

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23 October 2015**

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 redacted version of

**Decision on request for in-court protective measures relating to Witness
[REDACTED]**

Decision 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 Bosco Ntaganda

Mr Stéphane Bourgon
Mr Luc Boutin

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of 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

[REDACTED]

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64(2) and (6)(e) and 68(1) and (2) of the Rome Statute and Rules 87 and 88 of the Rules of Procedure and Evidence ('Rules') and incorporating by reference the applicable law as set out in the 'Decision on request for in-court protective measures relating to the first Prosecution witness',¹ issues the following 'Decision on request for in-court protective measures relating to Witness [REDACTED]'.

I. Background and submissions

1. On [REDACTED] 2015, the Office of the Prosecutor ('Prosecution') filed a request seeking in-court protective measures in relation to Witness [REDACTED] ('Request').² The Prosecution indicates that Witness [REDACTED] ('Witness') is [REDACTED].³ It further emphasises that the Witness has reported [REDACTED],⁴ and that [REDACTED].⁵ The Prosecution argues that the security risks in relation to the Witness [REDACTED].⁶ The measures sought are facial and voice distortion, as well as the use of a pseudonym during testimony.⁷
2. The Prosecution avers that the measures sought do not unfairly prejudice the accused, as he has been provided with the name and identifying information of the Witness, who will remain anonymous to the public only.⁸
3. On [REDACTED] 2015, the defence team for Mr Ntaganda ('Defence') filed a response, where it did not object to the Request ('Response').⁹

¹ 14 September 2015, ICC-01/04-02/06-824-Conf, paras 5-6. A public redacted version was filed the following day (ICC-01/04-02/06-824-Red).

² [REDACTED].

³ Request, [REDACTED], para 5.

⁴ Request, [REDACTED], para 7.

⁵ Request, [REDACTED], para 7.

⁶ Request, [REDACTED], para 7.

⁷ Request, [REDACTED], paras 4 and 9.

⁸ Request, [REDACTED], para 2.

⁹ [REDACTED].

4. On 16 October 2015, the Victims and Witnesses Unit ('VWU') transmitted its observations on the Request to the Chamber.¹⁰ Noting, amongst other things, [REDACTED], the VWU 'strongly' recommended implementing in-court protective measures during the testimony to ensure that the Witness's security situation remains stable.

II. Analysis

5. With regard to the protective measures requested, the Chamber notes that the Witness [REDACTED].¹¹ The Chamber further notes the Prosecution's submissions that the Witness [REDACTED].¹²
6. The Chamber notes that the Witness has [REDACTED] in connection with his involvement with the Prosecution in these proceedings.¹³ Additionally, the Chamber recalls its previous finding regarding [REDACTED], which the Chamber considers may increase the risk to the Witness.¹⁴
7. Consequently, in light of these factors, while mindful of the fair trial-related concerns which generally militate against shielding the identity of witnesses from the public, the Chamber is satisfied that an objectively justifiable risk exists with respect to the Witness that warrants the protection of the Witness's identity. [REDACTED].
8. Noting that the Defence has been provided with the name and identifying information of the Witness, the Chamber does not consider the requested protective measures to be disproportionate to the rights of the accused. Therefore, the Chamber finds, pursuant to Rule 87 of the Rules, that the protective measures sought, specifically the allocation of a pseudonym for use during the trial and face and voice distortion during testimony, are necessary and proportionate and should be granted in this case.

¹⁰ Email communication from the VWU to the Chamber on 16 October 2015, at 09:58.

¹¹ Request, [REDACTED], paras 4-5.

¹² Request, [REDACTED], para 7.

¹³ [REDACTED].

¹⁴ [REDACTED].

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request, specifically for use of a pseudonym for the purposes of the trial and voice and face distortion during testimony.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, appearing to be 'RF', written over a horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'K Ozaki', written over a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, appearing to be 'Chung', written over a horizontal line.

Judge Chang-ho Chung

Dated 23 October 2015

At The Hague, The Netherlands