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No.: ICC-01/05-01/08

Date: 28 June 2016

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 redacted version of "Decision on the 'Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings'", ICC-01/05-01/08-1125 of 14 January 2011

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Mr Marie-Edith Douzima Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Ms Isabelle Guibal

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, (“Bemba case”) issues the following Decision on the “Report of the Registry drawing to the Chamber’s attention an issue regarding an application for participation in the proceedings”.

I. Background and submissions

1. On 9 December 2009, the Chamber issued its “Decision on the Observations on legal representation of unrepresented applicants”¹ in which it ordered, *inter alia*, that² (i) the Office of Public Counsel for victims (“OPCV”) shall continue to represent the victim applicants it currently represents until the Chamber issues a decision on their application to participate and (ii) the OPCV shall represent victim applicants who have not chosen a legal representative until a decision is made on their application to participate.

2. On 14 October 2010, the Registry filed an *ex parte* Registry only “Report of the Registry drawing to the Chamber’s attention an issue regarding an application for participation in the proceedings” (“14 October Registry Report”).³ It informs the Chamber that the Registry has received information concerning an application for participation which has not yet been submitted to the Chamber, and which could potentially have implications concerning other applications for participation.⁴

3. According to the 14 October Registry Report, applicant [REDACTED] went to the [REDACTED] in order to obtain information regarding the status of his

¹ Decision on the Observations on legal representation of unrepresented applicants, 9 December 2009, ICC-01/05-01/08-651.

² ICC-01/05-01/08-651, paragraph 18.

³ Report of the Registry drawing to the Chamber’s attention an issue regarding an application for participation in the proceedings, 14 October 2010 (notified on 15 October 2010), ICC-01/05-01/08-953-Conf-Exp and annexes.

⁴ ICC-01/05-01/08-953-Conf-Exp, page 3.

application. During the discussion with the Victims Participation and Reparation Section (“VPRS”) staff, the applicant explained that he had been a victim of pillage in [REDACTED]. In his application for participation, however, it is stated that he was a victim of pillage and murder in [REDACTED]. The applicant further explained that he was assisted by an intermediary, [REDACTED], who wrote on the form while putting questions to him and he was not aware that there was a discrepancy in the information on the application form.⁵

4. The Registry states that such information could potentially cast doubt on the accuracy of information provided by all applicants assisted by [REDACTED], as it raises suspicions of fraud by this individual.⁶ The VPRS took immediate steps to identify in which applications this intermediary had been involved as the person assisting applicants to fill in application forms.⁷ A preliminary examination revealed at least approximately 326 applicants had been assisted by this individual to complete applications that were received by the VPRS starting in February 2010, of which 131 have already been filed and 195 were among those still to be filed with the Chamber.⁸ The Registry further underlines that it does not believe that any applications where the applicant was assisted by this person have already been accepted to participate in the proceedings and that the vast majority of applications for which [REDACTED] provided assistance were received by the VPRS from the OPCV.⁹

5. The Registry suggests that further inquiries into the issue could be undertaken in order to establish whether or not the inaccurate information provided in application [REDACTED] is an isolated incident. In this respect, the Registry recommends to:

- (i) ask the OPCV whether it has additional information with regards

⁵ ICC-01/05-01/08-953-Conf-Exp, paragraphs 2 to 4.

⁶ ICC-01/05-01/08-953-Conf-Exp, paragraph 7.

⁷ ICC-01/05-01/08-953-Conf-Exp, paragraph 10.

⁸ ICC-01/05-01/08-953-Conf-Exp, paragraph 11.

⁹ ICC-01/05-01/08-953-Conf-Exp, paragraph 11 e).

to the issue of possible fraud by [REDACTED] and if it has verified the statements made by the applicants in the applications that were presented to the Registry by them;

- (ii) arrange an interview with [REDACTED] with regards to this issue; and
- (iii) allow the VPRS to contact some or all applicants who have been assisted by him, in order to verify their statements and take this opportunity to get them to fill in the relevant part of the application form for reparations.¹⁰

6. On 15 October 2010, the Registry requested by email that the Chamber grants (i) one additional week to file 120 applications that were held back in light of the issue raised in the 14 October Registry Report; and, (ii) two additional weeks to file the last applications received before the time limit established in the Chamber's 7 September 2010 Decision.¹¹

7. On 20 October 2010, the Chamber instructed the Registry by email to investigate the issue raised in the 14 October Registry Report, jointly with the OPCV which represents the relevant applicants and to report back to the Chamber by way of a formal filing. Accordingly, the Chamber suspended its consideration of the affected applications already transmitted pending the results of the investigation. The Chamber therefore rejected the request for an additional week in which to file the 120 applications that were left and instructed the Registry to refrain from filing them until further clarification. The Chamber nonetheless granted the Registry's request for two additional weeks for filing the last applications received before the time limit established in the Chamber's 7

¹⁰ ICC-01/05-01/08-953-Conf-Exp, paragraph 15.

¹¹ Decision setting a time-limit for the submission of new victims' applications for participation, 7 September 2010, ICC-01/05-01/08-875, which fixed a deadline of 15 September 2010 for the submission of any new victims' applications to the Registry for participation in the initial stages of the trial proceedings.

September 2010 Decision, underlining however that any application falling within the aforementioned category should not be transmitted to the Chamber, pending further instructions.¹²

8. On 28 October 2010, the OPCV filed its “Observations on the Registry’s Report drawing to the Chamber’s attention an issue regarding an application for participation in the proceedings” (“28 October OPCV Observations”).¹³ The OPCV underlines that, as a matter of principle, to date their practise has been to enter into contact with each and every applicant who had chosen Principal Counsel as her/his legal representative and, to the extent possible, to meet with her/him in person.¹⁴

9. The OPCV further states that in the course of its first missions in the field, Principal Counsel met with individuals who introduced themselves as assisting victims with filling in the participation and reparations forms. Principal Counsel met several times with [REDACTED] and “repeatedly underlined the need to take into account the individual specific facts recalled by each and every victim in order for their application(s) to mirror appropriately the events they suffered from.”¹⁵

10. The OPCV avers that it ensures that the applications for participation are transmitted to the VPRS “only once they had been checked with the applicants themselves and completed when necessary.”¹⁶ However, when evaluating the applications of individuals helped by [REDACTED], it did not have any reason to

¹² Email sent by the Chamber’s Legal Adviser on 15 October 2010 at 15:49 to the Registry.

¹³ Observations on the Registry’s Report drawing to the Chamber’s attention an issue regarding an application for participation in the proceedings, 28 October 2010 (notified on 28 October 2010, ICC-01/05-01/08-978-Conf-Exp.

¹⁴ ICC-01/05-01/08-978-Conf-Exp, paragraph 10.

¹⁵ ICC-01/05-01/08-978-Conf-Exp, paragraph 11.

¹⁶ ICC-01/05-01/08-978-Conf-Exp, paragraph 12.

suspect fraud; should it have been otherwise it would have immediately informed the Registry and the Chamber.¹⁷ The OPCV however specifies that the applications transmitted by the VPRS to the OPCV in the past few weeks have not yet been assessed and verified by the OPCV.

11. In relation to the recommendations formulated by the Registry, the OPCV submits that should any interview be scheduled with [REDACTED], such interview should take place in the presence of the OPCV's Principal Counsel or a member of the OPCV designated by her as the OPCV is representing him.¹⁸ In addition, the OPCV brings to the attention of the Chamber that in conducting the recommended investigation, due regard should be given to the alleged threats recently received by [REDACTED] which were relayed to the Victims and Witnesses Unit ("VWU") and the VPRS in August 2010.¹⁹

12. Finally, as it intended to enter into contact with the applicants whose applications have been recently received, the OPCV expressed its readiness to include such contacts as part of the investigation if the Chamber so wishes. In this event, the OPCV informs the Chamber that it will be in a position to report back to the Chamber on these applications filled in with the assistance of [REDACTED] by the end of January 2011 and to the extent that the information gathered does not fall within the context of privileged communications.²⁰

13. On 22 December 2010, by way of email, the Registry informed the Chamber of the steps undertaken following the 14 October Registry Report and the Chamber's instructions of 20 October 2010. The Registry first informs the Chamber that 160 applications for participation have been withheld by the

¹⁷ ICC-01/05-01/08-978-Conf-Exp, paragraph 15.

¹⁸ ICC-01/05-01/08-978-Conf-Exp, paragraph 22.

¹⁹ ICC-01/05-01/08-978-Conf-Exp, paragraph 23.

²⁰ ICC-01/05-01/08-978-Conf-Exp, paragraph 20.

Registry and not transmitted to the Chamber.²¹ Additionally, 10 further applications from applicants represented by the OPCV who were assisted by [REDACTED] were received by the VPRS on 9 December 2010.

14. The Registry informs the Chamber that on 23 November 2010 the VPRS conducted interviews with [REDACTED] individuals who have assisted victims and know [REDACTED]. These interviews led to further interviews with applicants [REDACTED] and [REDACTED]. One of the individuals contacted by the VPRS said that he had received information relating to [REDACTED] making false statements in the applications, as two applicants had contacted him in this regard. One of the two applicants met by the VPRS [REDACTED], whose statement will be provided to the Chamber in the Registry's final report, alleged that [REDACTED] had written false information in his application form. The other individuals interviewed stated that they had no concrete information as regards people making false statements in applications.

15. The Registry further states that, according to the information provided by the OPCV, the statements of 167 applicants who were assisted by [REDACTED] were verified directly by the OPCV, either in person or by telephone. At a meeting held between the OPCV and the VPRS on 13 December 2010, the OPCV expressed the view that it had taken all reasonable steps to ascertain that the information contained in the applications is reliable. In light of this, the Registry considers that at this point it is not necessary for the VPRS to conduct further investigations relating to these 167 applications, and it proposes to limit its investigations for the time being to the remaining 203 applications which [REDACTED] assisted in filling in and where such applicants were not contacted either by the OPCV or the VPRS.

²¹ 79 applications belonging to Group C were retained from the filing of 8 October 2010, 42 applications belonging to Group D were retained from the filing of 8 October 2010, and 39 applications were retained from the filing of 29 October 2010.

16. Given the number of applicants involved, and provided that circumstances in the field allow for the interviews to be conducted at an efficient pace, the Registry is of the opinion that all applicants could be reached by the end of March 2011. The Registry further informs that an interview with [REDACTED], as suggested in the 14 October 2010 Registry Report, has been deemed undesirable since it is believed that it could jeopardise the investigation as [REDACTED] may contact the applicants he assisted in order to influence their answers.

II. Relevant provisions

17. In accordance with Article 21 (1) of the Rome Statute (“Statute”), the Chamber has considered the following provisions of the Statute, the Rules of Procedure and Evidence (“Rules”), the Regulations of the Court and the Regulations of the Registry:

Article 68 of the Statute

Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

[...]

2. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

[...]

Rule 89 of the Rules**Application for participation of victims in the proceedings**

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber.

[...]

Regulation 81 of the Regulations of the Court**Office of Public Counsel for victims**

2. The Registrar shall establish and develop an Office of Public Counsel for victims for the purpose of providing assistance as described in sub-regulation 4.
3. The Office of Public Counsel for victims shall fall within the remit of the Registry solely for administrative purposes and otherwise shall function as a wholly independent office. Counsel and assistants within the Office shall act independently.

[...]

4. The Office of Public Counsel for victims shall provide support and assistance to the legal representative for victims, including, where appropriate:
 - a) Legal research and advice; and
 - b) Appearing before a Chamber in respect of specific issues.

Regulation 86 of the Regulations of the Court**Participation of victims in the proceedings under rule 89**

1. For the purposes of rule 89 and subject to rule 102 a victim shall make a written application to the Registrar who shall develop standard forms for that purpose which shall be approved in accordance with regulation 23, sub regulation 2 [...]

[...]

3. Victims applying for participation in the trial and/or appeal proceedings shall, to the extent possible, make their application to the Registrar before the start of the stage of the proceedings in which they want to participate.

[...]

5. The Registrar shall present all applications described in this regulation to the Chamber together with a report thereon. The Registrar shall endeavour to present one report for a group of victims, taking into consideration the distinct interests of the victims.

[...]

6. Before deciding on an application, the Chamber may request, if necessary with the assistance of the Registrar, additional information from *inter alia*, States, the Prosecutor, the victims or those acting on their behalf or with their consent. If information is received from States or the Prosecutor, the

Chamber shall provide the relevant victim or victims with an opportunity to respond.

Regulation 107 of the Regulations of the Registry

Review of applications

[...]

2. In seeking further information in accordance with regulation 86, sub-regulation 4, or regulation 88, sub-regulation 2, of the Regulations of the Court, the Registry shall consider the interests of the victim and shall take into account, *inter alia*, whether the victim is represented, the security of the victim, and any time limits for the filing of documents with the Court. When contacting victims or their legal representatives to request further information, the Registry shall inform them that their request may be granted or rejected by the Chamber on the basis, *inter alia*, of information provided by them and that they may submit a new application later in the proceedings if their application is rejected by the Chamber.

[...]

III. Analysis and Conclusions

18. The Chamber recalls that in its Decision of 18 November 2010 on 772 applications by victims to participate in the proceedings, it decided to defer its decision on the merits on 133 applicants who have been assisted by [REDACTED] until further information in this respect is received.²²

19. The present Decision is intended to provide the Registry and the OPCV with general guidelines in light of the information provided to the Chamber in order that the matter may be clarified.

20. The Chamber recalls that in compliance with its “Decision on the Observations on legal representation of unrepresented applicants,”²³ the OPCV is representing victim applicants who have not yet chosen a legal

²² Decision on 772 applications by victims to participate in the proceedings, 18 November 2010 (notified on 18 November 2010), ICC-01/05-01/08-1017, paragraph 61.

²³ ICC-01/05-01/08-651.

representative until a decision on their application to participate is made. The OPCV is currently representing applicants who have been assisted by [REDACTED] as well as [REDACTED], the intermediary himself, who has also introduced an application for participation on his own behalf.²⁴

21. The Chamber notes that the OPCV has already contacted, either in person or by telephone, 167 applicants it represents in order to assess and verify their applications. In this respect, the Chamber agrees with the Registry that, in the interests of efficiency, it is not advisable to duplicate the steps undertaken, and the Registry should limit its investigations to the remaining 203 applications where the victim applicants have been assisted by [REDACTED] but have not been contacted either by the OPCV or the VPRS at the present time. The Chamber considers that in relation to the remaining 203 applicants, only the VPRS should contact the applicants in order to verify their statements.

22. The Chamber agrees with the Registry that an interview with [REDACTED] should only be conducted once all the remaining applicants assisted by him in filling in their applications have been contacted and their statements verified.

IV. Orders

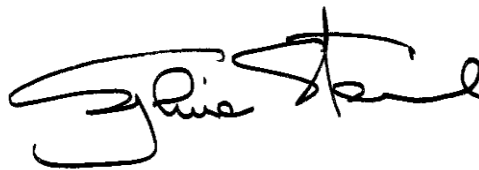
23. For these reasons, the Trial Chamber hereby orders:

- a. the OPCV to file a list of applicants who were assisted by [REDACTED] and whose applications have not yet been assessed and verified by the OPCV;

²⁴ Application No. [REDACTED].

- b. the VPRS to contact all applicants included on the list to be provided by the OPCV under a) above in order to verify their statements;
- c. the Registry to inform the Chamber of the results of its investigations no later than Monday 28 February 2011.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 28 June 2016

At The Hague, The Netherlands