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Date: **15 March 2017**

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-B and D-J**

Public redacted version of “Prosecution’s request for in-court protective measures and special measures for Prosecution witnesses testifying in the 7th evidentiary block”, 11 October 2016, ICC-01/04-02/06-1579-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 Witnesses P-0758, P-0761, P-0773, P-0898, P-0918, P-0911, P-0875, P-0908, P-0883, P-0300 and P-0121 (“7th Evidentiary Block Witnesses”) 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”). These witnesses will testify in the seventh evidence block, which is scheduled to commence on 7 November 2016. In the case of Witness P-0121, [REDACTED] is a back-up witness.
2. Granting the requested protective measures will ensure that the 7th Evidentiary Block Witnesses are able to give evidence without fear for their personal security or that of their 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 these witnesses has been provided to the Defence, and the measures sought do not prejudice the rights of the Accused. The witnesses’ identity will be protected from the public only.
4. The Prosecution requests special measures pursuant to rule 88 of the Rules for Witnesses P-0758, P-0898, P-0875, P-0883, P-0908, P-0918, P-0761 and P-0773.

Confidentiality

5. This request and its annexes are 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 as they refer to confidential security-related

witness information. The Prosecution will file confidential and public redacted versions of this filing.

Prosecution's Submissions

6. The Prosecution requests that Trial Chamber VI ("Chamber") grant facial distortion, voice distortion and the use of a pseudonym during the testimony of: (1) Witnesses P-0758, a [REDACTED] who was [REDACTED], as well Witnesses P-0761 and P-0773, who are [REDACTED]; (2) Witness P-0898, a [REDACTED] who was [REDACTED], and Witness P-0918 [REDACTED]; (3) Witness P-0911, a [REDACTED] who was [REDACTED]; (4) Witness P-0875, a [REDACTED] who was [REDACTED] Witness P-0908 [REDACTED]; (5) Witness P-0883, a [REDACTED] who was [REDACTED]; and (6) Witnesses P-0300 and P-0121, two Lendu [REDACTED] of the area of Kobu and Buli, who witnessed the UPC/FPLC's attack on Kobu, Sangi, Buli and surrounding villages as well as the circumstances leading up to the massacre of civilians in Kobu. The requested protective measures are warranted in view of the objectively justifiable risk to these witnesses' security and well-being.¹

The 7th Evidentiary Block Witnesses all reside within the Accused's geographic area of influence

7. The 7th Evidentiary Block Witnesses all live within the geographic area of influence of the Accused and in an area where former UPC/FPLC members and associates loyal to the Accused are present. The requested protective measures are necessary to avoid revealing these witnesses' identity, bearing in mind the potential risk of retaliation from supporters of the Accused.

¹ The Prosecution notes, with respect to the five remaining witnesses scheduled to appear during the seventh evidentiary block, that (1) the Prosecution has separately filed a request in-court protective measures for Witness P-0024 (See ICC-01/04-02/06-1576-Conf-Exp) and (2) that the Chamber has also held that, in accordance with regulation 42(1) of the Regulations of the Court, the in-court protective measures ordered by Trial Chamber I in respect of Witnesses [REDACTED] shall remain in place for the purposes of the Ntaganda case (See ICC-01/04-02/06-774-Conf, paras. 3-5).

a) **Witnesses P-0758, P-0761 and P-0773**

8. Witness P-0758 [REDACTED]. P-0758 is expected to testify on: (1) the Accused's role in the UPC/FPLC and [REDACTED]; (2) UPC/FPLC battles [REDACTED]; (3) killings, rapes and attacks by the UPC/FPLC soldiers and commanders on civilians, particularly on the Lendu population; and (4) ill treatment and rapes of child soldiers by other soldiers and commanders in the UPC/FPLC military camps.
9. [REDACTED].
10. [REDACTED].² [REDACTED].³ [REDACTED].
11. Witness P-0758 expressed fear for [REDACTED] life if the Accused's supporters were to find out about [REDACTED] testimony. P-0758 stated to the Prosecution that [REDACTED] background as [REDACTED] is known to [REDACTED] local community in [REDACTED] and in [REDACTED]. Furthermore, P-0758 also stated that [REDACTED].⁴
12. Due to [REDACTED], P-0758 is also [REDACTED]. Revealing [REDACTED] identity publicly would expose Witness P-0758 to retaliation. The requested protective measures are necessary to avoid revealing Witness P-0758's identity, bearing in mind the objectively justifiable risk of retaliation from supporters of the Accused.
13. Moreover, P-0758 is [REDACTED] is a particularly vulnerable witness. Given the witness's expected testimony [REDACTED] there is a high risk of stigmatisation.

² See DRC-OTP-2054-8283, paras. 21-25; DRC-OTP-2057-0127, paras. 21-22; Confidential, *ex parte* Annexes A and B – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0751 and DRC-OTP-2096-0737).

³ See Confidential, *ex parte* Annexes A and B – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0751 and DRC-OTP-2096-0737).

⁴ See Confidential, *ex parte* Annex A – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0751).

14. Witnesses P-0761 and P-0773 are [REDACTED]. They are expected to testify about [REDACTED].

15. Revealing the identity of these two witnesses would expose [REDACTED]. As such, [REDACTED].

16. Moreover, Witnesses P-0761 and P-0733 reside within the Accused's geographic area of influence and would be at risk should their identity [REDACTED] become known. Witness P-0773 is [REDACTED] who lives in [REDACTED]. Witness P-0761, [REDACTED], is a [REDACTED] who resides in [REDACTED].⁵

17. Witnesses P-0773 and P-0761 both expressed fear for their own lives should their identity [REDACTED] become known, because the Accused's supporters, including those who were in the UPC/FPLC [REDACTED], are still present all over Ituri.⁶

b) Witnesses P-0898 and P-0918

18. Witness P-0898, a [REDACTED], is a [REDACTED]. P-0898 is expected to testify about: (1) the Accused's role in UPC/FPLC recruitment; (2) [REDACTED]; (3) [REDACTED] children under the age of fifteen in the UPC/FPLC; (4) the commission of crimes by UPC/FPLC soldiers during and after attacks; and the Accused's role in these attacks and in the commission of these crimes.

19. Witnesses P-0918 is [REDACTED]. [REDACTED] is expected to testify about (1) the recruitment of child soldiers into the UPC/FPLC; (2) the Accused's role in recruitment; (3) [REDACTED]; (4) as well as the [REDACTED].

⁵ See [REDACTED].

⁶ See Confidential, *ex parte* Annexes A and D – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0748 and DRC-OTP-2096-0751).

20. Witnesses P-0898 and P-0918 currently reside in [REDACTED], [REDACTED], with [REDACTED] family members. P-0898 is [REDACTED].

21. P-0898 is [REDACTED], as set out below. [REDACTED] reported [REDACTED].⁷ Witness P-0898's background as [REDACTED] is well known in [REDACTED] community, in [REDACTED], and [REDACTED]. [REDACTED] informed the Prosecution that [REDACTED].⁸ Witness P-0898 is also [REDACTED].⁹ Finally, Witness P-0898 is also [REDACTED].

22. Witness P-0898 reported that [REDACTED].¹⁰

23. Witness P-0898 expressed fear for [REDACTED] life should [REDACTED] testimony become public. [REDACTED] place of residence, [REDACTED], is dominated by the Hema. P-0898 stated that if [REDACTED] community knew of [REDACTED] cooperation with the Prosecution, they would see [REDACTED] as a traitor and would harm [REDACTED]. P-0898 added that [REDACTED] feared reprisals from [REDACTED] community, because [REDACTED] has "[REDACTED] has seen how people still loyal to UPC behave towards people who have testified in other cases" and explained that "they have suffered from stigmatization".¹¹

24. Witness P-0918 also expressed fear of retaliation. [REDACTED] stated to the Prosecution that [REDACTED] – and indicated that [REDACTED]. P-0918 mentioned that the Accused's supporters, [REDACTED], could ambush [REDACTED] and that [REDACTED] security would be jeopardised if identified.¹² Furthermore, Witness P-0918 currently [REDACTED].¹³

⁷ See DRC-OTP-2078-2298, paras. 13-21 and DRC-OTP-2082-0028, paras. 51-56.

⁸ See DRC-OTP-2077-0235, para. 108.

⁹ See DRC-OTP-2077-0443 and DRC-OTP-2077-0365.

¹⁰ See DRC-OTP-2077-0235, para. 107.

¹¹ See Confidential, *ex parte* Annex E – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0756).

¹² See Confidential, *ex parte* Annexes F and G – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0742 and DRC-OTP-2096-0746).

[REDACTED].¹⁴ Should Witness P-0918's cooperation with the Court be made known, there is an objectively justifiable risk that retaliatory acts may be undertaken against [REDACTED] and/or [REDACTED] family members.

c) Witness P-0911

25. Witness P-0911 is [REDACTED]. [REDACTED] is expected to testify about: (1) the recruitment of children in the UPC/FPLC; (2) the role of the Accused in recruitment; (3) [REDACTED]; (4) [REDACTED]; and (5) [REDACTED].

26. P-0911 currently resides in [REDACTED], with [REDACTED] relatives. [REDACTED] – an area dominated by the Hema, within the geographic area of influence of the Accused, and where former UPC/FPLC members and associates loyal to the Accused are present. As a [REDACTED], P-0911 is a highly identifiable [REDACTED] witness. In-court protective measures are warranted in view of the objectively justifiable risk to this witness's security and well-being. Furthermore, revealing [REDACTED] identity may lead to [REDACTED]. As such, the measures requested [REDACTED].

d) Witnesses P-0875 and P-0908

27. Witness P-0875, a [REDACTED] and [REDACTED], is a [REDACTED]. [REDACTED]. Witness P-0875 is expected to testify about (1) [REDACTED]; (2) [REDACTED]; (3) the Accused's [REDACTED]; (4) the rape of civilian women by UPC/FPLC officers [REDACTED]; (5) UPC/FPLC soldiers raping women during battle; (6) [REDACTED]; (7) and witnessing the rape of two civilian women [REDACTED].

28. P-0875 was [REDACTED]. [REDACTED] is a vulnerable witness. [REDACTED] expressed fear of reprisals should [REDACTED] identity become public.¹⁵ The

¹³ See DRC-OTP-2082-0028, at 0028-0029 (cover page and paragraph 8).

¹⁴ See ICC-01/04-02/06-1576-Conf-Exp, paras. 14-16.

witness has seen the Accused on several occasions [REDACTED] and [REDACTED] fears him.

29. P-0875 currently resides in [REDACTED]. [REDACTED] is within the geographic area of influence of the Accused where former UPC/FPLC members and associates loyal to the Accused are still present. In particular, the [REDACTED] region is very close to an area where former UPC/FPLC elements and supporters are still based. [REDACTED]¹⁶ [REDACTED]¹⁷ [REDACTED].¹⁸ [REDACTED].¹⁹ [REDACTED].²⁰

30. Witness P-0908 is [REDACTED]. [REDACTED] is expected to testify about the UPC/FPLC attack [REDACTED].

31. P-0908 resides in [REDACTED] Ituri Province, with [REDACTED]. [REDACTED] is located [REDACTED], in a remote area of territory, and an area in which supporters of the Accused continue to have influence. Witness P-0908 explained to the Prosecution that [REDACTED] fears reprisals after [REDACTED] testimony, because the Accused “still has fanatics living in the community”.²¹ Furthermore, revealing P-0908’s identity would [REDACTED] at high risk of reprisals and stigmatisation.

e) Witness P-0883

32. Witness P-0883, [REDACTED], is a [REDACTED]. [REDACTED] is expected to testify about [REDACTED].

¹⁵ See DRC-OTP-2070-0180, para. 60 and Confidential, *ex parte* Annex H – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0735).

¹⁶ See [REDACTED].

¹⁷ See [REDACTED].

¹⁸ See [REDACTED].

¹⁹ See [REDACTED].

²⁰ See [REDACTED].

²¹ See Confidential, *ex parte* Annex I – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0744).

33. P-0883 is a [REDACTED] and currently resides with [REDACTED] in [REDACTED], in the territory of [REDACTED], Ituri Province, which is within the Accused's geographic area of influence.

34. As a [REDACTED], P-0883 is a vulnerable witness. [REDACTED]. As such, publicly revealing [REDACTED] identity would expose [REDACTED] to further stigmatisation and potential retaliation, as [REDACTED]. The nature of [REDACTED] expected testimony, in particular in relation to [REDACTED], creates a high risk of stigmatisation and retaliation from members of [REDACTED] community.

f) Witness P-0300 and P-0121

35. Witness P-0300 is a [REDACTED] who was [REDACTED] during the UPC/FPLC's attacks on the Banyali-Kilo and Walendu-Djatsi *collectivités*. P-0300 is expected to testify about the arrival of the displaced people from the area of Mongbwalu following the UPC/FPLC's attack on the Banyali-Kilo *collectivité* in November 2002, the UPC/FPLC's attack on the villages of the Walendu-Djatsi *collectivité* in February 2003 as well as the circumstances leading up to the massacre of civilians by the UPC/FPLC in Kobu.

36. Witness P-0121, [REDACTED], is a [REDACTED] who witnessed the UPC/FPLC's attack on Kobu and fled the area with [REDACTED] family. [REDACTED] is expected to testify about (1) hearing gunshots and fleeing Kobu towards Kilo [REDACTED]; (2) hiding in the bush in villages surrounding Kobu; (3) witnessing the UPC/FPLC's attack on Kobu, in particular [REDACTED]; (4) finding forty-nine bodies of men, women and children [REDACTED] close to "Hotel Paradiso"; and (5) [REDACTED].

37. Witnesses P-0300 and P-0121 [REDACTED] reside in [REDACTED], Ituri Province, with their families. P-0121 travels to [REDACTED] to work in [REDACTED] fields.²² As submitted above, [REDACTED].

38. Furthermore, P-0300 was [REDACTED] and [REDACTED]. In this role, [REDACTED]. [REDACTED].²³ As such, Witness P-0300 is [REDACTED], which makes [REDACTED] easily identifiable. P-0300 has expressed fear of reprisals and acts of revenge against [REDACTED], should [REDACTED] testimony become public, as there are still tensions based on ethnic origin between the Lendu and the Hema communities.²⁴ Witness P-0121 also expressed fears of retaliation and stigmatisation if [REDACTED] testimony became known.²⁵

The Ituri Province remains unstable

39. Armed groups are still active in post-conflict Ituri; the ethnic groups who were engaged in this conflict now reside in a fragile co-existence.²⁶ [REDACTED].²⁷ 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.²⁸

²² P-0300 and P-0121, respectively, have [REDACTED] and [REDACTED] children.

²³ See DRC-OTP-0150-0287, para. 14 and DRC-OTP-2055-1316, paras. 56-58.

²⁴ See Confidential, *ex parte* Annex D – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0748).

²⁵ See Confidential, *ex parte* Annex J – only available to the Prosecution and the Victims and Witnesses Unit (DRC-OTP-2096-0740).

²⁶ See generally, ICC-01/04-02/06-585-Conf-Anx.

²⁷ [REDACTED].

²⁸ ICC-01/04-02/06-785-Red, paras. 50-57.

40. Moreover, the security situation in the region, in general, remains unstable.
[REDACTED].²⁹

41. 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. 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.”³²

42. Witnesses P-0761, P-0773, P-0918, P-0911, P-0875, P-0908, P-0883, P-0300 and P-0121 have 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-0805,³³ P-0859,³⁴ P-0800,³⁵ P-0892,³⁶ P-0894,³⁷ P-0877,³⁸ P-0850,³⁹ P-0018,⁴⁰ P-0019,⁴¹ P-0113,⁴² P-0100,⁴³ P-0127,⁴⁴ P-0105,⁴⁵ P-0245⁴⁶ and P-0365.⁴⁷ In previous decisions concerning protective measures, the Chamber recalled

²⁹ [REDACTED].

³⁰ ICC-01/04-02/06-824-Red, para.14; ICC-01/04-02/06-1004-Conf-Red, para.5.

³¹ ICC-01/09-01/11-902-Red2, para.14.

³² *Ibid.*

³³ ICC-01/04-02/06-824-Conf.

³⁴ ICC-01/04-02/06-1004-Conf-Red.

³⁵ ICC-01/04-02/06-1160-Conf-Red.

³⁶ ICC-01/04-02/06-1277-Conf.

³⁷ ICC-01/04-02/06-T-101-CONF-ENG, p.61, l.17 to p.63, l.17.

³⁸ ICC-01/04-02/06-T-106-CONF-ENG, p.89, l.4 to p.90, l.11.

³⁹ ICC-01/04-02/06-T-110-CONF-ENG, p.32, l.10 to p.33, l.14.

⁴⁰ ICC-01/04-02/06-1418-Conf-Red.

⁴¹ ICC-01/04-02/06-1433-Conf.

⁴² ICC-01/04-02/06-T-115, p. 57, line 19 to p. 58, line 11.

⁴³ ICC-01/04-02/06-T-127-ENG, p. 73, line 7 to p. 75, line 11.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ ICC-01/04-02/06-T-139, p. 53, line 16 to p. 54, line 21.

⁴⁷ ICC-01/04-02/06-T-145, p. 55, line 14 to p. 58, line 21

“reported instances where other witnesses, including crime based witnesses, were allegedly threatened as a result of their involvement with the Court.”⁴⁸

[REDACTED]

43. Although the safety and security of these witnesses is closely monitored and assessed, [REDACTED].⁴⁹ Implementing the requested protective measures during the testimony of the 7th Evidentiary Block Witnesses will likely obviate the need for additional and more intrusive protective measures, [REDACTED], to be applied upon the completion of his testimony.

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

44. 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. 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 these witnesses; the ten witnesses will remain anonymous to the public only.⁵⁰

45. Article 68(2) of the Statute explicitly provides that granting measures to take into account a witness’s 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

⁴⁸ See Witness P-0800: ICC-01/04-02/06-1160-Conf-Red, para. 7; Witness P-0892: ICC-01/04-02/06-1277-Conf, para 6.

⁴⁹ [REDACTED].

⁵⁰ 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.

of justice.⁵¹ Moreover, if the Chamber grants the witnesses' 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.

46. The Prosecution submits that the use of a pseudonym in concert with facial and voice distortion is necessary to adequately protect the 7th Evidentiary Block Witnesses and ensure their safety, security, psychological well-being, dignity and privacy during and after their 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.⁵²

47. Granting the use of a pseudonym alone would not suffice to protect the 7th Evidentiary Block Witnesses 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 the 7th Evidentiary Block Witnesses would increase the risk that they could be identified. This necessitates the use of a pseudonym in combination with face and voice distortion. The requested protective measures will ensure that the 7th Evidentiary Block Witnesses are able to give evidence without fear for their personal safety and security or that of their family members, and in a manner that protects their 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.

48. The Prosecution notes that during past familiarisation and preparation process with the witnesses who have testified, the uncertainty around whether their

⁵¹ 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.

⁵² ICC-01/04-02/06-785-Red, para. 55.

identity would be made public during their testimony appeared to be a source of anxiety and concern. On this basis, the Prosecution respectfully requests that, if possible, the Chamber issue its decision or decisions on the request for in-court protective measures for Prosecution the 7th Evidentiary Block Witnesses prior to, or during, their witness preparation and familiarisation to permit the Prosecution to advise the witnesses of the status of their request in the course of this process.⁵³

Special measures for Witnesses

49. The Prosecution requests that the Chamber grant special measures for Witnesses P-0758, P-0898, P-0875, P-0883, P-0908, P-0918, P-0761 and P-0773, as necessary, pursuant to rule 88 of the Rules.

50. Article 68(1) and (2) of the Statute and rule 88 of the Rules allow 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 such witnesses.⁵⁴ The Chamber is able to take into account the particular characteristics of a witness when deciding what special measures, if any, to grant under rule 88 of the Rules.⁵⁵ Furthermore, in accordance with article 68(1) of the Statute, “the Court shall have regard to all relevant factors including [...] the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children”.

51. Witnesses P-0758, P-0898, P-0875 and P-0883 have all requested to be shielded from the Accused in the courtroom. There is good reason to implement the

⁵³ In its decision on the conduct of proceedings, the Chamber stated that, where a requesting party considers there are reasons for the Chamber to rule on the request for in-court protective measures at an earlier moment (than “just prior to the commencement of the testimony of the witness concerned”), it shall provide these reasons and specify the date by which it wishes the Chamber to rule on the matter (ICC-01/04-02/06-619, para. 50 and footnote 30).

⁵⁴ 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: “[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”.

⁵⁵ See e.g. ICC-01/04-01/06-1049, para.32.

requested measures in respect of these four witnesses who, [REDACTED], are all vulnerable witnesses. Moreover, Witnesses P-0758 and P-0883 are [REDACTED]. The Prosecution requests that the Chamber grant shielding from the Accused as a special measure to facilitate the testimony of these four witnesses. [REDACTED].

52. Further, in order to facilitate the testimony of Witnesses P-0758 and P-0883, [REDACTED], the Prosecution requests that the Chamber order the Parties and participants to adapt their questioning in accordance with their needs and capacities, as follows:

- (i) Start with questions to guide the witness through the statement;
- (ii) Use short, simple questions and language which is easy to understand, avoiding legal terms, long sentences and double negations;
- (iii) Put questions in a non-confrontational, non-pressuring manner;
- (iv) Avoid questions that may be embarrassing for the witness;
- (v) [REDACTED]:
 - (a) [REDACTED];
 - (b) [REDACTED];
- (vi) Observe the witness closely, in case of signs of nervousness, distraction, withdrawal or too emotional reactions, a break is allowed or witness is asked if [REDACTED] needs a break.

53. [REDACTED].

54. The Prosecution further requests that the Chamber grant the following special measures:

- a) Regular breaks for Witnesses P-0761, P-0773, P-0758, P-0908, P-0883 and P-0918;
- b) In-court assistance for Witnesses P-0773, P-0758, P-0908, P-0883, P-0918; and
- c) Reading assistance for Witnesses P-0758, P-0875, P-0883 and P-0918.

Request

55. The Prosecution requests that the Chamber grant in-court protective measures for Prosecution Witnesses P-0758, P-0761, P-0773, P-0898, P-0918, P-0911, P-0875, P-0908, P-0883, and P-0300 in the form of facial distortion, voice distortion and the use of a pseudonym during their testimony. The Prosecution also requests special measures pursuant to rule 88 of the Rules for Witnesses P-0758, P-0898, P-0875, P-0883, P-0908, P-0918, P-0761 and P-0773.



Fatou Bensouda
Prosecutor

Dated this 15th day of March 2017
At The Hague, The Netherlands