

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04

Date: 25 October 2010

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Sylvia Steiner
Judge Sanji Mmasenono Monageng

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

**Decision on the request of the legal representative of victims VPRS 3 and VPRS 6
to review an alleged decision of the Prosecutor not to proceed**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Mr Emmanuel Daoud

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court” respectively);

NOTING the “Demande du représentant légal de VPRS 3 et 6 aux fins de mise en cause de Monsieur Jean-Pierre Bemba en sa qualité de chef militaire au sens de l’article 28-a du Statut pour les crimes dont ses troupes sont présumées coupables en Ituri” (“the Request”),¹ filed on 30 June 2010, whereby the legal representative of victims VPRS 3 and VPRS 6 submits that the Prosecutor has taken a decision not to proceed against Jean-Pierre Bemba with respect to crimes allegedly committed in the province of Ituri, the Democratic Republic of the Congo (“the DRC”), and requests that the Chamber review that decision;

NOTING the “Response of the Office of Public Counsel for the Defence to the «Demande du représentant légal de VPRS 3 et 6 aux fins de mise en cause de Monsieur Jean-Pierre Bemba en sa qualité de chef militaire au sens de l’article 28-a du Statut pour les crimes dont ses troupes sont présumées coupables en Ituri»”,² filed on 15 July 2010, whereby the Office of Public Counsel for the Defence (“the OPCD”) requests the Chamber to dismiss the Request, arguing that VPRS 3 and VPRS 6 have no legal standing to seize the Pre-Trial Chamber because they lost their status of victims participating in the investigation stage of the DRC situation as a result of a judgment of the Appeals Chamber, and, alternatively, that VPRS 3 and VPRS 6 failed to identify a specific proceeding in the DRC situation, which affects their personal interests and is capable of judicial resolution;

NOTING the “Prosecution’s Observations to the «Demande du représentant légal de VPRS 3 et 6 aux fins de mise en cause de Monsieur Jean-Pierre Bemba en sa qualité de chef militaire au sens de l’article 28-a du Statut pour les crimes dont ses troupes sont présumées coupables en Ituri»” (“the Observations”),³ filed on 29 September 2010,⁴ in

¹ ICC-01/04-564.

² ICC-01/04-566.

³ ICC-01/04-581.

⁴ On 16 August 2010, the Single Judge issued the “Order for the submission of observations in response to a request made by the legal representative of VPRS 3 and VPRS 6” (ICC-01/04-572), in which she ordered the Prosecutor to file observations with respect to the Request by 15 September 2010. After the expiry of this time limit the Single Judge issued the “Order setting a new time limit for observations” (ICC-01/04-580, 24 September 2010), in which she ordered the Prosecutor to file such observations by 16h00 on 29 September

which the Prosecutor requests the Chamber to dismiss *in limine* the Request, as VPRS 3 and VPRS 6 lack legal standing to file the Request and, in any event, the Prosecutor did not reject, on interests of justice grounds, the possibility of investigating or prosecuting Mr Bemba for crimes committed in Ituri;

NOTING article 53 of the Rome Statute (“the Statute”);

NOTING that both the OPCD and the Prosecutor claim that VPRS 3 and VPRS 6 do not have legal standing to submit the Request, following a Judgment of the Appeals Chamber;⁵

CONSIDERING, however, that irrespective of whether VPRS 3 and VPRS 6 have *locus standi*, the Chamber may review the alleged decision of the Prosecutor on its own initiative, pursuant to article 53(3)(b) of the Statute, in conjunction with articles 53(1)(c) and 53(2)(c);

NOTING, however, that the Prosecutor submits that to date no decision on “interests of justice” grounds not to proceed against Mr Bemba with respect to crimes allegedly committed in Ituri has been taken;⁶

CONSIDERING therefore that, in view of the Prosecutor’s declaration, which the Chamber, in light of the information available to it, sees no reason to disbelieve, there is no

2010 and provide reasons for the Prosecutor's failure to comply with the Order of 16 August 2010. In response to the latter order, the Prosecutor submitted that the failure to comply with the time limit was unintentional and caused by an internal miscommunication within the Office of the Prosecutor.

⁵ “Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007”, 19 December 2008, ICC-01/04-556. VPRS 3 and VPRS 6 were allowed to participate in those appellate proceedings on the basis that they would be personally affected since they stood to lose their rights in the proceedings (“Decision on Victim Participation in the appeal of the Office of Public Counsel for the Defence against Pre-Trial Chamber I’s Decision of 7 December 2007 and in the appeals of the Prosecutor and the Office of Public Counsel for the Defence against Pre-Trial Chamber I’s Decision of 24 December 2007”, 30 June 2008, ICC-01/04-503, para. 97). It must be noted that the Appeals Chamber held in its decision that sixty victims, including VPRS 3 and VPRS 6, “stand to lose rights they have gained in the Decision of 24 December 2007”, whereas the said Decision in fact did not concern VPRS 3 and VPRS 6, whose participatory rights were granted by a decision issued on 17 January 2006 (“Decision on the applications for participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6”, ICC-01/04-101-tEN-Corr).

⁶ Observations, para. 17.

decision for the Chamber to review and there is, accordingly, no basis for it to exercise its powers under article 53(3)(b) of the Statute;

FOR THESE REASONS,

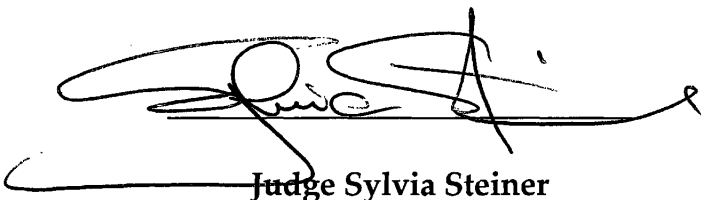
REJECTS the Request of VPRS 3 and VPRS 6.

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

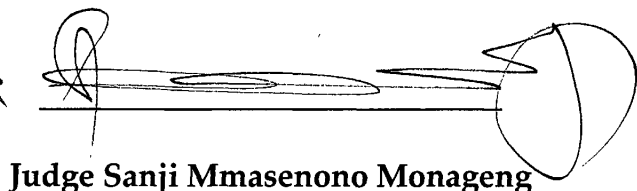


Judge Cuno Tarfusser

Presiding Judge



Judge Sylvia Steiner



Judge Sanji Mmasenono Monageng

Dated this Monday, 25 October 2010

At The Hague, The Netherlands