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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

**Public redacted version of "Decision on 'Defence Request for Disclosure of
Information concerning Intermediary 2' (ICC-01/05-01/08-3185-Conf)"**

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

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Legal Representatives of the Victims

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**Victims Participation and Reparations
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Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case"), hereby issues the following Decision on "Defence Request for Disclosure of Information concerning Intermediary 2" (ICC-01/05-01/08-3185-Conf) ("Decision").

I. Background¹

1. At the hearing on 24 February 2011, Witness P-73 alleged that an intermediary, called "[REDACTED]", had included false information in his application for participation in the proceedings regarding the crimes he and his family were victims of, and the estimated economic value attributed to his looted properties.²
2. On 3 June 2011, further to the Chamber's instruction,³ the Registry filed its "Report on issues concerning intermediaries' involvement in completion of applications for participation" ("Registry Report 1478"),⁴ in which the Registry explained the nature of, *inter alia*, Intermediary 2's involvement in assisting applicants to complete their application forms.
3. On 11 July 2011, the Chamber issued its "Decision on the Registry's 'Report on issues concerning intermediaries' involvement in completion of applications for

¹ In view of the number of submissions and findings related to the contacts of Witnesses P-169 and P-178 with other witnesses, the Chamber will confine its summary of the procedural background to documents directly relevant to the present Decision and refers back to the background detailed in its previous decisions on the matter, particularly that included in: "Decision on 'Prosecution's Information to Trial Chamber III on issues involving witnesses CAR-OTP-PPPP-0169' (ICC-01/05-01/08-3138-Conf-Red) and 'Defence Urgent Submissions on the 5 August Letter' (ICC-01/05-01/08-3139-Conf)", 2 October 2014, ICC-01/05-01/08-3154-Conf (a public redacted version of that decision was filed on 10 October 2014, ICC-01/05-01/08-3154-Red); and "Decision on 'Defence Urgent Motion for disclosure of materials relating to P-169 and remedies for non-disclosure' (ICC-01/05-01/08-3159-Conf)", 21 October 2014, ICC-01/05-01/08-3167-Conf.

² Transcript of hearing of 24 February 2011, ICC-01/05-01/08-T-73-Red-ENG WT, pages 33 and 34.

³ Email from the Legal officer of Trial Chamber III to the Associate Legal Officer, DCS, 20 May 2011 at 10.25.

⁴ Report on issues concerning intermediaries' involvement in completion of applications for participation, 3 June 2011, ICC-01/05-01/08-1478-Conf.

participation''' ("Decision 1593"),⁵ in which it, *inter alia*, ordered (i) the VPRS to contact the applicants assisted by Intermediary 2 and included in the ninth transmission of applications for participation,⁶ in order to verify the accuracy of the information contained in their applications; (ii) the VPRS to file the original applications of re-interviewed applicants, together with any supplementary information collected, as well as a consolidated individual assessment report; (iii) the VPRS to transmit to the legal representatives 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; and (iv) the legal representatives to subsequently verify with the victims they represent the accuracy of the information provided in their respective application forms.⁷

4. On 19 July 2012, the Chamber issued its "Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings",⁸ in which it decided on, *inter alia*, the applications completed with the assistance of Intermediary 2, re-examined by the Registry and transmitted in the seventeenth transmission of victims' applications.⁹

⁵ 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.

⁶ 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 and 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. By the time of issuing Decision 1593, the applications of the ninth transmission were pending a decision by the Chamber.

⁷ ICC-01/05-01/08-1593-Conf, paragraph 37.

⁸ Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings, 19 July 2012, ICC-01/05-01/08-2247-Conf. A public redacted version was filed on the same day: Public redacted version of "Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings", 19 July 2012, ICC-01/05-01/08-2247-Red.

⁹ Seventeenth report to Trial Chamber III on applications to participate in the proceedings, 28 November 2011, ICC-01/05-01/08-1959-Conf-Exp and confidential *ex parte* annexes; Seventeenth transmission to the Trial Chamber of applications for participation in the proceedings, 28 November 2011, ICC-01/05-01/08-1957 and confidential *ex parte* annexes. Seventeenth transmission to the parties and legal representatives of the applicants of redacted versions of applications for participation in the proceedings, 28 November 2011, ICC-01/05-01/08-1958 and confidential redacted annexes.

5. On 3 October 2013, the Office of the Prosecutor ("prosecution") filed its "Information on contacts of Witnesses 169 and 178 with other witnesses [...]" together with confidential *ex parte* Annexes A and B,¹⁰ indicating to the Chamber that Witness P-169 sent letters to, amongst others, the prosecution and the VWU ("Letters") ("Filing 2827").¹¹ In his Letters, Witness P-169, *inter alia*, listed alleged outstanding claims, including loss of income and "money promised by the Prosecutor for witnesses", and provided a list of [REDACTED] 22 individuals, including 21 protected witnesses called by the prosecution ("Relevant Witnesses"), many of whom he alleged were contacted and gathered by Witness P-178 to "look at loss of income claims".¹² In this context, the prosecution explained that it had placed separate telephone calls to Witness P-169 and Witness P-178 to discuss the information received, brief them on potential offences under Article 70 of the Statute and instruct them to desist from [REDACTED] as well as to obtain [REDACTED], if possible. Witness P-169 reportedly stated that (i) Witness P-178 "began organising meetings with witnesses in March 2013"; and (ii) they met with [REDACTED] and with one "[REDACTED]", a [REDACTED] national, "possibly" a lawyer.¹³

6. On 11 September 2014, the prosecution filed its "Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-169".¹⁴ The

¹⁰ Information on contacts of Witnesses 169 and 178 with other witnesses [...], 3 October 2013, ICC-01/05-01/08-2827-Conf-Exp and confidential *ex parte* Annexes A and B. A second confidential redacted version was filed on 9 January 2014 and third confidential redacted versions of the annexes were filed on 10 October 2014: ICC-01/05-01/08-2827-Conf-Red2 and Conf-AnxA-Red3 + Conf-AnxB-Red3.

¹¹ The letters, appended as Annexes A and B to the prosecution's filing, are items CAR-OTP-0072-0504/ EVD-T-D04-00057 and CAR-OTP-0072-0508/ EVD-T-D04-00056.

¹² ICC-01/05-01/08-2827-Conf-Red2, paragraphs 7, 9, and 10.

¹³ ICC-01/05-01/08-2827-Conf-Exp, paragraph 15. While quoting the *ex parte* version of the Prosecution Submission, the Chamber considers that the quoted information does not require *ex parte* treatment at this stage.

¹⁴ Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-169", 11 September 2014, ICC-01/05-01/08-3138-Conf-Exp along with Conf-Exp-AnxA. A confidential redacted version was filed on

prosecution informed the Chamber that the VWU had transmitted, on 3 September 2014, another letter allegedly from Witness P-169 ("5 August 2014 Letter"), which the prosecution had disclosed to the defence for Mr Jean-Pierre Bemba ("defence") on 4 September 2014 pursuant to Article 67(2) of the Statute.¹⁵ The prosecution explained that the 5 August 2014 Letter alleges, *inter alia*, that Witness P-169 "possesses evidence of corruption and ill-treatment of Prosecution witnesses".¹⁶

7. On 2 October 2014, the Chamber issued its "Decision on 'Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169' (ICC-01/05-01/08-3138-Conf-Red) and 'Defence Urgent Submissions on the 5 August Letter' (ICC-01/05-01/08-3139-Conf) ("Decision 3154").¹⁷ The Chamber, *inter alia*, (i) ordered the recall of Witness P-169; (ii) ordered the reopening of the presentation of evidence for the limited purpose of hearing Witness P-169 in relation to issues arising out of his various allegations and issues of witness credibility; (iii) deferred any decision on whether it would rely on the testimony of Witness P-169 or the Relevant Witnesses; and (iv) established a schedule for the filing of additional submissions to the parties' and legal representative's closing briefs ("Additional Submissions"), which shall relate exclusively to Witness P-169's testimony and any related evidence admitted by the Chamber.

12 September 2014: ICC-01/05-01/08-3138-Conf-Red. Pursuant to a 15 September 2014 Chamber's order, Annex A was reclassified as confidential: ICC-01/05-01/08-3138-Conf-AnxA. See Email from the Chamber to CMS of 15 September 2014 at 09.01.

¹⁵ See Prosecution's Communication of Evidence pursuant to Article 67(2) of the Rome Statute and confidential Annex A, 5 September 2014, ICC-01/05-01/08-3133, paragraph 1 and ICC-01/05-01/08-3133-Conf-AnxA. The disclosed document bears the ERN CAR-OTP-0083-1212 and the annex bears the ERN CAR-OTP-0083-1214.

¹⁶ ICC-01/05-01/08-3138-Conf-Red, paragraph 2.

¹⁷ Decision on 'Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169' (ICC-01/05-01/08-3138-Conf-Red) and 'Defence Urgent Submissions on the 5 August Letter' (ICC-01/05-01/08-3139-Conf), 2 October 2014, ICC-01/05-01/08-3154-Conf. A redacted version was filed on 10 October 2014, ICC-01/05-01/08-3154-Red.

8. Witness P-169 testified before the Chamber from 22 to 24 October 2014, after having been recalled by the Chamber.¹⁸ On 24 October 2014, following the completion of Witness P-169's testimony, the Chamber issued one oral¹⁹ and one written decision²⁰ on the admission into evidence of documents submitted by the defence in relation to the testimony of Witness P-169. The issuance of these decisions closed the submission of evidence in the *Bemba* case, which had been re-opened for the limited purpose of hearing Witness P-169 in relation to issues arising out of his various allegations and issues of witness credibility.

9. On 3 November 2014, the defence filed its "Defence Request for Disclosure of Information concerning Intermediary 2" ("Defence Request" or "Request"),²¹ in which it requests that the Chamber order disclosure of the following information: (i) "the details of all victim applications (by application number) that were assisted by Intermediary 2 at any point of the proceedings;" (ii) "confirmation as to which of these victims were a) admitted to participate in the proceedings and b) also testified as Prosecution witnesses;" and (iii) "information concerning whether any participants/parties in the Bemba case used the services of Intermediary 2 for any purpose other than completing victim applications" ("Requested Information").²²

10. In support of its Request, the defence submits that the Requested Information is (a) "of central importance to issues concerning the credibility of P-169, and the

¹⁸ Transcript of hearing on 22 October 2014, ICC-01/05-01/08-T-361-CONF-ENG; Transcript of hearing on 23 October 2014, ICC-01/05-01/08-T-362-CONF-ENG; Transcript of hearing on 24 October 2014, ICC-01/05-01/08-T-363-CONF-ENG.

¹⁹ ICC-01/05-01/08-T-363-ENG RT, page 29, line 5, to page 34, line 14.

²⁰ Decision on the admission of two documents, 24 October 2014, ICC-01/05-01/08-3176.

²¹ Defence Request for Disclosure of Information concerning Intermediary 2, 3 November 2014, ICC-01/05-01/08-3185-Conf. The request was preceded by a request sent by email on 31 October 2014 at 12.44. By email sent on 31 October 2014 at 17.55, the Chamber instructed the defence to raise the issue by way of formal filing, justifying the relevance of the information sought for their additional final submissions, by Monday, 3 November 2014 at 16.00.

²² ICC-01/05-01/08-3185-Conf, paragraphs 1 and 18.

relationship between his expectation concerning his entitlement to receive expenses, and the credibility and veracity of his testimony”;²³ and “material to the preparation of the Defence, and its forthcoming submissions regarding P-169”.²⁴ The defence stresses that Witness P-169 testified that he took part in a meeting with [REDACTED] to discuss “the question of obtaining money from the ICC and the corruption of witnesses”²⁵ and that Witness P-178 “knew ‘[REDACTED]’ very well.”²⁶ According to the defence, this “suggests that ‘[REDACTED]’ may have been part of a continuing scheme to collude with victim-witnesses for the purposes of financial gain.”²⁷ Consequently, the defence contends that there is “a clear nexus between P-73’s initial testimony concerning Intermediary 2’s role in falsifying victim applications for financial gain, and P-169’s complaints regarding the existence of witness subordination linked to the payment of financial expenses”.²⁸

11. The defence further avers that “[g]iven the questions that have arisen during the testimony of P-73 and P-169 concerning the conduct of ‘[REDACTED]’, both the prosecution and the [legal representative] were put on notice that any information within their custody regarding either their contacts with [REDACTED] or contacts between [REDACTED] would be relevant to credibility issues or at the very least, material to the preparation of the Defence²⁹ and that the Requested Information “falls squarely within the scope of information that has been provided to the Defence in other cases”.³⁰

²³ ICC-01/05-01/08-3185-Conf, paragraph 2.

²⁴ ICC-01/05-01/08-3185-Conf, paragraph 12.

²⁵ ICC-01/05-01/08-3185-Conf, paragraph 8.

²⁶ ICC-01/05-01/08-3185-Conf, paragraph 9.

²⁷ ICC-01/05-01/08-3185-Conf, paragraph 10.

²⁸ ICC-01/05-01/08-3185-Conf, paragraph 11.

²⁹ ICC-01/05-01/08-3185-Conf, paragraph 14.

³⁰ ICC-01/05-01/08-3185-Conf, paragraph 15.

12. Finally, the defence submits that since “the Registry has already identified [REDACTED] as Intermediary 2, the Requested Information does not occasion any [REDACTED].”³¹ Regarding the prosecution’s assertion that the defence has not established that the ‘[REDACTED]’ referred to by Witness P-169 is Intermediary 2,³² the defence avers that “this is a matter which could be best established through the recall of P-178 and potentially, [REDACTED] himself.”³³
13. On 4 November 2014, the Chamber issued its “Decision on ‘Defence request for recall of Witness P-178’”,³⁴ in which it rejected the defence’s request that the Chamber recall Witness P-178, on the basis that it was “not convinced that the defence has demonstrated that recalling Witness P-178 would provide the Chamber with ‘fresh’ evidence necessary for the determination of the truth”.³⁵
14. On 4 November 2014, further to the Chamber’s instruction,³⁶ the prosecution,³⁷ the legal representative³⁸ and the Registry³⁹ respectively filed their observations on the Defence Request.
15. The prosecution and the legal representative both ask that the Chamber reject the Request in its entirety.⁴⁰ The prosecution, referring to Decision 1593, submits that “[t]he Chamber has adequately and sufficiently addressed the issue of

³¹ ICC-01/05-01/08-3185-Conf, paragraph 16.

³² The defence refers to the prosecution’s submission in ICC-01/05-01/08-3180-Conf, paragraph 16.

³³ ICC-01/05-01/08-3185-Conf, paragraph 17.

³⁴ Decision on “Defence request for recall of Witness P-178”, 4 November 2014, ICC-01/05-01/08-3186-Conf.

³⁵ ICC-01/05-01/08-3186-Conf, paragraph 24. *See also* Defence request for recall of Witness P-178, 29 October 2014, ICC-01/05-01/08-3177-Conf.

³⁶ Email sent by the Chamber to the parties, the legal representative and the Registry on 31 October 2014 at 17.55.

³⁷ Prosecution’s Response to Defence Request for Disclosure from the Registry of Information concerning Intermediary 2, 4 November 2011, ICC-01/05-01/08-3188-Conf.

³⁸ Réponse de la Représentante légale des victimes à la « Defence Request for Disclosure of Information concerning Intermediary 2- ICC-01/05-01/08-3185-Conf », 4 November 2014, ICC-01/05-01/08-3187-Conf.

³⁹ Registry Response to the “Defence Request for Disclosure of Information concerning Intermediary 2” (ICC-01/05-01/08-3185-Conf) dated 3 November 2014, 4 November 2014, ICC-01/05-01/08-3189-Conf.

⁴⁰ ICC-01/05-01/08-3188-Conf, paragraph 10; ICC-01/05-01/08-3187-Conf, page 12.

Intermediary 2".⁴¹ It further stresses that "[i]n the absence of the family name and any other identifying feature, there is no evidence that the [REDACTED] referred to by P-169 is the same individual as Intermediary 2".⁴² Even assuming that it was the same person, the prosecution contends that the defence "has failed to establish the requisite nexus with P-169's testimony" and that there is no justification that the Requested Information is relevant to the defence's additional submissions on Witness P-169.⁴³ In this respect, the prosecution stresses that (i) Witness P-169's knowledge of [REDACTED] is limited; (ii) "there is no evidence to show that P-178 or [REDACTED] took further steps as a result of the meeting"; (iii) the defence has not shown "any connection between [REDACTED] and Witness P-169".⁴⁴ The prosecution also contends that the defence has failed to establish the relevance of the Requested Information to any "live issue in the case" and to substantiate the existence and involvement of [REDACTED] in a "continuing scheme to collude with victim witnesses for the purposes of financial gain".⁴⁵

16. The legal representative stresses at the outset that it is not clear from the Request whether the defence only wants a list of the application numbers of applications completed with the assistance of Intermediary 2 or whether it also requests unredacted or lesser redacted versions of the relevant applications.⁴⁶ According to the legal representative, the defence failed to justify its request for access to either. She contends that the defence misinterpreted the testimony of Witness P-169 who, although mentioning a certain [REDACTED], did not provide any

⁴¹ ICC-01/05-01/08-3188-Conf, paragraph 5.

⁴² ICC-01/05-01/08-3188-Conf, paragraph 6.

⁴³ ICC-01/05-01/08-3188-Conf, paragraph 6.

⁴⁴ ICC-01/05-01/08-3188-Conf, paragraph 6.

⁴⁵ ICC-01/05-01/08-3188-Conf, paragraphs 7 and 8.

⁴⁶ ICC-01/05-01/08-3187-Conf, paragraph 9.

information corroborating alleged falsification of victims' applications.⁴⁷ She further submits that the hypothetical benefit of lifting redactions in the application forms is outweighed by the resulting risk for victims and witnesses.⁴⁸ Regarding the request for a list of applications completed with the assistance of Intermediary 2, the legal representative stresses that the identity of the intermediary is redacted in the redacted versions of the applications and that lifting these redactions would reveal information that is subject to protective measures.⁴⁹ The legal representative does not oppose the communication of the application numbers of dual status individuals but stresses that the request for access to their applications is not justified and risks compromising the security of these witnesses as well as third parties mentioned in the forms.⁵⁰

17. Regarding the defence's request for "confirmation as to which of these victims were a) admitted to participate in the proceedings and b) also testified as Prosecution witnesses" the legal representative submits that this follows from the first request and thus reiterates her opposition to the communication of a list of the victims assisted by Intermediary 2.⁵¹ The request for "information concerning whether any participants/parties in the Bemba case used the services of Intermediary 2 for any purpose other than completing victim applications", is, in the legal representative's submission, "too broad" and "has no legal basis".⁵² Specifically, the legal representative submits that (i) the defence does not clearly identify the information sought;⁵³ (ii) the defence's submissions on the mandate

⁴⁷ ICC-01/05-01/08-3187-Conf, paragraphs 6 to 12.

⁴⁸ ICC-01/05-01/08-3187-Conf, paragraphs 14 to 16.

⁴⁹ ICC-01/05-01/08-3187-Conf, paragraphs 17 and 18.

⁵⁰ ICC-01/05-01/08-3187-Conf, paragraph 19.

⁵¹ ICC-01/05-01/08-3187-Conf, paragraph 24.

⁵² ICC-01/05-01/08-3187-Conf, paragraph 27. « [T]rop large et dépourvue de de base légale » in the French original.

⁵³ ICC-01/05-01/08-3187-Conf, paragraphs 28 to 30.

of Intermediary 2 are speculative;⁵⁴ (iii) Witness P-169's credibility cannot be evaluated in light of the allegations against [REDACTED];⁵⁵ and (iv) there is no legal basis for disclosure of information on internal procedures concerning an intermediary, which are confidential and protected under Article 8 of the Code of Professional Conduct for counsel on the respect for professional secrecy and confidentiality.⁵⁶

18. The Registry, stressing the lack of clarity surrounding the defence's request for "the details of all victim applications", specifies that "[w]hile a list of applications submitted with the assistance of Intermediary 2 could be provided without delay, the disclosure of these applications would require a significant amount of time necessary for their redactions."⁵⁷ The Registry further clarifies that contrary to the defence's contention,⁵⁸ Registry Report 1478 does not identify "[REDACTED]" as being Intermediary 2.⁵⁹ In this respect, it further notes that Witness P-169 described [REDACTED] as "[REDACTED]",⁶⁰ "which does not appear to the Registry to correspond to the physical appearance of the individual met by Registry staff and identified in the Registry's report as Intermediary 2."⁶¹ In addition, the Registry recalls that it has already submitted its observations regarding the allegations of Witness P-73 and filed the results of the inquiry⁶² and submits that "[i]t does not have further remarks or new information on the role played by this intermediary in the completion of applications for participation

⁵⁴ ICC-01/05-01/08-3187-Conf, paragraph 29.

⁵⁵ ICC-01/05-01/08-3187-Conf, paragraph 31.

⁵⁶ ICC-01/05-01/08-3187-Conf, paragraph 33.

⁵⁷ ICC-01/05-01/08-3189-Conf, paragraph 1.

⁵⁸ ICC-01/05-01/08-3185-Conf, paragraph 1.

⁵⁹ ICC-01/05-01/08-1478-Conf.

⁶⁰ ICC-01/05-01/08-T-361-CONF-ENG ET, page 40, line 9.

⁶¹ ICC-01/05-01/08-3189-Conf, paragraph 2. The Registry refers to ICC-01/05-01/08-1478-Conf.

⁶² ICC-01/05-01/08-3189-Conf, paragraph 3. The Registry refers to documents ICC-01/05-01/08-1478-Conf and ICC-01/05-01/08-1960-Conf-Exp.

and/or reparations.”⁶³ Finally, the Registry recalls that a previous defence request for communication of lesser redacted versions of the applications which had been completed with the assistance of Intermediary 2 has already been addressed by the Chamber.⁶⁴ Should the Chamber decide to modify its previous decision, the Registry suggests that the respective legal representative be given the opportunity to provide observations.⁶⁵

II. Analysis and conclusions

19. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber has considered Articles 64(2), 67, 68 and 69 of the Statute.

20. As a preliminary matter, the Chamber notes the defence’s submission that the question of whether the “[REDACTED]” mentioned by Witness P-169 is Intermediary 2, “is a matter which could be best established through the recall of P-178 and potentially, [REDACTED] himself”. In this regard, the Chamber underlines that (i) it has previously rejected the defence’s request to recall Witness P-178;⁶⁶ (ii) the individual called “[REDACTED]” cannot be “recalled” since he has never been called as a witness in this case; and (iii) the submission of evidence in the *Bemba* case is closed.⁶⁷ Accordingly, the Chamber will not address this submission further.

21. The Chamber further notes that while in paragraphs 14 and 15 of its Request, the defence refers to disclosure under Article 67(2) of the Statute and Rule 77 of the

⁶³ ICC-01/05-01/08-3189-Conf, paragraph 3.

⁶⁴ ICC-01/05-01/08-3189-Conf, paragraph 4.

⁶⁵ ICC-01/05-01/08-3189-Conf, paragraph 4.

⁶⁶ ICC-01/05-01/08-3186-Conf. Pending the Chamber’s decision on the “Defence Request for Reconsideration of the ‘Decision on ‘Defence request for recall of Witness P-178’”, ICC-01/05-01/08-3186-Conf,” 5 November 2014 ICC-01/05-01/08-3192-Conf, this decision is still valid.

⁶⁷ Decision on closure of evidence and other procedural matters, 7 April 2014, ICC-01/05-01/08-3035, paragraph 7.

Rules, it seeks the provision of information by the Registry. Accordingly, the Chamber will treat the Request as a request for provision of information and not as a request for disclosure.

22. As set out in paragraphs 1 to 4 above, the Chamber addressed the issue of Intermediary 2 when it arose during the testimony of Witness P-73. In particular, in Decision 1593, the Chamber ordered the VPRS to contact all applicants assisted by Intermediary 2 who had pending applications before the Chamber, in order to verify the accuracy of the information contained in their applications, and to file the original applications of re-interviewed applicants, together with any supplementary information collected. Regarding the 160 applicants assisted by Intermediary 2 who have already been authorised to participate in the proceedings, the Chamber ordered the legal representatives to verify directly with the victims they represent the accuracy of the information provided in their respective application forms. The Chamber notes that the parties did not seek leave to appeal this decision.

23. In Decision 2247, the Chamber rejected a previous defence request for the communication of lesser redacted versions of the victims' applications.⁶⁸ In this context, the Chamber also addressed the defence's specific challenge concerning redactions of the identities of intermediaries.⁶⁹ The Chamber notes that the parties did not seek leave to appeal this decision. The Chamber further emphasises that the defence has access to the same redacted versions of the victims' applications as the prosecution and is therefore not disadvantaged.

⁶⁸ ICC-01/05-01/08-2247-Conf, paragraph 24.

⁶⁹ ICC-01/05-01/08-2247-Conf, paragraph 25. In this paragraph the Chamber referred to Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims' applications to the Registry, 21 July 2011, ICC-01/05-01/08-1590-Corr, paragraph 31.

24. The current Defence Request is premised on defence assertions that the Requested Information is “of central importance to issues concerning the credibility of P-169”⁷⁰ and “material to the preparation of the Defence, and its forthcoming submissions regarding P-169”.⁷¹ In this regard, the Chamber notes Witness P-169’s submission that he only met this “[REDACTED]” once, after his testimony, and that he thought he was a witness.⁷² The Chamber further notes that there is no information as to whether the “[REDACTED]” mentioned by Witness P-169 and Intermediary 2 are the same person.

25. In addition, the Chamber recalls its instructions in Decision 3154 that the additional submissions to the parties’ and legal representative’s final briefs “shall relate exclusively to Witness P-169’s testimony and any related evidence admitted by the Chamber”.⁷³ Even assuming that [REDACTED] is Intermediary 2, the Chamber finds that the defence has not sufficiently demonstrated that the Requested Information relates to Witness P-169’s testimony and any related admitted evidence. The defence submits that the Requested Information is relevant as there is “a clear nexus between P-73’s initial testimony concerning Intermediary 2’s role in falsifying victim applications for financial gain, and P-169’s complaints regarding the existence of witness subordination linked to the payment of financial expenses”.⁷⁴ However, Witness P-169 is not a so-called “dual status” individual. In addition, as confirmed by Witness 169 in his recent testimony, he met a person called [REDACTED] only once, at a meeting held after his testimony at the seat of the Court, for the purpose of discussing “loss of income”. Furthermore, the Chamber clarifies that with the exception of Witness

⁷⁰ ICC-01/05-01/08-3185-Conf, paragraph 2.

⁷¹ ICC-01/05-01/08-3185-Conf, paragraph 12.

⁷² ICC-01/05-01/08-T-361-CONF-ENG-ET, page 40, lines 9 to 15 and page 66, lines 14 to 21.

⁷³ ICC-01/05-01/08-3154-Conf, paragraph 50 (xvi).

⁷⁴ ICC-01/05-01/08-3185-Conf, paragraph 11.

P-73, none of the dual status individuals called to testify in the proceedings was assisted by Intermediary 2 in the completion of their applications for participation.⁷⁵ Accordingly, the Chamber considers that the defence failed to substantiate its contention that the Requested Information is relevant for the preparation of the defence's Additional Submissions.

26. Regarding the request for "information concerning whether any participant/parties in the Bemba case used the services of Intermediary 2 for any purpose other than completing victim applications",⁷⁶ the Chamber finds that the request is speculative and lacks specificity regarding its basis and the nature of the precise information sought.

27. Finally, the Chamber notes that the alleged meeting involving "[REDACTED]" was first mentioned in Filing 2827, which was provided to the defence on 7 November 2013.⁷⁷ The Chamber is of the view that the information concerning "[REDACTED]" provided during the recall of Witness P-169 is not substantially different from the information referred to in Filing 2827. For this reason, the Chamber considers that the defence could have sought the Requested Information at an earlier stage of the proceedings.

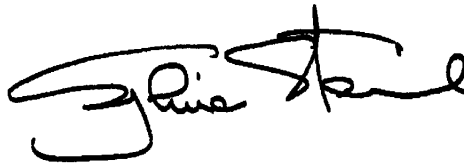
28. In view of the above, the Chamber hereby **REJECTS** the Defence's Request.

⁷⁵ For the purpose of this finding, the Chamber reviewed the unredacted versions of the relevant witnesses' victims applications: ICC-01/05-01/08-137-Conf-Exp-Anx10, ICC-01/05-01/08-137-Conf-Exp-Anx11, ICC-01/05-01/08-137-Conf-Exp-Anx14, ICC-01/05-01/08-137-Conf-Exp-Anx18, ICC-01/05-01/08-224-Conf-Exp-Anx11, ICC-01/05-01/08-224-Conf-Exp-Anx12, ICC-01/05-01/08-224-Conf-Exp-Anx18, ICC-01/05-01/08-224-Conf-Exp-Anx20, ICC-01/05-01/08-653-Conf-Exp-Anx1, ICC-01/05-01/08-796-Conf-Exp-Anx151, ICC-01/05-01/08-954-Conf-Anx371-Red, ICC-01/05-01/08-954-Conf-Anx372-Red, ICC-01/05-01/08-954-Conf-Anx373-Red, ICC-01/05-01/08-1604-Conf-Exp-Anx214, and ICC-01/05-01/08-1723-Conf-Exp-Anx56.

⁷⁶ ICC-01/05-01/08-3185-Conf, paragraph 1.

⁷⁷ ICC-01/05-01/08-2827-Conf-Red, paragraph 15.

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

At The Hague, the Netherlands