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

Date: 29 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 Version of “Decision on in-court protective measures for
Witnesses D04-23, D04-26 and D04-25”, ICC-01/05-01/08-2746 of
19 August 2013**

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Édith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Other
Reparations Section**

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on in-court protective measures for Witnesses D04-23, D04-26 and D04-25.

I. Background and submissions

1. On 13 July 2012, the defence filed its “Defence Request for Protective Measures”¹ (“Request”), in which it sought the Chamber’s authorisation for in-court protective measures for a number of witnesses including Witnesses D04-23 and D04-26, as part of a group of witnesses designated by the defence as “[REDACTED]”, as well as Witness D04-25 as part of a group of witnesses called “Other Witnesses”.² With regard to Witnesses D04-23, D04-26 and D04-25, the defence requests in-court protective measures and in particular, the continued use of a pseudonym, image and voice distortion, and the use of private or closed session as necessary to avoid the identity of the witnesses becoming known to those outside the courtroom.³
2. In relation to its request for in-court protective measures for the category of witnesses who are “[REDACTED]”, the defence submits at the time of its Request that [REDACTED]. In this context, the defence outlines that the witnesses under this category [REDACTED].⁴ As such, the defence submits that the witnesses have expressed “genuine and legitimate concerns for their own safety, and [REDACTED], should their identities as witnesses for the Defence become known”.⁵
3. Concerning its request for in-court protective measures for Witness D04-25,

¹ Defence Request for Protective Measures, 13 July 2012, ICC-01/05-01/08-2244-Conf.

² ICC-01/05-01/08-2244-Conf, paragraphs 10 and 11.

³ ICC-01/05-01/08-2244-Conf, paragraphs 45(c) and (d).

⁴ ICC-01/05-01/08-2244-Conf, paragraphs 27 – 29.

⁵ [REDACTED].

the defence submits that this witness was [REDACTED] during the relevant events, that “he is directly rebutting the testimony of a Prosecution witness” and that [REDACTED], “he has concerns for his own safety and [REDACTED] should his association with the Defence become known.”⁶

4. On 6 August 2012, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Response to ‘Defence Request for Protective Measures’” (“Response”).⁷ In its Response, the prosecution asserts that the defence “does not provide sufficiently specific and individualized information in relation to the witnesses concerned to justify the Chamber granting the requested [in-court protective measures]”, and that the Chamber should require such information in order to “assess whether *each* witness is facing an objective and precisely identified risk on the basis of his specific situation”.⁸ The prosecution further submits that the defence “failed to submit individual fact-based requests, choosing instead to describe generic risks for entire categories of witnesses.”⁹ On this basis, the prosecution submits the Chamber should require the defence to provide all relevant information in support of the individual request for each witness so as to enable the Chamber to strike a proper balance between the obligation to protect witnesses and the duty to ensure the publicity of the proceedings.¹⁰ The prosecution finally observes that the defence did not specify whether it had obtained the consent of each witness for whom protective measures are sought, which the prosecution submits is necessary, since the Chamber has consistently sought witnesses’ consent before deciding on requests for protective measures.¹¹

5. On 19 August 2013, the Victims and Witnesses Unit (“VWU”), after having

⁶ [REDACTED].

⁷ Prosecution’s Response to “Defence Request for Protective Measures”, 6 August 2012, ICC-01/05-01/08-2253-Conf.

⁸ ICC-01/05-01/08-2253-Conf, paragraph 7.

⁹ ICC-01/05-01/08-2253-Conf, paragraph 8.

¹⁰ ICC-01/05-01/08-2253-Conf, paragraph 8.

¹¹ ICC-01/05-01/08-2253-Conf, paragraph 9.

met with the witnesses, provided the Chamber with its VWU security assessments on the need to implement in-court protective measures for the benefit of Witnesses D04-23,¹² D04-26¹³ and D04-25¹⁴ (“VWU Assessments”).

6. In relation to Witnesses D04-23 and D04-26, [REDACTED] although they did not report any specific threats to them or their families as a result of their collaboration with the defence, they expressed general concerns for their security. [REDACTED]¹⁵ and [REDACTED].
7. In relation to Witness D04-25, [REDACTED] the witness reported having been subjected to threatening phone calls and kidnapping attempts [REDACTED].
8. On the basis of these assessments, [REDACTED].

II. Analysis and conclusions

9. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber has considered the following provisions: Articles 64(7), 67(1), and 68 of the Statute, Rule 87 of the Rules of Procedure and Evidence (“Rules”), Regulations 20, 41 and 42 of the Regulations of the Court, and Regulation 94 of the Regulations of the Registry.
10. When ruling upon a request for protective measures, pursuant to Article 68(1) and (2) of the Statute and Rule 87(1) of the Rules, the Chamber must take into account its obligation under Article 68 of the Statute “to protect the safety, physical and psychological well-being, dignity and privacy of victims and

¹² Email from the VWU to the Chamber on 19 August 2013 at 12.38.

¹³ Email from the VWU to the Chamber on 19 August 2013 at 11.58

¹⁴ Email from the VWU to the Chamber on 19 August 2013 at 12.06.

¹⁵ This designation is based on the defence’s submissions in the context of the public status conference held on 27 June 2013, ICC-01/05-01/08-T-331-CONF-ENG ET, page 5, line 21.

witnesses". This obligation must be balanced against the Chamber's duty to observe the principle of publicity of proceedings, as enshrined in Articles 64(7) and 67(1) of the Statute and Regulation 20 of the Regulations of the Court. The Chamber notes that while the principle of publicity of proceedings is not absolute,¹⁶ it must be paid due regard when protective measures that would limit the publicity of the proceedings are sought.¹⁷

11. The Chamber reiterates its consistent approach that in-court protective measures are to be granted on a case-by-case basis, based upon precise information on the objective risk the witness is exposed to. The Chamber notes that in its Request the defence has not generally provided individualised and specific information in relation to each witness for which it has requested protective measures. Nevertheless, in relation to Witnesses D04-23, D04-26 and D04-25, the Chamber considers that it received sufficient information to rule on the request, drawn from the information provided by the defence, the witnesses themselves and the VWU Assessments.
12. Turning to the particular circumstances of Witnesses D04-23 and D04-26, and the question of whether the requested protective measures are justified, the Chamber is of the view that given their previous roles [REDACTED], and taking into account the VWU Assessments in this regard, the witnesses may indeed be perceived as [REDACTED]. Considering that the political and military situation in the region remains unstable, the Chamber is of the view that the witnesses' fears seem justified. In relation to Witness D04-25, and noting the VWU Assessment, the Chamber considers that in view [REDACTED] the witness's fears seem justified.

¹⁶ Decision on in-court protective measures for Witnesses 38, 22 and 87, 19 November 2010, ICC-01/05-01/08-1021-Conf, paragraph 24, see also Decision on in-court protective measures for Witness 36, 9 March 2012, ICC-01/05-01/08-2160-Conf, paragraph 9; Decision on in-court protective measures for Witness 45, 24 January 2012, ICC-01/05-01/08-2063-Conf, paragraph 16.

¹⁷ Decision on in-court protective measures for Witness 65, 30 September 2011 (notified on 3 October 2011), ICC-01/05-01/08-1809-Conf, paragraph 7; see also ICC-01/05-01/08-2160-Conf, paragraph 9.

13. Furthermore, the Chamber notes the witnesses' consent to benefit from in-court protective measures.

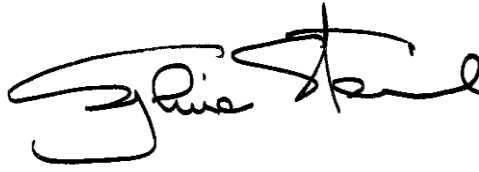
14. In terms of the fairness of proceedings, the Chamber stresses that the protective measures sought protect the witnesses' identities solely with regard to the general public. The protective measures requested for Witnesses D04-23, D04-26 and D04-25 are specifically provided for in Rule 87(3)(c), (d) and (e) of the Rules and have been considered as generally non-intrusive measures, allowing the Chamber to appropriately balance its duty to respect the principle of publicity and its obligation to protect victims and witnesses. Further, the identities of Witnesses D04-23, D04-26 and D04-25 are already known to the prosecution and therefore the imposition of the requested in-court protective measures will still enable the prosecution and the legal representatives of victims to question the witness *via* video-link¹⁸ and publicly for the majority of their testimony, save for parts that would tend to identify them.

15. Therefore, the Chamber considers that the requested measures are necessary to avoid any potential risks posed to the witnesses, reasonable and proportionate and that no less intrusive measures would suffice.

16. For the reasons set out above, the Chamber **DECIDES** to authorise, during the testimony of Witnesses D04-23, D04-26 and D04-25 and the trial proceedings, the use of image and voice distortion, the continued use of pseudonyms, as well as the use of private session to protect their identities, provided that this is indicated in advance to the parties, participants and the Chamber.

¹⁸Decision on the "Second Further Revised Defence Submissions on the Order of Witnesses" (ICC-01/05-01/08-2644) and on the appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link", 31 May 2013, ICC-01/05-01/08-2646, paragraph 13(ii).

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, the Netherlands