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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 175 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 175 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 may be deemed to meet the requirements for victim participation. In the alternative, the Prosecution does not object to the Chamber requesting additional information.

4. The Prosecution submits that applicants listed in section D 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.

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 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 the applications listed in this section satisfy the requirements or requesting additional information.

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 28 November 2011 the Registry provided the Prosecution with 175 redacted versions of the seventeenth 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-01/05-01/08-1958, Seventeenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 28 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/0009/10, a/0021/10, a/0041/11, a/0042/11, a/0043/11, a/0044/11, a/0045/11, a/0046/11, a/0048/11, a/0051/11, a/0052/11, a/0053/11, a/0055/11, a/0057/11, a/0060/11, a/0061/11, a/0118/11, a/0119/11, a/0120/11, a/0121/11, a/0125/11, a/0127/11, a/0306/10, a/0321/10, a/0327/10, a/0646/10, a/0648/10, a/0649/10, a/0663/10, a/0668/09, a/0673/10, a/0675/10, a/0680/10, a/0681/10, a/0686/10, a/0689/10, a/0844/10, a/0848/10, a/0853/10, a/0854/10, a/0856/10, a/0857/10, a/0863/10, a/0898/10, a/0903/10, a/0938/10, a/0943/10, a/0946/11, a/0947/10, a/0948/10, a/0951/10, a/0952/10, a/0957/10, a/0958/10, a/0959/10, a/0960/10, a/0982/10, a/0985/10, a/0986/10, a/0999/10, a/1282/10, a/1287/10, a/1288/10, a/1373/10, a/1509/10, a/1515/10, a/1531/10, a/1561/10, a/1569/10, a/1574/10, a/1577/10, a/1627/10, a/1632/10, a/1650/10, a/1651/10, a/1765/10, a/1771/10, a/1777/10, a/1778/10, a/1786/10, a/1801/10, a/1802/10, a/1809/10, a/1923/10, a/1924/10, a/1942/10, a/1943/10, a/1948/10, a/2184/10, a/2420/10, a/2422/10, a/2426/10, a/2428/10, a/2435/10, a/2438/10, a/2457/10, a/2466/10, a/2831/10, a/3159/10 and a/3425/10.

10. With regard to Applicants a/0133/11, a/0137/11, a/0138/11, a/0139/11, a/0324/10, a/0310/10, a/0687/10, a/0949/10, a/1036/10, a/1286/10 and a/1580/10 the Prosecution submits that as victims of pillaging they all meet the requirements for participation. However, their applications are not limited to the harm they suffered from the pillaging.

11. Applicants a/0133/11, a/0137/11 and a/0139/11 should be requested to provide more information about the rapes that they allegedly suffered to determine whether they should also be granted victims' status for the crime of rape.

12. Applicant a/0138/11 should be invited to provide information and documentation to establish the rape of his wife and her identity and proof of kinship, in order to substantiate his claims on the harm he suffered as a result of her rape.

13. Applicants a/0324/10 and a/1580/10 both claim that their respective sons were killed by the soldiers of the *Mouvement de Libération du Congo* ("MLC"). They should be invited to provide further documentation to establish their sons' identity, death and kinship.

14. Applicants a/0687/10 and a/0949/10 both claim harm suffered from the rape of their respective daughters. They should be requested to provide evidence to establish their daughters' identity and proof of kinship.

15. Applicant a/1036/10 claims that she suffered harm as a result of her mother's killing. She should be requested to provide proof of identity and death of her mother and kinship.

16. With regard to Applicant a/1286/10, he should be invited to provide more information to determine whether he was also victim of rape.

17. Applicant a/0310/10 also applies in relation to the murder of his father. As he fails to provide any documentation in this respect, he should be requested to submit proof of identity and death of his father and kinship.

18. As to Applicant a/0644/10, the Prosecution submits that she meets the requirements for participation as a victim of pillaging and rape. The applicant also mentions the rape of her sister. She should be invited to provide information and/or documentation to establish the identity of her sister and proof of kinship, in order to substantiate her claim on the harm she suffered as a result of her sister's rape.

19. With regard to Applicant a/1970/10, the Prosecution notes that he meets the requirements for participation as a victim of pillaging only. He also claims harm for torture that, however, does not fall within the crimes with which the Accused is charged.

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

20. Applicants a/0124/11 and a/0126/11 state that the events happened on 16 March 2003. The Prosecution considers, in line with the Chamber's decision,⁷ that this date, coupled with the applicants' statements of the presence of the MLC at the given location, 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 the applicants have established, *prima facie*, the causal link between the harm suffered by them and the crimes with which the Accused is charged.

21. The original application filed by Applicant a/2258/10⁹ indicated November 2003 as the time of the pillaging and the killing of the applicant's father. In the annex filed, the applicant states that crimes occurred in 2003 after the MLC troops had left Bangui to move into the interior of the Central African Republic. The Prosecution submits that the applicant consistently indicated the time of his victimization and has

⁷ ICC-01/05-01/08-1017, Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, at paras. 54-55.

⁸ 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.

⁹ It is the Prosecution's understanding from the "Seventeenth transmission to the parties and legal representatives of the applicants of redacted versions of applications for participation in the proceedings" filed on 28th November 2011 and from the "Report on issues concerning intermediaries' involvement in completion of applications for participation" filed on 3rd June 2011 that a number of applicants, whose applications are included in the seventeenth batch of Victims Applications, had filed original application forms with the assistance of Intermediary 1. Those applicants subsequently filed annexes that were used to verify the information previously provided by them.

established, *prima facie*, the causal link between the harm suffered by him and the crimes charged. Furthermore, the applicant provides a statement signed and stamped by the “*Chef de Quartier*”. The Prosecution notes that although this document is not included in the list provided by Pre-Trial Chamber III¹⁰ and endorsed by the Chamber,¹¹ it contains similar features to the examples accepted by the Chamber. The Prosecution therefore submits that it should be considered sufficient to establish the death of the applicant’s father and kinship.¹²

C. Applications that may be deemed to meet the requirements for victim participation; in the alternative, the Chamber may request additional information

22. Applicants a/0645/10, a/0676/10, a/0682/10, a/0684/10, a/0704/10, a/0899/10, a/0939/10, a/0984/10 and a/1468/10 file annexes whereby they confirm their original applications and the signature on them.¹³ However, while providing information on the crimes committed against them, they omit to confirm the dates of their victimization indicated in the original applications. The Chamber may interpret this omission as a misunderstanding that they were called upon to confirm all the information. If so, it may deem that these applicants have established, *prima facie*, the causal link between the harm suffered by them and the crimes charged. In the alternative, the Chamber may request further information.

23. In addition, Applicant a/0645/10 did not provide any document with regard to the killing of his father and the rape of his sister, for which he claims harm.

¹⁰ ICC-01/05-01/08-320, Fourth Decision on Victims’ Participation, 12 December 2008, at paras. 36-38.

¹¹ 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, at paras. 40-42.

¹² 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 2011, at para. 25.

¹³ See explanation in footnote 9 above.

24. Applicant a/0899/10 refers to the death of his brother. More information as to whether his death amounts to a killing committed by the MLC troops should be requested. Moreover, the applicant should submit his brother's death certificate and proof of kinship.

25. Applicant a/0984/10 claims harm suffered as a result of his wife's rape. He should be invited to provide proof of identity of his wife and kinship.

26. Applicant a/1468/10 also mentions the rape of his daughters. He should be requested to provide proof of identity of his daughters and kinship.

D. Applications in respect of which decision should be deferred until additional information/ documentation is provided

27. Applicants a/0130/11, a/0131/11, a/0135/11, a/0136/11, a/0297/10, a/0328/10, a/0647/10, a/0657/10, a/0662/10, a/0670/10, a/0679/10, a/0688/10, a/0850/10, a/0862/10, a/0934/10, a/0935/10, a/0944/10, a/0953/10, a/0956/10, a/1000/10, a/1034/10, a/1274/10, a/1371/10, a/1378/10, a/1460/10, a/1487/10, a/1572/10, a/1781/10, a/2430/10, a/2462/10, a/2482/10 and a/2487/10 do not provide sufficient information as to when the crimes against them were committed by the MLC troops. The Prosecution therefore 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.

28. In addition, Applicant a/0935/10 claims harm as a result of her daughter's rape but does not submit proof of kinship.

29. Applicant a/0297/10 claims harm suffered as a result of her daughter's rape, but does not provide proof of identity and kinship.

30. Applicant a/1371/10 also files an application for the killing of her son. However, she does not submit proof of the victim's death and kinship.

31. Applicant a/0907/10 should be requested to clarify when her property was pillaged and who the perpetrators were. The applicant also claims harm with regard to the alleged killing of her husband. However, she should be invited to give more information on her husband's death, as well as proof of his identity and death and kinship.

32. Applicant a/0932/10 does not provide sufficient information as to the date and the perpetrators of the crime from which she claims harm. Moreover, the applicant claims harm with regard to her daughter's rape, but does not give sufficient information as to the rape. The Prosecution submits that the Chamber defer its decision and give the applicant the opportunity to provide more information.

33. Applicants a/0936/10 and a/0937/10 do not provide sufficient information as to the date of their victimization. The Prosecution submits that the Chamber defer its decision and give the applicants the opportunity to provide more information. Furthermore, redactions in the applications make it impossible to identify the locations where the crimes occurred. The Prosecution is therefore unable to assess whether there is a causal link between the harm suffered by these applicants and the crimes charged.

34. Applicant a/1280/10 files an annex in which she confirms her original application and the signature on it, although she omits to confirm the date of her victimization indicated in the original application. For the reason stated in paragraph 22 above, the Chamber may interpret this omission as a misunderstanding that she was called upon to confirm all the information. However, she fails to provide clarity as to whether she lost money as a result of pillaging committed by the MLC soldiers,

and whether her daughter's death amounts to killing. The Prosecution therefore submits that the Chamber defer its decision and give the applicant the opportunity to provide more information.

35. Applicant a/2022/10 indicated in her original application the date when her brother was beaten up by MLC soldiers. In the annex filed she is not able to confirm that date. Furthermore, she does not clarify whether there is causal link between the death of her brother that occurred months later, and the beating. The Prosecution therefore submits that the Chamber defer its decision and give the applicant the opportunity to provide more information.

36. Applicant a/1629/10 claims to have suffered harm because of her sister's rape and the pillaging of her husband's and her children's property. She should be requested to provide proof of identity and kinship of her sister, husband and children.

37. As to the application submitted by Applicant a/2664/10, more information should be requested to determine the identity of the person claiming victim's status.¹⁴

E. Applications in respect of which the Prosecution leaves it to the Chamber to determine whether the requirements for participation are met or additional documents or information should be sought

38. As to Applicants a/0054/11, a/0059/11, a/0062/11, a/0123/11, a/0128/11, a/0129/11, a/0900/11, a/0933/10 and a/1372/10, redactions make it impossible to identify the locations where the crimes occurred. The Prosecution is therefore unable to assess whether there is a causal link between the harm suffered by these applicants

¹⁴ This applicant originally filed an application. An annex was subsequently filed by the applicant's mother. However, the latter did not clarify whether she is applying on behalf of her daughter or for the harm she suffered in connection with the crimes committed against her daughter.

and the crimes charged, and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested.

39. In addition, Applicant a/0900/11 claims harm suffered as a result of his father's killing. However, he does not submit a death certificate. Furthermore, the document provided as proof of kinship is not legible because of redactions.

40. Applicant a/1372/10 also requests compensation for her husband's killing, but fails to submit death certificate and proof of kinship.

IV. Conclusion

41. 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.

42. The Prosecution submits that applicants listed in section C above may be deemed to meet the requirements for participation. In the alternative, the Prosecution does not object to the Chamber requesting additional information.

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

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



Luis Moreno-Ocampo,
Prosecutor

Dated this 20th Day of December 2011

At The Hague, The Netherlands