

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 23 August 2016

TRIAL CHAMBER III

Before: Judge Joyce Aluoch, Presiding Judge
Judge Geoffrey Henderson
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public Redacted Document

**Public redacted version of “Prosecution’s Response to Defence Request for
Disclosure from the Registry of Information concerning Intermediary 2”,
4 November 2014, ICC-01/05-01/08-3188-Conf**

Source: The Office of the Prosecutor

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 of Jean-Pierre

Bemba Gombo

Mr Peter Haynes

Ms Kate Gibson

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of 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 Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. The Defence requests Trial Chamber III (“Chamber”) to order the Registry to: (i) disclose the details of all application numbers of victims who were assisted by Intermediary 2 at any point during the proceedings; (ii) confirm which of those victims were a) admitted to participate in the proceedings, and b) also testified as Prosecution witnesses; and (iii) disclose information concerning whether any participants or parties used the services of Intermediary 2 for any purpose other than completing victim applications (“Defence Motion”).¹

2. The Office of the Prosecutor (“Prosecution”) opposes the Defence request for the Registry to disclose the requested information as it is speculative, fails to establish the requisite nexus with the testimony of CAR-OTP-PPPP-0169 (“P-169”) and is therefore not relevant to their additional final submissions. Furthermore, the information sought is not relevant to any other “live” issue in the case.

3. The Prosecution submits that the Chamber should put an end to the Defence’s fishing expeditions and endless attempts to capitalise on a presently unsubstantiated alleged scheme involving 22 Prosecution witnesses. The basis of any such alleged scheme no longer exists following the testimony of P-169 as the originator of this assertion, and the information gathered from the witnesses concerned.

¹ ICC-01/05-01/08-3185-Conf, Defence Request for Disclosure of Information concerning Intermediary 2, 3 November 2014, para. 1.

II. Request for Confidentiality

4. Pursuant to Regulation 23(1)*bis* of the Regulations of the Court, the Prosecution requests that this document be received as “Confidential” as it relates to the Defence Motion, which bears the same classification.

III. Submissions

5. The Chamber has adequately and sufficiently addressed the issue of Intermediary 2. Following allegations that Intermediary 2 included false information in the victim application of CAR-OTP-PPPP-0073,² the Registry provided additional information regarding its enquiries into Intermediary 2 and stated that it would continue to monitor his activities but that there was no reason to take further action.³ On 11 July 2011, the Chamber ordered, *inter alia*, that the Victims Participation and Reparations Section (“VPRS”) should contact the 70 victim applicants assisted by Intermediary 2 in order to verify the accuracy of the information contained in their applications, whilst the legal representatives of victims would conduct similar enquiries with the remaining 160 victims that had already been authorised to participate in the proceedings.⁴

6. In 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 2.⁵ Even assuming, *arguendo*, that Intermediary 2 is the same

² P-73, ICC-01/05-01/08-T-73-RED-ENG, 24 February 2011, pages 18 to 34.

³ ICC-01/05-01/08-1478-Conf, Report on issues concerning intermediaries' involvement in completion of applications for participation, 3 June 2011, paras. 22, 27, 34.

⁴ ICC-01/05-01/08-1593-Conf, Decision on the Registry's "Report on issues concerning intermediaries' involvement in completion of applications for participation", 11 July 2011.

⁵ The Defence made an erroneously similar type of inference based on a first name mentioned by P-169 during his testimony. In spite of their insistence, it was clear from P-169's testimony that [REDACTED] was not a

“[REDACTED]” referred to by P-169, the Defence has failed to establish the requisite nexus with P-169’s testimony. P-169 stated clearly that the meeting was organised by CAR-OTP-PPPP-0178 (“P-178”).⁶ His limited knowledge of [REDACTED] is evident from his statements that, “To my mind, well, I thought he was a witness, but I was not able to ask in order to ascertain whether he was a witness or not.”⁷ P-169 did not even know [REDACTED] last name and added that, “This is a gentleman of short stature. [REDACTED] knows him well. I saw him for the first time and for the last on that occasion.”⁸ Apart from their presence at the same meeting allegedly organised by P-178, there is no evidence to show that P-178 or [REDACTED] took further steps as a result of the meeting. Nor has the Defence shown that there is any connection between [REDACTED] and P-169. Therefore there is no justification to show that the information requested from the Registry is relevant to the additional Defence submissions on P-169.

7. In addition, although the Defence knew of the allegation regarding Intermediary 2 in mid-2011, they chose not to take any action following the Chamber’s order. It is too late in the day, without further basis, to raise additional measures that should have been taken by the Chamber in relation to Intermediary 2.⁹ The Defence has no evidence to substantiate the allegation that “[REDACTED]’ may have been part of a continuing scheme to collude with victim-witnesses for the purposes of financial gain.”¹⁰ In fact, P-169’s testimony obviates the need for any such enquiry into the existence of an alleged scheme. Contrary to the Defence assertion, P-169 never referred to a meeting in which the corruption of witnesses was

Prosecution investigator contrary to Defence’s assertion. See, ICC-01/05-01/08-3182-Conf, Prosecution’s Additional Submissions to the Closing Brief regarding P-169, 31 October 2014, para. 21.

⁶ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, page 39, lines 18-25; ICC-01/05-01/08-T-362-CONF-ENG ET, 23 October 2014, page 4, lines 15-17.

⁷ P-169, ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, page 40, lines 12-13.

⁸ P-169, ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, page 40, lines 9-15; page 66, lines 14-21.

⁹ ICC-01/05-01/08-3185-Conf, Defence Request for Disclosure of Information concerning Intermediary 2, 3 November 2014, para. 7.

¹⁰ ICC-01/05-01/08-3185-Conf, Defence Request for Disclosure of Information concerning Intermediary 2, 3 November 2014, paras. 10-11.

discussed.¹¹ The Defence attempt to link P-169's testimony to the existence of a scheme that he clearly denied or to speculate about [REDACTED] involvement is unfounded. Moreover, P-169 is not even a dual status victim-witness in this case and therefore cannot be associated with Intermediary 2 in that context.¹² Had he been a dual-status victim-witness, P-169 would have remembered if [REDACTED] was Intermediary 2.

8. The Defence has failed to establish the relevance of the information requested in the Defence Motion to any "live" issue in the case. The information regarding Intermediary 2, who may or may not be the [REDACTED] referred to by P-169, is not relevant to the preparation of the Defence in this case. The Defence has failed to substantiate the existence of a scheme involving 22 Prosecution witnesses. P-169, who initially alleged the existence of such a scheme in order to exert pressure on the Court, explained that: (i) there was no money promised by the Prosecution to any of its witnesses;¹³ (ii) there was no attempt to corruptly influence Prosecution witnesses;¹⁴ (iii) he did not meet any of the witnesses apart from one meeting with a certain [REDACTED], CAR-OTP-PPPP-0042, and P-178;¹⁵ and (iv) he was not mandated to represent any of the other 21 Prosecution witnesses.¹⁶ In addition, following various enquiries by the Prosecution,¹⁷ Victims and Witnesses Unit,¹⁸ and Legal Representative of victims,¹⁹ the witnesses concerned who were contacted either did not know P-169 or had not met with him, and/ or denied the existence of any such scheme.

¹¹ The extract of the transcript cited by the Defence to support this allegation does not contain this information. See P-169, ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, page 36, line 10 to page 37, line 16 and page 57, lines 6-10.

¹² ICC-01/05-01/08-T-360-CONF-ENG ET, 23 September 2014, page 38, lines 9-10.

¹³ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.45, lines 8-12; ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.43, line 23 to page 44, line 25.

¹⁴ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.36, line 5 to p.37, line 12; p.45, line 13 to p.46, line 1; ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.70, lines 6-12.

¹⁵ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, page 57, lines 1-10.

¹⁶ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.57, lines 3-10.

¹⁷ See, CAR-OTP-0083-1494_R01.

¹⁸ See, ICC-01/05-01/08-3143-Conf-Anx-Corr-Red2 and ICC-01/05-01/08-2975-Conf-Anx-Red.

¹⁹ See, for example, ICC-01/05-01/08-T-360-CONF-ENG ET, 23 September 2014, page 49, lines 4-10.

9. The Defence Motion is yet another attempt to extend the present proceedings infinitely and without any arguable basis.

IV. Relief Sought

10. The Prosecution requests that the Chamber dismiss the Defence Motion in its entirety.



Fatou Bensouda, Prosecutor

Dated this 23rd Day of August 2016
At The Hague, The Netherlands