

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **30 March 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 and special measure for Witness P-0815'

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**

Others

Trial Chamber VI ('Chamber') of the International Criminal 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 and Rules 86, 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 Prosecution's request for in-court protective measures and special measure for Witness P-0815'.

I. Procedural background and submissions

1. On 14 October 2015, the Office of the Prosecutor ('Prosecution') filed a request seeking, *inter alia*, in-court protective measures for Witness P-0815 ('Witness') in the form of face and voice distortion and the use of a pseudonym during testimony ('Request').² The Prosecution submits that these measures are necessary to adequately protect the Witness and to ensure that he is able to testify without fear for his personal safety and security, as well as that of his family. In support of its Request, the Prosecution submits, *inter alia*, that: i) the Witness's [REDACTED]; ii) he resides with [REDACTED] in an area where residents commonly know each other and which is 'very close to an area where UPC/FPLC elements and supporters are based'; and iii) the Witness is [REDACTED].
2. On 5 November 2015, the defence team for Mr Ntaganda ('Defence') filed a response,³ in which it opposes the Request. It submits that the Prosecution failed to establish the existence of an objectively justifiable risk to the Witness's safety

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

² Fifth Prosecution request for in-court protective measures, notified on 15 October 2015, ICC-01/04-02/06-900-Conf-Exp. A corrected version (ICC-01/04-02/06-900-Conf-Exp-Corr), as well as confidential redacted and public redacted versions thereof (ICC-01/04-02/06-900-Conf-Corr-Red and ICC-01/04-02/06-900-Corr-Red2), were filed on the same day.

³ Response on behalf of Mr Ntaganda to "Confidential redacted version of 'Corrected version 'of Fifth Prosecution request for in-court protective measures' 14 October 2015, ICC-01/04-02/06-900-Conf-Exp-Corr" ('First Response'), ICC-01/04-02/06-984-Conf. A public redacted version was filed on 12 February 2016 (ICC-01/04-02/06-984-Red).

and security, and notes that the information pertaining to the Witness's current location is not available to it. It considers that the Witness's situation appears no different from that of any other crime-base witness but suggests that the Witness testify about [REDACTED] in private session, due to the sensitive nature of this matter.

3. On 4 March 2016, the Prosecution supplemented its Request ('Prosecution Supplementary Submissions'),⁴ submitting that: i) the Witness is [REDACTED]; and ii) he lives in a region where the Victims and Witnesses Unit ('VWU') considers [REDACTED] and where [REDACTED]. The Prosecution also informs the Chamber that it will seek to elicit the evidence regarding the Witness's [REDACTED], in private session.⁵ Finally, the Prosecution seeks that the Chamber grant the Witness the special measure of [REDACTED], if needed, pursuant to Rule 88 of the Rules ('Special Measure Request').⁶
4. On 23 March 2016, as instructed by the Chamber,⁷ the Defence filed its response to the Prosecution Supplementary Submissions,⁸ whereby it reiterates its opposition to the Request but indicates that it does not object to the Special Measure Request, provided it does not interfere with the Witness's testimony. The Defence further notes that the Prosecution Supplementary Submissions are heavily redacted and 'takes issue with the long-term impact on the fairness of the proceedings of the Prosecution's overuse of redactions to hide witness-related information to the Defence'.⁹

⁴ Additional Submissions for Special and Protective Measures for Witness P-0815, ICC-01/04-02/06-1196-Conf-Exp, with three confidential annexes. A confidential redacted version (ICC-01/04-02/06-1196-Conf-Red) and a public redacted version (ICC-01/04-02/06-1196-Red2) were filed on the same day.

⁵ Prosecution Supplementary Submissions, ICC-01/04-02/06-1196-Conf-Red, para. 22.

⁶ Prosecution Supplementary Submissions, ICC-01/04-02/06-1196-Conf-Red, paras 26-27.

⁷ E-mail from a Legal Officer of the Chamber to the parties on 16 March 2016 at 17:18.

⁸ Response on behalf of Mr Ntaganda to "Additional Submissions for Special and Protective Measures for Witness P-0815", ICC-01/04-02/06-1228-Conf ('Second Response'). A public redacted version was filed on the same day (ICC-01/04-02/06-1228-Red).

⁹ Second Response, ICC-01/04-02/06-1228-Conf, para. 5.

II. Analysis

5. The Chamber notes that the Witness is [REDACTED] and resides and works in an area where, as the Prosecution argues, inhabitants know one another, UPC/FPLC elements and supporters are proximate to, and some demobilised former members of the UPC/FPLC live. In this regard, the Chamber recalls that factors such as the general security situation in a region may be relevant in relation to the circumstances of a specific witness¹⁰ and notes that the VWU already indicated that [REDACTED].¹¹ The Chamber further notes that the Witness is expected to testify about [REDACTED] during the conflict. Finally, the Chamber recalls the reported instances where other witnesses, [REDACTED], were allegedly threatened as a result of their involvement with the Court.¹²
6. In light of the above, the Chamber is satisfied that there exists an objectively justifiable risk with respect to the Witness's and his family's security and well-being warranting the protection of his identity from the public. The Chamber further finds that the in-court protective measures sought do not unduly infringe upon the rights of the accused given that the accused and the Defence will be able to see the Witness give evidence at trial and hear the Witness's voice without distortion. Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures of use of a pseudonym for the purposes of the trial and voice and face distortion during testimony.

¹⁰ First Protective Measures Decision, ICC-01/04-02/06-824-Red, paras 14-15. Therein, the Chamber indicated it had taken note of concerns expressed in relation to the security situation in the Ituri region, referring to Third Report of the Registry on the Security Situation in the Democratic Republic of the Congo, 1 May 2015, ICC-01/04-02/06-585-Conf. The corrected annex was notified on 4 May 2015 (ICC-01/04-02/06-585-Conf-Anx-Corr).

¹¹ Email from VWU to the Chamber on [REDACTED].

¹² Confidential Redacted Response of the Common Legal Representative of victims of the Attacks to the 'Confidential redacted version of "Corrected version of 'Fifth Prosecution request for in-court protective measures", 14 October 2015, ICC-01/04-02/06-900-Conf-Exp-Corr', 4 November 2015, ICC-01/04-02/06-977-Conf-Red, paras 13-20.

7. Regarding the Prosecution notice that it will seek to elicit certain evidence concerning the Witness's [REDACTED] in private session,¹³ the Chamber notes that it is not opposed by the Defence.¹⁴ In light of the above, and given that information could be elicited which relates to and may identify [REDACTED] who has not agreed to be part of the Court's process, and in accordance with its obligation to [REDACTED],¹⁵ the Chamber finds it appropriate to already indicate that evidence concerning [REDACTED] may be elicited in private session.
8. Finally, the Chamber grants the Special Measure Request, noting, however, that the concrete need for any such assistance will be determined at the relevant time.
9. This decision is without prejudice to the forthcoming VWU assessment which may warrant a modification of the measures granted.

¹³ Prosecution Supplementary Submissions, ICC-01/04-02/06-1196-Conf-Red, para. 22.

¹⁴ First Response, ICC-01/04-02/06-984-Conf, para. 20. *See also*, Second Response, ICC-01/04-02/06-1228-Conf, para. 13.

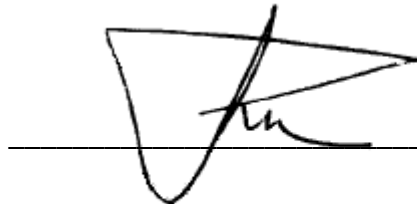
¹⁵ [REDACTED].

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; and

GRANTS the Special Measure Request.

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

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a smaller, cursive signature, positioned above a horizontal line.

Judge Robert Fremr, Presiding Judge

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

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of several characters in a cursive style, positioned above a horizontal line.

Judge Chang-ho Chung

Dated this 30 March 2016

At The Hague, The Netherlands