

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 25 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 Response to Defence Request for Modification of Redactions", 17 October 2011, ICC-01/05-01/08-1845-Conf

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. On 23 September 2011, the Defence filed its “Defence Request for Modification of Redactions” (“Defence Request”)¹ requesting that Trial Chamber III (“Chamber”) order the Office of the Prosecutor (“Prosecution”) to remove redactions in the statements of Witness CAR-OTP-PPPP-0213 (“Witness 213”) related to purported [REDACTED] the witness, and that the Defence be informed as to whether [REDACTED].

2. For the reasons stated below, the Prosecution requests that the Defence Request be rejected. The redactions are necessary to protect the safety of Witness 213 and his family. They are also consistent with the Chamber’s “Decision on the prosecution's applications for redactions”² (“Chamber’s Decision on redactions”), which authorized the redactions for protective reasons. Furthermore, the objective for which the Defence requests the lifting of the redactions can be achieved without removing the redactions, as the Defence is already in possession of information sufficient for it to explore credibility issues during its examination of Witness 213.

II. Request for confidentiality

3. The Prosecution requests that this document be received as “Confidential” as it responds to the Defence Request, which is currently classified as confidential.

III. Prosecution’s response

4. In an e-mail to the Chamber dated 30 August 2011, the Defence requested that the Prosecution be directed to lift redactions in the statements of Witness 213, so as to

¹ ICC-01/05-01/08-1775-Conf, Defence request for modification of redactions, 23 September 2011.

² ICC-01/05-01/08-815-Red2, Redacted Decision on the prosecution's applications for redactions (ICC-01/05-01/08-772-Conf, ICC-01/05-01/08-778-Conf and ICC-01/05-01/08-786-Conf), 9 July 2010.

disclose information related to the [REDACTED] and to whether the Prosecution [REDACTED].³

5. The Chamber reviewed the redactions that the Defence requested be lifted and then informed the Defence that the redactions - particularly those related to Witness 213's [REDACTED] - are consistent with the Chamber's Decision on redactions.⁴ The Chamber further observed that the redactions in question do not relate to any [REDACTED] in relation to Witness 213's testimony. The Chamber finally instructed the Defence to file an application if new facts or circumstances establish a basis to revisit the Chamber's Decision on redactions. This Defence Request followed.

6. The Chamber found in its Decision on redactions that the redactions "are necessary to ensure the safety of the witness and his family ... and no lesser measures appear to be feasible to ensure the continued safety and security of the witness and his family members."⁵ Notwithstanding the Chamber's 2 September email to the Defence, the Defence Request adds no new facts or circumstances; rather, it only restates its 30 August email request that the Chamber remove the redactions in Witness 213's statements related to [REDACTED].

7. Turning to the justification for the request, the Defence contends that its ability to assess Witness 213's credibility is restricted by the redactions. It contends the information related to Witness 213's "[REDACTED]" might establish that his appearance as a Prosecution witness [REDACTED].⁶ The Chamber, however, has already reviewed the redactions and informed the Defence that they relate to protective measures for the witness and his family and do not further reflect

³ E-mail from the Defence team of Jean-Pierre Bemba Gombo to the Chamber on 30 August 2011.

⁴ E-mail from the Chamber to the Defence team of Jean-Pierre Bemba Gombo on 2 September 2011.

⁵ ICC-01/05-01/08-815-Red2, at para. 18.

⁶ Defence Request, at paras. 13 and 14.

[REDACTED], such as [REDACTED] in the *Lubanga* case by the witness referred to by the Defence.⁷

8. In addition, the Prosecution disagrees with the Defence argument that “while the impugned redactions remain in place, the Defence is not in a position to explore this point during Witness 213’s testimony, or to submit on any effect it may have on his credibility”.⁸ The redactions do not limit the ability of the Defence to ask relevant questions during cross-examination - including when the witness requested protective measures, whether he [REDACTED] and, if so, when he [REDACTED], and whether he [REDACTED] - subject only to the Chamber’s authority to protect against the disclosure of security-related information by counsel or the witness himself.

9. Thus, maintaining the redactions is necessary to ensure the safety of Witness 213 and his family, and they are in no way prejudicial to, or inconsistent with the rights of the Accused and a fair and impartial trial.

IV. Conclusion

10. In light of the foregoing, the Prosecution respectfully requests that the Chamber reject the Defence Request.



Fatou Bensouda, Prosecutor

Dated this 25th Day of July 2016

At The Hague, The Netherlands

⁷ [REDACTED].

⁸ Defence Request, at para.18.