

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **28 June 2016**

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**

**Public Redacted Document
with**

**Confidential, *EX PARTE*, only available to the Prosecution and Victims and
Witnesses Unit, Annex A**

**Public redacted version of "Prosecution's Request for Protective and Special
Measures for Witnesses CAR-OTP-PPPP-0015, CAR-OTP-PPPP-0032, CAR-OTP-
PPPP-0036, CAR-OTP-PPPP-0044, CAR-OTP-PPPP-0045 at Trial", 13 September
2011, ICC-01/05-01/08-1743-Conf-Exp**

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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 to be applied during the testimony of Witnesses CAR-OTP-PPPP-0015 ("Witness 15"), CAR-OTP-PPPP-0032 ("Witness 32"), CAR-OTP-PPPP-0036 ("Witness 36"), CAR-OTP-PPPP-0044 ("Witness 44"), CAR-OTP-PPPP-0045 ("Witness 45") during the case of *The Prosecutor v. Jean Pierre Bemba Gombo*. The Prosecution seeks these in-court protective measures pursuant to articles 68(1) and 64(2) of the Rome Statute ("Statute") and rules 87 and 88 of the Rules of Procedure and Evidence ("Rules"). These provisions authorize the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, while at the same time preserving the Accused's right to a fair and public trial.

2. In particular, the Prosecution, requests with respect to Witness 32, Witness 36, and Witness 45 that Trial Chamber III ("Chamber") authorize: (i) image and voice distortion; (ii) continued in-court use of the witness numbers and pseudonyms in lieu of names; (iii) and private or closed sessions for the portions of testimony where the witnesses provide information that would tend to disclose their respective identities ("partial in-court protective measures"). Additionally, the Prosecution requests private or closed sessions for the entire testimonies of Witness 15 and Witness 44 ("full in-court protective measures").

3. The Prosecution contemplates that with the exception of Witness 15 and Witness 44, the above witnesses will testify mostly in open session. The witnesses' identities are known to the Defence. With the requested measures in place, the Defence will be able to examine the witnesses publicly, except on discrete matters that bear on the witnesses' identities, and it will be able to present its case at trial

without restriction. The requested measures are intended to prevent the public disclosure at trial of the identities of the above witnesses.

II. Request for confidentiality

4. The Prosecution requests that this application and Annex A be received by the Chamber as “Confidential, *Ex Parte*, Prosecution and Victims and Witnesses Unit only” as it contains information that should not be disclosed to the Defence. The Prosecution shall file a redacted application as soon as practicable.

III. Application for in-court protective measures

5. The Prosecution’s request for in-court protective measures is based on, and supported by, the core texts of this Court and its practice. Accordingly, the Chamber throughout the proceedings shall have “due regard for the protection of victims and witnesses”.¹ The Prosecution and the Court have the duties to elicit the truth and, in doing so, to protect the physical and psychological well-being, dignity, and privacy of its witnesses.² The requested in-court protective measures are necessary, reasonable and proportionate.

6. This Chamber and other Chambers of this Court have authorized similar measures to protect the safety of witnesses.³ Thus, it is clear that granting such measures is within the discretion of the Court and that the Court is open to exercising that discretion in appropriate circumstances. Trial Chamber I in the

¹ Article 64(2) of the Statute.

² Article 68(1) of the Statute; see also ICC-01/04-01/07-776 OA7, Judgment on the appeal of the Prosecutor against the "Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules" of Pre-Trial Chamber I, 26 November 2008, at para. 101.

³ For instance, in the *Katanga* case, Trial Chamber II granted in-court protective measures for witnesses who have been admitted to the International Criminal Court Protection Programme: [REDACTED]. See also Chamber’s oral decision to conduct the entirety of [REDACTED] testimony in closed session rendered on [REDACTED].

Lubanga case granted requests for in-court protective measures for vulnerable and at-risk witnesses. In reaching its conclusion, that Chamber reasoned that:

“If any of their identities were to become known, the whole purpose of their protection which has been afforded to the witnesses would be undermined, and they, together with their families would be at risk for an indefinite period of time. The accused has been given the full identifying details for these and is able, therefore, to deal with their evidence without restriction.[...] Without the totality of these measures, there is a real risk that witnesses before the Court will be put at significant risk of harm and the court would thereby have failed to discharge its obligations under Article 68. They do not in any way render the trial against the accused unfair; and in all the circumstances they are necessary and proportionate.”⁴

IV. Unstable security environment due to upcoming Democratic Republic of Congo (“DRC”) presidential elections and evidence of threats to other similarly situated prosecution witnesses

7. The witnesses reside in the DRC, where Mr. Bemba appears to enjoy significant influence and support. The 2006 DRC presidential election, in which Mr. Bemba was defeated, saw violence, including killings, kidnappings, and violent clashes between supporters of the various political candidates.⁵ In the past Mr. Bemba’s supporters have reacted with angry protests to events involving Mr. Bemba,

⁴ Oral Decision of Trial Chamber I in the *Lubanga* case rendered on 16 January 2009: ICC-01/04-01/06-T-104-ENG, p. 4, lines 13-25.

⁵ See e.g. Joint Commission Investigates Congo Election Violence, International Foundation for Electoral Systems, 05-09-2006, <http://www.ifes.org/Content/Publications/Feature-Stories/2006/Sep/Joint-Commission-Investigates-Congo-Election-Violence.aspx> and DRC: battling it out in Kinshasa, IRIN 22-08-2006 <http://www.irinnews.org/report.aspx?reportid=60427> and Securing Congo’s Elections: Lessons from the Kinshasa Showdown, Africa Briefing No.42, International Crisis Group, 02-10-2006

for example, his arrest.⁶ Mr. Bemba's prosecution and his continuation in custody, in combination with his declared intention to participate in the upcoming election, may increase the political tension and contribute to both objective and subjective perceptions of risk by these witnesses.

8. Moreover, despite his detention in The Hague, Mr. Bemba has been able to maintain a level of control and support over the apparatus of the *Mouvement de Liberation du Congo* ("MLC"). This control and influence is demonstrated by the MLC's willingness to nominate Mr. Bemba as the party's candidate in the DRC presidential elections. Further Mr. Bemba has historically enjoyed considerable levels of popular support, especially in Kinshasa and in the Equateur and Oriental Provinces.⁷ It can be expected that MLC militants and Mr. Bemba's supporters will believe that the participation of these witnesses in the proceedings contributed to his inability to participate in the next DRC presidential elections. There is a risk of retaliation to these individuals should their identities -- or the content of their testimony that reveals their identities -- become known to MLC supporters. This poses a significant general threat to any witness who would provide evidence favorable to the Prosecution but especially to the above witnesses due to [REDACTED], and media attention that would be paid to their testimony before the Court.

9. [REDACTED].

10. Following the testimony in July 2011 of the first insider witness (Witness 169), [REDACTED] to this individual were reported [REDACTED]. During the same

⁶ "Protests in DRC against former rebel leader's arrest", AFP 26 May 2008 available at <http://afp.google.com/article/ALeqM5hE16tiKEk8XXbgJF5Zfhmm558pfw>. "Congo protesters demand release of arrested ex-VP", Reuters 27 May, <http://www.reuters.com/article/latestCrisis/idUSL27385005>

⁷ See e.g. DRC: Frontrunners need alliances for 2nd round of presidential polls, IRIN, 22 August 2006 available at <http://www.irinnews.org/report.aspx?reportid=60426> and 2006 Election Results from the Commission Electorale Indépendante available at <http://www.ceni.gouv.cd/synthese/resultats/resultnat.pdf>

period there was also [REDACTED] to another insider witness (Witness 178) prior to this individual's testimony. [REDACTED]. It is reasonable to conclude that [REDACTED] came about due to the perceived willingness of the Witnesses 169 and 178 to cooperate with the Prosecution to testify against Mr. Bemba at the Court and in spite of the Court's best efforts to protect their identities. [REDACTED]. The witnesses for whom protective measures are now being sought are similarly situated to Witnesses 169 and 178. Thus, it is reasonable to predict that they will likely [REDACTED], especially if the above witnesses are required to testify in public session without protective measures.

V. Witness Information

a. Witness 15

11. Witness 15⁸ requests full in-court protective measures. The Prosecution agrees, and requests that Witness 15's entire testimony be heard in private or closed session, because of [REDACTED]. [REDACTED] and his anticipated testimony create a substantial risk that he could be a target of threats or [REDACTED]. This risk would be mitigated by the imposition of in-court protective measures.

b. Witness 32

12. The Prosecution requests partial in-court protective measures for this witness. Witness 32 has been recently [REDACTED]. During the charged period he was [REDACTED]. Witness 32 has requested in-court protective measures as a result of the heightened tension surrounding the DRC presidential elections and his perceived risk due to his cooperation with the Court, and also in light of this [REDACTED]. Should Witness 32 testify without in-court protective measures such testimony would unquestionably [REDACTED]. Witness 32 is similarly situated to Witnesses 169 and 178, since he is [REDACTED] and would likely [REDACTED]. Although

⁸ [REDACTED].

Witness 32 has not reported any threats as a result of his cooperation with the Court, [REDACTED] and his anticipated testimony create a substantial risk that he could be a target of such threats or an actual attack. This risk would be mitigated by the imposition of in-court protective measures.

c. Witness 36

13. The Prosecution requests partial in-court protective measures for this witness. Witness 36⁹ is [REDACTED] and during the charged period was the [REDACTED]. He is currently living in [REDACTED], DRC with his wife and [REDACTED] children. Witness 36 has requested in-court protective measures as a result of the heightened tension surrounding the DRC presidential elections, [REDACTED], and his perceived risk due to his cooperation with the Court. Should Witness 36 testify without in-court protective measures such testimony would unquestionably [REDACTED]. Witness 36 is similarly situated to Witnesses 169, and 178 since he is [REDACTED] and would likely [REDACTED]. Witness 36 [REDACTED]. Witness 36 is concerned by the fact that members of several former rebel groups including MLC now serve in the DRC army. Witness 36's [REDACTED] and his anticipated testimony create a substantial risk that he could be a target of continued threats or an actual attack. This risk would be mitigated by the imposition of in-court protective measures.

d. Witness 44

14. The Prosecution requests full in-court protective measures for this Witness, because of [REDACTED]. During the charged period Witness 44 was [REDACTED]. Witness 44 has requested in-court protective measures as a result of the heightened tension surrounding the DRC presidential elections, [REDACTED], and his perceived risk due to his cooperation with the Court. Should Witness 44 testify without in-court protective measures such testimony would unquestionably [REDACTED]. Witness

⁹ [REDACTED].

44 is similarly situated to Witnesses 169, and 178 since he is [REDACTED] and would likely [REDACTED]. Witness 44 was [REDACTED]. Witness 44's anticipated testimony creates a substantial risk that he could be [REDACTED] or an actual attack. Additionally, Witness 44 is concerned about [REDACTED] where Mr. Bemba's supporters appear to be active. Witness 44 believes that testifying in public will raise tension and may lead extremists from MLC to attack him and/or his family.

e. Witness 45

15. The Prosecution request partial in-court protective measures for this witness. Witness 45 is [REDACTED]. During the charged period Witness 45 was [REDACTED]. Witness 45 has requested in-court protective measures as a result of the heightened tension surrounding the DRC presidential elections and the perceived risk due to his cooperation with the Court. Should Witness 45 testify without in-court protective measures such testimony would unquestionably [REDACTED]. Witness 45 is similarly situated to Witnesses 169, and 178 since he is [REDACTED] and would likely [REDACTED]. Witness 45 believes that [REDACTED]. Witness 45 is concerned with the fact that MLC supporters could then set up an operation. Witness 45's anticipated testimony creates a substantial risk that he could be [REDACTED] or an actual attack. This risk would be mitigated by the imposition of in-court protective measures.

VI. Relief sought

In light of the foregoing, the Prosecution respectfully requests that the Chamber:

- i) Authorize image and voice distortions, assign pseudonyms for their testimony, and ensure that evidence regarding the identities or other identifying information of Witness 32, Witness 36 and Witness 45 be given in private or closed session.

- ii) Authorize the entire testimony of Witness 15 and Witness 44 be given in private or closed session; or alternatively, should the Chamber not grant the requested full in-court protective measures, authorize image and voice distortions, assign pseudonyms for their testimony, and ensure that evidence regarding the identities or other identifying information of the above witnesses be given in private or closed session



Fatou Bensouda, Prosecutor

Dated this 28th Day of June 2016

At The Hague, The Netherlands