



Original: English

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

Date: 11 December 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***

Public

Decision on “OPCV concerns in relation to the Defence’s Submission No. ICC-01/05-01/08-3185-Conf”

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

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

**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

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Ms Fiona McKay

Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, hereby issues the following Decision on "OPCV concerns in relation to the Defence's Submission No. ICC-01/05-01/08-3185-Conf" ("Decision").

I. Background

1. On 3 November 2014, the defence for Mr Jean-Pierre Bemba Gombo ("defence") filed its "Defence Request for Disclosure of Information concerning Intermediary 2" ("Document 3185"),¹ in which it requested disclosure of certain information related to victims.²
2. On 6 November 2014, the Principal Counsel of the Office of Public Counsel for Victims (the "OPCV") informed the Chamber, through an email, of her concerns in relation to some assertions made by the Defence in Document 3185 and related to the OPCV.³
3. On 7 November 2014, the OPCV filed its "OPCV concerns in relation to the Defence's Submission No. ICC-01/05-01/08-3185-Conf" ("OPCV Request"),⁴ in which it objects to the defence's statement in paragraph 6 of Document 3185 that

¹ Defence Request for Disclosure of Information concerning Intermediary 2, 3 November 2014, ICC-01/05-01/08-3185-Conf. The Chamber notes that the present Decision references filing currently classified as confidential. However, in light of the principle of publicity under Article 64(7) and 67(1) of the Rome Statute and Regulation 20 of the Regulations of the Court, the present Decision is classified as public. To the extent that the Decision refers to confidential filings, the Chamber is of the view that reference to these documents does not undermine the confidentiality of information that should remain confidential.

² ICC-01/05-01/08-3185-Conf, paragraphs 1 and 18.

³ Email from Principal Counsel of the OPCV to the Chamber, 6 November 2014, at 16.03. The same day, the Chamber instructed the Principal Counsel to raise this issue in a formal filing. Email from the Chamber to the Principal Counsel of the OPCV, 6 November 2014, at 17.45.

⁴ OPCV concerns in relation to the Defence's Submission No. ICC-01/05-01/08-3185-Conf, 7 November 2014, ICC-01/05-01/08-3198-Conf.

“the Chamber has also noted that a [...] process conducted by the [OPCV] lacked the necessary rigour and objectivity” (“Contested Submission”).⁵ The OPCV submits that this assertion constitutes “a clear misrepresentation of the relevant Chamber’s finding” and expresses concern with “such a misleading representation of the Chamber’s finding which in turns attributes serious non-existent and unfounded behaviours to the OPCV”.⁶ The OPCV alleges that the defence’s statements might constitute a violation of the Code of Professional Conduct for counsel.⁷ The OPCV requests that the Chamber order the defence to file an amended version of Document 3185 and refrain from filing erroneous submissions in the record of the case.⁸

4. On 10 November 2014, the defence filed its “Defence Response to the ‘OPCV concerns in relation to the Defence’s Submission No. ICC-01/05-01/08-3185-Conf’” (“Defence Response”),⁹ in which the defence disputes the OPCV’s interpretation of the defence’s statement and objects to the OPCV making such a filing given its role in the proceedings.¹⁰ Further, the defence states that the OPCV fails to demonstrate that its concerns either affect or advance the general interests of its clients.¹¹ The defence also states that the OPCV Request, specifically when referring to the Code of Profession Conduct for counsel, is “inimical to the fairness of the proceedings, and should be struck from the

⁵ ICC-01/05-01/08-3198-Conf, paragraph 6 (citing ICC-01/05-01/08-3185-Conf, paragraph 6).

⁶ ICC-01/05-01/08-3198-Conf, paragraphs 7 to 8.

⁷ ICC-01/05-01/08-3198-Conf, paragraph 8.

⁸ ICC-01/05-01/08-3198-Conf, paragraph 10.

⁹ Defence Response to the “OPCV concerns in relation to the Defence’s Submission No. ICC-01/05-01/08-3185-Conf”, 10 November 2014, ICC-01/05-01/08-3202-Conf with confidential Annex A.

¹⁰ ICC-01/05-01/08-3202-Conf, paragraphs 1, 5 and 6.

¹¹ ICC-01/05-01/08-3202-Conf, paragraph 2.

record”.¹² However, without prejudice to its principal position, the defence appends an amended version of Document 3185 as Annex A to its response.

5. In the amended document, the defence changes the sentence “the Chamber has also noted that a [...] process conducted by the [OPCV] lacked the necessary rigour and objectivity”¹³ to “the Chamber has also noted that a [...] process conducted by the [OPCV] was not as comprehensive as that performed by the VPRS”.¹⁴

II. Analysis and Conclusion

6. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber has considered Articles 64(2) and (6)(f), 64(7) and 67(1) of the Statute and Regulation 20 of the Regulations of the Court (“Regulations”).
7. The Chamber notes the defence and the OPCV’s disagreements on the interpretation of the statement contained in paragraph 6 of Document 3185. However, in light of the defence’s amended version of Document 3185, which alters the Contested Submission, the Chamber finds the OPCV’s request on that point moot.
8. In relation to the OPCV’s request that the Chamber order the defence to refrain from making erroneous statements and the defence’s request that the OPCV Request be struck from the record, the Chamber finds that no prejudice has been

¹² ICC-01/05-01/08-3202-Conf, paragraph 4.

¹³ ICC-01/05-01/08-3198-Conf, paragraph 6 (citing ICC-01/05-01/08-3185-Conf, paragraph 6).

¹⁴ ICC-01/05-01/08-3202-Conf-AnxA, paragraph 6.

shown and the requested measures are not warranted in the present circumstances.

9. Further, the Chamber notes that the availability of the OPCV Request and the Defence Response in the public record of the case, with the appropriate redactions, will enable the public to contextualize the defence's Contested Submission. Thus, and in light of the principle of publicity under Articles 64(7) and 67(1) of the Statute and Regulation 20 of the Regulations, the Chamber orders the defence and the OPCV to file public redacted versions of the filings related to this Decision, including Document 3185. Regarding Document 3185 and related documents, the redactions applied should align with the Chamber's redactions in the "Public redacted version of 'Decision on 'Defence Request for Disclosure of Information concerning Intermediary 2' (ICC-01/05-01/08-3185-Conf)'"'.¹⁵

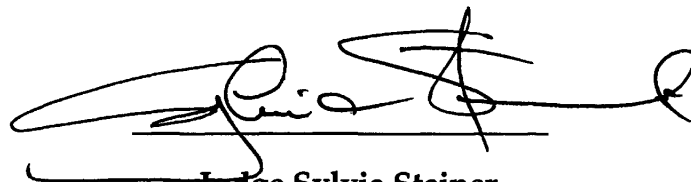
10. In view of the above, the Chamber hereby:

- (a) DECIDES that the OPCV's request for an amendment to Document 3185 is moot;
- (b) REJECTS the remainder of the OPCV's request;
- (c) REJECTS the defence's request that the OPCV Request be struck from the record;
- (d) ORDERS the OPCV to file a public redacted version of the OPCV Request or inform the Chamber that it may be reclassified as public without redactions;

¹⁵ Public redacted version of "Decision on 'Defence Request for Disclosure of Information concerning Intermediary 2' (ICC-01/05-01/08-3185-Conf)", 11 December 2014, ICC-01/05-01/08-3196-Red.

- (e) ORDERS the defence to file a public redacted version of Defence Response and Annex A to the Defence Response or inform the Chamber that they may be reclassified as public without redactions;
- (f) ORDERS the defence to file a public redacted version of Document 3185; and
- (g) ORDERS the Office of the Prosecutor, the legal representative of victims, and the Registry to file public redacted versions of their filings responding to Document 3185.

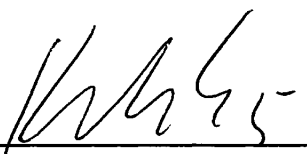
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 11 December 2014