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

Date: **5 November 2008**

PRE-TRIAL CHAMBER III

Before: Judge Ekaterina Trendafilova (Presiding Judge)
Judge Hans-Peter Kaul
Judge Mauro Politi

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

Public Redacted Version of ICC-01/05-01/08-209-US-Exp

**Prosecution's Submission of Additional Information
Pursuant to "Decision on the Security Situation of Witnesses"**

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 Jean-Pierre Bemba

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

Mr Simo Väättäinen

Detention Section

Victims Participation and Reparations Other Section

I. Procedural History

1. On 31 August 2008, the Single Judge issued the “First decision on the Prosecutor’s request for redactions” in which temporary redactions were authorized in relation to, *inter alia*, Witnesses 0009, 0022, 0023, 0029, 0033 and 0038.¹

2. On 22 September 2008, the Office of the Prosecutor (hereinafter referred to as the “Prosecution”) submitted the “Prosecution’s Amended Application for Proposed Redactions Pursuant to rules 81(2) and 81(4)” in which, *inter alia*, it requested that those temporary redactions be extended beyond 3 October 2008.²

3. On 1 October 2008, the Pre-Trial Chamber III (hereinafter referred to as the “PTC III”) issued its “Second Decision on the Prosecutor’s requests for redactions” (hereinafter referred to as “Second Decision”) in which the Prosecution’s requests for redactions to the witness statements and related documents concerning, *inter alia*, Witnesses 0022, 0023, 0029 were partially granted and the PTC III authorized the preparation of summaries relating to the statements of Witnesses 0033 and 0038.³

4. On 30 September 2008⁴ and 17 October 2008⁵, the Prosecution filed two applications in which it, *inter alia*, requested the redactions of five witness statements and the use of summaries for two other witness statements. Both applications are still under consideration by the PTC III.

5. On 27 October 2008, the Prosecution filed the “Prosecution’s Submissions of Information concerning Witness 0022, Witness 0029 and Witness 0006”.⁶

6. On 3 November 2008, the PTC III issued its “Decision on the Security Situation of Witnesses” (hereinafter referred to as “Security Situation Decision”) in which the Prosecution was ordered to consult with the Victims and Witnesses Unit (hereinafter referred to as the “VWU”), contact Witnesses 0022, 0023, 0029, 0033, 0038, 0042, 0047, 0065, 0068, 0080,

¹ ICC-01/05-01/08- 85-Conf

² ICC-01/05-01/08- 114-US-Exp

³ ICC-01/05-01/08-135-Conf, page 29

⁴ ICC-01/05-01/08-126-US-Exp

⁵ ICC-01/05-01/08-164-US-Exp

⁶ ICC-01/05-01/08-190-US-Exp

0081 and 0087 and file a report with regard to their individual security situation and their possible consent to disclose their identity and related identifying information to the Defence in the proceedings leading to the confirmation of charges hearing.⁷

II. Request for Sealing

7. The Prosecution requests that this Submission be received by the PTC III as “Under Seal, *Ex Parte*, Only Available to the Prosecutor and the Victims and Witnesses Unit”, since it relates to material that is currently under seal and *Ex Parte*.

III. Consultation with the Victims and Witnesses Unit

8. On 4 November 2008, the Prosecution met with the VWU in compliance with the PTC III’s order contained in its Security Situation Decision. During this meeting the Prosecution provided the information that there had been no substantial changes from the previously communicated Individual Risk Assessments (hereinafter referred to as “IRA”). On the basis of this information, the VWU communicated that the risk to the witnesses 0022, 0023, 0029, 0033, 0038, 0042, 0047, 0065, 0068, 0080, 0081 and 0087 could be appropriately and adequately addressed by the safety measures currently in place. That said, upon receipt of the copies of the IRAs, the VWU retains the option to provide additional comments or advice.

IV. Updated Individual Risk Assessment

9. In accordance with the PTC III’s order contained in its Security Situation Decision, the Prosecution herewith submits a report on the security situation of the twelve witnesses whose identity the Prosecution has requested not be disclosed to the Defence. With regard to Witnesses 0022, 0023, 0033, and 0038 the Prosecution would like to highlight that their respective security situation underwent no change since the previous IRAs were communicated that would have justified to provide updated information to this Chamber prior to its Decision of 3 November 2008. The PTC III was, however, immediately informed when the inadvertent disclosure of Witness 0029’s identity constituted a change in her security situation. Due, inter alia, to the continuous redaction of their names an identifying

⁷ ICC-01/05-01/08-202-US-Exp, page 7

information, there have been no substantial changes in the security situations of these witnesses.

[REDACTED]

10. [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

11. [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED]

12. [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

13.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

14.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

15.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. [REDACTED]

21. [REDACTED]

V. Consent of the Witnesses

22. In accordance with the PTC III's order of 3 November 2008, the Prosecution has contacted as many witnesses as possible in a limited time span in order to verify if they would consent to the disclosure of their identity to the Defence. The Prosecution concurs with the PTC III in considering that "even if a witness decides to authorise the use of his or her statement for the purpose of the confirmation hearing, knowing that his or her identity might be disclosed to the Defence, the witness is inevitably undertaking a certain amount of risk which is to be assessed by the Chamber".⁸

23. To date, Witnesses 0022, 0023, 0029, 0042, 0068, 0080 and 0087 agreed that their identity is shared with the Defence in the proceedings leading to the Confirmation of Charges Hearing. Witness 0033 currently does not consent to share his identity with the Defence:

⁸ ICC-01/05-01/08-202-US-Exp, paragraph 12

Witness 0038 agreed that his identity is shared with the Defence if the ICC can guarantee his security in case of threat; Witness 0047 agreed that his identity is shared with the Defence if the ICC can guarantee his security and the security of his family; Witness 0065 is willing for his identity and identifying information to be disclosed to the Defence on the condition that he is protected. He stated that he is very concerned about his security and possible repercussions against him if the Defence should know that he provided evidence to the Prosecution.

24. Despite having undertaken all efforts, the Prosecution has not yet been able to reach Witness 0081 subsequently to the PTC III's Security Situation Decision.

25. As the PTC III is aware, the Prosecution grants utmost importance to the security of the witnesses, and consequently to the views and concerns of the persons concerned. However, the Prosecution concurs with the Chamber in considering that such disclosure would entail a risk which is to be further assessed. The witnesses likely do not possess all the information that would enable them to take an informed decision regarding the disclosure of their identity.

26. The Prosecution submits that the non-disclosure of their identities will continue to protect the above witnesses. Redactions should be further applied as one of the key measures taken by the organs of this Court in mutual consultation for the purpose of protecting witnesses. Not redacting information in relation to the identity of all of the witnesses will lead to a foreseeable risk of acts of intimidation and of violence for the following reasons:

- a. Eight persons suspected of supporting the investigation and prosecution in the DRC and the CAR have been threatened or assaulted since the arrest of Bemba.

Such violence has been committed by supporters of Bemba as well as of Mr Patasse. Both are present in the areas where the witnesses reside.

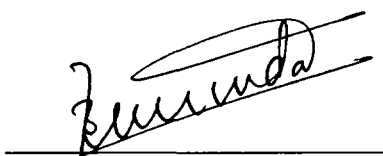
- b. Supporters of Bemba have used violence in the DRC and in Europe after his arrest during public demonstrations, including attacking MONUC and staff residence and an NGO-building. Even if there would not be any instruction from Bemba, then it can be expected that supporters of Bemba and Mr Patasse might act on their own initiative as soon as they know the identity of the witness.

27. Both points prove that there is a willingness and an ability of the supporters of Bemba and Mr Patasse to resort to the use of violence. As well, the PTC III may recall that both the DRC and the CAR authorities have informed the Prosecutor that they believe that the disclosure of the identity of witnesses would increase their risk because Bemba, his supporters as well as Patasse's supporters are considered as dangerous.⁹

28. The PTC III recently held that redactions were justified in relation to applications for victim participation, *inter alia*, "taking into consideration the authority and influence of Mr Jean-Pierre Bemba as President of the MLC over this movement to locate and reach the applicants".¹⁰

29. [REDACTED]

30. In addition, to relying on witness statements or summaries of witness statements at the confirmation hearing, the Prosecution will also rely on unredacted documentary evidence.



Fatou Bensouda, Deputy Prosecutor
On Behalf Of
Luis Moreno-Ocampo, Prosecutor

Dated this 5th day of November
 At The Hague, The Netherlands

⁹ See ICC-01/05-01/08-122-US-Exp, paragraphs 12 and 14 to 16; and ICC-01/05-01/08-131-US-Exp.

¹⁰ ICC-01/05-01/08-184, paragraph 13. Reference may also be made to prior finding by the Single Judge that "there are reasonable grounds to believe that the detained person may be attempting to interfere with or intimidate a witness or to breach an order for non-disclosure of the Single Judge" ICC-01/05-01/08-93-Conf, paragraph 40.