

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **1 July 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

Public redacted version of "Prosecution's sixteenth request for in-court protective measures", 26 May 2016, ICC-01/04-02/06-1336-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-0877 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 Statute and rule 87 of the Rules of Procedure and Evidence (“Rules”). Witness P-0877 will testify as the sixth witness in the fifth evidence block, which is scheduled to commence on 6 June 2016.
2. Granting the requested protective measures will ensure that Witness P-0877 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.
3. The measures sought appropriately balance the Accused’s right to a public hearing under article 67(1) of the Statute, against the need to protect witnesses appearing before the Court, pursuant to articles 64(2), 68(1) and 68(2) of the Statute. The identity of this witness has been provided to the Defence, and the measures sought do not prejudice the rights of the Accused. The witness’ identity will be protected from the public only.

Confidentiality

4. This request is classified as “Confidential, *ex parte* – only available to the Prosecution, the Legal Representative for the former child soldiers and the Victims and Witnesses Unit” pursuant to regulation 23bis (1) of the Regulations of the Court as it refers to confidential security-related witness information. The Prosecution will file confidential and public redacted versions of this filing.

Prosecution's Submissions

5. The Prosecution requests that Trial Chamber VI ("Chamber") grant facial distortion, voice distortion and the use of a pseudonym during the testimony of Witness P-0877, a crime-base witness who provides important evidence about crimes committed by the UPC [REDACTED].¹ The requested protective measures are warranted in view of the objectively justifiable risk to Witness P-0877's security and well-being.

Anticipated evidence

6. Witness P-0877 is expected to provide important direct evidence about the UPC/FPLC [REDACTED], including important eye-witness evidence relevant to the Prosecution's charges of murder and persecution in that location. He will also testify about seeing the Accused [REDACTED]. The requested protective measures are necessary to avoid revealing Witness P-0877's identity, bearing in mind the potential risk of retaliation from supporters of the Accused as elaborated upon further below.

Witness P-0877's family residence is [REDACTED] in a region that remains unstable

7. Witness P-0877 is [REDACTED]. His family's residence is located [REDACTED], which is [REDACTED].
8. Witness P-0877 has expressed concerns about testifying publicly in these proceedings as he fears negative repercussions should his cooperation with the Prosecution become known. At present, his involvement with these proceedings is not known to members of his family or his community. He is [REDACTED], as

¹ [REDACTED].

he is [REDACTED]. He also [REDACTED] and he [REDACTED]. The witness explained to the Prosecution that he currently lives in a [REDACTED], which is [REDACTED], and that the latter include many demobilised UPC militia, some of whom still support Bosco Ntaganda. He explained that some of the Hema of his community have publicly expressed their disapproval of Bosco Ntaganda's prosecution. Witness P-0877 [REDACTED].² The [REDACTED], confirmed to the Prosecution that the population [REDACTED] was divided on the matter of Bosco Ntaganda's trial. Indeed, in June 2015, he told the Prosecution that, whilst part of the population supported the possibility of opening statements being held *in situ*, the victims of the crimes were concerned by this prospect.³ Witness [REDACTED], further told the Prosecution that he feared retaliation upon his return in Ituri and that he feared for his life and the lives of his family members.

9. [REDACTED].⁴ 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.⁵

10. Moreover, the security situation in the region, in general, remains unstable. [REDACTED].⁶

² See Confidential, *Ex Parte*, Annex A.

³ See ICC-01/04-02/06-636-Conf-Exp-AnxA.

⁴ [REDACTED].

⁵ ICC-01/04-02/06-785-Red, paras. 50-57.

⁶ See generally ICC-01/04-02/06-585-Conf. The *ad hoc* international tribunals have recognised that the generally 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, Case No. ICTR-98-44C-PT, T. Ch. III, 21 September 2005, para. 9; *Prosecutor v Furundzija*, Decision on Prosecutor's Motion Requesting Protective Measures for Witnesses "A" and "D" at Trial, Case No. IT-95-17/1-T, T. Ch.II, 11 June 1998, paras. 7-8; *Prosecutor v Delalić et al.*, Decision on the

11. As previously noted by this Chamber⁷ and Trial Chamber V(A)⁸ 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.”⁹

12. Witness P-0877 has not been the subject of any direct or specific threats; however, the Chamber has granted in-court protective measures, including face and voice distortion and the use of a pseudonym, for similarly situated Prosecution witnesses, namely P-0805,¹⁰ P-0859,¹¹ P-0800¹² and P-0892.¹³ In previous decisions concerning 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.”¹⁴

[REDACTED]

13. Although the safety and security of this witness is closely monitored and assessed, [REDACTED]. [REDACTED].¹⁵

14. Implementing the requested protective measures during the testimony of Witness P-0877 will likely obviate the need for additional and more intrusive protective measures, [REDACTED] to be applied upon the completion of his testimony.

Motion by the Prosecution for Protective Measures for the Witness Designated by the Pseudonym "N", Case No. IT-96-21-T, T.Ch., 28 April 1997, paras. 7-9.

⁷ ICC-01/04-02/06-824-Red, para.14; ICC-01/04-02/06-1004-Conf-Red, para.5.

⁸ ICC-01/09-01/11-902-Red2, para.14.

⁹ Ibid.

¹⁰ ICC-01/04-02/06-824-Conf.

¹¹ ICC-01/04-02/06-1004-Conf-Red.

¹² ICC-01/04-02/06-1160-Conf-Red.

¹³ ICC-01/04-02/06-1277-Conf.

¹⁴ See Witness P-800: ICC-01/04-02/06-1160-Conf-Red, para. 7; Witness P-0892: ICC-01/04-02/06-1277-Conf, para 6.

¹⁵ [REDACTED].

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

15. 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.
16. 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.¹⁶
17. 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.¹⁷ 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. The Prosecution submits that the use of a pseudonym in concert with facial and voice distortion is necessary to adequately protect Witness P-0877 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

¹⁶ See Witness P-0805: ICC-01/04-02/06-824-Conf, para. 16; Witness P-0901: ICC-01/04-02/06-828-Conf, para. 10; Witness P-0768: 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.

¹⁷ 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.

Accused and his associates have interfered with Prosecution witnesses, particularly insiders prepared to provide unique and valuable testimony.¹⁸

19. Granting the use of a pseudonym alone would not suffice to protect Witness P-0877 as unprotected images of witnesses are easily accessible to the public on a worldwide scale, thereby maximising the risk of identification. The dissemination of the video image or voice of Witness P-0877 would increase the risk that he could be identified. This necessitates the use of a pseudonym in combination with face and voice distortion for both.
20. The requested protective measures will ensure that Witness P-0877 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. It will also mitigate the need for more intrusive security-related measures post-testimony.

Request

21. The Prosecution requests that the Chamber grant in-court protective measures for Prosecution Witness P-0877 in the form of facial distortion, voice distortion and the use of a pseudonym during his testimony.



Fatou Bensouda
Prosecutor

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

¹⁸ ICC-01/04-02/06-785-Red, para. 55.