

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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 in-court protective measures for
Witnesses D04-03 and D04-04”, ICC-01/05-01/08-2694 of 17 June 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 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

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”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on in-court protective measures for Witnesses D04-03 and D04-04.

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 D04-03 and D04-04, as part of a group of witnesses designated by the defence as [REDACTED].² The defence submitted that Witness D04-03 [REDACTED]. He had expressed concerns for his safety should his identity become known on the basis that [REDACTED].³ In relation to Witness D04-04, the defence submitted that as [REDACTED].⁴
2. In light of the above, the defence requested in-court protective measures for both of these witnesses. Specifically, the defence requested 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.⁵
3. On 6 August 2012, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Response to ‘Defence Request for Protective Measures’” (“Response”).⁶ In its Response, the prosecution asserts that the defence “does not

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 33 to 34.

⁴ [REDACTED].

⁵ ICC-01/05-01/08-2244-Conf, paragraphs 45(c).

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

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”.⁷ 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.”⁸ On this basis, the prosecution submits that 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.⁹ 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.¹⁰

4. On 30 May 2013, the defence filed its “Defence Further Submissions in Support of its Request for Protective Measures for Defence Witnesses [REDACTED]”, together with confidential *ex parte* Annex A (“Updated Request”).¹¹ Despite the recent change [REDACTED] the defence maintains its request for in court-protective measures for, *inter alia*, Witnesses D04-03 and D04-04, arguing that the situation in this country remains “extremely unstable” and that the witnesses

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

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

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

¹⁰ ICC-01/05-01/08-2253-Conf, paragraph 9.

¹¹ Defence Further Submissions in Support of its Request for Protective Measures for Defence Witnesses [REDACTED], 30 May 2013, ICC-01/05-01/08-2645-Conf and confidential *ex parte* Annex A to Defence Further Submissions in Support of its Request for Protective Measures for Defence Witnesses [REDACTED], 30 May 2013, ICC-01/05-01/08-2645-Conf-Exp-AnxA.

continue to have security concerns [REDACTED].¹² The defence further submits that at the time of its Updated Request, [REDACTED] and that these factors serve to increase the witnesses' fears of reprisals and the perceived risk to their security [REDACTED]. The defence therefore reiterates that the requested in-court protective measures are necessary, reasonable and proportionate, and consistent with the practice of the Chamber in the present proceedings.¹³

5. On 31 May 2013, the prosecution and the legal representatives of victims were ordered to file responses to the Updated Request, if any, by 5 June 2013.¹⁴ No observations were received by this deadline.
6. On 13 and 14 June 2013, the Victims and Witnesses Unit ("VWU"), after having met with the witnesses in [REDACTED], provided the Chamber, by email, with its security assessments on the need to implement in-court protective measures for the benefit of Witnesses D04-03 and D04-04 ("VWU Assessments").¹⁵ [REDACTED] both witness have expressed concerns [REDACTED].
7. On 14 June 2013,¹⁶ the Chamber also received, by email, [REDACTED] in relation to Witness D04-03, recommending [REDACTED].

II. Analysis and conclusions

8. 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, Rules 87 and 88 of the Rules of Procedure and Evidence ("Rules"), Regulations

¹² ICC-01/05-01/08-2645-Conf, paragraph 18.

¹³ [REDACTED].

¹⁴ Email from the Chamber's Assistant Legal Officer to the prosecution and legal representatives of victims on 31 May 2013, at 12.39.

¹⁵ Emails from the Registry's Associate Protection Officer to the Chamber on 13 June 2013 at 20.14 and on 16 June 2013 at 21.15.

¹⁶ Email from the VWU's Support Officer to the Chamber on 14 June 2013 at 13.42.

20, 41 and 42 of the Regulations of the Court, and Regulation 94 of the Regulations of the Registry.

9. 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 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,¹⁷ it must be paid due regard when protective measures that would limit the publicity of the proceedings are sought.¹⁸

10. 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 initial Request the defence did not generally provide individualised and specific information in relation to each witness for whom protective measures were sought. However, in relation to Witnesses D04-03 and D04-04, the Chamber considers that it has now received sufficient information to rule on the request, drawn from the updated information provided by the defence, the witnesses themselves and the VWU Assessment.

¹⁷ 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.

¹⁸ 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.

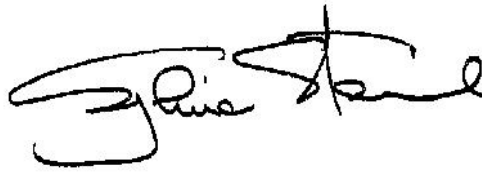
11. Turning to the particular circumstances of Witnesses D04-03 and D04-04, and the question of whether the requested protective measures are justified, the Chamber is of the view that given their previous roles [REDACTED] and taking into account the VWU Assessments in this regard, the witnesses may indeed be perceived as [REDACTED]. The Chamber was further informed that both witnesses have expressed fears in relation to [REDACTED]. Considering that the political and military situation remains unstable [REDACTED] the Chamber is of the view that the witnesses' fears appear justified.
12. Furthermore, the Chamber notes the witnesses consent to the use of in-court protective measures.
13. For the above reasons, the Chamber considers that Witnesses D04-03 and D04-04 would face objectively justifiable risks as a result of giving testimony on behalf of the defence.
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 by the defence for Witnesses D04-03 and D04-04 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. Furthermore, the identities of Witnesses D04-03 and D04-04 are already known to the prosecution and the legal representatives who, despite the imposition of the requested in-court protective measures, will still be able to question the witnesses via video-

link¹⁹ and publicly for the majority of their testimony, save for specific parts that would tend to identify them.

15. Therefore, the Chamber considers that the requested measures are necessary to avoid the risks posed to the witnesses, and that they are reasonable, 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 D04-03 and D04-04 and the trial proceedings, the use of image and voice distortion, the continued use of a pseudonym, as well as the use of private session to protect their identity, provided that this is indicated in advance to the parties, participants and the Chamber.
17. In addition, further to the VWU's [REDACTED] in relation to Witness D04-03, the Chamber approves [REDACTED] special measures. Accordingly, the Chamber (i) **DECIDES** to authorise, during the testimony of Witness D04-03, the presence of a VWU support assistant at the location of the video-link and the provision of reading assistance, as necessary; and (ii) **DIRECTS** the parties and participants to adapt their questioning to the needs and capacities of the witness by using short and simple open-ended questions to guide the witness through his testimony.

¹⁹Decision 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).

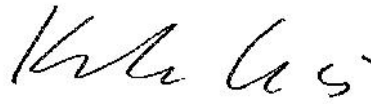
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, the Netherlands