



Original: **English**

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

Date: **01 August 2008**

PRE-TRIAL CHAMBER III

Before: Judge Hans-Peter Kaul (Single Judge)

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

**Public Redacted Version of ICC-01/05-01/08-58-US-Exp
Prosecutor's Decision concerning the Prosecutor's proposals for redactions**

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

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Legal Representatives of Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana ARBIA

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. Procedural History

1 On 20 June 2008, PTC III issued an Order setting forth deadlines for the submission of redacted material, including proposed redactions related to the Application for the Warrant of Arrest, Further Submission in Support of said Redactions, as well as proposed redactions to witness statements.

2. On 30 June 2008 the Prosecution filed the "Prosecution's Application Pursuant to Rules 81(2) and 81(4) for redactions to the Application for a Warrant of Arrest and the Further Submission" (ICC-01/05-01/08-32-US-Exp). On 16 July 2008 the Prosecution filed the "Prosecutor's Application for Redaction Pursuant to Rules 81(2) and 81(4)" (ICC-01/05-01/08-44-US-Exp) (these filings are collectively referred to as "Proposed Redactions").

3. On 23 July 2008, PTC III issued a Decision concerning the Prosecutor's proposals for redactions requesting a response from the Prosecutor (hereinafter referred to as "Decision").

II. Request for Sealing

4. The OTP requests that this application and its annexes be received as "Under Seal, *Ex Parte*, Prosecutor Only", as they relate to material that is currently treated as confidential and *ex parte* and depicts information for which redactions are sought and communication of which would defeat the purpose for which the redactions are requested.

III. Context in which redactions are being requested

5. The OTP is proposing to apply redactions to eleven out of the fourteen witnesses at this stage of the proceedings. The redactions are only proposed for the present stage of the proceedings, three months prior to the date of the Confirmation hearing. There is no request for redactions concerning the identities of Witnesses 0006, Witness 0025 and Witness 0036 because it is not believed that redactions are appropriate given their identities and the circumstances in which they obtained information. Redactions are however proposed for members of their families.

6. The OTP's intention is not to proceed to Confirmation Hearing with eleven anonymous witnesses. In fact, the redactions with respect to the arrest warrant are being requested at this stage of the proceedings, while the Prosecution is assessing with VWU which other measures, if any, are necessary to allow for the disclosure of the identities before the confirmation hearing. While the general situation in the CAR is calm and stable, the actual arrest of Jean-Pierre Bemba and the subsequent mobilization of supporters of the accused, in particular in the DRC, makes it necessary at least to reassess the risks for each witness should their names be disclosed, making them identifiable. For this reason redactions requested are intended to be of a temporary nature.

7. By way of context and in answer to the Chamber's concerns, the Prosecution notes that cooperation with VWU is in place since the opening of the investigation. Already in full consultation with the Prosecution, the VWU [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED]

8. As instructed by the Chambers, the Prosecution is consulting with VWU on the matter of risk assessment and possible alternative measures. Measures that could be triggered by an actual referral to VWU, such as relocation, are more intrusive and will be considered as a last resort.

9. Finally, the Prosecution has sought to confine redactions to identifying information and leave Mr. Bemba with the substantive information relating to the commission of the crimes, which are necessary for his Defence. The OTP submits that, in accordance with the jurisprudence of the Appeals Chamber, these measures are sufficient to counterbalance any difficulties caused to the defence by the proposed redactions.² In order to meet the concerns of the Chamber, however, the Prosecution is seeking to reduce the redactions to a minimum. Last, the OTP has not proposed to redact any PEXO and recognizes that the Defence is entitled to this information.

IV. Witness Protective Measures

10. The OTP is conducting a continuous risk assessment at a general level (CAR, DRC) and at an individual level for each witness. Based on such risk assessment, a number of measures are available:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

² The Appeals Chamber has stated that any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities. See, *Prosecutor v. Katanga*, ICC-01/04-01/07-475, 13 May 2008, paragraph 59.

- [REDACTED]

11. At this stage a number of measures are already in place [REDACTED]
[REDACTED]. The ongoing risk assessment will allow us to determine if such measures will be sufficient once the names of the witnesses have been disclosed. Hence the Prosecution is requesting temporary redactions.

12. The Prosecution underscores that the absence of a referral does not mean redactions are not appropriate. At this stage, the prosecution has assessed that temporary redactions are the least intrusive means available, while allowing the Prosecution to provide Mr. Bemba with the largest amount of information in the shortest timeframe possible, and while allowing for completion of consultations with VWU on the risk to witnesses and the measures required.

V. Ongoing cooperation and coordination between the OTP and the Victims and Witnesses Unit

13. Throughout the inception of the CAR investigation, OTP has been collaborating consistently with VWU. The OTP is not required by law to make a referral to the VWU for protective measures prior to a request for redactions of information, but other forms of cooperation have taken place [REDACTED] the periodical exchange of security-related information and the briefing on the Security Risk Assessment made by the OTP in relation to the arrest.

14. As instructed, the OTP consulted with VWU specifically on 24 July and continued exchanging information. The result of that consultation included the agreement that both VWU and OTP will continue to share all relevant information with a view to further assistance and advice on the protection issues. OTP and VWU agreed that

cooperation does not begin with a referral. The exchange of information must start at the earliest possible time. During the consultation OTP and VWU discussed that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. During that consultation, OTP and VWU discussed that [REDACTED]

[REDACTED]

VI. Justifications for Redactions-Factual & Legal basis

A. Factual Basis

15. Up until now, as the names of the witnesses have not been disclosed, the measures taken by the OTP and VWU [REDACTED] have been sufficient to properly protect the witnesses. This is based on an assessment of the intentions, capabilities and knowledge about the investigation that Mr Bemba, his supporters and others who might fear to be prosecuted in relation to this situation, have as follows:

16. These persons may well have the capability to intimidate, bribe or harm witnesses who are residing [REDACTED]. This assumption is based on the analysis of the past behaviour of Mr. Bemba and others in relation to retaliation, their resources (network of supporters, forces) and the ability to use them [REDACTED]

[REDACTED]

17. Their intentions need to be reassessed before new protective measures are decided upon. In the DRC, the response to the news of Mr. Bemba's arrest was swift and at time violent. MLC supporters attacked MONUC buildings and a staff residence; a Belgian NGO's offices; and intimidate staff of NGOs known to work on Human Rights and Justice issues. The MLC, while taking a diplomatic approach at

the same time promised that the arrest would lead to “consequences”. A demonstration in support of Bemba was held by 8000 persons close to the river where easy access to Bangui is possible. This demonstrates that Mr. Bemba still has a very large basis of support which can be mobilized.

18. In the CAR, on the night of the announcement of the arrest, several persons (not potential witnesses) were threatened. The recipients included well-known supporters of ICC intervention in the CAR.

19. Mr. Bemba’s arrest has also resulted in speculation on who will be next. Such speculation as the investigation is continuing has created or has raised concerns amongst various political actors in CAR.

20. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21. [REDACTED]
[REDACTED]

Temporary redactions are the best solution at present.

22. [REDACTED]
[REDACTED]
[REDACTED]

23. The remaining protective measures to mitigate this risk are redactions or a referral for protection to VWU. By redacting at this stage, protection is achieved in the least intrusive way, while ensuring expeditious proceedings and while still ensuring fair trial.

24. Based on the discussions that the OTP had with VWU as instructed, the OTP received the following conclusions from VWU [30 July 2008]:

25. [REDACTED]
[REDACTED]
[REDACTED]

26. As already discussed in our previous meeting, the current security measures in place are sufficient for **the current level of risk** [emphasis added] in relation to those witnesses. [REDACTED]
[REDACTED]
[REDACTED]

27. For these reasons, the VWU does not object in principle that the identities of witnesses are disclosed to the defence. However, the risk of information being compromised increases with the number of individuals having access to it, irrespective of their motivation. In addition, it can be in the interest of an effective protection regime to disclose sensitive information as late as possible. For this reason, the VWU would recommend disclosure of witnesses' identities as late as possible and to consider a rolling system of disclosure.

B. Legal Basis

28. While preparing the proposed redactions, the Prosecution has made a distinction between the different legal justifications for limiting disclosure, as provided for in the Rome Statute and the Rules:

- i. Disclosure of evidence or information, which may lead to the endangerment of the safety or security of a witness/victim or his or her family and persons at risk on account of the Court's activities (Articles 68(5) and 54(3)(f) of the Rome Statute; Rules 81(3) and 81(4) of the Rules);
- ii. Disclosure of material or information, which may prejudice further or ongoing investigation (Rule 81(2) of the Rules); and

29. For ease of use, the OTP has created a table that corresponds to the Application for the Warrant of Arrest, the Further Submission and the 11 witness statements. The Tables set forth the legal basis for the request as well as the analysis set forth in Paragraph 40 of the Decision.

1. Categorization of Individual witnesses

30. [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

31. [REDACTED]

[REDACTED]



33. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

34. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

35. [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

36. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

37. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

38. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

39. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

40. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

41. [REDACTED]

42. [REDACTED]

43. [REDACTED]



[REDACTED]

[REDACTED]

44. [REDACTED]

45. [REDACTED]

[REDACTED]

46. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

47. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

48. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

49. [REDACTED]
[REDACTED]

[REDACTED]

50 [REDACTED]

[REDACTED]

51. [REDACTED]

[REDACTED]

52. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

53. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

54. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

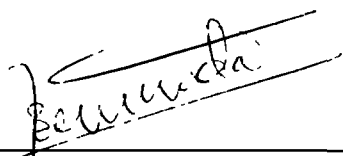
56. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONCLUSION: The OTP respectfully requests that PTC III grant the proposed redactions at this stage of the proceedings, for the reasons set forth above.



 Fatou Bensouda, Deputy Prosecutor
 On behalf of
 Luis Moreno-Ocampo, Prosecutor

Dated this 1st day of August 2008

At The Hague, The Netherlands