

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 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

**Decision on “Prosecution’s Application for redactions pursuant to rule 81(4) of
the Rules of Procedure and Evidence”**

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of the 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 Keïta

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
Section**

Other

Trial Chamber III (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on “Prosecution’s Application for redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence” (“Decision”).¹

I. Background and Submissions

1. On 11 August 2015, the Office of the Prosecutor (“Prosecution”) filed its confidential *ex parte*, Prosecution and Victims and Witnesses Unit (“VWU”) only, “Report on security matters relating to Prosecution Witness [...]” (“Prosecution Report”),² in which it informed the Chamber about a security incident involving two witnesses called by the Prosecution.³ The Prosecution also signalled its intention to “file shortly a request for redactions in order to provide the relevant information to the Defence”.⁴
2. On 13 August 2015, the Prosecution filed its “Prosecution’s Application for redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence” (“Prosecution Application”), together with confidential *ex parte* Annexes A and B.⁵ Annex B contains the Prosecution’s proposed redactions to an investigator’s report of the security incident

¹ The Chamber notes that the present Decision is classified as public. To the extent that this Decision makes reference to the existence of, or, to a limited extent, the content of documents filed or communications exchanged on a confidential *ex parte* or confidential basis, the Chamber considers that the information concerned does not warrant confidential *ex parte* or confidential treatment at this time.

² Report on security matters relating to Prosecution Witness [...], 11 August 2015, ICC-01/05-01/08-3281-Conf-Exp.

³ ICC-01/05-01/08-3281-Conf-Exp.

⁴ ICC-01/05-01/08-3281-Conf-Exp, footnote 2.

⁵ Prosecution’s Application for redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence, 13 August 2015, ICC-01/05-01/08-3283 and confidential *ex parte* Annexes A and B.

("Investigator Report").⁶ The Prosecution submits that it considers the Investigator 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", and that the redactions it proposes "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".⁷ The Prosecution requests redactions pursuant to Article 54(3)(f) and 68 of the Statute and Rule 81(4) of the Rules and submits that 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".⁸

3. By email on 14 August 2015, the Chamber ordered the Victims and Witnesses Section ("VWS" or "VWU") to review the redactions proposed in the confidential *ex parte* Annexes, in consultation with the Prosecution, and to submit its observations, in a confidential *ex parte* (VWU and the Prosecution) filing, by 19 August 2015.⁹
4. On 17 August 2015, the defence for Mr Jean-Pierre Bemba Gombo ("Defence") filed its "Defence Request concerning the 'Prosecution's Application for redactions pursuant to rule 81(4) of the Rules of Procedure

⁶ ICC-01/05-01/08-3283-Conf-Exp-Annex B-Corr.

⁷ ICC-01/05-01/08-3283, para. 2.

⁸ ICC-01/05-01/08-3283, para. 3.

⁹ Email from the Chamber to VWU, copying the parties, of 14 August 2015 at 15.02.

and Evidence” (“Defence Request”),¹⁰ in which it requests that the Chamber order the Prosecution to immediately inform the Defence of the witnesses to which the Prosecution Application refers and provide any further information which will assist the Defence in making submissions on the issues involved.¹¹

5. On 19 August 2015, the VWU submitted its “Victims and Witnesses Unit’s Observations on the Proposed Redactions in ICC-01/05-01/08-3283-Conf-Exp-AnxA and ICC-01/05-01/08-3283-Conf-Exp-AnxB-Corr” (“VWU Observations”),¹² in which it submits that, following consultation with the Prosecution, it agrees in principle that all proposed redactions made by the Prosecution should be maintained, save for one proposed redaction which, in the VWU’s view, does not relate to information affecting the relevant witness’s security.¹³
6. The Prosecution did not submit any observations on the recommendations presented in the VWU Observations.¹⁴
7. On 21 August 2015,¹⁵ the Prosecution submitted its “Prosecution’s Response to Defence Request concerning the ‘Prosecution’s Application

¹⁰ Defence Request concerning the “Prosecution’s Application for redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence”, 17 August 2015, ICC-01/05-01/08-3284.

¹¹ ICC-01/05-01/08-3284, para. 4.

¹² Victims and Witnesses Unit’s Observations on the Proposed Redactions in ICC-01/05-01/08-3283-Conf-Exp-AnxA and ICC-01/05-01/08-3283-Conf-Exp-AnxB-Corr, 19 August 2015, ICC-01/05-01/08-3286-Conf-Exp.

¹³ ICC-01/05-01/08-3286-Conf-Exp, pages 4 to 5.

¹⁴ By email on 20 August 2015, the Chamber ordered the Prosecution to submit its observations on the VWU’s recommendations, if any, by 21 August 2015. Email from the Chamber to the Prosecution, copying the Defence, the Legal Representative of victims, and the VWU, of 20 August 2015 at 14.03.

for redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence” (“Prosecution Response”),¹⁶ in which it requests that the Chamber dismiss the Defence Request.¹⁷ The Prosecution argues that the Defence Request is unnecessary and inappropriate¹⁸ because: (i) the Prosecution “intends to disclose all material information concerning [the relevant witnesses] to the Defence, except for security-related information only”;¹⁹ (ii) the information the Prosecution seeks to withhold has no bearing on the case against the Accused;²⁰ (iii) providing the security-related information that the Prosecution seeks to withhold to the Defence would jeopardise the objective of the Prosecution Application;²¹ (iv) the Chamber has sufficient information to determine the necessity of the non-disclosure of the security-related information;²² (v) “the independent [VWU], rather than the Defence, is best placed to advise the Chamber on non-disclosure of security matters related to [the relevant witnesses] and others involved”;²³ and (vi) even if the Defence were to receive disclosure of the material information concerning the relevant witnesses before the Chamber’s decision on the Prosecution Application, it would not be in a position to make meaningful submissions on the specific protection and

¹⁵ By email on 18 August 2015, the Chamber had informed the parties and the Legal Representative of Victims that any responses to the Defence Request shall be filed by 21 August 2015. Email from the Chamber to the parties and Legal Representative of victims of 18 August 2015 at 10.03.

¹⁶ 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”, 21 August 2015, ICC-01/05-01/08-3288-Conf. A public redacted version was filed on the same day: ICC-01/05-01/08-3288-Red.

¹⁷ ICC-01/05-01/08-3288-Red, para. 8.

¹⁸ ICC-01/05-01/08-3288-Red, para. 1.

¹⁹ ICC-01/05-01/08-3288-Red, para. 2.

²⁰ ICC-01/05-01/08-3288-Red, para. 4.

²¹ ICC-01/05-01/08-3288-Red, para. 4.

²² ICC-01/05-01/08-3288-Red, para. 5.

²³ ICC-01/05-01/08-3288-Red, para. 5.

security-related matters.²⁴ The Prosecution further argues that the Defence does not have an absolute right to make submissions on issues regarding non-disclosure of information by having access to the information that is contained in *ex parte* annexes.²⁵

II. Analysis

8. For the purpose of the present Decision and in accordance with Article 21 of the Statute, the Chamber has considered Articles 64(2), (6)(c), (e) and (f), and 68 of the Statute, Rules 16 to 18 and 81(4) of the Rules and Regulations 23*bis* and 24 of the Regulations of the Court ("Regulations").
9. At the outset, the Chamber notes that in the Prosecution Application, the Prosecution seeks the Chamber's guidance in order to fulfil its disclosure obligations in relation to a document currently classified as confidential *ex parte*. While Regulation 24(1) of the Regulations affords the Defence a right to file a response, this right is not absolute, particularly where, as in the present circumstance, the Defence is not, by virtue of the nature of the matter before the Chamber, in a position to make meaningful submissions. Further, the Chamber considers it unnecessary to receive any responses to the Prosecution Application before ruling on it. The Chamber also notes that the Prosecution Response provided the Defence with the identity of the witnesses involved, as sought in the Defence Request.²⁶ In light of the above, the Chamber finds the Defence Request unnecessary

²⁴ ICC-01/05-01/08-3288-Red, para. 6.

²⁵ ICC-01/05-01/08-3288-Red, para 3.

²⁶ See ICC-01/05-01/08-3288-Conf, para. 2.

and thus rejects it. The Chamber also notes that taking into account the present Decision, the Defence Request becomes moot.

10. Turning to the Prosecution Application itself, recalling its previous approach to the redaction of disclosable material,²⁷ the Chamber has considered whether the redactions proposed by the Prosecution are justified and necessary. In this regard, the Chamber authorises the redactions the Prosecution proposes in Annex B, which it considers are necessary to protect the safety of witnesses, witnesses' family members, and relevant third parties, except for the proposed redaction noted by the VWU,²⁸ which the Chamber considers not to relate to information affecting the relevant witness's safety. In making its assessment, the Chamber also finds that the authorised redactions would cause no prejudice to the preparation of the Defence.

11. The Chamber notes that the Prosecution Report, currently classified as confidential *ex parte*, contains much of the same information contained in the Investigator Report. Accordingly, the Chamber orders the Prosecution to file a confidential redacted version of the Prosecution Report, with redactions in line with the authorised redactions to the Investigator Report.

²⁷ Decision on the Prosecution's Requests to Lift, Maintain and Apply Redactions to Witness Statements and Related Documents, 7 July 2010, ICC-01/05-01/08-813-Conf. A public redacted version of this decision was filed on 20 July 2010: ICC-01/05-01/08-813-Red, paras 57 to 63. *See also*, Decision on the prosecution's "Information on contacts of Witnesses 169 and 178 with other witnesses located in Central African Republic" (ICC-01/05-01/08-2827-Conf-Exp), 25 October 2013, ICC-01/05-01/08-2845-Conf-Exp. A confidential redacted version was filed on 5 November 2013: ICC-01/05-01/08-2845-Conf-Red. A public redacted version was filed on 11 December 2014: ICC-01/05-01/08-2845-Red2, paras 9 to 12.

²⁸ ICC-01/05-01/08-3286-Conf-Exp, pages 4 to 5.

12. The Chamber considers that the VWU Observations require continued confidential *ex parte* treatment.

13. In view of the above, the Chamber hereby:

- (i) **PARTIALLY GRANTS** the Prosecution Application for authorisation of the redactions to the Investigator Report proposed in Annex B, subject to the redaction addressed in paragraph 10 above and **ORDERS** the Prosecution to disclose the Investigator Report to the Defence by 26 August 2015;
- (ii) **ORDERS** the Prosecution to apply redactions to the Prosecution Report in line with the redactions the Chamber authorises to the Investigator Report and to file a confidential redacted version of the Prosecution Report by 26 August 2015; and
- (iii) **REJECTS** the Defence Request as unnecessary and moot.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 25 August 2015

At The Hague, the Netherlands