

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/05-01/08**
Date: **7 November 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 Request for Special Measures for Witnesses
CAR-OTP-PPPP-0108, CAR-OTP-PPPP-0110 and CAR-OTP-PPPP-0112 at Trial”,
17 May 2011, ICC-01/05-01/08-1412-Conf**

Source: The Office of the Prosecutor

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 special measures to be applied during the testimonies of Witnesses CAR-OTP-PPPP-0108 (“Witness 108”), CAR-OTP-PPPP-0110 (“Witness 110”) and CAR-OTP-PPPP-0112 (“Witness 112”) during the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*. The Prosecution seeks these special measures pursuant to Articles 68(1) and 64(2) of the Rome Statute and Rule 88 of the Rules of Procedure and Evidence. These provisions authorise the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, and to facilitate the testimony of a witness, while at the same time preserving the Accused’s right to a fair and public trial.

2. In particular, the Prosecution, requests that Trial Chamber III (“Chamber”) authorise: (i) image and voice distortion; (ii) continued in-court use of the witness number and pseudonyms in lieu of names; (iii) private or closed sessions for the portions of testimony where the witness provides information that would tend to disclose his/her identity.

3. The Prosecution contemplates that these witnesses will testify substantially in open session. These witnesses’ identities are known to the Defence. With the requested measures in place, the Defence will be able to examine these witnesses publicly, except on discrete matters that bear on their 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 - but not the substantive evidence - of Witnesses 108, 110 and 112.

II. Request for confidentiality

4. The Prosecution requests that this application be received by the Chamber as Confidential since it relates to a request for protective measures, communication of which to the public will defeat the object of the request.

III. Application for special measures

5. The Prosecution's request for special measures is based on, and supported by, the core texts of this Court and its practice. 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.¹ In addition, the requested measures also have the function to facilitate the testimonies of the witnesses.²

IV. Witnesses 108, 110 and 112

6. Witness 108 is the *Directeur du Cabinet à la Cour Constitutionnelle* since 2004.³ During the October 2002 - March 2003 events in the Central African Republic ("CAR"), his house was occupied and used as the headquarters by the Banyamulenge. He is a victim of pillaging. The Banyamulenge stole items from his house as well as destroyed some of those items that they could not take away.⁴ Witness 108 has informed the Prosecution that he does not have any problem being seen by the Accused, his lawyers and the whole courtroom but must be protected against the public. He strongly feels that, without the requested special measures, the protective measures available to the Prosecution are insufficient to protect him. Witness 108 emphasized that he will be giving his testimony, not as a Government official or high-ranked personality but as a victim.⁵ Witness 110 [REDACTED]. Apart from being a victim of pillaging herself,⁶ she also witnessed the Banyamulenge shoot someone to death.⁷ Witness 112 [REDACTED]. He was forced by the Banyamulenge to [REDACTED].⁸ He was also beaten and kicked by the Banyamulenge.⁹ Very recently Witnesses 110 and 112 have expressed their wish to the

¹ Article 68(1) of the Rome 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.

² Rule 88(1) of the Rules of Procedure and Evidence.

³ CAR-OTP-0037-0269.

⁴ CAR-OTP-0037-0269 at 274.

⁵ Witness 108 provided this information to the Prosecution on the 5 May 2011. The Prosecution contacted the witness to find out whether he required in-Court protective measures or not. This action was taken by the Prosecution in view of the emerging practice whereby witnesses are requesting protective measures during witness familiarization process here in the Hague.

⁶ CAR-OTP-0038-0360 at 0370.

⁷ CAR-OTP-0038-0360 at 0373.

⁸ CAR-OTP-0040-0079 at 0091.

⁹ CAR-OTP-0040-0079 at 0102.

Prosecution to remain anonymous to the public during trial because they do not want their neighbours and other people in the CAR to know that they are cooperating with the Court.¹⁰

7. Although at present the objective risk of retaliation against these witnesses is considered to be low, the Prosecution requests that the special measures should be granted in order to facilitate the testimonies of Witnesses 108, 110 and 112, due to their subjective perception of the risk. Moreover, the Prosecution submits that the Chamber has granted such measures to other witnesses, notably Witnesses 38,¹¹ 63¹² and 119 in order to facilitate their testimony.¹³

8. The Prosecution's request for special measures in this case, is also in accordance with the Victims and Witnesses Unit ("VWU")'s recommendations in respect of victims in similar circumstances as Witnesses 108, 110 and 112. In its report to the Chamber, the VWU has recommended maintaining full confidentiality of all victims' identities vis-à-vis the public at all times in order to avoid unnecessary exposure.¹⁴ Further, the VWU has recommended that where the Chamber decides that certain victims appear before it, then such victims should be granted procedural protective measures such as facial and voice distortion and assigning a pseudonym for these victims.¹⁵

9. As Witnesses' 108, 110 and 112 co-operation with the court is not known to the public, and in light of these witnesses' concerns, the Prosecution respectfully requests the Chamber to grant these special measures as they would enable these witnesses to provide their testimonies freely, as well as allow them to continue living in their current communities without the fear of possible threats or harassment to them or their families as a result of their testimonies before this Court.¹⁶

¹⁰ This information was communicated to the Prosecution on the 9 May 2011 by Witnesses 110 and 112.

¹¹ ICC-01/05-01/08-1021-Conf, Decision on in-court protective measures for Witnesses 38, 22 and 87, 19 November 2010, at para 35.

¹² ICC-01/05-01/08-T-107-ENG ET, 10 May 2011, at p. 1, line 24 to p. 3, line 5.

¹³ See ICC-01/05-01/08-T-107-ENG ET, 10 May 2011, at p. 2, lines 7-8. In respect to Witness 63, the Chamber states that these measures are necessary, reasonable and proportionate

¹⁴ ICC-01/05-01/08-1368-Conf, Victims and Witnesses Unit's report on the requests for protective and special measures of victims who have been granted status to participate, 31 March 2011, at para 10.

¹⁵ *Ibid.*, at para 12.

¹⁶ See ICC-01/05-01/08-T-107-ENG ET, 10 May 2011, at p. 2, lines 8-10.

V. Relief sought

10. In light of the foregoing, the Prosecution respectfully requests that the Chamber authorize image and voice distortions and assigns pseudonyms to Witnesses 108, 110 and 112 during their testimonies and ensure that evidence regarding their identities or other identifying information of Witnesses 108, 110 and 112 be given in closed session.



Fatou Bensouda, Prosecutor

Dated this 7th Day of November 2016

At The Hague, The Netherlands