

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: 27 October 2009

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elisabeth Odio-Benito
Judge Joyce Aluoch

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

**Public Document
Redacted version**

**Prosecution's Request to Lift, Maintain and Apply Redactions to Witnesses'
Statements and Related Documents**

Source: The Office of the Prosecutor

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

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Other

Introduction

1. During the status conference of 7 October 2009, Trial Chamber III (“the Chamber”) requested that the Office of the Prosecutor (“the Prosecution”) submit all requests relating to redactions by 20 October 2009.¹ Upon the Prosecution’s request, the Chamber extended the deadline until 26 October 2009.² The Prosecution respectfully submits its requests relating to redactions.

Request for Confidentiality

2. [REDACTED]

Prosecution’s request

3. The Prosecution divides its requests into three parts. The first part discusses both the lifting and imposing of limited redactions to witness statements and related documents of witnesses it relied upon during the confirmation hearing. The second part requests imposing of limited redactions to statements and related material of new (additional) witnesses that it seeks to introduce at trial. The third part relates to a request for the imposition of limited redactions to witness statements and other materials that the Prosecution seeks to disclose to the Defence either under Article 67(2) of the Rome Statute (“the Statute”) or Rule 77 of the Rules.

Confirmation hearing witnesses and related documents

4. This category is further sub-divided into two parts: the first part deals with witnesses, for whom the Pre-Trial Chamber III (“PTC III”) granted limited

¹ ICC-01/05-01/08-T-14-ENG, page 21, lines 6 – 7.

² [REDACTED]

redactions³ and the second category deals with witnesses, whose statements were ordered to be disclosed in a summary form by PTC III.⁴

5. In respect of witness statements and related documents, for which PTC III granted limited redactions, the Prosecution requests partial lifting of some of these redactions. The limited redactions sought to be maintained by the Prosecution relate to two principal issues: (a) information specifically relating to personal security, dignity and privacy of witnesses and; (b) information specifically affecting ongoing or further investigations. [REDACTED]

6. Within this category of witness statements and related documents, for which PTC III granted limited redactions, the Prosecution further requests that the Chamber lifts redactions previously granted by PTC III in relation to the statements and related documents of five witnesses [REDACTED]

7. With regard to the second category of witnesses whose statements were ordered to be disclosed in a summary form by PTC III [REDACTED], the Prosecution seeks to alter the disclosure of their statements to be in full rather than in summary form. In respect of this category of witnesses, the Prosecution requests the Chamber to impose limited redactions relating to: (a) information specifically relating to personal security, dignity and privacy of witnesses and; (b) information specifically affecting ongoing or further investigations.

8. Consistent with its past practice,⁵ where the Prosecution seeks the imposition or maintaining of redactions, it has applied red highlights in respect of information it seeks to be redacted under Rule 81(4) of the Rules and Article 54(3)(f) of the Statute -

³ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; ICC-01/05-01/08-180; [REDACTED]; [REDACTED].

⁴ [REDACTED]; [REDACTED]

⁵ For instance: [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]

information specifically relating to personal security, dignity and privacy of witnesses; and blue highlights have been applied to information specifically affecting ongoing or further investigations. These highlights have been applied in such a manner that permits the Chamber to view in a legible form, the piece of information sought to be redacted. The Prosecution has not applied highlights in respect of information for which it seeks the lifting of redactions.

Outstanding evidence that the Prosecution seeks to introduce at trial

9. The Prosecution recalls that on 9 October 2009, it informed the Chamber of the outstanding materials which comprise new witnesses not used for the confirmation hearing, forensic reports and audio-video materials that it seeks to introduce at trial.⁶ The Prosecution requests limited redactions to be applied to witness statements, related documents and forensic reports in respect of the following categories, consistent with its request in the other categories; (a) information specifically relating to personal security, dignity and privacy of witnesses and; (b) information specifically affecting ongoing or further investigations.

10. [REDACTED]

Application of limited redactions to witness statements and related material the Prosecution seeks to disclose to the Defence either under Article 67(2) of the Statute or Rule 77 of the Rules

11. The Prosecution seeks the imposition of limited redactions to statements it seeks to disclose either as potentially exonerating evidence or evidence material to the preparation of the Defence. Consistent with its request for the imposition of redactions to witness statements on which the Prosecution seeks to rely on at trial,

⁶ ICC-01/05-01/08-552.

the Prosecution requests limited redactions relating to the following information: (a) information specifically relating to personal security, dignity and privacy of witnesses and; (b) information specifically affecting ongoing or further investigations. [REDACTED].

The scope of redactions sought to be maintained or imposed

12. The scope of redactions sought to be maintained or imposed anew, relates to *inter alia*:

- Information specifically relating to personal security, dignity and privacy of witnesses. Under this category, the Prosecution seeks redactions to the following information:
 - i. the specific locations of residence of witnesses and their family members (only where fixed residential address is provided); and
 - ii. photographs of witnesses
- Information specifically affecting ongoing or further investigations. Under this category, the Prosecution seeks redactions to the following information:
 - i. the exact location(s) in which, the Prosecution interviews its witnesses (where specific address or description is provided);
 - ii. the identifying information of Prosecution's field staff given their role in the investigations; and
 - iii. photographs of investigator(s) contained in forensic reports.

13. [REDACTED]

Factual basis for the redactions

14. At the core of the Prosecution's duties is its responsibility to take appropriate measures to ensure effective investigations, and in doing so, take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.⁷ Against this background, the Prosecution has assessed the general and particular security situation of each of the witnesses that it seeks to introduce at trial [REDACTED]. [REDACTED]

15. [REDACTED]

16. [REDACTED]

Legal basis for redactions

17. The Prosecution seeks to maintain and apply limited redactions pursuant to Articles 68(1), 54(3)(f) of the Statute and Rule 81 (2) and (4) of the Rules on the ground that the categories of information if disclosed, will affect not only the personal security and privacy of each witness and their family members, but would also compromise ongoing or further investigations.⁸ The measures sought (redactions) are least intrusive and do not affect the Accused's ability to prepare its case, given that the Defence will be in possession [REDACTED] as well as the evidence provided by each witness that the Prosecution seeks to introduce at trial. In all circumstances, the redactions sought are appropriate for trial purposes.

⁷ Articles 54(1)(b) of the Statute read in conjunction with Article 68(1) of the Statute.

⁸ See ICC-01/04-01/07-475 OA, 13 May 2008, paragraphs 1, 54, 47, 58, 91, 97 and 98.

The appended annexes

18. Appended to this submission are Annexes 1-12, representing witness statements used at the confirmation hearing and for which the Prosecution seeks the lifting and maintaining of limited redactions and the accompanying chart for each witness statement and related documents setting out both the specific information sought to be redacted as well as the justification for the redaction sought.

19. Also attached are Annexes 13-16, representing witness statements used at the confirmation hearing in a summary form, and which the Prosecution now seeks to disclose in their original form with limited redactions applied. Accompanying these annexes are charts for each witness statement and related documents setting out both the specific information sought to be redacted as well as the justification for the redaction sought.

20. Attached are further Annexes 17-32, which represent outstanding materials (new evidence) that the Prosecution seeks to introduce at trial. Accompanying these annexes are charts for each witness statement and related documents setting out both the specific information sought to be redacted as well as the justification for the redaction sought.

21. Finally, the Prosecution has appended as Annexes 33-38, which represent witness statements and related documents that it seeks to disclose to the Defence either under Article 67(2) of the Statute or Rule 77 of the Rules. Accompanying these annexes are charts for each witness statement and related documents setting out both the specific information sought to be redacted as well as the justification for the redaction sought.

Relief sought

22. For the foregoing reasons, the Prosecution respectfully requests that the Chamber:

- a) Authorize the proposed redactions as submitted in the Annexes to this application.
- b) Lift all redactions related to witnesses [REDACTED]
- c) Partly lift the redactions related to witnesses: [REDACTED] and only maintain the redactions as submitted in the Annexes accompanying these statements;
- d) [REDACTED].
- e) [REDACTED], which statements the Prosecution seeks to disclose to the Defence either under Article 67(2) of the Statute and Rule 77 of the Rules; and finally
- f) Order pursuant to Rule 87(3)(b) of the Rules that the Defence be prohibited from disclosing such information to a third party.



Luis Moreno-Ocampo, Prosecutor

Dated this 27th day of October 2009

At The Hague, The Netherlands