

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **17 October 2011**

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***

Confidential

**Decision on the OPCV's application concerning the inquiry into victims'
applications completed with the assistance of Intermediary 1**

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

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Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

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REGISTRY

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Ms Fiona McKay

Other

Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case"), issues the following Decision on the OPCV's application concerning the inquiry into victims' applications completed with the assistance of Intermediary 1.

I. Background and submissions

1. On 11 July 2011, the Chamber issued its "Decision on the Registry's 'Report on issues concerning intermediaries' involvement in completion of applications for participation'" ("Decision").¹ The Decision ordered the verification of 161 applications of victim applicants whose application forms had been completed with the assistance of a certain intermediary ("Intermediary 1"), whose reliability and methodology had been called into question. To this end, the Decision ordered the Victims Participation and Reparation Section ("VPRS"), to, *inter alia*, (i) contact the 161 applicants to verify the accuracy of the information contained in their applications;² and (ii) re-file the verified applications, together with any supplementary information and a consolidated individual assessment report.³
2. On 16 September 2011, the Office of Public Counsel for Victims ("OPCV") filed an *ex parte*, VPRS and OPCV only, "Information to the Chamber following the 'Decision on the Registry's 'Report on issues concerning intermediaries' involvement in completion of applications for participation'" ("Application").⁴
3. The Application explains that following the issuance of the Decision, the

¹ Decision on the Registry's "Report on issues concerning intermediaries' involvement in completion of applications for participation", 11 July 2011, ICC-01/05-01/08-1593-Conf.

² ICC-01/05-01/08-1593-Conf, paragraph 37 (a).

³ ICC-01/05-01/08-1593-Conf, paragraph 37 (e).

⁴ Information to the Chamber following the "Decision on the Registry's 'Report on issues concerning intermediaries' involvement in completion of applications for participation", 16 September 2011, ICC-01/05-01/08-1755-Conf-Exp and its confidential *ex parte* annexes.

OPCV reviewed the files of the applicants it represents to identify additional information that might corroborate or clarify the events described in the application forms of the individuals concerned.⁵ During this review, the OPCV determined that the accounts provided in the application forms of 75 individuals ("75 Individuals") were corroborated by information already in its possession.⁶ Such information includes: (i) statements collected by the OPCV for the purpose of proceedings conducted pursuant to Article 19 of the Rome Statute ("Statute");⁷ (ii) applications for reparations that were filled out with the assistance of an intermediary whose methods have not been impugned;⁸ (iii) applications filed by family members or persons who witnessed the events in question;⁹ and (iv) additional material or information provided by the applicants, such as letters, emails or pictures¹⁰ (together "Additional Information"). The Additional Information available for each of the 75 Individuals is summarised in a table annexed to the Application.¹¹ Further annexes contain Additional Information which has not been filed previously.¹²

4. The OPCV submits that the Additional Information corroborates the applications of the 75 Individuals "beyond the *prima facie* standard evaluation commended by the Chamber in the course of its usual assessment of victims' applications."¹³ The OPCV also expresses concern regarding the prejudice that could be caused by re-interviewing the 75 Individuals,¹⁴ and suggests that "such prejudice could be avoided" if the Chamber were to base its decision on the Additional Information as opposed to the VPRS re-interviewing the 75

⁵ ICC-01/05-01/08-1755-Conf-Exp, paragraphs 1 and 6.

⁶ ICC-01/05-01/08-1755-Conf-Exp, paragraph 10.

⁷ ICC-01/05-01/08-1755-Conf-Exp, paragraph 11.

⁸ ICC-01/05-01/08-1755-Conf-Exp, paragraph 12.

⁹ ICC-01/05-01/08-1755-Conf-Exp, paragraph 13.

¹⁰ ICC-01/05-01/08-1755-Conf-Exp, paragraph 14.

¹¹ ICC-01/05-01/08-1755-Conf-Anx 1.

¹² ICC-01/05-01/08-1755-Conf-Exp, Anxs 2-17.

¹³ ICC-01/05-01/08-1755-Conf-Exp, paragraph 15.

¹⁴ ICC-01/05-01/08-1755-Conf-Exp, paragraph 16.

Individuals.¹⁵

5. Against this backdrop, the OPCV asks the Chamber to clarify whether the 75 Individuals should be part of the verification process ordered in the Decision.¹⁶

II. Relevant provisions

6. In accordance with Article 21(1) of the 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: Articles 64 and 68 of the Statute, Rule 89 of the Rules, Regulations 81 and 86 of the Regulations of the Court and Regulation 107 of the Regulations of the Registry.

III. Analysis and conclusions

The Application is not based upon new facts or circumstances that would warrant reconsideration of the Decision

7. In the Decision, the Chamber ordered "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".¹⁷ Therefore, the OPCV's suggestion that the 75 Individuals should be excluded from the inquiry amounts to a request for the Chamber to revisit its previous ruling on the matter.
8. As the Chamber has already underlined, the Court's legal framework does

¹⁵ ICC-01/05-01/08-1755-Conf-Exp, paragraph 16.

¹⁶ ICC-01/05-01/08-1755-Conf-Exp, page 12.

¹⁷ ICC-01/05-01/08-1593-Conf, paragraph 37(a).

not provide for a review of a decision.¹⁸ For this reason, the Chamber has previously held that it will not revisit its previous decisions, in the absence of new facts or circumstances that may influence that decision.¹⁹

9. The Chamber notes that most of the Additional Information has been in the OPCV's possession for 12 months or more. For example, the statements collected in the context of the Article 19 proceedings were compiled no later than April 2010.²⁰ With regard to other corroborating material, such as emails or letters sent to the OPCV, the Chamber notes that most of these documents also date back to 2010.²¹ While the Additional Information will be of use to the Chamber in making its final determination on the 75 Individuals' applications, it is not "new" and therefore does not justify a reconsideration of the Decision.

Excluding the 75 Individuals from the re-interview process would defeat the purpose of the inquiry ordered in the Decision

10. The purpose of the inquiry ordered in the Decision was to enable the Chamber "to make a consistent and fair appraisal of the applications".²² Excluding the 75 Individuals from the inquiry would defeat that purpose.
11. The Decision was based on the need for consistency in the inquiries regarding

¹⁸ Décision on the "Requête de la Défense aux fins d'obtenir de la Chambre de Première Instance III des décisions appropriées avant l'ouverture du Procès prévue pour le 22 Novembre 2010", 16 November 2010, ICC-01/05-01/08-1010, paragraphs 9-10.

¹⁹ Public Redacted Version of the Decision on the "Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République Démocratique du Congo" of 2 September 2011, 6 September 2011, ICC-01/05-01/08-1691-Red; Transcript of hearing on 2 December 2010, ICC-01/05-01/08-T-42-Red -ENG WT, page 2, line 2, to page 4, line 13.

²⁰ See Response by the Legal Representative of Victims to the Defence's Challenge on Admissibility of the Case pursuant to articles 17 et 19 (2) (a) of the Rome Statute with 102 Annexes Confidential ex parte OPCV only and same Annexes Public Redacted for example filings, 16 April 2010, ICC-01/05-01/08-1755-Conf-Exp, Anx7, Anx22, Anx24, Anx26, Anx28, Anx29, Anx31, Anx32, Anx35, Anx36, Anx51, Anx52, Anx53, Anx54, Anx55, Anx57, Anx40, Anx39, Anx48, Anx46, Anx45, Anx63, Anx61, Anx59, Anx58, Anx50, Anx47, Anx44, Anx87, Anx78, Anx72, Anx71, Anx76, Anx79, Anx73, Anx69, Anx75, Anx74 and Anx70; See also 01/05-02/08-1755-Conf-Exp, Annexes 2 to 14.

²¹ See 01/05-02/08-1755-Conf-Exp, Annexes 15 to 17.

²² ICC-01/05-01/08-1593-Conf, paragraph 28.

the involvement of Intermediary 1 in the victim application process in the *Bemba* case. Having reviewed the parallel inquiries carried out by the OPCV and the VPRS, the Chamber concluded that “the verification procedures and methodology employed by the VPRS and the OPCV following the Chamber’s 14 January Decision appear to differ significantly” inasmuch as “the verification procedure undertaken by the OPCV appears not to have been as comprehensive as that undertaken by the VPRS.”²³

12. The Chamber considered that “for the sake of consistency and in order to ensure that victims’ right are afforded the greatest possible protection, all of the applications at issue should be verified using the same methodology.”²⁴ For that purpose, the Chamber decided that it was appropriate for the VPRS to undertake a complementary inquiry into the applications using the same methodology the VPRS had employed up until that point.²⁵

13. If 75 Individuals were excluded from the inquiry, the Chamber would need to assess their applications on the basis of the Additional Information in the possession of the OPCV that comprises a variety of documents obtained in different contexts. As a consequence, out of the 161 applications to be reviewed in a consistent manner, the applications of these 75 Individuals would receive a different treatment than the applications of the remaining 86 individuals. In the view of the Chamber, such a procedure would undermine any effort to “make a consistent and fair appraisal of the applications”²⁶ and can therefore not be reconciled with the underlying purpose of the Decision.

The 75 Individuals are to be re-interviewed by the VPRS

14. For the very same reason, the Chamber is of the view that the 75 Individuals

²³ ICC-01/05-01/08-1593-Conf, paragraph 25.

²⁴ ICC-01/05-01/08-1593-Conf, paragraph 29.

²⁵ ICC-01/05-01/08-1593-Conf, paragraph 29.


²⁶ ICC-01/05-01/08-1593-Conf, paragraph 28.

should not be excluded from the re-interview process undertaken by the VPRS. The Chamber reiterates that the VPRS is instructed to pursue its inquiry, in accordance with the conditions and deadlines set out in the Decision and the Chamber's Decision on the Registry's "Corrigendum to the Request for an extension of time to report on further investigations relating to intermediaries".²⁷

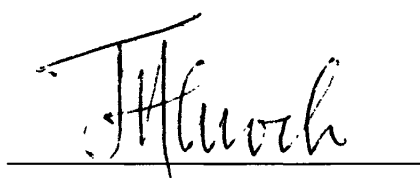
15. Finally, the Chamber is of the view that the Additional Information may further its assessment of the 75 Individuals' applications. Accordingly, the OPCV is invited to provide the Chamber with the Additional Information in its possession relating to the 75 Individuals. The OPCV should transmit the relevant documents to the VPRS, which shall submit these documents to the Chamber, along with the corresponding original application and additional statement when the VPRS files its report on 28 November 2011.

²⁷ Decision on the Registry's "Corrigendum to the Request for an extension of time to report on further investigations relating to intermediaries", 29 July 2011, ICC-01/05-01/08-1618-Conf, paragraph 14.

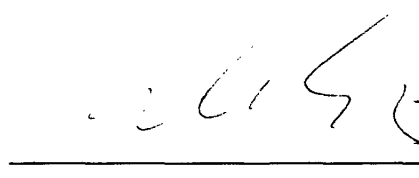
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 17 October 2011

At The Hague, The Netherlands