

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 15 July 2016

TRIAL CHAMBER III

Before: Judge Joyce Aluoch, Presiding Judge
Judge Geoffrey Henderson
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*V. JEAN-PIERRE BEMBA GOMBO***

Public Redacted Document

Public redacted version of "Prosecution's Response to 'Defence Request for Protective Measures'", 06 August 2012, ICC-01/05-01/08-2253-Conf

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba Gombo

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

The Office of Public Counsel for the Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. The Defence requests in-court protective measures (“ICPM”) for 57 out of the 63 witnesses that it intends to call to testify.¹ In addition, the Defence requests that two witnesses testify entirely in closed session.² It seeks these measures by making generalized claims that they are necessary to protect the witnesses from victimization by their communities, the Central African Republic (“CAR”) [REDACTED],³ and by seeking to justify the measures not for each individual witness but rather by groups of witnesses, namely: (i) Victim witnesses; (ii) [REDACTED] witnesses; (iii) Former CAR soldiers and; (iv) other witnesses.⁴

2. Ultimately Trial Chamber III (“Chamber”) will need to balance the need to protect witnesses with the presumption of an open and public trial. But the approach of the Defence is improper. The Defence has the burden of proving a fact based risk for each of the witnesses and their families, in connection with their testimonies. Additionally, the Defence should demonstrate that the requested ICPM are necessary, reasonable and proportionate to that risk. Yet, the Defence has only submitted requests for entire categories of witnesses, failing to substantiate individual requests. On that basis, the Office of the Prosecutor (“Prosecution”) objects to the request and proposes that it be dismissed without prejudice to the Defence right to file a new request that addresses the witnesses individually.

II. Background

3. On 24 February 2012, the Chamber rendered a decision setting out the procedure for requesting protective measures stating, *inter alia*, that the Defence

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

² ICC-01/05-01/08-2244-Conf, para. 45.

³ ICC-01/05-01/08-2244-Conf, paras. 14, 22, 28 and 29.

⁴ ICC-01/05-01/08-2244-Conf, paras. 12 and 44.

should file, if applicable, any request for in-court protective measures “stating the legal and factual basis for such request”.⁵

4. On 27 June 2012, the Chamber rejected the Defence request for delayed disclosure of its witnesses’ identities on the basis of lack of information regarding the risks faced by the witnesses.⁶

5. On 13 July 2012, the Defence filed its “Defence Request for Protective Measures” (“Defence Request”), seeking ICPM for a total of 57 witnesses.⁷ On the same day, the Defence filed its “Defence Disclosure of its List of Witnesses and the Factual and Legal Elements of its Case” by which the Defence disclosed that it will call a total of 63 witnesses.⁸

III. Request for confidentiality

6. Pursuant to Regulation 23(1) *bis* of the Regulations of the Court, the Prosecution files this document as “Confidential” to maintain the confidentiality of the Defence Request.

IV. Prosecution’s submissions

7. The Defence Request does not provide sufficiently specific and individualized information in relation to the witnesses concerned to justify the Chamber granting the requested ICPM. This information is necessary for the Chamber to assess whether *each* witness is facing an objective and precisely identified risk on the basis of his

⁵ ICC-01/05-01/08-2141, Decision on defence disclosure and related issues, 24 February 2012, para. 36.

⁶ ICC-01/05-01/08-2236-Conf, Decision on the “Defence Request for Delayed Disclosure of Witness Identifying Particulars and Summaries of Anticipated Testimony, and other Related Requests”, 27 June 2012, para. 20.

⁷ ICC-01/05-01/08-2244-Conf.

⁸ ICC-01/05-01/08-2243-Conf, Defence Disclosure of its List of Witnesses and the factual and Legal Elements of its Case, 13 July 2012. See Annex A for details of the 63 Defence witnesses.

specific situation.⁹ The Chamber has stressed throughout these proceedings that it will consider granting protective measures to witnesses only on a case by case basis.¹⁰ Recently, the Chamber rejected the Defence request for delayed disclosure of its witnesses' identities on account that the Defence failed to "provide specific and individual information in relation to the witnesses concerned ..."¹¹ The Chamber also noted that nothing prevents the Defence from requesting individual risk assessments by the Victims and Witnesses Unit of the security situation of its witnesses, in order to ascertain whether these witnesses face an objectively justifiable risk. This step would further enable the Chamber to decide on any requests for ICPM.¹²

8. The Prosecution notes that the Defence again failed to submit individual fact-based requests, choosing instead to describe generic risks for entire categories of witnesses. The Chamber should therefore require the Defence to provide all relevant information in support of each individual request for ICPM so as to enable the Chamber to strike a proper balance between the obligation to protect the witnesses and the duty to ensure the publicity of the proceedings.

9. The Prosecution finally observes that the Defence Request did not specify whether it obtained the consent by each witness for whom protective measures are sought. Clarification on this point is necessary, since the Chamber has to date been seeking the witness's consent before deciding on protective measures requested.¹³

⁹ ICC-01/05-01/08-2236-Conf, para. 20. The Chamber referred to the reasoning of Trial Chamber II: ICC-01/04-01/07-1179-tENG, Public redacted version of the Decision on the Protection of Prosecution Witnesses 267 and 353 of 20 May 2009 (ICC-01/04-01/07-1156-Conf-Exp), 28 May 2009, para. 35.

¹⁰ ICC-01/05-01/08-1774-Conf, Decision on in-court protective measures for Witness 32, 22 September 2011, para. 11.

¹¹ ICC-01/05-01/08-2236-Conf, para. 20.

¹² ICC-01/05-01/08-2236-Conf, para. 20.

¹³ Rules 87(1) and 88(1) of the Rules of Procedure and Evidence. See also ICC-01/05-01/08-1021-Conf, Decision on in-court protective measures for Witnesses 38, 22 and 87, 19 November 2010, para. 31. The Chamber stated: "The Chamber notes that pursuant to Rules 87(1) and 88(1) of the Rules, it 'shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure'".

V. Conclusion

10. The Prosecution opposes the request as currently formulated, and requests that the Chamber order the Defence to provide specific and individual information in relation to the witnesses for whom protective measures are sought.



Fatou Bensouda, Prosecutor

Dated this 15th Day of July 2016

At The Hague, The Netherlands