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

Date: **24 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 Annexes A to C and Public Annex 1**

Public redacted version of "Prosecution's fifteenth request for in-court protective measures", 23 May 2016, ICC-01/04-02/06-1332-Conf-Exp

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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 for Prosecution Witness P-0888 in the form of facial and voice distortion as well as the use of a pseudonym, pursuant to articles 64(2) and 68(1) of the Rome Statute ("Statute") and rule 87 of the Rules of Procedure and Evidence ("Rules"). The Prosecution also requests the following special measures, pursuant to rule 88 of the Rule, namely: (a) in-court assistance by a support assistant of the Victims and Witnesses Unit ("VWU"); and (b) breaks and questioning adapted to the needs of P-0888 as a vulnerable witness. P-0888 is a [REDACTED]. He will testify as the fourth witness in the fifth evidence block, scheduled to commence on 6 June 2016.
2. The requested protective measures are necessary in view of, *inter alia*: (i) P-0888's expected evidence; (ii) [REDACTED]; (iii) [REDACTED],¹ [REDACTED]; (iv) the witness has family members who still reside in [REDACTED]; and (v) P-0888 resides in [REDACTED] which [REDACTED].
3. Granting the requested protective measures will ensure that Witness P-0888 is able to give evidence without fear for his personal security or that of his family members. It will also mitigate the need for more intrusive security-related measures post-testimony.
4. Special measures are also necessary in view of the specific circumstances of the witness as a vulnerable, [REDACTED] witness. P-0888's [REDACTED].
5. The Request appropriately balances 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) of the Statute. The identity of this witness has been

¹ [REDACTED].

provided to the Defence, and the measures sought do not prejudice the rights of the Accused. The witness's identity will be protected from the public only.

Confidentiality

6. This filing is classified as "Confidential, *EX PARTE* – only available to the Prosecution and the Victims and Witnesses Unit" pursuant to regulation 23*bis*(1) of the Regulations of the Court, as it provides confidential information about witnesses' security and locations of residence. The Prosecution will file confidential and public redacted versions of this filing.

Prosecution's Submissions

7. The Prosecution requests facial distortion, voice distortion, and the use of a pseudonym during the testimony of Witness P-0888 and that he be granted special measures of in-court assistance of a VWU support assistant, and breaks and questioning adapted to his needs.

I. P-0888's expected evidence

8. The requested protective measures are warranted in view of the objectively justifiable risk which exists in relation to Witness P-0888. Witness P-0888 will provide important and unique evidence [REDACTED].
9. Witness P-0888 is expected to testify about the Accused's role within the UPC and his authority and control over operations in [REDACTED], as well as the Accused's role in the recruitment and use of child soldiers in the UPC/ *Forces Patriotiques pour la libération du Congo* ("FPLC"). The witness will also testify about [REDACTED] and the organisation and structure of the UPC/FPLC.

10. The witness is expected to provide evidence on *inter alia*, the commission of the following crimes in and around [REDACTED] and other locations during the temporal scope of the charges: namely, murder and attempted murder, attacks against the civilian population, rape of UPC/FPLC child soldiers, rape of other civilians, persecution, pillaging, forcible transfer of population, enlistment and conscription of children under 15 and their use to participate actively in hostilities. P-0888's expected testimony will relate to all charged modes of liability. His testimony will also provide details regarding victim impact.

II. [REDACTED]

11. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].²

12. [REDACTED].³

13. [REDACTED].⁴ [REDACTED].⁵ [REDACTED].⁶ The Chamber considered the content of this conversation "to be deeply troubling and giving rise to a reasonable belief that Mr Ntaganda, through the relevant interlocutor, intended to engage in a serious form of witness interference."⁷ [REDACTED].⁸

III. [REDACTED]

14. Witness P-0888 is [REDACTED].⁹ [REDACTED]. [REDACTED].¹⁰ [REDACTED]. [REDACTED].

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ ICC-01/04-02/06-785-Red, para.55.

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

IV. The witness's family reside [REDACTED]

15. Witness P-0888 currently resides in [REDACTED] and has family members residing in both [REDACTED] and [REDACTED]. He has indicated that he has security concerns related to his cooperation with the Prosecution.¹¹ [REDACTED]. [REDACTED].

16. As previously noted by this Chamber¹² and Trial Chamber V(A)¹³ 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.”¹⁴

V. [REDACTED]

17. 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.¹⁵ 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.”¹⁶ [REDACTED].¹⁷

18. [REDACTED]. [REDACTED].

¹¹ [REDACTED].

¹² 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.

¹³ ICC-01/09-01/11-902-Red2, para.14.

¹⁴ ICC-01/09-01/11-902-Red2, para.14.

¹⁵ See ICC-01/04-02/06-1160-Red2, para.7, fn.18.

¹⁶ ICC-01/04-02/06-785-Red, para.55.

¹⁷ [REDACTED].

19. [REDACTED]. [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.¹⁸

VI. The requested protective measures should be granted and do not violate the Accused's right to a public hearing

20. 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.
21. The Chamber has previously found that protective measures of voice and face distortion together with the use of a pseudonym does not unfairly prejudice the rights of the Accused as he has been provided with the name and identifying information of this witness; he will remain anonymous to the public only.¹⁹
22. Article 68(2) of the Statute 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.²⁰ Moreover, if the Chamber grants the witness face and voice distortion in addition to the use of a pseudonym, the hearing will still be in public as any non-identifying testimony will be given in open session and publicly available.

¹⁸ See ICC-01/04-02/06-1293- Red2, para.9.

¹⁹ See Witness [REDACTED]: ICC-01/04-02/06-824-Conf, para. 16; Witness P-0901: ICC-01/04-02/06-828-Conf, para. 10; Witness [REDACTED]: ICC-01/04-02/06-905-Conf, para. 8; Witness P-0859: ICC-01/04-02/06-1004-Conf-Red, para. 6; Witness P-0800: ICC-01/04-02/06-1160-Conf-Red, para. 8.

²⁰ 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.

23. The Prosecution submits that the use of a pseudonym together with facial and voice distortion is necessary to adequately protect Witness P-0888 and ensure his safety, security, psychological well-being, dignity and privacy during and after his testimony. The Chamber has found reasonable grounds to believe that the Accused and his associates have interfered with Prosecution witnesses, particularly insiders prepared to provide unique and valuable testimony.²¹

24. Granting the use of a pseudonym alone would not suffice to protect this witness. Unprotected witnesses' images are easily accessible to a large audience on a worldwide scale, thereby maximising the risk of identification.²² The dissemination of the video image and voice of this witness would increase the risk that he could be identified. This necessitates the use of a pseudonym in conjunction with face and voice distortion.

VII. Special measures are required

25. Rule 88 allows the Court to impose measures to facilitate the testimony of vulnerable victims and witnesses and the Chamber has discretion to determine which special measures would facilitate the testimony of a vulnerable witness.²³ The Chamber is able to take into account the particular characteristics of a witness

²¹ ICC-01/04-02/06-785-Red, para. 55.

²² The Registry's Public Information and Documentation Section ("PIDS") live-streams the proceedings, such that they are easily accessible to anyone with an internet connection. PIDS also uploads an audio-visual summary of each witness's testimony to the Court's YouTube channel. Once uploaded, PIDS distributes a link to these summaries via email to a number of television and radio broadcasters in the DRC, who routinely broadcast such material.

²³ See e.g. H. Brady, '*Protective and Special Measures for Victims and Witnesses*', in Lee, R. et al., (eds.), *The International Criminal Court, Elements of Crimes and Rules of Procedure and Evidence*, (Transnational Publishers Inc., 2001), pp. 447-450: "Rule 88 is primarily designed to allow the Court to order 'special measures' to facilitate the testimony of certain vulnerable victims and witnesses, such as traumatised victims or witnesses, children, victims of sexual violence and the elderly. [...] [T]he drafters of Rule 88 purposely reserved to it a degree of flexibility, thus giving the Court scope to fashion orders as may be necessary and appropriate in the circumstances".

when deciding what special measures, if any, to grant under rule 88 of the Rules.²⁴

26. [REDACTED]. [REDACTED]. [REDACTED].²⁵ He [REDACTED] witnessed many crimes, including those committed by the Accused.

27. [REDACTED]. [REDACTED]. [REDACTED].²⁶ [REDACTED]. [REDACTED].²⁷

28. Article 68(1) of the Statute provides that in taking appropriate measures to ensure the protection of the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, Chambers shall have regard to all relevant factors. As stated in the same article, such factors include the nature of the crime, in particular where the crime involves sexual or gender violence or violence against children. This is consistent with domestic laws and the practice of international courts and tribunals.²⁸ [REDACTED]. Nevertheless, in order to minimise the risk of re-traumatisation, the Prosecution requests the Chamber to authorise: (a) a [REDACTED]-speaking support assistant from the VWU to sit next to him during his testimony and to provide him with assistance when necessary; and (b) breaks and questioning adapted to his needs as a vulnerable witness.²⁹

²⁴ See e.g. ICC-01/04-01/06-1049, para.32 (“The Trial Chamber also draws special attention to the vulnerability of some of the people who may be called to testify. There must be awareness of the particular characteristics of a witness which may cause the court environment to be particularly foreign and uncomfortable. In the context of the present case, for example, particular attention should be paid to any children who are called as witnesses to ensure that their psychological well-being is considered as a matter of paramount importance, pursuant to Article 68 of the Statute and Rule 88 of the Rules.”).

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ The Chamber granted this special measure in relation to Witness [REDACTED], see email from the Chamber to the Parties and Participants dated 6 November 2015 at 17:47.

Request

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



Fatou Bensouda
Prosecutor

Dated this 24th day of June 2016
At The Hague, the Netherlands