



Original: **English**

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

Date: **29 June 2016**

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***

**Public Redacted Version of “Decision on in-court protective measures for
Witness D04-02”, ICC-01/05-01/08-2663 of 10 June 2013**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Édith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Other
Reparations Section**

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on in-court protective measures for Witness D04-02.

I. Background and submissions

1. On 13 July 2012, the defence filed its “Defence Request for Protective Measures”¹ (“Request”), in which it sought the Chamber’s authorisation for in-court protective measures for a number of witnesses including Witness D04-02, as part of a group of witnesses designated by the defence as “[REDACTED]”.² The defence submitted that Witness D04-02 [REDACTED].³ With regard to this witness, the defence requested in-court protective measures and in particular, the continued use of a pseudonym, image and voice distortion, and the use of private or closed session as necessary to avoid the identity of the witness becoming known by those outside the courtroom.⁴
2. In relation to its request for in-court protective measures for the category of witnesses who are “[REDACTED]”, the defence submitted at the time of its Request that [REDACTED]. In this context, the defence outlined that the witnesses under this category [REDACTED] and expressed “concerns for their safety should their identities become known on the basis that [REDACTED] [...]”. As a result, the defence submitted that these circumstances warrant a finding on the part of the Chamber that the requested protective measures are necessary, reasonable and proportionate.⁵
3. On 6 August 2012, the Office of the Prosecutor (“prosecution”) filed its

¹ Defence Request for Protective Measures, 13 July 2012, ICC-01/05-01/08-2244-Conf.

² ICC-01/05-01/08-2244-Conf, paragraphs 10 and 11.

³ ICC-01/05-01/08-2244-Conf, paragraphs 33 to 35.

⁴ ICC-01/05-01/08-2244-Conf, paragraphs 45(c).

⁵ ICC-01/05-01/08-2244-Conf, paragraph 35.

“Prosecution’s Response to ‘Defence Request for Protective Measures’” (“Response”).⁶ In its Response, the prosecution asserts that the defence “does not provide sufficiently specific and individualized information in relation to the witnesses concerned to justify the Chamber granting the requested [in-court protective measures]”, and that the Chamber should require such information in order to “assess whether *each* witness is facing an objective and precisely identified risk on the basis of his specific situation”.⁷ The prosecution further submits that the defence “failed to submit individual fact-based requests, choosing instead to describe generic risks for entire categories of witnesses.”⁸ On this basis, the Chamber should require the defence to provide all relevant information in support of the individual request for each witness so as to enable the Chamber to strike a proper balance between the obligation to protect witnesses and the duty to ensure the publicity of the proceedings.⁹ The prosecution finally observes that the defence did not specify whether it had obtained the consent of each witness for whom protective measures are sought, which the prosecution submits is necessary, since the Chamber has consistently sought witnesses’ consent before deciding on requests for protective measures.¹⁰

4. On 30 May 2013, the defence filed its “Defence Further Submissions in Support of its Request for Protective Measures for Defence Witnesses [REDACTED]”, together with confidential *ex parte* Annex A (“Updated Request”).¹¹ Despite the recent change [REDACTED], the defence maintains its request for in court-protective measures for Witness D04-02, arguing that the situation in this country remains “extremely unstable” and that the

⁶ Prosecution’s Response to “Defence Request for Protective Measures”, 6 August 2012, ICC-01/05-01/08-2253-Conf.

⁷ ICC-01/05-01/08-2253-Conf, paragraph 7.

⁸ ICC-01/05-01/08-2253-Conf, paragraph 8.

⁹ ICC-01/05-01/08-2253-Conf, paragraph 8.

¹⁰ ICC-01/05-01/08-2253-Conf, paragraph 9.

¹¹ Defence Further Submissions in Support of its Request for Protective Measures for Defence Witnesses [REDACTED], 30 May 2013, ICC-01/05-01/08-2645-Conf and confidential *ex parte* Annex A to Defence Further Submissions in Support of its Request for Protective Measures for Defence Witnesses [REDACTED], 30 May 2013, ICC-01/05-01/08-2645-Conf-Exp-AnxA.

witness continues to have security concerns [REDACTED].¹² The defence further submits that at the time of its Updated Request, [REDACTED] and that these factors increase the witness's fears of reprisals and the perceived risk for his security [REDACTED]. The defence therefore reiterates that the requested in court protective measures are necessary, reasonable and proportionate, and consistent with the practice of the Chamber in the present proceedings.¹³

5. On 31 May 2013, the prosecution and the legal representatives of victims ("Legal Representatives") were ordered to file responses to the Updated Request, if any, by 5 June 2013.¹⁴ No observations were received by the set deadline.
6. On 7 June 2013, by way of an email, the Victims and Witnesses Unit ("VWU"), after having met with the witness in [REDACTED], provided the Chamber with its VWU security assessment on the need to implement in-court protective measures for the benefit of Witness D04-02 ("VWU Assessment").¹⁵ The witness expressed general fears [REDACTED].

II. Analysis and conclusions

7. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered the following provisions: Articles 64(7), 67(1), and 68 of the Statute, Rule 87 of the Rules of Procedure and Evidence ("Rules"), Regulations 20, 41 and 42 of the Regulations of the Court, and Regulation 94 of the Regulations of the Registry.

¹² ICC-01/05-01/08-2645-Conf, paragraph 18.

¹³ ICC-01/05-01/08-2645-Conf, paragraph 19.

¹⁴ Email from the Chamber's Assistant Legal Officer to the prosecution and legal representatives of victims on 31 May 2013, at 12.39.

¹⁵ Email by the Registry's Associate Legal Officer to the Chamber's Legal Officer, 7 June 2013, at 17.27.

8. At the outset, the Chamber notes that neither the prosecution nor the Legal Representatives made any submissions with respect to the defence's Updated Request.

9. When ruling upon a request for protective measures, pursuant to Article 68(1) and (2) of the Statute and Rule 87(1) of the Rules, the Chamber must take into account its obligation under Article 68 of the Statute "to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses". This obligation must be balanced against the Chamber's duty to observe the principle of publicity of proceedings, as enshrined in Articles 64(7) and 67(1) of the Statute and Regulation 20 of the Regulations of the Court. The Chamber notes that while the principle of publicity of proceedings is not absolute,¹⁶ it must be paid due regard when protective measures that would limit the publicity of the proceedings are sought.¹⁷

10. The Chamber reiterates its consistent approach that in-court protective measures are to be granted on a case-by-case basis, based upon precise information on the objective risk the witness is exposed to. The Chamber notes that in its initial Request the defence has not generally provided individualised and specific information in relation to each witness for which it has requested protective measures. In relation to Witness D04-02, the Chamber considers that it received sufficient information to rule on the request, drawn from the updated information provided by the defence, the witness himself and the VWU Assessment.

¹⁶ Decision on in-court protective measures for Witnesses 38, 22 and 87, 19 November 2010, ICC-01/05-01/08-1021-Conf, paragraph 24, see also Decision on in-court protective measures for Witness 36, 9 March 2012, ICC-01/05-01/08-2160-Conf, paragraph 9; Decision on in-court protective measures for Witness 45, 24 January 2012, ICC-01/05-01/08-2063-Conf, paragraph 16.

¹⁷ Decision on in-court protective measures for Witness 65, 30 September 2011 (notified on 3 October 2011), ICC-01/05-01/08-1809-Conf, paragraph 7; see also ICC-01/05-01/08-2160-Conf, paragraph 9.

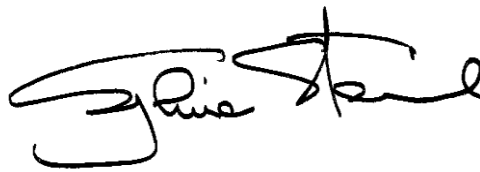
11. Turning to the particular circumstances of Witness D04-02, and the question of whether the requested protective measures are justified, the Chamber is of the view that given his previous role [REDACTED], and taking into account the VWU Assessment in this regard, the witness may indeed be perceived as a [REDACTED]. The Chamber was informed that the witness [REDACTED]. Considering that the political and military situation remains unstable [REDACTED], the Chamber is of the view that the witness's fears seem justified.
12. Furthermore, the Chamber further notes the witness' consent to benefit from in-court protective measures.
13. For the above reasons, the Chamber considers that Witness D04-02 would face objectively justifiable risks as a result of giving testimony on behalf of the defence.
14. In terms of the fairness of proceedings, the Chamber stresses that the protective measures sought protect the witness's identity solely with regard to the general public. The protective measures requested for Witness D04-02 are specifically provided for in Rule 87(3)(c), (d) and (e) of the Rules and have been considered as generally non-intrusive measures, allowing the Chamber to appropriately balance its duty to respect the principle of publicity and its obligation to protect victims and witnesses. Further, the identity of Witness D04-02 is already known to the prosecution and therefore the imposition of the requested in-court protective measures will still enable the prosecution and the Legal Representatives to question the witness *via* video-link¹⁸ and publicly for the majority of his testimony, save for parts that would tend to identify him.

¹⁸Decision on the "Second Further Revised Defence Submissions on the Order of Witnesses" (ICC-01/05-01/08-2644) and on the appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link", 31 May 2013, ICC-01/05-01/08-2646, paragraph 13(ii).

15. Therefore, the Chamber considers that the requested measures are necessary, reasonable and proportionate to avoid the risks posed to the witness and no less intrusive measures would suffice.

16. For the reasons set out above, the Chamber **DECIDES** to authorise, during Witness D04-02's testimony and the trial proceedings, the use of image and voice distortion, the assignment and continued use of a pseudonym, as well as the use of private session to protect his identity, provided that this is indicated in advance to the parties, participants and the Chamber.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, the Netherlands