

**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 Protective and Special
Measures for Witness CAR-OTP-PPPP-0073 at Trial", 14 February 2011,
ICC-01/05-01/08-1225-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 in-court protective measures to be applied during the testimony of Witness CAR-OTP-PPPP-0073 (“Witness 73”) in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*. The Prosecution seeks these in-court protective measures pursuant to Articles 68(1) and 64(2) of the Rome Statute and Rules 87 and 88 of the Rules of Procedure and Evidence (“Rules”). 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) assignment of a pseudonym, and continued in-court use of that pseudonym in lieu of the name; (iii) private sessions for the portions of testimony where the witness provides information that would tend to disclose his identity, as well as the identity of [REDACTED], who was a victim of sexual violence.

3. The Prosecution contemplates that Witness 73 will testify substantially in open session. Witness 73’s identity is known to the Defence. With the requested measures in place, the Defence will be able to examine Witness 73 publicly, except on discrete matters that bear on the identity of Witness 73, [REDACTED]. The Defence will therefore be able to present its case at trial without restriction. The requested measures will not prevent the public disclosure at trial of the substantive evidence that Witness 73 will provide.

II. Request for confidentiality

4. The Prosecution requests that this application be received by the Chamber as Confidential, *Ex Parte*, only available to the Prosecution and the Victims and Witnesses Unit ("VWU"), since it relates to a request for protective measures, communication of which will defeat the object of the request.

III. Application for in-court protective measures

5. The Prosecution's request for in-court protective measures is based on, and supported by, the core texts of this Court and its practice. Accordingly, the Chamber throughout the proceedings shall have "*due regard for the protection of victims and witnesses*".¹ 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.²

IV. Witness 73

6. Witness 73 and his family were victims of multiple pillaging. Witness 73 was also a victim of beating. He will testify to mass pillaging suffered by the civilian population and the sexual assault committed on [REDACTED]. Furthermore, Witness 73 is expected to testify to the Accused's visit in Bangui - PK12, and identify some commanders of the *Mouvement de Libération du Congo*.

7. The VWU has contacted the Prosecution on 10 February 2011 to inform that Witness 73 stated during the familiarization process that he would feel unsafe to

¹ Article 64(2) of the Rome Statute ("Statute").

² Article 68(1) of the 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.

testify in public session without protective measures, and raised severe concerns for his personal safety and that of his family.

8. During a consultation with the VWU, the Prosecution has then been informed that Witness 73 had assumed that every witness testifying before the Court would be automatically granted protective measures, including face and voice distortion and assignment of a pseudonym.³ When pointed out to him that there are currently no protective measures in place for his testimony, Witness 73 expressed his fear of being identified upon his return [REDACTED]. This, in his view, may lead to harassment for him and his family.

9. The Prosecution submits that the requested in-court protective measures, if granted, would enable Witness 73 to continue to live in his current community without the fear of him and his family being identified and, as a result being re-traumatized, threatened or harassed. At present the objective risk of retaliation against the witness is considered to be low, but the Prosecution requests that the measures should be granted pursuant to Rule 88 of the Rules in order to facilitate the testimony of Witness 73, due to his subjective perception of risk.

10. In order not to defeat the in-court protective measures, which were granted by a Chamber's oral decision in relation to [REDACTED] testimony, ⁴ the Prosecution also requests that relevant portions of Witness 73's testimony, referring to and identifying [REDACTED], who was a victims of sexual violence, be heard in private session.

³ The Prosecution notes that it had previously met Witness 73 [REDACTED] on 2 April 2010 in order to provide the witness with an explanation on procedural and logistical aspects related to his testimony. On this occasion an explanation had been provided to Witness 73 as to the procedural mechanism for requesting in-court protective measures pursuant to Rules 87 and 88 of the Rules of Procedure and Evidence. Witness 73 did not raise security concerns with the Prosecution's representatives.

⁴ ICC-01/05-01/08-T-63-CONF-ENG, 10 February 2011, page 51, lines 6-19. The Chamber granted the use of face and voice distortion and the use of a pseudonym during [REDACTED] testimony. The Chamber also authorized that portions of [REDACTED] testimony referring to and identifying witnesses and victims of sexual violence be heard in private session.

V. Relief sought

11. In light of the foregoing, the Prosecution respectfully requests that the Chamber:

- (i) authorize image and voice distortions during Witness 73's testimony;
- (ii) assign a pseudonym to Witness 73 for continued in-court use in lieu of his name;
- (iii) authorize portions of the testimony of Witness 73, where the witness provides information that would tend to disclose his identity, as well as the identity of [REDACTED], to be heard in private session.



Fatou Bensouda, Prosecutor

Dated this 7th Day of November 2016

At The Hague, The Netherlands