

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 28 September 2015

TRIAL CHAMBER VII

Before: **Judge Bertram Schmitt, Single Judge**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA
WANDU and NARCISSE ARIDO***

Public

Decision on Prosecution Request for In-Court Protective Measures

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Mr Christopher Gosnell

Counsel for Fidèle Babala Wandu

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Mr Charles Achaleke Taku

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber VII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Article 68 of the Rome Statute ('Statute') and Rule 87 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Prosecution Request for In-Court Protective Measures'.

1. On 15 September 2015, the Office of the Prosecutor ('Prosecution') requested in-court protective measures for witnesses P-263 and P-433, and informed the Chamber that witness P-272 also requested in-court protective measures ('Request').¹
2. None of the defence teams filed a response by the 17 September 2015 deadline set by the Single Judge.²
3. Article 68(1) of the Statute and Rule 87 of the Rules govern the Chamber's authority to order protective measures. Both the Prosecution and the witness concerned have standing to request such measures, which may include face distortion and the use of a pseudonym.³ Bearing in mind the general principle of publicity,⁴ protective measures should be granted only on an exceptional basis following a case-by-case assessment. It must be considered whether the measures are necessary in light of an objectively justifiable risk and proportionate, bearing in mind the rights of the accused.⁵

¹ Prosecution's Request for In-Court Protective Measures, ICC-01/05-01/13-1248-Conf (with three *ex parte* annexes; confidential redacted versions of the annexes filed on 18 September 2015).

² Email from a Legal Officer of the Chamber to the parties, 17 September 2015 at 16:19.

³ Rule 87(1) and (3) of the Rules.

⁴ Articles 64(7) and 67(1) of the Statute; Regulation 20 of the Regulations of the Court.

⁵ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on request for in-court protective measures relating to the first Prosecution witness, 15 September 2015, ICC-01/04-02/06-824-Red, paras 5-6 (notified 16 September 2015; further citations therein).

4. The Single Judge emphasises that the defence teams have all been provided with the identity of all the Prosecution's witnesses – the issue addressed in the present decision is rather whether measures should be taken to protect the witnesses' identities from the public. The Single Judge also clarifies that his rulings are based on the information put forward by the Prosecution, and that additional protective measures may be added if deemed necessary by the Victims and Witnesses Unit.⁶
5. For P-433 and P-263, the Prosecution requests face-distortion and the use of a pseudonym during testimony.⁷ For the reasons given by the Prosecution in the Request,⁸ the Single Judge is satisfied that the requested in-court protective measures are appropriate for P-433 and P-263.
6. P-272 requests that he be granted face and voice distortion and the use of a pseudonym during his testimony. The reason provided by the witness is that if he testified publicly, someone in the public may recognise him and hurt him or his family for testifying.⁹ The Prosecution takes no position on the measures P-272 should be afforded.¹⁰
7. The Single Judge is not persuaded that such measures are necessary. P-272 provides no information indicating an objectively justifiable risk of harm to himself or his family. Further, given that the witness's name and role in the case have already been mentioned in public documents in the case record, the Single Judge is not persuaded that the requested measures would effectively conceal P-272's identity. Accordingly, the Single Judge rejects the requested protective measures at this time.

⁶ See Directions on the conduct of the proceedings, 2 September 2015, ICC-01/05-01/13-1209, para. 24.

⁷ Request, ICC-01/05-01/13-1248-Conf, paras 4-7, 11.

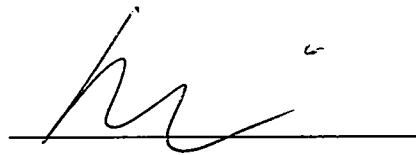
⁸ Annex A of the Request, ICC-01/05-01/13-1248-Conf-AnxA-Red, paras 1, 3-4; Annex B of the Request, ICC-01/05-01/13-1248-Conf-AnxB-Red.

⁹ Annex C of the Request, ICC-01/05-01/13-1248-Conf-AnxC-Red.

¹⁰ Request, ICC-01/05-01/13-1248-Conf, paras 8-10; Annex A of the Request, ICC-01/05-01/13-1248-Conf-AnxA-Red, para. 2; Annex C of the Request, ICC-01/05-01/13-1248-Conf-AnxC-Red.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY
GRANTS the requested in-court protective measures for P-433 and P-263; and
REJECTS the requested in-court protective measures for P-272.

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

A handwritten signature in black ink, consisting of a stylized 'B' followed by a cursive 'S' and a horizontal line extending to the right.

Judge Bertram Schmitt, Single Judge

Dated 28 September 2015

At The Hague, The Netherlands