Cour Pénale Internationale

International Criminal Court

Original: **English**

No.: **ICC-01/05-01/08**
Date: **5 April 2018**

TRIAL CHAMBER III

Before: **Judge Geoffrey Henderson, Presiding Judge**
Judge Chang-ho Chung
Judge Kimberly Prost

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v.JEAN-PIERRE BEMBA GOMBO

Public Document
With Confidential *EX PARTE* Annexes, only available to the Registry

Public redacted version of ''Second report to Trial Chamber III on applications to participate in the proceedings'', dated 11 June 2010 and registered on 14 June 2010, ICC-01/05-01/08-796-Conf-Exp

Source: **Registry**

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**
Legal Representatives of the Victims	**Legal Representatives of the Applicants**
Unrepresented Victims	**Unrepresented Applicants (Participation/Reparation)**
The Office of Public Counsel for Victims	**The Office of Public Counsel for the Defence**
States' Representatives	**Amicus Curiae**

REGISTRY

Registrar Mr Herman von Hebel	**Counsel Support Section**
Victims and Witnesses Unit	**Detention Section**
Victims Participation and Reparations Section Mr Philipp Ambach	**Other**

The Registrar of the International Criminal Court (the "Court");

NOTING Rule 89(1) of the Rules of Procedure and Evidence and Regulation 86(5) of the Regulations of the Court, which require the Registrar to present applications to participate in proceedings to the Chamber, together with a report thereon,

NOTING regulation 86(4) of the Regulations of the Court, and

NOTING the "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants" dated 22 February 2010 ("22 February 2010 Decision");[1]

CONSIDERING that on 10 December 2009, the Registry transmitted 86 applications for participation in the proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* to the Trial Chamber;[2]

CONSIDERING that the Registry has received 192 further applications for participation in the proceedings;

TRANSMITS to the Chamber the following report on 192 applications for participation in proceedings

A. Background and content of this report

1. The present report covers 192 applications to participate in proceedings. Of these, 190 are natural persons and two ([REDACTED]) are organisations or institutions.

[1] ICC-01/05-01/08-699, dated 22 February 2010, paragraph 38.
[2] ICC-01/05-01/08-653-Conf-Exp., dated 10 December 2009.

2. All the applications that are the subject of this report appear to the Registry to be linked to the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, by reference to Public Redacted Annex B to the "Prosecution's Submission of the Document Containing the Charges as Confirmed by the Pre-Trial Chamber filed in accordance with the Chamber's Order of 7 October 2009"[3] ("Second Amended Document Containing the Charges").

3. In accordance with the 22 February 2010 Decision,[4] the Registry is filing herewith only applications that appear to be complete, as defined in paragraphs 33 to 39 below. The VPRS has also received further applications which are currently being processed and will be filed at a later date. This includes a number of applications which are incomplete and for which missing documents or information have been requested and are awaited.[5]

4. The Registry would like to draw the Chamber's attention to applications a/0014/10, a/0015/10, a/0018/10, a/0020/10, a/0024/10, and a/0025/10. In relation to these applicants, both applications for participation and for reparations are filed. The Registry notes that, in accordance with Rule 94(2), it will notify to the Defence any reparations applications upon commencement of the trial. However, the reparations applications of the above applicants are filed at this point because in each case they were completed prior to the respective applications to participate and the latter often make specific references to the previously-completed reparations applications. Thus it is only by seeing the two together that the Chamber will be in a position to obtain the complete information related to the applications for participation.

[3] Second Amended Document Containing the Charges, ICC-01/05-01/08-593, dated 4 November 2009.
[4] Ibid, paragraph 35.
[5] For those applications which cannot be completed, the Registry will provide the Chamber with a report indicating the reasons why the applications were not filed with the Chamber, in accordance with the 22 February 2010 Decision, at paragraph 37.

5. In accordance with the reporting system already established with Trial Chambers I and II for applications to participate in proceedings, this report provides an overview of the 192 applications transmitted, while the following documents are provided as annexes:
   - **Annex 200**: Table of applications by group.
   - **Annex 201:** Map showing the areas of the four groups of applicants.
   - **Annex 1**: Reports under regulation 86(5) on an applicant-by-applicant basis, comprising an overview of each of the applications along with boxes summarising matters contained in the actual applications and drawing attention to specific relevant issues.
   - **Annexes 2 to 199**: The 192 applications for participation, together with supporting documentation provided by the applicants or their legal representatives.

6. With a view to assisting the Chamber, as in the Registry's first report on applications, the applications have been grouped into four groups, reflecting the alleged geographical movement of the MLC troops[6], as set out in the Prosecutor's "Second Amended Document Containing the Charges", Annex B.

7. At paragraphs 18 to 21 of the document, the Prosecutor describes how MLC troops first participated in fighting in Bangui and its outskirts (particularly "PK12") (paragraph 18). After this, it is said that the MLC troops divided into two groups, with each group following one of the two roads leading to the North of the CAR (paragraph 19). One group moved along the road leading to Damara, and subsequently continued to Sibut. A second group moved along the road to Boali, continuing to Bossembélé, Bossangoa and Bozoum. On withdrawing from the CAR in March 2003, the MLC troops retreated South, including passing through the town of Mongoumba (paragraph 21).

[6] This grouping has no other purpose but to give a mapping of the geographical location of the alleged crimes, and has no relation with the potential organization of a common legal representation of victims in the future.

8. Consequently, the applications have been grouped in the following manner:
   - Group A, containing applications relating to alleged crimes in or around Bangui and PK12, whether on arriving or on leaving the DRC
   - Group B, containing applications relating to alleged crimes in or around Damara and Sibut
   - Group C, containing applications relating to alleged crimes in or around Boali, Bossembélé, Bossangoa and Bozoum
   - Group D, containing applications relating to alleged crimes in or around Mongoumba

   A table illustrating the grouping is provided in Annex 1, and a mapping of the four groups of applications is provided in Annex 2.

B. Explanation of information contained in the application-by-application reports

a. Information contained in the boxes under the heading "Informations concernant le demandeur" (Information concerning the applicant)

9. This part includes basic personal information regarding the applicant:[7] the name, date of birth, sex, age at the time of applying, place of residence, ethnic group and type of applicant (whether the applicant is a natural person or an organisation or institution). This information is extracted from information provided under Part A of the standard application form.

10. The last box, headed "Statut du demandeur" (Status of the applicant) is used when another person acts on behalf of the applicant. It indicates whether the applicant is a child, disabled or deceased, or otherwise that there is a person acting on behalf of the applicant. Where the applicant is acting on his or her

[7] In the reports, the "applicant" is the person whose details are provided in Part A of the standard application form, even if another person has presented the application on his or her behalf.

own behalf, no information is included in the box even where the applicant is under 18 years of age.

11. A number of the applications are submitted on behalf of deceased persons, where the victim is said to have died as a result of the alleged crime. The Registry notes that there is no consistent practice on the participation of persons acting on behalf of deceased persons where the deceased person is considered to be the victim, as distinct from situations where a close relative is considered a victim in their own right as a result of suffering caused by the death. In the instant case, Pre-Trial Chamber III found that a victim does not cease to be a victim because of his or her death, and recognized a number of deceased victims.[8] In the Lubanga case, Trial Chamber I accepted one deceased person as a victim, with his uncle acting on his behalf.[9] On the other hand, both Pre-Trial Chamber I and Trial Chamber II have declined to accept deceased persons as victims, and have held that a close relative may participate only in their own name on the basis of their own suffering as a result of the death.[10]

12. Information concerning any proof of identity that has been provided by the applicant is indicated on the second page, in the box entitled “Documents joints” (Documents attached to the application). Where no proof of identity is provided, or where the VPRS makes comments relating to such documents or

[8] Fourth Decision on Victims’ Participation, ICC-01/05-01/08-320, dated 12 December 2008, paragraphs 39 and 40. The Chamber established three requirements for a deceased person to be recognized as victim, namely, that the deceased was a natural person, that the death of the person appears to have been caused by a crime within the jurisdiction of the Court and finally, that a written application on behalf of the deceased person has been submitted by his or her successor.

[9] [REDACTED]

[10] For example “Motifs de la décision relative aux 345 demandes de participation de victimes à la procédure », ICC-01/04-01/07-1491-Red, dated 23 September 2009, paragraphs 49 to 56. However, Judge Kaul issued a Partly Dissenting Opinion in which he referred to the Fourth Decision on Victims’ Participation of Pre-Trial Chamber III on that specific matter.

their conformity with the Chamber's requirements, this has been indicated in the box entitled "Commentaires" (Comments).

b. Information contained in the boxes under the heading "Personne agissant au nom du demandeur" (Person acting on behalf of the applicant)

13. This part includes basic information about a person acting on behalf of the applicant, if applicable: the name, place of residence and link with the applicant. The information in this part is extracted from information provided under Part B of the standard application form.

14. Information concerning any proof of identity or proof of the link with the applicant is indicated on the second page, in the box entitled "Documents joints" (Documents attached to the application). Where no such proof is provided, or where the VPRS makes comments relating to such documents or their conformity with the Chamber's requirements, this has been indicated in the box entitled "Commentaires" (Comments).

c. Information contained in the boxes under the heading "Description du crime et du prejudice allégué" (Description of the crime and the harm alleged)

15. This part includes information regarding the events and harm alleged. Most of this information is extracted from that provided under Parts D and E of the standard application form. Two of the boxes do not comprise information extracted from the application forms, and further explanations are provided below as to the information provided in these boxes.

<u>"Alleged responsible"</u>

16. As regards the person alleged to be responsible for the alleged crime ("auteur"), in some applications the applicant does not specifically name Jean-Pierre Bemba or the MLC, but mentions the "banyamulengués" as being

responsible,[11] in some cases noting their Congolese nationality. Since this is a term commonly used in the CAR to describe the Congolese forces accompanying Mr. Bemba, these applications have been included on the basis that this gives an indication of an intention to refer to the MLC forces accompanying Mr. Bemba.

"Date" of crime

17. As regards the date of the alleged crime ("date"), the Registry would draw to the Chamber's attention the fact that in some applications the applicant does not give a precise date.[12] The Registry is nonetheless transmitting applications falling within this category in light of the approach adopted by Trial Chamber II[13] and Trial Chamber I.[14] In such cases, a note is made in the "commentaries" box.

18. In other cases, the harm alleged is said to have been suffered outside the dates mentioned in the confirmed charges, either prior to 26 October 2002 or after 15 March 2003.[15] These applications are included in this Report, on the basis that the "Second Amended Document Containing the Charges" states that the alleged crimes were carried out in the CAR "from on or about 26 October 2002 to 15 March 2003"[16] [our emphasis]. In these cases as well, a note is made in the "commentaries" box.

---

[11] For instance, applicants [REDACTED].
[12] For example applicants [REDACTED].
[13] ICC-01/04-01/07-933, at paragraph 22: "[when] an application does not refer explicitly to the date […], but where the alleged facts indisputably correspond to the acts specified by the Pre-Trial Chamber, the Participation Section should transmit it to the Chamber".
[14] ICC-01/04-01/06-1556, at paragraph 85: "The Trial Chamber considers that the information provided in the applications and in the VPRS reports is sufficient to establish, prima facie, that the applicants were recruited within that time period, particularly taking into consideration that the date of demobilization can reasonably be inferred as being the date when the applicant received his or her demobilisation certificate".
[15] For example, applicants [REDACTED].
[16] Pages 35 to 38.

"Place" of crime

19. As mentioned previously,[17] the applications have been grouped into four groups, reflecting the alleged geographical movement of the MLC troops, as set out in the Prosecutor's "Second Amended Document Containing the Charges", Annex B.

20. Six applicants report events that allegedly occurred on islands on the river separating the Central African Republic and the Democratic Republic of Congo ([REDACTED]), or partly on the Congolese side of the river ([REDACTED]). The Registry draws this to the attention of the Chamber as it raises the question whether the acts alleged by these applicants fall within the territorial scope of the charges.

21. Likewise, the Registry would draw the Chamber's attention to applicant [REDACTED]. The latter alleges harm suffered as the result of crimes that occurred in Ngoto, Lobaye, which is a significant distance from Mongoumba, the nearest place mentioned in the Prosecutor's "Second Amended Document Containing the Charges", Annex B. The Registry decided to file this application for the Chamber's consideration, since the description of the events appears to relate to the attacks alleged to have been committed by the MLC troops in and around Mongoumba around the 15th of March 2003.

"Type d'acte" (Type of act)

22. This box contains an indicative list of acts constituting crimes within the jurisdiction of the Court, that the harm alleged by the applicant might possibly constitute. The Registry would like to stress that in providing such a list, it looks solely at the alleged act itself, and does not make any assessment at all as to the presence of the contextual or mental elements of the crime such as would be necessary to determine whether the acts constitute genocide, a crime

[17] See paragraph 6 of this report.

against humanity or a war crime. Nor is the list of acts provided for each applicant intended to be an exhaustive list of those that might arise out of the set of facts alleged.

23. In the instant case, there are three main types of acts included in the five counts in the "Second Amended Document Containing the Charges": rape (in counts one and two), murder (in counts three and four) and pillage (in count five).[18] In the "type d'acte" box, the acts alleged by the applicants have been characterized as "viol/autres formes de violences sexuelles" if rape is alleged, as "homicide intentionnel" if murder is alleged and "destruction ou appropriation de biens/pillage" if pillage is alleged. The VPRS has also included other indicative crimes, where relevant.[19]

24. All of the applications filed with this report, with the exception of one application mentioned in paragraph 27[20], allege one or more of the acts enumerated in paragraph 23.

25. As regards pillage, the Registry notes that in several cases, the applicant alleged the occupation of their home for a period of days, weeks or months. In such cases, "destruction ou appropriation de biens/pillage" has been entered in the "type d'acte" box. However, the Registry makes no finding as to whether any appropriations might be justified by military necessity.[21]

26. Moreover, in several other cases, the applicant alleged having fled their village upon arrival, or rumors of arrival, of the alleged perpetrators, only to come back to it several days, weeks or months later to find that their home had been pillaged. In such cases, "destruction ou appropriation de biens/pillage" has

[18] Pages 35 to 38.
[19] For instance, these same applications might subsequently be filed in the record of the situation or of another case involving different charges.
[20] [REDACTED].
[21] Elements of Crimes, Elements of Article 8(2)(e)(v), footnote 61.

been entered in the "type d'acte" box, whether the applicant has directly witnessed the pillage or had only a second-hand account of it.

27. The Registry draws to the attention of the Chamber the acts described in applications [REDACTED]. In these applications, the shelling of houses, causing destruction and injuries, is alleged. These applications are filed for the Chamber's consideration of the question of whether or not the shelling of houses could be considered to fall within any of the three crimes falling within the confirmed charges, such as, for example, attempted murder.

28. In a number of cases, a person submitting an application on behalf of a victim has also mentioned harm they themselves allege to have suffered. In such cases this has been noted under "commentaries" as the Chamber may wish to consider that person also to be a victim.

"Type de préjudice » (Type of harm)

29. In this box the types of harm that are alleged by the applicants have been categorised as follows:
    - Préjudice physique (physical harm)
    - Préjudice moral (psychological harm)
    - Préjudice materiel (material harm)
    - Atteinte grave aux droits fondamentaux (substantial impairment of fundamental rights)

30. The latter category, "atteinte grave aux droits fondamentaux" (substantial impairment of fundamental rights), has been recognized as a type of harm within the meaning of Rule 85 by Trial Chamber I.[22]

[22] ICC-01/04-01/06-1119, paragraph 92. The Trial Chamber was guided by Principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly Resolution 60/147, 16 December 2005.

31. In certain instances, an applicant alleges that certain acts were committed that might constitute a crime within the Court's jurisdiction and that might be expected to cause harm, but does not specify any harm. The Registry has drawn attention to such instances in the "Commentaires" (Comments) section of the reports.

d. Information contained in the boxes under the heading "Eléments formels" (formal elements)

32. This part includes information relating to the signatures and other formalities relating to the application, and any attempts made by the Registry to seek further information or documentation and the results of such efforts, as well as any documents accompanying the application. Since this does not comprise information extracted from the application forms, the Registry would like to provide further explanations as to the information provided in each box.

<u>"La demande est-elle complète" (is the application complete ?), "Signatures ou marques d'identification ? » (signatures or identification mark ?) and "Commentaires" (Comments)</u>

33. According to regulation 86(4) of the Regulations of the Court, the Registrar may request further information from victims, or from those presenting an application on behalf of a victim, in order to ensure, to the extent possible, that applications are complete before their transmission to the Chamber.

34. Further, regulation 86 sub-regulation (2) sets out the information which should be contained in an application. In its 22 February 2010 Decision, the Trial Chamber reaffirmed the criteria adopted by the Single Judge of Pre-Trial Chamber III for considering an application from the CAR to be complete, which included a list of the documents which would be accepted as proof of

identity.[23] This list was based on a report provided by the Registry, in Annex 2 to its report on applications dated 17 October 2008, entitled "Rapport sur les documents d'identification disponibles et utilisés en République centrafricaine" (report on identification documents available and used in the Central African Republic).[24]

35. Upon receiving an application, the Registry reviews the application in order to ascertain whether the application is complete according to these criteria. If any information or documentation is missing, the Registry sends a request to the legal representative, if there is one. Where there is no legal representative, the Registry communicates the request directly to the person or organisation that presented the application.

36. For the purposes of managing the process of requesting and receiving further information or documentation, the Registry has developed a standard form which, when used, is referred to in the "Documents joints" (documents attached to the application) box as "fiches de suivi" (follow up forms). The Registry uses these forms to indicate what information or documentation is missing, what further information has been requested, and how and when any additional information or documentation is actually received. In some cases, the forms are completed and signed by Registry staff in the field when they are directly given information or documents.

---

[23] ICC-01/05-01/08-320, paragraph 81. The information required is as follows: (i) the identity of the applicant; (ii) the date of the crime(s); (in) the location of the crime(s); (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court; (v) proof of identity; (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim; (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship; (viii) a signature or thumb-print of the Applicant on the document, at the very least, on the last page of the application. Criteria regarding proof of identity, including a list of 22 documents that would be accepted as proof of identity and guidance as to what would be accepted in cases where none of the listed documents could be produced, can be found in paragraphs 36 to 38.

[24] ICC-01/05-01/08-168-Conf-Exp.

37. In relation to certain applications, the VPRS has noted only minor inconsistencies (such as small discrepancies in the spelling of a name or in a date of birth), or the absence of a specific piece of information which may not necessarily render the application incomplete. The Registry has filed such applications, always drawing attention to such matters in the "commentaires" (comments) box, but should the Chamber prefer, the Registry is ready to request further information from the applicant in such instances.

38. Any information received subsequent to the original application will appear in the report, and attention may be drawn to the fact that the information was received at a later date than the application, if it appears relevant to highlight it to the Chamber.

39. The Registry has sought to make clear in the applicant-by-applicant reports whether or not the application appears to be complete and whether it has been signed, and (under "Commentaires" (comments)) draws to the Chamber's attention the following matters:

- Missing information, and whether or not it renders the application incomplete in the context of the particular application;
- The fact that further information or documentation has been requested but not received;
- The fact that further information or documentation has been requested and subsequently received and reflected in the relevant box in the report, where it is considered that this should be drawn to the attention of the Chamber;
- Any discrepancies in information received, such as between dates or other information contained in different documents received from the applicant, including between the application form itself and documents received at the same time or subsequently;

- Comments relating to signatures: however no mention is made of a failure to provide signatures or initials which are requested in the application form but which are not required under regulation 86(2) of the Regulations of the Court or another source. Examples of information that would not be highlighted include instances where a signature is not witnessed (as requested in part J of the form) or where an applicant has not signed or initialed the bottom of each page (this is requested in the form solely for the purpose of ensuring that pages of the same application are kept together when transmitted to the Court).

<u>"Personne ayant assistée le demandeur" (person who assisted the applicant)</u>

40. The name of the person who has assisted the applicant to fill in the application form is included, and the organisation with which that person is affiliated, if any.

<u>"Documents joints" (documents attached to the application)</u>

41. Any supporting documentation received from the applicant is listed, including proofs of identity, as well as any follow up form recording the manner in which any further information was received.

e. Information contained in the boxes under the heading "Représentation légale" (legal representation)

42. This part indicates whether or not the applicant has a legal representative and, if so, the name of the legal representative. The information in this part is extracted from information provided under Part G of the standard application form and/or any power of attorney provided.

f. Information contained in the boxes under the heading "Requêtes formulées par le demandeur" (requests made by the applicant)

43. The first section of this part indicates in what stages of the proceedings the applicant has requested to participate. The information in this part is extracted from information provided under Part C of the standard application form.

44. The second section of this part indicates whether or not the applicant is making a request for non-disclosure of their identity, or other information, to one or more party. The information in this part is extracted from information provided under Part H of the standard application form and/or any other information provided.

C. Protection

45. Of the applicants who are the subject of this report, 176 applicants expressly request that their identities be kept from the general public, 175 applicants requested that their identities be kept from states and other participants, 174 requested that their identities be kept from the defence and 26 requested that their identities be kept from the prosecution.

46. A majority of the applicants dealt with in this report have therefore requested that their information be kept from one or other party, indicating some concern for their security. Even as regards those who have not made such a request, the Registry considers that at this early stage a cautious approach should be taken. This is appropriate given that the applications have not yet been considered by the Chamber, but also because the Registry does not believe that all of the applicants had an opportunity to discuss this question with a lawyer before submitting their applications. Further, it is possible that there was a misunderstanding on the part of the applicants of the meaning of "defence" and "prosecution". The Registry therefore recommends that, for

the purpose of allowing observations to be provided, the parties be provided redacted versions of the applications. Should the applications, or some of them, be accepted by the Chamber then the nominated legal representatives could be requested to clarify or confirm the requests of their clients.

47. Should the Chamber order the Registry to prepare redacted versions of the applications, the Registry would propose to follow the instructions provided by the Chamber in that regard in its 22 February 2010 Decision[25], unless otherwise instructed.

48. Should the Chamber require redacted versions of the applications to be transmitted, the Registry is ready to prepare these within a period of two weeks.

E. Legal representation

49. The situation of the applicants who are the subject of the present report is as follows.

- Maitre Marie-Edith Douzima,

  Two applicants who are the subject of this report have chosen Maitre Marie-Edith Douzima as their legal representative. Maitre Douzima is already representing other victims participating in the preparation for trial process.

- Maitre N'Zala Celestin

  Four applicants who are the subject of this report have chosen Maitre N'Zala Celestin as their legal representative.[26]

[25] At paragraph 33.
[26] [REDACTED].

- <u>The Office of Public Counsel for Victims</u>

  185 applicants who are the subject of this report are represented by OPCV. These include both victim applicants who have designated OPCV as their legal representative (159 applicants) and those where the OPCV was designated by the Registrar in accordance with the Chamber's decision of 9 December 2009[27] (26 applicants).

50. Applicant a/0553/08 had appointed Maître Goungaye Wanfiyo, as legal representative. In accordance with the Chamber's decision of 9 December 2009, the VPRS has carried out consultations with victim applicants formerly represented by Mr. Wanfiyo, and will shortly be presenting a report on common legal representation to the Chamber.[28]

Marc Dubuisson, Director, Division of Judicial Services
per delegation of Herman von Hebel, Registrar

Dated this 5 April 2018

At The Hague, The Netherlands

[27] ICC-01/05-01/08-651, dated 9 December 2009, paragraph 18.
[28] ICC-01/05-01/08-651, paragraphs 17, 18 (d).