



Original: English

No.: ICC-01/05-01/08
Date: 7 December 2017

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 version of "Tenth report to Trial Chamber III on applications to participate in the proceedings", 23 June 2011, ICC-01/05-01/08-1561-Conf-Exp

Source: Registry

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING article 68(3) of the Rome Statute, rule 89(1) of the Rules of Procedure and Evidence and regulation 86 (4), (5) and (7) of the Regulations of the Court;

NOTING the “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants” issued by Trial Chamber III (the “Chamber”) on 22 February 2010 (“22 February 2010 Decision”);¹

NOTING the “Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings” dated 30 June 2010;²

NOTING the “Decision on 772 applications by victims to participate in the proceedings” dated 18 November 2010;³

NOTING the “Decision on 653 applications by victims to participate in the proceedings” dated 23 December 2010;⁴

NOTING the memorandum of the Presiding Judge dated 16 September 2010 which required the Registry to provide the Chamber with reports which, for each application, summarise the alleged facts and harm suffered as well as providing a *prima facie* assessment of the application’s compliance with the requirements of rule 85 of the Rules of Procedure and Evidence;⁵

¹ ICC-01/05-01/08-699.

² ICC-01/05-01/08-807.

³ ICC-01/05-01/08-1017.

⁴ ICC-01/05-01/08-1091.

⁵ Memorandum dated 16 September 2010 from the Presiding Judge to the Director, Division of Court Services.

NOTING the "Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings" dated 14 October 2010 ("the 14 October Registry Report");⁶

NOTING the instruction of the Chamber to the Registry to investigate the issue raised in the 14 October Registry Report, jointly with the Office of Public Counsel for Victims ("OPCV"), and to report back to the Chamber by way of a formal filing by 28 February 2011;⁷

NOTING the Decision on the "Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings" dated 14 January 2011 ("the Decision of 14 January 2011");⁸

NOTING the "Transmission de la liste des demandeurs visés par la Décision de la Chambre de première instance III du 14 janvier 2011 dans le cadre de l'enquête menée par le Greffe eu égard à certaines demandes de participation de victimes" dated 18 January 2011 of the Office of Public Counsel for Victims;⁹

NOTING the "Final report on the investigations pursuant to the Chamber's Decision on the "Report of the Registry drawing to the Chamber's attention an issue regarding an application for participation in the proceedings" dated 31 March 2011 ("the Final report on the investigations");¹⁰

NOTING the "Status of the applications filled in with the assistance of [REDACTED]" dated 6 May 2011;¹¹

⁶ ICC-01/05-01/08-953-Conf-Exp.

⁷ Email sent by the Chamber's Legal Adviser on 20 October 2010 to the Associate Legal Officer, Division of Court Services.

⁸ ICC-01/05-01/08-1125-Conf-Exp.

⁹ ICC-01/05-01/08-1133-Conf-Exp.

¹⁰ ICC-01/05-01/08-1369-Conf-Exp.

¹¹ ICC-01/05-01/08-1391-Conf-Exp.

NOTING the instruction of the Chamber of 7 June 2011 ordering the Registry to file during the week of 20 June 2011 the applications completed with the assistance of the intermediary [REDACTED] which were verified by the VPRS in accordance with the Chamber's Decision of 14 January 2011, along with the supplementary information collected during the investigation process;¹²

NOTING the "Report on issues concerning intermediaries' involvement in completion of applications for participation" dated 3 June 2011 ("the Report on intermediaries");¹³

CONSIDERING that between [REDACTED] 2010 and [REDACTED] 2011 the Registry conducted interviews in the Central African Republic ("CAR") with 204 applicants regarding the content of their applications for participation;

CONSIDERING that the applications submitted by 203 persons¹⁴ have now been processed and redacted in accordance with the guidelines established by the Chamber;¹⁵

TRANSMITS to the Chamber the following report on 203 applications for participation in the proceedings.

A. Background and content of this report

1. The present report covers 203 applications to participate in the proceedings of natural persons.

¹² Email of 7 June 2011 from the Legal Officer, Pre-Trial Division, to the Associate Legal Officer, Division of Court Services.

¹³ ICC-01/05-01/08-1478-Conf.

¹⁴ VPRS met applicant [REDACTED], who expressed his wish to withdraw his application. The application was never filed with the Chamber.

¹⁵ ICC-01/05-01/08-699, paragraph 33.

2. The 203 applications have been filed with the Chamber.¹⁶ The present report serves to transmit to the Chamber the reports which are required by regulation 86(5) of the Regulations of the Court as further elaborated by the memorandum of the Presiding Judge dated 16 September 2010.
3. 104 applications of the 203 applications covered in this report have already been the subject of previous transmissions to the Chamber and parties.¹⁷ Following the 14 October Registry Report the Chamber deferred its decision on these applications until further information was submitted.¹⁸ In accordance with the Chamber's instructions of 7 June 2011, these applications are now transmitted again along with supplementary information collected during the investigation process.¹⁹
4. Contrary to the Registry's usual practice of filing only those applications which appear to be complete and linked to the charges in the case *The Prosecutor v. Jean-Pierre Bemba Gombo*,²⁰ 15 applications which do not appear to be linked to the charges in the case or not completed have also been included in the current report. As explained in its Final report on the investigations,²¹ the Registry recommends that, given the particular nature of the investigation conducted in the CAR, a decision should be issued on the merits of each application that was verified by the VPRS in the context of that investigation.
5. The Registry also believes there is a need to ensure that a unique and coherent message regarding their application for participation is sent to all the victims who have been assisted by the intermediary [REDACTED] and who have been

¹⁶ ICC-01/05-01/08-1559

¹⁷ A list of applications already transmitted to the Chamber, the parties and participants was provided in ICC-01/05-01/08-1391-Conf-Exp-Anx.

¹⁸ ICC-01/05-01/08-1017 paragraph 63 d) and ICC-01/05-01/08-1091 paragraph 67 b)

¹⁹ Email of 7 June 2011 from the Legal Officer, Pre-Trial Division, to the Associate Legal Officer, Division of Court Services.

²⁰ In accordance with Decision ICC-01/05-01/08-699, paragraph 35.

²¹ ICC-01/05-01/08-1369-Conf-Exp, paragraph 52.

awaiting for a decision on their applications. Therefore the Registry strongly recommends that a single decision on all applications which have been completed with the assistance of this intermediary be issued, including those applications verified by the OPCV and that are not the subject of the current report.

6. This report provides an overview of the applications transmitted, while the following documents are provided as annexes:
 - **Annex 1:** An explanation of the contents of the individual assessment reports which constitute Annex 3;
 - **Annex 2:** Map showing the geographical areas used to group applications;
 - **Annex 3:** Reports under regulation 86(5), providing the Registry's assessment of each application (as explained in Annex 1);
 - **Annex 4:** Memoranda sent by the Office of Public Counsel for Victims (OPCV) to the VPRS in relation to individual applications;
 - **Annex 5:** Index showing applications filed with this report per geographical area A to D.

7. As described in its previous reports,²² the Registry has categorized applications according to the geographical locations at which crimes are alleged by the applicants to have been committed.²³ These groupings are explained in Annex 1 and shown on the map comprising Annex 2. The applications which are the subject of this report fall within all four groups, but in order to facilitate the Chamber's consideration, an Index is provided as Annex 5 which divides the applications according to their groups (groups A to

²² Notably the Registry's Report on applications to participate in the proceedings, ICC-01/05-01/08-653-Conf-Exp, paragraph 8 ; Second report to Trial Chamber III on applications to participate in the proceedings, ICC-01/05-01/08-796-Conf-Exp, paragraphs 6 to 8, and annex 2 to that report (ICC-01/05-01/08-796-Conf-Exp-Anx2).

²³ As set out in Public Redacted Annex B to the "Prosecution's Submission of the Document Containing the Charges as Confirmed by the Pre-Trial Chamber filed in accordance with the Chamber's Order of 7 October 2009", ICC-01/05-01/08-593, dated 4 November 2009.

D) based on the geographical area of the alleged events, as in previous reports.²⁴

B. *Prima facie* assessments in relation to rule 85

8. As requested by the Chamber, the Registry has, for each application covered by this report, undertaken a *prima facie* assessment of compliance with the requirements of rule 85. The reports which constitute Annex 3 show the individual results of these assessments, and the reasons for them (including whether the requirements of rule 85 are demonstrated and any legal issues which are apparent), as well as summaries of the applications.
9. As was explained in the Registry's Final report on the investigations,²⁵ all *prima facie* assessments included in the current report take into account any new information collected during the investigation process, as well as each individual Report of the interview (contained in Annex 3) between the VPRS staff and the applicant during the conduct of the inquiry, in order to draw an overall conclusion on the application. Further details on the content of the individual assessments, are provided in Annex 1, including explanations of how specific issues arising in the context of the inquiry have been dealt with in the Registry's *prima facie* assessment reports.²⁶
10. In relation to each application, the Registry indicates either that:
 - (a) The application appears *prima facie* to comply with the requirements of rule 85; or

²⁴ The Registry notes that as regards Group D, Mougoumba and the surrounding area, it has included in this group some applications which are close to the river to the South of Bangui between Bangui and Mougoumba even if they may be closer to Bangui than to Mougoumba. This is due to the similar patterns of the events alleged by these applicants.

²⁵ ICC-01/05-01/08-1369-Conf-Exp. See paragraph 26 to 42 for an explanation of the methodology used for the purpose of the individual assessments.

²⁶ The Registry notes that modifications have been made to the document usually filed as Annex 1 to the Registry's Reports on applications for participation in the proceedings. Notably part "A Report of Interview with Applicant" has been added, and amendments made to paragraphs 28, 49, 51 and 61.

- (b) Unclear: the Registry is not in a position to make a *prima facie* assessment without further guidance from the Chamber on specific matters that are indicated; or
- (c) Not satisfied: the application does not appear *prima facie* to comply with the requirements of rule 85.

C. Memoranda from the OPCV

11. The Registry has received a series of memoranda from the OPCV which may be of relevance to the Chamber in determining the applications for victims' status covered by the present report and/or which will be covered by subsequent reports of the Registry. The Registry has reviewed and taken into consideration the points made by the OPCV in this memorandum when reviewing the applications concerned. However the Registry has ultimately conducted its own analysis and made its own assessments of the applications. The Registry's *prima facie* assessments as reflected in the reports comprising Annex 3 therefore take into account, but are not determined by, the views of the OPCV as set out in the memorandum constituting Annex 4 to the present report.

D. Partial notification to the OPCV of the Registry's assessments

- 12. The Registry has received a request from the Principal Counsel of the OPCV²⁷ for the transmission to the OPCV of "individual victims' assessments made by the VPRS in the framework of the Registry's Investigation".
- 13. The Registry is in agreement with the Principal Counsel on the importance of the OPCV having access to information drawn from the inquiry regarding their clients, not only in order to facilitate communication between the OPCV with its clients but also to allow the Office to be notified of any additional information related to its clients necessary to fully "protect their integrity and

²⁷ Email dated 18 April 2011 from the Principal Counsel, OPCV, to the Chief, VPRS.

well-being and to avoid any additional trauma". Moreover, as pointed by the Principal Counsel, should the Report on the interview reveal that the VPRS has doubts in relation to the truthfulness of any applicant, it is of crucial importance that the OPCV, in its capacity of legal representative of the persons concerned, is informed accordingly.

14. The Registry maintains its view that its regular individual assessment should not be notified to the parties and participants. However it distinguishes the present request from the Principal Counsel, on the basis that the reports requested related specifically to discussions held between the Registry and the OPCV's clients. Should the Chamber deem it appropriate, the Registry would be in a position to provide the OPCV with the Report of Interview with Applicant related to the clients of the OPCV.

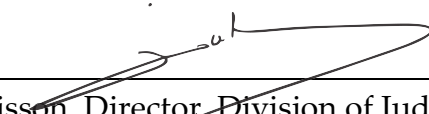
D. Protection

15. The Registry notes that the 203 applications which are the subject of this report have been transmitted in redacted form to the parties in compliance with the Chamber's order that applications for participation in the proceedings received by the Registry be transmitted to the parties in redacted form on an ongoing basis as and when they are prepared,²⁸ and in accordance with the guidelines on redactions provided in the 22 February 2010 Decision. The redacted applications have also been notified to the legal representatives of the respective applicants in compliance with the Chamber's order conveyed by email on 26 August 2010 that in relation to all future applications the Registry should systematically notify the respective legal representatives of victims of the redacted versions of applications as notified to the parties.²⁹

²⁸ Email of 16 September 2010 from the Legal Advisor, Trial Division, to the Director, Division of Court Services and the Chief, VPRS.

²⁹ Email of 26 August from the Legal Officer, Trial Chamber III to the Assistant Legal Officer, Division of Court Services.

16. At this time no further measures of protection appear to be necessary.



Marc Dubuisson, Director, Division of Judicial Services
per delegation of the Registrar

Dated this 7 December 2017

At The Hague, The Netherlands