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Pénale
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**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 Response to 'Defence Request for Disclosure and Investigative Assistance concerning Witnesses 169 and 178'",
2 April 2014, ICC-01/05-01/08-3030-Conf**

Source: 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 Defence requests that it be provided with the telephone numbers and/or other contact details of Witnesses 169 and 178. It also requests that the Trial Chamber III (“Chamber”) order the Office of the Prosecutor (“Prosecution”) to disclose any investigative steps concerning (i) breaches of orders for protective measures and the contact between witnesses and (ii) the addressees of the 7 and 8 June letters and any further correspondence or publications concerning Exposed Witnesses. It also requests that the Chamber, in absence of any investigative steps, order the Prosecution to initiate such an investigation and provide a report on it.

2. The Prosecution submits that the Defence request raises issues that have either become moot or have already been dealt with. The Defence attempts a circumvention of several of the Chamber’s decisions merely because it disagrees with the rulings therein. Its attempt to raise anew issues that have extensively been dealt with and decided by this Chamber should not be allowed. The Prosecution respectfully requests the Chamber to reject the Defence’s request.

II. Procedural Background

3. On 3 October 2013, the Prosecution filed its confidential *ex parte*, Prosecution and Victims and Witnesses Unit (“VWU”) only, “Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED]” together with Annexes A and B (“Prosecution Filing 2827”).¹ It, *inter alia*, sought the Chamber's guidance as to the possible need, appropriateness and legal basis of any disclosure requirements resulting from the information contained in Prosecution Filing 2827.²

¹ ICC-01/05-01/08-2827-Conf-Exp, Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED], 3 October 2013, and confidential *ex parte* Annexes A and B.

² ICC-01/05-01/08-2827-Conf-Exp, Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED], 3 October 2013, and confidential *ex parte* Annexes A and B, para. 20.

4. On 25 October 2013, the Chamber issued its “Decision on the prosecution's ‘Information on contacts of Witnesses 169 and 178 with other witnesses located [...]’” (“Decision 2845”)³ in which it, *inter alia*, ordered the VWU to submit a report on issues addressed in the Prosecution Filing 2827, including an assessment of the security situation of the Individuals.⁴

5. On 7 November 2013, the Prosecution filed a redacted version of the Prosecution Filing 2827 and its Annexes, as confidential redacted.⁵

6. On 11 November 2013, the Defence filed its “Defence Motion concerning ‘Information on contacts with witnesses 169 and 178 with other witnesses’” (“Defence Filing 2872”),⁶ in which it, *inter alia*, requested that the Chamber order: (i) “the disclosure of any requests for payments or other benefits made by Witness 169, Witness 178, or any of the 22 [Individuals] and all details and dates of the payments or benefits provided to Witness 169, Witness 178, or any of the 22 [Individuals] by the Prosecution, the VWU, or the Registry, including those made in the period between 25 June 2013 and 3 October 2013”; (ii) “the disclosure of any recordings, statements or notes of interviews generated by the Prosecution during the contact with both Witness 169 and Witness 178, as well as Witness 119, Witness 42, Witness 38, Witness 68 and any of the other [Individuals], as well as “[REDACTED]” or any other intermediary with whom it has been in contact”; and (iii) the recall of Witness 169 and Witness 178.⁷

³ ICC-01/05-01/08-2845-Conf-Exp, Decision on the prosecution's 'Information on contacts of Witnesses 169 and 178 with other witnesses located [...]’ (ICC-01/05-01/08-2827-Conf-Exp), 25 October 2013. ICC-01/05-01/08-2845-Conf-Red, Confidential redacted version of "Decision on the prosecution's 'Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED]’ (ICC-01/05-01/08-2827-Conf-Exp)" of 25 October 2013, 5 November 2013.

⁴ ICC-01/05-01/08-2845-Conf-Red, paras. 11, 12 and 13(i).

⁵ ICC-01/05-01/08-2827-Conf-Red, ICC-01/05-01/08-2827-Conf-AnxA-Red, and ICC-01/05-01/08-2827-Conf-AnxB-Red.

⁶ ICC-01/05-01/08-2872-Conf, Defence Motion concerning “Information on contacts with witnesses 169 and 178 with other witnesses”, 11 November 2013.

⁷ ICC-01/05-01/08-2872-Conf, para. 50.

7. On 26 November 2013, the Chamber held a confidential *ex parte*, Registry only, status conference,⁸ in which it instructed the VWU to provide (i) a table enclosing updated information in relation to financial benefits allocated to the 22 Individuals; (ii) a report containing the history of the situation of Witnesses 169 and 178; and (iii) a summary of this report containing information that could be shared with the parties.⁹

8. On 29 November 2013, the VWU filed its confidential *ex parte*, VWU only, "Victims and Witnesses Unit's Report in relation to the Defence Motion ICC-01/05-01/08-2872-Conf pursuant to the Status Conference held on 26 November 2013" ("VWU Report 2912") together with confidential *ex parte*, VWU only, Annexes A, B, and C.¹⁰

9. On 6 December 2013, further to the Chamber's instruction, the VWU filed a confidential *ex parte* addendum to Annex C, entitled Annex D, containing information provided in Annex B which the Chamber considered to be potentially "material to the preparation of the defence".¹¹

10. On 18 December 2013, the Chamber issued its "Decision on 'Defence Motion concerning 'Information on contacts [of] Witnesses 169 and 178 with other witnesses'" ("Decision 2924"),¹² in which it, *inter alia*,: (i) ordered the Prosecution to formally disclose by 13 January 2014 the lesser redacted versions of the 7 and 8 June

⁸ ICC-01/05-01/08-2904, Order convening a confidential *ex parte*, Registry only, status conference, 21 November 2013.

⁹ See ICC-01/05-01/08-3015-Conf, Decision on "Defence Motion for the Admission of Documents related to Witness 169 and Witness 178", 13 March 2014, para. 4.

¹⁰ ICC-01/05-01/08-2912-Conf, Victims and Witnesses Unit's report in relation to the Defence motion ICC-01/05-01/08-2872-Conf pursuant to the Status Conference held on 26 November 2013, with confidential Annexes A, B, and C. Annexes A, B and C respectively provide the information requested by the Chamber during the status conference as set out in paragraph 12(i), (ii) and (iii) above.

¹¹ See ICC-01/05-01/08-3015-Conf, Decision on "Defence Motion for the Admission of Documents related to Witness 169 and Witness 178", 13 March 2014, para. 5.

¹² ICC-01/05-01/08-2924-Conf, Decision on "Defence Motion concerning 'Information on contacts [of] Witnesses 169 and 178 with other witnesses'", 18 December 2013.

2013 letters in accordance with eCourt protocol; (ii) ordered the Registry to reclassify its confidential *ex parte*, VWU only, “Victims and Witnesses Unit's Report in relation to the Defence Motion ICC-01/05-01/08-2872-Conf pursuant to the Status Conference held on 26 November 2013” (“VWU Report 2912”), together with three confidential *ex parte*, VWU only Annexes A, C, and D as confidential; (iii) rejected the Defence's request to recall Witnesses 169 and 178; and (iv) decided that any applications by the parties and participants for the admission into evidence of documents referred to in the Decision 2924 were to be submitted by 20 January 2014.¹³

11. On 18 December 2013, the Registry reclassified VWU Report 2912, along with its corresponding Annexes A, C, and D, as confidential.¹⁴

12. On 9 January 2014, the Prosecution filed a lesser redacted version of the Prosecution Filing 2827 as confidential redacted.¹⁵

13. On 10 January 2014, the Defence filed its “Defence Request for Leave to Appeal the Decision on the Defence Motion concerning contact between Witness 169 and 178 and other witnesses” (“Defence Filing 2932”).¹⁶

14. On 16 January 2014, the Prosecution filed its “Prosecution's Response to the Defence Request for Leave to Appeal the Decision on ‘Defence Motion concerning ‘Information on contacts [of] Witnesses 169 and 178 with other witnesses’” (“Prosecution Filing 2938”),¹⁷ in which it asked that the Chamber reject the Defence

¹³ ICC-01/05-01/08-2924-Conf, para. 38.

¹⁴ ICC-01/05-01/08-2912-Conf and confidential Annexes A, C, and D.

¹⁵ ICC-01/05-01/08-2827-Conf-Red2, ICC-01/05-01/08-2827-Conf-AnxA-Red2, and ICC-01/05-01/08-2827-Conf-AnxB-Red2.

¹⁶ ICC-01/05-01/08-2932-Conf, Defence Request for Leave to Appeal the Decision on the Defence Motion concerning contact between Witnesses 169 and 178 and other witnesses, 10 January 2014.

¹⁷ ICC-01/05-01/08-2938-Conf, Prosecution's Response to the Defence Request for Leave to Appeal the Decision on 'Defence Motion concerning 'Information on contacts [of] Witnesses 169 and 178 with other witnesses', 16 January 2014; ICC-01/05-01/08-2938-Conf-Corr, on 20 January 2014, the Prosecution filed a corrigendum to the Prosecution Response. Corrected Version of Prosecution's Response to the Defence Request

request for leave to appeal Decision 2924.¹⁸

15. On 20 January 2014, the Defence filed its “Defence Motion for the Admission of Documents related to Witness 169 and Witness 178” (“Defence Filing 2939”),¹⁹ in which it requests that the Chamber (i) order the formal disclosure in accordance with the eCourt protocol of the 7 June and 8 June 2013 letters and Annexes A, C, and D of VWU Report 2912, and (ii) admit into evidence the same.²⁰

16. On 20 January 2014, the Prosecution disclosed the 7 and 8 June 2013 letters to the Defence, in accordance with the eCourt Protocol.²¹ The 7 June 2013 Letter was assigned ERN CAR-OTP-0072-0504_R01 and the 8 June 2013 Letter was assigned ERN CAR-OTP-0072-0508_R01.

17. On 14 February 2014, the Chamber issued its “Decision on “Defence Request for Leave to Appeal the Decision on the Defence Motion concerning contact between Witnesses 169 and 178 and other witnesses”” (“Decision 2980”),²² in which it denied the Defence request for leave to appeal.²³

18. On 12 March 2014, the Defence filed its “Defence Request for Disclosure and Investigative Assistance concerning Witnesses 169 and 178” (“Defence Request 3013”).²⁴ The Defence requested that it be provided with the telephone numbers and/or other contact details of Witnesses 169 and 178. It also requested that the

for Leave to Appeal the Decision on “Defence Motion concerning ‘Information on contacts [of] Witnesses 169 and 178 with other witnesses’”, 20 January 2014, ICC-01/05-01/08-2938-Conf.

¹⁸ ICC-01/05-01/08-2938-Conf-Corr, para. 2.

¹⁹ ICC-01/05-01/08-2939-Conf, Defence Motion for the Admission of Documents related to Witness 169 and Witness 178, 20 January 2014.

²⁰ ICC-01/05-01/08-2939-Conf, para. 19 and p. 18 to 19.

²¹ ICC-01/05-01/08-2941-Conf, Prosecution’s Communication of Rule 77 Evidence Disclosed to the Defence on 20 January 2014, 20 January 2014, para. 2.

²² ICC-01/05-01/08-2980-Conf, Decision on “Defence Request for Leave to Appeal the Decision on the Defence Motion concerning contact between Witnesses 169 and 178 and other witnesses”, 14 February 2014.

²³ ICC-01/05-01/08-2980-Conf, para. 47.

²⁴ ICC-01/05-01/08-3013-Conf, Defence Request for Disclosure and Investigative Assistance concerning Witnesses 169 and 178, 12 March 2014.

Chamber order the Prosecution to disclose any investigative steps concerning a) breaches of orders for protective measures and the contact between witnesses and b) the addressees of the 7 and 8 June letters and any further correspondence or publications concerning [REDACTED] Witnesses. It also requests that the Chamber, in absence of any investigative steps, order the Prosecution to initiate such an investigation and provide a report on it.²⁵

19. On 13 March 2014, the Chamber issued its "Decision on "Defence Motion for the Admission of Documents related to Witness 169 and Witness 178"" ("Decision 3015").²⁶ It admitted into evidence all items related to Witnesses 169 and 178 as requested by the Defence: documents CAR-OTP-0072-0504_R01, CAR-OTP-0072-0508_R01, ICC-01/05-01/08-2912-Conf-AnxA, ICC-01/05-01/08-2912-Conf-AnxC and ICC-01/05-01/08-2912-Conf-AnxD.²⁷ The Chamber instructed the Registry to assign respective ERN and EVD-T numbers to all of the listed documents.²⁸

III. Request for classification

20. The Defence Request 3013 was filed confidentially. Also, given the references to filings and decisions of confidential nature, the Prosecution respectfully requests that the Chamber receive this response as a confidential document.

²⁵ ICC-01/05-01/08-3013-Conf, para. 39.

²⁶ ICC-01/05-01/08-3015-Conf, Decision on "Defence Motion for the Admission of Documents related to Witness 169 and Witness 178", 13 March 2014.

²⁷ ICC-01/05-01/08-3015-Conf, para. 33(a).

²⁸ ICC-01/05-01/08-3015-Conf, para. 33(b).

IV. Submissions

21. In its Request 3013, the Defence, *inter alia*, refers to “[t]he Prosecution’s deplorable attitude to disclosure...”²⁹ The Prosecution recalls that it is the Prosecution that brought the information to the Chamber’s attention seeking its guidance as to the possible need, appropriateness and legal basis of any disclosure requirements resulting from the information contained in Prosecution Filing 2827.³⁰ The Prosecution did not withhold this information from the Chamber or the parties. The Prosecution complied with all of the Chamber’s orders on the disclosure and scope of redactions to be applied to the filings. This, contrary to the Defence’s phrasing, shows due diligence.

22. In its Request 3013, the Defence, *inter alia*, with regard to Witnesses 169 and 178, also refers to “[d]isclosed material now reveals that these witnesses received [REDACTED] respectively from the ICC.”³¹ The Prosecution submits that this phrasing by the Defence, made outside the context as to how, from which organ of the Court and for what purpose the noted payments were made, may potentially mislead its reader, especially if the statement was ever to be made public through a reclassification of the Defence Request 3013 and other related or similar filings.³² Regarding the latter, the Prosecution brings to the Chamber’s attention another filing from the Defence, in which the Defence stated that “these filings and materials demonstrate, *inter alia*... (b) payments to Prosecution witnesses in the amounts of up to [REDACTED]”.³³

²⁹ ICC-01/05-01/08-3013-Conf para. 27.

³⁰ ICC-01/05-01/08-2827-Conf-Red2, Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED], 3 October 2013, and confidential *ex parte* Annexes A and B, para. 20.

³¹ ICC-01/05-01/08-3013-Conf, para. 25.

³² It is the Prosecution’s submissions that if and when the Chamber decides on what materials and/or documents related to Witnesses 169 and 178 should be reclassified as public, such information should be redacted. The issue on the public reclassification of the documents and its timing, is still a live issue before the Chamber.

³³ ICC-01/05-01/08-3005-Conf-Corr, Corrigendum to Defence Further Request for Reclassification of Documents related to Witness 169 and Witness 178, 7 March 2014, para. 3.

23. In the Prosecution's submissions, the Defence ought to exercise caution in phrasing its submissions. The Prosecution submits that for the sake of clarity, the reader should be provided with the context of the payments referenced by the Defence. It should be informed that they represent payments from the VWU and not from the Prosecution. Every expense is fully accounted for by the VWU. The amounts noted represent the total of the financial assistance provided to the witnesses over a significant period of time, [REDACTED]. The Defence is already aware of this. It has been provided with the VWU's detailed report containing the "Table relating to financial assistance provided [REDACTED]".³⁴ The VWU is a neutral entity operating within the Registry's organ of this Court. It is entrusted with the power and obligations to assess and address issues regarding the security and well-being of all witnesses to this Court, *irrespective* of whether they are witnesses called by the Prosecution or by the Defence. The VWU is obliged to treat equally all witnesses, based on its own, objective and independent assessment of the safety, security and well-being needs that each witness has, *irrespective* of whether they are called as witnesses by the Prosecution or by the Defence.

24. The Defence is aware of the VWU's position on this matter. Whilst dealing with issues related to redactions in a confidential filing, the VWU, *inter alia*, submitted:

"1. The VWU takes this opportunity to emphasise its neutrality, which places the VWU as *an independent entity to provide its equal services to the parties and participants* in accordance with the statutory provisions of the Court.

2. As a matter of principle, the VWU does not share the details of the funds allocated to witnesses [REDACTED] to the parties and participants of a proceedings. *All funds provided by the VWU are to assist the witness [REDACTED] assisted with the aim to mitigate any identified or perceived [REDACTED]*."³⁵

³⁴ ICC-01/05-01/08-2912-Conf-AnxD, Annex D to the Victims and Witnesses Unit's report in relation to the Defence motion ICC-01/05-01/08-2872-Conf pursuant to the Status Conference held on 26 November 2013, 6 December 2013, p. 2.

³⁵ ICC-01/05-01/08-2903-Conf, VWU's Observations in relation to the Defence Motion ICC-01/05-01/08-2872-Conf, 19 November 2013, paras. 1-2, emphasis added.

25. With regard to this issue, it is also important to emphasise, as noted by the Chamber in its Decision 2924, that the VWU's conclusion is that "none of the Individuals received any financial assistance that goes beyond the requirements of ordinary subsistence..."³⁶

26. The remaining Defence submissions raise issues that have either become moot or have already been dealt extensively with. In the Prosecution's submissions, the Defence attempts a circumvention of several of the Chamber's decisions merely because it disagrees with the rulings therein.

27. Regarding the Defence submission to obtain the telephone numbers and/or other contact details of Witness 169 and Witness 178, the Prosecution reiterates its prior position, that since the beginning of this case, the practice has been that contact details of witnesses were not provided to the other party, unless so authorised by the Chamber.³⁷ In fact, the Defence is aware that the information on contact details, not only of Witness 169 and Witness 178 but of all protected witnesses, has been redacted from all filings or annexes thereto reclassified as confidential *as per* the Chamber's instructions.³⁸

28. With regard to the grounds furnished by the Defence in support of the request to obtain the contact details of the two witnesses, such as the investigation into the collusion between the witnesses and/or the taking of written statements from them,³⁹ the Prosecution submits that they are all issues for which the parties have already made their respective submissions on and the Chamber has dealt and deliberated upon.

³⁶ ICC-01/05-01/08-2924-Conf, para. 33.

³⁷ ICC-01/05-01/08-3013-Conf, para. 13.

³⁸ See for example ICC-01/05-01/08-2827-Conf-Red2, ICC-01/05-01/08-2827-Conf-AnxA-Red2, and ICC-01/05-01/08-2827-Conf-AnxB-Red2.

³⁹ ICC-01/05-01/08-3013-Conf, paras. 27-29.

29. The Prosecution's submissions in this regard, available to the Defence, include, *inter alia*, the following:

"Further investigation by the Defence

18. The conclusions drawn by the Defence that "virtually all the [REDACTED] witnesses called by the Prosecution had been promised by and/ or were receiving sums of money from the ICC" are false and unsubstantiated. Even *arguendo*, Witness 169's allegations indicate that Witness 178 attempted to [REDACTED] approximately one year after the completion of the Prosecution's case. The Defence has distorted the information contained in the Prosecution's Submissions. In any event, any argument that Prosecution's [REDACTED] witnesses had a financial interest in testifying and collusion between them existed is unfounded and unsubstantiated.

19. The Defence request to further investigate the [REDACTED] and potential collusion between Prosecution witnesses, including a recall of Witnesses 169 and 178, is excessive and unnecessary.

20. The issue at stake is limited to the allegations made by Witness 169. The [REDACTED] have made no such allegations. Even with regard to Witnesses 169 and 178, however, the request for a recall is unwarranted. The Defence already had the opportunity to explore Witness 169's and Witness 178's credibility during their testimony. Witness 169's allegations refer to a timeframe long after the completion of his and their testimonies and do not warrant re-examination by the Defence of Witnesses 169 and 178."⁴⁰

30. The Chamber has extensively dealt with the submissions of all the parties and participants on these issues and has deliberated upon. It has, *inter alia*, held that:

"The Chamber notes the defence's allegation that "virtually all the [REDACTED] witnesses called by the Prosecution had been promised by and/or were receiving sums of money from the ICC". In relation to this allegation, the Chamber notes the VWU's submission that none of the Individuals received any financial assistance that goes beyond the requirements of ordinary subsistence." This submission is further supported by ICC-01/05-01/08-2912-Conf-Exp-AnxA, which will be communicated to all parties and participants by virtue of the present Decision.

Similarly, the Chamber is not convinced by the defence's assertion that the witnesses "acted as a collective bargaining unit" or that there was "collusion" between them. Indeed, the attempted contact allegedly initiated by Witness 178 took place after the relevant witnesses testified and, as noted in the Prosecution Submission, those witnesses who could be contacted by the prosecution to verify the information stated that they refused to attend any such meeting. Accordingly, on the basis of the material before it, the Chamber finds that the defence's assertion regarding "collusion" of witnesses is unsubstantiated."⁴¹

31. In relation to the Defence's request to recall Witnesses 169 and 178, the Chamber, in noting the Defence's submission that disclosure of the requested information "put into admissible form for reception into evidence, may well obviate the need for the recall of any witnesses", *inter alia*, ordered "the Registry to provide all parties and participants with any relevant information relating to the interactions

⁴⁰ ICC-01/05-01/08-2897-Conf, paras. 18-20.

⁴¹ ICC-01/05-01/08-2924-Conf, paras. 33 and 34.

between Witnesses 169 and 178 and the Court” and the Prosecution to “formally disclose the lesser redacted versions of the letters of 7 and 8 June 2013 in accordance with the eCourt protocol.”⁴²

32. The Chamber reasoned that “[I]f ultimately admitted into evidence by the Chamber following an assessment under the three-part admissibility test”, these documents may provide the parties and participants with an adequate basis to make any related submissions on the witnesses’ credibility which they consider necessary. The Chamber therefore considers that there is no good cause to order the recall of Witnesses 169 and 178.”⁴³

33. On 13 March 2014, the Chamber issued its Decision 3015.⁴⁴ It admitted into evidence all items related to Witnesses 169 and 178 as requested by the Defence: documents CAR-OTP-0072-0504_R01, CAR-OTP-0072-0508_R01, ICC-01/05-01/08-2912-Conf-AnxA, ICC-01/05-01/08-2912-Conf-AnxC and ICC-01/05-01/08-2912-Conf-AnxD.⁴⁵

34. With regard to the Defence submissions on the source of the list of 21 witnesses and the recipients of the letters, the Prosecution submits that the Defence attempts to blur the lines between an inquiry related to (i) incriminating and exonerating circumstances regarding the credibility of the evidence and, (ii) a breach of witness protective measures impacting witnesses’ safety and well-being.⁴⁶

35. With regard to incriminating and exonerating circumstances regarding the credibility of the evidence, the Prosecution submits that, as shown in the previous

⁴² ICC-01/05-01/08-2924-Conf, para. 36.

⁴³ ICC-01/05-01/08-2924-Conf, para. 37.

⁴⁴ ICC-01/05-01/08-3015-Conf, Decision on “Defence Motion for the Admission of Documents related to Witness 169 and Witness 178”, 13 March 2014.

⁴⁵ ICC-01/05-01/08-3015-Conf, para. 33(a).

⁴⁶ ICC-01/05-01/08-3013-Conf, paras. 30, 32 – 34, 37.

paragraphs (paragraphs 27–33), such issues are already addressed. The Prosecution has provided the participants with the information on relevant measures considered and its assessment thereof. The Prosecution reminds the Defence of its following submissions made upon its consideration of related aspects:

“15. On 25 June 2013, the Prosecution placed separate telephone calls to Witness 169 and Witness 178 [REDACTED]:

- Witness 169 stated that (i) [REDACTED]
- Witness 169 explained that the issue of writing letters is not new since he is used to that when he is unhappy with the ICC. He has the impression that this is the only way to provoke a reaction from the ICC which cares so much about its reputation. Witness 169 explained that the processing of their claims lasted for too long. Together with Witness 178 they are convinced that in order to avoid bad publicity and protect their reputation the ICC will grant their requests.
- Witness 169 was briefed about security implications of his behaviour, the potential impact on the security of other witnesses, offences under Article 70 of the Statute and the consequences therein. He was asked to [REDACTED].
- Witness 178 confirmed his role in [REDACTED]. He further stated that he would ‘continue’ to act in this way until he receives his loss of income.
- Witness 178 complained about the fact that he tried several time to reach the OTP unsuccessfully and it’s only by writing this type of letter that consideration is given to his situation.
- Witness 178 was also briefed about security implications of his behaviour, the potential impact on the security of other witnesses, offences under Article 70 and the consequences therein. He was asked to refrain [REDACTED].”⁴⁷
- ...
- “18. Nevertheless, the Prosecution considers that, to date, there have been no indications of intent to harm or intimidate any of the witnesses by Witness 169 and/or Witness 178. Furthermore, there are no allegations or suggestions, to date, that the perceived entitlements and/or ‘promises’, referenced by the two witnesses above, could have compromised witness testimonies, given the current phase of the case and the post-testimonies’ timing of their communication of the [REDACTED].”⁴⁸

36. In a subsequent related filing, the Prosecution, *inter alia*, submitted:

“6. In its filing on the information [REDACTED] of witnesses 169 and 178 [REDACTED] (“Filing 2827”), the Prosecution informed the Chamber that it contacted witnesses 169 and 178 about their conduct, it briefed them about the security implications of their behaviour, their impact on the security of other witnesses, offences under Article 70 and the consequences therein.

7. In this regard, the Prosecution informed the Chamber that there has been no indication that witnesses 169 and 178 intended to harm any of the [REDACTED] witnesses. The Prosecution concluded this after it discussed the conduct of witnesses 169 and 178 with some of the [REDACTED]. None of them reported threats, [REDACTED] intimidation or retaliation against them by witnesses 169 and 178. The Prosecution briefed witnesses 169 and 178 on, *inter alia*, offences under Article 70 of the Statute, to discourage them to continue [REDACTED].

⁴⁷ ICC-01/05-01/08-2827-Conf-Red2, para. 15.

⁴⁸ ICC-01/05-01/08-2827-Conf-Red2, para. 18.

8. The Prosecution informs the Chamber that, as of the date of this filing, it has not received any reports of a security nature from any of the [REDACTED] by the conduct of witnesses 169 and 178.

9. Based on the above, the Prosecution has no reason to undertake any measures pursuant to Article 70 of the Statute regarding the conduct of witnesses 169 and 178. The Prosecution will continue to monitor the situation.”⁴⁹

37. Similarly with regard to a breach of witness protective measures impacting witnesses’ safety and well-being, the Prosecution reminds the Defence of its following submissions made upon its consideration of related aspects:

“16. Based on the information provided above, the Prosecution considers that [REDACTED].

17. Given that Witness 169 and Witness 178 have demonstrated persistence in [REDACTED], and that Witness 178 has stated that he will not desist, the Prosecution considers that [REDACTED].

18. Nevertheless, the Prosecution considers that, to date, there have been no indications of intent to harm or intimidate any of the witnesses by Witness 169 and/or Witness 178. Furthermore, there are no allegations or suggestions, to date, that the perceived entitlements and/or ‘promises’, referenced by the two witnesses above, could have compromised witness testimonies, given the current phase of the case and the post-testimonies’ timing of their communication of the [REDACTED].”⁵⁰

38. The Prosecution recalls that the Chamber has also ordered the VWU to prepare a full assessment of the security situation of the [REDACTED].⁵¹ In its latest report to the Chamber, the VWU outlined the [REDACTED].⁵²

39. The Prosecution and the VWU continue their joint efforts to establish contact with the concerned witnesses. They have been able to establish contact [REDACTED].⁵³ The information obtained confirms the prior submissions from the Prosecution as outlined in paragraphs 35–38 above. More specifically, on 12 November 2013, the Prosecution and VWU were able to establish contact with CAR-OTP-PPPP-0038 (“Witness 38”) who confirmed what has been previously

⁴⁹ ICC-01/05-01/08-2867-Conf, Report pursuant to Chamber’s decision on the Prosecution’s information on contacts of witnesses 169 and 178 with other witnesses, 8 November 2013, paras. 6-9.

⁵⁰ ICC-01/05-01/08-2827-Conf-Red2, paras. 16-18.

⁵¹ ICC-01/05-01/08-2845-Conf-Red, Confidential redacted version of “Decision on the prosecution’s ‘Information on contacts of Witnesses 169 and 178 with other witnesses located [REDACTED]’ (ICC-01/05-01/08-2827-Conf-Exp)” of 25 October 2013, 5 November 2013, paras. 7 and 13.

⁵² ICC-01/05-01/08-3010-Conf, Registry’s Further Report on the functioning of the Initial Response System in the Central African Republic, 10 March 2014, p. 3, para.5.

⁵³ VWU has already submitted its report on the security assessment summarising the information from the telephone conversations with witnesses contacted until 28 February 2014. See ICC-01/05-01/08-2975-Conf-Anx-Red.

summarised.⁵⁴

40. On 17 January 2014, the Prosecution and VWU operating jointly were able to establish contact with only two witnesses. They, *inter alia*, provided the following information:

- CAR-OTP-PPPP-0110 ("Witness 110"): Witness 110 confirmed receiving a telephone call from one [REDACTED]. She told him that she is not interested in requesting money from the Court and warned him against calling her again. Surprised on how [REDACTED] she asked him but received no answer. The caller proposed to her a meeting but she declined. She has received no other telephone calls. She has not received any threat in relation to her participation in the proceedings before the ICC;
- CAR-OTP-PPPP-0075 ("Witness 75"): Witness 75 has not received any telephone call in relation to the testimony or requesting a signature for claiming money from the Court.

41. On 17 March 2014, the Prosecution and VWU established contact with four other witnesses. They, *inter alia*, provided the following information:

- CAR-OTP-PPPP-0022 ("Witness 22"): Witness 22 has not been contacted by anyone regarding any claim of loss of income;
- CAR-OTP-PPPP-0069 ("Witness 69"): Witness 69 has not been contacted by anyone concerning anything relating to any form of claims of payments from the Court;
- CAR-OTP-PPPP-0042 ("Witness 42"): Witness 42 repeated his accounts as previously summarised.⁵⁵ He stated that one "[REDACTED]" had met him and that he had [REDACTED] and had left with him documents he

⁵⁴ ICC-01/05-01/08-2827-Conf-Red2, para. 13.

⁵⁵ ICC-01/05-01/08-2827-Conf-Red2, para. 13.

had said were his financial settlements with the Court. [REDACTED] had told him that he had another witness of [REDACTED] with him in their project. [REDACTED] had asked him to join him, hold a meeting with the other witnesses so that they could claim their loss of income to the Court. [REDACTED] had asked whether Witness 42 could help contact witnesses [REDACTED] Witness 42 refused. A few days later Witness 42 told [REDACTED] that he does not want to take part in their project. Witness 42 has not heard from [REDACTED] since;

- CAR-OTP-PPPP-0068 (“Witness 68”): Witness 68 repeated her accounts as previously summarised.⁵⁶ She stated that a man called her one day on the phone and said that he was also an ICC witness. This person [REDACTED]. He had said to Witness 68 that the Court had not paid them and asked her to join in claiming the payment. The man said he would call back. Witness 68, in wanting to check the caller’s information, contacted a VWU’s field staff who advised against. The caller never called her back. Witness 68 expressed her concerns regarding the fact that the [REDACTED]. She also stated her concerns due to the current situation in her country of residence and the failure to establish contact with the Court.

42. On 17 March 2014, the Prosecution and VWU were able to also contact Witness 169. He confirmed his previously summarised accounts.⁵⁷ He, *inter alia*, stated:

- [REDACTED] (“Witness 178”) brought to him [REDACTED]. He asked that they should hold a meeting with all of the witnesses so that they can claim their loss of income from the Court. Witness 178 was particularly interested in the project as he was not satisfied with the Court’s response to his claim for loss of income. Witness 178 did not tell him

⁵⁶ ICC-01/05-01/08-2827-Conf-Red2, para. 14.

⁵⁷ ICC-01/05-01/08-2827-Conf-Red2, para. 15.

[REDACTED] the other witnesses. He got angry at Witness 169's insistence to know. They no longer communicate with each other. It was only Witness 169 and Witness 178 who started this. No one else was with them. Witness 169 contacted [REDACTED] ("Witness 42"), but he failed to convince him to join them. Witness 178 contacted the [REDACTED]. To Witness 169's knowledge, the project never materialised and the meeting never took place.

43. Based on the information previously submitted with the Chamber, parties and participants⁵⁸ and as shown above, since June 2013 and until the latest attempt on 17 March 2014, the Prosecution was able to establish contact with [REDACTED] (excluding Witness 169 and Witness 178). Only five of them (Witnesses 38, 42, 68, 110, and 119) were contacted either by Witness 169 or Witness 178 and all of them rejected their proposals. They have had no further contact with Witness 169 or Witness 178. None of them reported any threat onto them or their dependants as a consequence of their refusal to cooperate with Witness 169 or Witness 178 and/or the possible dissemination of Witness 169's letter. The other four contacted witnesses (Witnesses 22, 69, 75 and 209) had not been contacted by either Witness 169 or Witness 178.

44. The Prosecution, given all noted difficulties to effectively address and monitor the situation in regard to [REDACTED], has taken all measures possible since the time [REDACTED]. The Prosecution submits that, to this date, there is no information to indicate that there [REDACTED],⁵⁹ [REDACTED].

⁵⁸ ICC-01/05-01/08-2827-Conf-Red2.

⁵⁹ ICC-01/05-01/08-3013-Conf, paras. 35-37.

V. Relief Sought

45. For the reasons set out above, the Prosecution respectfully requests the Chamber to reject the Defence request.



Fatou Bensouda, Prosecutor

Dated this 15th Day of July 2016

At The Hague, The Netherlands