

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/08**
Date: **21 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

Public Redacted Version of "Prosecution's Response to Defence Request concerning the '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:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba Gombo

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Other Section

I. Submissions

1. The Defence request should be dismissed as unnecessary and inappropriate in this situation. The Defence seeks identifying information of the witnesses referred to in the Office of the Prosecutor (“Prosecution”)’s request for redactions to disclose an investigator’s report (“Redactions Application”).¹ In addition, it requests “any further information which will assist the Defence in making submissions on the issues involved.”²

2. The Defence request for identifying information is unnecessary.³ The Prosecution intends to disclose all material information concerning Prosecution witnesses [REDACTED] to the Defence, except for security-related information only. The purpose of the Redactions Application is precisely to provide the Defence with the complete potentially exculpatory information, and other information that may be material to Defence preparation as soon as possible.

3. To the extent that the Defence seeks any further information to make submissions on the issues involved – that is, on the security of the Prosecution witnesses, their family members, and other persons - the Defence request should be dismissed. Providing the Defence with “the greatest opportunity to make submissions on the issues involved” is only one of a number of factors that the Chamber should take into account in determining the Redactions Application.⁴ The Appeals Chamber has stated that, “pursuant to rule 81(4), *ex parte* applications can be made for the purpose of non-disclosure for protective reasons ...”⁵ Thus the Defence does not have an absolute right to make submissions on issues regarding

¹ ICC-01/05-01/08-3283+Conf-Exp-Anxs, Prosecution’s Application for redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence, 13 August 2015.

² ICC-01/05-01/08-3284, Defence Request concerning the “Prosecution’s Application for redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence”, para. 4, 17 August 2015 (“Defence Request”).

³ The Defence did not even attempt to make an *inter-partes* request for the identities of the relevant witnesses prior to seizing the Chamber with this request.

⁴ ICC-01/04-01/07-475, paras. 72-73.

⁵ ICC-01/04-01/07-475, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, 13 May 2008, para. 52.

non-disclosure of information by having access to the information that is contained in *ex parte* annexes.

4. In this particular instance, Defence submissions would be inappropriate and unnecessary. The information that the Prosecution seeks to withhold has no bearing on the case against the Accused. Furthermore, it is precisely the security-related information that the Prosecution seeks to withhold, which constitutes the “further information” that would enable the Defence to make any meaningful submissions. Providing this information to the Defence would jeopardise the objective of the Redactions Application.⁶

5. The Chamber has sufficient information to determine the necessity of the non-disclosure of the security-related information. The Chamber has received relevant information from the Prosecution, which has a fuller picture of the security of its witnesses. The independent Victims and Witnesses Unit (“VWU”),⁷ rather than the Defence, is best placed to advise the Chamber on non-disclosure of security matters related to [REDACTED] and others involved. The VWU has full un-redacted access to the security-related information. The Chamber, as the final arbiter, must ensure that non-disclosure of information is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁸

6. Even if the Defence were to receive disclosure of the material information concerning Prosecution witnesses [REDACTED] now, rather than promptly after the Chamber’s decision on the Redactions Application, it would not be in a position to make meaningful submissions on the specific protection and security-related

⁶ ICC-01/04-01/07-475, para. 73(b): prior to ruling on the application for redactions, the Pre-Trial Chamber should give the Defence the greatest possible opportunity to make submissions on the issues involved, necessarily without revealing to the Defence the information which the Prosecutor alleges should be protected;” [Emphasis added]

⁷ See, articles 43(6) and 68(4) of the Rome Statute, as well as rules 16 to 18 of the Rules of Procedure and Evidence regarding the VWS expertise to advice on protection issues.

⁸ ICC-01/04-01/07-475, para. 67.

matters. At this stage, the Defence simply cannot provide meaningfully submissions on this issue.

II. Request for Confidentiality

7. Pursuant to regulation 23(1)*bis* of the Regulations of the Court, the Prosecution requests that this document be received by the Chamber as “Confidential” as it makes references to specific witnesses codes within the context of a recent witness security incident. The Prosecution submits that revealing this information to the public may identify the witnesses concerned.⁹

III. Relief Sought

8. The Prosecution requests that the Chamber dismiss the Defence Request.



**Fatou Bensouda,
Prosecutor**

Dated this 21st August 2015
At The Hague, The Netherlands

⁹ The Prosecution has simultaneously filed a public redacted version of this filing.