

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **14 April 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 measures for Witnesses P-0892 and P-0912'

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 ('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 measures for Witnesses P-0892 and P-0912'.

I. Procedural background and submissions

1. On 17 March 2016, the Office of the Prosecutor ('Prosecution') filed a request seeking in-court protective measures for Witnesses P-0892 and P-0912 (together, 'Witnesses') in the form of face and voice distortion and the use of a pseudonym during testimony, as well as to elicit testimony regarding [REDACTED] in private session ('Request').² The Prosecution submits that these measures are necessary due to: (i) the nature of the Witnesses' expected evidence, in particular in relation to [REDACTED], given the risk of [REDACTED] for the Witnesses; (ii) the Witnesses' current residence being located [REDACTED]; (iii) the possibility that the Witnesses may be identified by persons involved in certain events concerning Witness P-0912; and (iv) the fact that neither of the Witnesses is [REDACTED].³
2. In view of the specific needs and circumstances of the Witnesses, the Prosecution also requests the following special measures pursuant to Rule 88 of the Rules: (i) that the Witnesses be granted reading and writing assistance during their testimony, if required; (ii) that questioning be adapted to the needs and capacities of Witness P-0912; and (iii) that Witness P-0912 be assisted in court by a

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 Prosecution's eleventh request for in-court protective and special measures, notified on 18 March 2016, ICC-01/04-02/06-1218-Conf-Exp. A confidential redacted version thereof (ICC-01/04-02/06-1218-Conf-Red) was filed on the same day.

³ Request, ICC-01/04-02/06-1218-Conf-Red, paras 2, 7-24 and 35-37.

[REDACTED] support assistant from the Victims and Witnesses Unit ('VWU') ('Special Measures Request').⁴

3. On 8 April 2016, the Legal Representative of Victims of the attacks ('LRV') filed a response ('LRV Response'),⁵ supporting the Request and noting the [REDACTED] of the protective measures sought in respect of both Witnesses.⁶
4. On 11 April 2016, the defence team for Mr Ntaganda ('Defence') filed a response, in which it partially opposes the Request ('Defence Response').⁷ It submits that the Prosecution failed to establish the existence of an objectively justifiable risk to the Witnesses' safety and security, and that, in terms of the Witnesses' subjective fears, none of the material disclosed to it 'reveals, let alone implies, that the witnesses ever had or have such concerns'.⁸ Should the other protective measures sought be granted, the Defence further opposes the request to elicit testimony regarding [REDACTED] in private session.⁹ It does not oppose the Special Measures Request, but argues that, while [REDACTED], no leading questions should be put during examination-in-chief, and that while it will [REDACTED], the Defence must be able to effectively challenge the evidence.¹⁰ Finally, it requests a declaration from the Chamber that the protective measures of voice and face distortion, as well as use of a pseudonym, may only be made under Rule 87 of the Rules, rather than also under Rule 88.¹¹

⁴ Request, ICC-01/04-02/06-1218-Conf-Red, paras 1-2 and 28-37.

⁵ Response of the Common Legal Representative of the Victims of the Attacks to the "Confidential redacted version of 'Prosecution's eleventh request for in-court protective and special measures', 17 March 2016, ICC-01/04-02/06-1218-Conf-Exp", ICC-01/04-02/06-1257-Conf.

⁶ LRV Response, ICC-01/04-02/06-1257-Conf, para. 13.

⁷ Response on behalf of Mr Ntaganda to "Prosecution's eleventh request for in-court protective measures", ICC-01/04-02/06-1261-Conf.

⁸ Defence Response, ICC-01/04-02/06-1261-Conf, para. 10.

⁹ Defence Response, ICC-01/04-02/06-1261-Conf, paras 25-32.

¹⁰ Defence Response, ICC-01/04-02/06-1261-Conf, para. 24.

¹¹ Defence Response, ICC-01/04-02/06-1261-Conf, para. 9, page 13.

II. Analysis

5. The Chamber notes that the Witnesses reside in areas where, as the Prosecution argues, the inhabitants commonly know each other, the accused continues to have influence, and 'where former UPC/FPLC members and associates loyal to the [a]ccused are present'.¹² 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 witness¹³ and notes the Prosecution submission that armed groups remain active in the region.¹⁴ The Chamber also observes that the Witnesses are [REDACTED].

6. The Chamber further notes that the Witnesses are expected to testify about the [REDACTED] during the conflict, and that, should their identities become known in connection with these alleged incidents, [REDACTED]. Further, while the Chamber has considered the Defence submission that the Witnesses have not faced concrete threats as a result of their involvement with the Court,¹⁵ it recalls that 'threats to a witness, or his/her family, are not a prerequisite to determining that a witness faces an objectively justifiable risk, thus warranting the granting of protective measures'.¹⁶ In this regard, the Chamber notes the reported instances where other witnesses, [REDACTED], were allegedly threatened as a result of their involvement with the Court.¹⁷

7. In light of the above, the Chamber is satisfied that there exists an objectively justifiable risk with respect to the Witnesses' security and well-being warranting the protection of their identities from the public. The Chamber further finds that

¹² Request, ICC-01/04-02/06-1218-Conf-Red, para. 11. *See also* paras 12 and 15.

¹³ First Protective Measures Decision, ICC-01/04-02/06-824-Red, paras 14-15. [REDACTED].

¹⁴ Request, ICC-01/04-02/06-1218-Conf-Red, para. 17.

¹⁵ Defence Response, ICC-01/04-02/06-1261-Conf, para. 6.

¹⁶ First Protective Measures Decision, ICC-01/04-02/06-824-Conf, para. 14, referring to, as an example, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on 'Prosecution's First Request for In-Court Protective Measures for Trial Witnesses', 3 September 2014, ICC-01/09-01/11-902-Red2, para. 14.

¹⁷ [REDACTED].

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 Witnesses give evidence at trial and hear the Witnesses' voices 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. Having so found, the Chamber does not find it necessary to make further findings with respect of the applicable law.¹⁸

8. Regarding the Prosecution request to elicit certain evidence concerning the [REDACTED] in private session,¹⁹ the Chamber is cognisant of the [REDACTED] of the protective measures sought in relation to the Witnesses, [REDACTED].²⁰ The Chamber is also aware of its obligation to take into account [REDACTED].²¹ The Chamber accepts that it may prove warranted to hear such evidence in private session to ensure, in particular, the Witnesses' dignity and well-being, however, the necessity for this will be assessed on a case-by-case basis at the relevant time.
9. Finally, the Chamber grants the Special Measures Request in the following terms: (i) that the Witnesses be granted reading and writing assistance during their testimony, if required; (ii) that questioning be adapted to the needs and capacities of Witness P-0912, having particular regard to [REDACTED];²² and (iii) that Witness P-0912 be assisted in court by a [REDACTED] support assistant from the VWU.
10. This decision is without prejudice to the forthcoming VWU assessment which may warrant a modification of the measures granted.

¹⁸ See, in this regard, Defence Response, ICC-01/04-02/06-1261-Conf, para. 9 and page 13.

¹⁹ Request, ICC-01/04-02/06-1218-Conf-Red, paras 10, 20-22, 35-37.

²⁰ Request, ICC-01/04-02/06-1218-Conf-Red, paras 10 and 35.

²¹ [REDACTED].

²² The Chamber does not find it necessary at this stage to order the specific measures listed at paragraph 34 of the Request (ICC-01/04-02/06-1218-Conf-Red), and will adjudicate any objections to the manner of questioning of Witness P-0912 if and when such objections arise.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

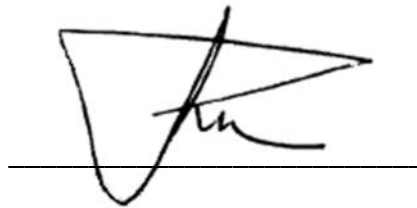
GRANTS the use of pseudonyms for the purposes of the trial and voice and face distortion during testimony for the Witnesses;

GRANTS the Special Measures Request within the terms specified at paragraph 9 above;

REJECTS all other requests; and

ORDERS the parties and LRV to file public redacted versions of their filings, namely the Request (ICC-01/04-02/06-1218-Conf-Red), LRV Response (ICC-01/04-02/06-1257-Conf) and Defence Response (ICC-01/04-02/06-1261-Conf) within two weeks of the issuance of the present decision.

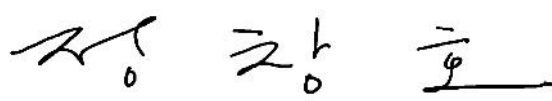
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 14 April 2016

At The Hague, The Netherlands