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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 applicants listed in section B 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 C below make it difficult to determine whether they meet all the requirements for participation. The Prosecution does not object to the

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.

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

5. The Prosecution submits that the applicant listed in section D below does not meet the requirements for victim 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.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 9 December 2011, the Chamber, granting a Defence request,⁷ ordered extension of the time limit for the filing of observations on the 18th and 19th transmission of the applications for participation in the proceedings.⁸ The Chamber

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-01/05-01/08-1992, 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.

⁸ ICC-01/05-01/08-T-200-CONF-ENG ET, p. 59, line 17 to p. 60, line 9, 9 December 2011.

further ruled that for the remaining 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.⁹

9. On 13 January 2012 the Registry provided the Prosecution with 350 redacted versions of the twentieth set of applications.¹⁰

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/0538/11, a/0539/11, a/0541/11, a/0543/11, a/0546/11, a/0550/11, a/0551/11, a/0552/11, a/0807/10, a/0813/10, a/16229/11, a/16270/11, a/16483/11, a/16484/11, a/16486/11, a/16487/11, a/16488/11, a/16491/11, a/16492/11, a/16493/11, a/16497/11, a/16498/11, a/16499/11, a/16500/11, a/16501/11, a/16502/11, a/16505/11, a/16506/11, a/16507/11, a/16508/11, a/16509/11, a/16510/11, a/16511/11, a/16512/11, a/16513/11, a/16514/11, a/16515/11, a/16516/11, a/16518/11, a/16519/11, a/16520/11, a/16521/11, a/16522/11, a/16584/11, a/16585/11, a/16586/11, a/16587/11, a/16588/11, a/16589/11, a/16590/11, a/16592/11, a/16593/11, a/16594/11, a/16595/11, a/16638/11, a/16639/11, a/16640/11, a/16641/11, a/16642/11, a/16800/11, a/16801/11, a/16802/11, a/16803/11, a/16804/11, a/16805/11, a/16806/11, a/16807/11, a/16808/11, a/16809/11, a/16810/11, a/16811/11, a/16812/11, a/16813/11, a/16814/11, a/16815/11, a/16816/11, a/16817/11, a/16818/11, a/16819/11, a/16820/11, a/16822/11, a/16823/11, a/16824/11, a/16825/11, a/16826/11, a/16827/11, a/16828/11, a/16829/11, a/16830/11, a/16831/11, a/16832/11, a/16833/11, a/16834/11, a/16835/11, a/16836/11, a/16837/11,

⁹ *Ibid*, p. 60, lines 9-11.

¹⁰ ICC-01/05-01/08-2043, Twentieth transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 13 January 2012.

a/16838/11, a/16839/11, a/16840/11, a/16841/11, a/16842/11, a/16843/11, a/16844/11,
a/16845/11, a/16846/11, a/16847/11, a/16848/11, a/16849/11, a/16850/11, a/16851/11,
a/16852/11, a/16853/11, a/16854/11, a/16855/11, a/16856/11, a/16857/11, a/16858/11,
a/16859/11, a/16860/11, a/16861/11, a/16862/11, a/16863/11, a/16864/11, a/16866/11,
a/16867/11, a/16868/11, a/16869/11, a/16870/11, a/16871/11, a/16872/11, a/16873/11,
a/16874/11, a/16875/11, a/16876/11, a/16877/11, a/16878/11, a/16879/11, a/16880/11,
a/16881/11, a/16882/11, a/16883/11, a/16884/11, a/16885/11, a/16886/11, a/16887/11,
a/16888/11, a/16889/11, a/16890/11, a/16891/11, a/16892/11, a/16893/11, a/16894/11,
a/16895/11, a/16896/11, a/16897/11, a/16898/11, a/16899/11, a/16900/11, a/16901/11,
a/16902/11, a/16903/11, a/16904/11, a/16905/11, a/16906/11, a/16907/11, a/16935/11,
a/16936/11, a/16937/11, a/16939/11, a/16940/11, a/16942/11, a/16943/11, a/16944/11,
a/16948/11, a/16952/11, a/16953/11, a/16954/11, a/16955/11, a/16956/11, a/16957/11,
a/16958/11, a/16960/11, a/16961/11, a/16962/11, a/16963/11, a/16964/11, a/16966/11,
a/16968/11, a/16969/11, a/16970/11, a/16972/11, a/16973/11, a/16975/11, a/16976/11,
a/16977/11, a/16978/11, a/16979/11, a/16980/11, a/16981/11, a/16982/11, a/16984/11,
a/16985/11, a/16987/11, a/16988/11, a/16990/11, a/16991/11, a/16992/11, a/16993/11,
a/16994/11, a/16995/11, a/16996/11, a/16998/11, a/16999/11, a/17000/11, a/17001/11,
a/17002/11, a/17003/11, a/17004/11, a/17005/11, a/17021/11, a/17028/11, a/17029/11,
a/17030/11, a/17031/11, a/17032/11, a/17033/11, a/17034/11, a/17035/11, a/17035/11,
a/17038/11, a/17039/11, a/17040/11, a/17041/11, a/17042/11, a/17046/11, a/17048/11,
a/17049/11, a/17050/11, a/17051/11, a/17052/11, a/17053/11, a/17055/11, a/17056/11,
a/17057/11, a/17058/11, a/17059/11, a/17060/11, a/17061/11, a/17062/11, a/17063/11,
a/17064/11, a/17065/11, a/17078/11, a/17079/11, a/17080/11, a/17090/11, a/17091/11,
a/17092/11, a/17093/11, a/17094/11, a/17096/11, a/17097/11, a/17098/11, a/17099/11,
a/17100/11, a/17101/11, a/17110/11, a/17111/11, a/17112/11, a/17113/11, a/17114/11,
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a/17122/11, a/17124/11, a/17125/11, a/17126/11, a/17127/11, a/17128/11, a/17129/11,
a/17130/11, a/17131/11, a/17132/11, a/17134/11, a/17135/11, a/17136/11, a/17137/11,
a/17138/11, a/17139/11, a/17140/11, a/17141/11, a/1876/10.

11. With regard to Applicants a/16270/11, a/16592/11, a/16841/11, a/16844/11, a/17028/11, a/17052/11 and a/17079/11, 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. Applicant a/16270/11 should be invited to provide information and/or documentation to establish the murder and proof of kinship with his two deceased daughters in order to substantiate his claim on the harm he suffered as a result of their murder. The Prosecution also notes that the redactions applied to the attached death certificate of his deceased son make it impossible to establish his kinship and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested from him.

13. Applicant a/16592/11 should be requested to provide information and/or documentation to further clarify his accounts on the death of his son and whether he is claiming indirect victim status as a result of his death.

14. Applicant a/16841/11 should be invited to provide information and/or documentation to establish the murder and proof of kinship with his deceased sisters in order to substantiate his claim on the harm he suffered as a result of their murder.

15. Applicant a/16844/11 should be requested to provide information and/or documentation to establish the murder and proof of kinship with his deceased parents in order to substantiate his claim on the harm he suffered as a result of their murder.

16. With regard to Applicant a/17028/11, the Prosecution notes that the redactions applied to the identity and death certificate of her deceased son make it impossible to establish the kinship. The Prosecution therefore leaves it to the Chamber to

determine whether sufficient documentation was provided or additional documents and/or information should be requested from her to prove her claim on the harm she suffered as a result of his murder.

17. Applicant a/17052/11 should be invited to provide information and/or documentation to establish the murder and proof of kinship with her deceased daughter in order to substantiate her claim on the harm she suffered as a result of her murder.

18. Applicant a/17079/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with his deceased daughter in order to substantiate his claim on the harm he suffered as a result of her rape.

19. With regard to Applicant a/16964/11, the Prosecution notes that she meets all the requirements for participation as a victim of rape. However, she should be invited to provide information and/or documentation to establish the identity and proof of kinship with her raped mother in order to substantiate her claim on the harm she suffered as a result of her rape.

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

20. Applicants a/16239/11, a/16494/11, a/17023/11, a/17024/11, a/17025/11, a/17054/11, a/17066/11, a/17069/11, a/17070/11, a/17071/11, a/17072/11, a/17073/11, a/17074/11, a/17075/11, a/17076/11, a/17077/11, a/17095/11 and a/17133/11, do not provide sufficient information as to the date of the crimes committed against them by the *Mouvement de Libération du Congo* troops. Therefore the Prosecution requests 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. Alternatively, with regard to Applicants a/17066/11, a/17069/11, a/17071/11, a/17074/11, a/17075/11 and a/17076/11, the Prosecution, noting the redactions to the references to a certain festivity in 2003, leaves it to Chamber to determine whether the non-redacted versions of these applications provide sufficient information or additional documents and/or information should be requested to determine the time of their victimization.

21. Additionally, with regard to Applicant a/16239/11, the Prosecution notes that the redactions make it impossible to determine whether the identity document attached to the application relates to the person who suffered victimization and filled in the application form, and leaves it to the Chamber to determine whether additional documents and/or information should be requested.

22. With regard to Applicant a/16494/11, the Prosecution submits that, due to the unclear description of the events, it is also not possible to establish, *prima facie*, whether the Banyamulengue were the perpetrators of the pillaging from which he suffered harm. The Prosecution submits that the applicant should be asked to clarify his account of events.

23. With regard to Applicant a/17023/11, the Prosecution notes that the applicant mentioned her uncle's murder but provided no document to establish his death, identity and proof of kinship. The Applicant should be invited to provide information and/or documentation to establish the death, identity and proof of kinship of her uncle, in order to substantiate her claim on the harm she suffered as a result of his murder.

24. With regard to Applicant a/16485/11, the Prosecution submits that, due to the unclear description of the events, it is not possible to determine whether the applicant suffered harm from any of the crimes charged against the Accused. Although the applicant attached a list of pillaged items to her application, she made no mentioning of the pillaging of her house or property. Therefore, the applicant should be invited to further clarify her account of events.

25. Applicant a/16490/11 submitted an application on behalf of her sister. *Inter alia*, she stated that she and her sister were born from a different father and mother. Given the unclear information on the kinship, the lack of the birth certificate of the deceased as well as the redactions to the birth certificate of the applicant, the Prosecution cannot assess whether the applicant has established, *prima facie*, proof of kinship with the deceased and submits that the Chamber request the applicant to provide further clarification, information or documents to establish it.

C. 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

26. As to Applicants a/16496/11, a/16938/11, a/16941/11, a/16945/11, a/16946/11, a/16947/11, a/16949/11, a/16950/11, a/16951/11, a/16986/11, a/17043/11, a/17044/11 and a/17047/11, 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.

27. Additionally, with regard to Applicant a/16986/11, the Prosecution notes that the redactions and the fact that he did not provide his date of birth make it

impossible to determine whether the identity document attached to the application relates to the person who suffered victimization and filled in the application form, and leaves it to the Chamber to determine whether additional documents and/or information should be requested.

28. As to Applicants a/0545/11, a/16489/11, a/16495/11, a/16503/11, a/16504/11, a/16591/11, a/16604/11, a/16821/11, a/16967/11, a/16971/11, a/16974/11, a/16983/11, a/16997/11, a/17037/11 and a/17045/11, redactions make it impossible to establish whether the identity documents attached to the applications relate to the persons who suffered victimization and filled in the application forms. In addition, regarding Applicants a/0545/11, a/16604/11, a/16974/11, a/16983/11 and a/16997/11, the Prosecution notes that they do not provide their date of birth. The Prosecution also notes that the identifying documents of Applicants a/16495/11, a/16504/11, a/16604/11 and a/17037/11 do not include the information on the date of birth. The Prosecution, therefore, leaves it to the Chamber to determine whether sufficient information and/or documentation were provided or additional documents and/or information should be requested.

29. The form submitted by Applicant a/16971/11 contains redactions which make it impossible to establish proof of kinship with his victimized daughter. The Prosecution leaves it to the Chamber to determine whether additional documents and/or information should be requested.

30. Applicant a/16517/11 is acting on behalf of her sister killed by the Banyamulengue. The Prosecution notes that, due to redactions applied on their parents' names, it is not possible to establish their kinship. The Prosecution leaves it to the Chamber to determine whether sufficient information and/or documentation was provided or additional documents and/or information should be requested.

31. With regard to Applicant a/16956/11, the Prosecution observes that, due to redactions, it is not possible to establish the kinship between the victim and her father. The Prosecution leaves it to the Chamber to determine whether sufficient information and/or documentation was provided or additional documents and/or information should be requested.

32. Applicant a/17027/11 is the sister of a murdered victim. The Prosecution notes that, due to redactions applied to the identity and death certificates of her deceased brother, it is not possible to establish the identity of the brother as well as kinship between the two. The Prosecution leaves it to the Chamber to determine whether sufficient information and/or documentation was provided or additional documents and/or information should be requested.

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

33. Applicant a/17022/11 states that he was beaten by the Banyamulengue. The events, as described in his application, do not amount to any of the crimes charged against the Accused. Therefore, the Prosecution submits that the applicant does not meet the requirements for victim participation.

IV. Conclusion

34. 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.

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

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

37. The Prosecution submits that the applicant listed in section D above does not meet the requirements for participation.



Luis Moreno-Ocampo, Prosecutor

Dated this 6th Day of February 2012

At The Hague, The Netherlands