

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **1 June 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 Annex A, Confidential, *EX PARTE* – only available to the
Prosecution and the Victims and Witnesses Unit Annex B and Public Annex C**

**Public redacted version of “Prosecution’s seventeenth request for in-court
protective measures”, 31 May 2016, ICC-01/04-02/06-1353-Conf-Exp**

Source: 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 Trial Chamber VI ("Chamber") to grant in-court protective measures in the form of facial and voice distortion as well as the use of a pseudonym for Witness P-0020, pursuant to articles 64(2) and 68(1) of the Rome Statute ("Statute") and rule 87 of the Rules of Procedure and Evidence ("Rules") ("Request").
2. Witness P-0020 will be the eighth witness to testify in the fifth block of evidence, scheduled to commence on 6 June 2016. The requested protective measures are warranted in view of the objectively justifiable risk which exists in relation to this witness.
3. Witness P-0020 is a [REDACTED] who is easily identifiable given the [REDACTED]. He is [REDACTED] and is expected to provide evidence about crimes committed by the *Union des Patriotes Congolais /Forces Patriotiques pour la Libération du Congo* ("UPC/FPLC") during the temporal scope of the charges. [REDACTED]. The witness [REDACTED] and currently resides [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 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-0020 is able to give evidence without fear for his personal security or that of his family members.

Confidentiality

5. This filing is classified as "Confidential, *ex parte* – only available to the Prosecution and the Victims and Witnesses Unit" pursuant to regulation 23bis(1) of the Regulations of the Court ("Regulations"), as it provides information about

a witness' security and location of residence. Annex A to this filing is classified as "Confidential" pursuant to regulation 23bis(1) of the Regulations since it contains information which may identify the witness in relation to whom protective measures are being sought. Annex B to this filing is classified as "Confidential, *ex parte* – only available to the Prosecution and the Victims and Witnesses Unit" pursuant to regulation 23bis(1) of the Regulations since it contains information which could reveal Witness P-0020's location of residence and that of other witnesses. The Prosecution will file confidential and public redacted versions of this filing.

Prosecution's Submissions

6. Witness P-0020 is a [REDACTED] who has [REDACTED].¹ The Prosecution's Request is warranted in view of the objectively justifiable risk to this witness' security and well-being.

Anticipated evidence

7. Witness P-0020 [REDACTED].² [REDACTED].³ [REDACTED].⁴
8. Witness P-0020 is expected to provide evidence on, *inter alia*, the commission of the following crimes by UPC/FPLC soldiers during the temporal scope of the charges: murder and attempted murder, attacks against the civilian population, rape of civilians, pillaging, enlistment and conscription of children under the age of 15 and their use to participate actively in hostilities.
9. Accordingly, Witness P-0020 is expected to give evidence on a significant number of the charges against the Accused. The requested protective measures are

¹ See Confidential Annex A, [REDACTED].

² See Confidential Annex A, [REDACTED].

³ See Confidential Annex A, [REDACTED].

⁴ See Confidential Annex A, [REDACTED].

necessary to avoid revealing his identity, bearing in mind the potential risk of retaliation from supporters of the Accused as elaborated upon further below.

Witness P-0020 resides [REDACTED] in a region that remains unstable

10. Witness P-0020 resides in [REDACTED], [REDACTED], and [REDACTED].

These locations are [REDACTED].

11. [REDACTED].⁵ [REDACTED].⁶

12. Witness P-0020, who is easily identifiable in view of [REDACTED], has expressed concerns about testifying in these proceedings, in particular in view of [REDACTED]. As a [REDACTED].⁷ [REDACTED].

13. [REDACTED]⁸ The Chamber concluded that there were reasonable grounds to believe that the Accused sought to disguise attempts to disclose confidential information or to interfere with Prosecution witnesses, during the course of telephone conversations from the detention centre with third parties. The Chamber also held that the Accused, through an interlocutor, intended to engage in a serious form of witness interference when he spoke of “silencing” certain persons.⁹

14. Moreover, the security situation in the region, in general, remains unstable. [REDACTED].¹⁰

⁵ See Confidential, *ex parte* Annex B – only available to the Prosecution and the Victims and Witnesses Unit.

⁶ See Confidential, *ex parte* Annex B – only available to the Prosecution and the Victims and Witnesses Unit.

⁷ See Confidential Annex A, [REDACTED].

⁸ [REDACTED].

⁹ See ICC-01/04-02/06-785-Red, paras.50-57.

¹⁰ See generally, ICC-01/04-02/06-585-Conf. The *ad hoc* international tribunals have recognised that the general volatile situation in a post-conflict region and potential threats against witnesses living in the region can justify witnesses’ fears for their safety, see e.g. *Prosecutor v Rwamakuba*, Decision on the Defence Motion for Protective Measures, ICTR-98-44C-PT, 21 September 2005, para.9; *Prosecutor v Furundzija*, Decision on Prosecutor’s Motion Requesting Protective Measures for Witnesses “A” and “D” at Trial, IT-95-17/1-T, 11 June 1998, paras.7-8; *Prosecutor v. Delalić et al.*, Decision on the Motion by the Prosecution for Protective Measures for the Witness Designated by the Pseudonym “N”, IT-96-21-T, 28 April 1997, paras.7-9.

15. As previously noted by this Chamber¹¹ and Trial Chamber V(A)¹² in relation to the granting of in-court protective measures, the security situation in the region may be a relevant factor when considered in relation to the circumstances of a specific witness. Trial Chamber V(A) went on to state 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.”¹³

16. Although the witness has not been the subject of any specific threat or risk, the Chamber has granted in-court protective measures, including face and voice distortion and the use of a pseudonym, for similarly situated Prosecution Witnesses.¹⁴ In its decision concerning Witness P-0800’s protective measures, the Chamber recalled “reported instances where other witnesses, including crime based witnesses, were allegedly threatened as a result of their involvement with the Court.”¹⁵

[REDACTED]

17. The safety and security of Witness P-0020, [REDACTED], is closely monitored and assessed. [REDACTED].¹⁶

18. Implementing the requested protective measures during this witness’ testimony will likely obviate the need for additional and more intrusive steps to be taken upon the completion of his testimony, [REDACTED].

¹¹ ICC-01/04-02/06-824-Red, para.14; ICC-01/04-02/06-1004-Conf-Red, para.5 with public redacted version at ICC-01/04-02/06-1004-Red2, para.5.

¹² ICC-01/09-01/11-902-Red2, para.14.

¹³ ICC-01/09-01/11-902-Red2, para.14.

¹⁴ See, e.g. ICC-01/04-02/06-824-Conf; ICC-01/04-02/06-1004-Conf-Red; ICC-01/04-02/06-1160-Conf-Exp.

¹⁵ ICC-01/04-02/06-1160-Conf-Exp, para.7.

¹⁶ [REDACTED].

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

19. The Prosecution requests that the Chamber grant the full set of protective measures requested for this witness pursuant to articles 64(2) and 68(1) of the Statute and rule 87 of the Rules. 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.
20. As the Chamber has previously found, granting the protective measures of voice and face distortion together with the use of a pseudonym does not unfairly prejudice the rights of the Accused when he has been provided with the name and identifying information of the witness who will remain anonymous to the public only.¹⁷ The Accused is in possession of this information, and, as such, will not be prejudiced should the requested protective measures be granted.
21. Granting face and voice distortion in addition to a pseudonym would not violate the Accused's right to a public hearing.¹⁸ 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.¹⁹ Moreover, if the Chamber were to grant this witness face and voice distortion in addition to the use of a pseudonym, the hearing will still be in public given that any non-identifying testimony given by this witness will be in open session and publicly available.

¹⁷ ICC-01/04-02/06-905-Red, para.8.

¹⁸ 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, pp.5-6, paras.5-6; Witness P-0800: ICC-01/04-02/06-1160-Conf, para.8.

¹⁹ 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.

Conclusion and Request

22. The risk to Witness P-0020's safety is objectively justifiable and warrants the requested protective measures. For all of the foregoing reasons, the Prosecution asks that the Chamber grant its Request.



Fatou Bensouda
Prosecutor

Dated this 1st day of June 2016
At The Hague, The Netherlands