

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08
Date: 21 October 2008

PRE-TRIAL CHAMBER III

Before: Judge Fatoumata Dembele Diarra (Presiding Judge)
Judge Hans-Peter Kaul
Judge Ekaterina Trendafilova

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

Under Seal

**Ex Parte, Prosecutor and Victims and Witnesses Unit only
Prosecution's Submissions of Information concerning Witness 0029**

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

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Mr Simo Väätäinen

Detention Section

**Victims Participation and Reparations
Section**

Other

Procedural Background

1. On 1 October 2008 the Pre-Trial Chamber III (hereinafter referred to as “PTC”) issued its “Second Decision on the Prosecutor’s requests for redactions” (hereinafter referred to as “The Decision”), in which the Prosecution’s requests for redactions to the witness statements and related documents, concerning, *inter alia*, witness 0029, were partially granted.¹
2. In compliance with the above-mentioned decision, on 3 October 2008 the Office of the Prosecutor (hereinafter referred to as “Prosecution”) filed with the PTC the “Prosecution’s Communication of disclosure of incriminating evidence pursuant to the Second Decision on the Prosecutor’s requests for redactions dated 1 October 2008”,² with attached the List of Disclosed Materials as Annex A, in which the witness statements with authorized redactions, disclosed to the Defence on 3 October 2008, were listed, including that of witness 0029.³
3. As explained by the Prosecution in its “Corrigendum to “Prosecution’s Communication of disclosure of incriminating evidence pursuant to the Second Decision on the Prosecutor’s requests for redactions dated 1 October 2008”,⁴ which was filed on 7 October 2008, the name of the witness identified as witness 0029, whose identity had not been authorised for disclosure to the Defence, was inadvertently mentioned in the above-mentioned Annex A. The Prosecution also requested to the PTC that the Defence be ordered not to disclose Annex A and/ or the name of witness 0029 to the suspect, and not to use the information in any way, in addition to other remedies, if deemed appropriate by the PTC.
4. On 8 October 2008, during an *ex parte* Status Conference held by the PTC, the Prosecution informed the Chamber that it made numerous attempts to reach witness 0029 after the incident but to no avail at that stage.⁵

¹ ICC-01/05-01/08-135-Conf

² ICC-01/05-01/08-139-Conf

³ ICC-01/05-01/08-139-Conf-Anx A

⁴ ICC-01/05-01/08-139-Conf-Corr

⁵ ICC-01/05-01/08-T-6-CONF-EXP

5. On 17 October 2008 the PTC issued its “Ordonnance relative à la protection du témoin 0029” (hereinafter referred to as “The Ordonnance”), whereby the Prosecution was ordered to inform the PTC about the risks for witness 0029 and the measures taken, if any, to ensure her protection.⁶

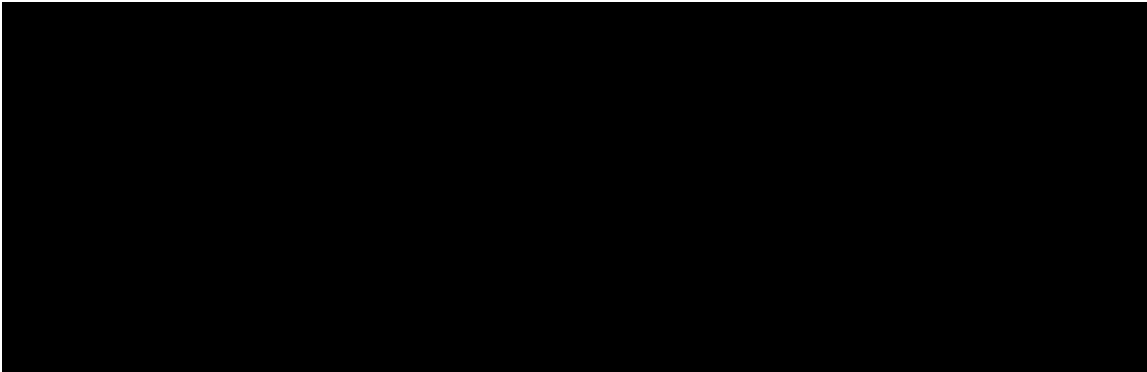
Security Situation of Witness 0029 and Measures for Protection taken after the Disclosure of her Identity

6. Further to meeting and consulting with the Victims and Witnesses Unit (hereinafter referred to as “VWU”), in compliance with paragraph 10 of the Ordonnance, the Prosecution is hereby submitting the information requested by the PTC.
7. After the name of witness 0029 was inadvertently disclosed to the Defence, the witness could be finally be reached on 15 October 2008. Witness 0029 explained that her telephone had been switched off for days, as she was out of the Central African Republic.
8. Witness 0029 was then informed of the disclosure of her name and of the immediate measures taken by the Prosecution in order to prevent the disclosure of her name to the suspect, namely informing the Chamber and seeking a non-disclosure order. She was also advised to pay attention to her personal security and reminded of the fact that [REDACTED]
[REDACTED]
she should have resort to it, should any security concern arise.
9. Witness 0029 stated that she had moved from her previous house to another house in Bangui. She also added that nothing happened to her after her name was disclosed to the Defence.
10. On 16 October 2008 witness 0029 was called again by the Prosecution from The Hague. During this second telephone conversation she confirmed the prior communication and its content. Witness 0029 was then reassured about the steps taken by the Prosecution after her name had been revealed to the Defence.

⁶ ICC-01/05-01/08-167-CONF-EXP

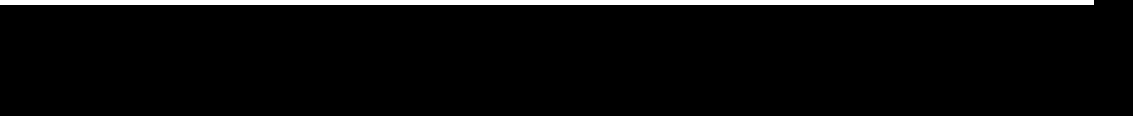
Protective Measures to address the Risks of Witness 0029

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12. Although witness 0029 is somehow known to the public [REDACTED], the anonymity of her relationship with the International Criminal Court (hereinafter referred to as “ICC”) has protected her from threat, intimidation and any other malicious act to date. The granting of redactions to her statement and [REDACTED] [REDACTED] have been sufficient measures to protect her safety, as her identity as a prosecution’s witness has remained unknown.

Disclosure of her identity could have exposed her but, according to the information provided by witness 0029 herself, she has not been subject of any intimidation or other similar acts in almost three weeks of the disclosure of her identity to the Defence. [REDACTED]

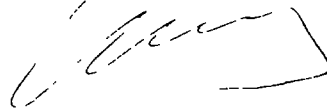


13. The Prosecution respectfully submits that, in the light of the above, a non-disclosure order would provide adequate guarantee that witness 0029 will not suffer consequences of the inadvertent disclosure of her identity.
14. The Prosecution further stresses that Article 8(4) of the Code of Professional Conduct for Counsel imposes to counsels not to reveal the identity of protected victims and witnesses, or any confidential information that may reveal their identity and whereabouts, unless they have been authorized to do so by an order of the Court. In addition, and consistent with best practices, the witness was reminded of [REDACTED] in case of security concerns. Finally, the Prosecution will ensure that [REDACTED]

[REDACTED]

15. The Prosecution therefore submits that given the above-mentioned circumstances, the risks for witness 0029 can be managed by a non disclosure order and strengthening a range of protective measures currently in place, which include [REDACTED], the use of best practices, by the Prosecution and VWU, [REDACTED]

[REDACTED]



Luis Moreno-Ocampo, Prosecutor

Dated this 21st day of October 2008

At The Hague, The Netherlands