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No.: ICC-01/04-01/06

Date: 1 June 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:

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Other

On 16 January 2009, the Trial Chamber granted 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 who lives with his family in [REDACTED]. He is not in the ICC Protection Program (ICCPP) and [REDACTED]. The Prosecution submits that the requested protective measures will ensure the witness's protection without prejudicing the rights of the Accused or otherwise affecting the fairness of the trial, since the trial will remain public and the witness will be anonymous to the public only.

Background

1. At the Status Conference of 28 May 2008, 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 9 December 2008, the Trial Chamber held that under Rule 87, the party calling a witness is responsible for filing applications for protective measures, based on information already in its possession and supplemented, as appropriate, by any relevant information provided by the Victims and Witnesses Unit (VWU).²
3. On 16 January 2009 the Court granted protective measures for 20 prosecution witnesses.³ On 30 January 2009, it granted in-court protective measures for witness 0038, who is not in the ICCPP.⁴

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

² "Decision on the prosecution's oral request regarding applications for protective measures", 9 December 2008, ICC-01/04-01/06-1547.

³ ICC-01/04-01/06-T-104-ENG, page 4, lines 19-25 and page 5, line 1.

4. On 26 March 2009, witness 0360, an expert witness who is not in the ICCPP, requested image distortion during his testimony. The Chamber granted the request.⁵

Prosecution's Submissions

5. The Prosecution seeks protective measures for witness 0116, who is not in the ICCPP, on the basis of Articles 64(2) and 68(1) and (2), and Rule 87(3)(c) and (d). These measures will ensure the right of the witness to give evidence without fear for his personal safety.
6. The OTP interviewed the witness in October 2007. He provides information on the recruitment of child soldiers under the age of 15 into the UPC/FPLC, on the involvement of Thomas LUBANGA in mobilizing forces for the UPC/FPLC, and on the lack of demobilisation of child soldiers by the UPC/FPLC.
7. The witness is [REDACTED].
8. [REDACTED].
9. The witness [REDACTED].
10. [REDACTED], the witness was informed of the availability of protective measures under Rules 87. After [REDACTED] on 18 May 2009, he raised concerns related to his security should he testify publicly. Indeed, he

⁴ ICC-01/04-01/06-T-113-CONF-ENG-ET, page 20, line 9 to page 22, line 10, granting the Prosecution's Request for Protective Measures for one Prosecution Witness, 21 January 2009, ICC-01/04-01/06-1639-Conf.

⁵ ICC-01/04-01/06-T-156 -ENG-ET, page 4, lines 1 to 22.

indicated that should his request for protective measures be denied, he would not be in a position to testify.

11. As indicated, the witness is not in the ICCPP [REDACTED].
12. Given the nature of the evidence the witness provides and the facts that he is not in the ICCPP, [REDACTED], the Prosecution submits that the witness and his family will be exposed to a greater level of risk if his identity becomes publicly known.
13. Consequently, the Prosecution requests that the Court authorize three in-court protective measures: voice distortion, image distortion, and the assignment of a pseudonym for use during trial.
14. The requested protective measures will protect the security of this witness by ensuring his public anonymity without impermissibly restricting any rights of the Accused. The witness's identity will be known to the Accused and his defence team, and his testimony, if not particulars regarding his identity, will be accessible to the public.
15. 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.
16. 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.

Relief Requested

17. Based on Articles 64(2) and 68(1) and (2), and on Rule 87, the Prosecution requests the Trial Chamber to order the requested protective measures -- voice and image distortion and the assignment of a pseudonym during the trial -- for the additional witness identified herein.



Luis Moreno-Ocampo
Prosecutor

Dated this 1st day of June 2009
At The Hague, Netherlands