



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 "Corrigendum to Decision on in-court protective
measures for Witness CHM-01", ICC-01/05-01/08-2900-Corr of
18 November 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* (“Bemba case”), issues the following Decision on in-court protective measures for Witness CHM-01.

I. Background

1. On 6 November 2013, the Chamber issued its “Decision on the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute”, in which it, *inter alia*, decided to call [REDACTED], hereinafter Witness CAR-CHM-PPPP-0001 (“Witness CHM-01”), to provide testimony in the *Bemba* case as of 18 November 2013.¹
2. On 15 November 2013, the Victims and Witnesses Unit (“VWU”) provided the Chamber with its “In-court protection assessment for Witness CHM-01” (“VWU Assessment”) in which it recommends that in-court protective measures be granted to Witness CHM-01.² [REDACTED].

II. Analysis

3. 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.
4. When taking a decision as to whether a witness should be granted protective measures, pursuant to Article 68(1) and (2) of the Statute and Rule 87(1) of the

¹ Decision on the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute, 6 November 2013, ICC-01/05-01/08-2863-Conf and Public redacted version of “Decision on the presentation of additional testimony pursuant to Articles 64(6)(b) and (d) and 69(3) of the Rome Statute”, 6 November 2013, ICC-01/05-01/08-2863- Red.

² Email from the VWU to the Chamber, 15 November 2013, at 16.55.

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,³ it must be paid due regard when protective measures that would limit the publicity of the proceedings are sought.⁴

5. 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. In relation to Witness CHM-01, the Chamber considers that on the basis of the information provided by the witness himself and reflected in the VWU Assessment it has sufficient information to decide on protective measures for the witness.
6. Turning to the particular circumstances of Witness CHM-01, and the question of whether the requested protective measures are justified, the Chamber is of the view that given his specific role [REDACTED] during the events investigated by the Court, and taking into account the VWU Assessment in this regard, the witness might be subject to threats, intimidation or harassment as a result of his testimony before the Court.

³ 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.

⁴ 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.

7. The Chamber also notes the witness's concerns [REDACTED], including fears that they may be subject to acts of harassment, intimidation or retaliation as a result of his testimony.⁵
8. For the above reasons, the Chamber considers that Witness CHM-01 [REDACTED] might face objectively justifiable risks as a result of the witness's testimony before the Court. The Chamber further notes the witness's consent to benefit from in-court protective measures.
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 and do not deny the parties or the legal representatives' knowledge of the witness's identity. Furthermore, the parties and the legal representatives of victims will be able to listen to, see and question the witness. As such, the use of limited in-court protective measures will not be prejudicial to the fairness of the trial.
10. Balancing its duties to protect the witness and to respect the publicity of the proceedings, the Chamber considers that the measures requested are strictly necessary to avoid the risks posed to the witness; no less intrusive measures would suffice. Limited in-court protective measures are therefore necessary, reasonable and proportionate.

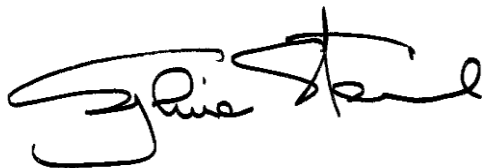
III. Conclusions

11. For the reasons set out above, the Chamber DECIDES that the testimony of Witness CHM-01 will be heard with limited in-court protective measures, namely the use of image and voice distortion, the continued use of a pseudonym, as well as the use of private session to protect the witness's

⁵ ICC-01/05-01/08-2244-Conf, paragraphs 43 and 44.

identity when necessary, provided that this is indicated in advance to the parties, the 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