

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-02/06
Date: 14 October 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 “Prosecution’s submission pursuant to regulation 35 to vary the time limit for the sixth request for in-court protective measures concerning Prosecution Witness P-0039”, 14 October 2015

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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Introduction

1. Pursuant to regulation 35(2) of the Regulations of the Court (“RoC”) and article 68(1) of the Statute, the Prosecution seeks a variation of the time limit to submit a request for in-court protective measures for Prosecution Witness P-0039 —in the form of facial and voice distortion and the use a pseudonym during testimony (“Request”).
2. First, there is good cause for this Chamber to grant the variation because the Prosecution received confirmation of P-0039’s request for in-court protective measures [REDACTED].¹ This new development constitutes a sound reason which objectively justifies the Prosecution’s request for a variation of time limit now.² This variation would not unduly prejudice the Accused.
3. Second, should this Chamber grant the Request, the in-court protective measures sought will protect this witness’s security, psychological well-being, dignity and privacy within the meaning of article 68(1) of the Statute. Moreover, 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) and 68(1) and (2) of the Statute. The measures sought will not unfairly prejudice the rights of the Accused as he has been provided with P-0039’s name and identifying information; the identity of Prosecution Witness P-0039 will remain anonymous to the public only.

¹ [REDACTED], the Office of the Legal Representatives communicated *via* email to the Prosecution the request by P-0039 for in-court protective measures, including facial and voice distortion and use of a pseudonym.

² ICC-01/04-01/06-834, para. 7.

Confidentiality

4. This filing is classified as “Confidential, *ex parte* – only available to the Prosecution” pursuant to regulation 23*bis*(1) of the RoC since it refers to confidential witness information and place of residence of a witness. The Prosecution will file redacted versions of this filing.

Procedural Background

5. On 2 June 2015, the Chamber issued its Conduct of the Proceedings Decision, establishing the deadlines for common case matters (“Decision”).³ Concerning the Prosecution’s presentation of evidence, the Court directed that the Prosecution provide a ‘Forthcoming Witnesses List’ four weeks prior to the start of a block, including, *inter alia*, the identified witnesses it intends to call and the order in which it intends to call them.⁴ Further, the Court directed that requests for in-court protective measures be filed “no later than four weeks before” the scheduled commencement of that witness’s testimony.⁵
6. On 22 June 2015, the Chamber held that the second evidentiary block would begin on 19 October 2015, noting that an approximate six-week break between the end of the first evidentiary block and the start of the second block would provide the Defence with “considerably more notice of the witnesses the Prosecution intends to call for the second block than will ordinarily be the case.”⁶
7. On 26 June 2015, in accordance with the Court’s directive, the Prosecution filed its updated list of witnesses, including P-0039 projected to testify [REDACTED] in the evidentiary block.⁷ On 18 September 2015, the Prosecution filed an updated

³ ICC-01/04-02/06-619.

⁴ ICC-01/04-02/06-619, para. 18.

⁵ ICC-01/04-02/06-619, para. 50.

⁶ ICC-01/04-02/06-661-Conf-Red2, para. 11.

⁷ ICC-01/04-02/06-675-Conf-AnxA.

list of witnesses, identifying P-0039 as testifying [REDACTED]. The Prosecution did not seek in-court protective measures four weeks before the witness's anticipated evidence as it was not aware that the witness had specific security concerns at that time.

8. [REDACTED], following a recent consultation with this witness, the Legal Representative of P-0039 informed the Prosecution that Witness P-0039 had requested in-court protective measures because he is afraid for his family should his name become known to the public.⁸

Prosecution's Submissions

9. Under regulation 35(2) of the RoC, a Chamber may extend a time limit "if good cause is shown". The Chamber may extend the time limit after it has elapsed if it can be demonstrated that the extension of the time limit could not be sought prior to its expiration for reasons outside a participant's control.
10. [REDACTED], the Prosecution received information that Prosecution Witness P-0039 requested in-court protective measures to conceal his identity from the public during his testimony; prior to [REDACTED], the Prosecution was not aware that P-0039 had requested in-court protective measures. Therefore, the Prosecution was unable to file a request [REDACTED]⁹ to vary the time limit due to circumstances outside of its control. At this time, the Prosecution requests facial and voice distortion and the use of a pseudonym during his testimony.¹⁰ Granting this variation now would not "derail the proceedings from their ordained course"¹¹ and is not unduly prejudicial to the Defence.

⁸ [REDACTED], email from the Office of the Legal Representatives to the Prosecution.

⁹ [REDACTED] would have been the deadline of four weeks prior to the testimony of P-0039 which had been established by the Court in its decision on the Conduct of Proceedings, ICC-01/04-02/06-619, para. 50.

¹⁰ [REDACTED], the Office of the Legal Representatives communicated *via* email to the Prosecution the request by P-0039 for in-court protective measures.

¹¹ ICC-01/04-01/07-653, para. 6.

11. Should the Chamber grant the variation of time limit, the in-court protective measures sought are necessary for Prosecution Witness P-0039 because publically revealing his identity will risk compromising his safety, privacy and his physical and psychological well-being within the meaning of article 68(1). The measures sought appropriately balance the Accused's right to a fair trial and reduce the possibility of needing more intrusive protective measures following testimony.

13. P-0039 is a dual-status witness who has been granted victim participation status in the case.¹² He is a civilian of Lendu ethnicity and a crime-base witness who is expected to testify, *inter alia*, about: living [REDACTED] around 2002 when UPC/FPLC militia invaded the area; [REDACTED]; the targeting of Lendu civilians and fighters alike by UPC/FPLC forces; living in the bushes [REDACTED]; carrying pillaged goods for the UPC/FPLC and [REDACTED] a prison with [REDACTED] Lendu people, [REDACTED] being guarded by two *kadagos*; seeing groups of Lendu prisoners escorted by UPC/FPLC soldiers walking [REDACTED] and learning that the men were later murdered; [REDACTED] and returning to his house in [REDACTED] months later to find that it was pillaged and destroyed, along with the other buildings in the area.

14. [REDACTED] his safety and security are closely monitored and assessed. The Prosecution requests in-court protective measures because this witness is [REDACTED] who has [REDACTED]. [REDACTED] heighten this witness's vulnerability and the need for protective measures, particularly considering potential retaliation after testimony if his status as a trial witness is publicly exposed.

15. P-0039 fears for his family members. P-0039 lives in [REDACTED], an area where residents commonly know each other. P-0039 is especially concerned because of the unstable security situation and that persons loyal to the UPC/FPLC group

¹² [REDACTED].

and/or the Accused may be found in the area where P-0039 and his family stay. [REDACTED] are aware of P-0039's involvement with the Court. No one else in his community knows.

Relief Requested

16. The Prosecution requests that the Chamber find that there is good cause to vary the time limit and to grant the in-court protective measures for Prosecution Witness P-0039 in the form of facial and voice distortion and the use of a pseudonym during his testimony before the Court.



Fatou Bensouda
Prosecutor

Dated this 14th day of October 2015
At The Hague, The Netherlands