

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 07/10/2011

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 Response to Prosecution Request for Protective Measures for Witness
CAR-OTP-WWWW-0015, CAR-OTP-WWWW-0036, CAR-OTP-WWWW-0044, and
CAR-OTP-WWWW-0045**

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

Mr Nkwebe Liriss
 Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims

Ms. Marie-Edith Douzima-Lawson
 Mr. Assingambi Zarambaud

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 Other
Section**

A. BACKGROUND

1. The Chamber in the present proceedings has now heard testimony from 26 factual Prosecution witnesses. 24 of these 26 witnesses have testified under the protection of “partial in-court protective measures”. As a result, a significant proportion of the present trial remains out of the public domain.

2. On 12 September 2011, the Prosecution informed the Chamber, by way of an *ex parte* email as follows:¹

Since the Chamber’s instruction to explore all alternatives with regards to have witnesses 15 and 44 testify before the winter recess, I have to report that **we were unable thus far to reach the witnesses**. OTP, of course, continues its efforts to get hold of the witnesses.

3. The next day, on 13 September 2011, the Prosecution filed the “Prosecution’s Request for Protective and Special Measures for Witnesses CAROTP-PPPP-0015, CAR-OTP-PPPP-0032, CAR-OTP-PPPP-0036, CAR-OTP-PPPP-0044, and CAR-OTP-PPPP-0045 at Trial”² (“Prosecution Request”).

4. The Defence did not receive a confidential redacted version of the Prosecution Request until three days later on 16 September 2011. The Prosecution Request provided to the Defence is significantly redacted in relevant parts.

5. By way of an oral decision of the same day, 16 September 2011, the Defence was ordered to respond to the Prosecution’s Request for protective measures for Witness 32 by 19 September 2011. The Chamber has since granted protective

¹ Email, 12 September 2011, from Ms. [REDACTED] to Mr. [REDACTED]. The Defence was made aware of this email on 22 September 2011 by way of its disclosure in an email from Mr. [REDACTED] entitled “Bemba case - witness schedule”. It was subsequently provided to the Defence in redacted form (emphasis added).

² ICC-01/05-01/08-1743-Conf-Red

measures for Witness 32,³ and the Defence has sought leave to appeal this decision.⁴

B. APPLICABLE LAW

6. Article 64 of the Rome Statute of the International Criminal Court ("Statute"), provides that:

The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

7. One of the rights with which the Chamber must ensure "full respect" is the right to a public trial. Pursuant to Articles 64(7) and 67(1) of the Statute, the requirement to hold trials in public is mandatory, subject only to the determination of special circumstances under Article 68.

8. Publicity, it is submitted, is internationally recognized as fundamental to an accused's fair trial rights; one which should only be derogated in exceptional circumstances. The European Court of Human Rights has been unequivocal that the public nature of trials⁵

protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of article 6(1), namely a fair trial.

9. The Trial Chambers of the ICC have underlined the fundamental importance of public trials. In *Katanga & Ngudjolo*, for example, the Trial Chamber was explicit that "the public nature of proceedings... constitutes for the Defence a safeguard, an essential safeguard. It contributes to preserving the trust that all those subject to

³ ICC-01/05-01/08-1774-Conf

⁴ ICC-01/05-01/08-1782-Conf

⁵ Judgement, *Werner v. Austria*, 24 November 1997, § 45.

the law have to have in justice, and it is one of the best means of controlling the way in which such justice is rendered.”⁶

10. Derogation from the mandatory requirement under Articles 64 and 67 can only be justified by a requirement to protect the witness.⁷ Throughout these proceedings, the Defence has been consistent in its position that protective measures must be proportionate and discrete, and only implemented when the Chamber is convinced that failure to do so will give rise to a serious likelihood that actual harm will be caused to a witness.⁸ As to proportionality, the defence notes that the Prosecution has requested that the whole of the testimony of Witness 44 and Witness 15 be heard in closed or private session. For Witness 36 and 45, as with the vast majority of other requests, the Prosecution seek so-called “partial in-court protective measures”. This inevitably leads, contrary to the Prosecution’s submission on the issue, to the majority of these witnesses’ evidence being heard in private or closed session, as it is seldom possible adequately to describe events without referring to persons, places or incidents which tend to reveal the witness’ identity.

11. The Defence, moreover, reiterates its previous arguments that protective measures should only be granted where the potential harm to a vulnerable witness is both genuine and well-founded.⁹

C. SUBMISSIONS

(a) The witnesses who are the subject of the Prosecution Request do not genuinely require protection

12. It is firstly to be observed that the Prosecution Request has been made on

⁶ Transcript, *Katanga & Ngudjolo Chui* (ICC-01/04-01/07-T-189-ENG ET WT 20-09-2010), at 10.

⁷ See Articles 68 (1) and (2)

⁸ See, for example, ICC-01/05-01/08-830-Conf-Exp, para. 3.

⁹ ICC-01/05-01/08-830-Conf-Exp, para. 5.

behalf of powerful and intelligent men. It is secondly to be noted that these applications are made quite literally at the very last possible moment, notwithstanding that the witnesses, and each of them, were fully cognisant of their status and function as witnesses for the Prosecution, and the option of protecting their identities from the moment of their first interviews in 2008. Lastly, the Defence observes the link between these men and the present proceedings has previously been [REDACTED]

13. The underlying facts of the very recent requests, however, require fuller examination in the Defence submission. On 26 August 2011, the Prosecution informed the Court and the parties that:

Recently Witness 15... and Witness 44 are unavailable at the dates tentatively scheduled [REDACTED] due to the [REDACTED]

14. No further explanation was given as to what was meant by the phrase [REDACTED] [REDACTED] nor why the [REDACTED] should prevent the attendance of these witnesses two and half months before they took place. However, a request was made that their attendance be postponed until 2012. Significantly, neither witness apparently made any request for protective measures.

15. On 1 September 2011, the Chamber instructed the Prosecution via email "to consider whether Witnesses 15 and 44, who are apparently involved in [REDACTED] [REDACTED] in the DRC could testify immediately, since [REDACTED] [REDACTED]"¹⁰

16. On 9 September 2011, the Chamber was informed that Witness 45 was unable to commence his testimony on 16 September 2011. The mechanism for the passing

¹⁰ Email, 1 September 2011, from Mr. [REDACTED] to [REDACTED] entitled RE: Bemba case - witness schedule

of this information is not clear, but the Defence assumes it to have been VWU. There is no indication that Witness 45 requested protection of his identity at that stage, one week before the scheduled date of his testimony.

17. On 12 September 2011, the Prosecution informed the Chamber that:¹¹

Since the Chamber's instruction to explore all alternatives with regards to have witnesses 15 and 44 testify before the winter recess, I have to report that **we were unable thus far to reach the witnesses**. OTP, of course, continues its efforts to get hold of the witnesses.

18. The next day, on 13 September 2011, the Prosecution filed its request for protective measures, in which it states that "Witness 15 requests full in-court protective measures";¹² that "Witness 44 has requested in-court protective measures"¹³, and that "Witness 45 has requested in-court protective measures."¹⁴

19. In relation to the latter, the Prosecution through its counsel, updated the Chamber as to his availability on 23rd September 2011, when she said :

...that VWU had been unable to contact witness 45 since he had informed them that he would be unable to testify at the initially foreseen dates.

20. The Defence cannot omit to observe that there are a number of curious features about what is now being submitted to the Chamber in the Prosecution Request:

i. In relation to Witnesses 15 and 44, contact was apparently lost some time

¹¹ Email, 12 September 2011, from Ms. [REDACTED] to Mr. [REDACTED]. The Defence was made aware of this email on 22 September 2011 by way of its disclosure in an email from Mr. [REDACTED] entitled "Bemba case - witness schedule". It was subsequently provided to the Defence in redacted form (emphasis added).

¹² ICC-01/05-01/08-1743-Conf-Red, para 11.

¹³ ICC-01/05-01/08-1743-Conf-Red, para 14.

¹⁴ ICC-01/05-01/08-1743-Conf-Red, para 15

before 26 August, and had not been re-established by 12 September. There appears, therefore, to be an unexplained contradiction between what was submitted to the Chamber by *ex parte* email during the afternoon of 12 September, and that which was filed *ex parte* the following day;

- ii. In relation to Witness 45, no contact was apparently had between a date prior to 9 September and 23 September 2011;
- iii. And yet notwithstanding the above, the filing of 13 September 2011 asserts that the witnesses and each of them has requested in-court protective measures “as a result of the heightened tension surrounding the DRC presidential elections”;
- iv. In relation to all three witnesses, the apparent disinterest in the outcome of their request for protective measures (assuming for the time being that one was in fact made) is remarkable. One might have thought that a witness who was concerned for his safety and anxious to have his identity protected, would be similarly anxious to speak to the offices of the ICC as to the progress of his application, but in these cases, apparently not. Nor do any of them seem remotely concerned to know whether their testimony has been postponed to a later date in November or even next year.
- v. No detail is apparently available either as to how it comes about that the Prosecution and the VWU have “lost contact” with men who [REDACTED] [REDACTED] have private secretaries, email addresses, and numerous telephones, both official and private. The phrase, it is submitted, masks the reality of the situation.
- vi. The Defence further observes the synonymous terms in which the reasons

for the witnesses' apparent fears are expressed.

21. In all the circumstances, the Defence submits that there are real concerns as to whether any of these witnesses have in fact made a request for protection, and if so, in what precise terms, and in any event whether the fears expressed are genuine or merit the protection sought.

22. The Defence moreover respectfully submits that a finding that these three witnesses **did** request protection before severing contact with the Prosecution will necessarily also involve a finding that the Prosecution, rather than file an expeditious request in each case, chose to wait to file a request *en bloc* for protective measures until a time when the witnesses were scheduled to travel to The Hague. Such practice, it is submitted, is to be deprecated.

(b) The existence of heightened tension surrounding the elections is an insufficient basis for imposing protective measures

23. The Defence submits that the reasons cited for the witnesses' requests for protection are vague, nebulous and insubstantial. At the risk of stating the obvious, of course there is tension in the period immediately preceding an election; there always is, wherever and whenever the election takes place, and one can well imagine [REDACTED]

[REDACTED] That, however, does not amount to sufficient reason to receive their evidence anonymously, and substantially in private.

24. The Defence also notes that, in the cases of Witness 15 and 44 at least, the apparent request for Protective Measures is an instrument of last resort, only used when the Chamber questioned their requests to delay their testimony until after the election. This, it is submitted, gives the lie to the suggestion that this is a security issue, rather than a simple inconvenience to these men.

25. Indeed the explicit submission of the Prosecution is that the need for protection only arises at this time, did not arise at any earlier time in the trial, and will subside in a few months. The Defence well understands the Chamber's desire to conclude the evidence as soon as possible, however, it does submit that the exercise of balancing an accused's fair trial rights with a witness' security is not a question of expediency.

26. Moreover, the Prosecution gives no examples or any concrete reports of alleged "instability" in the lead up to the elections, and certainly no examples of how any "instability" would or could affect the four individuals concerned. The Prosecution refers only to 2006 post-electoral violence, and an alleged "angry" reaction to Mr. Bemba's arrest on the part of his supporters.¹⁵ The Prosecution fails, however, to link these events (dating back between 3 and 5 years) to its position that protective measures are necessary for the present witnesses in 2011.

27. Further, the four men concerned [REDACTED]

- (a) [REDACTED]¹⁶
- (b) [REDACTED]¹⁷
- (c) [REDACTED]¹⁸
- (d) [REDACTED]¹⁹

28. As such, [REDACTED]
[REDACTED] In the
Defence submission the fact that a witness [REDACTED] is a "relevant

¹⁵ ICC-01/05-01/08-1743-Conf-Red, para. 7.

¹⁶ CAR-OTP-0006-0492

¹⁷ CAR-OTP-0020-0478

¹⁸ CAR-OTP-0027-0405

¹⁹ CAR-OTP-0009-0346

factor” to be considered under Article 68(1). In terms of the impact this has on a request for protective measures, the practice of the ICC is clear. In the *Lubanga* case, the Trial Chamber rejected a request for protective measures on the grounds that, *inter alia*, the witness was in a position to be given support by the present government in the DRC, given that he served within the Ministry of Justice. The Chamber held as follows:²⁰

He is well-placed to be given any support or assistance that he considers he needs by the present government, and where he is appointed to serve as a judge is of course within the discretion of the Ministry of Justice. The Chamber considers that the principle of open justice is of high importance and requests for anonymity should not be lightly granted. This witness is in a very different category from the previous witnesses in this trial who have enjoyed a high level of protection, and it is important that these applications are not routinely made in the expectation that they will be routinely granted. Instead, they must be founded on a solid basis and reasons must be provided in support of applications of this kind that go beyond the personal preferences or subjective fears of individual witnesses, although those are matters that the Chamber will take into consideration along with all of the objective reasons. No sufficient justification for these proposed steps exist for this witness.

29. The Defence submits that [REDACTED]

[REDACTED] protective measures are simply unnecessary.

(c) Prejudice to the Defence

30. In its previous response to the request for protective measures for Witness 32, the Defence emphasized the real impact of protective measures on Mr. Bemba’s fundamental right to a fair trial.²¹ Firstly, the Defence noted that it would be denied a valid and powerful examination tool, namely inviting witnesses to consider contradictions between their allegations, and the allegations of other individuals whom they know. Secondly, if witnesses provide incorrect testimony in public session, there is a greater possibility that other persons involved in the same events

²⁰ ICC-01/04-01/06-T-153-ENG WT 24-03-2009, page 63, lines 12 – 25.

²¹ ICC-01/05-01/08-1766-Conf, para. 17.

will be in a position to identify these errors and offer to testify. The Defence noted that this safeguard will be eliminated if the public is prevented from knowing who is making these incorrect allegations. Thirdly, the Defence expressed a more general concern that details of any ultimate findings on command responsibility will be completely beyond public scrutiny, as the Judgement will simply be a series of references to pseudonyms whose functions cannot be made public.

31. In granting protective measures for Witness 32, the Defence respectfully submits that the Chamber failed to address these fair trial concerns. In considering the impact on the rights of the Defence, the Chamber stated as follows:

The protective measures sought in the prosecution Request aim to protect Witness 32 from public identification, as opposed to curtailing the defence's knowledge of the witnesses' identity. Indeed, the witness' identity has been disclosed to the defence and the defence will be able to listen to and see the witness in court without any distortions. The defence's ability to question the witness will not be affected by the proposed measures. Moreover, the public will still be able to listen to Witness 32's testimony and will therefore not be deprived of the substance of his evidence. For these reasons, the Chamber concludes that the measures sought **would cause minimal prejudice to the defence and are consistent with the accused's fundamental right to a fair, public, trial**, as enshrined in Article 67 of the Statute.

32. No mention was made by the Chamber of the three concerns raised by the Defence regarding the accused's fundamental rights. As such, the Defence urges the Chamber to consider these arguments in determining the present request for protective measures. The Defence also urges the Chamber to consider the stifling effect the granting of protective measures will have on the Defence ability to investigate, given that the Defence will be prevented from asking potential witnesses to comment on the fact that a particular witness testified as to particular points.

(d) Individual circumstances of the witnesses

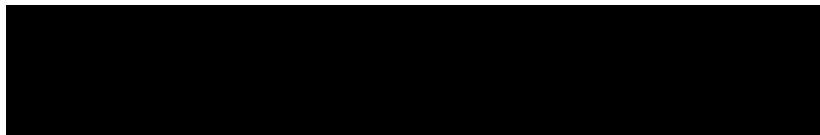
33. In addition to the more general objections to protective measures outlined above, the Defence makes the following arguments in response to the individual witnesses for whom protective measures have been requested.

(i) Witness 15

34. Witness 15 was interviewed in The Hague on 25 and 26 February 2008. During the course of that interview, he confirmed he had come of his own free will.²² The process of disclosure of his statement²³ and the possibility of his being called as a witness²⁴ was explained to him, and he had no comment to make.²⁵ There has been no prior suggestion that this witness required protective measures.

35. Three years later, the Prosecution has now requested “full in-court protective measures”²⁶ for Witness 15 on the ground that “[t]here is a risk of retaliation to these individuals should their identities – or the content of their testimony that reveals their identities – become known to MLC supporters.”²⁷

36. For more than three years, the public in the DRC has been aware of Witness 15’s involvement with the Prosecution in the present proceedings. Many examples can be cited, but the following extract from a widely-read website gives a good overview of the public knowledge of Witness 15’s involvement in this trial:²⁸



²² CAR-OTP-0006-0496/ CAR-OTP-0049-0295

²³ CAR-OTP-0006-0499/ CAR-OTP-0049-0297 - CAR-OTP-0049-0298

²⁴ CAR-OTP-0006-0500/ CAR-OTP-0049-0298

²⁵ *Ibidem*

²⁶ ICC-01/05-01/08-1743-Conf-Red, para. 11.

²⁷ ICC-01/05-01/08-1743-Conf-Red, para. 8.

²⁸ See [REDACTED] (unofficial translation from French).

[REDACTED]

37. Another website publishes a photograph [REDACTED]

[REDACTED] and calls Witness 15 a [REDACTED]

[REDACTED]²⁹ As such, the Prosecution's argument that Witness 15 must be granted protective measures, lest his identity as a witness be known to the public, cannot stand.

38. This proposition has judicial support, both within the ICC itself, and from decisions of the *ad hoc* International Tribunals. In *Boskoski*, for example, the Chamber held that:³⁰

The second witness is a victim, but the essential issue is the identity of that witness. **That identity has been the subject of public knowledge fully available on the Internet in a report that is public for sometime** and has also been the subject of earlier evidence in this trial, which has not been protected. And essentially in that factual situation, the Chamber does not see that there is a factual justification for attempting at this late stage to impose some form of protective measure.

39. The same approach was followed in *Lubanga*.³¹

40. Moreover, no reasonable argument can be made that Witness 15 requires protective measures in order to safeguard his security, given his own admissions as to [REDACTED] When meeting with the Prosecution, he confirmed that he is [REDACTED]

[REDACTED] He has a [REDACTED]

[REDACTED]³²

As such, the Defence submits that his request for protective measures is without

²⁹ See [REDACTED]

³⁰ *Prosecutor v. Boskoski and Taculovski*, T. 4270 -4271, 29 August 2007.

³¹ ICC-01/04-01/06-T-153-ENG WT 24-03-2009 1/99 NB T, at 60 – 63.

³² CAR-OTP-0006-0503 / CAR-OTP-0049-0301

object.

41. The Defence notes that the Prosecution has asked for “full in-court protective measures” and that his whole testimony be heard in closed or private session because of his “unique close personal and professional relationship with the Accused.”³³ The Defence fails to see any link between his previous relationship with Mr. Bemba and the need to testify in closed or private session. The practice of the ICC and International Tribunals is replete with examples of family members, close personal associates, spouses, and colleagues of accused’s persons testifying either in open or in partially-closed sessions. Nor is it clear why the standard in-court protective measures afforded to the other witnesses heard in this case are insufficient. The Defence submits that it is dangerous to set any precedent which suggests that normal in-court protective measures are insufficient to keep the identity of witnesses from the public. As such, for all the reasons outlined above, the Defence respectfully submits that the request for protective measures for Witness 15 should be denied.

(ii) Witness 36

42. Witness 36 was interviewed in The Hague on 11 and 12 April 2008. During the course of that interview, he confirmed he had come of his own free will.³⁴ The process of disclosure of his statements³⁵ and the possibility of his being called as a witness³⁶ was explained to him, and he had no comment to make.³⁷ There has been no prior suggestion that this witness required protection.

43. Perhaps of all the four witnesses, it is Witness 36 for whom the request for protective measures is most far-fetched. [REDACTED] and currently

³³ ICC-01/05-01/08-1743-Conf-Red, para. 11.

³⁴ CAR-OTP-0009-0349/ CAR-OTP-0055-1189

³⁵ CAR-OTP-0009-0353/ CAR-OTP-0055-1193

³⁶ CAR-OTP-0009-0488/ CAR-OTP-0055-1326

³⁷ *Ibidem*

occupying the position as [REDACTED] in DRC, it is hardly an exaggeration to say he has [REDACTED]

44. The Prosecution argues that testifying in public “would unquestionably raise his public profile.”³⁸ This is not an argument which justifies derogating from the underlying principle that the proceedings should be public. The state of this witness’ “public profile” is completely irrelevant to the question of whether he should be granted protective measures.

45. The Defence also objects to the Prosecution’s speculating that simply because Witness 36 is “an insider”, he would “likely face similar types of threats and intimidation” as Witness 169.³⁹ The alleged “threats” experienced by Witness 169 have been kept from the Defence. The Defence has been given no opportunity to test or examine these allegations, or make submissions on their veracity. As such, the Defence respectfully submits that the Chamber is prevented from relying on arguments based on the allegations of Witness 169, when the Defence has been prevented from making arguments thereon. Moreover, the Prosecution’s argument on this point calls for such blatant speculation on the part of the Chamber that it cannot be sustained. For all of the above reasons, the Defence submits that the request for protective measures for Witness 36 should be denied.

(iii) Witness 44

46. The Prosecution claims that Witness 44 has requested protective measures. In support for this request, the Prosecution states that since January 2008 he has been identified on the internet as a potential witness, and in July 2008 he was

[REDACTED]⁴⁰

47. The Defence notes that Witness 44 met the Prosecution in late August 2008,

³⁸ ICC-01/05-01/08-1743-Conf-Red, para. 13.

³⁹ ICC-01/05-01/08-1743-Conf-Red, para. 13.

⁴⁰ See [REDACTED] and [REDACTED]

after this information had been published. During this interview, he confirmed he had come of his own free will.⁴¹ The process of disclosure of his statements⁴² and the possibility that he would be called to give evidence in The Hague⁴³ were explained to him. He did not request protective measures⁴⁴ nor did he indicate that he had any objection to testifying in front of the Court.⁴⁵ The Defence submits that in such circumstances, the Prosecution's argument that he requires protective measures for information which was public at the time of his interview is self-defeating

48. By contrast, the Defence submits that the fact that he has been identified as a potential witness in these proceedings negates the need for protective measures. The information is already in the public domain. It is in precisely this situation where requests for protective measures have been refused at the International Tribunals and in the *Lubanga* trial.

49. The Defence again notes that Witness 44 already [REDACTED]
[REDACTED] For all of the above reasons, the Defence submits that that the request for protective measures for Witness 44 should be denied.

(iv) Witness 45

50. Witness 45 was interviewed in The Hague on 25 and 26 August 2008. During the course of that interview, he confirmed he had come of his own free will. The process of disclosure of his statements, the public nature of the proceedings, and the possibility of the Court ordering protective measures was explained to him, and about which he had no comment to make.⁴⁶ He confirmed that he was willing to

⁴¹ CAR-OTP-0034-0807/ CAR-OTP-0020-0506

⁴² CAR-OTP-0034-0809/ CAR-OTP-0020-0508

⁴³ CAR-OTP-0034-0810/ CAR-OTP-0020-0508

⁴⁴ CAR-OTP-0034-0810; CAR-OTP-0034-0811; CAR-OTP-0034-0812 / CAR-OTP-0020-0509; CAR-OTP-0020-0510; CAR-OTP-0020-0511

⁴⁵ CAR-OTP-0034-0782/ CAR-OTP-0020-0480

⁴⁶ CAR-OTP-0027-0411

appear as a witness.⁴⁷ There has been no prior suggestion that he required protection.

51. Witness 45 is [REDACTED] He therefore receives [REDACTED]

[REDACTED]

undermining the assertion that he requires the protective measures in the present proceedings.

52. Again, the Prosecution argues that testifying in public “would unquestionably raise his public profile.”⁴⁸ This is not an argument which justifies derogating from the underlying principle that the proceedings should be public. The state of this witness’ “public profile” is completely irrelevant to the question of whether he should be granted protective measures.

53. The Defence also reiterates its submissions regarding the flaws in the Prosecution submissions as to the relevance of the alleged threats against Witness 169.⁴⁹ Given the lack of information known to the Defence about these alleged threats, the Defence submits that the Chamber cannot rely on the Prosecution’s attempt to draw an analogy between Witness 169 and Witness 45, which in any event is specious.

54. The Defence also notes that the link between this witness and the present proceedings is already in the public domain, rendering the Prosecution’s request for protective measures without object.⁵⁰ For all of the above reasons, the Defence submits that the request for protective measures should also be denied.

D. RELIEF REQUESTED

55. In light of the above arguments, the Defence respectfully requests that the

⁴⁷ 0412

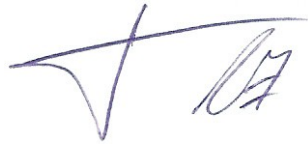
⁴⁸ ICC-01/05-01/08-1743-Conf-Red, para. 13.

⁴⁹ ICC-01/05-01/08-1743-Conf-Red, para. 14.

⁵⁰ See [REDACTED]

Chamber:

REJECT the Prosecution request for protective measures for Witnesses CAR-OTP-WWWW-0015; CAR-OTP-WWWW-0036; CAR-OTP-WWW-0044; CAR-OTP-WWWW-0045.



Aimé Kilolo Musamba
Associate Counsel

Done at The Hague, the Netherlands

7 October 2011