

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 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

**Decision on Prosecution's request for disclosure of information related to
Witness P-0800's security**

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 54(1), 54(3), 64(6) and 68(1) of the Rome Statute ('Statute') and Rule 79(4) of the Rules of Procedure and Evidence, issues the following 'Decision on Prosecution's request for disclosure of information related to Witness P-0800's security'.

I. Background and submissions

1. On 16 and 17 February 2016, Witness P-0800 ('Witness') testified in the present case,¹ after having been granted in-court protective measures, in the form of face and voice distortion and use of a pseudonym during testimony.²
2. On 17 February 2016, in the course of its cross-examination, the defence team for Mr Ntaganda ('Defence') put to the Witness that, according to information obtained by defence investigators, [REDACTED] despite the protective measures in place.³
3. On 18 March 2016, the Office of the Prosecutor ('Prosecution') filed a request for the Chamber to order the Defence to disclose to the Prosecution information related to the Witness's security ('Request for Disclosure'),⁴ namely: (i) the identity and background of the persons who [REDACTED]; and (ii) any information indicating the basis of their knowledge ('Requested Information').⁵ The Prosecution argues, *inter alia*, that the Requested Information is necessary to fulfil its statutory obligation to ensure the protection of witnesses,⁶ and to safeguard the integrity of the proceedings, by

¹ Transcripts of hearings on 16 and 17 February 2016, ICC-01/04-02/06-T-68-CONF-ENG ET and ICC-01/04-02/06-T-69-CONF-ENG ET.

² Decision on Prosecution's request for in-court protective and special measures for Witness P-0800, 10 February 2016, ICC-01/04-02/06-1160-Conf-Red. A public redacted version was filed on 12 February 2016 (ICC-01/04-02/06-1160-Red2).

³ ICC-01/04-02/06-T-69-CONF-ENG, p. 11, lines 21-23.

⁴ Prosecution's Application for Defence Disclosure of Information related to Witness P-0800's Security, ICC-01/04-02/06-1219-Conf, with confidential Annexes A and B.

⁵ Request for Disclosure, ICC-01/04-02/06-1219-Conf, para. 1.

⁶ Request for Disclosure, ICC-01/04-02/06-1219-Conf, paras 2, 12-16.

taking measures to avoid interference with current and future witnesses.⁷ According to the Prosecution, the relief sought would not prejudice the accused as it would not require disclosure of defence strategy. Alternatively, the Prosecution submits that the Requested Information should be disclosed to the Chamber and the Victims and Witnesses Unit ('VWU'), in order to be appropriately assessed and actioned ('Alternative Request').⁸

4. On 5 April 2016, the Defence opposed the Request for Disclosure ('Response').⁹ The Defence submits, *inter alia*, that the Requested Information is not necessary to assess the nature and scope of the risks, if any, posed to the Witness and his family.¹⁰ According to the Defence, providing the Requested Information to the Prosecution will prejudice the accused as the information clearly falls within the purview of Rule 81(1) of the Rules.¹¹ The Defence therefore stresses that there is neither any requirement nor obligation to provide the Prosecution with the name of the individuals met by the Defence's representatives in the field.¹² According to the Defence, if there is any balance to strike between the need to further protect the Witness and the interests of the accused, such balance favours not communicating the Requested Information to the Prosecution.¹³
5. The Defence however provided the Requested Information to the Chamber and VWU on an *ex parte* basis.¹⁴

⁷ Request for Disclosure, ICC-01/04-02/06-1219-Conf, paras 2, 17-19.

⁸ Request for Disclosure, ICC-01/04-02/06-1219-Conf, paras 27-28.

⁹ Response on behalf of Mr Ntaganda to 'Prosecution's Application for Defence Disclosure of Information related to Witness P-0800's Security', ICC-01/04-02/06-1250-Conf-Exp. A confidential redacted version was filed on the same day.

¹⁰ Response, ICC-01/04-02/06-1250-Conf-Red, paras 10-13.

¹¹ Response, ICC-01/04-02/06-1250-Conf-Red, paras 14-15.

¹² Response, ICC-01/04-02/06-1250-Conf-Red, para. 16.

¹³ Response, ICC-01/04-02/06-1250-Conf-Red, para. 17.

¹⁴ Response, ICC-01/04-02/06-1250-Conf-Red, paras 18-19.

II. Analysis

6. Mindful of the Court's obligation to protect witnesses and victims appearing before it, set out in Article 68(1) of the Statute, the Chamber considers that the Defence's transmission of the Requested Information to the VWU – the neutral organ of the Court primarily responsible for the protection of witnesses and victims - will ensure that any necessary measures for the protection of Witness P-0800 and his family will be taken. Accordingly, the Alternative Request is moot. Further, in light of the communication of the information to the VWU, the Chamber does not consider that the additional disclosure of the information to the Prosecution is warranted.

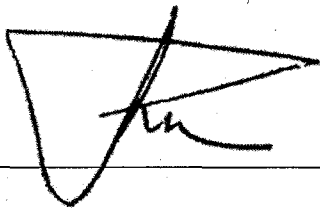
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request for Disclosure;

FINDS the Alternative Request moot; and

DIRECTS the parties to file public redacted versions of their respective filings (ICC-01/04-02/06-1219-Conf and ICC-01/04-02/06-1250-Conf-Red) within two weeks of the issuance of the present decision.

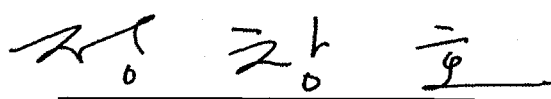
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 20 April 2016

At The Hague, The Netherlands