

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **29 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 Registry’s ‘Report on issues concerning intermediaries’
involvement in completion of applications for participation’”, ICC-01/05-
01/08-1593 of 11 July 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 Melinda Taylor
Ms Kate Gibson

Legal Representatives of the Victims

Ms 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

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States Representatives

Amicus Curiae

REGISTRY

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Mr Herman von Hebel

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Victims and Witnesses Unit

Mr Nigel Verrill

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Victims Participation and Reparations Section

Ms Isabelle Guibal

Other

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on the Registry’s “Report on issues concerning intermediaries’ involvement in completion of applications for participation”.

I. Background and submissions

Intermediary 1

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*, the Office of Public Counsel for Victims (“OPCV”) to (i) continue to represent the victim applicants it currently represents until the Chamber issues a decision on their applications to participate in this case; and (ii) represent victim applicants who have not chosen a legal representative until a decision is made on their applications to participate.²

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 informed the Chamber that the Registry had received information concerning an application for participation that had not yet been submitted to the Chamber, and that could potentially have implications for other applications for participation.⁴

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.

3. According to the 14 October Registry Report, applicant [REDACTED]⁵ went to the [REDACTED] to obtain information regarding the status of his application. During a discussion with staff of the Victims Participation and Reparation Section (“VPRS”), the applicant explained that he had been a victim of pillage in the [REDACTED].⁶ His application for participation, however, states that he was a victim of pillage and murder in [REDACTED].⁷ The applicant further explained that an intermediary (“Intermediary 1”) helped him fill out the form and that he, the applicant, was not aware that there was a discrepancy between the information in his application form and what had actually happened.⁸

4. The 14 October Registry Report states that such information could potentially cast doubt on the accuracy of information provided by all the applicants assisted by Intermediary 1, as “it raises suspicions of fraud by this individual [...]”.⁹ The VPRS took immediate steps to identify in which applications this intermediary had been involved as the person assisting applicants to fill in their application forms.¹⁰ A preliminary examination revealed that at least approximately 326¹¹ applicants had been assisted by this individual to complete applications that were received by the VPRS as of February 2010, of which 131 have already been filed and 195 were among those still to be filed with the Chamber.¹² The Registry further underlined that it did not believe that any applications where the applicant was assisted by this person had already been accepted to participate in the proceedings¹³ and that the vast majority of applications for which this

⁵ The application concerned has not been filed with the usual transmissions to the Chamber and the parties but it was filed as an annex to the 14 October Registry Report.

⁶ ICC-01/05-01/08-953-Conf-Exp, paragraph 2

⁷ Application form of a/1283/10 annexed to the 14 October Registry Report, ICC-01/05-01/08-953-Conf-Exp-Anx1. A redacted version of this application has been transmitted to the parties under ICC-01/05-01/08-1559-Conf-Anx32-Red.

⁸ ICC-01/05-01/08-953-Conf-Exp, paragraphs 2 to 4.

⁹ ICC-01/05-01/08-953-Conf-Exp, paragraph 7.

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

¹¹ This was subsequently amended to approximately 370 applications.

¹² ICC-01/05-01/08-953-Conf-Exp, paragraph 11 c).

¹³ ICC-01/05-01/08-953-Conf-Exp, paragraph 11 d).

intermediary provided assistance were received by the VPRS from the OPCV.¹⁴

5. The Registry suggested that further inquiries into the issue could be undertaken to establish whether the inaccurate information provided in application [REDACTED] was an isolated incident.¹⁵

6. By email of 20 October 2010,¹⁶ the Chamber instructed the Registry to inquire the issue raised in the 14 October Registry Report, jointly with the OPCV, and to report back to the Chamber by way of a formal filing. Pending the results of this inquiry, the Chamber suspended its consideration of the affected applications that had been transmitted to it. In its email, the Chamber also instructed the Registry to refrain from filing the 120 applications that had not yet been transmitted to the Chamber, pending further instruction.

7. 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",¹⁷ explaining how the OPCV implemented the Chamber's instructions.¹⁸

8. On 18 November 2010, the Chamber issued its "Decision on 772 applications by victims to participate in the proceedings",¹⁹ in which it deferred its decision on 133 victims' applications filled in with the assistance of Intermediary 1 until

¹⁴ ICC-01/05-01/08-953-Conf-Exp, paragraph 11 e).

¹⁵ ICC-01/05-01/08-953-Conf-Exp, paragraph 13.

¹⁶ Email sent by the Chamber's Legal Adviser on 20 October 2010 to the Associate Legal Officer, DCS.

¹⁷ 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).

¹⁸ ICC-01/05-01/08-978-Conf-Exp, paragraph 10.

¹⁹ Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, ICC-01/05-01/08-1017 and its confidential *ex parte* annexes.

further information was submitted.²⁰

9. On 22 December 2010, by way of an email,²¹ the Registry informed the Chamber of the steps undertaken following the 14 October Registry Report. The Registry stated that, according to information provided by the OPCV, the statements of 167 applicants who were assisted by Intermediary 1 had been verified by the OPCV, either in person or by telephone. The Registry also explained that at a meeting of the OPCV and the VPRS on 13 December 2010, the OPCV expressed its view that it had taken all reasonable steps to ascertain the accuracy of the information contained in the applications prepared with the assistance of Intermediary 1. In light of this, the Registry suggested that it was unnecessary for the VPRS to conduct further investigations relating to the 167 applications that the OPCV had verified. To this end, the Registry proposed limiting its investigations to the remaining applications that had been completed with Intermediary 1's assistance and that had not yet been verified by either the OPCV or the VPRS. The Registry estimated that all such applicants could be reached by the end of March 2011.

10. On 23 December 2010, the Chamber issued its "Decision on 653 applications by victims to participate in the proceedings",²² in which it deferred its decision on 76 victims' applications filed in with Intermediary 1's assistance until further information was submitted.²³

²⁰ ICC-01/05-01/08-1091, paragraph 63 letter c).

²¹ Email from the Registry to the Legal Adviser for the Trial Division, 22 December 2010 at 15h25. The content of this email was also recalled in the Decision on the "Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings", 14 January 2011, ICC-01/05-01/08-1125-Conf-Exp.

²² Decision on 653 applications by victims to participate in the proceedings, 23 December 2010, ICC-01/05-01/08-1091 and its confidential *ex parte* annexes.

²³ ICC-01/05-01/08-1091, paragraph 37 letter c).

11. On 14 January 2011, the Chamber issued its “Decision on the ‘Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings’”,²⁴ in which it adopted the recommendations of the 14 October Registry Report and ordered:

- a. the OPCV to file a list of applicants who were assisted by Intermediary 1 and whose applications have not yet been assessed and verified by the OPCV;
- 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.

12. On 31 March 2011, the Registry, having been granted an extension of time,²⁵ filed its “Final report on the investigations pursuant to the Chamber's Decision on the ‘Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings’” (“31 March Registry Report”).²⁶ In this report, the Registry informed the Chamber that approximately 370 applications were potentially affected by the concerns regarding Intermediary 1.²⁷ The Registry further confirmed that the manner in which the OPCV had verified applications was by contacting the applicant either in person or by telephone.²⁸ The Registry stated that the OPCV had concluded, as the result of its inquiry, that “none of the [...] applications verified by the OPCV and sent to the VPRS contained information which could lead to a suspicion of fraud or falsity of declarations”.²⁹ In its report,³⁰ the Registry also explained the methodology used by the VPRS to verify the applications that were not transmitted to it by the OPCV. This included the collection of information through interviews by the

²⁴ ICC-01/05-01/08-1125-Conf-Exp.

²⁵ Decision on the Registry Request for an Extension of Time, 28 February 2011, ICC-01/05-01/08-1303-Conf-Exp, paragraph 11.

²⁶ Final report on the investigations pursuant to the Chamber's Decision on the “Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings”, 31 March 2011, ICC-01/05-01/08-1369-Conf-Exp and three confidential *ex parte* annexes thereto.

²⁷ ICC-01/05-01/08-1369-Conf-Exp, paragraph 2.

²⁸ ICC-01/05-01/08-1369-Conf-Exp, paragraph 3 b).

²⁹ *Ibid.*

³⁰ ICC-01/05-01/08-1369-Conf-Exp, paragraphs 13 to 42.

VPRS staff in French or Sango, the verification of the applicants' identities, the recording of new statements and an individualised assessment by the VPRS according to consistency criteria. This assessment enabled the VPRS to compare the information collected by Intermediary 1 and that collected by the VPRS during its own inquiry.

13. The VPRS inquiry commenced on 8 February 2011 and involved interviews with around 200 applicants.³¹ At the end of the inquiry, the VPRS concluded that the applicants could be divided into three categories:

- instances where the interview confirmed the information originally provided by the applicant, and where that information met the criteria established by the Chamber to be accepted as a victim participating in the case (around 64% of the applicants met);
- the interview revealed differences with the information recorded in the original application, but meets the criteria established by the Chamber to be accepted as a victim participating in proceedings relating to the case (around 25%);
- the interview revealed details or facts that are inconsistent with the criteria established by the Chamber to be accepted as a victim participating in proceedings relating to the case (around 11%).³²

14. On 6 May 2011, the Registry filed its "Status of the applications filled in with the assistance of [Intermediary 1]" and its annex thereto,³³ in which it transmitted to the Chamber a consolidated table, containing:

- (a) a list of the applications filled in with the assistance of Intermediary 1 and which have been verified by the OPCV, indicating which applications have already been filed with the Chamber (99 applications) and which applications have been withheld (62 applications);
- (b) a list of the applicants who have been contacted by the OPCV in person (76 applications) and the ones who have been contacted by the OPCV by telephone (85 applications).
- (c) a list of the applications filled in with the assistance of Intermediary 1, which have not been verified by the OPCV and which have been communicated to the VPRS, indicating which applications have already been filed with the Chamber (110 applications) and which applications have been withheld (107 applications);
- (d) a list of the applications filled in with the assistance of Intermediary 1, verified by the

³¹ ICC-01/05-01/08-1369-Conf-Exp, paragraph 7.

³² ICC-01/05-01/08-1369-Conf-Exp, paragraph 37.

³³ Status of the applications filled in with the assistance of [Intermediary 1], 6 May 2011, ICC-01/05-01/08-1391-Conf-Exp and confidential *ex parte* annex.

VPRS, indicating which applications have already been filed with the Chamber (105 applications) and which applications have been withheld (96 applications);

(e) a list of the applications filled in with the assistance of Intermediary 1 the VPRS intended to verify following the Decision of 14 January 2011, but was unable to contact the applicant, indicating which applications have already been filed with the Chamber (1 application) and which applications have been withheld (2 applications).

15. On 23 June 2011, in accordance with the Chamber's instructions of 7 June 2011,³⁴ the VPRS filed its "Tenth report to Trial Chamber III on applications to participate in the proceedings", *ex parte*, Registry only,³⁵ and transmitted 203 victims' applications for participation to the Chamber ("Tenth Transmission"),³⁶ as well as redacted copies of these applications to the parties.³⁷ The Tenth Transmission includes applications completed with the assistance of Intermediary I that the VPRS had verified in accordance with the Chamber's Decision of 14 January 2011, along with supplementary information collected during the investigation process.

Intermediary 2

16. On 24 February 2011, Witness 73 gave evidence before the Chamber, alleging that the intermediary who helped him complete his application form ("Intermediary 2") had included false information in his application regarding the crime he and his family had suffered, and the estimated economic value attributed to his looted properties.³⁸

17. On 25 February 2011, the Registry informed the Chamber that 160 victims

³⁴ Email from the Legal officer of Trial Chamber III to the Associate Legal Officer, DCS, 7 June 2011 at 10.21

³⁵ Tenth report to Trial Chamber III on applications to participate in the proceedings, 22 June 2011 (notified on 23 June 2011), ICC-01/05-01/08-1561-Conf-Exp.

³⁶ Tenth transmission to the Trial Chamber of applications for participation in the proceedings, 22 June 2011 (notified on 23 June 2011), ICC-01/05-01/08-1559 and its confidential *ex parte* annexes.

³⁷ Tenth transmission to the parties and legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 22 June 2011 (notified on 23 June 2011), ICC-01/05-01/08-1560 and its confidential annexes.

³⁸ Transcript of hearing, 24 February 2011, ICC-01/05-01/08-T-73-Red-ENG, pages 18 to 34.

whose applications had been completed with the assistance of Intermediary 2 had been authorised to participate in the case.³⁹

18. On 21 April 2011, the Registry filed the “Ninth transmission to the Trial Chamber of applications for participation in the proceedings”⁴⁰ and the “Ninth transmission to the parties and legal representatives of the applicants of redacted versions of applications for participation in the proceedings” (“Ninth Transmission”),⁴¹ in which 401 new applications for participation were transmitted to the Chamber and the parties respectively.

19. On 17 May 2011, the defence filed its “Observations de la Défense sur la ‘Neuvième transmission aux parties et aux représentants légaux des versions expurgées des demandes de participation à la procédure’” (“Observations on the Ninth Transmission”),⁴² in which it requests that the Chamber reject all applications filed in with the assistance of Intermediary 2.⁴³

20. On 7 June 2011, the Registry informed the Chamber that 70 of the applications included in the Ninth Transmission had been completed with the assistance of Intermediary 2.⁴⁴

Intermediaries 1 and 2

³⁹ Email from the Head of the VPRS to the Legal officer of Trial Chamber III, 25 February 2011 at 15.00.

⁴⁰ Ninth transmission to the Trial Chamber of applications for participation in the proceedings, 21 April 2011, ICC-01/05-01/08-1381 and its confidential *ex parte* annexes.

⁴¹ Ninth transmission to the parties and legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 21 April 2011, ICC-01/05-01/08-1382 and confidential annexes thereto.

⁴² Observations de la Défense sur la “Neuvième transmission aux parties et aux représentants légaux des versions expurgées des demandes de participation à la procédure”, 17 May 2011, ICC-01/05-01/08-1413 and its confidential annex.

⁴³ ICC-01/05-01/08-1413, paragraph 15.

⁴⁴ Email from the Head of the VPRS to the Legal officer of Trial Chamber III, 7 June 2011 at 12.01.

21. On 3 June 2011, in accordance with the Chamber's instruction,⁴⁵ the Registry filed its "Report on issues concerning intermediaries' involvement in completion of applications for participation" ("3 June Registry Report"),⁴⁶ in which the Registry explains the nature of Intermediary 1 and Intermediary 2's involvement in assisting applicants to complete their application forms. The report details once again the steps that have already been taken in response to this issue⁴⁷ and makes further recommendations to the Chamber, including the development of a Court-wide set of guidelines on intermediaries and a system to monitor intermediaries' work.⁴⁸ With regard to Intermediary 1, the 3 June Registry's Report reiterates that an applicant, represented by the OPCV, had been assisted in filling out his application form by Intermediary 1, who allegedly included false information in the application.⁴⁹ The Registry further explains that it has reasons to have concerns about the ethical behaviour of this intermediary as well as regarding the content of information included by him in the applications of victims he had assisted.⁵⁰

22. On 8 July 2011, the Chamber issued its "Decision on 401 applications by victims to participate in the proceedings and setting a deadline for the submission of new victims' applications to the Registry" ("8 July Decision"),⁵¹ in which it deferred its decision on the 70 applications filled in with Intermediary 2's assistance until further information is submitted.⁵²

⁴⁵ Email from the Legal officer of Trial Chamber III to the Associate Legal Officer, DCS, 20 May 2011 at 10.25.

⁴⁶ Report on issues concerning intermediaries' involvement in completion of applications for participation, 3 June 2011, ICC-01/05-01/08-1478-Conf.

⁴⁷ ICC-01/05-01/08-1478-Conf, paragraphs 5 to 29.

⁴⁸ ICC-01/05-01/08-1478-Conf, paragraphs 30 to 36.

⁴⁹ ICC-01/05-01/08-1478-Conf, paragraph 2.

⁵⁰ ICC-01/05-01/08-1478-Conf, paragraph 3.

⁵¹ Decision on 401 applications by victims to participate in the proceedings and setting a deadline for the submission of new victims' applications to the Registry, 8 July 2011, ICC-01/05-01/08-1590 and confidential *ex parte* annexes thereto.

⁵² ICC-01/05-01/08-1590, paragraph 38 c).

II. Relevant provisions

23. 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 64 of the Statute

Functions and powers of the trial Chamber

[...]

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

[...]

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

24. This Decision is intended to provide the Registry with general guidelines and instructions in light of information provided to the Chamber to date, and to clarify the issue of the involvement of Intermediaries 1 and 2 in these proceedings.

Intermediary 1

25. The Chamber recalls that the OPCV already contacted, either in person or by telephone, 161 applicants it represents in order to assess and verify their applications.⁵³ In its 14 January Decision, the Chamber initially stated that, in the interests of efficiency, it was “not advisable to duplicate the steps undertaken, and the Registry should limit its investigations to the remaining applications where the victim applicants have been assisted by [Intermediary 1] who at that

⁵³ The original number of 167 applicants as provided in the Registry’s email of 22 December 2010 and reflected in the 14 January Decision was subsequently amended to 161 applications (See ICC -01/05-01/08-1391-Conf-Exp, page 4).

time, [had] not been contacted either by the OPCV or the VPRS [...]”.⁵⁴ However, the Chamber notes with concern that the verification procedures and methodology employed by the VPRS and the OPCV following the Chamber’s 14 January Decision appear to differ significantly. In particular, the Chamber is concerned that the verification procedure undertaken by the OPCV appears not to have been as comprehensive as that undertaken by the VPRS.

26. The VPRS identified three categories of applications, namely: (1) situations where the information recorded in the original application was confirmed and meets the criteria set by the Chamber for the case, (2) situations where the verification process revealed some differences between the victim’s statement and information recorded in the original application, but where the victim nevertheless appeared to meet the Chamber’s criteria for a participating victim and (3) cases where the verification process revealed information that rendered the applicant ineligible for participation in the case under the criteria established by the Chamber.⁵⁵ This last category, which raises some concerns, represents around 10 percent of the verified applications, according to the VPRS.

27. The OPCV on the other hand concluded that “none of the [...] applications verified by the OPCV and sent to the VPRS contained information which could lead to a suspicion of fraud or falsity of declarations”.⁵⁶

28. In the Chamber’s view, the difference in the methodologies employed by the VPRS and the OPCV creates two problems. In the Chamber’s view, the difference in the methodologies employed by the VPRS and the OPCV makes it difficult for

⁵⁴ ICC-01/05-01/08-1125, paragraph 21.

⁵⁵ ICC-01/05-01/08-1369-Conf-Exp, paragraphs 43 to 47.

⁵⁶ ICC-01/05-01/08-978-Conf-Exp.

the Chamber to make a balanced assessment of the verified applications. Because of the significantly different manner in which the applications were assessed by the VPRS and the OPCV, the Chamber finds itself unable at this stage to make a consistent and fair appraisal of the applications.

29. In these circumstances, the Chamber considers that, for the sake of consistency and in order to ensure that victims' rights are afforded the greatest possible protection, all of the applications at issue should be verified using the same methodology. In addition, with regard to applications transmitted to the VPRS by the OPCV, a complementary inquiry by the VPRS, using the same methodology it has used to date, would enable the Chamber to better assess *in fine* the applications that have been filled in with the assistance of Intermediary 1.

Intermediary 2

30. During his testimony,⁵⁷ [REDACTED] explained that the person assisting him to fill in his victim's application form, namely Intermediary 2, "persuaded [him] to say that [his] daughter was raped by several persons"⁵⁸ rather than declaring that she was "taken away and courted".⁵⁹ Regarding the alleged crime of pillaging, [REDACTED] also maintained that the person helping him "was the one writing down. He was the one putting in the amounts. If you told him an amount, he would increase it."⁶⁰

31. The Chamber understands the Registry's wariness of conducting further inquiries into the veracity of the information contained in the applications

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

prepared with the assistance of Intermediary 2.⁶¹ In its 3 June Report, the Registry explains that such an inquiry would not be advisable as it “has not so far received any reliable information showing that Intermediary 2 has included false information in applications for participation.”⁶² The Registry submits that issues raised in [REDACTED] testimony could be explained by reference to other factors, including “memory shortage” caused by the passage of time, normal reactions to trauma, or the practice of intermediaries completing application forms in the absence of the victim.⁶³ The Registry finally raises concerns as to the limitations and risks of conducting a further inquiry, including a risk of re-traumatising victims and the danger of sending confusing messages to victims that their accounts are not believed by the Court.⁶⁴

32. At the same time, the Chamber must take into account [REDACTED] testimony, made under oath, and the concerns raised by the defence in its Observations on the Ninth Transmission concerning the nature and extent of the involvement of intermediaries in the application process.⁶⁵ As a temporary measure, the Chamber, in its 8 July Decision has already deferred the 70 applications that were completed with the assistance of Intermediary 2. Although the Chamber is mindful that a further inquiry has certain downsides, especially the potential risk of victim re-traumatisation, the Chamber must nevertheless consider the seriousness of [REDACTED] assertions as set out in paragraph 30 above. In these circumstances, the Chamber is not fully convinced by the position taken by the Registry in its 3 June Report, according to which other factors may explain discrepancies in different statements of the witness.

⁶¹ ICC-01/05-01/08-1478-Conf, paragraphs 21 and 34.

⁶² ICC-01/05-01/08-1478-Conf, paragraph 22.

⁶³ ICC-01/05-01/08-1478-Conf, paragraphs 23 to 28.

⁶⁴ ICC-01/05-01/08-1478-Conf, paragraph 29.

⁶⁵ ICC-01/05-01/08-1413, paragraph 14.

33. The Chamber recalls that in compliance with its “Decision on the Observations on legal representation of unrepresented applicants,”⁶⁶ the OPCV is representing victim applicants, until such time as the Chamber rules on their applications to participate in the case. Under this mandate, the OPCV is currently representing applicants who have been assisted by Intermediary 2.⁶⁷ Despite this, the Chamber believes that, in the specific circumstances of the case, the VPRS, which has already put in place verification procedures that appear to be satisfactory, is the appropriate entity to verify the accuracy of information provided in the applications filled in with Intermediary 2’s assistance.

34. Therefore, for the sake of consistency, the Chamber is of the view that the 70 applications at issue should be reviewed by the VPRS following the same procedure it has used to date.

35. In addition, the Chamber is aware that in previous sets of applications it has dealt with, a total of 160 applications filled in with Intermediary 2’s assistance have already been ruled upon, and the corresponding applicants granted participating status. In this respect, the Chamber recalls that applications are assessed and decided upon on a *prima facie* basis. Therefore, the Chamber does not deem it necessary, at this stage, for the VPRS to check those applications that were completed with Intermediary 2’s assistance and that have been already accepted by the Chamber.

36. Instead, the Chamber agrees with the Registry’s recommendation that the legal representatives of these 160 individuals meet with their clients in the course of their normal duties to check the accuracy of information provided in their

⁶⁶ ICC-01/05-01/08-651.

⁶⁷ The latter has also introduced an application for participation on his own behalf, application [REDACTED].

application forms, with a particular emphasis on those applicants who have been assisted by Intermediary 2.⁶⁸

IV. Orders

37. For these reasons, the Chamber hereby orders:

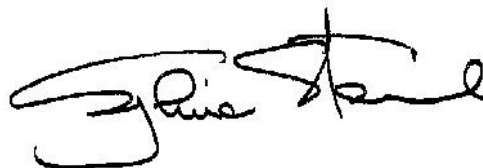
- a. the VPRS to contact the 161 applicants assisted by Intermediary 1 and initially contacted by the OPCV in order to verify the accuracy of the information contained in their applications;
- b. the VPRS to contact the 70 applicants assisted by Intermediary 2 and included in the Ninth Transmission in order to verify the accuracy of the information contained in their applications;
- c. the VPRS to continue its efforts to contact any applicants who could not be reached to date with a view to re-interviewing them to verify the accuracy of the information contained in their applications;
- d. the VPRS to file a report with the Chamber on the results of its inquiry under (a), (b) and (c) by 16.00 on Friday 3 October 2011;
- e. the VPRS to file or re-file in the record of the case, by 16.00 on Friday 3 October 2011, (i) the original applications of re-interviewed applicants together with any supplementary information collected during the inquiry process and (ii) a consolidated individual assessment report following the model of the report on the Tenth Transmission ;
- f. the VPRS to ensure that the assessment under (e) (ii) reflects the applicant's account as provided during the verification process,

⁶⁸ ICC-01/05-01/08-1478-Conf, paragraph 35.

complemented by any information contained in the original application. In case of inconsistencies between the two accounts, the summary should exclusively be based on the information collected during the verification process; and

- g. the VPRS to refrain from transmitting to the Chamber any applications that do not *prima facie* satisfy the criteria established by the Chamber for participation in the proceedings;
- h. the VPRS to transmit, where applicable, to both legal representatives, Mr Assingambi Zarambaud and Ms Marie-Edith Douzima-Lawson, a list of the 160 applicants assisted by Intermediary 2 and who have already been authorised to participate in the proceedings by previous Chamber's decisions on victim applications;
- i. the legal representatives of victims to subsequently verify with the victims they represent the accuracy of the information provided in their respective application forms.

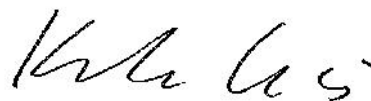
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, The Netherlands