

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 June 2011

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

**Decision on the Prosecution's Requests for extension of the Chamber's
authorisation to hear testimony via video-link and protective measures for
Witness CAR-OTP-WWWW-0108**

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo Musamba

Legal Representatives of the Victims

Ms Marie Edith Douzima-Lawson
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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Marie Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber III ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court") in the case of The Prosecutor v. Jean-Pierre Bemba Gombo hereby issues the following Decision on the Prosecution's Requests for extension of the Chamber's authorisation to hear testimony via video-link and protective measures for Witness CAR-OTP-WWWW-0108.

I. Background and Submissions

1. On 12 October 2010, the Chamber issued its "Decision on the Request for the conduct of the testimony of witness CAR-OTP-WWWW-0108 by video-link",¹ granting the request of the Office of the Public Counsel for Victims ("OPCV") and authorising Witness 108 to give *viva voce* (oral) testimony before the Chamber by means of video technology, if such a testimony was given before the end of May 2011.² In granting the request, the Chamber took into consideration the specific professional commitments and particular profile of Witness 108, namely that he is *Directeur de Cabinet* and General Secretary of the Central African Republic's ("CAR") Constitutional Court in charge of controlling the presidential election process, which prevented him from travelling outside the CAR until May 2011.³ Additionally, the Chamber was of the view that Witness 108's testimony by video technology was compatible with the rights of the accused to examine or have examined the witnesses before him, in accordance with Article 67(1)(e) of the Statute.⁴
2. On 16 May 2011, the Office of the Prosecutor ("prosecution") filed its "Prosecution's request for extension of the Chamber's authorization to hear

¹ Decision on the "Request for the conduct of the testimony of witness CAR-OTP-WWWW-0108 by video-link", 12 October 2010, ICC-01/05-01/08-947-Conf; and Public Redacted Version ICC-01/05-01/08-947-Red.

² ICC-01/05-01/08-947-Conf, paragraph 16.

³ ICC-01/05-01/08-947-Conf, paragraph 14.

⁴ ICC-01/05-01/08-947-Conf, paragraph 12.

Witness CAR-OTP-PPPP-0108's testimony via video-link"⁵ ("prosecution's Request") in which it requests that authorisation to hear Witness 108's testimony via video-link be extended beyond 31 May 2011, in the event that the said Witness' testimony had not been concluded by that time.⁶ The prosecution submits that in addition to his functions as *Directeur de Cabinet* and Secretary General of the Constitutional Court of the CAR, Witness 108 is acting *in lieu* of the President of the Constitutional Court who is presently on sick leave in Europe.⁷ Furthermore, Witness 108 is the main individual responsible for the post-electoral process following the recent presidential elections in the CAR.⁸ The prosecution argues that the professional activities of Witness 108 do not allow his absence from Bangui although he reiterated his commitment to cooperate with the Court and his willingness to testify.⁹

3. On 18 May 2011, the Registrar submitted its Report on the "Witness Testimony via Video-Link",¹⁰ in which it submits that visa arrangements for Court Staff currently take two weeks to complete and that both the flight arrangements and the witness familiarisation must be completed prior to testimony before the Court.¹¹
4. On 23 May 2011, the prosecution submitted its "Prosecution's Response to the Registrar's Submission 'Witness testimony via video-link'",¹² in which it reiterates its request for an extension of the Chamber's authorisation to hear

⁵ Prosecution's request for extension of the Chamber's authorization to hear Witness CAR-OTP-PPPP-0108's testimony via video-link, 16 May 2011, ICC-01/05-01/08-1410-Conf.

⁶ ICC-01/05-01/08-1410-Conf, paragraph 3.

⁷ ICC-01/05-01/08-1410-Conf, paragraph 4.

⁸ ICC-01/05-01/08-1410-Conf, paragraph 4.

⁹ ICC-01/05-01/08-1410-Conf, paragraph 5.

¹⁰ Witness testimony via video-link, 18 May 2011, ICC-01/05-01/08-1422-Conf.

¹¹ ICC-01/05-01/08-1422-Conf, paragraph 3.

¹² Prosecution's Response to the Registrar's Submission "Witness Testimony via Video-Link", 23 May 2011, ICC-01/05-01/08-1434-Conf.

Witness 108's testimony via video-link and informs the Chamber that it expects Witness 108 to begin his testimony on 14 June 2011.¹³

5. On 30 May 2011, the defence for Mr. Jean-Pierre Bemba Gombo ("defence") filed its "Defence response to the Prosecution's request for extension of the Chamber's authorisation to hear Witness CAR-OTP-PPPP-0108's testimony via video-link",¹⁴ in which it reiterates its objection to the use of video-link technology as well as to the extension for the use thereof.¹⁵ The defence states, *inter alia*, that Witness 108's electoral role would apparently terminate at the end of May¹⁶ and that the prosecution's Request did not provide sufficient information concerning the alleged sick leave of the CAR Constitutional Court President and on Witness 108's appointment as his substitute.¹⁷
6. On 17 May 2011, the prosecution submitted its "Prosecution's Request for Special Measures for Witnesses CAR-OTP-PPPP-0108, CAR-OTP-PPPP-0110 and CAR-OTP-PPPP-0112 at Trial" ("Request for Protective Measures"),¹⁸ in which it specifically requests that protective measures be applied during Witness 108's testimony pursuant to Articles 68(1) and 64(2) of the Rome Statute ("Statute") and Rule 88 of the Rules of Procedure and Evidence ("Rules").¹⁹ In particular, the prosecution requests that the Chamber authorise image and voice distortion, continued in-court use of the witness number and pseudonyms *in lieu* of names, and private or closed sessions for the portions of testimony where the witness provides identifying

¹³ ICC-01/05-01/08-1434-Conf, paragraph 3.

¹⁴ Defence's response to the Prosecution's request for extension of the Chamber's authorization to hear Witness CAR-OTP-PPPP-0108's testimony via video-link, 30 May 2011, ICC-01/05-01/08-1465-Conf.

¹⁵ ICC-01/05-01/08-1465-Conf, paragraph 2.

¹⁶ ICC-01/05-01/08-1465-Conf, paragraph 5.

¹⁷ ICC-01/05-01/08-1465-Conf, paragraphs 6-7.

¹⁸ Prosecution's Request for Special Measures for Witnesses CAR-OTP-PPPP-0108, CAR-OTP-PPPP-0110 and CAR-OTP-PPPP-0112 at Trial, 17 May 2011, ICC-01/05-01/08-1412-Conf.

¹⁹ ICC-01/05-01/08-1412-Conf, paragraph 1.

information.²⁰ The prosecution acknowledged that Witness 108 has been the *Directeur du Cabinet à la Cour Constitutionnelle* since 2004 and that he will not be giving testimony as a Government official or high-ranked personality but rather as a victim.²¹ The prosecution requests that protective measures be granted in order to facilitate Witness 108's testimony due to his subjective perception of the risk. It considers such protective measures to be in accordance with the Victims and Witnesses Unit's recommendations regarding other witnesses in similar circumstances as well as essential to enable him to provide his testimony freely.²²

7. On 26 May 2011, the defence filed its "Defence Response to the Prosecution's Request for Special Measures for Witnesses CAR-OTP-PPPP-0108, CAR-OTP-PPPP-0110 & CAR-OTP-PPPP-0112 at Trial" ("defence Response"),²³ in which it opposes the Request for Protective Measures. The defence reiterates its previously expressed concern that protective measures have been requested for virtually every prosecution witness and that this triggers a non-proportionate use of closed sessions and protective measures is "liable to taint the public's perception of the accused's responsibility" and prejudice his defence.²⁴ The defence further submits that the objective risk of retaliation against Witness 108, as assessed by the prosecution, is low and that the measures sought by the prosecution are unwarranted and lacked evidentiary support.²⁵

²⁰ ICC-01/05-01/08-1412-Conf, paragraph 2.

²¹ ICC-01/05-01/08-1412-Conf, paragraph 6.

²² ICC-01/05-01/08-1412-Conf, paragraphs 7-9.

²³ Defence Response to the Prosecution's Request for Special Measures CAR-OTP-PPPP-0108, CAR-OTP-PPPP-0110 & CAR-OTP-PPPP-0112 at Trial, 26 May 2011, ICC-01/05-01/08-1459-Conf.

²⁴ ICC-01/05-01/08-1459-Conf, paragraph 3.

²⁵ ICC-01/05-01/08-1459-Conf, paragraphs 4-5.

II. Relevant Provisions

8. In accordance with Article 21(1) of the Statute, the Trial Chamber, in making its decision, has considered the following provisions: Article 64 (2) and (7), Article 67 (1)(e), Article 68 (1) and Article 69 (2) of the Statute; Rule 67 and Rule 87 (1), (3)(a), (c) to (e) of the Rules.

III. Analysis and Conclusions

Request for video-link testimony

9. As this Chamber previously held:

[t]he term 'given in person' used by Article 69(2) of the Statute, does not imply that witness testimony shall necessarily, under any circumstances, be given by way of live testimony in court. Instead, the Statute and the Rules give the Court broad discretion, subject to the provisions of Rule 67 of the Rules, to permit evidence to be given *viva voce* (orally) by means of video or audio technology whenever necessary, provided that the Statute and the Rules are respected and that such measures are not prejudicial to, or inconsistent with, the rights of the accused.²⁶

10. The Chamber recalls Article 67(1)(e) of the Statute, according to which the accused has the right to "examine or have examined the witness before him or her". As the Chamber previously stated, Rule 67(1) of the Rules provides that video-link technology may be used so long as it provides the Defence with an opportunity to examine the witness during his or her testimony. In the instant case, the defence does not argue that the rights of the accused would be prejudiced by the use of the video-link during the testimony of Witness 108. Therefore, in the absence of any argument in the defence's Response, the Chamber finds that the use of the video-link during the testimony of Witness 108 is compatible with the rights of the accused to examine or have examined the witness before him.

²⁶ ICC-01/05-01/08-947-Conf, paragraph 10.

11. One of the relevant criteria to determine whether or not the use of video-link technology should be used is the personal circumstances of the witness himself.²⁷ The Chamber finds that Witness 108's personal commitments have not substantially decreased after the expiration of the authorisation of the use of a video-link, at the end of May 2011. In fact, his new role acting *in lieu* of the President of the Constitutional Court coupled with his permanent functions as *Directeur de Cabinet* and Secretary General of the Constitutional Court of the CAR, constitute personal circumstances of an exceptional nature, which warrant the authorisation for the witness to provide *viva voce* (oral) testimony by means of video technology.

Request for Protective Measures

12. Article 68(1) of the Statute provides that the Chamber shall take appropriate measures to protect the safety, physical and psychological well-being of witnesses and issue appropriate protective measures, so long as such measures are not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Additionally, the Chamber notes Rule 87 of the Rules, which provides that the Chamber may order measures to protect the identity and personal safety of witnesses giving testimony before the Court. Lastly, the Chamber recalls that Article 64(7) of the Statute provides that trials should be held in public.

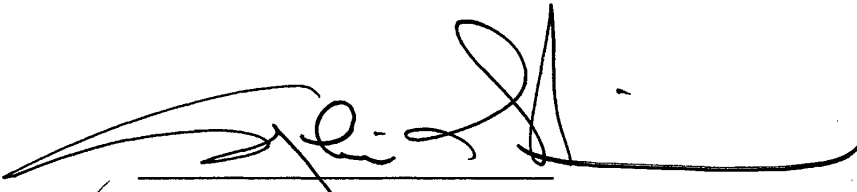
13. The Chamber has taken into account the submissions of the parties, and considers that Witness 108's identity is publicly known as he holds a position in the public service. In addition, the Chamber is not convinced by the prosecution's argument on the "subjective perception of the risk" of Witness 108. Consequently, the Chamber finds that the protective measures requested for Witness 108 are not necessary. Therefore, the prosecution's request for protective measures is to be rejected.

²⁷ ICC-01/05-01/08-947-Conf, paragraph 13.

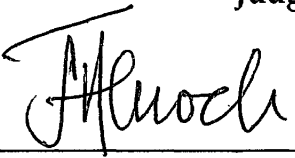
14. For the above reasons, the Chamber:

- a. Grants the prosecution's Request, and extends until 15 July 2011, the authorisation to hear Witness 108's testimony via video technology, as originally granted.
- b. Denies the Request for Protective Measures for Witnesses 108.

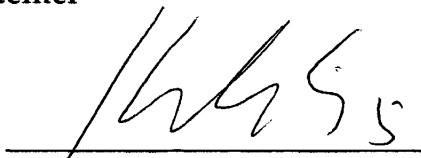
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this Monday 13 June 2011

At The Hague, The Netherlands