

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 17 August 2016

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

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

**Public Redacted Document
with
Confidential, *EX PARTE*, only available to the Prosecution and the Victims and
Witnesses Unit, Annex A**

**Public redacted version of "Prosecution's Information to Trial Chamber III on issues
involving witness CAR-OTP-PPPP-0169" 11 September 2014, ICC-01/05-01/08-3138-
Conf-Exp**

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. The Office of the Prosecutor ("Prosecution") informs Trial Chamber III ("Chamber") of developments in the issues related to witness CAR-OTP-PPPP-0169 ("P169") and 21 other protected witnesses.

2. On 3 September 2014 the Prosecution received, in an email from Victims and Witnesses Unit ("VWU"), a third letter from P169.¹ The letter, dated 5 August 2014, is addressed to the [REDACTED] and asserts various claims of outstanding payments, complains of an alleged robbery, alleges that P169 possesses evidence of the corruption and ill-treatment of Prosecution witnesses. The letter also contains the [REDACTED]. It appears that P169 sent his letter [REDACTED]. The witness also claims to have copied a number of other recipients, including [REDACTED]. He threatens to report the information in his letter to the national and international media if his demands for money are not met.

3. The Prosecution is working with the VWU to assess the potential risk to [REDACTED] and to coordinate efforts aimed at ensuring their protection.

4. The Prosecution has disclosed P169's letter to the Defence. The Prosecution submits the instant filing to the Chamber primarily for information purposes, but also seeks the Chamber's limited intervention with respect to the potential admission of the 5 August 2014 letter and, more immediately to prevent P169's further disclosure of sensitive information.

¹ Annex A.

II. Confidentiality

5. The Prosecution requests that this filing be received as Confidential, *Ex parte*, only available to the Prosecution and VWU pursuant to Regulation 23bis of the Regulations of the Court, as it relates to information that if classified otherwise may prejudice the investigation of the incidents described in this filing and/or further [REDACTED].

III. Statement of Facts

6. P169 testified in Court from 1 to 11 July 2011. He filed loss of income claims with VWU to compensate for monetary losses he allegedly incurred by testifying in The Hague. VWU and P169 had protracted discussions about the compensation, requiring the Prosecution to facilitate their communication. VWU initially denied the witness's loss of income request, but later resolved a number of his income and readjustment related expenses on or about 9 October 2013.

7. On 7 June 2013, P169 sent a letter ("first letter") to the Prosecution [REDACTED].² The first letter included an annex containing the [REDACTED]. On 10 June 2013, P169 resent the same letter and another letter ("second letter"), dated 8 June 2013, to VWU.³

8. On 3 October 2013, the Prosecution filed ICC-01/05-01/08/2827-Conf-Exp providing the Chamber with information in the Prosecution's possession as of 3 October 2013.

² ICC-01/05-01/08-2827-Conf-Exp-AnxA-Red2

³ ICC-01/05-01/08-2827-Conf-Exp-AnxB-Red2

9. Until the Prosecution received P169's 5 August 2014 letter, together with the attachments from VWU on 3 September 2014, the Prosecution had not received any further information or complaints from the witness since VWU's resolution of his outstanding claims on or about 9 October 2013.

10. P169's third letter, dated 5 August 2014, reiterates information he previously provided the Prosecution, namely that he had been threatened [REDACTED].⁴ P169 also claims that he still has a number of unsettled monetary claims, including an allegation of money he claims was paid by the Prosecution for the benefit of witnesses.⁵ He notes that the current unstable security situation in the Central African Republic ("CAR") led to personal loss of money and property.⁶ He further claims to have information concerning the corruption and ill-treatment of the witnesses [REDACTED].⁷ Finally, P169 threatens that if his demands for money are not met [REDACTED], he will report the information in his letter to the national and international media.⁸

11. P169 sent his 5 August 2014 letter [REDACTED]. The witness purports to have sent copies of the letter to, *inter alia*, [REDACTED]. It is unclear whether he actually sent copies of the letter to other entities and, if so, whether these were received.

12. The Prosecution does not know how P169 came into [REDACTED]. Both P169 and Witness P178 refused to provide this information when asked by the Prosecution in June 2013. The Prosecution has already met with VWU concerning this issue and will continue to coordinate efforts aimed at the protection of witnesses through VWU.

⁴ ICC-01/05-01/08-1623-Conf-Red.

⁵ Annex A.

⁶ Annex A.

⁷ Annex A.

⁸ Annex A.

IV. Submissions

13. Based on the information provided above, the Prosecution considers that the further [REDACTED] is a serious matter requiring the coordinated response of VWU and the Prosecution. The possibility that P169 has sent the [REDACTED].

14. After P169's first two letters to the Prosecution and VWU, the Prosecution believed that the actions of Witness 169 were attributable to his extreme dissatisfaction with the slow resolution of his legitimate outstanding claims. However, now that his claims have been processed by VWU, it would appear this is not the case. Further, P169 is aware that his actions have a considerable impact on the security of other witnesses.

15. The Prosecution has evidence which bears directly on the possible impetus for P169's 5 August 2014 letter, which emerges as a result of its Article 70 investigation. The Prosecution stands prepared to present this evidence, should the Chamber be disposed to admit P169's 5 August 2014 letter, as it goes to its probative value and weight.

16. Aspects of Witness P169's 5 August 2014 letter suggest that it is the result of improper influence. In particular, the 5 August 2014 letter departs in subtle but substantial ways from his first letter: for instance, P169 alleges for the first time that the Prosecution actually paid money to benefit witnesses, rather than allegedly offering it, as advanced in the first and second letters; the witness also now claims to have information on the corruption of witnesses. As noted, Article 70 evidence in the Prosecution's possession speaks to these issues.

17. The Prosecution anticipates that the Defence will seek the admission of P169's 5 August 2014 letter, which the Prosecution concedes may be relevant to the Chamber's

assessment of the witness's credibility. However, to the extent that the Chamber may entertain the letter's admission for such purpose, it should also consider available evidence which bears on the veracity and weight of the letter itself, just as it will no doubt consider all other available evidence in the record of the case concerning the witnesses experiences in the CAR in 2002-2003, including corroborative evidence, demeanour evidence, and evidence or the lack thereof, of fabrication.

18. However, should the Chamber be disinclined at this stage to entertain evidence derived from the Article 70 investigation which is relevant to the nature and possible impetus of the 5 August 2014 letter, the Chamber may alternatively see fit to recall the witness. This would minimally give the parties and the Chamber an opportunity to address their respective concerns regarding P169's testimony in light of his subsequent behaviour.

19. Finally, the Prosecution notes that P169's public dissemination of the [REDACTED] is a serious breach of the Chamber's protective orders which demands an immediate and robust response, including directing P169 to refrain from [REDACTED], under the threat of sanctions pursuant to Article 71 of the Statute.

20. The Prosecution will provide an update with further information as soon as it is available.

V. Relief sought

21. In light of the foregoing, the Prosecution requests that the Chamber:

- a) order P169 to refrain from disseminating any further [REDACTED];

- b) allow the Prosecution to introduce evidence from the Article 70 case bearing on the 5 August 2014 letter, to the extent the Chamber may be inclined to admit it into evidence; and
- c) alternatively, should the Chamber be inclined to admit any or all of P169's letters as relevant to the reliability of his testimony without the benefit of the Article 70 evidence, to recall the witness and hold a limited evidentiary hearing confined to assessing the witness's credibility in light of the his recent behaviour.



Fatou Bensouda, Prosecutor

Dated this 17th Day of August 2016

At The Hague, The Netherlands