

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-02/06**

Date: **6 May 2016**

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
With Confidential Annexes A-E**

Public redacted version of "Prosecution's thirteenth request for in-court protective measures", 6 May 2016, ICC-01/04-02/06-1310-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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Introduction

1. The Prosecution requests in-court protective measures in the form of facial and voice distortion as well as the use of a pseudonym for Witness P-0190, as provided for in rule 87 of the Rules of Procedure and Evidence (“Request”).
2. The requested protective measures are warranted in view of the objectively justifiable risk which exists in relation to Witness P-0190. This Witness will be the first witness to testify in the fifth block of evidence, scheduled to commence on 6 June 2016. The Witness [REDACTED]. He [REDACTED] is expected to provide direct evidence about the role played by the Accused in the UPC/FPLC.
3. [REDACTED].
4. Granting the Request would appropriately balance the Accused’s right to a fair and public hearing under articles 64(2) and 67(1) of the Rome Statute (“Statute”) against the need to protect victims and witnesses appearing before the Court, pursuant to articles 64(2) and 68(1) and (2). These measures will ensure that Witness P-0190 is able to give evidence without fear for his personal security or that of his family members.

Confidentiality

5. This Request is classified as “Confidential, *ex parte* – only available to the Prosecution and Victims and Witnesses Unit” pursuant to regulation 23*bis* (1) of the Regulations of the Court as it provides information dealing with a witness’ security situation. Annexes A-E are classified as “Confidential” because they contain information which could identify this Witness in relation to whom protective measures are being sought. The Prosecution will file a confidential, *ex parte* version of this request which will be made available to the Defence, a

confidential version which will also be available to the Legal Representatives, and a public redacted version.

Prosecution's Submissions

6. The Prosecution requests facial distortion, voice distortion and the use of a pseudonym during the testimony of Witness P-0190.
7. Witness P-0190 [REDACTED]. The Witness is expected to provide evidence on, *inter alia*, the commission of the following crimes by UPC/FPLC members [REDACTED] during the temporal scope of the charges: murder and attempted murder, attacks against the civilian population, rape of civilians, persecution, pillaging, forcible transfer of population, and enlistment and conscription of children under 15 and their use to participate actively in hostilities. Accordingly, Witness P-0190 is expected to give evidence on a significant number of the charges against the Accused.
8. [REDACTED].¹ Therefore, this Witness is highly identifiable and extra caution is warranted during his testimony, including through the granting of the requested protective measures.

[REDACTED]

[REDACTED]

9. Witness P-0190 reported that [REDACTED].² [REDACTED].³

10. [REDACTED],⁴ [REDACTED].⁵ [REDACTED].

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

[REDACTED]

11. [REDACTED].⁶

12. [REDACTED].⁷ [REDACTED].⁸

13. [REDACTED].⁹

14. [REDACTED].¹⁰ [REDACTED].

[REDACTED]

15. Witness P-0190 reported that [REDACTED].¹¹ [REDACTED].¹²

16. [REDACTED].¹³

[REDACTED]

17. Witness P-0190 reported that [REDACTED].¹⁴ [REDACTED].¹⁵

18. [REDACTED].¹⁶ [REDACTED].¹⁷ [REDACTED].¹⁸ [REDACTED].¹⁹ [REDACTED].²⁰

[REDACTED]

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED]. [REDACTED].

19. Witness P-0190 reported that [REDACTED].²¹ [REDACTED].²² [REDACTED].²³
[REDACTED].²⁴

[REDACTED]

20. In granting requests for protective measures, the Chamber has previously noted the reported instances where other witnesses were allegedly threatened as a result of their involvement with the Court.²⁵ The Chamber has also found reasonable grounds to believe that the Accused, through his interlocutor, “intended to engage in a serious form of witness interference.”²⁶ [REDACTED].²⁷

21. [REDACTED].

22. [REDACTED]. Granting the requested protective measures may negate the need for further intrusive protection measures for the Witness and his relatives upon completion of testimony.²⁸

All three requested protective measures should be granted

23. The Prosecution requests that the Chamber grant the full set of protective measures requested for this Witness. Granting the use of a pseudonym alone would not suffice to protect P-0190, as unprotected witnesses’ images are easily accessible to a vast public on a worldwide scale, thus maximising the risk of their identification. The dissemination of the video image or voice of P-0190 would increase the risk that he could be identified. This necessitates the use of a pseudonym in combination with face and voice distortion.

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ See ICC-01/04-02/06-1160-Red2, para.7, fn.18.

²⁶ ICC-01/04-02/06-785-Red, para.55.

²⁷ [REDACTED].

²⁸ See ICC-01/04-02/06-1293- Red2, para.9.

The requested protective measures do not violate the Accused's right to a public hearing

24. The protective 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.
25. Granting face and voice distortion in addition to a pseudonym would not violate the Accused's right to a public hearing.²⁹ Article 68(2) explicitly provides that granting measures to take into account a witness' views is an exception to the principle of public hearings. Further, the right to a public hearing is not absolute and subject to the protection of the private life of the parties or where publicity would prejudice the interests of justice.³⁰ Moreover, if the Chamber were to grant the witnesses face and voice distortion in addition to the use of a pseudonym, the hearing will still be public given that any non-identifying testimony provided by this Witness will be elicited in open session and publicly available.

Conclusion and Request

26. Witness P-0190 has expressed objectively justifiable concerns for his safety and that of his family members that warrant the requested protective measures. The protective measures sought will ensure P-0190 is able to give evidence without fear for his personal safety and security or that of his family members, and in a manner that protects his psychological well-being, dignity and privacy as provided for under article 68(1) of the Statute.

²⁹ Witness [REDACTED]: ICC-01/04-02/06-824-Conf, para.10; Witness P-0901: ICC-01/04-02/06-828-Conf, para.10; Witness [REDACTED]: ICC-01/04-02/06-905-Conf, paras.8-9; Witness P-0859: ICC-01/04-02/06-1004-Conf-Red, paras.5-6; Witness P-0800: ICC-01/04-02/06-1160-Conf, para.8.

³⁰ See e.g. ECHR, *Guisset v. France*, Appl. no. 33933/96, "Judgment", September 26, 2000, para.73; ECHR, *B and P v. UK*, Appl. nos. 36337/97 and 35974/97, "Judgment", April 24, 2001, para.36.

27. For all of the foregoing reasons, the Prosecution asks that the Chamber grant its Request.



Fatou Bensouda
Prosecutor

Dated this 6th day of May 2016
At The Hague, The Netherlands