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No.: ICC-01/05-01/08
Date: 13 August 2015

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 Document

**With Confidential, *EX PARTE*, Annexes A and B - only available to Prosecution and
Victims and Witnesses Unit**

**Prosecution's Application for redactions pursuant to rule 81(4) of the Rules of
Procedure and Evidence**

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. Submissions

1. The Office of the Prosecutor (“Prosecution”) herewith submits an application for Trial Chamber III (“Chamber”) to authorise redactions to an investigator report regarding a meeting with a Prosecution witness. The Prosecution seeks to disclose the redacted version of that report to the Defence of Jean-Pierre Bemba Gombo (“Accused”).

2. The Prosecution is mindful that the Chamber is currently at the phase of deliberations and the Parties should therefore carefully address it. The Prosecution, however, considers the above-mentioned report disclosable under article 67(2) of the Rome Statute (“Statute”) and rule 77 of the Rules of Procedure and Evidence (“Rules”), as it contains information relevant to the credibility of Prosecution witnesses. In order to disclose the report, the redactions hereby proposed are essential, as disclosure of the full non-redacted text of the report would put at risk a witness, his family members and third innocent parties.

3. The Prosecution requests the redactions pursuant to articles 54(3)(f) and 68 of the Statute and rule 81(4) of the Rules. These provisions allow the Prosecution to submit proposals for redactions in order to ensure the safety of witnesses, their family members and third persons that may be at risk on account of the Court’s activities.¹ For each of the proposed redactions, the Prosecution submits that non-disclosure of the information is necessary as the least intrusive measure in order to protect the safety and well-being of the witness and other innocent third parties.²

¹ ICC-01/04-01/07-475 OA, Judgment on Prosecution’s Appeal against the First Redaction Decision, 13 May 2008, para.43: In addition to rule 81(4), “other provisions of the Statute and the Rules that are aimed at ensuring that persons are not put at risk through the activities of the Court and which are not limited to the protection of witnesses and victims and members of their families only.”, including articles 43(6), 54(3)(f) and 68(4), and rules 16-18, 59(2) and 87(1).

² ICC-01/04-01/07-476 OA2, Judgment on Katanga’s Appeal against the First Redaction Decision, 13 May 2008, para. 59: “The same general factors [as for non-disclosure of the identity of a witness pursuant to rule 81(4)] apply, *mutatis mutandis*, in the current case, [and] can be summarised briefly as a thorough consideration of the danger that the disclosure of the information may cause; the necessity of the non-disclosure, including whether it is the least intrusive measure necessary to avoid prejudice to the investigations of the Prosecutor; and the fact that any measures taken shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

Additionally, the proposed redactions are not prejudicial to, or inconsistent with the rights of the Accused and a fair and impartial trial, as they would not prevent the Defence from receiving the material information.³

II. Request for Confidentiality

4. Annex A to this application contains justifications for each of the proposed redactions; Annex B is a non-redacted version of the investigator's report with highlights of the proposed redactions. The Prosecution requests that these annexes be received by the Chamber as "Confidential, *EX PARTE*, only available to the Prosecution and the Victims and Witnesses Unit" in accordance with rule 81(4) of the Rules, as they contain confidential information that should be released neither to the Defence and the participants, nor to the public at this stage.⁴

III. Relief Sought

5. The Prosecution requests the Chamber to authorise the redactions as requested in Annex B.



Fatou Bensouda,
Prosecutor

Dated this 13th August 2015
At The Hague, The Netherlands

³ *Ibid.*

⁴ See, ICC-01/05-01/13-98, Decision on the "Prosecution's Application for Redactions pursuant to Rule 81(2) of the Rules of Procedure and Evidence", 15 January 2014, para.5: "It is - and should be - obvious that, for the procedure leading to the Chamber's determination of a request to be effective, the specific, factual reasons underlying a request for redaction under rule 81 must only be submitted to the Chamber and not divulged to the other parties prior to the Chamber's determination as to whether the grounds set forth in rule 81 are met."