

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **1 February 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

Public redacted version of 'Decision on Prosecution's request for in-court protective measures for Witness P-0290'

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) and (6)(e), 67(1) and 68(1) and (2) of the Rome Statute and 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-0290'.

I. Background and submissions

1. On 23 December 2015, the Office of the Prosecutor ('Prosecution') filed a request seeking in-court protective measures in relation to Witness P-0290 ('Witness') in the form of face and voice distortion, as well as use of a pseudonym during testimony ('Request').² The Prosecution indicates that the Witness: (i) is personally known to the accused,³ (ii) is [REDACTED];⁴ and (iii) believes that [REDACTED].⁵ Moreover, given that the Witness [REDACTED], the Prosecution submits that, if it became publicly known that he testified, [REDACTED].⁶ The Prosecution also argues that the security risks are greater as [REDACTED].⁷
2. On 11 January 2016, the defence team for Mr Ntaganda ('Defence') filed a preliminary response ('First Response'),⁸ where it requested the Chamber to order the Prosecution to file a lesser redacted version of the confidential version of its Request.

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 Prosecution's tenth request for in-court protective measures, ICC-01/04-02/06-1071-Conf-Exp. A confidential redacted version and a public redacted version were filed on 24 December 2015 (ICC-01/04-02/06-1071-Conf-Red and ICC-01/04-02/06-1071-Red2).

³ Request, ICC-01/04-02/06-1071-Red2, para. 7.

⁴ Request, ICC-01/04-02/06-1071-Conf-Red, para. 6.

⁵ Request, ICC-01/04-02/06-1071-Conf-Red, para. 6.

⁶ Request, ICC-01/04-02/06-1071-Conf-Exp, para. 7.

⁷ Request, ICC-01/04-02/06-1071-Conf-Exp, para. 8.

⁸ Preliminary response on behalf of Mr Ntaganda to "Prosecution's tenth request for in-court protective or special measures", ICC-01/04-02/06-1080-Conf.

3. On 12 January 2016, the Chamber rejected the request contained in the First Response ('Decision of 12 January 2016'), finding that the redactions applied by the Prosecution were warranted.⁹
4. On 18 January 2016, the Defence filed a response in which it objects to the Request.¹⁰ The Defence submits that no objectively justifiable risk to the Witness's safety exists because, first, the Witness 'is not alleged to have been [sub]ject to interference',¹¹ and is therefore in a position distinguishable from that of Witnesses [REDACTED] and [REDACTED], and, second, because the Witness's 'anticipated testimony is essentially technical in nature, which entails a significantly lesser risk of retaliation.'¹²
5. On 21 January 2016, the Defence filed a request seeking clarification of the Decision of 12 January 2016 ('Request for Clarification'),¹³ in which it seeks 'clarification of the reasons forming the basis of the redactions applied to the confidential redacted version of the Request.'¹⁴

⁹ Email communication from the Chamber to the Defence on 12 January 2016 at 15:13.

¹⁰ Response on behalf of Mr Ntaganda to "Prosecution's tenth request for in-court protective measures", ICC-01/04-02/06-1087-Conf ('Second Response'). A public redacted version was filed on the same day (ICC-01/04-02/06-1087-Red).

¹¹ Second Response, ICC-01/04-02/06-1087-Conf, para. 4.

¹² Second Response, ICC-01/04-02/06-1087-Conf, para. 6.

¹³ Request on behalf of Mr Ntaganda seeking clarification of Trial Chamber VI's decision rejecting the Defence request for a lesser redacted version of 'Prosecution's tenth request for in-court protective measures', ICC-01/04-02/06-1099-Conf.

¹⁴ Request for Clarification, ICC-01/04-02/06-1099-Conf, page 9.

II. Analysis

6. As a preliminary matter, in relation to the Request for Clarification, the Chamber recalls that it already found ‘that the redactions applied to this filing are warranted’, and noted, in particular, that none of the redacted text contained allegations of interference.¹⁵ The Chamber clarifies that the redactions applied were considered to be warranted on the basis that they referred to matters such as the location of the Witness and his family and the content of a confidential *ex parte* filing.¹⁶ The Chamber also notes that the factual basis for the chosen classification, in accordance with Regulation 23 *bis* of the Regulations of the Court, is listed in the confidential redacted version of the Request, and the Chamber is satisfied that this provided sufficient information to the Defence.¹⁷
7. The Chamber notes that the Witness is a former member of the UPC/FPLC who is personally known to the accused and whose anticipated evidence implicates the accused in the commission of crimes.¹⁸ The Chamber also notes the Witness’s professional and family situation,¹⁹ as well as the fact that, should the Witness’s cooperation with the Prosecution be revealed to the public, the implementation of additional and more intrusive protective measures may be required at a later stage. Finally, the Chamber recalls that, although it is not alleged that the Witness has been subject to interference, it found there were reasonable grounds to believe that the accused and his associates have attempted to interfere with Prosecution witnesses, [REDACTED].²⁰

¹⁵ Email communication from the Chamber to the Defence on 12 January 2016 at 15:13.

¹⁶ The Chamber notes that a confidential redacted version of the filing in question has since been issued (ICC-01/04-02/06-1061-Conf-Corr-Red3, para. 24).

¹⁷ Namely ‘protective measures, witness security, and locations of residence’, Request, ICC-01/04-02/06-1071-Red2, para. 3.

¹⁸ Request, ICC-01/04-02/06-1071-Red2, para. 7; Prosecution’s Pre Trial Brief, 9 March 2015, ICC-01/04-02/06-503-Conf-AnxA, pages 149-151, 157 and 160-161.

¹⁹ Request, ICC-01/04-02/06-1071-Conf-Exp, paras 6-7.

²⁰ Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts, 18 August 2015, ICC-01/04-02/06-785-Red, para. 55.

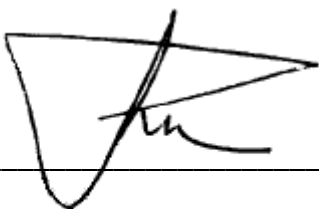
8. In light of these factors, and mindful of the fair trial-related concerns which generally militate against the identity of witnesses being shielded from the public, the Chamber is satisfied that an objectively justifiable risk exists with respect to the Witness that warrants the protection of the Witness's identity. The Chamber also notes, in this regard, that the risk to the Witness's security and that of the Witness's family is greater given [REDACTED].
9. The Chamber considers that the allocation of a pseudonym for use during the trial and face and voice distortion during testimony does not unduly infringe upon the accused's right to a public hearing and finds that these measures are necessary and proportionate in the case at hand. Pursuant to Rule 87 of the Rules, the Chamber therefore grants the Request, without prejudice to the forthcoming VWU assessment which may warrant a modification of the measures granted.
10. Finally, the Chamber recalls that it will determine on a case-by-case basis, at the relevant time during the Witness's testimony, whether private or closed sessions or redactions to public records are necessary in order to prevent the identity of the Witness from being disclosed to the public.

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; and

ORDERS the Defence to file public redacted versions of its First Response and Request for Clarification by the filing deadline on 12 February 2016.

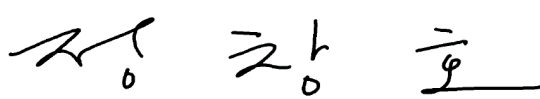
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 1 February 2016

At The Hague, The Netherlands