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No.: ICC-01/04-02/06
Date: 11 October 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, *EX PARTE*, only available to the Prosecution and Victims and
Witnesses Unit Annexes A-G and Confidential Annexes H-O**

**Public redacted version of “Prosecution’s request for in-court protective measures
for Witness [REDACTED]”, 10 October 2016, ICC-01/04-02/06-1576-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 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 [REDACTED], as provided for in rule 87 of the Rules of Procedure and Evidence ("Rules") ("Request"). The requested protective measures are warranted in view of the objectively justifiable risk which exists in relation to this witness.
2. Witness [REDACTED] will be the first witness to testify in the seventh block of evidence which is scheduled to commence on 7 November 2016. Between [REDACTED] and [REDACTED], Witness [REDACTED]. Witness [REDACTED] is expected to provide direct evidence about a number of charges against the Accused.
3. Witness [REDACTED] and members of his family reside [REDACTED]. The witness is [REDACTED].
4. Witness [REDACTED]. [REDACTED], the witness's family was intimidated. He is a known person in [REDACTED] due to his involvement with [REDACTED]. Accordingly, the witness requires in-court protective measures for his testimony in the proceedings against the Accused.
5. Granting the Request will ensure the protection of the safety, physical and psychological well-being, dignity and privacy of this witness as mandated by article 68(1) of the Rome Statute ("Statute"). It may also mitigate the need for more intrusive security-related measures post-testimony. 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.

Confidentiality

6. This filing and Annexes A-G thereto are 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 they provide information regarding a witness’ security situation and location. Annexes H-O 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 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 [REDACTED].
8. Witness [REDACTED] is a male of [REDACTED] ethnicity. Between [REDACTED] and [REDACTED] he was a [REDACTED]. Witness [REDACTED] was also involved in [REDACTED].
9. The witness is expected to provide evidence on, *inter alia*, the commission of the following crimes by UPC/FPLC members during the temporal scope of the charges: enlistment and conscription of children under the age of fifteen and their use to participate actively in hostilities, attacks against the civilian population, and persecution. Accordingly, Witness [REDACTED] is expected to give evidence on a significant number of the charges against the Accused.

I. The requested protective measures are necessary

10. Witness [REDACTED] requires in-court protective measures because he faces an objectively justifiable risk, in particular in view of reports that [REDACTED] members of his family were intimidated by members of the Hema community in [REDACTED]. The fact that the witness [REDACTED] and family members [REDACTED] also support the need for the Request to be granted.

[REDACTED]'s family was intimidated by members of the Hema community in [REDACTED]

11. Witness [REDACTED]:

[REDACTED].¹

12. [REDACTED]. [REDACTED]. [REDACTED].

13. [REDACTED].²

14. [REDACTED]³ [REDACTED].⁴ [REDACTED].⁵

15. [REDACTED].⁶

16. [REDACTED];⁷ [REDACTED];⁸ [REDACTED].⁹ [REDACTED].¹⁰

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

17. Should [REDACTED] co-operation with the Court be made known, there is an objectively justifiable risk that retaliatory acts may be undertaken against him and/or his family members.

The reported instances of intimidation warrant protective measures

18. 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.¹¹ 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.”¹² In view of the reported intimidation of Witness [REDACTED]’s family members, should he testify without the requested protective measures, the likelihood of retaliatory acts being undertaken against him and/or his family is significant.

19. Indeed, [REDACTED].¹³ Further, [REDACTED].¹⁴ The Chamber should grant the requested measures to minimise the risk that similar harm is inflicted upon this witness and/or his family subsequent to his testimony against the Accused.

[REDACTED] and his family reside [REDACTED]

20. Witness [REDACTED] recently [REDACTED]. The witness has informed the Prosecution that [REDACTED]. The witness plans on [REDACTED].

21. Witness [REDACTED]’s [REDACTED].

22. Witness [REDACTED]’s [REDACTED].

¹¹ See ICC-01/04-02/06-1160-Red2, para.7, fn.18.

¹² ICC-01/04-02/06-785-Red, para.55.

¹³ [REDACTED].

¹⁴ [REDACTED].

23. Witness [REDACTED] continues to be [REDACTED]. [REDACTED].¹⁵ [REDACTED]. The Chamber has previously taken into account a witness's position and the extent to which he is known and recognisable within the community in considering the existence of an objectively justifiable risk justifying in-court protective measures.¹⁶ Protecting [REDACTED]'s identity would also serve to protect [REDACTED].

24. [REDACTED].

25. [REDACTED].¹⁷

26. [REDACTED].¹⁸ [REDACTED].¹⁹ [REDACTED].²⁰ [REDACTED].²¹ [REDACTED].²² [REDACTED].²³ [REDACTED].²⁴

27. [REDACTED].²⁵ [REDACTED].²⁶ [REDACTED].²⁷

28. Several Prosecution witnesses have noted that armed groups are still active in [REDACTED] and the surroundings and that the security situation in [REDACTED] is volatile.²⁸ The witnesses considered UPC and Ntaganda supporters in [REDACTED] to be dangerous.²⁹

¹⁵ [REDACTED].

¹⁶ See the Chamber's decisions concerning the requests for in-court protective measures for Witnesses [REDACTED] and [REDACTED], [REDACTED] and [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

29. As previously noted by this Chamber³⁰ and Trial Chamber V(A)³¹ 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.

Witness [REDACTED] and his family members [REDACTED]

30. The safety and security of Witness [REDACTED], [REDACTED], is closely monitored and assessed. However, as previously noted by the Chamber, [REDACTED].³² Implementing the requested protective measures during this witness's testimony will likely obviate the need for additional and more intrusive steps to be taken upon the completion of his testimony,³³ [REDACTED].

All three requested protective measures should be granted

31. 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 Witness [REDACTED], 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 Witness [REDACTED] would increase the risk that he could be identified. This necessitates the use of a pseudonym in combination with face and voice distortion.

³⁰ 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.

³¹ ICC-01/09-01/11-902-Red2, para.14.

³² [REDACTED].

³³ [REDACTED].

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

32. 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.
33. Granting face and voice distortion in addition to a pseudonym would not violate the Accused's right to a public hearing.³⁴ 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.³⁵ Moreover, if the Chamber were to grant the witness 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

34. Witness [REDACTED] has expressed objectively justifiable concerns for his safety and that of his [REDACTED] family members that warrant the requested protective measures. The protective measures sought will ensure that he is able to give evidence without fear for his personal safety and security or that of his [REDACTED] 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.

³⁴ 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.

³⁵ 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.

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



Fatou Bensouda
Prosecutor

Dated this 11th day of October 2016
At The Hague, The Netherlands