

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 August 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 provision of an update on the security implications of the lifting of redactions”, 25 May 2010, ICC-01/05-01/08-780-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

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations Other
Section**

Introduction

1. The Office of the Prosecutor (“Prosecution”) submits its update on the security implications of the lifting of redactions to witness statements and related documents pursuant to the order of Trial Chamber III (“Chamber”) on 20 May 2010.¹

2. The security concerns that underlay the Prosecution’s original application to permit and maintain certain redactions (see para. 4, *infra*) continue to apply. Balancing the legitimate needs of the Defence against the compelling security implications for witnesses and ongoing investigations, the Prosecution submits that the Chamber should leave in place redactions to: (a) the locations of Prosecution interviews; (b) the identities of Prosecution field staff; and (c) the photograph of a Prosecution investigator. With the exception of the witnesses whom the Prosecution seeks inclusion into the International Criminal Court Protection Program (“ICCP”), the Prosecution does not object to disclosure of photographs and addresses of Prosecution witnesses, provided that the Chamber puts in place a mechanism to control and supervise the instances and the manner in which the Defence uses the disclosed information in conducting its investigation. The Prosecution’s position – that locations of interviews and the disclosure of the identity of Prosecution staff are not necessary for the preparation of the Defence, and that photographs and addresses of witnesses can be disclosed subject to judicially imposed limitations on their dissemination -- is consistent with the approach already taken by Trial Chambers I and II.

3. This filing focuses on providing the Chamber with an update on the security implications of the possible lifting of redactions. During the upcoming status conference, the Prosecution will be prepared to make more detailed submissions to the Chamber with respect to the restrictions that should be put in place for permitting the Defence to

¹ Email sent by Legal Officer to the Prosecution on 20 May 2010 at 16:43.

use information regarding the residential address or a photograph of a protected witness for the purposes of its investigations.

Background

4. On 26 October 2009, the Prosecution submitted its “Request to Lift, Maintain and Apply Redactions to Witness Statements and Related Documents” seeking limited redactions to be applied to the statements of witnesses it intends to introduce at trial.² The Prosecution requested limited redactions to be applied to the following categories of information: (a) fixed residential addresses of witnesses and their family members; (b) photographs of witnesses; (c) the exact location where the Prosecution conducts its witness interviews; (d) identifying information of the Prosecution’s field staff; and (e) in one statement, the photograph of an investigator.³

5. On 4 November 2009, the Chamber issued its “Order on disclosure of evidence by the Office of the Prosecutor” in which it provisionally ordered the Prosecution to disclose the materials indicated in its request in their current redacted form pending a decision by the Chamber on the Prosecution’s request of 26 October 2009.⁴

6. Between 11 and 30 November 2009, the Prosecution disclosed all the materials referred to in the Chamber’s order of 4 November 2009 applying redactions in the manner ordered by the Chamber.⁵

7. On 5 May 2010, the Chamber further ordered the Prosecution to disclose to the Defence the statements of Witness 209 and Witness 213, applying redactions where

² ICC-01/05-01/08-572-Conf-Exp.

³ *Ibid.*

⁴ ICC-01/05-01/08-590, para. 6.

⁵ ICC-01/05-01/08-605, ICC-01/05-01/08-606, ICC-01/05-01/08-627, ICC-01/05-01/08-628 and ICC-01/05-01/08-629.

necessary and providing justification for redactions sought.⁶ In compliance with this order, the Prosecution disclosed to the Defence the statements of Witness 209 on 10 May 2010,⁷ and Witness 213 on 20 May 2010 applying limited redactions in a manner consistent with its approach in its request of 26 October 2009.⁸

8. This request is made pursuant to Rule 81(4) and Rule 81(2) of the Rules of Procedure and Evidence (“Rules”).

Request for confidentiality

9. The Prosecution requests that this filing be received by the Chamber as “Confidential, *Ex Parte*, Prosecution and the Victims and Witnesses Unit only” as it relates to filings that are subject to the same level of confidentiality. In addition, the Chamber submitted its instructions to the Prosecution only.

Security update on the implications of lifting of redactions

10. The Prosecution remains concerned about the security of its witnesses and the need for the Chamber to maintain sufficient protections. The Prosecution is also aware that any measures put in place to protect victims and witnesses shall not unfairly prejudice the Defence.

11. The current update on the security implications on the lifting of redactions is divided into four parts. The first part relates to the exact locations where the Prosecution conducts witness interviews; the second part relates to identifying information of the Prosecution’s field staff; the third part concerns the photograph of an investigator in one statement; and the final part concerns the fixed residential addresses and photographs of witnesses.

⁶ ICC-01/05-01/08-767-Conf-Exp.

⁷ ICC-01/05-01/08-771 + Conf-Exp-AnxA.

⁸ ICC-01/05-01/08-777 + Conf-Exp-AnxA.

i. Exact locations where the Prosecution conducts its interviews

12. Disclosure to the Defence of information relating to the location where the Prosecution conducts interviews with witnesses would place third parties, including owners of the premises where interview are conducted, at risk on account of their cooperation with the Court.

13. [REDACTED]. Consequently, disclosure of the Prosecution's interview locations may be detrimental to ongoing and future investigations not only in the current case, but also in other cases and situations that are being investigated. Additionally, disclosure may affect [REDACTED] for future investigations by the Prosecution. Thus, the secrecy of the interview locations is necessary to protect ongoing and future investigations.

14. At the same time, the Defence does not need this information to conduct effective Defence investigations. Thus, the redactions sought will not affect the fairness of the proceedings.

15. Trial Chamber I in the *Lubanga* case granted permanent redactions to information revealing interview locations.⁹

ii. Information identifying Prosecution's field staff

16. The Prosecution assesses that the risks associated with disclosing identifying information of its field staff are high. In addition to jeopardizing the safety of the staff members themselves, disclosure may compromise ongoing and future investigations as well as the security of witnesses. Absent any need by the Defence for this information to conduct its investigation, redactions to the field staff's identities should be retained.

⁹ ICC-01/04-01/06-2183, para. 23.

17. The Prosecution's field staff are mostly local staff members. Identifying them and associating them with the Prosecution and its investigations will put them and their families at risk. The local Prosecution's field staff also maintain contact with actual or potential witnesses or other persons assisting the Prosecution in its investigation. Hence, anything that identifies them and ties them to the Prosecution may transfer the risk as well to other persons with whom they are in contact, and with those persons' families.

18. There are a limited number of field staff who support the Prosecution's operations in the Central African Republic ("CAR"). If they are identified, it may deny the Prosecution the ability to rely on these persons to operate on its behalf in the field. Anonymity is necessary for field staff to carry out their task, [REDACTED].

iii. Photograph of a Prosecution's investigator in one statement

19. Dissemination of the photograph of an investigator who frequently travels to Bangui for investigative purposes may compromise his safety and the security of persons with whom he associates in the field, as well as ongoing investigations. Nor is it necessary for the effective conduct of a Defence investigation. On this basis, the Appeals Chamber found that redactions of "identifying information of current and former Prosecution Staff" may be granted on a case-by case basis.¹⁰

iv. Redactions relating to fixed residential addresses and photographs of witnesses

20. The Prosecution draws a distinction between the purposes for which access may be given to the Defence to the fixed residential addresses or photographs of witnesses: access may be provided: (a) solely for use in the courtroom during proceedings; or (b) the use of such addresses and photographs for the purposes of investigations outside the

¹⁰ ICC-01/04-01/07-475, paras. 89-108, para. 91.

courtroom. With regard to the former, the Prosecution assesses that disclosure does not result in a significant increase in the risk to the witnesses in question. This is so because the Chamber would retain control over the use of such addresses and photographs in the courtroom in a manner that balances the rights to a fair trial against protection of victims and witnesses.

21. However, if the Defence were to use the disclosed information indiscriminately for the purposes of its investigations (for instance, if it would show photographs of protected witnesses to third persons), this could measurably increase the risk to the witnesses and their family members. The Prosecution is concerned that widespread use of addresses and photographs will enable a much larger group of people to identify the witnesses by sight and link them to the Court's proceedings. [REDACTED].¹¹

22. Additionally, use of the disclosed material for the purposes of the Defence investigations would have an impact on [REDACTED]¹² The concerns are amplified in circumstances of witnesses who are considered vulnerable. Using the photographs of vulnerable witnesses without informing or seeking their consent first may possibly lead to difficulties [REDACTED].¹³

23. In order to prevent and/or manage any such increased risk, the Prosecution requests that the Chamber impose restrictions on the circumstances and the manner in which the Defence may use the disclosed information regarding the addresses and photographs of witnesses.

¹¹ See the VWU's assessment of risk resulting from the use of photographs of Prosecution witnesses for the purposes of Defence investigations (ICC-01/04-01/07-2092-Conf-Anx).

¹² ICC-01/04-01/07-2092-Conf-Anx, p.2, para.3. VWU provided extensive recommendations to Trial Chamber II in the *Katanga* case on the manner and circumstances in which the Defence may use photographs of Prosecution witnesses during its investigations.

¹³ *Ibid.*

24. First, the Prosecution requests that the Chamber regulate the manner in which the Defence may use the photographs and addresses of protected Prosecution witnesses.¹⁴ In addition, the Prosecution requests the Chamber to impose conditions upon the Defence for the use of photographs and disclosure of addresses of these witnesses to third parties during its investigations.¹⁵ In particular, the Defence should not reveal the image or address of protected Prosecution witnesses to third persons without the Chamber's authorization, which in turn should not be granted until the Victims and Witnesses Unit ("VWU") has assessed the impact of disclosure on each Prosecution witness.¹⁶

25. The Chamber should regulate and oversee, in accordance with its duty under Article 68(1) of the Rome Statute, the instances and manner in which this information is used by the Defence. In particular, use of such photographs and addresses should be authorized on a case-by-case basis and upon a specific application by the Defence only. In each case, the Chamber should balance the rights of the Accused to a fair trial against the need for protection of victims and witnesses. In deciding whether and under what conditions the Defence may use the disclosed information for its investigations, the Chamber may consider the impact that use of this information may have on the security risk of witnesses, the investigative purpose to be achieved by that particular line of inquiry, and whether alternative modes of investigations are exhausted or not feasible.

26. Further, the Defence should be instructed to keep a record of all circumstances of use of photographs and addresses, including the names of the persons in the Defence teams making such contact. This information should be made available to the Chamber and to the VWU, to be considered when assessing the impact that the investigations had and may continue to have on the security risk of Prosecution witnesses.

¹⁴ This may be done in a manner similar to how it has been regulated in the *Katanga* case (see ICC-01/04-01/07-1134, paras. 25-31).

¹⁵ This may be done in a manner similar to how it has been regulated in the *Katanga* case (see ICC-01/04-01/07-1734, paras. 15-20).

¹⁶ *Ibid.*

27. While the above approach may be followed for most Prosecution witnesses, the Prosecution opposes disclosure for any purposes of photographs and current addresses of three witnesses whom the Prosecution seeks to have included into the ICCPP, namely [REDACTED].¹⁷ In the view of the Prosecution, these [REDACTED] witnesses are exposed to an increased security risk, which can only be managed through their inclusion into the ICCPP. They reside [REDACTED] and are particularly vulnerable to threats. They are the only Prosecution witnesses [REDACTED] who do not enjoy any form of protection from [REDACTED]. Disclosure to the Defence of photographs of these witnesses and their current address followed by the use of this information during investigations – even in a restricted form – would increase the security level for these witnesses in a way that can not be managed with measures that are currently available. For these reasons, the Prosecution submits that, pending a decision on the inclusion of [REDACTED] into the ICCPP, redactions concerning their residence and their photograph should remain in place.

Conclusion

28. In light of the foregoing, the Prosecution respectfully requests that:

- (i) The Chamber maintain the existing redactions on interview locations, identifying information of Prosecution field staff, and on the photograph of the Prosecution investigator;
- (ii) In the event that the Chamber orders disclosure of the identities and fixed residential addresses of some Prosecution witnesses, it impose restrictions on the use of such information by the Defence outside the courtroom as set out above;

¹⁷ The referrals of [REDACTED] is being assessed by the VWU, while the assessment of [REDACTED] has been deferred, pending an agreement of his wife to be interviewed.

- (iii) The Chamber maintain the existing redactions on the residence and photographs of [REDACTED].



Fatou Bensouda, Prosecutor

Dated this 9th day of August 2016

At The Hague, The Netherlands