



Original: English

No.: ICC-01/05-01/08
Date: 27 January 2012

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:

The Office of the Prosecutor

Counsel for the Defence

Mr. Nkwebe Liriss

Mr. Aimé Kilolo Musamba

Legal Representatives of the Victims

Ms. Marie-Edith Douzima-Lawson

Mr. Assingambi Zarambaud

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

**The Office of Public Counsel for the
Defence**

Mr. Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Ms. Maria-Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Other

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 applicants listed in section B below do 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 16 December 2011, the Registry provided the Prosecution with 350 redacted versions of the nineteenth 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-01/05-01/08-2018, Nineteenth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 16 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/0397/11, a/0707/10, a/1052/10, a/16196/11, a/16197/11, a/16198/11, a/16199/11, a/16200/11, a/16201/11, a/16202/11, a/16203/11, a/16204/11, a/16209/11, a/16210/11, a/16211/11, a/16214/11, a/16215/11, a/16217/11, a/16219/11, a/16221/11, a/16222/11, a/16223/11, a/16224/11, a/16226/11, a/16227/11, a/16228/11, a/16230/11, a/16232/11, a/16236/11, a/16237/11, a/16238/11, a/16242/11, a/16243/11, a/16244/11, a/16246/11, a/16247/11, a/16248/11, a/16249/11, a/16252/11, a/16253/11,

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/16257/11, a/16259/11, a/16260/11, a/16261/11, a/16262/11, a/16263/11, a/16264/11,
a/16265/11, a/16266/11, a/16267/11, a/16268/11, a/16269/11, a/16271/11, a/16272/11,
a/16273/11, a/16278/11, a/16279/11, a/16280/11, a/16281/11, a/16282/11, a/16283/11,
a/16284/11, a/16285/11, a/16286/11, a/16287/11, a/16288/11, a/16289/11, a/16290/11,
a/16291/11, a/16292/11, a/16293/11, a/16294/11, a/16295/11, a/16296/11, a/16297/11,
a/16299/11, a/16309/11, a/16310/11, a/16314/11, a/16315/11, a/16422/11, a/16423/11,
a/16424/11, a/16425/11, a/16426/11, a/16427/11, a/16428/11, a/16429/11, a/16430/11,
a/16431/11, a/16432/11, a/16433/11, a/16434/11, a/16435/11, a/16447/11, a/16448/11,
a/16449/11, a/16450/11, a/16451/11, a/16452/11, a/16453/11, a/16454/11, a/16455/11,
a/16456/11, a/16457/11, a/16458/11, a/16459/11, a/16460/11, a/16461/11, a/16462/11,
a/16464/11, a/16466/11, a/16467/11, a/16468/11, a/16469/11, a/16471/11, a/16472/11,
a/16474/11, a/16476/11, a/16477/11, a/16478/11, a/16479/11, a/16480/11, a/16481/11,
a/16482/11, a/16563/11, a/16564/11, a/16565/11, a/16566/11, a/16567/11, a/16568/11,
a/16569/11, a/16570/11, a/16571/11, a/16572/11, a/16573/11, a/16574/11, a/16575/11,
a/16577/11, a/16578/11, a/16579/11, a/16580/11, a/16581/11, a/16582/11, a/16583/11,
a/16596/11, a/16597/11, a/16598/11, a/16599/11, a/16600/11, a/16601/11, a/16602/11,
a/16606/11, a/16608/11, a/16609/11, a/16610/11, a/16611/11, a/16612/11, a/16613/11,
a/16614/11, a/16615/11, a/16616/11, a/16618/11, a/16619/11, a/16620/11, a/16622/11,
a/16623/11, a/16624/11, a/16625/11, a/16626/11, a/16627/11, a/16628/11, a/16629/11,
a/16630/11, a/16631/11, a/16632/11, a/16633/11, a/16634/11, a/16635/11, a/16636/11,
a/16644/11, a/16645/11, a/16646/11, a/16647/11, a/16648/11, a/16649/11, a/16650/11,
a/16651/11, a/16652/11, a/16653/11, a/16654/11, a/16655/11, a/16657/11, a/16658/11,
a/16659/11, a/16660/11, a/16661/11, a/16662/11, a/16663/11, a/16665/11, a/16667/11,
a/16669/11, a/16672/11, a/16675/11, a/16676/11, a/16677/11, a/16680/11, a/16738/11,
a/16739/11, a/16740/11, a/16741/11, a/16742/11, a/16743/11, a/16744/11, a/16745/11,
a/16746/11, a/16748/11, a/16749/11, a/16751/11, a/16752/11, a/16753/11, a/16754/11,
a/16755/11, a/16756/11, a/16757/11, a/16758/11, a/16759/11, a/16760/11, a/16761/11,
a/16762/11, a/16763/11, a/16764/11, a/16765/11, a/16766/11, a/16767/11, a/16768/11,
a/16769/11, a/1677/10, a/16770/11, a/16771/11, a/16772/11, a/16773/11, a/16774/11,

a/16775/11, a/16777/11, a/16778/11, a/16779/11, a/16780/11, a/16781/11, a/16782/11, a/16783/11, a/16784/11, a/16785/11, a/16786/11, a/16787/11, a/16788/11, a/16789/11, a/16790/11, a/16791/11, a/16792/11, a/16793/11, a/16794/11, a/16795/11, a/16796/11, a/16797/11, a/16798/11, a/16799/11, a/1713/10, a/1857/10, a/1888/10, a/1894/10, a/3172/10.

11. With regard to Applicants a/0707/10, a/1052/10, a/16196/11, a/16210/11, a/16230/11, a/16247/11, a/16248/11, a/16260/11, a/16268/11, a/16309/11, a/16464/11 and a/16480/11, 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. In submitting additional information, Applicant a/0707/10 describes crimes committed against him by the Accused's as well as Bozize's troops. The Prosecution's submission above pertains only to his claims attributing the crime of pillaging to the Banyamulengue.

13. Applicant a/1052/10 should be invited to provide information and/or documentation to establish proof of kinship with the deceased father and to establish the causal link between his death and the injury caused by the Banyamulengue.

14. Applicant a/16196/11 should be invited to provide 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 his sister's rape.

15. Applicant a/16210/11 should be invited to provide information and/or documentation to establish his legal standing towards his adopted son as well as his proof of identity and kinship, in order to substantiate his claim on the harm he suffered as a result of his adopted son's murder.

16. Applicant a/16230/11 should be invited to clarify whether she is describing the rape of her sister or that of her daughter. She should be invited to provide information and/or documentation to establish the murder and proof of kinship of her family member, in order to substantiate her claim on the harm she suffered as a result of her family member's rape.

17. In addition to the crime of pillaging, Applicant a/16247/11 meets all the requirements as a victim of rape. However, she should be invited to provide information and/or documentation to establish the murder of her husband as well as his identity and proof of kinship, in order to substantiate her claim on the harm she suffered as a result of his murder.

18. Applicant a/16248/11 should be invited to provide information and/or documentation to establish the murder of her daughter as well as her identity and proof of kinship, in order to substantiate her claim on the harm she suffered as a result of her daughter's murder.

19. Applicant a/16260/11 should be invited to provide information and/or documentation to establish the murder of her son as well as his identity and proof of kinship, in order to substantiate her claim on the harm she suffered as a result of her son's murder.

20. Applicant a/16268/11 should be invited to provide information and/or documentation to establish the murder of her brother-in-law and the other family member¹⁴ as well as their respective identity and proof of kinship, in order to substantiate her claim on the harm she suffered as a result of their murder.

¹⁴ Due to redactions, the identity of the other family member is unknown to the Prosecutor.

21. Applicant a/16309/11 should be invited to provide information and/or documentation to establish the rape of his wife as well as her identity and proof of kinship, in order to substantiate his claim on the harm he suffered as a result of his wife's rape.

22. Applicant a/16464/11 should be invited to provide information and/or documentation to establish the rape of his daughter as well as her identity and proof of kinship, in order to substantiate his claim on the harm he suffered as a result of his daughter's rape.

23. Applicant a/16480/11 should be invited to provide information and/or documentation to establish the rape of his two daughters as well as their respective identity and proof of kinship, in order to substantiate his claim on the harm he suffered as a result of his daughters' rape.

24. Lastly, the Prosecution notes that several of the above applicants do not provide a specific date for the exactions listed in their applications.¹⁵ Instead they refer to the event of *Tabaski* celebration in 2003. The Prosecution observes that this celebration, as it has also previously submitted,¹⁶ took place in the month of February 2003. Therefore, the Prosecution considers that all of these applicants have fully met the requirement of time, establishing, *prima facie*, the causal link between the harm suffered and the crimes committed within the time-frame alleged by the Prosecution and upheld by the Chamber, "i.e. on or about 26 October 2002 to 15 March 2003".¹⁷

¹⁵ See for example the applications of Applicants a/16214/11, a/16217/11, a/16222/11, a/16223/11 and a/16224/11.

¹⁶ ICC-01/05-01/08-1858, Prosecution's Observations on 212 Applications for Victims' Participation in the Proceedings, 14 October 2011, at para. 10.

¹⁷ 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.

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

25. Applicant a/1681/10 states that he was captured and tortured by *Mouvement de Libération du Congo* (“MLC”) soldiers whilst Applicant a/1699/10 resubmits an application on behalf of his deceased brother, clarifying that he was tortured by MLC soldiers in January 2003 and later died in October 2003. The crime of torture is not part of the confirmed charges against the Accused. Therefore, as there is no causal link between the harm claimed by both of the applicants and the charges against the Accused, the Prosecution submits that the applicants do not meet the requirements for victim participation.

26. Applicant a/16208/11 attributes the crimes of pillaging to the young people of her neighborhood, not to troops under the control of the Accused. This fails to establish, *prima facie*, the causal link between the harm she suffered and the charges against the Accused. Therefore, 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

27. Applicants a/16274/11, a/16275/11, a/16276/11, a/16277/11, a/16298/11, a/16301/11, a/16302/11, a/16304/11, a/16305/11, a/16306/11, a/16307/11, a/16308/11, a/16312/11, a/16313/11, a/16316/11, a/16417/11, a/16418/11, a/16674/11 and a/16685/11 do not provide sufficient information on the location of the crimes committed against them 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 clarify or provide further information on the location of their victimization.

28. Applicants a/16212/11, a/16216/11, a/16241/11, a/16254/11, a/16475/11, a/16603/11, a/16664/11, a/16666/11, a/16668/11, a/16670/11, a/16671/11, a/16673/11, a/16686/11, a/16687/11 and a/16688/11 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 clarify or provide further information on the time of their victimization.

29. In addition to the deficiency of the information on the time of the events, the Prosecution notes that the redactions of the events' location to forms submitted by Applicants a/16212/11, a/16603/11 and a/16686/11 make it impossible to identify where the crimes occurred. The Prosecution is therefore unable to assess whether there is a causal link between the harm suffered by the applicants and the crimes charged against the Accused and leaves it to the Chamber to determine whether the applicants provided sufficient information or whether additional documents and/or information should be requested.

30. Regarding Applicant a/16216/11, the Prosecution notes that in addition to the deficiency of the information on the time of the events, the applicant provides an unclear description on the perpetrators. He mentions as persons responsible for the pillaging of his goods the Banyamulengue as well as the "GP". Furthermore, he includes in the application form a description of pillaging that occurred after the 2003 events and blames the "*coupeurs de route*". Lastly, in his list of the pillaged items the applicant states that the "rebels" were responsible for the pillaging. The Prosecution submits that the Chamber should ask the applicant to clarify these submissions and claims in order to determine whether and for what crimes he meets the criteria for participation as a victim in the current proceedings.

31. Regarding Applicant a/16668/11, the Prosecution notes that redactions make it impossible to establish his identity. Therefore the Prosecution is unable to assess whether he 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 for him to establish his identity.

32. Applicant a/0727/10 states that he was keeping items belonging to a church at his home where they were pillaged. He annexes a document signed by a number of persons designating him to represent the church's interests. The Prosecution notes that, due to redactions, it is impossible to confirm his title and determine, *prima facie*, his *locus standi* to act on the church's behalf. The Prosecution submits that the applicant be asked by the Chamber to clarify if he is filing the application on behalf of the church and, if that is the case, to instruct him to use the application form for organizations rather than the standard one for individuals.

33. Applicant a/16013/11 states that he welcomed a Banyamulengue to his house and gave him money. The Banyamulengue then told him to leave his house and that he was going to protect it. The Prosecution notes that, based on the unclear description of the events in the applicant's form, it is not possible to establish whether the applicant has suffered any crimes at all or, if he has, whether for such crimes a causal link can be established between the harm suffered and the charges against the Accused. The Prosecution submits that the applicant be asked by the Chamber to clarify his accounts and provide further information and/or documents to establish, *prima facie*, that he meets all the requirements for victim participation.

34. Applicant a/16213/11 claims that he was a victim of pillaging. However, he attaches to his application a list of pillaged items referring to a "*groupement*", which makes it unclear whether he is acting on his behalf or on that of a corporation. The

Chamber should defer the decision on his application and ask him to clarify the above. If he is acting on behalf of a corporation, the Chamber should instruct the applicant to use the application form for organizations rather than the standard one for individuals and to provide additional information and documents granting him *locus standi* to act on this corporation's behalf. If the applicant is filing for victim status on his own behalf, he should provide further information to clarify which of the looted items belong to him.

35. Applicant a/16473/11 claims damages for the pillaging and the murder of his brother. However, he provides no documentation to establish his brother's identification or proof of kinship. He should be invited to provide information and/or documentation to establish the identity and proof of kinship of his brother, in order to substantiate his claim on the harm he suffered as a result of his murder.

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

36. As to Applicants a/0377/11, a/16251/11, a/16465/11, a/16470/11, a/16605/11 and a/16610/11, 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 against the Accused and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested.

37. In addition, Applicants' a/0377/11 and a/16218/11 forms contain redactions which 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.

38. As to Applicants a/16205/11, a/16206/11, a/16207/11, a/16218/11, a/16220/11, a/16225/11, a/16231/11, a/16233/11, a/16681/11, a/16682/11, a/16683/11 and a/16684/11, redactions make it impossible to determine when the crimes against them were committed by the MLC troops. The Prosecution is therefore unable to assess whether there is a causal link between the harm suffered by these applicants and the crimes charged against the Accused and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested to determine the time of their victimization.

39. In addition, forms submitted by Applicants a/16225/11 and a/16233/11 contain redactions which 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.

40. As to Applicants a/16234/11, a/16235/11, a/16240/11, a/16250/11, a/16255/11, a/16258/11, a/16300/11, a/16303/11, a/16311/11, a/16419/11, a/16463/11, a/16617/11, a/16637/11, a/16656/11, a/16678/11, a/16679/11 and a/16776/11, 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.

41. In addition, Applicant a/16235/11's form contains redactions which make it impossible to determine as to when the crimes against him were committed by the MLC troops. The Prosecution is therefore unable to assess whether there is a causal link between the harm suffered by him and the crimes charged against the Accused and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested to determine the time of his victimization.

42. Applicant a/16245/11 claims the status of indirect victim for the murder of her brother. The Prosecution notes that the redactions applied to the birth and death certificates attached to her application make it impossible to establish proof of kinship with the murdered brother. The Prosecution leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested in order for her to establish kinship with the murdered brother and substantiate her claim on the harm she suffered as a result of his murder.

43. Applicant a/1665/10 claims the status of indirect victim for the murder of his father. The Prosecution notes that the redactions applied to the birth and death certificates attached to his application make it impossible to establish proof of kinship with the murdered father. The Prosecution leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested in order for him to establish kinship with the murdered father and substantiate his claim on the harm he suffered as a result of his murder.

IV. Conclusion

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

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

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

47. 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 27th Day of January 2012

At The Hague, The Netherlands