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No.: ICC-01/05-01/08
Date: 6 September 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
with
Confidential, *Ex parte*, Prosecution and Victims and Witnesses Unit only Annex A**

**Public redacted version of “Prosecution’s Submission Regarding Trial Chamber
III’s ‘Order on the Reclassification of Documents’ of 18 October 2011”,
1 November 2011, ICC-01/05-01/08-1869-Conf-Exp**

Source: 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") opposes disclosure of any part of the information regarding existence of [REDACTED] two of its witnesses and their family members, namely Witnesses CAR-OTP-PPPP-0169 ("Witness 169") and CAR-OTP-PPPP-0178 ("Witness 178") while investigations remain ongoing. Any disclosure at this stage could not only jeopardise its investigations into the witness [REDACTED], it could also increase the risks to the safety of the two witnesses and their family members.

2. Upon completion of its investigation, the Prosecution requests the opportunity to fully redact portions of these documents, prior to their disclosure, dealing with procedures and/or different techniques applied by the organs of the Court. The redactions will be necessary to address security concerns of the witnesses as well as portions containing information on the identity and location of the witnesses and their family members, the identity and location of the Court's field staff and investigators as well as the location where interviews take place.

II. Request for confidentiality

3. The Prosecution requests that this filing and its Annex A be received by the Trial Chamber III ("Chamber") as "Confidential, *Ex parte*, Prosecution and Victims and Witnesses Unit only" as they relate to filings and other court records that are subject to the same level of confidentiality. In addition, they contain information regarding [REDACTED], for which the Prosecution's investigation remains ongoing, as well as information which if classified otherwise would increase the risks to the safety of the two witnesses and their family members.

III. Background

4. On 15 August 2011, the Prosecution filed its “Prosecution’s Report to the Trial Chamber III on the current security situations of Witnesses 169 and 178” (“August Report”).¹ Subsequently, the Chamber held *Ex parte* hearings, on 26 August 2011 and 7 September 2011 to address security concerns of Witnesses 169 and 178.²

5. On 4 October 2011, the Registrar filed the “Victims and Witnesses Unit’s report on the [REDACTED] of CAR-OTP-PPPP-0169, CAR-OTP-PPPP-0178, and CAR-OTP-PPPP-0178’s Wife” (“VWU’s Report”).³ Its report concludes that:

[REDACTED].

It has also been clearly established that the witness CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0169 have had [REDACTED].

[REDACTED].

In order to determine [REDACTED] CAR-OTP-PPPP-0169, the VWU, while assessing [REDACTED], will try to determine [REDACTED].⁴

6. On 18 October 2011, the Chamber issued an “Order on the reclassification of documents” (“Order”).⁵ The Chamber ordered the reclassification of the Victims and Witnesses Unit’s (“VWU”) Report as “Confidential, *Ex parte*, Registry and Prosecution only”.⁶

¹ ICC-01/05-01/08-1623-Conf-Exp, Prosecution’s Report to the Trial Chamber III on the current security situations of Witnesses 169 and 178, 15 August 2011.

² ICC-01/05-01/08-T-148-CONF-EXP-ENG ET, 26 August 2011 and ICC-01/05-01/08-T-155-CONF-EXP-ENG ET, 7 September 2011.

³ ICC-01/05-01/08-1816-Conf-Exp + Conf-Exp-Anxs1-4, Victims and Witnesses Unit’s report on the [REDACTED] of CAR-OTP-PPPP-0169, CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0178’s wife, 4 October 2011. A corrigendum to Annex 2 was filed on 11 October 2011: see ICC-01/05-01/08-1816-Conf-Exp-Anx2-Corr, Corrigendum to Annex 2: Victims and Witnesses Unit’s report on the [REDACTED] of CAR-OTP-PPPP-0169, CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0178’s wife, 11 October 2011.

⁴ ICC-01/05-01/08-1816-Conf-Exp-Anx1, pp. 12 and 13.

⁵ ICC-01/05-01/08-1847-Conf-Exp, Order on the reclassification of documents, 18 October 2011.

⁶ *Ibid*, para. 9 (a).

7. The Chamber noted that the VWU's Report highlights apparent inconsistencies between the [REDACTED] brought to the Chamber's attention and the [REDACTED] by the VWU.⁷ The Chamber also ordered the Prosecution to provide observations on whether, in light of the VWU's Report, the following documents are required to be disclosed to the Defence, in whole or in part:

- a. The VWU's Report and its annexes;⁸
- b. The August Report;⁹
- c. The transcript of the *Ex parte* hearing held on 26 August 2011;¹⁰
- d. The transcript of the *Ex parte* hearing held on 7 September 2011.¹¹

8. The Chamber further instructed the Prosecution to inform the Chamber whether and when it can expect to receive the results of Prosecution's [REDACTED] of Witnesses 169 and 178 and whether and to what extent the Prosecution changed its position on the disclosure of the August Report,¹² as expressed in the "Prosecution's Submissions on granting access to ICC-01/05-01/08-1623" ("Filing 1709").¹³

IV. Prosecution's submissions

a. Measures taken to address security concerns of the two witnesses

9. The Prosecution informs the Chamber of the following overall measures taken to address the security concerns of Witness 169 and 178 and their family members.

⁷ *Ibid*, para 5.

⁸ ICC-01/05-01/08-1816-Conf-Exp + Conf-Exp-Anxs1-4.

⁹ ICC-01/05-01/08-1623-Conf-Exp.

¹⁰ ICC-01/05-01/08-T-148-CONF-EXP-ENG ET, 26 August 2011.

¹¹ ICC-01/05-01/08-T-155-CONF-EXP-ENG ET, 7 September 2011.

¹² ICC-01/05-01/08-1847-Conf-Exp, para. 8.

¹³ ICC-01/05-01/08-1709-Conf-Exp, Prosecution's Submissions on granting access to ICC-01/05-01/08-1623, 6 September 2011, para. 10.

10. [REDACTED].

11. Witness 178 [REDACTED]. He completed his testimony on 8 September 2011 and [REDACTED]. Due to security concerns reported by the witness, the VWU [REDACTED].

12. Due to the unique situation of both these witnesses [REDACTED] and in order to avoid any potential [REDACTED].

b. Measures taken to investigate possible witness interference issues

13. The Prosecution informs the Chamber on following status of its measures taken to investigate possible [REDACTED] issues:

- a. [REDACTED].
- b. [REDACTED].
- c. [REDACTED].
- d. [REDACTED].
- e. [REDACTED].

14. As highlighted above, the Prosecution's investigations are ongoing. The Prosecution [REDACTED] to both witnesses. Based on the information received from meetings with the concerned witnesses, [REDACTED], the Prosecution has, at this preliminary stage of its investigations, established [REDACTED].

15. [REDACTED].

16. The Prosecution reiterates its prior undertakings to complete its investigation as soon as possible.

c. Prosecution's [REDACTED] and other information

17. The Prosecution submits as Annex A the Prosecution report in response to "Victims and Witnesses Unit's report on the [REDACTED] of CAR-OTP-PPPP-0169, CAR-OTP-PPPP-0178 and CAR-OTP-PPPP-0178's Wife" ("Prosecution's Report"). This report comments on the observations and apparent inconsistencies raised by the VWU in the context of Prosecution's [REDACTED] and other information gathered during the investigation of the [REDACTED].

18. With regards to the discrepancies highlighted in the VWU's Report and its conclusions, the Prosecution notes that, as is elaborated in detail in the Prosecution's Report, the VWU considered only the [REDACTED]. The Prosecution submits that it is also necessary to consider the [REDACTED] at the time of the events to gain a more complete view of the sequence of those events as they took place.

19. The Prosecution's Report includes the following findings:

- a. The Prosecution's [REDACTED]. There is a date discrepancy concerning when he reported the matter to the Chamber but this is best considered in the light of his immediate report to the Prosecution of the matter on 24 July 2011 and possibly with the [REDACTED] in the days following if that has been retained.
- b. [REDACTED]. Additionally, [REDACTED] could be explained by the fact that [REDACTED] since, or even before, the 2002-2003 conflict in CAR. It should be noted however that based on the [REDACTED]. Future investigative steps in this respect are underway and more information is also required from both witnesses on the nature of [REDACTED] before inferences can be drawn.
- c. The VWU identified [REDACTED] but these need to be considered in light of the existing links between them before, during and after the 2002-2003 conflict. Additionally, as set out in the above analysis, during this period of [REDACTED],

which they feel exposed their witness status. They do not deny being [REDACTED].

- d. The Prosecution considered and analyzed in greater detail certain discrepancies identified by the VWU concerning the [REDACTED]. Available information contained in [REDACTED] shows that these discrepancies could be attributed to the witness being confused on dates and not necessarily an attempt to lie. In fact, [REDACTED]. However, it is worth mentioning that it would be insufficient to consider the discrepancies only in relation to [REDACTED]. Reporting by the witnesses to both the Prosecution and [REDACTED] at the time of these events need to be taken into consideration as part of the analysis to provide a more complete view of the sequence of events as they took place.
- e. The VWU report states that further determination of the [REDACTED] is required. Their report is only of the [REDACTED]. Whilst that analysis shows discrepancies, these need to be considered together with other information available as indicated above.

d. Reclassification of documents identified by the Chamber

20. The Prosecution notes that all of the documents identified by the Chamber in its Order (listed in paragraph 7 above) relate to and contain information regarding existence of [REDACTED] Witness 169 and Witness 178 and their family members. In addition, these documents contain information related to the procedures and/or different techniques applied by the Prosecution and VWU to address security concerns of the witnesses. And they contain information on the identity and location of the witnesses and their family members, the identity and location of the Court's field staff and investigators, and the locations where interviews or meetings between the Court's field and Head Quarters' staff and the witnesses take place.

21. The Prosecution submits that all of this information should be fully redacted.
22. Notwithstanding discrepancies identified by the VWU, the Prosecution submits that, in light of the ongoing investigations and the [REDACTED] to the witnesses and their family members, the documents listed in paragraph 7 above, should remain under their current “Confidential, *Ex parte*” classifications and should not be shared with the Defence and the participants until the Prosecution finalizes its investigations.
23. In its Filing 1709, the Prosecution submitted, *inter alia*, that:

“7. ...The Prosecution is actively investigating [REDACTED]. Disclosure of even a redacted version of Filing 1623 at present would likely alert potential suspects or witnesses of the Prosecution’s investigative interest in this matter, which could cause them to interfere with the investigation by allowing them time to prepare their stories, destroy evidence, or influence the testimony of others.

...

9. ...the Prosecution submits that at the conclusion of its investigation, ...a disclosure of Filing 1623 in redacted form to the Defence...will be possible. The Prosecution undertakes to complete its investigation as soon as possible.”¹⁴

24. The Prosecution submits that the above reasoning and submissions remain valid for its August Report and the other documents listed in paragraph 7 above. The Prosecution submits that at the conclusion of its ongoing investigation, it will be possible then to disclose portions dealing with the highlighted inconsistencies in all of these documents in redacted form to the Defence and the other participants.

¹⁴ ICC-01/05-01/08-1709-Conf-Exp, paras. 7 and 9.

V. Conclusion

25. For the above-mentioned reasons, the Prosecution respectfully requests the Chamber to maintain the non-disclosure to the Defence and the participants of the VWU's Report and its annexes, the August Report, the transcript of the *Ex parte* hearing held on 26 August 2011 and the transcript of the *Ex parte* hearing held on 7 September 2011, until the Prosecution's ongoing investigation is finalized.



Fatou Bensouda, Prosecutor

Dated this 6th Day of September 2016

At The Hague, The Netherlands