



Original: English

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

Date: 8 July 2016

TRIAL CHAMBER III

Before: Judge Joyce Aluoch
Judge Geoffrey Henderson
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

**Public Redacted Document
with
Confidential, *EX PARTE*, only available to Prosecution and Victims and Witnesses
Unit, Annex A**

Public redacted version of “Prosecution’s Submission on Analysis of the phone records of Witnesses 169, 178 and 178’s Wife and on the Measures regarding their safety and wellbeing”, 21 May 2012, ICC-01/05-01/08-2218-Conf-Exp

Source: 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 the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the 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”) hereby submits a report (“Report”) of its investigation to date into security incidents reported by CAR-OTP-PPPP-0169 (“Witness 169”) and CAR-OTP-PPPP-0178 (“Witness 178”).

2. The Report shows that the two witnesses made some errors regarding dates when reporting the threatening phone calls and that on one occasion the VWU may have also erred in one of its reports. However, contrary to the findings of the Victims and Witnesses Unit’s (“VWU”) “Report on the analysis of the phone records of CAR-OTP-PPPP-0169, CAR-OTP-PPPP-0178, and CAR-OTP-PPPP-0178’s Wife” (“VWU Report”)¹, the analysis of the phone records essentially corroborate the accounts of Witness 169 and Witness 178.

3. As to the contacts between Witness 169 and Witness 178, and between them and the other individuals identified in the VWU Report, the Prosecution submits that these contacts do not raise any concern or suspicion, as they are explained by the existing business relationships and social links between them prior to, during and after the 2002-2003 conflict in the Central African Republic (“CAR”).

4. Measures to address matters related to the safety and wellbeing of the aforementioned witnesses have been taken. The Prosecution keeps monitoring their security situation.

¹ ICC-01/05-01/08-1816-Conf-Exp, Victims and Witnesses Unit’s report on the analysis of the phone records of CAR-OTP-PPPP-0169, CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0178’s wife, 4 October 2011.

II. Request for Confidentiality

5. The Prosecution requests that this filing and its Annex A (“Analysis of Witness 169, Witness 178 and Witness 178’s Wife phone records and other information”) be received by the Trial Chamber III (“Chamber”) as Confidential, *Ex parte*, Prosecution and VWU only as they relate to filings and other court records that are subject to the same level of confidentiality. Moreover, they contain information that if classified otherwise would increase the risks to the safety of the two witnesses and their family members.

III. Background

6. On 15 August 2011, the Prosecution filed, Confidential, *Ex parte*, Prosecution and Victims and Witnesses Unit only, the “Prosecution’s Report to the Trial Chamber III on the current security situations of Witnesses 169 and 178”². Subsequently, the Chamber held *Ex parte* hearings on 26 August 2011³ and 7 September 2011⁴ to address security concerns of Witnesses 169 and 178.

7. On 4 October 2011, the Registrar filed, Confidential, *Ex parte*, Registry only, the VWU report.⁵ This report concluded that:

“The analysis of the phone records have partly confirmed the phone contacts reported by witness CAR-OTP-PPPP-0178 and his wife, and shown that the witness did not have previous contacts with the alleged sources of threats (apart from a [REDACTED] 17 second phone call on 28 May 2011 to the

² 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, 15 August 2011.

³ ICC-01/05-01/08-T-148-CONF-EXP-ENG ET, 26 August 2011.

⁴ ICC-01/05-01/08-T-155-CONF-EXP-ENG ET, 7 September 2011.

⁵ ICC-01/05-01/08-1816-Conf-Exp.

number identified by witness CAR-OTP-PPPP-0169 as being the [REDACTED] influent MLC member).

It has also been clearly established that the witness CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0169 have had regular phone contacts since at least January 2011, more specifically from March 2011 onwards.

The analysis of the phone records have brought to light the numerous contacts between the witness CAR-OTP-PPPP-0169 and the alleged sources of threats, on a regular basis and for at least the last 8 months.

In order to determine the potential threats against CAR-OTP-PPPP-0169, the VWU, while [REDACTED].^{6''}

8. On 18 October 2011, the Chamber ordered the reclassification of VWU's Report as Confidential, *Ex parte*, Registry and Prosecution only.⁷

9. On 1 November 2011, the Prosecution filed, Confidential, *Ex parte*, Prosecution and VWU only, its "Prosecution's Submission Regarding Trial Chamber III's 'Order on the Reclassification of Documents' of 18 October 2011" ("Prosecution's Submission"),⁸ whereby the Prosecution presented the findings of its preliminary investigation on Witness 169's and Witness 178's security incidents.

⁶ ICC-01/05-01/08-1816-Conf-Exp-Anx1, p. 12 to p.13.

⁷ ICC-01/05-01/08-1847-Conf-Exp, Order on the reclassification of documents, 18 October 2011.

⁸ ICC-01/05-01/08-1869-Conf-Exp, Prosecution's Submission Regarding Trial Chamber III's "Order on the Reclassification of Documents" of 18 October 2011, 1 November 2011.

IV. Prosecution's submissions

a. Prosecution's investigation of possible witness interference issues and analysis of the information collected

10. Further to the analysis - contained in Annex A - of the phone records of Witness 169, Witness 178, Witness 178's wife and several individuals mentioned in Annex A, as well as of the information and materials collected during the investigation, the Prosecution submits that:

- Discrepancies identified by the VWU concerning the dates of the threats reported by Witness 169 and Witness 178 have been carefully considered and analyzed. These discrepancies do not affect the witnesses' credibility, but can rather be attributed to the witnesses' mistaken recollection of some dates, miscommunication between the VWU and the witnesses, as well as confusion regarding the internal logging of each incident reported by the witnesses to the VWU;
- The contacts between Witness 169 and Witness 178, as well as between them and the individuals identified in Annex A are best explained in light of the existing business and social links between them prior to, during and after the 2002-2003 CAR conflict;
- The VWU's Report is incomplete. It only analyzed the phone records and failed to consider the remaining information contained in Annex A.

11. In fact, the facts set forth in the Report show that a fabrication of the threats by the two witnesses is extremely unlikely. To believe that the threats were invented by the witnesses, one would have to believe that although the witnesses went to the trouble of obtaining the phone [REDACTED] which the threat calls were made, and also made calls from that number to their own phones (presumably anticipating that someone might later check phone records), they at the same time reported the calls

incorrectly, that is reported them as occurring at times different from the ones that *they themselves made the calls*. This theory is all the more strange in that it would require Witness 169 reporting the threat call [REDACTED], as claimed by the VWU, but only himself placing the false threat call [REDACTED] the following day. If that were not already improbable, then the fabrication theory requires believing that Witness 169 made the mistake again ten days later, reporting the threat call as having occurred on [REDACTED] when in fact he himself made the fake call on [REDACTED].

12. In other words, to conclude that the two witnesses conspired to fabricate the threats requires believing that the witnesses were both careful and deliberate in their plans (coming to an agreement, obtaining a phone number for the threats, placing the fake calls) and at the same time extremely careless and sloppy (making mistakes in reporting the dates of some of the calls that they themselves placed). In the Prosecution's submission, it is far more likely that the witnesses simply made some minor mistakes in their reporting of the threats and that these small mistakes were to some extent compounded by some errors by the VWU. In fact, the evidence substantially corroborates the threats reported by the witnesses.

b. Measures taken to address security concerns of the two witnesses

13. The Prosecution hereby informs the Chamber of the following measures taken to address the security concerns of Witness 169 and Witness 178 and their family members.

14. On 11 November 2011, the Registrar granted provision of [REDACTED]. However, the Registrar approved [REDACTED]. On [REDACTED], Witness 169 reported that he received new threats through messages sent to his [REDACTED] telephones.

15. On 20 February 2012, the Registrar [REDACTED].

16. On 22 February 2012 the Prosecution met with VWU to verbally discuss the findings of its investigation in the threat calls that were received by Witnesses 169 and 178. On 24 February 2012, the Prosecution requested that the implementation of the Registrar's decisions be deferred to provide VWU with an opportunity to re-assess their risk and threat levels against the updated information provided by the Prosecution and the new threats reported by Witnesses 169 and 178.

17. On 04 April 2012 the Prosecution provided VWU with a report outlining the information collected in support of its investigation and findings thereof.

18. On 4 and 5 April 2012 VWU met with witnesses 169 and 178 to inform them of the Registrar's decision and recommended measures. The Prosecution was informed about the meeting on 11 April 2012 and requested VWU to reconsider the recommendations.

19. On 26 April 2012, the Prosecution and VWU met and discussed the [REDACTED] of Witness 178, VWU's re-assessment of the security situation of Witnesses 169 and 178 in light of the additional information provided by the Prosecution and new threats received by the witnesses, the need to increase the [REDACTED]. VWU undertook to address these issues expeditiously.



Fatou Bensouda, Prosecutor

Dated this 8th Day of July 2016
At The Hague, The Netherlands