

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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 D04-15”, ICC-01/05-01/08-2741 of 16 August 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 Reparations Section

Other

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, issues the following Decision on in-court protective measures for Witness D04-15.

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 D04-15, as part of a group of [REDACTED] (together “[REDACTED] Witnesses”).² The defence submits that as part of this group of witnesses, Witness D04-15 has expressed fears relating to both his own security [REDACTED], and that these fears warrant a finding on the part of the Chamber that the requested protective measures are necessary, reasonable, and proportionate.³ More specifically, the defence makes a general assertion that the [REDACTED] Witnesses have expressed fears “that they [REDACTED] will be the subject of harassment, subjected to pressure, or that they will be [REDACTED]”.⁴ Moreover, the defence submits that these witnesses would be viewed [REDACTED].⁵
2. In light of the above, the defence requests in-court protective measures for Witness D04-15, specifically, 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.⁶
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 20 to 25.

³ ICC-01/05-01/08-2244-Conf, paragraphs 4, 20 to 25.

⁴ ICC-01/05-01/08-2244-Conf, paragraph 21.

⁵ ICC-01/05-01/08-2244-Conf, paragraphs 23 and 24.

⁶ ICC-01/05-01/08-2244-Conf, paragraphs 45(b).

“Prosecution’s Response to ‘Defence Request for Protective Measures’” (“Response”).⁷ 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”.⁸ 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.”⁹ 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.¹⁰ 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.¹¹

4. On 12 July 2013, the Victims and Witnesses Unit (“VWU”) provided the Chamber, by email, with its security assessment on the need to implement in-court protective measures for the benefit of Witness D04-15 (“VWU Assessment”).¹² [REDACTED] The witness further stated that he would only feel safe if he testified in closed session because [REDACTED] despite the in-court protective measures requested by the defence. [REDACTED].

⁷ Prosecution’s Response to “Defence Request for Protective Measures”, 6 August 2012, ICC-01/05-01/08-2253-Conf.

⁸ ICC-01/05-01/08-2253-Conf, paragraph 7.

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

¹⁰ ICC-01/05-01/08-2253-Conf, paragraph 8.

¹¹ ICC-01/05-01/08-2253-Conf, paragraph 9.

¹² Email from the VWU’s Analyst to the Chamber on 12 July 2013 at 12.09.

II. Analysis and conclusions

5. 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.
6. 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,¹³ it must be paid due regard when protective measures that would limit the publicity of the proceedings are sought.¹⁴
7. 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 may be exposed to. The Chamber notes that to date, the defence has not provided individualised and specific information in support of the in-court protective measures requested in relation to Witness D04-15. That notwithstanding, on the basis of the information and recommendations provided

¹³ 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.

¹⁴ 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.

by the VWU, the Chamber is of the view that it is nevertheless in a position to determine whether Witness D04-15 should be granted protective measures.

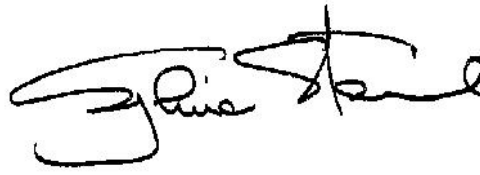
8. Turning to the particular circumstances of Witness D04-15 and the question of whether the requested protective measures are justified, the Chamber is of the view that given his previous role [REDACTED] and taking into account the VWU Assessment in this regard, the witness may indeed be perceived as a [REDACTED]. Therefore, the Chamber is of the view that the witness's fears appear justified.
9. 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 by the defence for Witness D04-15 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 of proceedings and its obligation to protect victims and witnesses. Further, the identity of Witness D04-15 is already known to the prosecution and the legal representatives of victims who, despite the imposition of the requested in-court protective measures, will still be able to question the witnesses via video-link¹⁵ and publicly for the majority of his testimony, save for parts that would tend to identify him.
10. Concerning the requirement under Rule 87(1) that the Chamber seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought, the Chamber notes the witness's wish to testify entirely in closed session. However, the Chamber also notes the VWU's assessment that the potential risks associated with the witness's testimony relate mainly to the

¹⁵ Order on the schedule and conditions of the testimony of Witness D04-15, 3 July 2013, ICC-01/05-01/08-2723), paragraph 13 (a).

identification of the witness by the general public and the VWU's recommendation that in-court protective measures in the form of image and voice distortion, the continued use of a pseudonym, and limited recourse to private session would be sufficient to protect the witness.

11. In view of the above, the Chamber considers that the requested measures are necessary to avoid any potential risks posed to the witness, reasonable and proportionate, and that no less intrusive measures would suffice.
12. For the reasons set out above, the Chamber **DECIDES** to authorise, during the testimony of Witness D04-15 and the trial proceedings, the use of image and voice distortion, the continued use of a pseudonym, as well as the limited use of private session to protect his identity.

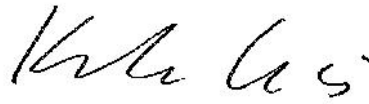
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, the Netherlands