

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

Public Redacted Document

Public Redacted version of: "Prosecution's Response to 'Defence Motion concerning [REDACTED]'", ICC-01/05-01/08-2897-Conf, 15 November 2013

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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I. Introduction

1. On 3 October 2013, the Office of the Prosecutor (“Prosecution”) filed its confidential, *ex parte*, Prosecution and Victims and Witnesses Unit (“VWU”) only, “Information on [REDACTED] [REDACTED]” along with Annexes A and B (“Prosecution Submissions”),¹ to inform Trial Chamber III (“Chamber”) that CAR-OTP-PPPP-0169 (“Witness 169”) and CAR-OTP-PPPP-0178 (“Witness 178”) [REDACTED].

2. On 25 October 2013, the Chamber rendered its “Decision on the prosecution’s “Information on [REDACTED] [REDACTED]” (“Decision”) whereby, *inter alia*, it ordered the Prosecution to submit a proposed redacted version of the Prosecution Submissions to be notified to the Defence and the legal representatives of victims, upon the Chamber’s approval.²

3. On 24 October 2013, the Defence of Jean-Pierre Bemba Gombo (“Accused”) filed a Motion³ requesting the Chamber to: (i) order the Prosecution to provide the Defence with a lesser redacted version of the Prosecution Submissions; (ii) order the Prosecution to disclose any request for payment or other benefits made by Witnesses 169 and 178 or any of the [REDACTED], and information related to payments or benefits received by them; (iii) order the Prosecution to disclose any materials generated from contacts with the above-mentioned witnesses; (iv) order the recall of Witnesses 169 and 178.⁴ The Defence’s Motion should be rejected in its entirety.

¹ ICC-01/05-01/08-2827-Conf-Exp-Red, Information on [REDACTED], with confidential *ex parte* Annexes A and B, 3 October 2013.

² ICC-01/05-01/08-2845-Conf-Exp, Decision on the prosecution’s “Information [REDACTED]”, 25 October 2013, para. 13 (ii).

³ ICC-01/05-01/08-2872-Conf, Defence Motion concerning [REDACTED], 11 November 2013.

⁴ *Ibid.*, para. 50.

4. The Prosecution has provided the Defence with a redacted version of the Prosecution Submissions in accordance with the Chamber's guidelines. No lesser-redacted version is necessary.

5. Requests for disclosure of benefits and payments to Prosecution witnesses and materials generated from contacts with Prosecution witnesses are without merit. The Prosecution has already complied with the Chamber's directions on disclosure by providing the Defence with the redacted version of its Prosecutions Submissions and the two annexes.

6. The request to recall Witnesses 169 and 178 is without merit. The Defence has not shown good cause and the information contained in the Prosecution Submissions does not warrant a recall of them.

II. Confidentiality

7. The Prosecution submits this response as confidential, under Regulation 23 *bis* of the Regulations of the Court, as it relates to a document filed with this classification.

III. Submissions

The redactions in the Prosecution's submissions

8. The Defence claim that the redactions in the Prosecution's Submissions go beyond the authorisation of the Chamber is without merit.⁵

⁵ Ibid., paras. 29-35.

9. The Prosecution sought guidance from the Chamber as to whether disclosure was necessary and, in case, as to the scope of disclosure.⁶ The Chamber ordered the Prosecution to prepare a redacted version of the Prosecution's Submissions and, to that end, issued instructions regarding the redactions to apply.⁷

10. The Prosecution, however, notes that the Defence has not been privy to the subsequent correspondence between the Chamber, the Prosecution and the VWU.⁸ Based on a Prosecution's request, the Chamber further instructed the Prosecution to consult with the VWU on additional proposed redactions. Upon VWU's recommendations, redactions to the Prosecution's Submissions [REDACTED].

11. The Prosecution, therefore, complied with the Chamber's Decision and disclosed its Submissions and the two annexes to the Defence, in line with the Chamber's guidelines. The Prosecution maintains that the redactions, as applied, are necessary to protect the ability of the VWU as well as that of the Prosecution to best manage the protection program and perform their duties *vis-à-vis* witnesses.

12. The Defence request of provision of public redacted versions of all filings associated with the conduct of Witnesses 169 and 178 is also unwarranted. The Chamber, once seized of the matter regarding such conduct, ordered the Prosecution to file the Prosecution Submissions and its Annexes. The Prosecution has complied with the Chamber's order and any request for provision of other filings is premature and unnecessary.

⁶ ICC-01/05-01/08-2827-Conf-Exp-Red, para. 20.

⁷ ICC-01/05-01/08-2845-Conf-Exp, paras. 11 and 12.

⁸ [REDACTED].

Disclosure of benefits and payments to Prosecution witnesses and material generated from contacts with Prosecution witnesses

13. The Defence requests for disclosure of information regarding benefits and payments to Prosecution witnesses⁹ and of materials generated from contacts with Witness 169 and 178 and the [REDACTED],¹⁰ are also without merit.

14. The Chamber, in the section of its Decision concerning disclosure, referred to allegations made by Witness 169 as to “outstanding claims” and “money promised by the Prosecutor for witnesses”.¹¹ The Chamber ruled that “any information relating to such claims may be material for the preparation of the defence and therefore should be disclosed under Rule 77 of the Rules”.¹²

15. The Prosecution submits that it has already complied with the Chamber’s above-mentioned directions by providing the Defence with the redacted version of its Prosecutions Submissions and the two annexes.

16. Any reimbursement by the Prosecution to witnesses of expenses that do not go “beyond the ordinary requirements of subsistence”, such as transportation and meals, does not have the potential to affect witnesses’ credibility.¹³ This type of information does not therefore qualify as information subject to disclosure.

17. Any request for benefits and/ or payments going beyond the reimbursement of ordinary expenses, potentially affecting the witnesses’ credibility, and any related contact between Prosecution witnesses and the Court in the instant case has involved

⁹ ICC-01/05-01/08-2872-Conf, paras. 36-38.

¹⁰ Ibid, paras. 39-42.

¹¹ ICC-01/05-01/08-2845-Conf-Exp, para. 10.

¹² Ibid. at para. 10.

¹³ See ICC-01-05-01-08-1857-Conf, Decision on the “Defence request for modification of redactions”, 21 October 2011, paras. 11-13.

the VWU and has been submitted to the VWU that deals with these matters as part of its mandate. The Prosecution therefore submits that any request for disclosure of such information should be addressed to the VWU and not to the Prosecution.

Further investigation by the Defence

18. The conclusions drawn by the Defence that “virtually all the [REDACTED] witnesses called by the Prosecution had been promised by and/ or were receiving sums of money from the ICC” are false and unsubstantiated.¹⁴ Even *arguendo*, Witness 169’s allegations indicate that Witness 178 attempted to [REDACTED] approximately one year after the completion of the Prosecution’s case.¹⁵ The Defence has distorted the information contained in the Prosecution’s Submissions. In any event, any argument that Prosecution’s [REDACTED] witnesses had a financial interest¹⁶ in testifying and collusion between them existed is unfounded and unsubstantiated.

19. The Defence request to further investigate the [REDACTED] and potential collusion between Prosecution witnesses,¹⁷ including a recall of Witnesses 169 and 178,¹⁸ is excessive and unnecessary.

20. The issue at stake is limited to the allegations made by Witness 169. The [REDACTED] have made no such allegations. Even with regard to Witnesses 169 and 178, however, the request for a recall is unwarranted. The Defence already had the opportunity to explore Witness 169’s and Witness 178’s credibility during their testimony. Witness 169’s allegations refer to a timeframe long after the completion of

¹⁴ ICC-01/05-01/08-2872-Conf, para. 43.

¹⁵ ICC-01/05-01/08-2827-Conf-Exp-Anx A-Red, page 4.

¹⁶ ICC-01/05-01/08-2872-Conf, para. 43.

¹⁷ Ibid., paras. 39-42.

¹⁸ Ibid., para. 48.

his and their testimonies and do not warrant re-examination by the Defence of Witnesses 169 and 178.

IV. Relief sought

21. In light of the foregoing, the Prosecution respectfully requests that the Chamber reject the Defence Motion in its entirety.



Fatou Bensouda, Prosecutor

Dated this 4th Day of June 2014

At The Hague, The Netherlands