

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 28 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 Prosecution's request for in-court protective measures for
Witness P-0039**

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

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), 67(1) and 68(1) of the Rome Statute, Rule 87 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 Prosecution's request for in-court protective measures for Witness P-0039'.

I. Background and submissions

1. On 14 October 2015, the Office of the Prosecutor ('Prosecution') filed a request:
 - (i) to vary the time limit in order to make a request for in-court protective measures in relation to witness P-0039 ('Witness'); and (ii) for face and voice distortion and use of a pseudonym during testimony to be granted ('Request').² The Prosecution argues, *inter alia*, that the Witness's [REDACTED] [REDACTED] and the need for protective measures, particularly considering [REDACTED],³ and that [REDACTED].⁴
2. On 14 October 2015, the Chamber granted the Prosecution's request for an extension of the deadline pursuant to Regulation 35(2) of the Regulations of the Court and shortened the deadline for any responses to the substantive request for in-court protective measures to 22 October 2015.⁵
3. On 22 October 2015, the defence team for Mr Ntaganda ('Defence') opposed the Request ('Response').⁶ The Defence submits that the Prosecution has failed

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) ('First Protective Measures Decision').

² Prosecution's submission pursuant to regulation 35 to vary the time limit for the sixth request for in-court protective measures concerning Prosecution Witness P-0039, ICC-01/04-02/06-899-Conf-Exp. A confidential redacted version (ICC-01/04-02/06-899-Conf-Red) and public redacted version (ICC-01/04-02/06-899-Red2) were filed on the same day.

³ Request, ICC-01/04-02/06-899-Conf-Red, para. 14.

⁴ Request, ICC-01/04-02/06-899-Conf-Red, para. 15.

⁵ E-mail from the Chamber to the parties and participants on 14 October 2015 at 17:00.

⁶ Response on behalf of Mr Ntaganda to 'Prosecution's submission pursuant to regulation 35 to vary the time limit for the sixth request for in-court protective measures concerning Prosecution Witness P-0039', ICC-01/04-02/06-930-Conf.

to establish an objectively justifiable risk to the Witness's security, noting that the Witness had only expressed concerns recently for the first time.⁷ The Defence further submits that the Witness's situation is similar to [REDACTED].⁸ The Defence concedes that [REDACTED] may be a relevant factor, but argues that it is not sufficient in itself to justify an exception to the principle of publicity of the proceedings.⁹

4. The Defence avers that the requested measures impede the Chamber's ability to carry out its truth-seeking function, insofar as revealing the Witness's identity to the public may increase the Witness's 'commitment to tell the truth' as well as the Witness's feeling of public accountability.¹⁰
5. On 22 October 2015, the Legal Representative of the Victims of the Attacks ('Legal Representative') filed a response in support of the Request ('LRV Response').¹¹ The Legal Representative submits that the Witness [REDACTED]. The Legal Representative refers to [REDACTED].¹² The Legal Representative further submits that the Witness is [REDACTED].¹³ The Legal Representative therefore argues that the protective measures sought are necessary to protect the physical and psychological well-being of the Witness.¹⁴
6. On 27 October 2015, the Victims and Witnesses Unit ('VWU') transmitted its observations on the Request to the Chamber,¹⁵ indicating that, [REDACTED], it is recommended to implement the measures set out in the Request.

⁷ Response, ICC-01/04-02/06-930-Conf, para. 8.

⁸ Response, ICC-01/04-02/06-930-Conf, paras 9-10.

⁹ Response, ICC-01/04-02/06-930-Conf, para. 10.

¹⁰ Response, ICC-01/04-02/06-930-Conf, para. 11.

¹¹ Response of the Common Legal Representative of the Victims of the Attacks to the 'Confidential redacted version of Prosecution's submission pursuant to regulation 35 to vary the time limit for the sixth request for in-court protective measures concerning Prosecution Witness P-0039', ICC-01/04-02/06-928-Conf.

¹² LRV Response, ICC-01/04-02/06-928-Conf, para. 13.

¹³ LRV Response, ICC-01/04-02/06-928-Conf, para. 14.

¹⁴ LRV Response, ICC-01/04-02/06-928-Conf, paras 12-14.

¹⁵ E-mail from VWU to the Chamber on 27 October 2015 at 15:24.

II. Analysis

7. The Chamber recalled in its First Protective Measures Decision that factors such as the security situation in a region may be relevant in relation to the circumstances of a specific witness.¹⁶ In this regard, the Chamber specifically notes that the Witness's testimony [REDACTED], which may increase the risk to the Witness from testifying publically. Moreover, the Chamber notes that the Witness [REDACTED]. The Chamber has additionally noted the submissions made regarding the Witness's [REDACTED], as well as the VWU's assessment that [REDACTED].
8. In light of these factors, the Chamber is satisfied that an objectively justifiable risk exists with respect to certain aspects of the Witness's forthcoming testimony which warrant adequate protection. The Chamber also notes, however, that the Witness's testimony is not expected to relate to the accused directly, and that [REDACTED]. The Chamber, mindful of the fair trial-related concerns which generally militate against shielding the identity of witnesses from the public, finds that the use of a pseudonym during the Witness's testimony will sufficiently mitigate any risks to his security. Consequently, the Chamber partly grants the Request and decides that the Witness shall only be referred to by way of his pseudonym for the purposes of the trial.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

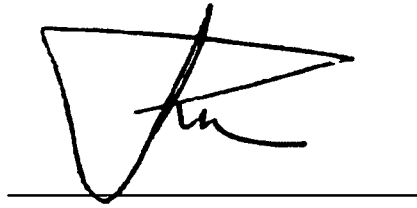
GRANTS, in part, the Request;

DECIDES that a pseudonym will be used for the purposes of the trial;

REJECTS the remainder of the Request.

¹⁶ First Protective Measures Decision, ICC-01/04-02/06-824-Conf, paras 14-15. Therein, the Chamber indicated it had taken note of concerns expressed in relation to the security situation in the [REDACTED] region, referring to [REDACTED].

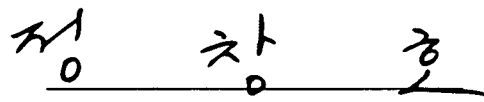
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' shape with a horizontal line extending to the right, positioned above a solid horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'Kuniko Ozaki', positioned above a solid horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of three distinct characters in Korean, positioned above a solid horizontal line.

Judge Chang-ho Chung

Dated 28 October 2015

At The Hague, The Netherlands