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

Date: 9 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 and the
Office of Public Counsel for Victims**

**Public redacted version of "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'",
dated 31 March 2011, ICC-01/05-01/08-1369-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 Ms Paolina Massidda	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 the "Decision on 772 applications by victims to participate in the proceedings" dated 18 November 2010;¹

NOTING the "Decision on 653 applications by victims to participate in the proceedings" dated 23 December 2010;²

NOTING the "Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings" dated 14 October 2010 ("the 14 October Registry Report");³

NOTING the instruction of Trial Chamber III ("the Chamber") to the Registry to investigate 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 by 28 February 2011;⁴

NOTING the Decision on the "Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings" dated 14 January 2011 ("the Decision of 14 January 2011");⁵

NOTING the "Transmission de la liste des demandeurs visés par la Décision de la Chambre de première instance III du 14 janvier 2011 dans le cadre de l'enquête menée par le Greffe eu égard à certaines demandes de participation de victimes" of 18 January 2011 of the Office of Public Counsel for Victims ("the OPCV");⁶

¹ ICC-01/05-01/08-1017

² ICC-01/05-01/08-1091

³ ICC-01/05-01/08-953-Conf-Exp and annexes

⁴ Email sent by the Chamber's Legal Adviser on 20 October 2010 to the Associate Legal Officer, DCS

⁵ ICC-01/05-01/08-1125-Conf-Exp

⁶ ICC-01/05-01/08-1133-Conf-Exp

NOTING the “Decision on the Registry Request for an Extension of Time” of 28 February 2011;⁷

NOTING article 68(1)(3) of the Rome Statute, rules 86, 89(1) and 101(1) of the Rules of Procedure and Evidence; Regulations 23 bis (2), 86(2), 86(4), 86(6) and 86(7) of the Regulations of the Court; and Regulation 107(3) and 107(4) of the Regulations of the Registry;

CONSIDERING that between [REDACTED] 2010 and [REDACTED] 2011 the Victims Participation and Reparations Section (“the VPRS”) conducted interviews in the Central African Republic (“CAR”) with approximately 186 applicants who were assisted in making their applications by [REDACTED], in order to verify the content of their statements;

CONSIDERING that this report is filed as Confidential, ex parte only available to the Registry and the OPCV, as it relates to victims' applications for participation in the proceedings and is filed in implementation of a Decision of the Chamber that was itself filed Confidential, ex parte only available to the Registry and the OPCV;

TRANSMITS to the Chamber the following report so as to present the results of its 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”

⁷ ICC-01/05-01/08-1303-Conf-Exp

I. Background to this Report

1. In its 14 October Registry Report,⁸ the Registry informed the Chamber that it had received information from an applicant for participation which might raise doubt regarding the correctness of the information contained in his application form, which at that time had not yet been submitted to the Chamber. It was reported that the applicant had been assisted in making his application by an intermediary, [REDACTED], who had allegedly included false information in the application form.
2. Following its filing of the 14 October Registry Report, the Registry was instructed to refrain until further notice from transmitting applications received from applicants who were assisted by [REDACTED].⁹ The VPRS took immediate steps to identify the applications in which [REDACTED] had assisted. As a result, 160 applications to participate were withheld (79 applications belonging to Group C were withheld from the filing of 8 October 2010; 42 applications belonging to Group D were withheld from the filing of 8 October 2010; and 39 applications were withheld from the filing of 29 October 2010). A further 10 applications, from clients of the OPCV who had been assisted by [REDACTED], were received by the VPRS on 9 December 2010 and were withheld. The Registry notes that prior to its 14 October Registry Report, approximately 200 applications had already been transmitted to the Chamber from persons assisted by [REDACTED], meaning that a total of approximately 370 victim applications were potentially affected by the questions raised in the 14 October Registry Report.

⁸ ICC-01/05-01/08-953-Conf-Exp and annexes

⁹ Email sent by the Chamber's Legal Adviser on 20 October 2010 to the Associate Legal Officer, DCS.

3. On 20 October 2010 the Chamber instructed the Registry and the OPCV to “investigate the issue jointly [...] and to report back to the Chamber by way of a formal filing”.¹⁰ The following steps were then taken by the Registry:

a. [REDACTED]¹¹

b. The Registry sought and, on 30 October 2010, received from the OPCV a list of its clients who had been assisted by [REDACTED] in making their applications and whose applications had since been verified by the OPCV.¹² The OPCV indicated that the statements on the harm suffered by these applicants had been verified by them personally as part of the OPCV’s normal practice of contacting individual applicants who wish to participate in the proceedings or who request reparations. The methodology used by the OPCV to conduct these verifications - which took place either in person or by telephone – was detailed in the 28 October

¹⁰ *Ibid*

¹¹ [REDACTED]

¹² Memorandum and its annex, from the Chief of OPCV to the Chief of the VPRS, CAR-Bemba-T-2010-47-PM, dated 30 October 2010

2010 Report of the OPCV to the Chamber,¹³ [REDACTED].¹⁴ The OPCV concluded that “none of the about 250 applications verified by the Office and sent to the VPRS contained information which could lead to a suspicion of fraud or falsity of declarations”.¹⁵

- c. Between [REDACTED] and [REDACTED] 2010, the VPRS field staff met with approximately 30 applicants who had been assisted by [REDACTED] and who had not previously been contacted by the OPCV.
4. In the Decision of 14 January 2011, the VPRS was ordered to contact all applicants not contacted previously by the OPCV in order to verify their statements. The VPRS identified 216 such applicants, including approximately 30 whom it had met during [REDACTED] 2010.
5. [REDACTED]¹⁶
6. In order to assist in the planning and preparation of these interviews, and to ensure that it was able to provide the Chamber with the most complete and comprehensive assessment of the applicants’ statements, the VPRS sought the services of an external consultant with expertise in working with victims in conflict and post-conflict situations, [REDACTED].¹⁷ From [REDACTED] to [REDACTED] 2011, this consultant assisted the VPRS [REDACTED] in

¹³ “Observations on the Registry’s Report drawing to the Chamber’s attention an issue regarding an application for participation in the proceedings”, ICC-01/05-01/08-978-Conf-Exp

¹⁴ [REDACTED].

¹⁵ *Ibid*, para. 17.

¹⁶ [REDACTED].

¹⁷ See annex 1.

designing an appropriate methodology for the investigation, and trained those staff in procedures for the collection and reporting of information.

7. Interviews with individual applicants were commenced on [REDACTED] 2011. The VPRS has now been able to meet 183 of the 215¹⁸ identified applicants not contacted by the OPCV. The remaining 32 applicants could not be met for the following reasons:

- 3 applicants have indicated that they wish to withdraw their applications.¹⁹
- 13 applicants were contacted (by telephone or through a relative) but did not attend on the day scheduled for their interviews, and VPRS has not so far been able to reach them to arrange a rescheduled interview.²⁰
- 7 applicants are currently outside of Bangui, and the VPRS was unable to make arrangements to meet with them.²¹
- 3 applicants were successfully contacted by [REDACTED] (either directly or through a relative), but VPRS was subsequently unable to reach them to set a date for an interview.²²
- 6 applicants could not be contacted at all, either by telephone or through [REDACTED].²³

II. Context of the inquiry

8. The VPRS planned to conduct individual interviews with a view to ascertaining whether the reported provision of inaccurate information in one application was an isolated incident, or whether the accuracy of the information provided in the other applications was also in question.

¹⁸ The list provided by the OPCV as annex of filing ICC-01/05-01/08-1133-Conf-Exp was later amended, changing the number of applicants to be met by the VPRS, from 203 to 216 applicants.

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ [REDACTED]

²² [REDACTED]

²³ [REDACTED]

9. This exercise had to be designed and conducted in such a way as to collect relevant information while mitigating the risks of negative impacts which such interactions could have on the victims interviewed and ensuring the equal treatment of all applicants.
10. The first interviews conducted during [REDACTED] 2010 with approximately 30 applicants highlighted the complexity of conducting such an inquiry, without putting at risk the security and well-being of the victims. These initial interviews revealed an atmosphere of anxiety amongst a number of the victims met. This atmosphere can be explained by various factors, including the following:
 - a. The precariousness of the applicants' personal circumstances meant that many had unrealistic expectations regarding the consequences of their applications "being approved", and in particular that this would involve the receipt of reparations or material assistance.²⁴
 - b. While the Chamber had issued a number of decisions granting victim status to 1,177 applicants, around 370 applicants, all assisted by the same intermediary, had neither been accepted nor refused, resulting in confusion and a feeling, among some of the victims, that they had been singled out without reasons being given.
 - c. Some of these applicants had developed a relationship of trust with [REDACTED], based on the fact that he was [REDACTED]. For many he was also the applicants' sole point of contact with the judicial process.²⁵ Given that [REDACTED],²⁶ some of the applicants had since that time felt isolated and unable to obtain information about the status of their applications or the proceedings.

²⁴ Please refer to p.6, question 10, of the consultant's report, in Annex 1.

²⁵ In the case of applicants who had never been in contact with the VPRS or the OPCV.

²⁶ [REDACTED]

11. As explained in the report²⁷ of the consultant, the VPRS also had to take into account the risks of secondary victimisation for the applicants interviewed, due to the fact that:

- a) *a new interview carries the risk that revisiting traumatic events may itself be indirectly traumatic;*
- b) *the fear and concern the victims must feel – which is real, as confirmed by the intermediaries who know them – regarding the nature of, and possible developments, during the interview;*
- c) *the victims' failure to understand why they, and not others, have been called up to participate in this process (including the perception that their statements were not accurately taken or that the ICC doubts the veracity of their accounts),*
- d) *the negative perception of what could happen afterwards to their applications or to themselves.*

12. Further, there was a concern that if a person is afraid or does not trust the interviewer sufficiently, they may consciously or unconsciously omit some details, or contradict themselves, fearful of the potential consequences.²⁸ For this reason, the inquiry had to ensure that the applicants interviewed were met in a reassuring environment, and that the context and consequences of the exercise they were submitted to were carefully explained.

III. Developing a methodology

13. In light of the contextual background and the experience gained as a result of the first interviews, and in view of the objectives and complexity of the mission, the VPRS, with the support of the external consultant, developed a methodology aimed at; a) ensuring, as far as possible, the well-being of

²⁷ Please refer to Annex 1

²⁸ The Istanbul Protocol or Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recalls that trust is an essential component of eliciting an accurate account. Notably, the Protocol emphasizes in paragraph 266 that: *“The potential impact of transference reactions on the evaluation process becomes evident when it is considered that an interview or examination that involves recounting or remembering the details of a traumatic history will result in exposure to distressing and unwanted memories, thoughts and feelings. Thus, even though a torture victim may consent to an evaluation with the hope of benefiting from it, the resulting exposure may renew the trauma experience itself. This may include the following phenomena. The evaluator’s question may be experienced as forced exposure to akin to an interrogation.”*

applicants, and b) receiving, assessing and presenting information collected throughout the interview process.

14. This methodology, which is described in Annex 1 to this report, was developed through meetings with [REDACTED], in order to identify and assess the problems they encountered in the process of filling in the forms or contacting victims, and meetings held with ICC field staff, legal representatives of the victims, and interpreters. Discussions focussed on the interactions with victims, cultural differences, linguistic expressions and other foreseeable difficulties in the work of intermediaries and arising in relation to victims in general.
15. Following these meetings, the methodology was tailored²⁹ so as to take into account the possibility of rumors having spread and influenced the victims who were being interviewed, as well as the framework that was imposed by the nature of the interview.

IV. Collection and assessment of the applicants' statements

A. Collection of information

1. [REDACTED]

16. [REDACTED]

17. [REDACTED].³⁰

²⁹ Please refer to annex 2

³⁰ *Idem*

18. [REDACTED].³¹

2. [REDACTED]

[REDACTED]

19. [REDACTED].³²

20. [REDACTED].

[REDACTED]

21. [REDACTED].

³¹ [REDACTED]

³² [REDACTED]

22. [REDACTED].

3. [REDACTED]

23. [REDACTED].

24. [REDACTED]³³

25. [REDACTED].

B. Assessment

26. [REDACTED].

27. [REDACTED].

³³ Please see the template for such statements in Annex 3.

1. [REDACTED]

- [REDACTED]

28. [REDACTED].

- [REDACTED]

29. [REDACTED].

- [REDACTED]

30. [REDACTED].³⁴³⁵

- **Factors affecting the consistency of victims' statements**

³⁴ ICC-01/05-01/08-424.

³⁵ ICC-01/05-01/08-836, in particular paragraphs 84 to 86.

31. As explained in the consultant's report, there is no single criterion for assessing the reliability of statements in cases of human rights violations or for testimonies in general.
32. The Registry would like to draw the Chamber's attention to some factors pointed out by the external consultant, which may explain discrepancies between what a person may say at different points in time, including memory and the relationship between the victim and the intermediary.³⁶
33. The VPRS also kept in mind, as recommended by the expert, the impact of trauma on memory and testimonies, as well as the interviewer's own limits.³⁷
34. Taking into account the above, the staff conducting the interviews sought to ensure that the victim understood the nature of the interview and to explain that forgetting or not knowing some details is normal, so as to encourage a less defensive attitude.
35. However, the Registry notes the possibility that some interviewees might have believed that there could be repercussions, in terms of the acceptance or rejection of their application to participate, if they did not provide a credible answer. This might have affected the consistency of their statements.
36. The Registry is also aware of the inherent risk of discrepancies appearing between statements taken at different points in time.³⁸

³⁶ Please refer to Annex 1.

³⁷ Please refer to Annex 1. In particular, this includes the following factors:

- Applicants may appear unreliable as they may hold back information related to the violation in order to avoid painful memories, embarrassment and shame. Subsequently, they may confuse the location or timing of various events, or add details as they come to mind and they feel more trust toward the interviewers.
- Applicants may exaggerate as they may feel obliged to in order to ensure that their story makes are believed. This does not mean that the story is untrue but it may mean that it could contain some elements of exaggeration.
- It may be difficult for interviewers to accept the truth of allegations of certain cruelty or behavior. If the demeanor of the survivor is very controlled, this difficulty could be exacerbate/compound.
- *"if the person is afraid or does not trust the interviewer sufficiently, he or she may consciously or unconsciously omit some details, or contradict themselves, for fear of the potential consequences. Conversely, when the person does not remember something, he or she may attempt to fill the gap with unconfirmed information, in the belief that silence or not responding may give the impression that he or she is not credible."*

2. Assessments made by the VPRS

37. As explained in the expert report, Annex 1, based on the interviews an evaluation form was completed in relation to each applicant. Applicants were assessed as falling under one of the following three categories:

- The interview confirmed the information originally provided by the applicant, and meets the criteria established by the Chamber to be accepted as a victim participating in proceedings relating to 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%).³⁹

38. As noted throughout the present report, an assessment to verify information from victims is an inherently complex exercise. The consultant's report⁴⁰ emphasises some of these factors:

Such factors are, on the one hand, the situation of victims, their participation objectives and their perception of the process (for example, the precariousness of the victims' personal circumstances could be at odds with a very sophisticated verification process which encourages unrealistic ideas about the consequence of "being approved"); and, on the other hand, the difficulties inherent in working with retrospective memories of violence and the psychological impact of violations in a context of great cultural differences.

³⁸ Further information on this risk was detailed in the Memorandum of the Registry of 17 March 2011.

³⁹ This category includes on one hand the statements in which important inconsistencies have been deemed as raising a fundamental doubt regarding the overall reliability of the statement, and on the other hands the statements where victims allege to have suffered from crimes not related to the case ([REDACTED]). Please refer to the results detailed from paragraph 42 to 47.

⁴⁰ Please refer to Annex 1

39. In light of the above, depending whether inconsistencies within a statement were assessed as minor, and not raising a fundamental doubt regarding the reliability of the statement, the statement was assessed as belonging to the first or second category.
40. Moreover, the Registry took into consideration the important distinction between discrepancies that affect the status of the victim - in other words, where an inaccuracy renders the application unqualified - and those that do not, in that the victim still qualifies as a victim based on the new information provided.
41. For these reasons, it is only in instances where the VPRS staff had fundamental doubts regarding the reliability of the applicant's statement that the applicant has been assessed as belonging to the third category.
42. The results and an overview of the 3 categories are summarised as follows.

V. Overview of the results of the assessments:

43. The VPRS has so far assessed 181⁴¹ victim applicants. Based on these assessments, the applicants have been grouped into the following three categories:

A. Category 1: The information recorded in the original application is confirmed and meets the criteria set by the Chamber for the case

44. Around 116 applicants interviewed fall into this category, including:
- 1) 88 applicants who provided consistent⁴² information during the interview.

⁴¹ [REDACTED]

⁴² In light of their internal consistency and the external coherence of this statement with other information available to the VPRS.

- 2) 28 applicants who provided information that contained some minor inconsistencies,⁴³ but in respect of whom the VPRS sees no reason to doubt the overall reliability of their statement.

B. Category 2: The interview revealed some differences between the victim's statement and the information recorded in the original application, but despite this the victim appears to meet the criteria established by the Chamber to be accepted as a victim participating in proceedings relating to the case

45. Around 45 applicants interviewed fall into this category. They can be grouped as follows:

- 1) 23 applicants do not remember the exact date of the alleged events, contrary to what is stated in their original applications.
- 2) 1 applicant provided a date of the alleged crime during the interview that differs from the one given in the original application.
- 3) 6 applicants described alleged crimes during the interview that differ from those described in the original applications.
- 4) 1 applicant provided a different place of the alleged crime during the interview than that given in the original application.
- 5) 7 applicants described places, dates and crimes during the interview which differed from those given in their original applications.
- 6) 3 applicants described places and dates of the alleged events during the interview which differed from those given in their original applications.
- 7) 4 applicants described crimes and dates of the alleged events during the interview which differed from those stated in their original applications.

46. The VPRS notes that of the 45 applicants in this category: ⁴⁴

- 1) 39 applicants provided consistent information during the interview.
- 2) 6 applicants provided information that contained some inconsistencies,⁴⁵ but the VPRS sees no reason to doubt the overall reliability of their statements.

⁴³ *Idem.*

⁴⁴ The VPRS refers hereafter to the internal and external coherence of the applicant during the interview, regardless of the differences with the information recorded in the original application

⁴⁵ *Idem.*

C. Category 3: The interview revealed details that are inconsistent with the criteria established by the Chamber for the approval of an application for participation in proceedings relating to the case

47. Around 20 applicants interviewed fall into this category. They can be grouped as follows:

- 1) 4 applicants alleged during the interview that they suffered harm as a result of crimes [REDACTED], contrary to what is stated in their original applications, and that they were not previously informed about the temporal jurisdiction of the Court.
- 2) 2 applicants alleged during the interview that they suffered from different crimes to those stated in their forms, and those crimes are not included in the charges confirmed against the accused.
- 3) 14 applicants stated that the crimes from which they suffered concurred within the scope of the case. However, as a result of significant inconsistencies either internally or with other available information, the VPRS has reason to doubt the reliability of such statements.⁴⁶

VI. Recommendations

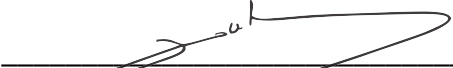
48. The Registry notes that it has not managed to meet 32 of the applicants, for the reasons explained in paragraph 7 of this report. The VPRS will continue its efforts to reach these applicants with the aim of filing a supplementary report on these within a reasonable period of time. For the applications that were already filed with the Chamber but for which the VPRS has not yet managed to meet with the applicant, the Registry recommends that the Chamber continue to defer its decision on their status, until further information is provided.

49. For all other applications for which the information was verified through the inquiry process, the Registry proposes to file with the Chamber the individual assessments aforementioned, together with the usual individual reports on applications prepared by the VPRS in accordance with Regulation 86(5) of the

⁴⁶ In such instances the VPRS has provided, the reasons of such assessment, in individualised assessments. As explained further in its recommendations, the VPRS proposes to file these assessments along with its individual reports in accordance with Regulation 86(5) of the Regulations of the Court. [REDACTED].

Regulations of the Court, as well as any supplementary documents or other information collected by the VPRS during its meetings with the applicants.

50. In the case of the applications already filed with the Chamber, the Registry recommends that it re-files the Regulation 86(5) reports together with the new individual assessments and any other new documents collected during the meetings with the applicants.
51. A redacted version of any supplementary information collected during the interview process can be prepared and transmitted to the parties, along with the original application, following an order from the Chamber.
52. Given the fact that the individual interviews were presented to the applicants as an exercise to provide the Chamber with supplementary information on their applications, the Registry recommends that a decision be issued on the merits of each of these applications, even as regards those that would not otherwise be filed with the Chamber for reasons such as that they do not appear to be linked with the case.
53. The Registry notes that it has not yet sought to conduct an interview with [REDACTED], because of the risk that it could have interfered with the interview process. Once the exercise is completed, and after consultation with the OPCV, the Registry proposes to contact [REDACTED], in order to put to him the results of the Registry's inquiry. Furthermore, the Registry stands ready to take any other step regarding [REDACTED] that the Chamber considers appropriate.



Marc Dubuisson, Director, Division of Court Services,
per delegation of the Registrar

Dated this 9 April 2018

At The Hague, The Netherlands