



Original: English

No.: ICC-01/04-02/06  
Date: 23 January 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, *EX PARTE* – only available to the Prosecution and the Victims and Witnesses Unit Annex A and Confidential Annexes B-E**

**Public redacted version of “Prosecution’s request for in-court protective measures for Prosecution Witnesses P-0005, [REDACTED] and P-0857”, 15 December 2016, ICC-01/04-02/06-1686-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 in-court protective measures for Prosecution Witnesses P-0005, [REDACTED] and P-0857 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 eighth evidence block, which is scheduled to commence on 16 January 2017.
2. Granting the requested protective measures will ensure that Witnesses P-0005, [REDACTED] and P-0857 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 identity of the witnesses will be protected from the public only.

## Confidentiality

4. This request and its annexes A and B 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. Annexes C-E are classified as “Confidential” pursuant to regulation 23bis(1) of the Regulations of the Court since they refer to information not available to the public. 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: (1) Witness P-0005, [REDACTED]; (2) Witness [REDACTED], [REDACTED]; and (3) Witness P-0857, a Lendu civilian who was present when the UPC/FPLC attacked Kobu in February 2003. The requested protective measures are warranted in view of the objectively justifiable risk to these witnesses' security and well-being.

*Witnesses P-0005, [REDACTED] and P-0857 all reside [REDACTED]*

6. Witnesses P-0005, [REDACTED] and P-0857 all live [REDACTED]. The requested protective measures are necessary to avoid revealing these witnesses' identity, [REDACTED].

a) **Witness P-0005**

7. Witness P-0005 is [REDACTED].<sup>1</sup> [REDACTED].<sup>2</sup> Witness P-0005 is expected to testify about, *inter alia*, (1) the creation of the UPC in 2000 and its coming into power officially in 2002; (2) the UPC/FPLC takeover of Bunia around 8 August of 2002, resulting in approximately 85 deaths, [REDACTED]; (3) [REDACTED]; (4) the structure and composition of the UPC/FPLC, its organized branches and military strength; (5) Bosco Ntaganda's position and influence within the UPC/FPLC; (6) the UPC/FPLC's enlistment of child soldiers; and (7) UPC/FPLC perpetration of crimes against the civilian population, including kidnapping, murder, sexual violence, armed robbery and pillaging in Bunia between around September 2002 to March 2003.

---

<sup>1</sup> See [REDACTED].

<sup>2</sup> See [REDACTED].

8. Witness P-0005 [REDACTED]. He currently resides in [REDACTED]. [REDACTED]. Witness P-0005 and several other Prosecution witnesses have voiced their concerns that armed groups are still active in [REDACTED] and the surroundings and that the security situation in [REDACTED] is vulnerable.<sup>3</sup> [REDACTED].<sup>4</sup>
9. Witness P-0005, who is easily identifiable [REDACTED]<sup>5</sup>, has expressed concerns if his identity is publicly revealed during his testimony. [REDACTED]. The witness further explained that insecurity in [REDACTED] was permanent.<sup>6</sup>
10. Witness P-0005 has also 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, [REDACTED]. He currently works as [REDACTED]. This witness [REDACTED]. Revealing Witness P-0005's identity publicly would heighten the security risks for him and his family members, [REDACTED]. As such, the in-court protective measures sought are necessary.

**b) Witness [REDACTED]**

11. Witness [REDACTED]. He is expected to provide evidence about [REDACTED]. He will also testify about his knowledge of targeting of non-Hema by the UPC/FPLC.

---

<sup>3</sup> See [REDACTED].

<sup>4</sup> See [REDACTED].

<sup>5</sup> See [REDACTED].

<sup>6</sup> See [REDACTED].

12. Witness [REDACTED] currently resides in [REDACTED], and works as [REDACTED]. [REDACTED]. [REDACTED].<sup>7</sup>

13. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].<sup>8</sup> Witness [REDACTED],<sup>9</sup> [REDACTED].<sup>10</sup> [REDACTED]. [REDACTED]. [REDACTED].

14. Witness [REDACTED] indicated to the Prosecution that he fears retribution by the Accused and his supporters. [REDACTED]. [REDACTED].<sup>11</sup> Witness [REDACTED].<sup>12</sup>

**c) Witness P-0857**

15. Witness P-0857 is a Lendu civilian who was present when the UPC/FPLC attacked Kobu in February 2003. He is expected to testify about the UPC/FPLC's attacks on Bambu and Kobu in February 2003, including about fleeing [REDACTED] when the UPC/FPLC attacked and seeing several dead bodies in Kobu, [REDACTED].

16. Witness P-0857 currently resides in [REDACTED]. [REDACTED].<sup>13</sup>

17. Witness P-0857 expressed fear of reprisals [REDACTED]. He lives in a community where he is [REDACTED] and [REDACTED]. [REDACTED].<sup>14</sup>

---

<sup>7</sup> [REDACTED].

<sup>8</sup> [REDACTED].

<sup>9</sup> See [REDACTED].

<sup>10</sup> See [REDACTED].

<sup>11</sup> See [REDACTED].

<sup>12</sup> See [REDACTED].

<sup>13</sup> See [REDACTED].

<sup>14</sup> See [REDACTED].

*The [REDACTED] remains unstable*

18. Armed groups are still active in [REDACTED].<sup>15</sup> [REDACTED]<sup>16</sup> 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.<sup>17</sup>
19. Moreover, the security situation in the region, in general, remains unstable. The [REDACTED] remains in a precarious state of post-conflict security with armed groups still active.<sup>18</sup>
20. As previously noted by this Chamber<sup>19</sup> and Trial Chamber V(A)<sup>20</sup> 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.”<sup>21</sup>

<sup>15</sup> See generally, [REDACTED].

<sup>16</sup> [REDACTED].

<sup>17</sup> ICC-01/04-02/06-785-Red, paras. 50-57.

<sup>18</sup> See generally [REDACTED]. 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 Delali et al.*, Decision on the 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.

<sup>19</sup> ICC-01/04-02/06-824-Red, para.14; ICC-01/04-02/06-1004-Conf-Red, para.5.

<sup>20</sup> ICC-01/09-01/11-902-Red2, para.14.

<sup>21</sup> *Ibid.*

21. Witnesses P-0005, [REDACTED] and P-0857 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 Witnesses [REDACTED],<sup>22</sup> [REDACTED],<sup>23</sup> [REDACTED],<sup>24</sup> [REDACTED],<sup>25</sup> [REDACTED],<sup>26</sup> [REDACTED],<sup>27</sup> [REDACTED],<sup>28</sup> [REDACTED],<sup>29</sup> [REDACTED],<sup>30</sup> [REDACTED],<sup>31</sup> [REDACTED],<sup>32</sup> [REDACTED],<sup>33</sup> [REDACTED],<sup>34</sup> [REDACTED]<sup>35</sup> and [REDACTED].<sup>36</sup> 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.”<sup>37</sup>

*Witnesses P-0005, [REDACTED] and P-0857 [REDACTED]*

22. Although the safety and security of these witnesses is closely monitored and assessed, [REDACTED]. [REDACTED].<sup>38</sup> Implementing the requested protective measures during the testimony of Witnesses P-0005, [REDACTED] and P-0857 will likely obviate the need for additional and more intrusive protective measures, [REDACTED], to be applied upon the completion of his testimony.

<sup>22</sup> [REDACTED].

<sup>23</sup> [REDACTED].

<sup>24</sup> [REDACTED].

<sup>25</sup> [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

<sup>28</sup> [REDACTED].

<sup>29</sup> [REDACTED].

<sup>30</sup> [REDACTED].

<sup>31</sup> [REDACTED].

<sup>32</sup> [REDACTED].

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> [REDACTED].

<sup>36</sup> [REDACTED].

<sup>37</sup> 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.

<sup>38</sup> [REDACTED].



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

23. 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 three witnesses will remain anonymous to the public only.<sup>39</sup>
24. 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 of justice.<sup>40</sup> 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.
25. The Prosecution submits that the use of a pseudonym in concert with facial and voice distortion is necessary to adequately protect the Witnesses P-0005, [REDACTED] and P-0857 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

<sup>39</sup> See [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.

<sup>40</sup> 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.

interfered with Prosecution witnesses, particularly insiders prepared to provide unique and valuable testimony.<sup>41</sup>

26. Granting the use of a pseudonym alone would not suffice to protect Witnesses P-0005, [REDACTED] and P-0857 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 Witnesses P-0005, [REDACTED] and P-0857 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 Witnesses P-0005, [REDACTED] and P-0857 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.

27. The Prosecution notes that during past familiarisation and preparation process with the witnesses who have testified, the uncertainty around whether their 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 Witnesses P-0005, [REDACTED] and P-0857 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.<sup>42</sup>

---

<sup>41</sup> ICC-01/04-02/06-785-Red, para. 55.

<sup>42</sup> 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).

## Request

28. The Prosecution requests that the Chamber grant in-court protective measures for Prosecution Witnesses P-0005, [REDACTED] and P-0857 in the form of facial distortion, voice distortion and the use of a pseudonym during their testimony.



---

**Fatou Bensouda**  
**Prosecutor**

Dated this 23<sup>rd</sup> day of January 2017  
At The Hague, The Netherlands