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No.: ICC-01/04-02/06
Date: 2 September 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 “Second Prosecution request for in-court protective measures”, 17 August 2015, ICC-01/04-02/06-782-Conf-Exp

Source: The 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

Introduction

1. The Prosecution requests in-court protective measures for two [REDACTED] witnesses¹ who will to testify in the first evidence block, scheduled to commence on 15 September 2015, as provided for in rule 87 of the Rules of Procedure and Evidence.
2. The protective measures will ensure these Prosecution witnesses are able to give evidence without fear for their personal safety, or that of their family members. The measures sought appropriately balance the Accused's right to a fair and public hearing under articles 64(2) and 67(1) of the Statute, against the need to protect victims and witnesses appearing before the Court, pursuant to articles 64(2), 68(1) and 68(2) of the Statute. The measures sought do not unfairly 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*" pursuant to regulation 23bis(1) of the Regulations of the Court as it provides information dealing with protective measures and witness security. The Prosecution will file a confidential redacted version, as well as a public redacted version, of this filing.

Prosecution's Submissions

a) Witness P-0805

4. The Prosecution requests facial distortion, voice distortion and the use of a pseudonym during the testimony of Witness P-0805. He is a civilian and a crime-

¹ Witnesses P-0805 and P-0901.

based witness who has dual status in these proceedings [REDACTED]. Witness P-0805 [REDACTED] in Mongbwalu in 2002 when the UPC/FPLC forces attacked. He [REDACTED] Kobu and saw the corpses of those massacred in the Second Attack (on the Walendu-Djatsi *collectivité*). This individual [REDACTED] is expected to provide unique and important evidence of the crimes.

5. Witness P-0805 is [REDACTED] his safety and security are closely monitored and regularly assessed. Revealing his identity publically would heighten the risk of retaliation against and stigmatisation of him and his family members. This individual has explicitly expressed concerns over his safety and that of his family members should his identity be known to the public to both the Prosecution and the Legal Representative of the Victims. Further, as Witness P-0805 is the first Prosecution witness being called to testify in this case, there is a greater chance he will be the subject of heightened media attention. Implementing the requested protective measures during trial will likely obviate the need for additional and more intrusive protective measures to be applied upon the completion of his testimony.
6. Witness P-0805 resides [REDACTED].² [REDACTED]. As such, in-court protective measures are necessary.

b) Witness P-0901

7. The Prosecution requests facial distortion, voice distortion and the use of a pseudonym during the testimony of Witness P-0901. This individual was [REDACTED]. Witness P-0901 is expected to provide information about the Accused's commanding role in the UPC/FPLC, and the crimes committed by the Accused and members of the UPC/FPLC forces.

² Of particular note, Trial Chamber V(a) found that "evidence of prior direct threats to a witness, or his/her family, are not required in order to determine that they face an objectively justifiable risk sufficient to support the granting of protective measures" (ICC-01/09-01/11-902-Red2, para.14).

8. Witness P-0901 is [REDACTED]. If his identity were to be known as a result of his testimony, the purpose of this protection would be undermined, putting him and his family members at risk.
9. This individual has serious security concerns related to his involvement with the Prosecution, including retaliation against himself and his family. [REDACTED]. [REDACTED]. [REDACTED].
10. Witness P-0901 [REDACTED]. [REDACTED]. [REDACTED] provides important and unique evidence. Revealing his identity publically would heighten the risk to him and his family members. As such, in-court protective measures are necessary. [REDACTED].

Request

11. The Prosecution requests that the Chamber grant in-court protective measures to Witnesses P-0805 and P-0901 in the form of facial distortion, voice distortion and the use of a pseudonym during the testimony.



Fatou Bensouda
Prosecutor

Dated this 2nd day of September 2015
At The Hague, The Netherlands