



Original: English

No.: ICC-01/05-01/08
Date: 28 November 2011

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 262 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, 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' application"² ("Order"), the Office of the Prosecutor ("Prosecution") submits the following observations on 262 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 applicants listed in Section E below do 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 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 4 November 2011, the Registry provided the Prosecution with 262 redacted versions of the fifteenth 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-01/05-01/08-1885, Fifteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 4 November 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/0700/10, a/0701/10, a/0782/10, a/1236/11, a/1237/11, a/1238/11, a/1239/11, a/1240/11, a/1241/11, a/1242/11, a/1243/11, a/1244/11, a/1245/11, a/1247/11, a/1248/11 a/1249/11, a/1250/11, a/1251/11, a/1252/11, a/1254/11, a/1255/11, a/1256/11, a/1257/11, a/1258/11, a/1259/11, a/1261/11, a/1262/11, a/1263/11, a/1264/11, a/1265/11, a/1266/11, a/1268/11, a/1269/11, a/1271/11, a/1272/11, a/1273/11, a/1274/11, a/1275/11, a/1276/11, a/1277/11, a/1278/11, a/1279/11, a/1280/11, a/1281/11, a/1282/11, a/1284/11, a/1285/11, a/1286/11, a/1287/11, a/1289/11, a/1290/11, a/1291/11, a/1292/11, a/1293/11, a/1294/11, a/1295/11, a/1296/11, a/1297/11, a/1298/11, a/1299/11, a/1300/11, a/1301/11, a/1302/11, a/1303/11, a/1304/11, a/1305/11, a/1306/11, a/1307/11, a/1308/11, a/1309/11, a/1310/11, a/1311/11, a/1312/11, a/1313/11, a/1314/11, a/1315/11, a/1316/11, a/1317/11, a/1318/11, a/1320/11, a/1321/11, a/1322/11, a/1325/11, a/1326/11, a/1329/11, a/1331/11, a/1332/11, a/1333/11, a/1334/11, a/1335/11, a/1336/11, a/1337/11, a/1338/11, a/1339/11, a/1340/11, a/1341/11, a/1342/11, a/1343/11, a/1345/11, a/1346/11, a/1347/11, a/1348/11, a/1350/11, a/1351/11, a/1352/11, a/1353/11, a/1354/11, a/1355/11, a/1356/11, a/1357/11, a/1358/11, a/1359/11, a/1360/11, a/1361/11, a/1362/11, a/1364/11, a/1365/11, a/1369/11, a/1370/11, a/1371/11, a/1372/11, a/1373/11, a/1374/11, a/1375/11, a/1376/11, a/1377/11, a/1378/11, a/1382/11, a/1383/11, a/1386/11, a/1390/11, a/1392/11, a/1393/11, a/1394/11, a/1395/11, a/1396/11, a/1397/11, a/1398/11, a/1399/11, a/1401/11, a/1402/11, a/1404/11, a/1406/11, a/1407/11, a/1408/11, a/1409/11, a/1411/11, a/1412/11, a/1415/11, a/1416/11, a/1417/11, a/1420/11, a/1422/11, a/1423/11, a/1424/11, a/1425/11, a/1426/11, a/1427/11, a/1428/11, a/1429/11, a/1430/11, a/1432/11, a/1433/11, a/1435/11, a/1436/11, a/1437/11, a/1438/11, a/1439/11, a/1440/10, a/1444/11, a/1445/10, a/1445/11, a/1446/11, a/1447/11, a/1448/10, a/1452/11, a/1453/11, a/1454/11, a/1456/11, a/1459/11, a/1462/11,

a/1463/11, a/1464/11, a/1465/11, a/1466/11, a/1468/11, a/1469/11, a/1471/11, a/1472/11, a/1474/11, a/1475/11, a/1481/10, a/1505/10, a/1518/10, a/1539/10, a/1600/10, a/1700/10, a/1717/10, a/1817/10, a/1833/10, a/1913/10, a/2223/10, a/2625/10 and a/3162/10.

10. With regard to Applicant a/1367/11, the Prosecution notes that whilst as a victim of rape and pillaging she meets all the requirements for participation, she may be invited to provide documentation or information establishing the identity of her husband, his death and proof of kinship in order for her to substantiate claims regarding the harm she suffered due to his murder by the *Mouvement de Libération du Congo* ("MLC").

11. With regard to Applicants a/1379/11, a/1381/11 and a/1400/11, the Prosecution notes that they meet the requirements for participation as victims of pillaging only. The accounts of Applicant a/1379/11 that his house was also burned, of Applicant a/1381/11 that he was beaten by the MLC troops, and of Applicant a/1400/11 that he was shot at by the MLC soldiers are not to be considered for the purpose of their victim status in the current proceedings, as these events do not form part of the charges against the Accused.

12. As to Applicant a/1421/11, the Prosecution notes that whilst as a victim of pillaging she meets all the requirements for participation, she may be invited to provide further documentation or information to establish the rape of her daughter and proof of kinship in order to substantiate her claims on the harm suffered due to her daughter's victimization by the MLC troops.

13. With regard to Applicant a/2861/10, the Prosecution notes that whilst as a victim of pillaging she meets all the requirements for participation, she may be invited to provide further information or documentation to establish the death of her

son and proof of kinship in order to substantiate any claims on the harm she suffered as the result of her son's murder.

14. With respect to Applicant a/1470/11, the Prosecution notes that whilst as a victim of pillaging he meets all the requirements for participation, he may be invited to provide further documentation or information to establish the rape of his daughter and wife, as well as proof of kinship to them and proof of his daughter's death in order to substantiate his claims on the harm suffered due to the victimization of his daughter and wife.

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

15. Applicants a/0720/10, a/1267/11 and a/1270/11 provide a "*Carte d'Adhésion*" as proof of identity. Applicant a/1253/11 provides an "*Attestation de Résidence*" signed and stamped by the *Chef de Quartier*, for identification purpose. Applicant a/1366/11 provides a death declaration signed and stamped by the *Chef de Quartier*, to establish the death of applicant's son. Applicant a/1368/11 provides a birth declaration signed and stamped by the *Chef de Quartier*, for identification purposes and a death declaration signed and stamped by the *Chef de Quartier*, to establish the death of the applicant's son. Applicants a/1403/11 and a/1431/11 provide an "*Attestation de Reconnaissance*" signed and stamped by the *Chef de Quartier*, for identification purposes, kinship and the brother's death. Applicants a/1442/11, a/1450/11, a/1455/11 and a/1477/11, provide a "*Déclaration de Reconnaissance*" signed and stamped by the *Chef de Quartier*, for identification purpose. 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 similar features to the examples accepted by

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.

the Chamber. The Prosecution therefore submits that they should be considered sufficient to establish the applicants' identity and the death of the persons on whose behalf their applications are filed.⁹

16. Applicant a/1324/11 states that the events happened in 2002 when Bozizé attempted to take over power. Applicant a/1349/11 gives the date of 23 October 2002 as the day he fled from his residence. However, it is clear from the description provided in his application that the crime suffered by him occurred in the days that followed. Applicants a/1413/11 and a/1414/11 state that the events took place at the end of Tabaski festivities in 2003, which in that year happened in the month of February.¹⁰ With regard to all of these applicants the Prosecution notes that they clearly identify the MLC as the perpetrators of the crimes. The Prosecution considers, in line with the Chamber's decision,¹¹ that this identification, coupled with their statements of the presence of the MLC at the given 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".¹² The Prosecution, therefore, submits that the applicants have established, *prima facie*, the causal link between the harm suffered by them and the crimes with which the Accused is charged.

17. The Prosecution notes discrepancies in the dates of birth set out by Applicants a/1319/11,¹³ a/1344/11¹⁴ and a/1467/11.¹⁵ However, the Prosecution submits that the

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;

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-01/05-01/08-1858, Prosecution's Observations on 212 Applications for Victims' Participation in the Proceedings, 24 October 2011 at para. 10.

¹¹ ICC-01/05-01/08-1017, at paras. 54-55.

¹² 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 The year of birth provided in the application form of this Applicant is 1976 whilst that given in his redacted birth certificate is 1977.

¹⁴ The year of birth provided in the application form of this Applicant is 1989 whilst that given in his redacted birth certificate is 1982.

discrepancies do not affect the merits of their respective applications, 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

18. Applicants a/1327/11, a/1328/11, a/1260/11, a/1283/11, a/1363/11, a/1385/11, a/1387/11, a/1419/11, a/1434/11, a/1440/11, a/1448/11, a/1451/11, a/1457/11, a/1458/11, a/1460/11, a/1461/11, a/1473/11, a/1476/11 and a/2187/10 do not provide sufficient information as to when the crimes against them were committed by the MLC troops. Therefore, the Prosecution submits that the Chamber defer its decision on their respective applications and give these applicants the opportunity to provide further information on the time of their victimization.¹⁶

19. Applicants a/1387/11 and a/1405/11 do not provide sufficient information as to the location of the crimes they suffered. Therefore, the Prosecution submits that the Chamber defer its decision on their respective applications and give them the opportunity to provide further information in this respect.

20. With regard to Applicant a/1246/11, the Prosecution notes that the date of birth provided in the application form is not clear and the date indicated in his birth certificate is illegible. It is therefore not possible to establish the applicant's identity and the Prosecution suggests that he be requested to provide further clarifications on the date of birth and resubmit a clearer version of the birth certificate, which would make it possible to establish his identity.

¹⁵ The age provided in the application form of this Applicant is 25, which does not match with the year of birth given in his redacted ID, *i.e.* 1996.

¹⁶ ICC-01/05-01/08-836, at para. 51.

21. With respect to Applicant a/1384/11, the Prosecution notes that, based on her vague description of the events, it is difficult to establish whether she is a victim of rape by soldiers speaking Lingala. Her account that she was also beaten by them cannot be taken into consideration for her victim status, as the charges against the Accused do not include this act. The Prosecution, therefore, submits that the Chamber defer its decision on her application and give the applicant the opportunity to provide further information on the events, and on the identification of the perpetrators.

22. As to Applicant a/2510/10, the Prosecution submits that her description of the events does not clarify whether she was a victim of pillaging, despite her claim to this effect. Therefore, the Prosecution suggests that the Chamber defer its decision on this application and give the applicant the opportunity to provide further information on the events.

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

23. The applications submitted by Applicants a/1410/11, a/1418/11, a/1441/11, a/1443/11, a/1449/11, a/1711/10 and a/1716/10 contain redactions which make it difficult to determine whether the identity documents attached to the applications relate to the persons who suffered victimization and filled in the application forms.

24. In addition, with regard to Applicant a/1711/10, the Prosecution notes that the explanations provided for the discrepancies on the applicant's date of birth are unclear.

25. With regard to Applicant a/1441/11, the Prosecution notes that whilst she appears to meet the requirements as a victim of pillaging, she also claims damages for the death of her spouse, but does not give any proof of kinship and of his death.

26. As to Applicant a/1716/10, who appears to meet the requirements as a victim of pillaging and also that his father was killed, the information regarding his father's death is inadequate. There are discrepancies on the date of his father's death indicated on the death certificate and the time when the events took place. The applicant states that he will try to have a new death certificate issued to correct the mistake on the first one and provide it to the Chamber when possible. The Prosecution submits that at this stage, given the existing redactions, it is difficult to assess his kinship to the deceased and whether his father's death is to be attributed to the MLC troops.

27. Therefore, for all of the applicants in this section the Prosecution leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/ or information should be requested.

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

28. Applicants a/1380/11 and a/1389/11 state that they were beaten by the MLC troops. The events, as described in their respective applications, do not amount to any of the crimes charged against the Accused. Therefore, the Prosecution submits that Applicants a/1380/11 and a/1389/11 do not meet the requirements for victim participation in the trial proceedings.

IV. Conclusion

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

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

31. The Prosecution leaves it to the Chamber to determine whether applicants listed in section D above provided adequate documentation or additional documents and/ or information should be requested.

32. The Prosecution submits that applicants listed in section E above do not meet the requirements for participation.



Luis Moreno-Ocampo,
Prosecutor

Dated this 28th Day of November 2011

At The Hague, The Netherlands