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Pénale
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**International
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Court**

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Date: **22 April 2016**

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 Additional Submissions to the Closing Brief regarding P-169”, 4 November 2014, ICC-01/05-01/08-3182-Conf-Corr

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I. Introduction

1. The Office of the Prosecutor ("Prosecution" or "OTP") submits that the Trial Chamber III ("Chamber") can and should rely upon the evidence of Witness CAR-OTP-PPPP-0169 ("P-169") in determining the case against Mr Jean-Pierre Bemba Gombo ("Accused" or "Mr Bemba"). The witness' his testimony about the 2002-2003 events in the Central African Republic ("CAR") is internally consistent, externally corroborated by other witnesses and independent evidence, and/ or plausible as demonstrated in the Prosecution Closing Brief. P-169's behaviour is explained by separate post-testimony events arising out of threats linked to his testimony before the Chamber and the corresponding necessary protective measures, which prevented him from continuing [REDACTED]. The post-testimony events are independent of, and do not cast doubt upon, the reliability of P-169's evidence about the 2002-2003 CAR conflict. The Prosecution submits that his evidence should be considered and assessed by the Chamber in the same manner as that of any other witness in this case.

2. Between 1 and 11 July 2011, P-169 testified before the Chamber regarding the 2002-2003 events in the CAR ("2011 testimony").¹ Between August 2011 and August 2014, over a period of three years, P-169 sent a total of five letters to the Court complaining about financial entitlements (primarily rental allowance and school fees for his children) owed by VWU following an agreement with the witness.² P-169 was recalled by the Chamber for the limited purpose of hearing his evidence in relation to issues arising out of his various allegations and issues of witness credibility.³ His

¹ See, trial transcripts ICC-01/05-01/08-T-136-CONF-ENG to ICC-01/05-01/08-T-142-CONF-ENG.

² See: (i) 6 August 2011, ICC-01/05-01/08-1660-Conf-Anx1-Red2; (ii) 7 June 2013, EVD-T-D04-00057/CAR-OTP-0072-0504_R02; (iii) 8 June 2013, EVD-T-D04-00056/CAR-OTP-0072-0508_R02; (iv) 11 June 2014, EVD-T-D04-00103/CAR-OTP-0083-1327_R02 and EVD-T-D04-00102/CAR-OTP-0083-1303; (v) 5 August 2014, CAR-OTP-0083-1212 and CAR-OTP-0083-1214.

³ ICC-01/05-01/08-3154-Red, 10 October 2014, para. 50(i) and (ii).

subsequent testimony was from 22 to 24 October 2014 ("2014 testimony").⁴ In accordance with the order of the Chamber to file additional submissions to the closing briefs relating exclusively to P-169,⁵ the Prosecution herewith submits its additional submissions.

II. Request for Confidentiality

3. Pursuant to Regulation 23(1)*bis* of the Regulations of the Court ("Regulation"), the Prosecution requests that this document be received as "Confidential" as it relates to information regarding P-169's testimony that was held entirely in closed session and therefore bears the same classification.

III. Submissions

P-169 had no prior expectation of monetary benefits owing to his testimony:

4. The OTP approached P-169, [REDACTED], as a potential witness in this case. Although P-169 had relevant information regarding the 2002-2003 events in the CAR, he was initially reluctant to co-operate because of fears about his security should he testify against the MLC. In particular, P-169's sister had been killed by MLC soldiers in the Democratic Republic of Congo ("DRC").⁶ Moreover, P-169's livelihood depended to a large extent upon [REDACTED],⁷ [REDACTED].

5. Prior to his testimony, P-169 was an active businessman who was responsible for his wife and at least [REDACTED] children.⁸ During over two years of co-

⁴ See, trial transcripts ICC-01/05-01/08-T-361-CONF-ENG to ICC-01/05-01/08-T-363-CONF-ENG.

⁵ ICC-01/05-01/08-T-363-CONF-ENG ET, 24 October 2014, p.34, lines 17 to 23; ICC-01/05-01/08-3154-Red, 10 October 2014, para. 50(xvi).

⁶ ICC-01/05-01/08-T-138-CONF-EN, 5 July 2011, p.17, line 22 to p.22, line 5; see also ICC-01/05-01/08-T-142-CONF-ENG, 11 July 2011, p.32 line 18 to p.33, line 19.

⁷ ICC-01/05-01/08-T-138-CONF-ENG ET, 5 July 2011, p.17, lines 1 to 20; ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.28, lines 2 to 6 where P-0169 explained that [REDACTED].

⁸ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.27, lines 15 to 17.

operation between P-169 and the Prosecution, from his initial interview in 2009 to immediately prior to his 2011 testimony, at no point did P-169 request or demand any financial reward or compensation from the Prosecution. As is standard OTP practice in meeting witnesses where applicable, P-169 was provided with reimbursement of ordinary expenses, such as transportation, meals, and communication means as necessary. For example, although P-169 was interviewed by the OTP over a period of four days, he neither requested nor was he paid for any additional expenses such as loss of income.⁹

6. P-169 himself stated that, “Before coming to testify, I did not receive any financial assistance at all from the Prosecutor.”¹⁰ There is no evidence to suggest that P-169 had any expectations of monetary reward prior to his testimony. He testified that the Prosecution did not promise money to any of its witness.¹¹ Specifically, he stated that “at no time before or after my testimony, at no time on no date did the Prosecutor promise me money. That’s what I’m saying. That’s the truth.”¹²

7. P-169 confirmed that he would not reconsider his testimony as he told the truth of his own free will.¹³ His testimony is based on direct evidence of what he saw during the 2002-2003 events in CAR.¹⁴ He stated, “... what I said was the truth and telling the truth about everything that happened, everything that I saw. That is what I came and did here. I came and told the truth.”¹⁵

⁹ See, P-0169’s witness statements: CAR-OTP-0043-0275, CAR-OTP-0043-0308, CAR-OTP-0043-0346, CAR-OTP-0043-0380.

¹⁰ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.32, lines 22 to 23.

¹¹ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.45, lines 8 to 12.

¹² ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.43, line 23 to page 44, line 25.

¹³ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.34, line 16 to p.35, line 9; p.41, lines 4 to 11.

¹⁴ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.40, lines 20 to 25.

¹⁵ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.42, lines 13 to 22.

The motivation behind P-169's five letters to the Court

8. P-169's testimony demonstrates that his motivation to write letters of complaints was due to lengthy and difficult exchanges he had with the Victims and Witnesses Unit ("VWU") staff, in addressing issues regarding his concerns and financial claims. After his initial letter in 2011, his subsequent letters came about a year and a half later (mid-2013) as P-169 believed that he could exert pressure for his concerns to be heard and addressed by sending additional letters. P-169 testified that his daughter assisted him in writing the letters,¹⁶ and that he authored the letters.¹⁷ He explained that none of the other persons copied in his letters actually received a copy apart from the Court, but that he copied them in order to exert pressure.¹⁸ Based on P-169's account, his actions were not designed to exert pressure by actually exposing other witnesses to danger. Moreover, there is no evidence showing that anyone else received a copy of his letters.

9. Referring in length to discussions he had with the VWU regarding his difficulties and financial concerns, P-169 stated, *inter alia*, that he wrote the letters because he was asking for help and because two of the VWU staff suggested that he should write about his alleged entitlements.¹⁹ P-169 complained about the treatment he had received by the VWU, detailing that he had been lied to by the VWU on a number of occasions, and noted that since nothing had worked, he had to resort to the Madam President for her to listen to his complaint and demands.²⁰ He further stated that his letters were "a way for *him* to grieve as to what happened. It was a

¹⁶ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.61, lines 3 to 6.

¹⁷ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.18, line 7 to p.20, line 6; p.29, lines 7 to 16; p.30, lines 2 to 4; p.34, lines 4 to 9.

¹⁸ See, for example, ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.14, line 5 to p.15, line 5; p.19- lines 4 to 20; p.30, line 16 to p.32, line 2; p.19, line 12; p.31, line 15.

¹⁹ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.18, line 7 to p.27, line 17; see also P169-T-363-ENG-ET, 24 October 2014, p.24, line 16 to p.25, line 12.

²⁰ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.33, lines 20 to 24; p.34, line 21 to p.35, line 9.

shout of anger if you like.”²¹ He referred to further dealings with the VWU regarding amounts he should have received but did not as the reason for writing the letters.²²

P-169’s belief of entitlement was related to loss of income claims as a result of necessary protective measures recommended by the VWU:

10. Following his 2011 testimony, P-169 and his wife began to receive threats and information from various sources.²³ These threats and related rumours were directly linked to the fact that P-169 testified against Mr Bemba.²⁴ Based on a security assessment by the VWU, interim protective measures were instituted for P-169.²⁵ These measures, which were based on security concerns and applicable as of [REDACTED],²⁶ consisted of witness subsistence allowance in order for P-169 not to resume his [REDACTED]. [REDACTED].²⁷ Consequently, for witness security reasons, P-169 could no longer pursue his primary income generating [REDACTED]. As a result of his loss of income, P-169 went from a self-sufficient businessman responsible for at least [REDACTED] people to a person dependent upon VWU for welfare needs such as school fees and home rental allowance.

11. On 30 January 2012, the Prosecution’s request to include P-169 [REDACTED] was rejected by the Registrar.²⁸ However, the Registrar decided that P-169 would be provided with funds [REDACTED].²⁹ Following the OTP’s request for reconsideration [REDACTED], the VWU agreed to provide P-169 with [REDACTED].³⁰ On 27 February 2013, the Registrar rejected the request for

²¹ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.34, line 21 to p.56, lines 8 to 9.

²² ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.61, line 7 to p.62, line 16.

²³ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.8, line 1 to page 13, line 16.

²⁴ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.11, line 23 to p.24, line 8; p.13, lines 9 to 16.

²⁵ See, ICC-01/05-01/08-2912-Conf-AnxC, page 1.

²⁶ EVD-T-D04-00108/ICC-01/05-01/08-3160-Conf-AnxB-Red.

²⁷ ICC-01/05-01/08-2912-Conf-AnxC, page 1.

²⁸ ICC-01/05-01/08-2912-Conf-AnxC, page 1.

²⁹ ICC-01/05-01/08-2912-Conf-AnxC, page 1.

³⁰ ICC-01/05-01/08-2912-Conf-AnxC, page 1.

reconsideration but granted [REDACTED].³¹ On 16 April 2013, the Registrar decided to extend the financial support to provide additional financial assistance for P-169 [REDACTED].³²

12. After a lengthy and difficult process, on 2 December 2013, the VWU provided its summary in relation to the financial assistance given to P-169 based on protection measures.³³ However, during a period of over one and a half years, between September 2011 and April 2013,³⁴ P-169 had higher expectations of his entitlements than what he received from the VWU. For example, he expected the payment of school fees for two years rather than one year, as well as [REDACTED]. During his 2014 testimony, P-169 explained that he sent the letters because he could no longer [REDACTED] for security reasons and therefore [REDACTED] were no longer running; his request for financial assistance was because he could no longer pay his rent or send his children to school.³⁵

13. As a consequence of ceasing [REDACTED], which is directly linked to his testimony before the Chamber, P-169 began to encounter financial difficulties and felt entitled to loss of income-related claims from the VWU. P-169 could not have foreseen, nor is there evidence to suggest that, the post-testimony events and VWU's protective measures would have prompted him to cease [REDACTED] and thus lead to financial constraints. Therefore to link the post-testimony events to the veracity of P-169's courtroom testimony requires more than his mere belief of entitlement to financial assistance from VWU, which were due to his cessation of [REDACTED] based on a post-testimony security assessment.

³¹ ICC-01/05-01/08-2912-Conf-AnxC, page 1.

³² ICC-01/05-01/08-2912-Conf-AnxC, page 1.

³³ EVD-T-D04-00073/CAR-CHM-0001-0029 at page 0029.

³⁴ ICC-01/05-01/08-2912-Conf-AnxC, page 1.

³⁵ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.20, lines 5 to 13; p.20, line 22 to p.21, line 1; p.25, line 24 to p.26, line 1.

14. P-169's 2014 testimony is in accordance with information provided by the Prosecution in previous filings. P-169 filed loss of income claims with the VWU in relation to his time spent testifying in The Hague. He entered into lengthy discussions with the VWU in relation to several of his claims. His exchanges with the VWU reached the point where the Prosecution was solicited to intervene in order to re-establish and facilitate their communication. P-169's loss of income claims were denied and he was informed of the Registrar's decision in January 2013. P-169 did not accept the Registrar's decision. The frustrations caused by the difficult, lengthy and continuing discussions between him and the VWU resulted in complaints addressed by him to several International Criminal Court ("ICC" or "Court") authorities, including the Prosecutor, as well as supposedly other external actors.³⁶

15. As described above, P-169's post-testimony behaviour must be seen in light of his escalating frustrations and financial difficulties, which are directly linked to protective measures after his testimony based on threats received and independently verified.

The support provided by the VWU was based on their independent assessment and is reasonable considering P-169's unique situation

16. The Defence reminded P-169 that he received support for a total amount of [REDACTED] from the VWU.³⁷ The Defence intended to portray that P-169 gained a considerable benefit from his testimony at the Court. This theory is untenable as P-169 indicated that he ran a [REDACTED] before joining the court as a witness.³⁸ The VWU is a neutral organ that gives support to witnesses of both parties. What is considered as reasonable support is something determined by the VWU on a case-

³⁶ ICC-01/05-01/08-2827-Conf-Red, para. 6.

³⁷ ICC-01/05-01/08-T-362-CONF-ENG, 23 October 2014, p.31, line 20.

³⁸ ICC-01/05-01/08-T-362-CONF-ENG, 23 October 2014, p.18, line 19 to p.19, line 1.

by-case basis. As such, the amounts received by witnesses are likely to be different depending on their circumstances and other factors.

The allegations contained in P-169's letters:

17. In explaining the meaning of phrases used in his letter, P-169 once again referred to his difficult experience in dealing with the VWU. His letters did not explicitly attribute allegations of "*subordination des témoins*" to a specific individual or organ of the Court. P-169 explained that the term "*subordination des témoins*" (corruptly influencing witnesses) referred to "all the mistreatment that the witnesses were subjected to by VWU."³⁹

18. In explaining what he had meant by 'a fool's bargain', P-169, *inter alia*, stated that "I realised that the staff of the VWU were promising me one thing on one day and then on the next day they would promise me something quite different. So it was in – all within that framework that I drafted this letter saying that the VWU had lied a great deal."⁴⁰

P-169 had limited or no interaction with other witnesses in this case:

19. Apart from his association with P-178, which was well-known and widely discussed during the trial, it appears from P-169's testimony that he never met any other witnesses in the case, including witnesses listed in the letters,⁴¹ with the exception of [REDACTED] (P-42). He met P-42 at the meeting called by P-178. P-169 also stated that he was never delegated as such authority or given a mandate to

³⁹ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.36, line 5 to p.37, line 12; p.45, line 13 to p.46, line 1.

⁴⁰ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.54, lines 7 to 12.

⁴¹ EVD-T-D04-00057/CAR-OTP-0072-0504_R02 at page 0507; EVD-T-D04-00056/CAR-OTP-0072-0508_R02 at page 0513 and CAR-OTP-0083-1214

represent anybody whomsoever.⁴² He further stated that “he did not collaborate with [REDACTED] to influence any witnesses.”⁴³

The Defence attempt to build a theory around collusion or involvement of 20 other witnesses in a plan to extort financial benefits from the Court is unsubstantiated:

20. There is no evidence of any misbehaviour regarding the 20 other witnesses listed in the annexes of P-169’s letters. P-169 indicated that he himself never received any money or was never promised any benefit in exchange for his testimony. He also indicated that he did not expect any such benefit when he came to testify in July 2011. With the exception of P-178 and P-42 in the circumstances described during his testimony, P-169 testified that he did not meet with other witnesses in the case. He is therefore not aware nor in a position to provide any information which may support an allegation of misbehaviour from the Prosecution. To the contrary, in relation to expressions used in his letters such as “money paid or promised to the witnesses”, “corruptly influence on witnesses”, “bargain sale”, P-169 clearly stated several time that these expressions were untrue and used for the sole purpose of putting pressure on the readers of his letters.

21. The Prosecution invites the Chamber to pay close attention to, and scrutinise, the Defence attempts to mischaracterise P-169’s testimony and the evidence. For example, referring to a staff member who provided him money, P-169 was firm when he stated that “[REDACTED] is a VWU staff member. He is not an investigator from the OTP. (...) He works for VWU. He doesn’t work for OTP.”⁴⁴ Earlier, under Defence’s questioning he already testified that he received money from “a VWU staff member called [REDACTED].”⁴⁵ Despite being in possession with this

⁴² ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.57, lines 3 to 10.

⁴³ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.70, lines 6 to 12. [Emphasis added]

⁴⁴ ICC-01/05-01/08-T-362-CONF-ENG, 23 October 2014, p.48, line 1.

⁴⁵ ICC-01/05-01/08-T-362-CONF-ENG, 23 October 2014, p.42, line 17.

information, during the continuation of his examination the next day, the lead counsel put to P-169 that [REDACTED] is a Prosecution investigator. Ignoring the answer of the witness who indicated that he did not know the surname of [REDACTED], the lead counsel asserted that the individual in question was [REDACTED] of the OTP⁴⁶ and added that [REDACTED] was the only [REDACTED] on the ICC system at the time.⁴⁷ The Defence insistence to incorrectly attribute its flawed interpretation of the evidence in spite of P-169's testimony that [REDACTED], must be laid to rest as P-169 stated that "[REDACTED] is a black man. He's not a white man."⁴⁸

22. P-169's [REDACTED] activities also brought him into close contact with P-178 with whom he exchanged professional services and they became well acquainted. P-169 has always been transparent in explaining that he knows and communicates P-0178,⁴⁹ as well as current or previous interactions with MLC-affiliated persons such as [REDACTED].⁵⁰ In fact it is well known that the P-169's basis of knowledge regarding the 2002-2003 events in the CAR was largely based on his interaction with members of the MLC.

23. The fact that witnesses may know or communicate with one another is still a far cry from demonstrating that they colluded in their testimony or that they influenced each other's testimony thereby making it unreliable. For this to be the case, the Defence must prove this fact with evidence rather than merely speculate as to its possibility.⁵¹

⁴⁶ ICC-01/05-01/08-T-362-CONF-ENG, 23 October 2014, p.6, line 1.

⁴⁷ ICC-01/05-01/08-T-362-CONF-ENG, 23 October 2014, p.7, line 10.

⁴⁸ ICC-01/05-01/08-T-362-CONF-ENG, 23 October 2014, p.8, line 13.

⁴⁹ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.15, lines 6 to 25.

⁵⁰ See, for example, ICC-01/05-01/08-1623-CONF-RED.

⁵¹ See, for example, *Setako* Appeal Judgement, para. 137; *Renzaho* Appeal Judgement, para. 275, referring to *Karera* Appeal Judgement, para. 234; *Kanyarukiga* (Appeal Judgement, para. 240).

Impact on P-0169's credibility:

24. P-169's behaviour may be termed unsavoury or inappropriate, but this does not mean that he is not credible or that his testimony is not reliable. His behaviour was triggered by post-testimony events that were not present before or during his initial testimony and have no bearing on the truth of the 2002-2003 CAR events described in his testimony. P-169's behaviour was triggered by his belief that he was entitled to financial compensation associated with loss of income due to his inability to continue his [REDACTED]; nothing on the record suggests pre-meditated or opportunistic behaviour aimed at gaining financial benefits from his status as a witness in this case. P-169 willingly testified again before this Chamber and explained truthfully under oath why he acted the way that he did, including admitting that parts of his letters were based on his own understanding or interpretation rather than concrete facts. At the very least, P-169 demonstrated that he takes his obligation to tell the Chamber the truth seriously.

25. Therefore P-169's credibility must be assessed, as with every other witness, by the wide range of possible factors affecting the credibility of a witness. The Defence will argue that P-169 admitted to some lies in his letters and therefore is incapable of belief. Such a position seeks to remove the Chamber's basic duty to freely assess witness credibility and reliability of evidence in favour of a fictitious standard that stipulates that once a person behaves in a disproving or controversial manner or admits to providing incorrect information, any information provided by that person should be automatically excluded. This rigid and artificial standard would automatically exclude certain categories of evidence, such as insider testimony where that witness seeks to minimise or conceal his role in spite of other evidence showing that other parts of his evidence are truthful. Although the Defence would have it so, there is no simple formula for assessing credibility short of a detailed

assessment of the veracity of P-169's evidence as a whole. Nor is there any basis on articles 69 or 74 of the Statute for this position.

26. P-169's post-testimony behaviour does not cast a doubt on the reliability of his testimony. The Prosecution submits that the Chamber should believe P-169's 2011 testimony because it is internally consistent, externally corroborated by other witnesses or independent evidence, logical, and/ or plausible as demonstrated in the Prosecution Closing Brief. Additionally, in spite of his subsequent behaviour, P-0169 confirmed the veracity of his testimony.

IV. Relief Sought

27. The Prosecution requests the Chamber to rely upon P-169's 2011 testimony as truthful and credible.



Fatou Bensouda, Prosecutor

Dated this 22th Day of April 2016
At The Hague, The Netherlands