

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **1 July 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 request for in-court protective measures for Witness P-0019'

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 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

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 of the Rome Statute ('Statute') and Rules 86-88 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 request for in-court protective measures for Witness P-0019'.

I. Procedural history and submissions

1. On 10 June 2016, the Office of the Prosecutor ('Prosecution') filed a request seeking in-court protective measures for Witness P-0019 ('Witness'),² whereby it seeks voice and face distortion for the duration of the Witness's testimony, the use of a pseudonym for the purposes of the trial, and that the part of her testimony related to [REDACTED] be heard in private session ('Request'). The Prosecution further seeks that the Chamber grant certain special measures for the Witness ('Request for Special Measures'), including that the Witness be provided with the assistance of a support person from the Victims and Witnesses Unit ('VWU').³
2. The Prosecution submits that the measures proposed are warranted given the objectively justifiable risks posed to the Witness's safety and well-being. In support, it refers to: (i) the Witness's expected evidence, particularly in relation to [REDACTED], given the risk of [REDACTED]; (ii) the Witness's [REDACTED];

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

² Prosecution's twentieth request for in-court protective and special measures, ICC-01/04-02/06-1383-Conf-Exp, only available to the Prosecution and the VWU, and one public Annex. Confidential redacted and public redacted versions were filed respectively on 10 and 14 June 2016 (ICC-01/04-02/06-1383-Conf-Red; ICC-01/04-02/06-1383-Red2).

³ Request, ICC-01/04-02/06-1383-Conf-Red, paras 22-28.

(iii) the possibility that the Witness may be identified by persons involved in [REDACTED]; and (iv) the Witness [REDACTED].⁴

3. On 20 June 2016, the defence team for Mr Ntaganda ('Defence') filed a response in which it indicated it does not oppose the Request.⁵ It further submits that the remainder of the requested measures fall within the scope of the Chamber's discretion to govern the conduct of the proceedings, and indicates that it does not object to a VWU support assistant sitting next to the Witness during her testimony.⁶
4. On 30 June 2016, the VWU transmitted its recommendations to the Chamber,⁷ indicating that it supports implementation of all in-court protective measures set out in the Request.

II. Analysis

5. The Chamber recalls that it is appropriate to consider the nature of a witness's victimisation in assessing the need for protective or special measures⁸ and notes its particular obligations to protect victims [REDACTED] under Article 68 of the Statute and Rule 88 of the Rules.
6. Concerning the risk to the Witness's psychological wellbeing and safety, the Chamber finds that there exists a risk of [REDACTED]. The Chamber further notes the potential risk arising to the safety of the Witness should her identity become known to [REDACTED]. The Chamber also notes the fact that [REDACTED].⁹ Moreover, the Chamber recalls the reported instances where other

⁴ Request, ICC-01/04-02/06-1383-Conf-Exp, paras 3 and 8-21.

⁵ Response on behalf of Mr Ntaganda to "Prosecution's twentieth request for in-court protective and special measures", ICC-01/04-02/06-1411-Conf ('Response').

⁶ Response, ICC-01/04-02/06-1411-Conf, paras 1-2.

⁷ E-mail from VWU to a Legal Officer of the Chamber on 30 June 2016 at 18:02.

⁸ Decision on Prosecution request for in-court protective measures for Witness P-0018, 22 June 2016, ICC-01/04-02/06-1418-Conf-Red.

⁹ Request, ICC-01/04-02/06-1383-Conf-Red, para. 6.

witnesses [REDACTED] were allegedly threatened as a result of their involvement with the Court.¹⁰ In this regard, the Chamber further recalls that factors such as the general security situation in a region may be relevant in relation to the circumstances of a specific witness¹¹ and notes the Prosecution submission that the area remains unstable and that armed groups remain active in the region.¹²

7. In light of the above, the Chamber is satisfied that there exist objectively justifiable risks with respect to the Witness's security, as well as her wellbeing, warranting the shielding of her 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, the Chamber grants the measures of use of a pseudonym for the purposes of the trial and voice and face distortion during testimony.
8. The Chamber notes that the Prosecution's request to elicit certain evidence concerning [REDACTED] in private session is unopposed by the Defence. The Chamber accepts that it may prove warranted to hear such evidence in private session to ensure, in particular, the Witness's dignity and wellbeing; however, the necessity for this will be assessed on a case-by-case basis at the relevant time.
9. Turning to the Request for Special Measures, the Chamber decides to defer its decision on the specific measures sought until receipt of the VWU vulnerability assessment.

¹⁰ 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.

¹¹ First Protective Measures Decision, ICC-01/04-02/06-824-Red, paras 14-15. [REDACTED].

¹² Request, ICC-01/04-02/06-1383-Conf-Red, para. 11.

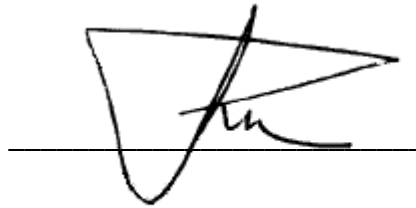
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS voice and face distortion for the duration of the Witness's testimony, as well as the use of a pseudonym for the purposes of the trial;

DEFERS its decision on the Request for Special Measures; and

ORDERS the Defence to file a public redacted version of the Response (ICC-01/04-02/06-1411-Conf) within two weeks 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 1 July 2016

At The Hague, The Netherlands