

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **22 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 for Witnesses P-0907 and P-0887’**

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

Mr Christopher Gosnell

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

Mr Fabián Raimondo (appointed Rule 74
legal adviser)

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 to 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 for Witnesses P-0907 and P-0887'.

I. Procedural background and submissions

1. On 22 March 2016, the Office of the Prosecutor ('Prosecution') filed a request seeking in-court protective measures for Witnesses P-0907 and P-0887 (together, 'Witnesses') in the form of face and voice distortion and the use of a pseudonym during testimony ('Request').² The Prosecution submits that the measures sought for both Witnesses are [REDACTED], and are necessary to protect the Witnesses' safety, security and well-being, referring, *inter alia*, to the fact that: (i) the Witnesses [REDACTED], including [REDACTED] Victims and Witnesses Unit ('VWU'); (ii) [REDACTED] defence team for Mr Ntaganda ('Defence'), notably [REDACTED]; (iii) Witness P-0887 [REDACTED] as a result of [REDACTED]; and (iv) although [REDACTED], [REDACTED] would be at increased risk if the Witnesses' identities were publicly disclosed.
2. On 12 April 2016, the Legal Representative of Victims of the attacks ('Legal Representative') filed a response,³ wherein he supports the Request and

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 Twelfth request for in-court protective measures, ICC-01/04-02/06-1224-Conf-Exp, only available to the Prosecution, the Legal Representative of the Victims of the Attacks and VWU. Confidential redacted and public redacted versions were filed on 13 and 14 April 2016 (ICC-01/04-02/06-1224-Conf-Red; ICC-01/04-02/06-1224-Conf-Red2; and ICC-01/04-02/06-1224-Red3).

³ Response of the Common Legal Representative of the Victims of the Attacks to the Prosecution's Twelfth request for in-court protective measures and Request pursuant to article 68(2) of the Rome Statute and rule 88(1) of the Rules of Procedure and Evidence, ICC-01/04-02/06-1262-Conf-Exp, only available to the Prosecution,

additionally seeks that special measures pursuant to Rule 88 of the Rules be granted for Witness P-0887 ('Request for Special Measures for Witness P-0887').

3. On 13 April 2016, after the Defence indicated it did not have access to the Request,⁴ the Prosecution filed a confidential redacted version thereof.⁵
4. Also on 13 April 2016, in response to a Defence request,⁶ the Chamber ordered the Prosecution to file a lesser redacted confidential version of its Request and set a deadline of 21 April 2016 for any response.⁷
5. On 21 April 2016, the VWU provided its report on in-court protective measures for the Witnesses,⁸ whereby it recommends that the Chamber grant the same measures as those sought in the Request.
6. Also on 21 April 2016, the Defence filed a response ('Defence Response').⁹ Noting the allegations that Witness P-0907 [REDACTED], the Defence indicates it does not oppose the granting of the measures sought for his testimony. The Defence however suggests that the Chamber request additional evidence from the Prosecution in relation to the allegations raised by the Prosecution with respect of the witness before adjudicating the Request, submitting that the absence of affidavit and/or statement 'deprives the Defence of an appropriate basis to challenge the witness's credibility and security concern during cross-examination', which it considers to be prejudicial to the accused.¹⁰ The Defence

Legal Representative and VWU. A confidential redacted version was filed the same day (ICC-01/04-02/06-1262-Conf-Red).

⁴ Transcript of hearing on 12 April 2016, ICC-01/04-02/06-T-79-CONF-ENG ET, page 54, line 19 to page 55, line 25.

⁵ ICC-01/04-02/06-1224-Conf-Red.

⁶ Email from the Defence to the Chamber on 13 April 2016 at 14:28.

⁷ Email from a Legal Officer of the Chamber to the Defence on 13 April 2016 at 17:36.

⁸ Email from VWU to the Chamber on 21 April 2016 at 10:47.

⁹ Response on behalf of Mr Ntaganda to "Prosecution's Twelfth request for in-court protective measures", ICC-01/04-02/06-1292-Conf.

¹⁰ Defence Response, ICC-01/04-02/06-1292-Conf, para. 10. *See also* paras 4-9.

further submits that the witness's [REDACTED] do not establish the existence of a risk to his security.

7. In the same response, the Defence indicates that it opposes the Request with respect to the use of voice and face distortion during the testimony of Witness P-0887. The Defence submits that, apart from alleged [REDACTED], which are not supported by any statement and/or affidavit, no additional evidence in the material disclosed suggests that there is an objectively justifiable risk to this witness's safety.¹¹ The Defence argues that the nature of the risk the witness faces 'warrants, at a maximum, the use of a pseudonym'.¹² It further avers that the necessity of granting the Request for Special Measures for Witness P-0887 should be 'assessed on a case-by-case basis at the relevant time'.¹³

II. Analysis

8. The Chamber agrees with the Prosecution that the requests for protective measures for the Witnesses are [REDACTED], given [REDACTED].¹⁴ The Chamber has adjudicated the Request in light of this fact.
9. The Chamber notes that Witness P-0907 is [REDACTED] and who is expected to provide direct evidence about [REDACTED]. The Chamber further notes [REDACTED], including [REDACTED]. Moreover, the Chamber recalls that it found there were reasonable grounds to believe that the accused and his associates have attempted to interfere with Prosecution witnesses, [REDACTED].¹⁵ Finally, the Chamber also takes into consideration that, according to the VWU, the measures sought would 'negate the need for further intrusive

¹¹ Defence Response, ICC-01/04-02/06-1292-Conf, para. 12.

¹² Defence Response, ICC-01/04-02/06-1292-Conf, paras 12-14.

¹³ Defence Response, ICC-01/04-02/06-1292-Conf, paras 3 and 17-18.

¹⁴ See, for example, Request, ICC-01/04-02/06-1224-Red3, para. 12.

¹⁵ Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts, 18 August 2015, ICC-01/04-02/06-785-Red, para. 55.

protection measures' for the Witnesses and their relatives upon completion of testimony.¹⁶

10. In light of the above, 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 Witnesses which warrants the protection of their identities. 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 for both Witnesses. The Chamber will determine on a case-by-case basis, at the relevant time during the Witnesses' testimonies, whether private or closed sessions or redactions to public records are necessary.
11. Finally, the Chamber takes note of the Legal Representative's Request for Special Measures for Witness P-0887, and finds it appropriate to defer its decision thereon until it has received the VWU's vulnerability assessment of the witness.

¹⁶ Email from VWU to the Chamber on 21 April 2016 at 10:47.

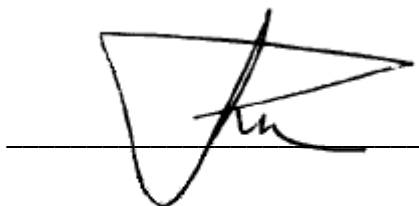
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

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

DEFERS its decision on the Request for Special Measures for Witness P-0887; and

ORDERS the Defence and the Legal Representative to file public redacted versions of their filings (ICC-01/04-02/06-1262-Conf-Red and ICC-01/04-02/06-1292-Conf) within 21 days of notification of the present decision.

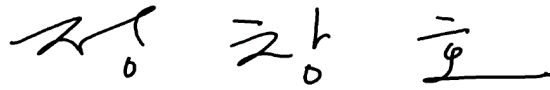
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 22 April 2016

At The Hague, The Netherlands