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

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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**

Confidential

Defence Request for Disclosure of Information concerning Intermediary 2

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

Fatou Bensouda

Jean-Jacques Badibanga

Counsel for the Defence

Peter Haynes QC

Kate Gibson

Melinda Taylor

Legal Representatives of the Victims

Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants**Unrepresented Victims****Unrepresented****(Participation/Reparation)****Applicants****The Office of Public Counsel for the Victims**

Paolina Massida

The Office of Public Counsel for the Defence

Xavier-Jean Keita

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

Herman von Hebel

Defence Support Section**Deputy Registrar****Victims and Witnesses Unit**

Nigel Verrill

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

A. INTRODUCTION

1. The Defence for Mr. Jean-Pierre Bemba Gombo hereby requests the Honourable Trial Chamber to order disclosure of the following information to the Defence (“the Requested Information”):¹

- 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.

2. The Requested Information is of central importance to issues concerning the credibility of P-169, and the relationship between his expectation concerning his entitlement to receive expenses, and the credibility and veracity of his testimony.

B. SUBMISSIONS

3. During his testimony before the ICC, P-73 claimed that he had been encouraged by a person called [REDACTED] to amend his victim application form in order to include false information, with a view to increasing the amount of potential reparations that he would receive.²

¹ The level of confidentiality of this present request is justified due to its citation of P-169’s closed session testimony and to confidential filings pertaining to Intermediary 2.

² T-76-Conf-ENG-ET, p.7, line 13 – p.16, line 7; p.23, line 14 – p.24, line 17.

4. P-73 also testified that [REDACTED] had assisted his neighbour to complete an application form.³ P-42 is the neighbour of P-73.⁴

5. A Registry Report on this issue identified [REDACTED] as being Intermediary 2, and confirmed that this person had had multiple interactions with victim-applicants, including persons who had been admitted to participate in the proceedings.⁵

6. In its Decision on this issue, the Chamber ordered the VPRS to contact pending applications to ascertain the accuracy of the information therein.⁶ However, the Chamber did not order that there be any such verification process for the victims that had already been admitted to participate as of 11 July 2011.⁷ Although the Chamber recommended that the LRV verify the information during meetings with the clients,⁸ the Chamber has also noted that a previous verification process conducted by the LRV (the OPCV) lacked the necessary rigour and objectivity.⁹

7. There is no indication that any further follow up measures were taken with respect to Intermediary 2: that is, neither Intermediary 2 nor the persons with whom he interacted appear to have been cautioned or instructed in relation to the consequences of submitting false information to the ICC, and neither the Registry, the LRV or the Prosecution were given any instruction to desist from utilising the services of Intermediary 2 for any purpose.

³ T-76-Conf-ENG-ET, p.7, lines 13-19.

⁴ T-71-Conf-ENG-ET, p.27, lines 4-11.

⁵ ICC-01/05-01/08-1478-Conf.

⁶ ICC-01/05-01/08-1593-Conf, para. 33.

⁷ ICC-01/05-01/08-1593-Conf, para. 35.

⁸ ICC-01/05-01/08-1593-Conf, para. 36.

⁹ ICC-01/05-01/08-1593-Conf, paras. 26-28.

8. During his recent testimony before the ICC, P-169 testified that he took part in a meeting with P-42, [REDACTED] and P-178 in which the question of obtaining money from the ICC and the corruption of witnesses were discussed.¹⁰

9. P-169 further averred that P-178 knew [REDACTED] very well.¹¹

10. This testimony suggests that [REDACTED] may have been part of a continuing scheme to collude with victim-witnesses for the purposes of financial gain. P-73 had already testified that '[REDACTED] had assisted his neighbour (P-42), who in turn, met with P-169 and P-178 for the purpose of transmitting financial demands to the ICC.

11. There is thus 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.

12. In such circumstances, the Requested Information is material to the preparation of the Defence, and its forthcoming submissions regarding P-169.

13. The Defence further notes that it has never been disclosed the unredacted version of the application forms of dual victim-witnesses, or the victim-codes which correspond to the dual victim-witnesses. It therefore does not have the means to ascertain which of the participating victim-witnesses were assisted by Intermediary 2, and whether they had been admitted to participate prior to the Trial Chamber's decision on Intermediary 2.

¹⁰ T-361-Conf-ENG-ET, p.36, line 10 – p.37, line 16; p.57, lines 6-10.

¹¹ T-361-Conf-ENG-ET, p.40, lines 7-10.

14. In its decision of 12 July 2010, the Trial Chamber confirmed that information in the victim applications forms of dual victim-witnesses should be disclosed to the Defence if it falls under Article 67(2) or Rule 77.¹² Given the questions that have arisen during the testimony of P-73 and P-169 concerning the conduct of [REDACTED], both the Prosecution and the LRV were put on notice that any information within their custody regarding either their contacts with [REDACTED] or contacts between [REDACTED] and their witnesses or clients would be relevant to credibility issues or at the very least, material to the preparation of the Defence.

15. The Requested Information falls squarely within the scope of information that has been provided to the Defence in other cases. For example, in the Lubanga case, the Prosecution was ordered to disclose a chart setting out the contacts between different intermediaries and witnesses.¹³ Trial Chamber II has also confirmed that the Defence has the right to know whether a Prosecution witness was in contact with a particular intermediary.¹⁴

16. Given that the Registry has already identified [REDACTED] as Intermediary 2, the Requested Information does not occasion any further risk to the security of the victim-witnesses in question.

17. Finally, with respect to the Prosecution's assertion that the Defence has not established that the [REDACTED], who was referred to by P-169, is Intermediary 2,¹⁵ this is a matter which could be best established through the recall of P-178 and potentially, [REDACTED] himself.

C. RELIEF REQUESTED

¹² ICC-01/05-01/08-807-Corr, para. 59.

¹³ ICC-01/04-01/06-2434-Red2, para. 15. See also paras. 30, 34.

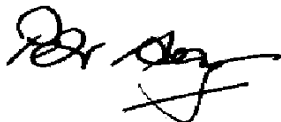
¹⁴ Oral Decision, ICC-01/04-01/07-T-173-Red-ENG, pp. 57-61.

¹⁵ ICC-01/05-01/08-3180-Conf, para. 16.

18. For the reasons set out above, the Defence respectfully requests the Trial Chamber to:

ORDER the disclosure of the Requested Information.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes QC
Lead Counsel of Mr. Jean-Pierre Bemba

The Hague, The Netherlands

03 November 2014