

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 30/05/2013

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*
with Confidential Annex A , Ex Parte Defence and VWU only
Urgent**

**Defence Further Submissions in Support of its Request for Protective Measures
for Defence Witnesses [REDACTED]**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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

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A. BACKGROUND

1. The remaining Defence witnesses include, *inter alia*, the following Central African witnesses who are currently located [REDACTED]

Witness D04-06 (former FACA soldier)

Witness D04-09 (former FACA soldier)

Witness D04-04 (former FACA soldier)

Witness D04-03 (former member of Miskine's militia)

Witness D04-02 (former member of the Karako)

2. On 13 July 2012, the Defence filed its confidential *Defence Request for Protective Measures* ("Defence Request").¹ At the time of filing of the Defence Request, the Central African Republic was still governed by the regime lead by General François Bozizé. As such, the Defence Request contained the following submissions in support of the Defence request for protective measures for the abovementioned witnesses:²

(b) Former Central African Soldiers

3. The Defence also intends to call former Central African soldiers who were involved in the relevant conflict, and who fought as part of Bozize's troops, the FACA, for Abdoulaye Miskine, and as part of the Karako militia. [...]

(ii) FACA Soldiers

4. The second group of former Central African soldiers are **ex-FACA soldiers** who fought as part of the so-called "Loyalist Forces" during the 2002-2003 regime, namely [...] **Witness 4, Witness 6, [...] Witness 9** [...].

5. These former soldiers fled the Central African Republic following the conflict, and are consequently liable to be considered

¹ ICC-01/05-01/08-2244-Conf

² ICC-01/05-01/08-2244-Conf, paras. 3-12.

as “deserters”. Moreover, they were also the military adversaries of the Head of State of the present regime during the 2002-2003 conflict. As such, they have expressed genuine fears for their own safety and [REDACTED] [REDACTED] should their identities or whereabouts, or association with the Defence be made public.

6. These witnesses will also be called to testify about the crimes committed by the troops under the command of the current Head of State during the relevant conflict which again heightens the risk, and their legitimate fear of reprisals against themselves and their families should their identity be made public.

(iii) Miskine and Karako militia

7. The last category of former Central African soldiers also fought as part of the “Loyalist Forces” during the 2002-2003 conflict. **Witness 2** fought as part of the Karako militia, while **Witness 3** was part of the troops who were under the direction of Abdoulaye Miskine. [REDACTED]

8. They have both expressed concerns for their safety should their identities become known on the basis that they were the adversaries of the present regime in the Central African Republic during the 2002-2003 conflict, and also because they will give testimony as to crimes committed by troops under the control of the present Head of State (and other soldiers under the command of Miskine himself).

9. For the reasons outlined above, the Defence submits that the granting of in-court protective measures for the former Central African soldiers is necessary, reasonable and proportionate. The Defence recalls that the Chamber has previously considered that protective measures are generally non-intrusive measures in cases where a witness could be at risk on the account of their testimony at the Court.³ The Defence submits that for each of the categories of former Central African soldiers outlined above, this threshold has been met, warranting the granting of in-court protective measures for the hearing of their testimony.

10. On 19 September 2012, Trial Chamber III (“the Chamber”) granted in-court protective measures to Defence Witness D04-07, a former FACA soldier who was

³ See, for example, ICC-01/05-01/08-1774-Conf, paras. 12.

also [REDACTED]⁴ The Defence had justified its request for protective measures for this witness on the following basis:⁵

In particular, the Defence requests the Chamber to grant in-court protective measures for Witness D04-07 who belongs, according to the Defence, to the third category of witnesses. The Defence submits that, as part of that group of witnesses, Witness 07 is an ex-FACA

[REDACTED]
[REDACTED] The Defence generally asserts that the witness in this category have expressed fears for their own safety and [REDACTED]
[REDACTED] In addition, this category of witnesses will testify on crimes allegedly committed by the troops under the command of Mr Bozizé, current president of the CAR, which heightens the risk of them and gives rise to a legitimate fear of reprisals.

11. The Defence files the following submissions to provide the Chamber with further information concerning the current security concerns of Witnesses D04-06; D04-09; D04-04; D04-03; D04-02, who are [REDACTED] and who appear to be the next group of witnesses who will testify in the present proceedings. Concerns relevant to all witnesses are contained in this confidential filing. Particular concerns specific to each witness which reveal details such as the witness' place of residence and particular family details are contained in *Confidential and Ex Parte Annex A*.

12. The Defence submits that these additional security concerns provide a further justification for the granting of protective measures to facilitate the testimony of these witnesses.

B. APPLICABLE LAW

13. Article 67(1)(e) of the Rome Statute safeguards the right of the accused "to examine, or have examined, the witnesses against him or her and to obtain the

⁴ ICC-01/05-01/08-T-248-CONF-ENG ET 19-09-2012, pp.2-4.

⁵ ICC-01/05-01/08-T-248-CONF-ENG ET 19-09-2012 p. 2.

attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.”

14. As regards protective measures for witnesses, Article 68(1) provides as follows:

The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

15. Together with Article 64(2) of the Rome Statute, and Rules 87 and 88 of the Rules of Procedure and Evidence (“Rules”), the Chamber is authorised to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particular including victims of sexual violence, and to facilitate the testimony of vulnerable witnesses and those who are particularly at risk, while at the same time preserving the Accused’s right to a fair and public trial.

16. In the present case, the Chamber has adopted the following approach to the granting of requests for protective measures:⁶

...protective measures pursuant to Article 68(1) and (2) of the Statute and Rules 87 and 88 of the Rules may be granted by the Chamber on a case-by-case basis, where the Chamber on a case by case basis, where the Chamber is satisfied that they are not prejudicial to, or inconsistent with, the accused’s right to a fair and impartial trial. It can therefore not be said that protective measures granted for witnesses who are called to testify are, in principle, contrary to the fundamental right of the accused to a fair and public trial.

⁶ See, for example, ICC-01/05-01/08-1774-Conf, paras.11-12.

Balancing its duty to respect the principle of publicity and its obligation to protect victims and witnesses, **the Chamber considers that protective measures such as image and voice distortion and the assignment of pseudonyms are generally non-intrusive measures in cases where a witness could be at risk on the account of their testimony at the Court.** These measures are also intended as well to protect the physical and psychological well-being of witnesses at risk, and avoiding unnecessary public exposure of witnesses. **Such in-court protective measures impede the public's understanding of the case to a very limited extent** because the public is still able to follow the proceedings and the substance of the testimony of witnesses to whom protective measures are granted. These measures will sometimes need to be combined with limited private session testimony, in order not to defeat their purpose and to ensure effective protection of the identities of the witnesses concerned.

C. SUBMISSIONS

17. On the basis of the fears and risks associated with their testimony that have been expressed by these witnesses, the Defence maintains its request for in-court protective measures for Witnesses D04-06; D04-09; D04-04; D04-03; D04-02.

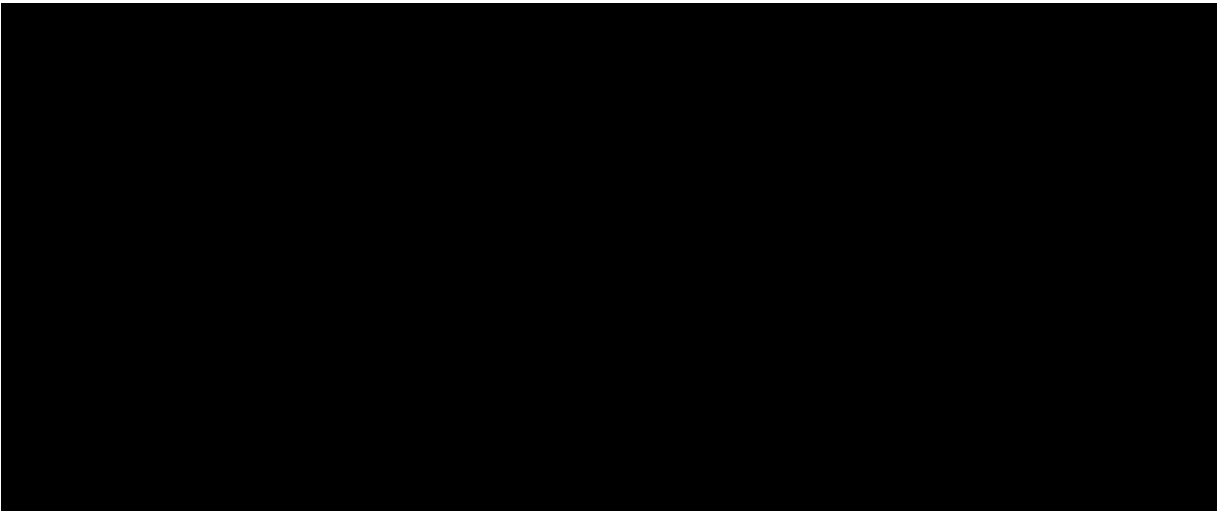
18. While General François Bozizé is no longer the head of state of the Central African Republic, the Defence understands that the situation in this country remains extremely unstable following the very recent violent rebellion and is still populated by many who remain loyal to the former regime. As such, these witnesses continue to harbor fears for themselves, [REDACTED]

[REDACTED] as regards being viewed as (a) deserters of the former FACA army; (b) traitors to the former regime given their association with the loyalist forces in during the 2002-2003 events; and (c) traitors given their anticipated testimony about the crimes committed by those fighting under the command of General Bozizé during the 2002-2003 events.⁷ In addition, the witnesses have informed the Defence that [REDACTED]

[REDACTED] given that many of the

⁷ ICC-01/05-01/08-2244-Conf, paras. 3-12.

Chadians who entered the country with General Bozizé in 2003 enjoy significant power within the new regime.

19. 


20. The Defence accordingly submits that the granting of in-court protective measures for Witnesses D04-06; D04-09; D04-04; D04-03; D04-02 is necessary, reasonable and proportionate, and consistent with the practice of the Chamber in the present proceedings.

D. RELIEF REQUESTED

21. Given the reasons cited above, the Defence respectfully requests that the Chamber:

GRANT the Defence request for in-court protective measures for Witnesses D04-06; D04-09; D04-04; D04-03; D04-02.

The whole respectfully submitted.



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Done on the 30th of May 2013
At The Hague, The Netherlands