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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 209 Applications for Victims'
Participation in the Proceedings**

Source: 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, 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 209 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 participate as victims in the above-mentioned proceedings, pursuant to Article 68(3) of the Rome Statute ("Statute"), to applicants listed in sections A and B below.

3. The Prosecution submits that applicants listed in section C below should be requested to provide clarifications or submit further documents or 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 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.

¹ ICC-01/05-01/08-1590-Corr, 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, 21 July 2011.

² ICC-01/05-01/08-1726, Decision setting a timeline for the filing of observations on pending victims' applications, 9 September 2011, at paras. 7 and 8(a).

5. The Prosecution submits that the applicant listed in Section E below does not meet all the requirements for participation.

6. With regard to the legal criteria for victims' participation in the proceedings, the Prosecution reincorporates here the submissions set out in its previous observations.³

II. Background

7. On 24 September 2010, the Chamber ordered the 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

8. On 21 October 2011, the Registry provided the Prosecution with 209 redacted versions of the fourteenth set of applications.⁶

³ ICC-01/05-01/08-858, Prosecution's Observations on the 192 Applications for Victim's Participation in the Proceedings, 19 August 2010, at paras. 6-9; ICC-01/05-01/08-946-Corr, Corrigendum to Prosecution's Observations on 218 Applications for Victim's Participation in the Proceedings, 14 October 2010, at paras. 5-12; ICC-01/05-01/08-952, Prosecution's Observations on 176 Applications for Victims' Participation in the Proceedings, 14 October 2010, at paras. 5-11.

⁴ ICC-01/05-01/08-T-25-CONF-ENG ET, p. 23 line 23 to p. 24 line 3, 24 September 2010.

⁵ ICC-01/05-01/08-1726, at paras. 3, 4, 7 and 8(a).

⁶ ICC-01/05-01/08-1855, Fourteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 21 October 2011.

III. Factual analysis of the applications

A. Applications that meet the requirements for victim participation

9. The Prosecution submits that the following Applicants meet all of the requirements under Article 68(3) of the Statute for participation in the trial proceedings of this case: a/2855/10, a/2860/10, a/0858/11, a/0943/11, a/0944/11, a/0945/11, a/0984/11, a/0985/11, a/0986/11, a/0987/11, a/0989/11, a/0990/11, a/0991/11, a/0992/11, a/0993/11, a/0994/11, a/0995/11, a/0996/11, a/0997/11, a/0999/11, a/1000/11, a/1001/11, a/1002/11, a/1003/11, a/1004/11, a/1005/11, a/1006/11, a/1007/11, a/1008/11, a/1010/11, a/1011/11, a/1012/11, a/1013/11, a/1014/11, a/1035/11, a/1036/11, a/1037/11, a/1038/11, a/1039/11, a/1040/11, a/1041/11, a/1042/11, a/1043/11, a/1044/11, a/1045/11, a/1046/11, a/1047/11, a/1048/11, a/1049/11, a/1050/11, a/1051/11, a/1052/11, a/1053/11, a/1054/11, a/1055/11, a/1056/11, a/1057/11, a/1058/11, a/1059/11, a/1061/11, a/1062/11, a/1063/11, a/1065/11, a/1066/11, a/1067/11, a/1068/11, a/1069/11, a/1070/11, a/1071/11, a/1072/11, a/1073/11, a/1075/11, a/1076/11, a/1077/11, a/1078/11, a/1082/11, a/1083/11, a/1084/11, a/1085/11, a/1086/11, a/1087/11, a/1088/11, a/1089/11, a/1090/11, a/1091/11, a/1092/11, a/1093/11, a/1094/11, a/1097/11, a/1098/11, a/1100/11, a/1101/11, a/1102/11, a/1103/11, a/1104/11, a/1105/11, a/1106/11, a/1107/11, a/1108/11, a/1109/11, a/1110/11, a/1111/11, a/1112/11, a/1113/11, a/1114/11, a/1115/11, a/1116/11, a/1117/11, a/1118/11, a/1119/11, a/1120/11, a/1122/11, a/1123/11, a/1124/11, a/1125/11, a/1126/11, a/1127/11, a/1157/11, a/1158/11, a/1159/11, a/1160/11, a/1161/11, a/1162/11, a/1163/11, a/1164/11, a/1167/11, a/1168/11, a/1169/11, a/1170/11, a/1171/11, a/1172/11, a/1173/11, a/1174/11, a/1175/11, a/1176/11, a/1177/11, a/1179/11, a/1180/11, a/1181/11, a/1182/11, a/1183/11, a/1184/11, a/1185/11, a/1186/11, a/1187/11, a/1188/11, a/1189/11, a/1190/11, a/1191/11, a/1192/11, a/1193/11, a/1195/11, a/1196/11, a/1197/11, a/1198/11, a/1199/11, a/1200/11, a/1201/11, a/1202/11, a/1203/11, a/1204/11, a/1205/11, a/1206/11, a/1207/11, a/1208/11, a/1209/11, a/1210/11, a/1211/11, a/1212/11, a/1213/11, a/1214/11, a/1215/11, a/1216/11, a/1217/11, a/1218/11, a/1219/11, a/1220/11, a/1221/11, a/1222/11, a/1223/11, a/1224/11,

a/1225/11, a/1226/11, a/1227/11, a/1228/11, a/1230/11, a/1231/11, a/1232/11, a/1233/11, a/1234/11 and a/1235/11.

10. With regard to Applicants a/0984/11, a/0986/11, a/0987/11 and a/1061/11 the Prosecution notes that whilst as victims of pillaging they meet all the requirements for participation, these applicants may be invited to provide further information or documentation to clarify or establish the following: (i) for Applicant a/0984/11, to provide documentation or information establishing kinship with the deceased person referred to in his application; (ii) for Applicant a/0986/11 to provide documentation or information establishing the identity and the death of her sister as a victim of rape; (iii) for Applicant a/0987/11 to provide documentation or information establishing the identity and the death of her daughter as a victim of rape and; (iv) for Applicant a/1061/11 to provide documentation or information establishing whether the death of his wife is attributed to the *Mouvement de Libération du Congo* ("MLC") troops.

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

11. Applicants a/1095/11, a/1096/11 and a/1099/11 provide a "*Déclaration de Perte*" signed and stamped by the *Chef de Quartier*, for identification purposes. Applicants a/1165/11 and a/1166/11 provide a "*Déclaration de Reconnaissance*" signed and stamped by the *Chef de Quartier* for identification purposes. Applicant a/1229/11 filed an application on behalf of her deceased daughter. She provides a "*Déclaration de Décès*" signed and stamped by the *Chef de Quartier*, establishing her daughter's death. The Prosecution notes that although these documents are not included in the list provided by Pre-Trial Chamber III⁷ and endorsed by the Chamber,⁸ they contain

⁷ ICC-01/05-01/08-320, Fourth Decision on Victims' Participation, 12 December 2008, at paras. 36-38.

⁸ 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; ICC-01/05-01/08-1017, Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, at paras. 40-42.

similar features to the examples accepted by the Chamber. The Prosecution therefore submits that they should be considered sufficient to establish the applicants' identity and the death of the person on whose behalf the application is filed.⁹

12. Applicant a/0988/11 states that the events described in her application were committed on 17 March 2003. However, the Prosecution notes that the applicant clearly identified the MLC as the perpetrators of the crime. The Prosecution considers, in line with the Chamber's decision,¹⁰ that this identification, coupled with the applicant's statement of the presence of the MLC at the relevant location, demonstrates that the crime 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".¹¹ The Prosecution, therefore, submits that the applicant has established, *prima facie*, the causal link between the harm suffered and the crimes with which the Accused is charged.

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

13. Applicants a/1074/11, a/1079/11, a/1080/11 and a/1081/11 do not provide sufficient information as to the time when the crimes against them were committed by the MLC troops. Therefore, the Prosecution suggests that the Chamber defer its decision on their applications and give the applicants the opportunity to provide further information on the time of their victimization.¹²

⁹ ICC-01/05-01/08-1590-Corr, at para. 35; ICC-01/05-01/08-1862, Decision on 270 applications by victims to participate in the proceedings, 25 October 2010, at para. 25.

¹⁰ ICC-01/05-01/08-1017, at paras. 54-55.

¹¹ 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.

¹² ICC-01/05-01/08-836, at para. 51.

14. Applicant a/0769/11's year of birth on his attached identification document is illegible. It is therefore not possible to establish the applicant's identity. The Prosecution suggests that the applicant is asked to resubmit a clearer version of the same document or additional documentation and information that would make it possible to establish his identity.

15. As regard to Applicant a/1178/11, the Prosecution notes that, based on her general description of the events, it is difficult to establish whether she is a victim of pillaging and whether this crime was committed by the MLC troops. Therefore, the Prosecution deems it convenient that the Chamber defers its decision on her application and gives the applicant the opportunity to provide further details on the crime she suffered and the perpetrators of it.

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

16. The applications submitted by Applicants a/0998/11, a/1034/11 and a/1060/11 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.

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

17. Applicant a/0901/11 states that his houses were burned and his properties destroyed. The Prosecution submits that the events, as described by this applicant do

not amount to any of the crimes charged against the Accused. Therefore, the Prosecution submits that Applicant a/0901/11 does not meet the requirements for victim participation in the trial proceedings.

IV. Conclusion

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

19. The Prosecution submits that applications made by applicants listed in section C above should be deferred until further clarifications and/ or information are provided.

20. The Prosecution leaves it to the Chamber to determine whether there is a sufficient link between the harm alleged by the applicants listed in Section D above and the charges in these proceedings, or to request additional information.

21. The Prosecution submits that the applicant listed in Section E above does not meet the requirements for victim participation.



Luis Moreno-Ocampo, Prosecutor

Dated this 14th Day of November 2011

At The Hague, The Netherlands