

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 24/02/2012

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**

Confidential

**Defence Observations on the Request for Full Protective Measures for Witness
0036**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

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Legal Representatives of the Victims

Ms. Marie-Edith Douzima-Lawson
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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Other
Section**

1. On 16th September 2011, the Prosecution filed a Confidential and Redacted version of its Request for Protective and Special Measures for witnesses 15, 36, 44 and 45.¹
2. On 6th October 2011 the Defence filed its Response to the Prosecution's request for Protective Measures.
3. To date the Chamber has rendered no decision in relation to the protective measures sought in relation to witness 36, notwithstanding the passage of almost 5 months since the close of the filings on the matter.
4. On 20 February 2012, at 08.16 the Defence received the following email from VWU:

"Please be informed that the court familiarisation and the courtesy meeting for this morning have been postponed until further notice."

5. The defence notes that the email was sent only to the defence team, and assumes, therefrom that the information it contained was already known to the other parties, the Chamber, the Registry, the prosecution and even the Legal Representatives for Victims"
6. At 4.59 pm the Defence received notification of a re-scheduled court familiarization and courtesy meeting, due to take place on 21 February between 10.00 and 11.20 a.m.
7. At 8.28 am on 21 February, the defence received the following email:

"Please be informed that CAR-36 didn't give his consent to meet your team. Therefore the scheduled courtesy meeting has been cancelled."

8. The defence is at a loss to understand why the courtesy meeting was cancelled. Surely, the principle purpose of the exercise is to acclimatise the witness to the surroundings in which he will give his evidence. The

¹ ICC-01/05-01/08-1743 Conf- Red

fact that he will not meet representatives of one of the parties, does not invalidate the central reason for the exercise.

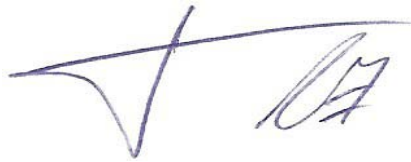
9. The defence also notes the curious language of this email (which again was only addressed to the defence team). It doesn't state that the witness has refused to meet the defence, but that "*he didn't give his consent*", implying a lack of information, rather than a positive assertion on the part of the witness.
10. At 12.19 pm on 21 February the Defence was first informed that witness 36 was [REDACTED] His testimony, due to start on 22nd, was inevitably cancelled. How it came about that this information was only known to VWU at that stage, is a matter of conjecture. However, the net effect is that his testimony will be delayed for 10 days or so, and the question of the protective measures recommended by VWU, can be considered in the interim.
11. Later on 21 February, the following email was received from the Trial Chamber:

In its updated report on the in-court protective measures requested for Witness 36, the VWU concluded that due to the nature and the content of Witness 36's testimony, [REDACTED]
[REDACTED]
[REDACTED] For these reasons, the VWU recommends that Witness 36's entire testimony should be heard in closed session.

In light of the VWU's recommendation, the Chamber asks the prosecution and the defence to submit their observations on the option of authorising Witness 36's testimony to be heard in full closed session. The observations should be provided by way of a formal filing to be submitted no later than by 16.00 on Friday, 24 February 2012.
12. The Defence was not provided with a copy the VWU report, nor any details as to how such an assessment was made. With respect to VWU, assessments as to

[REDACTED] and are matters for the Chamber. The assertion, moreover, that [REDACTED] [REDACTED] has no apparent or identifiable basis that is known to the defence, and is so nebulous as to be capable of meaning any number of things, many of which would not justify the grant of such extreme measures of protection.

13. The defence is, however, deeply troubled by the procedure being adopted. In the instant case, the issues as to whether witness 36 should be accorded any protective measures at all were crystallised in filings almost 5 months ago. The matter will however, apparently be determined on the basis of a secret report containing the inadmissible opinion of a member of VWU, the basis of which is not, nor will ever be known to the defence.
14. The defence notes that the summary of the report contained in the above email does not appear to cite as its source, the witness himself. There is moreover, nothing in the assertions of VWU which is not already contained in the prosecution filing of 16th September, which arguments have already effectively been countered by the defence. Accordingly, in the defence submission, the VWU report is not a new basis or ground for the granting of Protective Measures.
15. The Defence reiterates its consistent preference for the proceedings to be held in public, but in the present circumstances, especially given the paucity of information made available to it, defers to the Chamber on the present issue.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a series of loops and a final 'K'.

Aimé Kilolo
Associate Counsel

Done on the 24th of February 2012

At The Hague, the Netherlands