

**Cour
Pénale
Internationale**
**International
Criminal
Court**



Original: **English**

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

Date: **25 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 Submission of Further Information as Ordered by the Chamber in its Decision on the Prosecution’s Requests to Lift, Maintain and Apply Redactions to Witness Statements and Related Documents”, 23 September 2010, ICC-01/05-01/08-898-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

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. On 7 July 2010, Trial Chamber III (“Chamber”), in its “Decision on the Prosecution’s Requests to Lift, Maintain and Apply Redactions to Witness Statements and Related Documents” (“Decision”) ordered the Office of the Prosecutor (“Prosecution”) to submit further information in response to the issues raised in Annex B to the Decision, related to Witnesses 0006, 0032, 0036, 0044, 0009, 0015, 0022, 0029, 0031, 0045, 0068, 0080 and 0087.¹

II. Request for confidentiality

2. The Prosecution requests that this submission be received by the Chamber as Confidential, *Ex Parte*, Prosecution and the Victims and Witnesses Unit (“VWU”) only, since it contains information pertaining to the security situation of its witnesses and third parties, revelation of which may jeopardize their safety and security.

III. Information on the issues raised by the Chamber

Witness 0006

3. The Chamber ordered the Prosecution to address the issue of the security of those family members of Witness 0006 [REDACTED].²

4. The Prosecution informs the Chamber that the security situation of Witness 0006 and his family members has not changed over the last ten months despite the

¹ ICC-01/05-01/08-813-Conf, Decision on the Prosecution's Request to Lift, Maintain and Apply Redactions to Witness Statements and Related Documents, 7 July 2010, at para.89 (p.)

² ICC-01/05-01/08-813-Conf-Exp-AnxB, page 4.

disclosure of their identities.³ The witness has been reached by telephone by the Prosecution and had nothing to report in terms of security. Concerning family members other than his wife and children who live with him: Witness 0006's father [REDACTED]. His mother lives in [REDACTED] in an area which is [REDACTED]. Witness 0006 assured the Prosecution that he will [REDACTED]. It would be possible for her to move to the witness's residence to benefit from the protective measures in place. Two of Witness 0006's children from a previous relationship live with the witness's ex-wife in a location unknown to Witness 0006. Therefore the Prosecution cannot state whether this location is [REDACTED], and in any event the witness would not be able to provide his ex-wife [REDACTED]. The identity of Witness 0006's family members is irrelevant to the known issues in the case and therefore also has a low threat impact. Nevertheless, it cannot be excluded that threats or harm to family members could be used as leverage against the witness. The Prosecution assesses that the provision of the [REDACTED] to Witness 0006's mother, and the possibility of moving her if any suggestion of potential threat is made, is sufficient to provide protection. As to his other family members, since their location is unknown we believe that the risk is probably negligible.

Witness 0032

5. The Chamber ordered the Prosecution to address the issue of the security of the family members of Witness 0032;⁴ to provide details of the present circumstances, and to submit the present level of risk of [REDACTED]⁵ [REDACTED].⁶

³ ICC-01/05-01/08-606, Prosecution's Communication of Incriminatory Evidence disclosed to the Defence pursuant to the Chamber's Order on disclosure of evidence by the Office of the Prosecutor of 4 November 2009, 11 November 2009.

⁴ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 8.

⁵ [REDACTED].

⁶ [REDACTED].

6. The security situation of Witness 0032 and his family members has not changed over the last ten months despite the disclosure of their identities.⁷ The witness has been reached by telephone by the Prosecution and had nothing to report in terms of security concerning his family. The witness resides in [REDACTED]. The family members residing with Witness 0032 benefit from the presence of the bodyguard protecting the witness when he is at home. The adult children reside in low-risk areas in [REDACTED]. The identity of Witness 0032's family members is irrelevant to the known issues in the case and therefore also has a low threat impact. Nevertheless, it cannot be excluded that threats or harm to family members could be used as leverage against the witness. The Prosecution assesses that the current protective measures provided to the family members residing with the witness are proportionate to the threat level, and the members who live in [REDACTED] face no discernible risk.

7. The Prosecution contacted the witness and asked him about the present circumstances of the two persons known by the names [REDACTED]. Witness 0032 has not had contact with "[REDACTED]" who was in [REDACTED] at the time, since early 2006. Witness 0032 last spoke on the telephone with "[REDACTED]", who was in [REDACTED] at the time, in 2007. The Prosecution has not discovered any additional information about the two men. Based on this scant information, the Prosecution cannot make an educated assessment regarding their level of risk.

8. The Prosecution also asked Witness 0032 about "[REDACTED]". Witness 32 informed the Prosecution that he last heard of this person in 2002 from a common friend and has no further information about him. "[REDACTED]" resided in [REDACTED] at the time. The Prosecution has not discovered any additional information about this person. Based on this scant information, the Prosecution cannot make an educated assessment regarding his level of risk.

⁷ ICC-01/05-01/08-606.

Witness 0036

9. The Chamber ordered the Prosecution to address the safety of some individuals mentioned as members of the “*Conseil Politico-Militaire*”, the individual referenced as [REDACTED] for whom redactions were granted under Rule 81(4) of the Rules of Procedure and Evidence.⁸

10. The Prosecution notes that the request to apply redactions and the order granting the redactions to their names were justified as the context of the citation of their names in the statement may have led some to believe that they were collaborating with the Prosecution, putting therefore their safety at risk and requiring redactions. The list of Prosecution’s witnesses is now finalized and does not include the individuals referred to, who are known by the Defence to be members of the *Mouvement de Libération du Congo* (“MLC”). Therefore, the Prosecution assesses that they are no longer at risk on account of the activities of the Court, as there can be no perception that they are cooperating with the Prosecution.

Witness 0044

11. The Chamber ordered the Prosecution to submit information on the circumstances of the individual identified as a source by Witness 0044.⁹

12. The Prosecution contacted Witness 0044, who stated that he has not talked to this individual (a former MLC member) since they both left the “[REDACTED]” of the Democratic Republic of Congo in 2006. Witness 0044 further indicated that the above-mentioned individual is currently living in [REDACTED].

⁸ ICC-01/05-01/08-813-Conf-Exp-AnxB, pages 17, 18 and 22.

⁹ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 29.

Witness 0009

13. The Chamber ordered the Prosecution to submit further information on the circumstances of the family members of Witness 0009.¹⁰

14. The security situation of Witness 0009 and his family members has not changed over the last ten months despite the disclosure of their identities.¹¹ The witness has been reached by telephone by the Prosecution and had nothing to report in terms of security concerning his family. Witness 0009 lives in Bangassou, which is outside of [REDACTED], where he serves as a State magistrate. [REDACTED]. The Prosecution liaised with the authorities of the Central African Republic in an unsuccessful attempt to have Witness 0009 transferred to another duty station, where more appropriate measures to protect his safety could be taken. His parents, wife and other three children reside in [REDACTED], which is [REDACTED]. Witness 0009 assured the Prosecution that he will share [REDACTED] with his wife. The identity of Witness 0009's family members is irrelevant to the known issues in the case and therefore also has a low threat impact. Nevertheless, it cannot be excluded that threats or harm to family members could be used as leverage against the witness. The Prosecution assesses that the current protective measures provided to the witness's family in Bangui - [REDACTED] - are proportionate to the threat level.

Witness 0015

15. The Chamber ordered the Prosecution to address the safety of the family members of Witness 0015.¹²

¹⁰ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 31.

¹¹ ICC-01/05-01/08-606.

¹² ICC-01/05-01/08-813-Conf-Exp-AnxB, page 39.

16. The security situation of Witness 0015 and his family members has not changed over the last ten months despite the disclosure of their identities.¹³ The witness has been reached by telephone by the Prosecution and confirmed that his family members have not been threatened. Ten security officers guard the home of Witness 0015 in [REDACTED] where he lives with his family. He has access to [REDACTED]. The identity of Witness 0015's family members is irrelevant to the known issues in the case and therefore also has a low threat impact. Nevertheless, it cannot be excluded that threats or harm to family members could be used as leverage against the witness. The Prosecution assesses that the current protective measures provided to the witness's family, identical to the protection provided to the witness himself, are proportionate to the threat level.

Witness 0022

17. The Chamber ordered the Prosecution to report on certain potentially privileged medical information for Witness 0022.¹⁴ The Prosecution contacted Witness 0022, who agreed to the disclosure of this information.¹⁵

Witness 0029

18. The Chamber ordered the Prosecution to report on certain potentially privileged medical information for Witness 0029 and to address the safety of the family members of Witness 0029.¹⁶

¹³ ICC-01/05-01/08-606.

¹⁴ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 46.

¹⁵ The documents the Chamber cited at page 46, annexes to the witness statement, are not specifically medical information. Instead, they are maps and sketches that assist the witness in describing her rape, specifically Documents: CAR-OTP-0007-0528, CAR-OTP-0007-0529, CAR-OTP-0007-0530, CAR-OTP-0007-0558, CAR-OTP-0007-0559, CAR-OTP-0007-0561, CAR-OTP-0007-0563, CAR-OTP-0007-0565, CAR-OTP-0007-0567.

¹⁶ ICC-01/05-01/08-813-Conf-Exp-AnxB, pages 64 and 65.

19. The Prosecution contacted the witness who agreed on the disclosure of the medical information.

20. The witness has two children who live with her in [REDACTED]. The witness's father is deceased. Her mother lives in [REDACTED] with a witness's nephew, who has a telephone. Though the area is outside [REDACTED], Witness 0029's mother resides 50 to 80 meters from a police station, 100 to 150 meters from a "Gendarmerie" and has access to communication.

21. The witness has been reached by telephone by the Prosecution and had nothing to report in terms of security concerning specifically her family. The identity of Witness 0029's family members is irrelevant to the known issues in the case and therefore also has a low threat impact. However, Witness 0029 received a death threat on 19 July 2010.

22. In light of this it cannot be excluded that threats or harm to family members could be used as leverage against the witness. The Prosecution assesses that the current protective measures provided to the witness's children who live with her, [REDACTED], are proportionate to the threat level. The relatives who live outside [REDACTED] are also protected by their proximity to police protection and their ability to telephone for help.

Witness 0031

23. The Chamber ordered the Prosecution to address the safety of the family members of Witness 0031.¹⁷

¹⁷ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 71.

24. The Prosecution informs the Chamber that the security situation of Witness 0031 and his family members has not changed over the last ten months despite the disclosure of their identities.¹⁸ The witness has been reached by telephone by the Prosecution and had nothing to report in terms of security concerning his family. He resides in Bangui with his family and they have [REDACTED]. His parents are deceased. His sister resides in [REDACTED] without any foreseeable risk of threat based on the present information. The identity of Witness 0031's family members is irrelevant to the known issues in the case and therefore also has a low threat impact. Nevertheless, it cannot be excluded that threats or harm to family members could be used as leverage against the witness. The Prosecution assesses that the current protective measures provided to the witness's family who reside with him, identical to that provided to the witness himself, are proportionate to the threat level. The risk to his sister, in [REDACTED], is assessed as negligible.

Witness 0045

25. The Chamber ordered the Prosecution to address the safety of the family members of Witness 0045.¹⁹

26. The security situation of the family members of Witness 0045 has not changed over the last ten months despite the disclosure of their identities. Witness 0045 has received several threats as reported by the Prosecution.²⁰ When reached by the Prosecution in July 2010, the witness stated that he was informed that the names of Prosecution's witnesses in the instant case might be published by the local press. However, he had nothing to report in terms of security concerning his family. Witness 0045 lives in an area [REDACTED] with one of his children and his brother-

¹⁸ ICC-01/05-01/08-606.

¹⁹ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 77.

²⁰ ICC-01/05-01/08-537-Conf-Exp, Prosecutor's Report to the Trial Chamber on the current security situation of Intermediary 166 and Witnesses 37, 45, 119 and 178, 23 September 2009.

in-law and is protected by two police officers. His wife, his second child, his mother, his brother, his sister-in-law and his niece reside in [REDACTED] and have been provided with [REDACTED]. The identity of Witness 0045's family members is irrelevant to the known issues in the case and therefore also has a low threat impact. Nevertheless, it cannot be excluded that threats or harm to family members could be used as leverage against the witness. The Prosecution assesses that the current protective measures provided to the witness's family members, identical to that provided for the witness himself, are proportionate to the threat level.

Witness 0068

27. The Chamber ordered the Prosecution to report on certain potentially privileged medical information for Witness 0068.²¹ The Prosecution contacted the witness, who agreed to the disclosure of this information.

Witness 0080

28. The Chamber ordered the Prosecution to provide more information on its assertion implying a permission by the Chamber to lift redactions on names and identifying information of Witness 0080's family members.²² Further, the Chamber ordered the Prosecution to report on the current address of Witness 0080's husband and on whether [REDACTED] is available to him.

29. On 26 October 2009, the Prosecution submitted its "Request to Lift, Maintain and Apply Redactions to Witnesses' Statements and Related Documents".²³ The filing, as its title reflects, sought to lift certain redactions and maintain or apply

²¹ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 84.

²² ICC-01/05-01/08-813-Conf-Exp-AnxB, page 94.

²³ ICC-01/05-01/08-572-Conf-Exp, Prosecution's Request to Lift, Maintain and Apply Redactions to Witnesses' Statements and Related Documents, 26 October 2009.

others. On 4 November 2009, the Chamber directed the Prosecution to disclose the materials concerned in their “current redacted form”.²⁴ The Prosecution understood the reference to the “current” redacted form, to direct disclosure of the materials in the Prosecution’s “current” redacted form - with the liftings as requested in the 26 October filing - and not the redacted form prior to the submission of the 26 October filing, which is what the Chamber in fact seems to have intended. Therefore, the Prosecution disclosed witness statements in versions reflecting, *inter alia*, the lifting of redactions as requested in the 26 October filing.

30. The Prosecution confirms that Witness 0080’s husband is Witness 0023. Witness 0080 clarified that she and Witness 0023 reside with their children at the same address in Bangui. Witness 0080’s family, including Witness 0023, has [REDACTED].

Witness 0087

31. The Chamber ordered the Prosecution to provide more information on its assertion implying a permission by the Chamber to lift redactions on names and identifying information of the witness’s family members.²⁵ Further, the Chamber requested the Prosecution to address the safety of the neighbour of Witness 0087, “[REDACTED]”²⁶

32. The explanation for our assertion is set out in paragraph 31 above. On the question regarding [REDACTED] safety, the Prosecution telephoned Witness 0087 to enquire about the security situation of [REDACTED], her neighbour and distant

²⁴ ICC-01/05-01/08-590, Order on disclosure of evidence by the Office of the Prosecutor, 4 November 2009, at para. 6.

²⁵ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 104.

²⁶ ICC-01/05-01/08-813-Conf-Exp-AnxB, page 106.

cousin. Witness 0087 reported no difficulty in [REDACTED] security situation.
[REDACTED] has been provided with [REDACTED].



Fatou Bensouda, Prosecutor

Dated this 25th Day of August 2016

At The Hague, The Netherlands