

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 5 June 2015

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

Public Redacted Version of "Corrected version of the 'Prosecution request for in-court protective measures', 27 May 2015, ICC-01/04-02/06-609-Conf-Exp"

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

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Introduction

1. The Prosecution requests in-court protective measures (face distortion, voice distortion and use of a pseudonym) for 11 of its witnesses, six of whom are currently in the International Criminal Court Protection Programme ("ICCPP") and under the care of the Victims and Witnesses Unit ("VWU").¹ In the *Lubanga* proceedings, Trial Chamber I granted these same in-court protective measures, provided for under rule 87 of the Rules of Procedure and Evidence ("Rules"), to these 11 witnesses.

2. Pursuant to regulation 42(1) of the Regulations of the Court ("Regulations"), these measures "shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded." There is no reason to revise the protective measures as they are still necessary to protect these witnesses. The measures balance the Accused's right to a fair, and public, hearing against the need to protect victims and witnesses appearing before the Court under articles 64, 67(1) and 68(2) of the Statute. They do not prejudice the rights of the Accused as he has been provided with the names and identifying information of these witnesses; they will remain anonymous to the public only.

Confidentiality

3. This response is classified as "Confidential – *EX PARTE* only available to Prosecution and VWU" pursuant to regulation 23*bis*(1) of the Regulations as it provides information dealing with protective measures and individuals in the ICCPP. The Prosecution will file a redacted version of this filing.

¹ Witnesses [REDACTED]. Witness [REDACTED] was in the ICCPP when the in-court protective measures were implemented in the *Lubanga* proceedings, [REDACTED].

Prosecution's Submissions

I. Application of regulation 42(1) of the Regulations

4. The Prosecution intends to call 11 witnesses who were previously granted in-court protective measures in the form of image and voice distortion and the use of a pseudonym during their testimony in the *Lubanga* proceedings.² These witnesses include [REDACTED]. The Prosecution seeks to maintain these in-court protective measures for each witness.
5. Under regulation 42(1) of the Regulations, protective measures “shall continue to have full force and effect in relation to any other proceedings before the Court, subject to revision by a Chamber.” In *Katanga*, Trial Chamber II applied this provision to maintain the in-court protective measures previously ordered by Trial Chamber I in the *Lubanga* proceedings for three witnesses who subsequently testified in the *Katanga* trial, holding that:

...regulation 42(1) [...] provides that the protective measures ordered for a victim or witness in a case before the Court continue to apply, *mutatis mutandis*, in all other cases. Therefore, unless the procedure set out in regulation 42(3) is implemented, the protective measures originally ordered remain applicable.

Thus, the Chamber can but take formal note that, in accordance with regulation 42(1) [...], the protective measures ordered by Chamber I in the Thomas Lubanga Dyilo case apply directly, *mutatis mutandis*, to the present case.³

6. The application of regulation 42(1) to maintain in-court protective measures provides an assurance to witnesses for whom protective measures were previously granted that these measures will stay in place unless revision is warranted. The Prosecution submits that the in-court protective measures implemented in the *Lubanga* proceedings for these 11 witnesses continue to be necessary and as such there is no reason for the Chamber to revise them.

² [REDACTED].

³ ICC-01/04-01/07-1516-tENG, paras.8-9.

II. Continued necessity for the in-court protective measures

a) Witnesses currently in the ICCPP

7. Six of the 11 witnesses included in this request for in-court protective measures are currently in the ICCPP and under VWU care, namely witnesses [REDACTED]. The circumstances and security needs of these witnesses have not changed, such that the in-court protective measures ordered in the *Lubanga* proceedings remain necessary. If their identity were to be known as a result of their testimony, the purpose of the protection afforded to these individuals would be undermined putting them and their families at risk.⁴
8. Such protection is even more pressing given that [REDACTED].⁵ Additionally, it appears that [REDACTED].⁶

b) [REDACTED]

9. Witness [REDACTED]. The circumstances and security needs of this witness have not changed and as such the in-court protective measures applied during the *Lubanga* proceedings remain necessary.
10. Witness [REDACTED] was a [REDACTED]. He [REDACTED] political-military groups including the UPC/FPLC. He [REDACTED] for the UPC/FPLC. He testified in the *Lubanga* proceedings and is expected to provide information about, *inter alia*, the various UPC/FPLC events [REDACTED], the presence of the Accused at these events, the presence of children under the age of 15 years in the UPC/FPLC and his knowledge of the structure of the UPC/FPLC. [REDACTED] provides unique evidence [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED]; [REDACTED]; [REDACTED].

⁶ [REDACTED].

11. Witness [REDACTED] was [REDACTED]. He was [REDACTED]. In [REDACTED].⁷ He currently resides in [REDACTED]. If his identity is revealed to the public in the course of his testimony, the purpose of the protection afforded to him would be undermined possibly putting him and his family at risk.

c) [REDACTED]

12. Witnesses [REDACTED] are both former members of the UPC/FPLC military, who will provide direct evidence about the charges against the Accused.

13. Witness [REDACTED] for which the Accused is charged, and will provide information about the Accused's role in these attacks as well as crimes committed by UPC/FPLC forces. [REDACTED]. [REDACTED]. Trial Chamber I found the in-court protective measures were necessary given [REDACTED], the instability in the Democratic Republic of the Congo ("DRC") and the apprehension of the witness.⁸

14. [REDACTED] in the *Lubanga* proceedings. In [REDACTED]. [REDACTED]. [REDACTED] has serious concerns about his safety and has requested the same in-court protective measures be put in place. He currently resides in [REDACTED]. [REDACTED] was recently [REDACTED]. [REDACTED]'s security needs have not changed, and if anything are now greater. As a result, the in-court protective measures remain necessary.

15. Witness [REDACTED] of the UPC/FPLC, [REDACTED]. He will testify about the structure and organisation of the UPC/FPLC as well crimes he saw committed or of which he has knowledge.

16. [REDACTED] was [REDACTED]. At the time he [REDACTED]. He was not accepted into the ICCPP. Prior to testifying in the *Lubanga* proceedings,

⁷ See: DRC-OTP-2062-0849, Investigator's Note, dated [REDACTED].

⁸ [REDACTED].

[REDACTED] requested that in-court protective measures be put in place to prevent the public knowing his identity. These measures were granted.⁹

17. The Prosecution assessed [REDACTED]. The circumstances and security needs of this witness have not changed. He remains highly identifiable and revealing his identity publically would heighten the risk to him and his family members. As such, the in-court protective measures put in place by Trial Chamber I remain necessary.

d) [REDACTED]

18. Witness [REDACTED]. He was well-known in Bunia (and in wider Ituri) for [REDACTED]. [REDACTED] is expected to provide information about the presence of children under the age of 15 in the UPC/FPLC forces [REDACTED] during the period of the charges.

19. [REDACTED] was never placed in the ICCPP [REDACTED]. Trial Chamber I found that, [REDACTED] his cooperation with the Court was not necessarily known to the wider community, and for this reason the in-court protective measures were necessary.

20. His security needs have not changed and the in-court protective measures remain necessary. [REDACTED]. Should his participation with the Court be known, it would give the appearance he has taken sides in the Ituri conflict and impacting upon his credibility and his safety. The risk to his security, and that of his family, is greater given he is not in the ICCPP.

⁹ [REDACTED].

e) [REDACTED]

21. Witness [REDACTED]. He is expected to provide information about the recruitment of children under the age of 15 into the armed forces of the UPC/FPLC, and the lack of UPC/FPLC demobilisation initiatives. He left [REDACTED] because of threats, and subsequently [REDACTED]. Trial Chamber I granted in-court protective measures on the basis that [REDACTED] in the region, was well-known for [REDACTED] and may be at risk if his association with the Court was made public.¹⁰

22. [REDACTED] is not in the ICCPP, but has reported security concerns. He currently lives in [REDACTED]. His security needs have not changed and the in-court protective measures remain necessary. If [REDACTED]'s identity is made public in the course of his testimony, his security and that of his family may be placed at risk, especially as he is not under protective care and [REDACTED] in the region.

23. Finally, the Prosecution remains concerned about the potential for [REDACTED] and seeks to minimise any risk to the safety and security of its witnesses, as well as to the integrity of these proceedings. [REDACTED],¹¹ [REDACTED].¹² On the basis of the [REDACTED],¹³ [REDACTED].¹⁴ Notably, in its [REDACTED].¹⁵

¹⁰ [REDACTED].

¹¹ [REDACTED]; [REDACTED]; [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

Request

24. The Prosecution requests the Chamber maintain the in-court protective measures in place for 11 witnesses who previously testified in the *Lubanga* proceedings.
25. The in-court protective measures requested appropriately balance the Accused's right to a fair, and public, hearing against the need to protect victims and witnesses appearing before the Court as provided for under article 68(2) of the Statute.



Fatou Bensouda
Prosecutor

Dated this 5th day of June 2015
At The Hague, The Netherlands