

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06
Date: 23 January 2009

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. THOMAS LUBANGA DYILO***

Public Redacted Version

Prosecution's Request for Protective Measures for one Prosecution Witness

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

Ms Catherine Mabilie
Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Legal Representatives of Applicants

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Jean Louis Gilissen
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Paul Kabongo Tshibangu
Mr Hervé Diakiese
Ms Paoline Massidda

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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Mr Simo Vaatainen

Detention Section

**Victims Participation and Reparations
Section**

Other

On 16 January 2009, the Trial Chamber rendered a decision granting the Prosecution's application for three protective measures to be applied during the testimony of certain Prosecution witnesses: (i) image distortion during testimony, (ii) voice distortion during testimony, and (iii) the assignment of a pseudonym for use during the trial. The Prosecution now seeks these three protective measures for an additional witness, DRC-OTP-WWWW-0038, who has received threats in the past and who [REDACTED] will be following the trial proceedings closely. The risk to his safety is enhanced due to the fact that he is [REDACTED]. The witness is not otherwise protected by the Court's protection program; he has access to the Initial Response System (IRS) but the IRS is unlikely to offer a timely response given the specific circumstances. The Prosecution submits that these protective measures preserve the Accused's right to a public hearing while ensuring the protection of this witness. The requested protective measures do not prejudice the rights of the Accused or make the trial unfair as the witness will remain anonymous to the public only. The Prosecution does not intend to seek protection measures for all witnesses.

Background

1. At the Status Conference of 28 May 2008 (28 May 2008 Status Conference), the Trial Chamber ordered that the Prosecution apply for in-court protective measures in respect of its witnesses in a timely fashion in advance of a scheduled trial date of 23 June 2008.¹
2. On that occasion, the Prosecution stated to the Trial Chamber that a number of its witnesses are currently within ICC Protection Program (ICCPP) and that in consultation with the Victim and Witnesses Unit (VWU) the Prosecution would seek image and voice distortion as well as

¹ ICC-01-04-01-06-T-88-ENG, page 57, lines 15-23.

the assignment of pseudonyms for use at trial.² The Prosecution added that with respect to witnesses not currently in the ICCPP, it would consider further specific requirements for protective measures.³

3. On 9 December 2008, the Trial Chamber held that under Rule 87 of the Rules of Procedure and Evidence (the Rules), the responsibility for filing applications for protective measures lies primarily with the party calling a witness, based on information already in its possession and supplemented, as appropriate, by any relevant information provided by the VWU.⁴
4. On 9 January 2009, the Prosecution filed the "Prosecution's Request for Protective Measures for Prosecution Witnesses".⁵ On 16 January 2009, the Trial Chamber granted protective measures for the group of 20 Prosecution trial witnesses currently in the ICCPP.⁶

Prosecution's Submissions

5. In the present application, the Prosecution seeks protective measures for a witness who is not in the ICCPP, on the basis of Articles 64(2) and 68(1) and (2) of the Rome Statute and Rule 87(3)(c) and (d) of the Rules of Procedure and Evidence (Rules).
6. These measures will ensure the right of the witness to give evidence without fear for his personal safety. [REDACTED]

² ICC-01-04-01-06-T-88-ENG, page 58 lines 1-16.

³ ICC-01-04-01-06-T-88-ENG, page 58, lines 17-21. The Prosecution is currently assessing the need for protective measures in Court for witnesses currently not in the ICCP. The majority of these 11 witnesses will not require any supplementary protection based on the information presently available. Should any of them require such protection, then the Prosecution will file an appropriate application expeditiously.

⁴ "Decision on the prosecution's oral request regarding applications for protective measures", 9 December 2008, ICC-01/04-01/06-1547.

⁵ ICC-01/04-01/06-1591-CONF.

⁶ ICC-01/04-01/06-T-104-ENG, page 4, lines 19-25 and page 5, line 1.

Current Security Concerns

7. The witness is currently [REDACTED].
8. [REDACTED].
9. [REDACTED].
10. [REDACTED].

Past Threats

11. The witness previously advised the OTP that he received threats as a result of his cooperation with the OTP. [REDACTED].
12. [REDACTED].
13. [REDACTED].
14. The Prosecution requests that the witness be afforded three in-court protective measures:
 - (i) voice distortion,
 - (ii) image distortion, and
 - (iii) the assignment of a pseudonym for use during trial.
15. The Prosecution submits that the in-court protective measures requested herein will further protect the security of this witness by ensuring his public anonymity without impermissibly restricting any rights of the

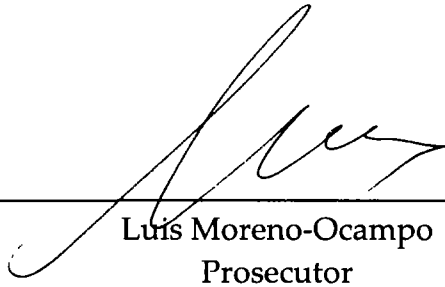
Accused. The possibility of the connection between his interaction with the ICC and the threats he has received should not be discounted at this stage. [REDACTED] the Prosecution has no reason to conclude that the witness's concerns were fabricated.

16. The Prosecution notes that the witness was contacted by the OTP on 20 January 2009 to discuss his security. The witness confirmed the concerns he has already expressed to the OTP and agreed with the current request for protective measures. The witness stated, however, that should the protective measures be denied he would still testify. The Prosecution submits that its obligations under Article 68 to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of witnesses during the investigation and prosecution phases, oblige it to apply for protective measures where, on its independent assessment, such measures are warranted. This is such a case.
17. Furthermore, the implementation of the requested protective measures during the trial may obviate the need for any protective measures to be applied by the Registry of the Court, upon completion of the VWU's post-testimony security assessment of each witness.
18. The Prosecution submits that the measures sought will not adversely affect the Accused's rights at all, since the witness's identity will be known to the Accused and his defence team and the witness's testimony, if not particulars regarding his identity, will be accessible to the public.

Relief Requested

19. Based on Articles 64(2), 68(1) and (2) and Rule 87, the Prosecution requests that Trial Chamber to order the requested protective measures -- voice and

image distortion and the assignment of a pseudonym during the trial -- for one additional trial witness identified herein.



Luis Moreno-Ocampo
Prosecutor

Dated this 23rd day of January 2009
At The Hague, Netherlands