requested to provide clarifications or submit further information to establish the causal link between the harm suffered and the crimes committed against them or their family members.

22. The Prosecution leaves it to the Chamber to determine whether Applicants a/0634/11 and a/0670/11, listed in Section D above, provided adequate proof of identity or should be asked to provide additional documents or information.

23. The Prosecution submits that Applicants a/0609/11 and a/0684/11, listed in Section E above, do not meet the requirements for participation.



Luis Moreno-Ocampo,
Prosecutor

Dated this 3rd day of October, 2011

At The Hague, The Netherlands