



Original: **English**

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 protective measures for Witness 44”, ICC-01/05-01/08-2107 of 3
February 2012**

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 Melinda Taylor
Ms Kate Gibson

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

The Office of Public Counsel for the Defence

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”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on protective measures for Witness 44.

I. Background and submissions

1. On 13 September 2011, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Request for Protective 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”¹ (“Request”). The prosecution filed a confidential redacted version of its Request on 16 September 2011.² In its Request, the prosecution urges the Chamber to authorise protective measures for, *inter alia*, Witness 44.³
2. Specifically, the prosecution requests that the Chamber authorise the entire testimony of Witness 44 to be given in private or closed session.⁴ In the alternative, the prosecution requests that the Chamber grant limited in-court protective measures, namely the use of a pseudonym, image and voice distortion and partial use of private or closed session for evidence regarding the identity or other identifying information of the witness.⁵
3. For that purpose, the prosecution argues that the protective measures requested are necessary, reasonable and proportionate.⁶ The prosecution justifies its

¹Prosecution’s Request for Protective 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.

² Confidential Redacted Version of “Prosecution’s Request for Protective 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, 16 September 2011, ICC-01/05-01/08-1743-Conf-Red.

³ ICC-01/05-01/08-1743-Conf-Red, paragraph 1.

⁴ ICC-01/05-01/08-1743-Conf-Red, paragraph 14 and page 10.

⁵ ICC-01/05-01/08-1743-Conf-Red, paragraph 14 and page 10.

⁶ ICC-01/05-01/08-1743-Conf-Red, paragraph 5.

request by the [REDACTED]⁷ The prosecution further asserts that Witness 44 himself has requested protective measures “as a result of the [REDACTED], past threats, and his perceived risk due to his cooperation with the Court”.⁸ In addition, the prosecution argues that testifying without protective measures would raise Witness 44’s public profile and subject him to potential threats and intimidation, which creates a substantial risk that he [REDACTED] could be a target of threats or an actual attack.⁹

4. On 7 October 2011, the defence filed its “Defence Response to Prosecution Request for Protective Measures for Witness CAR-OTP-WWWW-0015, CAR-OTP-WWWW-0036, CAR-OTP-WWWW-0044, CAR-OTP-WWWW-0045” (“defence Response”).¹⁰ The defence urges the Chamber to reject the requested protective measures, submitting that Witness 44 does not genuinely require protection, that the existence of [REDACTED] is an insufficient basis for imposing protective measures, and that the measures will cause prejudice to the defence.¹¹
5. On 1 February 2012, the Victims and Witnesses Unit (“VWU”) provided the Chamber with a security assessment in relation to Witness 44, in which it submitted that it supports the prosecution’s Request that the entire testimony of Witness 44 be heard in private or closed session. In the VWU’s view, such a measure is necessary to ensure the safety of the witness and his family.

⁷ ICC-01/05-01/08-1743-Conf-Red, paragraph 14.

⁸ ICC-01/05-01/08-1743-Conf-Red, paragraph 14.

⁹ ICC-01/05-01/08-1743-Conf-Red, paragraph 14.

¹⁰ Defence Response to Prosecution Request for Protective Measures for Witness CAR-OTP-WWWW-0015, CAR-OTP-WWWW-0036, CAR-OTP-WWWW-0044, CAR-OTP-WWWW-0045, 7 October 2011, ICC-01/05-01/08-1835-Conf.

¹¹ ICC-01/05-01/08-1835-Conf, paragraphs 12 to 23, 46 to 49 and page 19.

II. Relevant provisions

6. 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”), Regulation 20 of the Regulations of the Court, and Regulation 94 of the Regulations of the Registry.

III. Analysis and conclusions

7. When ruling upon a request for protective measures pursuant to Article 68(1) and (2) of the Statute and Rule 87 of the Rules, the Chamber needs to comply with the obligation established in Article 68 of the Statute “to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses” in a manner that is not “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.” Moreover, the Chamber has a 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. While the principle of publicity of proceedings “does not have an absolute nature”,¹² due regard must be given to it when protective measures are sought that would limit the public nature of the proceedings.¹³
8. According to the practice established by the Chamber, requests for protective measures are to be assessed on a case-by-case basis, and may be granted where the Chamber is satisfied that they are not prejudicial to, or inconsistent with, the rights of the accused and a fair and impartial trial.¹⁴ In this regard, the Chamber has previously clarified that limited protective measures such as image and

¹² Decision on in-court protective measures for Witnesses 38, 22 and 87, 19 November 2010, ICC-01/05-01/08-1021-Conf, paragraph 24; Trial Chamber II, Transcript of hearing on 20 September 2010, ICC-01/04-01/07-T-189-ENG, page 10, lines 17-22.

¹³ 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.

¹⁴ ICC-01/05-01/08-1809-Conf, paragraph 8.

voice distortion and the assignment of pseudonyms are generally non-intrusive measures in cases where a witness could be at risk on the account of his or her testimony at the Court.¹⁵

9. However, turning to the particular circumstances of Witness 44, the Chamber considers that the above-listed limited in-court protective measures concealing his identity are not sufficient to negate the risk. Indeed, the witness is aware that the fact that he will testify is known to a number of individuals. Nevertheless, he fears that the content of his statement, [REDACTED] could entail risks of retaliation against himself [REDACTED].

10. The conclusion that protective measures are necessary to protect the witness' safety needs to be balanced against the rights of the accused to a fair and impartial trial and the principle of the publicity of proceedings. For the reasons that follow, the Chamber is of the view that granting the protective measures sought in the Request, supported by the VWU, the neutral organ of the Court that is in charge of protection of witnesses and persons that could be put at risk on account of their cooperation with the Court, will have a limited impact on these imperatives.

11. The Chamber stresses that the protective measures sought merely purport to protect the witness' identity with regard to the general public and do not curtail the defence's knowledge of the witness' identity. To the contrary, his identity as well as his written statements have been disclosed to the defence a long time ago and the defence will be able to listen to and see the witness in the courtroom and question the witness.

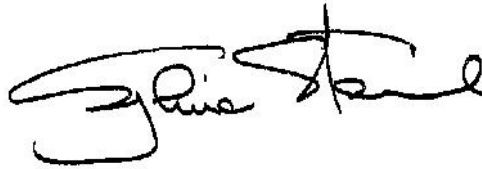
¹⁵ Decision on in-court protective measures for Witness 32, 22 September 2009, ICC-01/05-01/08-1774-Conf, paragraph 12.

12. Regarding the principle of publicity of proceedings, the Chamber underlines that after the completion of the witness's testimony, the prosecution will be required to prepare a public redacted version of the transcripts of the hearing held in closed session, for its possible release to the public once reviewed and authorised by the Chamber.
13. In these circumstances, the Chamber concludes that the measures sought are necessary, reasonable and proportionate and consistent with the accused's fundamental right to a fair trial, as enshrined in Article 67 of the Statute.

IV. Conclusions

14. For the reasons above, the Chamber grants the requested protective measure for Witness 44 and authorises his entire testimony to be heard in closed session.
15. In addition, the Chamber orders the prosecution, in consultation with the VWU, to prepare a public redacted version of the transcripts of hearing in closed session, for its possible release to the public once reviewed and authorised by the Chamber. The proposed redactions to the related transcripts should be filed confidentially with the Chamber as soon as practicable after the Witness has completed his evidence.

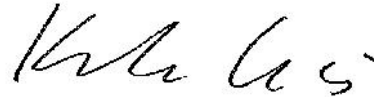
16. Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, The Netherlands