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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 charged against the Accused.

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 applicants listed in section D below do 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 30 January 2012, the Registry provided the Prosecution with 350 redacted versions of the 21st 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/0392/08, a/1256/10, a/1258/10, a/1364/10, a/17088/11, a/17103/11, a/17104/11, a/17105/11, a/17106/11, a/17107/11, a/17108/11, a/17142/11, a/17144/11, a/17149/11, a/17150/11, a/17152/11, a/17154/11, a/17155/11, a/17158/11, a/17161/11, a/17170/11, a/17171/11, a/17175/11, a/17176/11, a/17177/11, a/17180/11, a/17181/11, a/17183/11, a/17184/11, a/17185/11, a/17188/11, a/17190/11, a/17192/11, a/17193/11, a/17194/11, a/17195/11, a/17196/11, a/17197/11, a/17198/11, a/17199/11, a/17200/11, a/17201/11, a/17202/11, a/17203/11, a/17208/11, a/17209/11, a/17210/11, a/17211/11, a/17212/11, a/17213/11, a/17241/11, a/17215/11, a/17216/11, a/17217/11, a/17218/11, a/17219/11, a/17200/11, a/17221/11, a/17222/11, a/17223/11, a/17224/11, a/17225/11, a/17227/11, a/17228/11, a/17230/11, a/17231/11, a/17235/11, a/17237/11, a/17238/11, a/17239/11, a/17240/11, a/17241/11, a/17242/11, a/17243/11, a/17244/11, a/17245/11, a/17246/11, a/17247/11, a/17248/11, a/17249/11, a/17250/11, a/17251/11, a/17252/11, a/17254/11, a/17256/11, a/17257/11, a/17259/11, a/17260/11, a/17261/11, a/17262/11, a/17263/11, a/17264/11, a/17265/11, a/17266/11, a/17267/11, a/17268/11,

⁹ *Ibid*, p. 60, lines 9-11.

¹⁰ ICC-01/05-01/08-2074, Twenty-first transmission to the parties and the legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 27 January 2012.

a/17269/11, a/17270/11, a/17271/11, a/17272/11, a/17273/11, a/17274/11, a/17275/11, a/17279/11, a/17280/11, a/17282/11, a/17284/11, a/17285/11, a/17286/11, a/17287/11, a/17288/11, a/17289/11, a/17290/11, a/17291/11, a/17293/11, a/17294/11, a/17296/11, a/17297/11, a/17298/11, a/17299/11, a/17300/11, a/17301/11, a/17302/11, a/17303/11, a/17304/11, a/17305/11, a/17306/11, a/17307/11, a/17308/11, a/17309/11, a/17311/11, a/17316/11, a/17317/11, a/17318/11, a/17319/11, a/17320/11, a/17321/11, a/17322/11, a/17323/11, a/17324/11, a/17326/11, a/17327/11, a/17328/11, a/17329/11, a/17330/11, a/17331/11, a/17332/11, a/17333/11, a/17334/11, a/17335/11, a/17336/11, a/17337/11, a/17338/11, a/17339/11, a/17340/11, a/17341/11, a/17342/11, a/17343/11, a/17344/11, a/17345/11, a/17346/11, a/17347/11, a/17348/11, a/17349/11, a/17350/11, a/17351/11, a/17352/11, a/17353/11, a/17354/11, a/17355/11, a/17356/11, a/17357/11, a/17358/11, a/17359/11, a/17360/11, a/17361/11, a/17362/11, a/17363/11, a/17364/11, a/17365/11, a/17367/11, a/17368/11, a/17370/11, a/17371/11, a/17372/11, a/17373/11, a/17374/11, a/17375/11, a/17376/11, a/17377/11, a/17378/11, a/17382/11, a/17383/11, a/17385/11, a/17388/11, a/17390/11, a/17392/11, a/17393/11, a/17395/11, a/17396/11, a/17397/11, a/17398/11, a/17399/11, a/17402/11, a/17403/11, a/17404/11, a/17405/11, a/17406/11, a/17407/11, a/17409/11, a/17419/11, a/17436/11, a/17438/11, a/17440/11, a/17452/11, a/17454/11, a/17464/11, a/17473/11, a/1884/10, a/2138/10, a/2161/10, a/2176/10, a/2319/10, a/3199/10.

11. With regard to Applicants a/17154/11, a/17161/11, a/17177/11, a/17190/11, a/17213/11, a/17241/11, a/17218/11, a/17345/11, a/17349/11, a/17362/11, a/17395/11 and a/17436/11, 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/17154/11 should be invited to provide information and/or documentation to establish the identity, the murder and proof of kinship with her

deceased husband in order to substantiate her claim on the harm she suffered as a result of his murder.

13. With regard to Applicant a/17161/11, the Prosecution notes that his additional claim relates to his kidnapping and torturing by troops of the *Mouvement de Libération du Congo* ("MLC"), which do not form part of the charges against the Accused.

14. Applicant a/17177/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with her sister, who was raped by the MLC soldiers, in order to substantiate her claim on the harm the applicant suffered as a result of her sister's rape.

15. Applicant a/17190/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with his sister, who was raped by the MLC troops, in order to substantiate his claim on the harm he suffered as a result of her rape.

16. Applicant a/17213/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with her deceased brother in order to substantiate her claim on the harm she suffered as a result of his murder.

17. Applicant a/17241/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with her deceased husband in order to substantiate her claim on the harm she suffered as a result of his murder.

18. Applicant a/17218/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with his mother and

sister, who were raped by MLC troops, in order to substantiate his claim on the harm he suffered as a result of their rape.

19. Applicant a/17345/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with his deceased grandmother and aunt in order to substantiate his claim on the harm he suffered as a result of their murder.

20. Applicant a/17349/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with her deceased uncle in order to substantiate her claim on the harm she suffered as a result of his murder.

21. Applicant a/17362/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with his daughter, who was raped by the MLC soldiers, in order to substantiate his claim on the harm he suffered as a result of her rape.

22. Applicant a/17395/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with her deceased husband in order to substantiate her claim on the harm she suffered as a result of his murder.

23. Applicant a/17436/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with his deceased son in order to substantiate his claim on the harm he suffered as a result of his son's murder.

24. With regard to Applicants a/17171/11, a/17343/11, a/17361/11 and a/17371/11, the Prosecution submits that as victims of rape and pillaging, they all meet the

requirements for participation. However, their applications are not limited to the harm they suffered from the rape and pillaging.

25. Applicant a/17171/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with her daughters, who were raped by MLC soldiers, in order to substantiate her claim on the harm she suffered as a result of their rape.

26. Applicant a/17343/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with her daughter, who was raped by MLC troops, in order to substantiate her claim on the harm she suffered as a result of her daughter's rape.

27. Applicant a/17361/11 claims harm suffered as a result of the death of a person. She should be invited to clarify the kinship with this person and the circumstances of the death to determine whether it amounts to murder. Furthermore, the applicant should be requested to provide the identity, death certificate and proof of kinship with the deceased person to substantiate her claim.

28. Applicant a/17371/11 should be invited to provide information and/or documentation to establish the identity and proof of kinship with her deceased husband in order to substantiate her claim on the harm she suffered as a result of his murder.

29. Applicant a/17286/11 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 deceased brother in order to substantiate her claim on the harm she suffered as a result of his murder.

30. Applicant a/17308/11 filed the application on behalf of his deceased daughter. The Prosecution submits that the applicant meets all the requirements for participation as an indirect victim for the harm he suffered as a result of the rape of his daughter who, having contracted HIV, died four years latter. However, with regard to the pillaging of his shop, the applicant should be invited to file an application on his own behalf in order to be granted participation as a victim of pillaging.

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

31. Applicants a/17086/11, a/17102/11, a/17178/11, a/17207/11, a/17236/11, a/17369/11, a/17379/11, a/17384/11, a/17387/11, a/17391/11, a/17394/11 and a/17410/11 do not provide sufficient information as to the date of the crimes committed by the MLC troops against them. The Prosecution therefore requests that the Chamber defer its decision on their respective applications and give the applicants the opportunity to clarify or provide further information on the time of their victimization.

32. Additionally, the Prosecution notes that Applicant a/17086/11 should be requested to clarify her vague submission regarding the identity of the perpetrators. The Prosecution also notes that the redactions make it impossible to identify the location where the crimes occurred. The Prosecution therefore leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested.

33. With regard to Applicant a/17102/11, the Prosecution submits that she should be invited to provide information and/or documentation to establish the identity, death and proof of kinship with her deceased husband in order to substantiate her claim on the harm she suffered as a result of his murder, in addition to her claim on

the pillaging of her house. The Prosecution also notes that the redactions make it impossible to identify the location where the crimes occurred, and leaves it to the Chamber to determine whether sufficient documentation was provided or additional documents and/or information should be requested.

34. As to Applicants a/17178/11 and a/17369/11, the Prosecution also 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.

35. Applicants a/17182/11, a/17191/11, a/17276/11, a/17277/11, a/17278/11, a/17386/11, a/17389/11, a/17401/11 and a/2138/10 provide a church membership card to prove their identities. However, the Prosecution notes that the documents provide neither their respective dates of birth nor any indication of their age. Therefore, the Prosecution submits that the church membership cards are insufficient to establish the applicants' identity and the Chamber should give the applicants the opportunity to provide further information and/or documentation to demonstrate their identities.

36. Additionally, the Prosecution notes that Applicant a/17276/11 failed to identify the perpetrators of her rape and should be requested to provide further information in this regard.¹¹

37. The Prosecution observes that Applicant a/17087/11's description of the perpetrators is unclear and she should be requested to provide further information and/or documents as to their identity.¹² In addition, the Prosecution notes that the redactions make it impossible to identify the location where the crimes occurred.

¹¹ Applicant a/17276/11 merely states that her armed rapists spoke a language she did not understand.

¹² Applicant a/17087/11 refers to the perpetrators as "they" in her application and, when indicating the persons responsible for the harm suffered, she states "Patassé and Bemba".

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

38. With regard to Applicant a/17411/11, the Prosecution submits that the applicant should be requested to provide further information and/or documents to establish the identity and death of his deceased father and brother in order to substantiate his claim of the harm suffered as a result of their murder.

39. The Prosecution submits that applicants a/17281/11 and a/17283/11 should be requested to provide further information on the perpetrators of the rapes they suffered, in order to establish the causal link between the harm suffered and the charges against the Accused.¹³

40. Applicant a/17315/11 should be invited to provide further information and/or documents to establish the identity of the victim of rape for which he suffered harm and proof of kinship with her, in order to substantiate his claim.

41. Applicants a/17412/11 and a/17413/11 claim to have suffered harm as a result of the murder of their respective father and brother. The Prosecution submits that both applicants should be requested to provide further information and/or documents to establish the identity of the deceased persons as well as their respective proof of kinship in order to substantiate their claims.

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

¹³ Applicants a/17281/11 and a/17283/11 merely stated that the soldiers who raped them spoke a language that they did not understand

42. As to Applicants a/1435/10, a/1492/10, a/16865/11, a/17084/11, a/17085/11, a/17143/11, a/17145/11, a/17146/11, a/17147/11, a/17148/11, a/17151/11, a/17153/11, a/17156/11, a/17157/11, a/17159/11, a/17160/11, a/17162/11, a/17163/11, a/17164/11, a/17165/11, a/17166/11, a/17167/11, a/17168/11, a/17169/11, a/17172/11, a/17173/11, a/17189/11, a/17204/11, a/17205/11, a/17206/11, a/17414/11, a/17415/11, a/17416/11, a/17417/11, a/17418/11, a/17420/11, a/17421/11, a/17422/11, a/17423/11, a/17424/11, a/17425/11, a/17426/11, a/17427/11, a/17428/11, a/17429/11, a/17430/11, a/17431/11, a/17432/11, a/17433/11, a/17434/11, a/17437/11, a/17439/11, a/17441/11, a/17442/11, a/17443/11, a/17444/11, a/17445/11, a/17446/11, a/17447/11, a/17448/11, a/17449/11, a/17450/11, a/17451/11, a/17453/11, a/17455/11, a/17456/11, a/17458/11, a/17459/11, a/17460/11, a/17461/11, a/17462/11, a/17465/11, a/17464/11, a/17468/11, a/17469/11, a/17470/11, a/17471/11 and a/17472/11, 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.

43. In addition, with regard to Applicant a/16865/11, the Prosecution submits that he should be asked to provide further information and/or documents to establish the identity, death and proof of kinship to the deceased son in order to substantiate his claim on the harm suffered as a result of his murder.

44. The Prosecution submits that Applicant a/17084/11 should be requested to clarify who is acting on whose behalf, and provide accordingly documents to establish the applicant's and the victim's identity, as well as proof of kinship.

45. The Prosecution submits that Applicant a/17159/11 should be asked to provide further information and/or documents to establish the identity, death and proof of

kinship to her deceased father in order to substantiate her claim on the harm suffered as a result of his murder.

46. As to Applicants a/16965/11, a/17089/11, a/17109/11, a/17179/11, a/17186/11, a/17187/11, a/17255/11, a/17258/11, a/17292/11, a/17295/11, a/17314/11, a/17325/11, a/17411/11, a/17468/11 and a/17469/11, 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, Applicants a/17179/11, a/17258/11, a/17292/11 and a/17295/11 do not provide their dates of birth. The Prosecution also notes some discrepancies on the information and documentation provided by Applicants a/17109/11, a/17255/11, a/17314/11, a/17411/11, a/17468/11 and a/17469/11. 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.

47. Additionally, the Prosecution notes that according to the information provided by Applicant a/17089/11, the brother of the victim is acting on her behalf. However, no information or documentation on the date of birth of the brother and the kinship is provided. Therefore, the Prosecution submits that the applicant should be asked to provide further information and/or documents to establish the identity of the brother as well as proof of kinship with the victim.

48. As to Applicant a/17310/11, redactions make it impossible to identify the time when the crimes occurred. The Prosecution is therefore unable to assess whether there is a causal link between the harm suffered by the applicant 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.

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

49. Applicants a/12167/10, a/2243/10 and a/2357/12 claim harm from crimes that are not part of the charges against the Accused. Applicant a/12167/10 lost his property as a result of arson. Applicant a/2243/10 suffered gunshot wounds and Applicant a/2357/12 was kidnapped and tortured. The Prosecution therefore submits that there is no causal link between the harm suffered and the charges against the Accused and these applicants do not meet the requirements for victim participation.

IV. Conclusion

50. 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.

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

52. 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.

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

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is positioned above a horizontal line.

Luis Moreno-Ocampo, Prosecutor

Dated this 21st Day of February 2012

At The Hague, The Netherlands