

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: 15 July 2016

TRIAL CHAMBER III

Before: Judge Joyce Aluoch, Presiding Judge
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

**Public redacted version of "Prosecution's update on issues related to Witnesses
169 and 178", 03 October 2013, ICC-01/05-01/08-2826-Conf-Exp**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) submits an update to the Trial Chamber III (“Chamber”) on issues related to CAR-OTP-PPPP-0169 (“Witness 169”) and CAR-OTP-PPPP-0178 (“Witness 178”) and the measures taken to address them.
2. The Prosecution keeps monitoring their situation.

II. Request for Confidentiality

3. Prosecution requests that this filing be received by the Chamber as Confidential, *ex parte*, Prosecution and Victims and Witnesses Unit (“VWU”) only as it relates to filings and other court records that are subject to the same level of confidentiality. Moreover, the filing contain information that if classified otherwise may result in the increase of the risks to the safety of the two witnesses and their family members.

III. Background

4. On 15 August 2011, the Prosecution filed, Confidential, *ex parte*, Prosecution and VWU only, the “Prosecution’s Report to the Trial Chamber III on the current security situations of Witnesses 169 and 178.”¹
5. Subsequently, the Chamber held *ex parte* hearings on 26 August 2011² and 7 September 2011³ to address security concerns of Witnesses 169 and 178.

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, 15 August 2011.

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

³ ICC-01/05-01/08-T-155-CONF-EXP-ENG ET, 7 September 2011.

6. On 4 October 2011, the Registrar filed, Confidential, *ex parte*, Registry only, the VWU's report.⁴

7. On 18 October 2011, the Chamber ordered the reclassification of VWU's Report as Confidential, *ex parte*, Registry and Prosecution only.⁵

8. 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"),⁶ whereby the Prosecution presented the findings of its preliminary investigation on Witness 169's and Witness 178's security incidents.

9. On 14 March 2012, the Chamber issued "Decision on the reclassification of documents related to Witnesses 178 and 169".⁷ The Chamber approved redactions proposed by the Prosecution and the VWU. The Chamber instructed the Prosecution to re-file as confidential redacted document, its ICC-01/05-01/08-1623-Conf-Exp report. The Chamber instructed the VWU to re-file as confidential redacted documents, ICC-01/05-01/08-1816-Conf-Exp and its four annexes. It further instructed the Registry as confidential redacted, ICC-01/05-01/08-T-148-CONF-EXP and ICC-01/05-01/08-T-155-CONF-EXP transcripts.⁸

10. On 21 May 2012, the Prosecution filed, Confidential, *ex parte*, Prosecution and VWU only, its "Prosecution's Submission on Analysis of the phone records of

⁴ 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, 04 October 2011.

⁵ ICC-01/05-01/08-1847-Conf-Exp, Order on the reclassification of documents, 18 October 2011.

⁶ ICC-01/05-01/08-2218-Conf-Exp, 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.

⁷ ICC-01/05-01/08-2165-Conf, Decision on the reclassification of documents related to Witnesses 178 and 169, 14 March 2012.

⁸ *Ibid* at para. 5.

Witnesses 169, 178 and 178's Wife and on the Measures regarding their safety and wellbeing".⁹

11. On 8 January 2013, the Prosecution filed, Confidential, *ex parte*, Prosecution and VWU only, its "Prosecution's update on measures taken to address the security and well-being concerns of Witnesses 169 and 178".¹⁰

IV. Prosecution's submissions

a. Measures taken to investigate possible witness' interference issues

12. The Prosecution, having analyzed the information in its possession regarding the threats reported by both witnesses, referred the matter for investigations to the [REDACTED].

13. On 8 January 2013, the Prosecution informed the Chamber on its contact with the [REDACTED] regarding measures to be taken at the [REDACTED] to investigate the threats reported by both witnesses.¹¹

14. On 4 June 2013, the witnesses filed a complaint against [REDACTED]. No further feedback has been received so far from the [REDACTED] about the status of their investigation.

⁹ ICC-01/05-01/08-2218-Conf-Exp, 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.

¹⁰ ICC-01/05-01/08-2486-Conf-Exp, Prosecution's update on measures taken to address the security and well-being concerns of Witnesses 169 and 178, 8 January 2013

¹¹ *Ibid* at paras. 10 and 11.

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

15. With regard to witness 169, the Prosecution has monitored the situation and has taken the following measures to address any security and well-being issues since its last update to the Chamber on 8 January 2013.

16. On 16 April 2013, the VWU reported that on 27 February 2013, the Registrar decided, *inter alia*, to provide [REDACTED] at the witness's new residence upon VWU assessment to confirm the requirement.

17. The general security environment and restrictions in International Criminal Court [REDACTED] timely implementation of the Registrar's decisions, with respect to:

- i. [REDACTED];
- ii. [REDACTED].

18. Regarding additional [REDACTED], a need to further clarify scope of support with [REDACTED] implementation prior to the recent change in regime.

19. Witness 169 last communicated with the Prosecution on 27 June 2013, stated that he was travelling to [REDACTED] and would not be reachable until his return to [REDACTED]. He also indicated that he would seek to [REDACTED], but provided no details.

20. On 8 September 2013, Witness 169 sent the following text message to the Prosecution: "[REDACTED]". On 9 September 2013, Witness 169 called the Prosecution to inform that he had returned from [REDACTED] and ask for information on progress regarding his [REDACTED]. He was informed that he would be contacted shortly by the OTP on the matter.

21. On 13 September 2013, the Prosecution called Witness 169. The situation on the amount approved by the Registrar and the procedure for [REDACTED] was summarized and explained to Witness 169.

22. Witness 169's loss of income claim was rejected in January 2013.

23. The Prosecution continues to maintain contact with witness 169 and liaise with VWU on implementation of the [REDACTED].

24. With regard to witness 178, the VWU informed the witness that his loss of income claim was rejected during a joint phone call with the Prosecution on 19 April 2013. The VWU also expressed regret for the delay in issuing the decision.

25. The Prosecution continues to monitor the security and wellbeing situation of Witnesses 169 and 178.

c. Request for clarification

26. On 16 July 2013, the Chamber issued its "Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case", in which it, inter alia, decided that the presentation of evidence by the Defence for Mr Jean-Pierre Bemba ("Defence") would conclude by 25 October 2013, at the latest.¹²

27. Given the continuous nature of the issues related to the safety and wellbeing of Witnesses 169 and 178 and of other witnesses and based on the Chamber's

¹² ICC-01/05-01/08-2731, Decision on the timeline for the completion of defence's presentation of evidence and issues related to the closing of the case, 16 July 2013, paras. 22 and 38(b).

decision to conclude the presentation of the Defence's evidence by 25 October 2013, the Prosecution respectfully requests clarification on whether the Chamber requires the Prosecution to continue to submit further similar updates on these two or any other witnesses and, if yes, up until what moment of the proceedings against the Accused.



Fatou Bensouda, Prosecutor

Dated this 15th Day of July 2016

At The Hague, The Netherlands