

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 June 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 Submissions on granting access to ICC-01/05-01/08-1623", 6 September 2011, ICC-01/05-01/08-1709-Conf-Exp

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

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. Introduction

1. The Office of the Prosecutor (“Prosecution”) submits that disclosing any part of the information regarding the existence of [REDACTED] two of its witnesses is undesirable at present. Any disclosure at this stage could jeopardise ongoing investigations into the [REDACTED], as well as increase the risks to the safety of the two witnesses and their family members. Consequently, the Prosecution supports the disclosure of this information to the Defence, participants and the public only once its current investigations of the [REDACTED] are complete.

II. Request for confidentiality

2. The Prosecution requests that this submission be received by the Trial Chamber III (“Chamber”) as “Confidential, *Ex Parte*, Prosecution and Victims and Witnesses Unit only” as it relates to information regarding [REDACTED], which is similarly classified and should not be disclosed to the Defence and participants.

III. Procedural Background

3. On 15 August 2011, the Prosecution submitted its report to the Chamber on the current security situation of Witnesses 169 and 178, particularly [REDACTED] in relation to their testimony at the Court (“Filing 1623”).¹

¹ ICC-01/05-01/08-1623-Conf-Exp, “Prosecution’s Report to the Trial Chamber III on the current security situations of Witnesses 169 and 178”

4. On 26 August 2011, following the Prosecution's report, the Chamber held an *ex parte* status conference on security concerns with the Prosecution and the Victims and Witnesses Unit ("VWU").² At the status conference, the Chamber requested the observations of the Prosecution and VWU "on whether they would object to the Defence being granted access to filing 1623 in whole or in part, or to any kind of communication about the existence of [REDACTED] some of the Prosecution witnesses".³ Further, the Chamber requested guidance and expertise on "an assessment in general, whether publicity of the existence of [REDACTED] can put an end to [REDACTED] or have exactly the opposite [effect]".⁴

5. Pursuant to the Chamber's above request, a preliminary consultation between VWU and the Prosecution was convened at a meeting held on 2 September 2011. On the same day, the Prosecution sent its proposals on two redacted versions of Filing 1623 and an initial security assessment.⁵

6. On 5 September 2011, VWU recommended additional redactions to the Prosecution's proposals and suggested that [REDACTED].⁶ That same day, VWU informed the Presiding Judge of the results of the preliminary consultations to date between the VWU and Prosecution.⁷ Shortly thereafter, the Chamber requested that the Prosecution file a redacted version of Filing 1623 "no later than 17.00 today" for its review.⁸ Following a request for extension of time made by the Prosecution, the Chamber granted an extension until noon on 6 September 2011.⁹

² ICC-01/05-01/08-T-148-CONF-EXP-ENG ET 26-08-2011.

³ ICC-01/05-01/08-T-148-CONF-EXP-ENG ET 26-08-2011, page 22, lines 17 to 20.

⁴ ICC-01/05-01/08-T-148-CONF-EXP-ENG ET 26-08-2011, page 24, lines 4 to 11.

⁵ Email sent to the VWU by the Prosecution on 2 September 2011 at 17:13.

⁶ Email sent by VWU to the Prosecution on 5 September 2011 at 12:06.

⁷ Email sent by VWU on 5 September 2011 at 13:14.

⁸ Email from the Legal Officer of the Chamber on 5 September 2011 at 13:29.

⁹ Email from the Legal Officer of the Chamber on 5 September 2011 at 17:39.

IV. Prosecution's submissions

7. Following beneficial preliminary consultations on the working level between the Prosecution and VWU, as well as subsequent consultations with its own in-house protection experts, the Prosecution hereby submits that its final position is that the disclosure of Filing 1623 in any form to the Defence and participants is not recommended at this time. The Prosecution is actively investigating [REDACTED]. Disclosure of even a redacted version of Filing 1623 at present would likely alert potential suspects or witnesses of the Prosecution's investigative interest in this matter, which could cause them to interfere with the investigation by allowing them time to prepare their stories, destroy evidence, or influence the testimony of others.

8. Similarly, as a result of the above assessment, the Prosecution does not recommend the issuance of a public redacted version of Filing 1623 at this time because, even with heavy redactions, it could disclose information that could allow individuals to interfere with the Prosecution's ongoing investigation.

9. Rather, the Prosecution submits that at the conclusion of its investigation, both a disclosure of Filing 1623 in redacted form to the Defence and a public redacted version will be possible. The Prosecution undertakes to complete its investigation as soon as possible.

V. Conclusion

10. For the above-mentioned reasons, the Prosecution respectfully requests the Chamber to maintain the non-disclosure to the Defence, participants and the public of Filing 1623 until the conclusion of its current investigation into [REDACTED] Witnesses 169 and 178.



Fatou Bensouda, Prosecutor

Dated this 28th Day of June 2016
At The Hague, The Netherlands