

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/05-01/13

Date: 22 June 2016

TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Public Redacted Document

with

Confidential, *EX PARTE*, only available to the Prosecution and VWU Annexes A-C

**Public redacted version of "Prosecution's Request for In-Court Protective
Measures", 15 September 2015, ICC-01/05-01/13-1248-Conf**

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”) requests in-court protective measures for witnesses P-0263 and P-0433 pursuant to rule 87 of the Rules of Procedure and Evidence. Witness P-0272 also requests in-court protective measures in accordance with that rule (together the “Motion”).¹ The Prosecution reiterates² that the protective measures granted to the Main Case witnesses³ continue in these proceedings pursuant to regulation 42 of the Regulations of the Court (“RoC”).

2. The requested measures are intended to ensure that these witnesses are able to give evidence without fear for their personal safety, or that of their family members. The requested measures appropriately balance the Accused’s right to a fair and public hearing⁴ against the needs to protect victims and witnesses appearing before the Chamber.⁵ The requested measures do not unfairly prejudice the rights of the Accused as the Accused have been provided with the names and identifying information of these witnesses; they will remain anonymous to the public only.

II. Confidentiality

3. The Motion is classified as “Confidential” in accordance with the *Direction on the Conduct of Proceedings*⁶ and pursuant to regulation 23bis(2) of the RoC as it provides information dealing with protective measures and witness security. The annexes to this Motion are filed “Confidential, *Ex Parte*, only available to the Prosecution and VWU” because they contain information not currently known to the

¹ The Prosecution does not currently anticipate requesting protective measures for any other witnesses. Should it do so, however, the Prosecution will ensure to file an additional request immediately.

² See ICC-01/05-01/13-1048-Conf-Exp-AnxA, p.2.

³ Witnesses P-0020, P-0198, P-0201, P-0214, P-0243, P-0245, P-0260, P-0261.

⁴ Articles 64(2) and 67(1).

⁵ Articles 64(2), 68(1), and 68(2).

⁶ ICC-01/05-01/13-1209 (“Direction on Conduct of Proceedings”), para.25.

Defence which, if revealed, might jeopardise the witness's willingness and ability to provide evidence.

III. Submissions

A. Witness P-0263

4. The Prosecution requests that Witness P-0263 be granted face distortion and the use of a pseudonym to the extent [REDACTED] is able to testify in-person. While the Prosecution doubts that the Witness will be available to testify at trial, the Prosecution files this application out of an abundance of caution and in the spirit of the Chamber's order requesting that all potential protective measures be requested as soon as possible.⁷

5. The Witness met Kilolo [REDACTED].⁸ During that time, [REDACTED] was used by Kilolo to facilitate a payment in support of the scheme at issue.⁹ After these proceedings were initiated, the Witness states that [REDACTED].¹⁰

6. The Prosecution refers the Chamber to paragraph 1 of Confidential, *Ex Parte*, Annex A, appended to this Motion.

7. Implementing the requested measures during trial will likely obviate the need for additional and more intrusive protective measures to the extent the Witness is able to testify in-person, as well as alleviate the witness's current concerns about testifying in-person.

⁷ Direction on Conduct of Proceedings, para.24.

⁸ CAR-OTP-0083-1291 at 1296-1299.

⁹ CAR-OTP-0083-1291 at 1298, para.27.

¹⁰ CAR-OTP-0083-1291 at 1299, para.33.

B. Witness P-0272

8. Witness P-0272, Babala's driver, requests that he be granted face and voice distortion and the use of a pseudonym during his testimony. The Witness made payments to Kilolo¹¹ and to D-64 [REDACTED], [REDACTED]¹² in furtherance of the charged offences.

9. The Prosecution refers the Chamber to paragraph 2 of Confidential, *Ex Parte*, Annex A, appended to this Motion.

10. The Prosecution takes no position on the measures that should be afforded to Witness P-0272 and defers to the Chamber's broad discretion to take "appropriate measures to protect" witnesses under article 68. In this respect, the Prosecution notes that in the exercise of its discretion, the Chamber may conduct such further inquiry as it may deem necessary immediately prior to the beginning of the witness's evidence, to the extent that it may require further information to determine whether and which in-court protective measures may be appropriate in the circumstances.

C. Witness P-0433

11. The Prosecution requests that Witness P-0433 be granted face distortion and the use of a pseudonym during his testimony. The Witness is an analyst for the Office of the Prosecutor.

12. The Prosecution refers the Chamber to paragraphs 3 and 4 of Confidential, *Ex Parte*, Annex A, appended to this Motion.

¹¹ See ICC-01/05-01/13-1110-Conf, paras.29, 32.

¹² See ICC-01/05-01/13-1110-Conf, paras.30-31, 49(d), 180, 262.

IV. Relief Requested

13. The Prosecution requests the Chamber to grant the Motion.



Fatou Bensouda, Prosecutor

Dated this 22nd Day of June 2016
At The Hague, The Netherlands