

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 12/03/2014

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**

Confidential

**Defence Request for Disclosure and Investigative Assistance concerning
Witnesses 169 and 178**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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A. INTRODUCTION

1. The majority of witnesses who have testified in the present proceedings have done so with the benefit of protective measures.

2. The widespread application of protective measures has undoubtedly complicated the conduct of the trial. The Chamber has been required to decide on multiple applications for protective measures, each of which has been litigated by the parties. The VWU has conducted assessments of each witness for whom measures were sought, and provided reports to assist the Chamber in deciding these applications. Oral testimony was presented by moving in and out of closed and private sessions, and the parties dedicated significant resources to laborious post-facto transcript review. The majority of filings and decisions were prepared in multiple versions to ensure that identifying information was kept from the public forum. All this has been done to ensure that the identity of witnesses was not revealed to the public at large, and out of respect for the security concerns of the individuals who have testified.

3. On 7 June 2013, Prosecution Witness CAR-OTP-WWWW-0169 ("Witness 169") wrote a letter [REDACTED] the names and contact details of 21 protected Prosecution witnesses ("Exposed Witnesses")¹ to [REDACTED] ("7 June Letter").² It is the Registry's view that this was done with a view to obtaining a financial advantage, highlighting the "[REDACTED]" [REDACTED].³

4. From the information available to the Defence it appears that, 9 months later, there is no reliable information as to how an accurate list of 21 protected

¹ ICC-01/05-01/08-2980-Conf, footnote 5.

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

³ ICC-01/05-01/08-2975-Conf-Red, para. 8.

Prosecution witnesses was assembled and circulated in this way.⁴ Neither has there been any or any effective investigation into the matter, not least any attempt to contact the apparent recipients of 7 June 2013 Letter to determine the extent of the breach.⁵

5. The Defence has previously sought an order of the Chamber that two witnesses be recalled for further questioning upon the 7 June 2013 Letter. This application was rejected, as was an application for leave to appeal.⁶ Notwithstanding that, and in order that the matters might properly be investigated, the Defence has sought disclosure of the witnesses' contact details. The Prosecution has refused to provide the Defence with the contact details of the witnesses concerned. The Defence repeats its submissions in earlier filings seeking the recall of the witnesses that the issues which apparently arise from the 7 June Letter go to the heart of the credibility and reliability of much, if not most, of the evidence called by the Prosecution. In the submission of the Defence both the Accused's fair trial rights, and the search for the truth require further investigation as to how this breach of protective measures occurred, and the timing, extent of, and motivation behind contact between the Prosecution witnesses.

6. Having been effectively prevented from exploring this question on behalf of the accused, the Defence files the present applications for disclosure and orders for investigation.

4



see ICC-01/05-01/08-2975-Conf-Anx-Red.

⁶ ICC-01/05-01/08-2924-Conf, para. 38; ICC-01/05-01/08-2980-Conf, para. 47.

B. BACKGROUND

7. On 7 June 2013, Prosecution Witness 169 sent a letter identifying himself as a Prosecution witness, addressed to the Prosecutor of the ICC, [REDACTED]

[REDACTED]

[REDACTED] and the ICC Victims and Witness' Unit.⁷

8. In the 7 June Letter, Witness 169 stated that many other Prosecution witnesses were contacted by CAR-OTP-WWWW-0178 ("Witness 178"), and gathered together in March 2013 to look at loss of income claims. The 7 June Letter annexes a list of 21 Prosecution protected witnesses who were apparently demanding to be paid by the ICC for loss of earnings.⁸ In relation to each a current address and at least one telephone number was listed. Each of these witnesses is subject to witness protective measures in the present case.⁹ The list of names amounted effectively to [REDACTED] witnesses called by the Prosecution in its case.

9. The 7 June Letter is also significant, as it provides an insight into the payments Witness 169 had either received or was expecting as a result of his testimony before the ICC. It sets out a list of Witness 169's alleged outstanding monetary claims at that time, with a threat that if his demands were not met he

⁷ ICC-01/05-01/08-2827-Conf-AnxA-Red2.

⁸ ICC-01/05-01/08-2980-Conf, footnote 5.

⁹ [REDACTED]

would publicly denounce the ICC in the international media and other channels. Witness 169 claimed that VWU failed to buy him [REDACTED] and that it had been decided that VWU would give hi [REDACTED]

[REDACTED] However, he claims to have received only [REDACTED] He was therefore seeking an alleged shortfall of [REDACTED] He referred in the letter to a telephone call of 6 June 2013, following the submission of [REDACTED] during the course of which VWU apparently agreed to pay that sum of money.

10. On 8 June 2013, Witness 169 wrote a second letter, this time to VWU, but with copies for information to the same addressees, in which he appeared to be complaining about a telephone conversation with VWU on the previous day.¹⁰ He again appends the list of Exposed Witnesses ("8 June Letter").

11. Following a lapse of approximately five months, on 5 November 2014 the Prosecution was ordered to disclose Witness 169's letters.¹¹ On 8 November 2013, the Defence wrote to VWU with a copy to the Prosecution: "seeking the assistance of VWU in organising a physical or video-link meeting between each of the 22 Prosecution witnesses". The Defence stated:¹²

The purpose of these meetings is for the Defence to shed light on the issues raised in [the Prosecution filing] which are materially relevant to the preparation of the Defence. As 21 of the 22 witnesses are subject to protective measures, we ask for VWU's assistance in organising these meetings, and also to be present during any interviews.

¹⁰ ICC-01/05-01/08-2827-Conf-Red-AnxB.

¹¹ ICC-01/05-01/08-2845-Conf-Red.

¹² Email Defence to [REDACTED] 08 November 2013 16:30, entitled "Request from the Defence".

12. After VWU informed the Defence that its request should be directed to the Prosecution,¹³ the Defence wrote to the Prosecution asking for the phone numbers and email addresses of the witnesses listed in the 7 June Letter, requesting that “these be provided as a matter of urgency, and by close of business tomorrow, 12 November 2013 in the case of Witness 169 and Witness 178.”¹⁴

13. The Defence request was refused. The Prosecution responded that “since the beginning of this case, the practice has been that contact details of witnesses were not provided to the other party, unless so authorized by the Chamber.”¹⁵

14. In terms of the Prosecution’s own investigations into this manifest breach of protective measures of its witnesses, the Defence has received little information. It appears that on 18 June 2013 the Prosecution contacted “several” witnesses from Witness 169’s list. *Inter alia*, Witness [REDACTED] apparently told the Prosecution about three meetings with Witness 169 and/or Witness 178 prior to 14 June 2013.¹⁶ On 25 June 2013, the Prosecution contacted Witness 169 and Witness 178 by telephone. The Prosecution was informed, *inter alia*, that they had met Witness [REDACTED] with [REDACTED] who was [REDACTED].¹⁷ The Prosecution eventually filed a report on 8 November 2013, however, which indicated that the Prosecution had not in fact contacted each of the Exposed Witnesses.¹⁸ The Defence has no information that the Prosecution has contacted or attempted to contact any of the apparent recipients of either the 7 June or 8 June Letters.

¹³ Email VWU to Defence, 11 November 2013 11:55, entitled “Request from the Defence”.

¹⁴ Email Defence to [REDACTED] 11 November 2013 15:52 entitled “Request from the Defence”.

¹⁵ Email [REDACTED] 14 November 2013 17:00, entitled “Re: Request from the Defence”.

¹⁶ ICC-01/05-01/08-2827-Conf-Red, para. 13.

¹⁷ ICC-01/05-01/08-2827-Conf-Red, para. 13. Witness [REDACTED] had not apparently mentioned the presence of [REDACTED] at any of the meetings he described.

¹⁸ ICC-01/05-01/08-2867-Conf, para. 11.

15. VWU was also ordered to undertake a security assessment for each of the 21 Exposed Witnesses on 25 October 2013.¹⁹ On 17 February 2014, VWU filed a report revealing that it had spoken with three witnesses in the intervening four months.²⁰ VWU confirmed that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]²¹ As concerns the 7 June Letter, the VWU report stated [REDACTED]
[REDACTED]
[REDACTED]²²

16. Significantly, VWU emphasized:²³

[REDACTED]

B. CONFIDENTIAL NATURE OF THE PRESENT FILING

17. Each of the documents and related filings concerning contact between Witness 169 and Witness 178 and other Prosecution witnesses, and the payments and benefits provided to them, remain confidential.²⁴ As such, the Defence files the present submissions confidentially. The Defence reiterates its position that filings

¹⁹ ICC-01/05-01/08-2845-Conf-Red, para. 13.

²⁰ ICC-01/05-01/08-2999-Conf, page 3; ICC-01/05-01/08-2975-Conf-Anx-Red.

²¹ ICC-01/05-01/08-2975-Conf-Red, para. 1.

²² ICC-01/05-01/08-2975-Conf-Anx-Red, page 4.

²³ ICC-01/05-01/08-2975-Conf-Red, para. 8, citing to: ICC-01/05-01/08-2827-Conf-Red-AnxA, page 4, where the Witness wrote the following in his letter [REDACTED]
[REDACTED]

²⁴ ICC-01/05-01/08-2924-Conf, para. 38.

and materials relating to the contact between and requests for payment made by Prosecution witnesses should be reclassified as public.²⁵

C. APPLICABLE LAW

18. Article 54(1) of the Statute places an obligation on the Prosecution to investigate incriminating and exonerating circumstances equally. This necessarily extends to the reliability of its own evidence, and places a burden on the Prosecution as regards unreliable witnesses.

19. This duty was expressly recognised by the Prosecution in the *Katanga & Ngudjolo* case, where the Prosecution's attention had been drawn to inconsistencies in the prior statements of a victim/witness. The Senior Trial Attorney informed Trial Chamber II that he was duty bound to conduct further investigations, noting:²⁶

MR MACDONALD: (Interpretation) Very well. Basically, Mr Luvengika has spoken to us about certain information that could potentially be exonerating regarding certain evidence that was heard so far. With this information we received last week and in light of the difficulties in setting up an investigation team to go to the field, the Prosecution must conduct investigations into these facts, or these items of information, because we have exculpatory and incriminatory obligations throughout the entire proceedings. The Prosecution will be in a position to conduct these investigations next week.

20. This reflects the position at both the *ad hoc* Tribunals. In the *Tadić* case at the ICTY, the Prosecution informed the Trial Chamber that as a result of certain information put forward by the Defence, the Prosecution had commenced investigations with respect to Prosecution Witness L. Following these investigations "the Prosecution advised the Trial Chamber that it could no longer support Witness L as a witness of truth and invite the Trial Chamber to disregard his evidence

²⁵ ICC-01/05-01/08-3005-Corr-Conf.

²⁶ Transcript, 1 September 2010, page 2, [ICC-01/04-01/07-T-182-Red-ENG CT WT].

entirely.”²⁷ Similarly, at the ICTR, the Trial Chamber was disapproving of the Prosecution for having failed to take steps against an investigator accused of suborning false testimony. The Trial Chamber recalled that:²⁸

when the Prosecution Counsel was asked about this matter during the proceedings held on 3 December 2007, he indicated that the matter was still under review. The Chamber considers that the Tribunal must take all reasonable steps to protect the integrity of its own proceedings and expects that the Prosecutor will do what is necessary.

21. The Trial Chambers of the International Criminal Court have underlined the positive responsibility of the Prosecution to investigate exculpatory material, such as that which undermines its witnesses’ credibility, through the making of compulsive orders to investigate and report. In *Katanga & Ngudjolo*, for example, Trial Chamber II ordered the Prosecution “to inform the Chamber... about which steps have been taken to the alleged false testimony of Witness P-159 and whether or not it intends to initiate criminal proceedings against him.”²⁹

22. An accused before the International Criminal Court has, moreover, an overarching right to adequate time and facilities for the preparation of his defence (Article 67(1)(b) of the Statute of the International Criminal Court (“Statute”)), and to have access to information that may affect the credibility of Prosecution evidence (Article 67(2) of the Statute) or that is “material to the preparation of the defence” (Rule 77 of the Rules of Procedure and Evidence (“Rules”)).

23. As to the application of Rule 77 of the Rules, the Appeals Chamber has held that “the concept of information ‘material to the preparation of the defence’ needs to be interpreted broadly so as to include documents that were not directly linked

²⁷ *Prosecutor v. Duško Tadić*, IT-94-1, Trial Chamber’s Decision on Prosecution Motion to Withdraw Protective Measures for Witness L”, 5 December 1996, paras. 3-4.

²⁸ *Prosecutor v. GAA*, ICTR-07-90-R77, Judgment and Sentence, 4 December 2007.

²⁹ ICC-01/04-01/07-3223, page 5.

to exonerating or incriminating evidence.”³⁰ In particular, the Trial Chamber in the present proceedings has held that questions of payment and benefits to witnesses are relevant to credibility of the witnesses.³¹ As regards the Letters written by Witness 169, the Chamber held:³²

In the case at hand, the Chamber notes that the Prosecution Submissions refer to allegations made by Witness 169 as to "outstanding claims" and "money promised by the Prosecutor for witnesses". In the view of the Chamber, **any information relating to such claims** may be "material for the preparation of the defence" and therefore should be disclosed under Rule 77 of the Rules.

D. SUBMISSIONS

(a) Provision of Witness 169 and 178's telephone numbers to the Defence

24. In assessing the appropriate remedies to the current circumstances, it is difficult to ignore the chronology of events that has led to them. For a period of at least 6 months (and possibly much longer), the Prosecution was in possession of material tending to undermine the credibility of a number of its witnesses. It chose (regrettably, as the Chamber was to observe) not to investigate the matters of breaches of orders of protective measures and possible collusion of its witnesses, but rather to withhold disclosure of relevant material from the Defence, and to neglect to seek the Chamber's guidance. It would, in the submission of the Defence, be an affront to the principles of fairness were such an approach, coupled with the apparent urgency to conclude the trial process, give advantage to the Prosecution and prejudice the Defence.

25. Central to adversarial proceedings is the right of an accused to defend against the allegations brought by the Prosecution. The Prosecution presented

³⁰ ICC-01/05-01/08-2845-Conf-Red, para. 9 citing: ICC-01/04-01/06-1433, paras. 77-78; ICC-02/05-03/09-501, para. 38.

³¹ ICC-01/05-01/08-T-277-Conf-ENG-ET, 28-11-2012, pages 35-37.

³² ICC-01/05-01/08-2845-Conf-Red, para. 10.

Witnesses 169 and 178 as capable of presenting incriminatory evidence against Mr. Bemba. Witness 169 testified over seven days, Witness 178 for six, each making numerous allegations about the accused and his culpability for crimes alleged in the DCC. These were not insignificant witnesses, nor were they presented as such by the Prosecution. Disclosed material now reveals that these witnesses received [REDACTED] euros, and [REDACTED] euros respectively from the ICC.³³ Witness 169 has stated in writing that a failure to meet his demands will give rise to a risk that the situation will turn sour, and that he will denounce the ICC publicly in the international media and through other channels.³⁴ The Defence request to recall these witnesses and examine them in front of the Chamber about these claims was rejected, with leave to appeal also having been denied.³⁵

26. In rejecting the Defence's request for leave to appeal, the Chamber noted, *inter alia*, that:³⁶

In actuality, the Chamber, having considered the arguments offered by all parties and participants, allowed further investigation and exploration of issues central to the credibility of the prosecution's evidence on numerous occasions. This is shown by, for example, the Chamber's order to the VWU to provide VWU Report 2912 and the appropriate annexes to the defence. Additionally, the Chamber permitted the parties and participants to submit applications for the admission into evidence of documents referred to in the Impugned Decision; thus giving the defence the opportunity—of which it has availed itself—to submit documents relating to Witnesses 168 and 179 for admission into evidence.

27. As such, while finding that the Defence request for recall of Witness 169 and Witness 178 was not warranted, the Chamber did accept that, given the circumstances of the conduct of witnesses in question, providing the Defence with both full disclosure and the opportunity to seek to admit additional evidence was

³³ ICC-01/05-01/08-2912-Conf-AnxD.

³⁴ ICC-01/05-01/08-2827-Conf-AnxA-Red2.

³⁵ ICC-01/05-01/08-2924-Conf, para. 38; ICC-01/05-01/08-2980-Conf, para 47.

³⁶ ICC-01/05-01/08-2980-Conf, para. 42.

justified. However, the tendering of certain documents into evidence (which may or may not be allowed) can only be a partial examination of the possibilities of collusion between the witnesses, and their motivation to testify. These are matters that the Defence ought to have been completely at liberty to investigate and/or the Prosecution are and were under a duty to. The Prosecution's deplorable attitude to disclosure and/or the late stage of the proceedings should not alter that. Allowing the Defence to contact and, if necessary, take written statements from Witnesses 169 and 178 should be the minimum next step in the "further investigation and exploration of issues central to the credibility of the prosecution's evidence", particularly given the gravity of the accusations made by these two witnesses, and their undeniable wealth of knowledge of information which remains confidential in the present case.

28. The Defence recalls its position that the existence of a list of 21 protected Prosecution witnesses gives a different and telling context to the smaller meetings between Prosecution witnesses already in evidence.³⁷ Previous Defence submissions made in the absence of investigations, that the Prosecution witnesses "acted as a collective bargaining unit" or that there was "collusion" between them³⁸ were rejected by the Chamber, which held:

on the basis of the material before it, the Chamber finds that the defence's assertion regarding "collusion" of witnesses is unsubstantiated.

29. Ordering the Prosecution to furnish the contact details of Witnesses 169 and 178 will give the Defence an opportunity to provide a basis for such assertions. The Chamber has emphasised that it has not yet reached a "definitive" conclusion as to whether collusion in fact occurred, stating "contrary to the defence's contention, the Chamber did not reach a "definitive" conclusion in the Impugned Decision as to

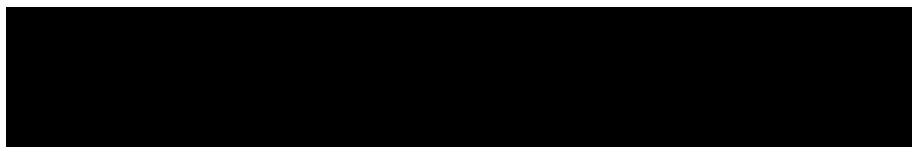
³⁷ See, for example, ICC-01/05-01/08-T-65-Conf, page 47 ; ICC-01/05-01/08-T-193-Conf, pages 25, 43.

³⁸ ICC-01/05-01/08-2872-Conf, para. 43.

whether or not there had been collusion between witnesses”.³⁹ As such, the provision of further evidence as to whether collusion has occurred can only assist the Chamber in the proper determination of the credibility of the Exposed Witnesses, and in turn, of the truth of the events in question.

(b) The source of the list of 21 protected prosecution witnesses

30. Before touching on the fact of Prosecution witnesses seeking or having been “promised” payment in relation to their testimony, or the propriety of Witness 169 publishing the names of protected witnesses, the first burning question is how the list was assembled in the first place. This is not a case of witnesses being aware that other family members had testified, or of witness knowing that his neighbour has also been called before the ICC. If each of the Exposed Witnesses was subject to protective measures, how is it that an accurate list of names was put together outside the context of the present proceedings? With respect to the Trial Chamber’s ruling on the matter, the fact that a person(s) or body was in possession of such a list is strongly inferential of collusion without more. No assistance is provided by the subsequent VWU investigations, with the only two witnesses contacted stating that:⁴⁰



31. In fact, none of the reports disclosed to the Defence by either the Prosecution or VWU shed any light on how this patent breach of witness protective measures occurred. From its phone calls to Witness 169 and 178 on 25 June 2013, the Prosecution states it was told the following:⁴¹

³⁹ ICC-01/05-01/08-2980-Conf, para. 44.

⁴⁰ ICC-01/05-01/08-2975-Conf-Anx-Red, page 3.

⁴¹ ICC-01/05-01/08-2827-Conf-Red2, para. 15.

[REDACTED]
[REDACTED] and “Witness 178 confirmed his role in
[REDACTED]
[REDACTED] He further stated that he would
‘continue’ to act in this way until he receives his loss of income”.

32. Faced with these refusals from Witnesses 169 and 178 to provide any information on the source of the list, there were two options open to the Prosecution. Either accept these refusals and drop the matter, or investigate further. The Defence does not accept that, in light of its statutory obligations and jurisprudence concerning the credibility of its own evidence, not to mention the purported security risk to its [REDACTED] witnesses, that the Prosecution simply let the matter lie. Article 54(1) of the Statute places an obligation on the Prosecution to act as a minister of justice, and investigate incriminating and exonerating circumstances equally. This necessarily extends to the reliability of its own evidence, and places a burden on the Prosecution as regards unreliable witnesses. The Prosecution’s failure to do so was most recently criticised by Her Honour Judge Van den Wyngaert in *Katanga*, who held:⁴²

...The Prosecution also failed to follow-up on the investigation of its own key witnesses. For example, in the cases of P-250, P-279 and P-280, who the Prosecutor alleged were child soldiers who participated in the battle of Bogoro, it was the Defence who produced school reports and identified witnesses who, at trial, testified that P-250, P-279 and P-280 had never participated in combat.

Such lack of due diligence on the part of the Prosecution is highly disappointing. I note, in passing, that the Prosecution has shown great zeal in other cases before this Court pursuing persons whom it suspects of having suborned testimony by launching a string of prosecutions under article 70. However, despite repeated requests and reminders by the Chamber in this case, the Prosecutor has still to take any initiative with regard to witness P-159, whose testimony the Prosecutor had to withdraw.

⁴² ICC-01/04-01/07-3436-AnxI, paras. 139-141.

... I am of the view that the Prosecution has both a legal and ethical obligation to make all reasonable efforts to ensure that the evidence it presents is reliable and, to the extent possible, complete.

33. In the submission of the Defence, the Prosecution should be ordered to provide, by way of a written report to the Chamber, disclosable to the Defence, the outcome of the investigative steps it has taken concerning the breaches of orders for protective measures in the present proceedings, and the timing, extent of and motivation for contact between its witnesses.

34. If it is indeed the case that no investigative steps have been taken since the telephone calls to Witnesses 169 and 178 in June 2013, the Defence requests that the Chamber order the Prosecution to further investigate the circumstances in which the breaches of protective measures occurred and the timing, extent of and motivation for contact between the protected Prosecution witnesses, with the outcome of such investigations being provided by way of a written report to the Chamber, disclosable to the Defence.

(c) The recipients of the 7 June and 8 June Letters

35. The 7 June 2003 letter was addressed to the Prosecutor of the ICC, [REDACTED]

[REDACTED]
[REDACTED] and the ICC Victims and Witness' Unit.⁴³ The 8 June 2003 Letter which appended the same list of protected witnesses was addressed to the VWU, with a copy for information to the same addressees as the 7 June Letter, with the absence of [REDACTED]

⁴³ ICC-01/05-01/08-2827-Conf-AnxA-Red2.

36. The Prosecution acknowledges that it received its versions of the 7 June and 8 June Letters via email.⁴⁴ The version it received was sent to [REDACTED]

[REDACTED]⁴⁵ As such, no argument can be made that the letters were not released to [REDACTED]

The Prosecution also concedes that "[REDACTED]

[REDACTED]"⁴⁶

37. Again, the Defence presumes that the Prosecution has since contacted the addressees of both the 7 June and 8 June 2013 letters and the recipients of the emails, to determine the extent of the breach of protective measures caused by Witness 169, and taken appropriate remedial steps, including return of and/or destruction of the letters in question. The Defence also presumes that the Prosecution has taken steps to determine whether the letters or indeed other correspondence revealing the identity of protected Prosecution witnesses has been sent to [REDACTED]

[REDACTED] particularly in light of Witness 169's threats that a failure to meet his demands will result in his denouncing the ICC publicly in the international media and through other channels.⁴⁷ The Defence takes note of VWU's statement that it has [REDACTED]

[REDACTED]⁴⁸ which itself plainly indicates a need for further investigation.

38. As such, and recalling the Chamber's finding that "**any information relating to such claims** may be 'material for the preparation of the defence' and therefore

⁴⁴ ICC-01/05-01/08-2827-Conf-Red2, para. 7.

⁴⁵ ICC-01/05-01/08-2827-Conf-Red2, para. 8.

⁴⁶ ICC-01/05-01/08-2827-Conf-Red2, para. 8.

⁴⁷ ICC-01/05-01/08-2827-Conf-AnxA-Red2.

⁴⁸ ICC-01/05-01/08-2975-Conf-Anx-Red, page 4.

should be disclosed under Rule 77 of the Rules”,⁴⁹ the Defence submits that the Prosecution should provide, by way of a written report to the Chamber disclosable to the Defence, the investigative steps it has taken with regards to enquiries it has made of the apparent addressees of the 7 June and 8 June Letters, and any further correspondence or publications concerning the Exposed Witnesses. If it is the case that nothing has been done, the Defence asks that the Chamber order the Prosecution to further investigate the extent of the breach of protective measures in the present case, and provide a written report to the Chamber, disclosable to the Defence.

E. RELIEF SOUGHT

39. In light of all of the above, the Defence requests that the Chamber:

ORDER that the Prosecution provide the Defence with the telephone numbers and/or other contact details of Witness 169 and Witness 178;

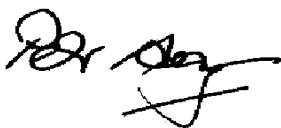
ORDER that the Prosecution disclose by way of a written report to the Chamber to be provided to the Defence of the investigative steps it has taken concerning the breaches of orders for protective measures in the present proceedings, and the timing, extent of and motivation for contact between its witnesses;

ORDER that the Prosecution disclose by way of a written report to the Chamber to be provided to the Defence the investigative steps it has taken investigative steps it has taken with regards to the addressees of the 7 June and 8 June Letters, and any further correspondence or publications concerning the Exposed Witnesses; and

⁴⁹ ICC-01/05-01/08-2845-Conf-Red, para. 10.

ORDER that in the absence of any investigative steps having been taken as regards the above, that the Prosecution initiate such an investigation and provide a written report to the Chamber disclosable to the Defence.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes QC

Lead Counsel of Mr. Jean-Pierre Bemba

The Hague, The Netherlands

12 March 2014