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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 “Corrected version of “Fifth Prosecution request for in-court protective measures””, 14 October 2015,
ICC-01/04-02/06-900-Conf-Exp-Corr**

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. On 25 September 2015, the Prosecution noted that there may be extra time remaining at the end of the second evidentiary block to accommodate additional witnesses.¹ During the hearing, the Defence indicated that if there is additional time for a witness it is not in principle opposed and will inform the Chamber should it not be ready to proceed.² On 5 October 2015, the Prosecution informed the Defence and the Legal Representatives of Victims that it proposed adding Witnesses P-815, P-800 and P-859 to the end of the second evidentiary block should there be sufficient time to hear these witnesses.³ The two Legal Representatives of Victims do not oppose the proposed addition.⁴ The Defence has indicated that it does not oppose the addition of one additional witness only (either Witness P-800 or P-859) at the end of the second evidentiary block.⁵

2. In the event that there is time to hear additional witnesses, the Prosecution requests that it be permitted to call Witness P-859 and requests facial and voice distortion as well as the use of a pseudonym during the witness's testimony as provided for in rule 87 of the Rules of Procedure and Evidence. [REDACTED].

3. The Prosecution notes that it would be preferable to have one or both of Witnesses P-815 and P-800 ready to testify [REDACTED] the next block as it is possible that the block will end early and valuable Court days will be lost. The Prosecution also, however, takes note of the Defence preference to hear only one additional witness.

¹ ICC-01/04-02/06-T-32-CONF-ENG, p. 61, l. 23 to p. 62, l. 5.

² ICC-01/04-02/06-T-32-CONF-ENG, p. 62, l. 14-18.

³ Email dated 5 October 2015 at 17:39.

⁴ Emails dated 12 October 2015 at 11:08 and 11:10.

⁵ Email dated 13 October 2015 at 15:15.

4. In anticipation of the eventual testimony of P-815 and P-800, at least at a later stage, the Prosecution now makes its request for facial and voice distortion as well as the use of a pseudonym during their testimony.
5. The protective measures sought will ensure that these Prosecution Witnesses are able to testify without fear for their personal safety and security or that of their family members; these measures will also protect each witness's psychological well-being, dignity and privacy, as provided under article 68(1) of the Statute. 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 will not unfairly prejudice the rights of the Accused as he has been provided with the names and identifying information of these witnesses; their identities will remain anonymous to the public only.

Confidentiality

6. This request is classified as "Confidential, *ex parte* – only available to the Prosecution" pursuant to regulation 23*bis*(1) of the Regulations of the Court as it provides information about protective measures, witness security and locations of residence. The Prosecution will file redacted versions.

Prosecution's Submissions

7. The Prosecution requests in-court protective measures in the form of facial and voice distortion and the use of a pseudonym during the testimony of Prosecution Witnesses P-815, P-800 and P-859. 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.

Prosecution Witness P-859

8. In-court protective measures sought in the form of facial and voice distortion and the use of a pseudonym are necessary because publically revealing P-859's identity will risk compromising his safety, privacy and his physical and psychological well-being within the meaning of article 68(1).

9. P-859 is a dual-status witness who has been granted victim participation status in the case. He is a civilian and a crime-base witness of [REDACTED] who is expected to testify, *inter alia*, about the UPC/FPLC militia attacking Mongbwalu, including the bombing of a compound which maimed civilians. P-859 is expected to testify about his escape from Mongbwalu along with others, about [REDACTED] murder by a UPC soldier and about the UPC/FPLC militia murdering civilians around Mongbwalu and Bunia. P-859 is expected to testify about how UPC/FPLC soldiers [REDACTED] and how this injury affects him.

10. [REDACTED] his safety and security is closely monitored and assessed. The Prosecution requests in-court protective measures for this witness because he does not want his appearance at the Court to be publically known. P-859 fears that either he or persons connected to him will face repercussions or be stigmatised in the community as a result of his appearance before the Court. [REDACTED], where residents commonly know each other. It is also an area where former UPC/FPLC members and associates loyal to the Accused may be present, and where the Accused continues to exert influence. P-859 is concerned about testifying publically for these reasons.

Prosecution Witness P-815

11. In-court protective measures sought in the form of facial and voice distortion and the use of a pseudonym are necessary for Prosecution Witness P-815 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).

12. P-815 is a civilian of [REDACTED] and a crime-base witness who is expected to testify, *inter alia*, about the UPC/FPLC attack on Sayo around December 2002, including how UPC/FPLC attacks on Sayo forced him and his family to flee to the bush. His testimony is expected to address how UPC/FPLC soldiers murdered [REDACTED]. He is expected to testify about UPC/FPLC militia looting and destroying the Catholic Church as well as the Health Centre in Sayo. He is also expected to testify about UPC/FPLC soldiers abducting civilians, including acts of rape and sexual slavery. [REDACTED].

13. [REDACTED] his safety and security is closely monitored and assessed. The Prosecution requests in-court protective measures —facial and voice distortion and the use of a pseudonym— because P-815 does not want his testimony at the Court to become publically known. [REDACTED], a community where inhabitants are commonly known to each other. [REDACTED] to an area where UPC/FPLC elements and supporters are based, and which can be easily accessed by former members of the UPC/FPLC. P-815 fears that if he is recognised during his testimony before the Court, he will suffer from stigmatisation and retaliation. Further, [REDACTED], the protection of his privacy and psychological well-being (as well as that of his family) is necessary.

Prosecution Witness P-800

14. In-court protective measures sought in the form of facial and voice distortion and the use of a pseudonym are necessary for Prosecution Witness P-800 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).
15. Prosecution Witness P-800 is a civilian of [REDACTED] and a crime-base witness [REDACTED]. P-800 is expected to testify, *inter alia*, about the UPC/FPLC attacks on villages in Mongbwalu and Sayo. He is expected to give evidence about UPC/FPLC attacks which forcibly displaced and killed civilians and how the UPC/FPLC militia targeted Lendu persons due to their ethnicity. P-800 is also expected to testify about the widespread pillaging and the destruction of property, including the Sayo Health Centre, a protected object.
16. [REDACTED] his safety and security is closely monitored and assessed. The Prosecution requests in-court protective measures for P-800 because [REDACTED]. P-800 has communicated that he fears retaliation and stigmatisation which may arise from any public dissemination of his identity during testimony. P-800 lives [REDACTED], where the inhabitants commonly know one another. [REDACTED] close to an area where UPC/FPLC elements and supporters are based, and which can be easily accessed by former members of the UPC/FPLC. [REDACTED] there is an increased risk of his exposure absent protective measures and of deleterious targeting.

Request

17. The Prosecution requests that the Chamber add Witness P-859 to the list of witnesses to be called [REDACTED] second evidentiary block and grant in-

court protective measures for Prosecution Witnesses P-859, P-815, and P-800 in the form of facial and voice distortion and the use of a pseudonym during their eventual testimony before the Court.



Fatou Bensouda,
Prosecutor

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