

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07

Date: 16 April 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public Redacted Version

**Prosecution's Submission of Information on the Preventive Relocation of
Witnesses 132, 163, 238 and 287**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence of Germain Katanga

Mr David Hooper

Mr Göran Sluiter

Counsel for the Defence of Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila

Ms Maryse Alié

Legal Representatives of Victims

Mr Joseph Keta

Ms Carine Bapita Buyangandu

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

Amicus Curiae

REGISTRY

Acting Registrar

Mr Ralph Martens

Defence Support Section

Victims and Witnesses Unit

Mr Simo Vaatainen

Detention Section

Victims Participation and Reparations Section

Other

The Office of the Prosecutor ("Prosecution" or "OTP") submits the details of the preventive relocation measures that are being put in place for Witnesses 132, 163¹, 238 and 287 in order for the Prosecution to be in a position to fulfil its disclosure obligations. The Prosecution continues to submit that the four witnesses need protection before disclosure of their identity or other information that may make them identifiable. As previously submitted, the Prosecution believes that protective measures should be implemented by the VWU as the Unit with the mandate and responsibility to implement them. The Prosecution is only undertaking preventive relocation because there remains a need for protection, but emphasizes that the VWU should take over as soon as practicable.

Request for sealing

1. The Prosecution requests that this submission, be received by the Single Judge as "Confidential, *ex parte*, Prosecutor and VWU Only", as it relates to witness protection and material currently treated as confidential and *ex parte*.

Background

2. On 31 March 2008, the Prosecution and the Registry submitted reports on the status of witness protection in the case.²
3. On 1 April, a closed session hearing³ was held during which the Prosecution and the Registry provided an update on the status of the protection of the witnesses the Prosecution intends to rely on for the Confirmation of the charges. The Prosecution informed the Single Judge that it was in the process of preventively relocating Witnesses 132, 163, 238 and 287 as their admission

¹ As of this submission, the Prosecution has not been able to confirm with Witness 163 if [REDACTED]. On 8 April, the Prosecution will be making a submission as per the Single Judge's order in the Decision establishing the calendar (ICC-01/04-01/07-259) and will give its final position on whether it will rely on the statement of Witness 163 for the confirmation of the charges.

² ICC-01/04-01/07-349-Conf-Exp and ICC-01/04-01/07-347-Conf-Exp.

³ ICC-01/04-01/07-T-22-CONF-FXP-ENG ET.

into the ICCPP had been rejected by the Registrar and since the four Witnesses need protection before their identity can be disclosed to the defence.

4. The Single Judge requested the Prosecution to elaborate on the kind of protection provided to the four Witnesses by the OTP before their statements can be admitted as evidence at the Confirmation Hearing, including the measures in place in case a witness is threatened during his preventive relocation.⁴

Introduction

5. The Prosecution submits that, under Article 68(1) of the Statute, the Court, including the Prosecution, bears responsibility to “protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.”⁵ Under Article 43(6) of the Statute, the Registry through the establishment of the VWU, is mandated “to provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses”.⁶ The VWU is also empowered to “advise the Prosecutor and the Court on appropriate protection measures”.⁷ In accordance with those provisions, the Prosecution relies on the VWU to implement the measures required for the protection of its witnesses.⁸

⁴ ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 29, line 12.

⁵ Article 68(1).

⁶ Article 43(6).

⁷ Article 68(4).

⁸ The drafters of the Rome Statute carefully considered whether there should be a separate unit for prosecution witnesses in the Office of the Prosecutor or whether there should be only one unit located in the Registry. *See* Report of the Preparatory Committee on the Establishment of an International Criminal Court: Addendum, Draft Statute, UN Doc. [A/CONF.183/2/ADD.1](#), 14 April 1998, art. 44(4), footnote 24. Eventually, the drafters consciously decided to create a single Victims and Witness Unit within the Registry, as advocated by Richard Goldstone, the former ICTY prosecutor, who reportedly indicated that the Prosecutor should not have to manage the entire witness support unit, and several NGOs that argued that “to place the protection obligation exclusively with the Prosecutor could compromise the responsiveness to witnesses and those at risk on account of their testimony. It could result in the diversion of resources from protection to investigation (...)”.

6. The Prosecution assesses and defines the need for protection of each of its witnesses. Article 68 gives a special responsibility to the Prosecutor to protect its witnesses. It follows that the Prosecution must have the means to implement this particular duty, through its independent assessment of the risks affecting and the protection needed by its witnesses. The establishment of a Unit within the Registry to provide protective measures is an efficient means to ensure equality of arms and effective use of the Court's resources; it does not take away from the Prosecution its obligations under Article 68 and the means to fulfil this obligation.⁹
7. Adequate protection is an integral part of an independent investigation. In the present case, should one Prosecution witness be banned, the Prosecution could lose a number of its essential witnesses. The Prosecution has a mandate to prove the case beyond a reasonable doubt; to this effect, the Prosecution independently decides how to lead its case and independently assesses the need to protect each of its witnesses at risk. Nothing in the mandate of VWU can allow them to infringe on the mandate of the Prosecutor in this regard.
8. The Prosecution submits that the mandate and the responsibility to implement protective measures lies with the VWU. The Prosecution brings all its assistance to the VWU, including contact with national and international institutions. The Prosecution is also willing to carry out emergency measures whenever the VWU is unable to do it within a tight timeframe, but the Prosecution can neither replace nor duplicate the mandate and responsibility of the VWU to protect witnesses.
9. Preventive relocation is a provisional measure. When the Prosecution assesses that a witness for whom protective measures have been rejected is at risk, the OTP organises for the relocation of the witness [REDACTED] – [REDACTED]

⁹ Nothing in the submissions of the Prosecution implies that the Prosecution should be consulted as to the protective measures to be provided for to Defence witnesses. *See* comments by the VWU on this topic. ICC-01/04-01/07-369-Conf-Exp, para. 39.

- and assists the witness to become self-sufficient. These measures are temporary and put in place, pending the provision of protection by the VWU, which is the proper Unit to implement adequate protective measures on the longer term. VWU has made it clear that ICCPP include [REDACTED]; therefore VWU can take over [REDACTED] relocation through admission in the ICCPP.

10. At the outset, the Prosecution also wishes to clarify two issues regarding preventive relocations: (1) as was made clear in all previous submissions, such provisional resettlements [REDACTED] away from the risk area¹⁰; and (2) the notion put forward by the Registry of a parallel programme¹¹ is a notion the OTP rejects at this point. Unless ordered by Chambers, the Prosecution has neither the mandate nor the administrative means to assume generally for the long term protection of its witnesses. It is the mandate and responsibility of the VWU to provide for protective measures.

Details of the preventive relocation measures for the four witnesses

11. As of this submission, Witnesses 238 and 287 have been preventively relocated. Witness 238 [REDACTED] and is now at [REDACTED] new location. Witness 287 [REDACTED] and is currently in transit to [REDACTED] new location.
12. The OTP's objective is to remove the witnesses from Ituri, an area with high-level of militia activity and presence of individuals close to either Germain KATANGA, Mathieu NGUDJOLO and Thomas LUBANGA DYILO. The preventive relocation undertaken by the OTP is done in order to manage the safety of the witness in light of the pending disclosure of his/her identity. The OTP stresses, in the meetings with the witnesses prior to relocation that the

¹⁰ ICC-01/04-01/07-369-Conf-Exp, para. 48. The notion that the Prosecution would consider the signing of separate relocation agreements in third countries as put forward by the Registry demonstrates a basic misunderstanding of Court wide practices. Such agreements are only negotiated by the Registrar and it is an agreed practice between the Organs of the Court that the Prosecutor supports the efforts of the Registrar in this matter.

¹¹ ICC-01/04-01/07-369-Conf-Exp, paras. 45 and 46.

main objective is to remove the individual out of the said risk area. Based on the risks faced by the four witnesses in question in their home location [REDACTED], the OTP is not capable of sufficiently mitigating the risks for the said witnesses to be protected in their current location.

13. The key principle for the OTP in executing its preventive relocation scheme for the four witnesses has been to assess the measures and suitable locations on a case by case basis and to implement appropriate measures according to the circumstances of each individual witness.
14. The individual circumstances that need to be taken into consideration prior to relocation include for example the number and composition of the witness' family, the witness' occupation, and possible threats. The individual circumstances have been assessed by investigators of the OTP in meetings with each witness prior to the preventive relocation. Care has been taken to ensure that the witness understands in particular that the OTP is not the proper organ of the Court tasked to conduct witness protection, but instead, that it is taking up the protection of the witness as an exceptional measure. The witnesses have also been asked to consent to their preventive relocation and the measures taken for their safety and protection are explained in detail.¹²
15. After the preparatory steps with the witness, the main components of the preventive relocation undertaken by the OTP include [REDACTED].
16. [REDACTED] have been done separately for all witnesses who have been relocated so far. Departures from [REDACTED] have been conducted in such a way that the departure of the witnesses can not be easily monitored. Witnesses 238 and 287 travelled [REDACTED].
17. [REDACTED]. The OTP exercises the same precautions as in all meetings it conducts with witnesses and applies the good practices as referred to by the

¹² The relocated witnesses will sign a written consent to this effect, as per the order of the Single Judge; see ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 29, line 20.

VWU¹³. The witness and his/her family members are housed in a suitable accommodation which has been previously identified according to the individual needs of the witness and his/her family. The suitability of the accommodation is assessed in light of the need for the witness to eventually become self-sustained and being able to support him/herself and any accompanying family members.

18. The presence of a functioning [REDACTED] at the relocation point is an important condition considered. The four witnesses are or will be relocated only to areas where the [REDACTED]. The presence of [REDACTED] to monitor or react to any incident at the new location is also another essential condition. The witness is also provided with [REDACTED].
19. Once settled, [REDACTED] maintains regular contact with the witnesses [REDACTED] to monitor their situation. The relocated witnesses have been told that they can continuously rely on [REDACTED]. As stated by the VWU during the closed session of 1 April, it will continue to respond [REDACTED].¹⁴ [REDACTED]. The Prosecution will apply the same practices it has applied in the past and will coordinate with the VWU as to the best options for the security of the witnesses at any given moment.
20. [REDACTED].
21. The Prosecution will refer again the cases of the four witnesses to the VWU once they are preventively relocated at their new locations. The Prosecution will also continue to refer any future cases to the VWU. The Prosecution will continue to consult the VWU and to share relevant security information for the proper assessment of the security situation in Ituri and throughout the DRC.
22. The VWU is always informed of provisional preventive measures taken by the OTP as the objective is to give time for the VWU to do its assessment

¹³ Those practices were the object of discussions and agreements between OTP and VWU early on in 2006.

¹⁴ ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 18, line 6:
[REDACTED].

interview and/or to take over from the OTP as soon as practicable.¹⁵ As stated by the VWU in the hearing, they can reassess protective measures.¹⁶ Provisional relocation is the *ad hoc* solution to which the Prosecution resorts in order to fulfil its protection and disclosure obligations.

23. Preventive relocation [REDACTED] is not a new approach. Witness 7 (Witness 028) was preventively relocated by the OTP [REDACTED]. Witness 9 (Witness 250) was also preventively relocated by the OTP, [REDACTED].

24. The Prosecution reiterates that it has neither the mandate nor the administrative means to assume generally for the long term protection of its witnesses. It is therefore not planning to protect the said four witnesses on the longer term. This is why the Prosecution is still requesting that protective measures be implemented by the VWU. However, the Prosecution believes the measures put in place for the four witnesses, in the present case, provides for their adequate protection.

Considerations applicable to all witnesses

The Threat assessment – Elimination of all foreseeable risks

25. The Prosecution submits that, pursuant to Art 68(1) of the Statute, the starting point for protective measures ought to be the elimination of all foreseeable risks. Any lower standard of risk would not permit the Court, or the Prosecution, to discharge its obligations to protect victims and witnesses as mandated by Article 68(1). It is this standard which underlay the Prosecution's referral requests for each of the four witnesses at issue. It is the standard agreed by the Presidency, the Registry and the Prosecution¹⁷ which committed to "put in place a system to address all security risks, striving for

¹⁵ ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 9, line 4. On 25 March, the [REDACTED] informed the VWU that it was preventively relocating the four witnesses.

¹⁶ ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 20, line 19. "If there's a case that OTP believes that one of these four is threatened, they give us the referral, we will assess it".

¹⁷ ICC-ASP, 4 August 2006.

maximum security of all participants” consistent with the obligations imposed under the Statute.¹⁸

26. It is the standard that the Prosecution applied when assessing that the four witnesses required protection in the form, at the very least, of preventive relocation.

27. This was also the standard applied previously by the VWU. On 2 May 2006 before the Pre-Trial Chamber, the VWU explained that it would resettle a witness even where a threat had not yet materialised so long as disclosure of a witness’ identity might result in such a threat:

[REDACTED].¹⁹

28. In the present case, this standard was also applied to the named witnesses identified in the Arrest Warrant Application (“AWA”). The AWA identified [REDACTED]witnesses. Out of these [REDACTED]witnesses, the VWU has accepted into the ICCPP [REDACTED]witnesses, [REDACTED] of whom the Prosecution had not collected information of a threat or who were not threatened at the time of their referral and who consented to be relocated.²⁰ [REDACTED] witnesses out of the [REDACTED] mentioned in the AWA were either already in the ICCPP or admitted in the ICCPP because threatened during the investigation.²¹ [REDACTED] witnesses out of the [REDACTED]are not in the ICCPP because these witnesses are either dead²²; do not want to cooperate anymore with the Court²³; [REDACTED] consented for their identity to be disclosed to the defence.²⁴

29. Yet, the VWU has applied a different standard to witnesses who are not named in the AWA. The Prosecution made referrals for the admission into the ICCPP for Witnesses 163, 238 as soon as [REDACTED] 2007, in anticipation

¹⁸ ICC-ASP, paragraph 31 and Annex, p. 14.

¹⁹ [REDACTED]

²⁰ [REDACTED]

²¹ [REDACTED]

²² Witness 12 (W-258) was assessed by the VWU before [REDACTED] died.

²³ Witness 4 (Witness 158).

²⁴ Witness 5 (W-161), Witness 6 (W-166).

that their statements and identity would be disclosed to the Defence and relied upon by the Prosecution for the confirmation of the charges. The referrals of Witness 287 and 132 were submitted respectively in [REDACTED] 2007 and [REDACTED] 2008, promptly after taking their statements. The four witnesses were rejected by the Registrar on the basis of a new standard: "The fundamental principle that we have is that the acceptance of an individual to the ICCPP will have to be threat based".²⁵ The representative of the VWU added further:

[t]he question is and issue is are there really people or organisations acting with malicious intent who are going after the Court's witnesses? Based on the information that we have been provided so far, we are -- in many cases we are not able to draw that conclusion.²⁶

30. This new standard was noted by the Single Judge:

I need to revisit. Maybe the filing made by VWU in the Lubanga case in relation to the requirements or the steps followed by VWU in terms of deciding, taking a decision, on relocation process. What I can say is that as far as I remember the witnesses that have been relocated in the Lubanga case, they have never been threatened. So the threat was not the basis for their relocation but the real possibility, the concrete likelihood that they would be threatened was the reason for relocation, [REDACTED]. I don't remember any information that they have been threatened before accepted in the relocation programme. So maybe there has been a change on the VWU approach in relation to the requirements or the steps to be followed.²⁷

31. The Prosecution submits that this new standard means, in practice, that the Court and the Prosecutor cannot fulfil their responsibilities under Article 68(1). As stated by the VWU itself in their filing, "[u]ltimately, if the VWU's approach were applied, the Court would agree to carry a certain level of risk, [...]"²⁸ For its part, the Prosecution has based its referrals and its subsequent decision to relocate provisionally the witnesses on the need to avoid any foreseeable risk. This is the Court wide accepted standard and it is the Prosecution's position that no administrative unit within the Court has the

²⁵ ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 10, line 21.

²⁶ ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 21, line 6.

²⁷ ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 21, line 11.

²⁸ ICC-01/04-01/07-369-Conf-Exp, para. 39.

authority to unilaterally modify the standard. The Prosecution will address this issue separately at the administrative level with the Presidency and the Registry.

Ituri is a high risk area for the four Prosecution witnesses

32. The assessment of risk is an individualised process as to the security of each witness, in full recognition of the overarching environment in which the Court's investigations occur. The VWU in its latest report filed on 4 April²⁹, deconstructs the threats or the risks faced by Prosecution witnesses on a case by case basis, and on every point, the VWU makes an assumption against the witness being in the need for protection. The Prosecution does not agree with those assumptions. The Prosecution submits furthermore that when assessing the security situation in Ituri, one also has to take into account the environment to which the witness is exposed to by the sum of all the reported incidents.
33. In past hearing and submissions, the Prosecution has submitted a number of examples of threats or situations of an intimidating nature reported by Prosecution witnesses or intermediaries. The sum of these incidents and the fact that FNI/FRPI supporters are trying to identify and threaten persons who are cooperating with the Prosecution creates a foreseeable risk to identifiable Prosecution witnesses. The definition of a threat includes the notion that it is intimidating in nature. Once a threat starts being harmful (be it physically or psychologically), it's no longer a threat – it is actual harm.
34. The Single Judge held - in the context of an application for redactions to protect, amongst others, witness identity – that the “risk of disclosing to the Defence the types of information for which authorisation for redactions have been requested must be assessed against the backdrop” of a generalised threat to ICC witnesses in Ituri.³⁰ In the last decision on redactions dated 2 April

²⁹ ICC-01/04-01/07-369-Conf-Exp.

³⁰ “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, ICC-01/04-01/07-84-Conf-Exp, paragraph 22:

2008, the Single Judge reiterated that the security situation and context, as described in the first decision on redactions, remains the same.³¹ The OTP has based its decision to provisionally relocate the four witnesses on the existence of such a generalised threat to its witnesses and on the individual circumstances of each witness.

35. The Prosecution has in previous submissions and closed session hearings described the specific situation of the security of its witnesses. The Prosecution would like to take this opportunity to provide the details of the referrals and rejections of Witnesses 132 and 287.

36. Witness 132 was [REDACTED]. The Prosecution requested the admission of Witness 132 into the ICCPP based on the current security situation in Ituri and the fact that Witness 132 had very strong fears [REDACTED]. Witness 132 also has strong fears of [REDACTED]. Witness 132 feels that if [REDACTED] were to be found [REDACTED] they would kill [REDACTED].³²

37. Witness 287, [REDACTED]. Witness 287 also sustained [REDACTED]. Witness 287 was referred to the VWU because [REDACTED]. [REDACTED] was first rejected by the Registrar in [REDACTED] of this year.³³ The Prosecution resubmitted [REDACTED] case to the VWU.³⁴

In particular, the Single Judge considers that particular weight should be given to (i) the current volatile situation in the Ituri and Kinshasa areas; (ii) the influence of Germain Katanga and Mathieu Ngudjolo in the Ituri and Kinshasa areas today, and their close connections to FNI and/or FRPI supporters currently living in these areas; (iii) the capabilities of the supporters of Germain Katanga and Mathieu Ngudjolo to interfere with ongoing and further Prosecution investigations and/or Prosecution witnesses, victims and members of their families; and (iv) the several precedents of interference with Prosecution witnesses by FNI and/or FRPI members, [REDACTED].

³¹ ICC-01/04-01/07-358-Conf-Exp, para. 8.

³² The reasons provided by the VWU for the rejection of witness 132 are: "No direct or indirect threat to the applicant. Applicant stated that [REDACTED] was not fearful of reprisal and was OK to stay in [REDACTED]. [REDACTED] said [REDACTED] was considering moving to a different residence in [REDACTED], and VWU confirmed that this was possible if the applicant so desired".

³³ As for Witness 287, the reasons provided for the rejection were: "No information indicating direct threat to applicant. An unfortunate [REDACTED] situation is not reason for entrance to the ICCPP. If allegations about [REDACTED] disclosure of [REDACTED] interaction with court were to be confirmed, discussions should be entered into [REDACTED], in the context of being reconsidered for ICCPP". See also ICC-01/04-01/07-T-15-CONF-EXP-ENG ET, p. 24, line 22.

³⁴ The reasons for the rejection were: "No direct or indirect threat to the applicant re [REDACTED] involvement with the ICC. [REDACTED], and no negative impact as a result of this. VWU is able to offer assistance to the applicant [REDACTED], via [REDACTED], if so requested. The applicant

38. The Prosecution has in previous submissions and closed session hearings described the specific situation of witnesses 163 and the specific threat reported by Witness 238.
39. The Prosecution respectfully submits that the rejected referrals of the four witnesses at issue in this case indicate that the VWU disregards the existence of threats to Prosecution's witnesses living [REDACTED].
40. The Single Judge recognised this special risk in the hearing held on 1 April:

[...] I still have some difficulties with this position of VWU; that the decision on the acceptance of someone in the witness protection programme, it's threat based. I would like maybe some more elaboration on that. Because someone that is not known to be a witness of course is not threatened, but once known could be immediately not threatened but killed, because as far as I know the system in militias, they don't send letters threatening someone; they just go there and kill. So the fact that this or that witness has not been threatened yet is the main -- the main basis for acceptance or non-acceptance of the person in the protection programme? So we need to wait until this person is killed or seriously threatened to be -- I would like some more elaboration on that, please.³⁵

The four witnesses need to be protected

41. The Prosecution intends to rely on the four witnesses at issue for the confirmation of the charges because they provide important³⁶ information to the case of the Prosecution and, as such, their identity will have to be disclosed to the defence. There is a foreseeable risk that the disclosure of their evidence and identity will compromise their security.
42. The VWU does not seem to comprehend the issue at stake when it states in its submission of 4 April:

The comments made by both the Single Judge and the Prosecution seem to indicate that an assumption is made that the disclosure of witness's identities to the Defence will automatically raise the level of

should be reminded of the [REDACTED] in place and protection procedures related to [REDACTED] potential court attendance".

³⁵ ICC-01/04-01/07-T-22-CONF-EXP-ENG ET, p. 12, line12.

³⁶ In the case of Witness 132, [REDACTED] information can be viewed as vital since according to Witness 132, [REDACTED].

risk to an extent that would warrant participation in the ICCPP. From this line of argument, it further seems that the Single Judge and the Prosecution assume that either the defence or the accused himself will reveal a witness's identity to individuals acting with malicious intent.³⁷

43. The Prosecution respectfully submits that the Defence in order to properly prepare its case has to test the credibility of witnesses and may well have to disclose the identity of Prosecution witnesses to third parties with no malicious intent. As an example, to test the credibility of a witness, the Defence may have to ask potential Defence witnesses about the credibility of Witness 238 by simply referring to [REDACTED] by name. Even if the Defence is to apply the best of practices and intentions in the field, by not referring to Witness 238 by name, but instead by referring to the evidence [REDACTED] provided (again to test the credibility of the Prosecution's evidence), this may in and of itself, disclose the identity of Witness 238 to third parties as only a few witnesses were present during a given event.³⁸

44. The Prosecution reiterates that the conditions necessary to protect witnesses are present in this case. It is in this context that the Prosecution, with the consent of the witnesses themselves, is preventively relocating these witnesses. The preventive relocation of the four witnesses is not an indication that the Prosecution intends to create its own relocation program. The Prosecution is preventively relocating the four witnesses on a temporary basis and until such a time they can be reassessed by the VWU and ultimately accepted into the ICCPP or until such a time the witnesses themselves can become self-sufficient in their new location. The Prosecution will not abandon its witnesses, because the Prosecution has a duty to protect them.

³⁷ ICC-01/04-01/07-369-Conf-Exp, para. 19.

³⁸ The Prosecution had already provided such an example of the foreseeable risk of disclosure to the defence, see ICC-01/04-01/07-T-15-CONF-EXP-ENG ET, p. 14, line 6 and following. The VWU still fails to recognise that in the normal execution of their duties (by providing the best defence possible to their client), the defence may or will have to disclose the identity of a witness or disclose information that may lead to their identification.

Conclusion

45. The Prosecution submits that the emergency provisional measures put in place by the Prosecution are adequate and provide for the necessary protection and security of Witnesses 132, 163, 238 and 287 in order for the Prosecution to fulfil its disclosure obligations
46. The Prosecution respectfully submits that the need to eliminate all foreseeable risk and the existence of such a risk in the case of the four witnesses that come from [REDACTED] would justify that the VWU take full responsibility for their protection in the longer term, through their admission into the ICCPP.
47. Article 68(1), is the all encompassing provision of the Statute by which the Court, as whole, is to provide for the protection of witnesses. The Prosecution submits that the Pre-Trial Chamber has the power pursuant to Article 68(1), to order the VWU to take the protective measures necessary to address all foreseeable risks to the security of the four witnesses at issue and admit them into the ICCPP.



Luis Moreno-Ocampo
Prosecutor

Dated this 16th day of April 2008

At The Hague, The Netherlands