



Original: **English**

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

Date: **16 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-F, Confidential Redacted Annex G and
Confidential, *EX PARTE*, only available to the Prosecution and Victims and
Witnesses Unit Annexes H-K**

**Public redacted version of "Prosecution's twenty-first request for in-court
protective and special measures", 14 June 2016,
ICC-01/04-02/06-1397-Conf-Exp**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. The Prosecution requests Trial Chamber VI (“Chamber”) to grant: (i) in-court protective measures in the form of facial and voice distortion as well as the use of a pseudonym for Witness P-0769, as provided for in rule 87 of the Rules of Procedure and Evidence (“Rules”); and (ii) the special measure of regular breaks, as necessary, during this witness’ testimony, pursuant to rule 88 of the Rules (“Request”).
2. Witness P-0769 will be the thirteenth witness to testify in the ongoing fifth block of evidence. He is a [REDACTED] and is expected to provide direct evidence about a number of charges against the Accused. The requested protective measures are warranted in view of the objectively justifiable risk which exists in relation to this witness.
3. Witness P-0769 has reported that [REDACTED]. [REDACTED].
4. The requested special measure of regular breaks, as necessary, during Witness P-0769’s testimony is required in view of [REDACTED].
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 Request and Annexes H-K 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 A-G 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 a confidential, *ex parte* redacted version of the Request which will be made available to the Defence, a confidential redacted version which will also be available to the Legal Representatives of the Victims, and a public redacted version.

Prosecution’s Submissions

7. The Prosecution requests facial distortion, voice distortion and the use of a pseudonym, as well as regular breaks, as necessary, during the testimony of Witness P-0769.
8. Witness P-0769, [REDACTED]. 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: murder and attempted murder, rape and sexual slavery of UPC/FPLC child soldiers, enlistment and conscription of children under 15 and their use to participate actively in hostilities. Accordingly, Witness P-0769 is expected to give evidence on a significant number of the charges against the Accused.

I. The requested protective measures are necessary

9. Witness P-0769 fears that, should his co-operation with the Court be made known, [REDACTED]. His fears are objectively justifiable, in particular in view of [REDACTED].

P-0769 reported that [REDACTED]

10. Witness P-0769 reported that on [REDACTED],¹ [REDACTED],² [REDACTED].³ [REDACTED].⁴

11. [REDACTED].⁵ [REDACTED].⁶ [REDACTED].⁷ [REDACTED].⁸

12. [REDACTED].⁹

13. [REDACTED].¹⁰ [REDACTED].¹¹

14. [REDACTED].¹²

15. [REDACTED].¹³ [REDACTED].¹⁴ [REDACTED].¹⁵ [REDACTED].¹⁶ [REDACTED].¹⁷

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

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

interlocutor, intended to engage in a serious form of witness interference.”¹⁸

[REDACTED].¹⁹

16. [REDACTED],²⁰ [REDACTED].²¹ [REDACTED]²² [REDACTED].

17. [REDACTED]. [REDACTED].²³ [REDACTED].²⁴

18. [REDACTED].²⁵ [REDACTED],²⁶ [REDACTED].

19. [REDACTED].²⁷

[REDACTED]

20. 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.²⁸ 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.”²⁹ [REDACTED].³⁰

21. [REDACTED].

¹⁸ ICC-01/04-02/06-785-Red, para.55.

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ See ICC-01/04-02/06-1160-Red2, para.7, fn.18.

²⁹ ICC-01/04-02/06-785-Red, para.55.

³⁰ [REDACTED].

P-0769 and his family reside [REDACTED]

22. Witness P-0769 and [REDACTED] of his family currently reside in [REDACTED].

P-0769's [REDACTED] resides in [REDACTED]. [REDACTED] these locations are [REDACTED].

23. [REDACTED].³¹ [REDACTED].³²

24. [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵

25. [REDACTED].³⁶ [REDACTED].³⁷

26. [REDACTED].

27. As previously noted by this Chamber³⁸ and Trial Chamber V(A)³⁹ 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.

[REDACTED]

28. The safety and security of Witness P-0769, [REDACTED], is closely monitored and assessed. [REDACTED].⁴⁰ Implementing the requested protective measures during this witness' testimony will likely obviate the need for additional and

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ 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.

³⁹ ICC-01/09-01/11-902-Red2, para.14.

⁴⁰ [REDACTED].

more intrusive steps to be taken upon the completion of his testimony,⁴¹ [REDACTED].

All three requested protective measures should be granted

29. 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 P-0769, 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 P-0769 would increase the risk that he could be identified. This necessitates the use of a pseudonym in combination with face and voice distortion.

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

30. 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.

31. Granting face and voice distortion in addition to a pseudonym would not violate the Accused's right to a public hearing.⁴² 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

⁴¹ See ICC-01/04-02/06-1293- Red2, para.9.

⁴² 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.

would prejudice the interests of justice.⁴³ 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.

II. The special measure of regular breaks is required [REDACTED]

32. [REDACTED].

33. 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 such witnesses.⁴⁴ 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.⁴⁵

34. The requested special measure of regular breaks during testimony, as required, is necessary [REDACTED].

Conclusion and Request

35. Witness P-0769 has expressed objectively justifiable concerns for his safety and that of his family members that warrant the requested protective measures. The protective and special measures sought will ensure P-0769 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.

⁴³ 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.

⁴⁴ 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”.

⁴⁵ See e.g. ICC-01/04-01/06-1049, para.32.

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



Fatou Bensouda
Prosecutor

Dated this 16th day of June 2016
At The Hague, The Netherlands