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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 350 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 ("First Decision"), the Chamber's "Decision setting a timeline for the filing of observations on pending victims' application"² ("Second Decision") and the Chamber's orders in the trial hearing of 9 December 2011³ ("Orders"), the Office of the Prosecutor ("Prosecution") submits the following observations on 350 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 section A below.

3. The Prosecution submits that Applicant a/16112/11 listed in section B below does not meet the requirements for victim participation.

4. 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.

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).

³ ICC-01/05-01/08-T-200-CONF-ENG ET, p. 59, line 8 to p. 61, line 16, 9 December 2011.

5. 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 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.⁴

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.⁵ 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.⁶

8. On 2 December 2011, the Registry provided the Prosecution with 350 redacted versions of the 18th set of applications.⁷

⁴ 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.

⁵ ICC-01/05-01/08-T-25-CONF-ENG ET, p. 23, line 23 to p. 24, line 3, 24 September 2010.

⁶ ICC-01/05-01/08-1726, at paras. 3, 4, 7 and 8(a).

⁷ ICC-01/05-01/08-1979, Eighteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 2 December 2011.

9. On 9 December 2011, the Chamber, approving the Defence request,⁸ ordered extension of the time limit for the filing of observations on the 18th transmission of the applications for participation in the proceedings until 20 January 2012.⁹ For the 19th transmission, the Chamber decided to extend the deadline for the filing of observations from 8 January 2012 to 27 January 2012.¹⁰ The Chamber further ruled that for the remaining transmissions of the applications, it will continue to apply the regular 21 days time limit to file the observations in accordance with Regulation 34(b) of the Regulations of the Court.¹¹ In addition, the Chamber granted the VPRS request for two additional filing dates of 27 January 2012 and 17 February 2012, to file the remaining applications.¹² It ruled that in relation to these two additional sets of applications, it will continue to apply the 21 days time limit for the parties to respond in accordance with Regulation 34(b) of the Regulations of the Court.¹³

III. Factual analysis of the applications

A. Applications that meet the requirements for victim participation

10. 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/16000/11, a/16001/11, a/16002/11, a/16003/11, a/16004/11, a/16005/11, a/16006/11, a/16007/11, a/16008/11, a/16009/11, a/16010/11, a/16011/11, a/16012/11, a/16014/11, a/16015/11, a/16016/11, a/16018/11, a/16019/11, a/16020/11, a/16021/11, a/16022/11, a/16023/11, a/16024/11, a/16025/11, a/16026/11, a/16027/11, a/16028/11, a/16029/11, a/16030/11, a/16031/11, a/16032/11, a/16033/11, a/16034/11, a/16035/11, a/16036/11, a/16037/11, a/16038/11, a/16039/11, a/16040/11, a/16041/11,

⁸ ICC-01/05-01/08-1992, Defence Request for an Extension of Time for the Filing of Submissions on the 18th Transmission of 350 victims' applications, 7 December 2011, at paras. 11-12.

⁹ ICC-01/05-01/08-T-200-CONF-ENG ET, p. 59 line 23 to p. 60 line 5, 9 December 2011

¹⁰ *Ibid*, p. 60, lines 6-9.

¹¹ *Ibid*, p. 60, lines 9-11.

¹² *Ibid*, p. 61, lines 1-12.

¹³ *Ibid*, p. 61, lines 13-16.

a/16042/11, a/16043/11, a/16044/11, a/16045/11, a/16046/11, a/16047/11, a/16048/11, a/16049/11, a/16050/11, a/16051/11, a/16052/11, a/16053/11, a/16054/11, a/16055/11, a/16056/11, a/16057/11, a/16058/11, a/16059/11, a/16060/11, a/16061/11, a/16062/11, a/16063/11, a/16064/11, a/16065/11, a/16066/11, a/16067/11, a/16068/11, a/16069/11, a/16070/11, a/16071/11, a/16072/11, a/16073/11, a/16074/11, a/16075/11, a/16076/11, a/16077/11, a/16078/11, a/16079/11, a/16080/11, a/16082/11, a/16083/11, a/16084/11, a/16086/11, a/16087/11, a/16088/11, a/16089/11, a/16090/11, a/16091/11, a/16092/11, a/16093/11, a/16094/11, a/16095/11, a/16096/11, a/16097/11, a/16099/11, a/16100/11, a/16101/11, a/16102/11, a/16103/11, a/16104/11, a/16105/11, a/16107/11, a/16113/11, a/16114/11, a/16116/11, a/16117/11, a/16118/11, a/16119/11, a/16120/11, a/16125/11, a/16126/11, a/16130/11, a/16131/11, a/16132/11, a/16133/11, a/16134/11, a/16135/11, a/16137/11, a/16139/11, a/16140/11, a/16144/11, a/16145/11, a/16147/11, a/16149/11, a/16154/11, a/16156/11, a/16157/11, a/16158/11, a/16159/11, a/16160/11, a/16161/11, a/16162/11, a/16163/11, a/16164/11, a/16165/11, a/16166/11, a/16167/11, a/16168/11, a/16170/11, a/16172/11, a/16173/11, a/16182/11, a/16185/11, a/16187/11, a/16189/11, a/16190/11, a/16191/11, a/16192/11, a/16194/11, a/1832/11, a/1833/11, a/1834/11, a/1835/11, a/1837/11, a/1840/11, a/1841/11, a/1842/11, a/1843/11, a/1844/11, a/1845/11, a/1846/11, a/1847/11, a/1848/11, a/1849/11, a/1850/11, a/1851/11, a/1854/11, a/1857/11, a/1858/11, a/1860/11, a/1861/11, a/1862/11, a/1863/11, a/1864/11, a/1866/11, a/1868/11, a/1870/11, a/1871/11, a/1873/11, a/1874/11, a/1875/11, a/1876/11, a/1882/11, a/1883/11, a/1884/11, a/1885/11, a/1886/11, a/1887/11, a/1888/11, a/1889/11, a/1890/11, a/1891/11, a/1892/11, a/1893/11, a/1894/11, a/1895/11, a/1896/11, a/1897/11, a/1898/11, a/1899/11, a/1900/11, a/1901/11, a/1902/11, a/1903/11, a/1904/11, a/1905/11, a/1907/11, a/1908/11, a/1909/11, a/1910/11, a/1911/11, a/1912/11, a/1913/11, a/1914/11, a/1916/11, a/1917/11, a/1918/11, a/1920/11, a/1921/11, a/1922/11, a/1923/11, a/1924/11, a/1925/11, a/1926/11, a/1927/11, a/1928/11, a/1929/11, a/1930/11, a/1931/11, a/1932/11, a/1933/11, a/1934/11, a/1935/11, a/1936/11, a/1937/11, a/1938/11, a/1944/11, a/1947/11, a/1949/11, a/1950/11, a/1954/11, a/1956/11, a/1957/11, a/1958/11, a/1959/11, a/1961/11, a/1963/11, a/1964/11, a/1965/11, a/1966/11, a/1967/11, a/1968/11, a/1969/11, a/1970/11, a/1972/11, a/1975/11,

a/1977/11, a/1978/11, a/1979/11, a/1980/11, a/1982/11, a/1983/11, a/1984/11, a/1985/11, a/1986/11, a/1987/11, a/1988/11, a/1989/11, a/1990/11, a/1991/11, a/1992/11, a/1995/11, a/1996/11, a/1997/11, a/1998/11 and a/1999/11.

11. With regard to Applicants a/16085/11, a/16098/11, a/16110/11, a/16122/11, a/16143/11, a/16179/11, a/16181/11, a/16183/11, a/16184/11, a/1852/11, a/1853/11, a/1855/11, a/1856/11, a/1867/11, a/1940/11, a/1941/11, a/1945/11, a/1955/11, a/1971/11, a/1973/11, a/1974/11, a/1976/11, a/1993/11 and a/1994/11, 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.

12. Applicants a/16085/11 and a/16098/11 should be invited to provide information and/or documentation to establish the identity of their mothers and proof of kinship, in order to substantiate their claims on the harm they suffered as a result of their mothers' rape.

13. Applicants a/16110/11, a/16179/11, a/16184/11, a/1976/11 and a/1994/11 should be invited to provide information and/or documentation to establish the identity of their daughters and proof of kinship, in order to substantiate their claims on the harm they suffered as a result of their daughters' rape.

14. Applicant a/16122/11 should be requested to provide more information to clarify whether she was also raped in order to determine whether she should also be granted victim status for the crime of rape.

15. Applicant a/16143/11 should be invited to provide information and/or documentation to further clarify the circumstances of his mother's death and to establish the identity of his mother, proof of her death and kinship in order to

substantiate his claim on the harm he suffered as a result of his mother's rape and murder.

16. Applicants a/1852/11, a/1853/11 and a/1855/11 should be invited to provide information and/or documentation to establish the identity of their mothers and proof of kinship, in order to substantiate their claims on the harm they suffered as a result of their mothers' rape. The Prosecution does not object to the Chamber determining whether the unredacted birth certificates annexed to their respective applications suffice to establish, *prima facie*, the requisite kinship.

17. Applicants a/1940/11, a/1941/11 and a/1945/11 should be requested to provide more information and/or documentation on the rape of their sisters and to establish their identity and proof of kinship, in order to substantiate their claims on the harm they suffered as a result of their sisters' rape.

18. Applicant a/16181/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship of his mother, daughters and his daughters' mother, in order to substantiate his claim on the harm he suffered as a result of their rape.

19. Applicant a/16183/11 should be invited to provide information and/or documentation to further clarify who in his family was a victim of rape and to establish the identity and proof of kinship of his family members who were raped in order to substantiate his claim on the harm he suffered as a result of their rape.

20. Applicant a/1856/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship of his wife and two daughters, in order to substantiate his claim on the harm he suffered as a result of their rape.

21. Applicant a/1867/11 should be invited to provide information and/or documentation to establish proof of kinship of her two daughters and son's wife, in order to substantiate her claim on the harm she suffered as a result of their rape.

22. Applicants a/1955/11 and a/1973/11 should be invited to provide information and/or documentation to further clarify the circumstances of their daughters' rape and to establish the identity and proof of kinship of their daughters, in order to substantiate their claims on the harm they suffered as a result of the rape and subsequent death of their daughters.

23. Applicant a/1971/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship of his wife, in order to substantiate his claim on the harm he suffered as a result of her rape.

24. Applicant a/1974/11 should be invited to provide information and/or documentation to further clarify the circumstances of the rape of her daughter and the death of her son and to establish the identity and proof of kinship of her daughter and deceased son, in order to substantiate her claim on the harm she suffered as a result of her daughter's rape and son's murder.

25. Applicant a/1993/11 should be invited to provide information and/or documentation to further clarify the circumstances of the rape of her daughters and the death of her husband and to establish the identity and proof of kinship of her daughters and deceased husband, in order to substantiate her claim on the harm she suffered as a result of her daughters' rape and husband's murder.

26. With regard to Applicant a/16176/11, the Prosecution submits that she meets the requirements for participation as a victim of rape. However, the applicant also mentions the rape of her daughter. She should be invited to provide information

and/or documentation to establish the identity and proof of kinship of her daughter, in order to substantiate her claim on the harm she suffered as a result of her daughter's rape.

B. Applications that do not to meet the requirements for victim participation

27. Applicant a/16112/11 states that the crime of pillaging he suffered was committed by Bozize's soldiers. As there is no causal link between the harm claimed by this applicant and the charges against the Accused, the Prosecution submits that the applicant does not meet the requirements for victim participation.

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

28. Applicants a/16121/11, a/16123/11, a/16127/11, a/16128/11, a/16138/11, a/16146/11, a/16148/11, a/16150/11, a/16153/11, a/16174/11 and a/16186/11 do not provide sufficient information as to when the crimes against them were committed by the *Mouvement de Libération du Congo* ("MLC") troops. The Prosecution therefore submits that the Chamber defer its decision on their respective applications and give these applicants the opportunity to clarify or provide further information on the time of their victimization.

29. In addition to the pillaging of her house, Applicant a/16127/11 also mentioned the pillaging of her husband's shop. She should be invited to provide information and/or documentation to establish the identity and proof of kinship of her husband, in order to substantiate her claim on the harm she suffered as a result of the pillaging of his shop.

30. With regard to Applicant a/16175/11, the Prosecution notes that the application form is incomplete. Some sentences finish with ellipses but do not resume anywhere. It is difficult to determine which crimes were committed. In section B, it appears that the applicant mentions that his wife was raped but he does not provide the necessary identification proof and proof of kinship. In section E, it appears that the applicant claims to have suffered from the crime of pillaging but the facts are not clearly stated. The Prosecution therefore submits that the Chamber defer its decision on this application and give the applicant an opportunity to provide further information on, *inter alia*, the crimes he and his family members suffered, the time of their victimization, and who the perpetrators were. The Chamber may also invite him to provide further information and/or documentation to establish the identity and proof of kinship of his wife, in order to substantiate any potential claim on the harm he suffered as a result of her victimization.

31. With regard to Applicant a/1981/11, the Prosecution notes that, based on his unclear description of the events, it is difficult to determine whether the applicant was a victim of pillaging or of any other crime. The Prosecution therefore submits that the Chamber defer its decision on his application and give him the opportunity to clarify or provide further information on the crimes he may have suffered.

32. Applicant a/16195/11 meets, *prima facie*, all the requirements for victim participation as a victim of rape and pillaging. However, in section B of her application, it seems that it is her husband who is recounting the events. The application includes no information that her husband is acting on her behalf. The Prosecution therefore submits that the Chamber defer its decision on her application and give the applicant the opportunity to clarify the apparent deficiency.

D. 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

33. As to Applicants a/16106/11, a/16109/11, a/16110/11, a/16136/11, a/1836/11, a/1838/11, a/1939/11, a/1942/11, a/1943/11, a/1946/11, a/1947/11, a/1951/11, a/1953/11, a/1960/11 and a/1962/11, 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 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.

34. In addition, Applicant a/1836/11 claims harm suffered as a result of his sister's rape. However, he does not submit any documents as proof of kinship. Therefore, the Chamber may also invite him to provide further information and/or documentation to establish proof of kinship with his sister, in order to substantiate his claim on the harm he suffered as a result of her victimization.

35. Applicant a/16136/11 also mentions the death of his child but based on his description of the events, it is not possible to establish a causal link with the Accused. Furthermore, he does not provide any documents to establish the identity, death and kinship of his child. Therefore, the Prosecution submits that the Chamber may also invite the applicant to provide information and/or documentation to further clarify the circumstances of the death of his son as well as to establish his son's identity, death and kinship, in order to substantiate his claim on the harm he suffered as a result of his son's murder.

36. As to Applicants a/16081/11, a/16129/11, a/16136/11, a/16141/11, a/16142/11, a/16151/11, a/16155/11, a/16169/11, a/16171/11, a/16177/11, a/16178/11, a/16180/11,

a/16189/11, a/1839/11, a/1859/11, a/1865/11, a/1869/11 and a/1915/11, redactions make it impossible to establish the applicants' identity. Therefore the Prosecution is unable to assess whether the applicants meet all the requirements for participation and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested in order for them to establish their identity.

37. Applicant a/16180/11 also mentions that a list of looted goods is annexed but this document is not attached to the application form. The Prosecution submits that the Chamber may also invite the applicant to provide the document.

38. Applicant a/1839/11 also states to have witnessed the rape of his mother and aunt as well as the looting of his clothes and luggage but does not submit any documents to establish his mother's identity and proof of kinship. Therefore, the Chamber may also invite him to provide further information and/or documentation to establish his mother's identity and proof of kinship in order to substantiate his claim on the harm he suffered as a result of her victimization.

39. As to Applicant a/1869/11, redactions make it impossible to establish his and his father's identity as well as to establish their kinship. Therefore, the Prosecution is unable to assess whether the applicant meets all the requirements for participation and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested in order to establish their identity and kinship.

40. With regard to Applicant a/1915/11, who states to have applied on behalf of a victim, redactions applied in the attached identification documents make it impossible to establish on whose behalf are the documents submitted. Therefore, the Prosecution is unable to assess whether the applicant meets all the requirements for

participation and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested in order to establish the applicant's identity, the identity of the victim and their alleged kinship.

IV. Conclusion

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

42. The Prosecution submits that Applicant a/16112/11 listed in section B above does not meet the requirements for participation.

43. The Prosecution submits that applications made by applicants listed in section C 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 D above provided adequate documentation or additional documents and/or information should be requested.



Luis Moreno-Ocampo, Prosecutor

Dated this 20th Day of January 2012

At The Hague, The Netherlands