

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 November 2014

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

Registry Observations on the “Requête de la Représentante légale des victimes relative au maintien de l’aide judiciaire allouée à son équipe après les plaidoiries finales” (ICC-01/05-01/08-3184) dated 31 October 2014

Source: Registry

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

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**

Mr Xavier-Jean Keïta

States' Representatives**Amicus Curiae****REGISTRY**

Registrar

Mr Herman von Hebel

Counsel Support Section

Mr Esteban Peralta Losilla

Mr Abdoul Aziz Mbaye

Victims and Witnesses Unit**Detention Section****Victims Participation and Reparations
Section****Other**

THE REGISTRAR OF THE INTERNATIONAL CRIMINAL COURT (THE "COURT");

NOTING the *Requête de la Représentante légale des victimes sollicitant le maintien de l'aide judiciaire et le maintien des ressources additionnelles allouées par le Greffier le 26 juillet 2011*¹ dated 17 September 2014 ("the first request");

NOTING the *Requête de la Représentante légale des victimes relative au maintien de l'aide judiciaire allouée à son équipe après les plaidoiries finales*² dated 31 October 2014 ("the request");

CONSIDERING rules 16, and 90 (5) of the Rules of Procedure and Evidence, regulations 24 *bis*, 83 and 85 of the Regulations of the Court, regulations 113 and 130 to 136 of the Regulations of the Registry and the *Registry's single policy document on the Court's legal aid system*,³

CONSIDERING that the reference to confidential documents requires that the present observations be filed as confidential pursuant to regulation 23 *bis* (2) of the Regulations of the Court;

RESPECTFULLY SUBMITS the following observations in accordance with Trial Chamber III's instructions received by e-mail message of 4 November 2014, in which the Registrar was invited to specify why no decision has been taken within the time limit set out in regulation 85 (1) of the Regulations of the Court.

I. On the timeframe of the response of the Registrar to the first request

1. The Legal Representative of the Victims invokes regulation 85 (1) of the Regulations of the Court (the "Regulations") in paragraph 10 of the request to

¹ See Annex 1 of the request, ICC-01/05-01/08-3184.

² ICC-01/05-01/08-3184.

³ ICC-ASP/12/3.

justify her appearing on this issue before Trial Chamber III (the "Chamber"), indicating that the Registrar did not respond to her request in a timely manner.

2. Regulation 85 of the Regulations refers to "Decision on payment of legal assistance" in the context of the submission of an application for legal assistance to be paid by the Court. The French version of this Regulation refers to "Décisions relatives à l'octroi de l'aide judiciaire".
3. This Regulation does not apply in the present case since it regards whether legal assistance should be paid by the Court, that is whether an applicant for legal aid meets the conditions established in the applicable texts or not,⁴ while the present case is related to the scope of the legal aid, as it refers to whether the level of resources provided by the Registrar to the team, which currently operates within the legal aid scheme of the Court, should be reconsidered or not at this stage of the proceedings. Therefore, the question is not governed by regulation 85 of the Regulations⁵ but by regulation 83 of the Regulations, which does not establish a deadline for the Registrar to respond to a request for means such as the one discussed here.
4. The Registrar agrees on the need to make a decision on a request for means within a reasonable timeframe; such reasonability should be assessed considering in particular whether the Registrar is or not in possession of all relevant information in order to issue an informed decision. The Registry always endeavours to ensure timely deliverance of decisions requesting means after considering the complexity of the request, the phase of proceedings and, on occasion, after consultations with the applicants prior to rendering the decision. In the present case, the Registrar is not yet in a

⁴ This scope of the referred regulation can be seen by checking regulations 131 and 132 of the Regulations of the Registry which further develop it.

⁵ Should this regulation be considered as a correct legal basis for the request, sub-regulation 3 specifies that the review of such decisions is reserved to the Presidency.

position to reach this decision for the reasons that will be explained further below.

5. In this context, the Registrar would like to reassure the Legal Representative and the Chamber that, in the absence of a decision on the first request, the situation remains unchanged until otherwise decided, and that the decision will be taken after consultations with the Legal Representative of the Victims and the Chamber on the needs of the case after the closing arguments.

II. Inability to reach an informed decision on the request at this stage of proceedings

6. At the time of the present observations, the Registry has been unable to render an informed decision on the request of the Legal Representative of the Victims and to finalise the consideration of the resources that will be necessary to ensure the appropriate representation of the victims after the closing arguments.
7. In the cases operating under the Court's legal aid system, the Registry has adopted decisions on the resources available to the Defence and the Victims teams between the closing statements and the issue of an article 74 decision. The main principles behind these decisions have been (a) to adapt the workforce of the representation team to the needs of the new phase in order not to put an excessive burden on the limited legal aid budget of the Court and (b) to allow the legal representative to react to needs which might reasonably appear during this period of time. This approach is in accordance with regulation 83, sub-regulations 1, 2 and 3, of the Regulations – which indicate, *inter alia*, that legal aid shall cover costs reasonably necessary for an

effective and efficient legal representation –, the legal aid system, the practice of the Registry and the jurisprudence of the Court.⁶

8. In his practice, before considering to reduce or increase the resources allocated to Defence and Victims after the closing arguments, the Registrar has taken all possible steps to ensure that he possesses all relevant information before issuing his decision, including to consult with counsel, his or her team, the Chamber or any relevant body to ensure that the legal representation will continue to be provided in an effective and efficient manner, taking into account the relevant phase of the case and the limited budget allocated to the Court's legal aid system. The Registrar is not yet in a position to take the aforementioned steps because of the current stage of the proceedings in the present case, the need to ensure that the team is fully operational for the purpose of the closing arguments and the latest modifications of the case calendar.
9. The *Notice of limited reopening of the presentation of evidence and rescheduling of closing statements*⁷ of 2 October 2014 scheduled that the closing statements should take place over the week of 10 November 2014.⁸ This factor was duly considered and, in order to ensure the proper conduct of the proceeding in the present case, it was considered reasonable to issue a decision on the request from the Legal Representative of the Victims in the case after the closing arguments in light of all relevant factors deriving therefrom and the result of

⁶ Trial Chamber II considered a reduction in the scope of the defence as necessary, see oral decision ICC-01/04-01/07-T-341-ENG ET WT dated 18 June 2012. The Registry nevertheless provided additional means to the defence team during the deliberations phase, after considering the need of the team based on information provided by counsel. The same reconsideration of resources applied to the Legal Representatives in the cases of *The Prosecutor vs. Germain Katanga* and *The Prosecutor vs. Thomas Lubanga Dyilo*. Counsel in the Katanga case did not litigate before the Trial Chamber II but constructively engaged the Registry to discuss the resources after the final oral pleadings. Several decisions providing additional means were issued during the deliberations phase, based on justifications provided by counsel and the progression of the case.

⁷ ICC-01/05-01/08-3155, in particular paragraph 9 (iv).

⁸ The Order on closing oral statements dated 4 November 2014 (ICC-01/05-01/08-3191) further specified the dates of 12 and 13 November 2014 for the closing oral statements.

consultations to be held with the counsel and the Chamber in accordance with Regulation 83 (2) of the Regulations. As done in the past regarding previous cases, the Registry will take the necessary steps to meet with the Chamber in order to ascertain the needs that will be considered for the purpose of evaluating the level of resources required after the closing arguments.⁹

III. Absence of a decision of the Registrar that the Chamber could review

14. The absence of a decision from the Registrar on the first request cannot be construed as a negative decision, in particular because the legal texts of the Court impose no deadline to issue a decision, but also because the reason for the Registrar not to have issued the expected decision yet is the need to ensure that appropriate response is given to the request. In addition, the Registrar notes that this absence of a decision at this stage has not affected the team and the rights of the Victims. As indicated above, in the absence of a decision on the first request the current level of resources of the team remain unchanged until otherwise decided.

15. In addition, in the absence of a decision by the Registrar under regulation 83 (4) of the Regulations, another Chamber of the Court has stated that "the Chamber cannot rule on the Legal Representative's Additional Request, because its role under Regulation 83 (4) of the Regulations is limited to reviewing decisions by the Registrar on the scope of legal aid. The Chamber cannot substitute its own decision for one still to be made by the Registrar, as this would usurp the latter's discretion".¹⁰

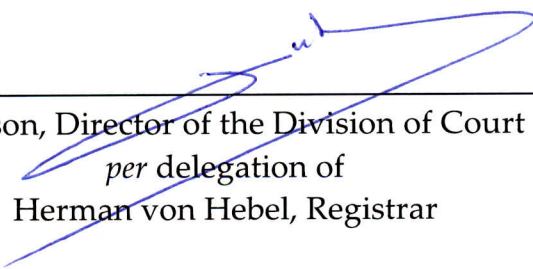
⁹ Regulation 83 (2) of the Regulations specifically contemplates the possibility of consulting the Chamber regarding the scope of legal aid for victims.

¹⁰ Paragraph 23 Decision on the Urgent Requests by the Legal Representative of Victims for Review of Registrar's Decision of 3 April 2012 regarding Legal Aid (ICC-01/04-01/07-3277) dated 23 April 2012.

IV. Conclusion

16. For the foregoing reasons, the Registrar advises the legal representative to wait for the Registrar to issue his decision on her request prior to seeking its review and respectfully prays the Chamber to consider the request as premature and to reject it in its entirety.

17. The Registry is, as always, endeavouring to reach the most appropriate decision on the matter at the earliest opportunity and will ensure that the capacity of the team to react to the actual needs of the representation of victims during the upcoming period is not affected.



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

Dated this 6 November 2014

At The Hague, The Netherlands