

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 measures taken to address the security and well-being concerns of Witnesses 169 and 178”, 08 January 2013, ICC-01/05-01/08-2486-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 the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

The Office of Public Counsel for the 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"), following its previous reports,¹ hereby submits a further update to Trial Chamber III ("Chamber") on the measures taken to address the security and well-being of Witness CAR-OTP-PPPP-0169 ("Witness 169") and Witness CAR-OTP-PPPP-0178 ("Witness 178").

2. The Prosecution continues to monitor their situation.

II. Request for Confidentiality

3. Pursuant to Regulation 23 *bis* of the Regulations of the Court, the 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 previous filings and other court records that are subject to the same level of confidentiality. Moreover, the filing contains information that, if classified otherwise, would increase 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 situation of Witnesses 169 and 178."²

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; 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; 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.

² ICC-01/05-01/08-1623-Conf-Exp.

5. Subsequently, the Chamber held *ex parte* hearings on 26 August 2011³ and 7 September 2011⁴ to address the security concerns of Witnesses 169 and 178.

6. On 4 October 2011, the Registrar filed, Confidential, *Ex parte*, Registry only, the VWU's report on the analysis of the phone records of Witness 169, Witness 178 and Witness 178's wife.⁵

7. On 18 October 2011, the Chamber ordered the reclassification of the VWU's Report as Confidential, *Ex parte*, Registry and Prosecution only.⁶

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"),⁷ whereby the Prosecution presented the findings of its preliminary investigation on Witness 169's and Witness 178's security incidents.

9. 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 Witnesses 169, 178 and 178's Wife and on the Measures regarding their safety and wellbeing".⁸

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, 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.

⁶ ICC-01/05-01/08-1847-Conf-Exp, Order on the reclassification of documents, 18 October 2011.

⁷ ICC-01/05-01/08-1869-Conf-Exp.

⁸ ICC-01/05-01/08-2218-Conf-Exp.

IV. Prosecution submissions

a. Measures taken to investigate possible witness interference issues

10. On 25 April 2012 and on 2 and 29 May 2012, the Prosecution [REDACTED] the Central African Republic ("CAR") in Bangui to inform him about the threats reported by Witnesses 169 and 178. The Prosecution emphasized the need to:

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

11. On 4 June 2012, Prosecution representatives met with [REDACTED], in order to follow up on the national investigation into the security threats received by Witnesses 169 and 178. [REDACTED] has been in charge of the ongoing national investigations. In addition, [REDACTED]. CAR authorities have not provided further information to the Prosecution on the status of the investigations.

b. Measures taken to address security and well-being concerns of Witness 169

12. On 8 February 2012, the Registrar approved [REDACTED].

13. On 23 May 2012, the VWU confirmed to the Prosecution its intention to conduct a new risk assessment for Witness 169 in light of the telephone threats reported by him. Pending the outcome of this assessment, the VWU agreed to suspend the implementation of the [REDACTED]. The VWU also indicated the possibility of liaising with the [REDACTED] for a long-term solution for Witness 169.

14. On 2 June 2012, the Prosecution met with Witness 169 and explained to him the next steps to address his concerns.

15. On 31 July 2012, the Prosecution and the VWU agreed that the risks to Witness 169 could be mitigated by [REDACTED].

16. On 8 August 2012, the VWU confirmed that funds were available for the [REDACTED]. The provision of funds was subject to renewals based on the Prosecution's confirmation of the necessity to continue the [REDACTED]. VWU's initial payment was transferred to the Prosecution on 12 and 28 September 2012, and the Prosecution concluded the arrangement to pay the funds [REDACTED]. In the meantime, Witness 169 [REDACTED].

17. The Prosecution notes that Witness 169's [REDACTED] required him to travel to [REDACTED] and to interact with individuals who could have potentially exposed him to further threats. In order to avoid the risk of further exposure and properly address his protection concerns, the VWU also recommended to Witness 169 that [REDACTED]. On 23 August 2012, the VWU outlined to the Prosecution a proposal for an [REDACTED] for Witness 169. Both organs agreed to explain this proposal to the witness jointly after its approval by the Registrar. As of 19 December 2012, the date of the most recent information from VWU, the Registrar's decision on the proposal for an [REDACTED] is still pending.

18. In addition, Witness 169 informed the Prosecution that he complained to the [REDACTED]. The Prosecution notes that on 8 November 2012, Witness 169 [REDACTED] the VWU for the months of October and November 2012. As of 19 December 2012, the date of the most recent information from VWU, the Registrar's decision on the [REDACTED] claims regarding Witness 169 is still pending.

19. On 31 October 2012, the Prosecution was informed by the VWU that they are no longer pursuing the option of identifying a possible long-term solution for Witness 169 through [REDACTED]. The VWU has not further explained the reasons for this decision. However, the Prosecution reiterates the submission under paragraph 15 above which points to the agreement of the 31 July 2012 between the Prosecution and the VWU that the risks to Witness 169 could be mitigated by implementing [REDACTED]. The Prosecution continues to monitor the security and well-being of Witness 169 and will update the Chamber on further measures taken to address them.

c. Measures taken to address security and well-being concerns of Witness 178

20. On 23 May 2012, the VWU confirmed to the Prosecution its intention to conduct a new risk assessment for Witness 178 in light of the telephone threats reported by him. Pending the outcome of this assessment, the VWU agreed to suspend the implementation of the Registrar's decision [REDACTED] 8 February 2012 and to pay to him, in the interim, [REDACTED]. The VWU also indicated the possibility of liaising with the [REDACTED] for a long-term solution for Witness 178.

21. On 2 June 2012, the Prosecution met with Witness 178 and explained to him the next steps to address his concerns.

22. On 19 July 2012, based on the VWU's reassessment requested by the Prosecution in May 2012, the VWU informed the Prosecution of the Registrar's decision to:

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

23. On 31 July 2012, the Prosecution and the VWU agreed that the risks to Witness 178 could be mitigated by implementing [REDACTED]:

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

24. The Prosecution reiterates its submissions under paragraph 16 above as relevant also for Witness 178. In addition, the Prosecution informs the Chamber that Witness 178 is in the process of [REDACTED].

25. On 12 September 2012, Witness 178 informed the Prosecution that he intended to leave the [REDACTED] due to his ongoing subjective perception of risk in [REDACTED]. [REDACTED] suitable location. On 28 September 2012, the VWU provided the funds to cover the [REDACTED].

26. On 10 October 2012, Witness 178 was given [REDACTED] for the purpose outlined in paragraph 23 (iii) above. Witness 178 requested an update regarding [REDACTED]. The Prosecution referred the claim to the VWU, which informs us that the CAR field office has not yet forwarded the documents it needs to determine the claim and so has been unable to provide a tentative date for the Registrar's decision on the issue.

27. As with Witness 169, on 31 October 2012 the Prosecution was informed by the VWU that it is no longer pursuing the option of identifying a possible long-term solution for Witness 178 through [REDACTED]. The Prosecution has not yet received a formal explanation by the VWU on the reasons for this decision. However, the Prosecution reiterates the submission under paragraph 23 above which points to agreement of the 31 July 2012 between the Prosecution and the VWU that the risks to Witness 178 could be mitigated by [REDACTED] at his location.

28. The Prosecution continues to monitor the security and wellbeing situation of Witness 178 and will update the Chamber on the measures taken to address them.



Fatou Bensouda, Prosecutor

Dated this 15 Day of July 2016

At The Hague, The Netherlands