

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-01/04-02/06  
Date: 28 February 2017

**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 request for measures pursuant to Rules 87  
and 88 for victims a/01635/13, a/20018/14 and a/30286/15'**

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**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**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, and 68(1) and (2) of the Rome Statute and Rules 87 and 88 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on request for measures pursuant to Rules 87 and 88 for victims a/01635/13, a/20018/14 and a/30286/15'.

## I. Procedural history and Submissions

1. On 10 February 2017, the Chamber, *inter alia*: (i) authorised six victims to present their views and concerns in person before the Chamber; (ii) set the schedule for such presentation and decided that it would take place via video-link;<sup>1</sup> and (iii) established a schedule for the submission of any requests for in-court or special measures by the Legal Representative of the Victims of the Attacks ('LRV') and any responses thereto.<sup>2</sup>
2. On 17 February 2017, the LRV filed a request seeking measures pursuant to Rules 87 and 88 of the Rules in the form of face and voice distortion and the use of a pseudonym for three of the six victims, namely victims a/01635/13, a/20018/14 and a/30286/15 (respectively 'Victims' and 'Request').<sup>3</sup> According to the LRV, the requested measures are necessary to protect the dignity, privacy and psychological well-being, and to prevent [REDACTED] re-traumatisation of the Victims.<sup>4</sup> Specifically, the LRV submits that: (i) Victims a/30286/15 and a/20018/14

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<sup>1</sup> The schedule was initially set for 2 and 3 March 2017, but on 22 February 2017, due to logistical difficulties reported by the Registry, the Chamber amended the schedule for the presentation of victims' views and concerns to take place on 1 and 2 March 2017 (Order amending the schedule for the presentation of victims' views and concerns, 22 February 2017, ICC-01/04-02/06-1797 ('Order')).

<sup>2</sup> Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns, ICC-01/04-02/06-1780-Conf, paras 49, 55-57, and page 20. A public redacted version was filed on 15 February 2017, ICC-01/04-02/06-1780-Red. As a result of the change in the dates of the hearings, the Chamber amended the schedule and directed that any responses to the request for in-court protective or special measures be filed on 27 February 2017 (Order, ICC-01/04-02/06-1797, para. 5).

<sup>3</sup> Request by the Common Legal Representative of the Victims of the Attacks for in-court protective/special measures for victims a/01635/13, a/20018/14 and a/30286/15, ICC-01/04-02/06-1793-Conf. The Request was notified on 17 February 2017.

<sup>4</sup> Request, ICC-01/04-02/06-1793-Conf, paras 2, 19, and 20.

are expected to present views and concerns regarding their [REDACTED];<sup>5</sup> (ii) Victim a/01635/13 is expected to present views and concerns about [REDACTED]; (iii) the presentation of views and concerns in public would affect the Victims' and their relatives' dignity and privacy, [REDACTED], which might result in re-traumatisation of the Victims who still appear 'vulnerable and psychologically instable';<sup>6</sup> and (iv) the requested measures are not prejudicial to the right of the accused given the limited scope of the Victims' expected statements and the fact they will not form part of the evidence in the present case.<sup>7</sup> The LRV further anticipates that additional special measures may be needed.<sup>8</sup>

3. On 27 February 2017, in line with the amended time limit set by the Chamber,<sup>9</sup> the Office of the Prosecutor ('Prosecution')<sup>10</sup> and the defence team for Mr Ntaganda ('Defence')<sup>11</sup> filed their respective responses in which they do not oppose the Request.
4. On 28 February 2017, the Victims and Witnesses Unit ('VWU') submitted a protective measures and a vulnerability assessment for Victim a/01635/13, both recommending that the requested measures be granted.<sup>12</sup> In addition, the vulnerability assessment recommends the presence of a psychologist to monitor the victim, as required, and recourse to private session to discuss information relating to [REDACTED].

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<sup>5</sup> Request, ICC-01/04-02/06-1793-Conf, para. 17.

<sup>6</sup> Request, ICC-01/04-02/06-1793-Conf, paras 18-19.

<sup>7</sup> Request, ICC-01/04-02/06-1793-Conf, paras 2 and 22.

<sup>8</sup> Request, ICC-01/04-02/06-1793-Conf, para 23.

<sup>9</sup> Order, ICC-01/04-02/06-1797, para. 5

<sup>10</sup> Prosecution's response to the "Request by the Common Legal Representative of the Victims of the Attacks for in-court protective/special measures for victims a/01635/13, a/20018/14 and a/30286/15", ICC-01/04-02/06-1806-Conf.

<sup>11</sup> Response on behalf of Mr Ntaganda to "Request by the Common Legal Representative of the Victims of the Attacks for in-court protective/special measures for victims a/01635/13, a/20018/14 and a/30286/15", ICC-01/04-02/06-1803-Conf.

<sup>12</sup> Email communications from the VWU to the Chamber on 28 February 2017 at 10:46 and 11:59.

## II. Analysis

5. At the outset, the Chamber recalls that the Victims will not appear as witnesses before the Chamber and are therefore not allowed to give evidence against the accused. In these circumstances, the Chamber considers that the usual assessment whether there exists an objectively justifiable risk to their security is not directly applicable.
6. The Chamber recalls that it is appropriate to consider the nature of the alleged victimisation in assessing the need for protective or special measures and notes its particular obligations to protect victims [REDACTED] under Article 68 of the Statute and Rule 88 of the Rules.<sup>13</sup>
7. The Chamber notes that the Victims are expected to present views and concerns in relation to [REDACTED]. Accordingly, the Chamber considers that they may be exposed to [REDACTED], should their identities become known in connection with these alleged incidents.
8. In light of the above, the Chamber is satisfied that the requested measures are necessary to ensure to the Victims' dignity, privacy and psychological wellbeing. The Chamber further finds that the measures sought do not unduly infringe upon the rights of the accused. In this regard, it notes that the Defence does not oppose the measures, and that the accused and the Defence will be able to see the Victims present views and concerns, which will not form part of the evidence in this case, via an undistorted video-link and hear their voices 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 the presentation of views and concerns. In addition, in light of the recommendation in the vulnerability assessment, the Chamber further grants the presence of a

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<sup>13</sup> Decision on Prosecution request for in-court protective measures for Witness P-0018, 22 June 2016, ICC-01/04-02/06-1418-Conf-Red.

psychologist to monitor Victim a/01635/13. As to the VWU's recommendation to discuss information relating to [REDACTED] in private session, the Chamber considers that, given the alleged harm and the expected views and concerns, this would result in most of the views and concerns being heard in private session. In the view of the Chamber, this would defeat part of the purpose of the presentation of views and concerns and is therefore not appropriate. Moreover, the Chamber considers that the other measures granted will ensure that the victims cannot be identified, and therefore address the risk of [REDACTED].

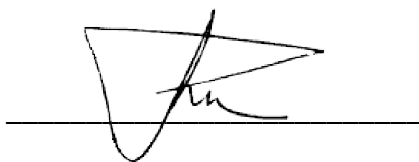
9. This decision is without prejudice to the pending VWU security and vulnerability assessments which may warrant further measures in respect of specific victims.

**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 the presentation of views and concerns, and, in addition, the presence of a psychologist for Victim a/01635/13; and

**ORDERS** the LRV and the parties to file public redacted versions of their respective submissions within two weeks of issuance of this decision.

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 'remr', written over a horizontal line.

**Judge Robert Fremr, Presiding Judge**

Two handwritten signatures in black ink, one in Latin script and one in Korean, written over a horizontal line.

**Judge Kuniko Ozaki**

**Judge Chang-ho Chung**

Dated this 28 February 2017

At The Hague, The Netherlands