

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **6 December 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 redacted version of

Decision on Defence request for in-court protective measures for Witness D-0251

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(1) of the Rome Statute and Rule 87 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on Defence request for in-court protective measures for Witness D-0251'.

I. Procedural history and submissions

1. On 27 October 2017, the defence team for Mr Ntaganda ('Defence') requested in-court protective measures for Witness D-0251 ('Witness') in the form of face and voice distortion and use of a pseudonym ('Request').¹ In support of its Request, the Defence argues that the Witness has expressed fears about potential negative repercussions arising from her testimony, which are objectively well-founded.² In this regard, the Defence refers to the security situation in the Democratic Republic of the Congo ('DRC') and Ituri, the 'ineffectiveness or partiality' of State organs, and argues that the perception of association with Mr Ntaganda, as a well-known former opponent of the government, places Defence witnesses at risk of retaliation by organs of governmental authority.³
2. With respect to the Witness's personal circumstances, the Defence argues that, due to her professional situation as a [REDACTED], 'her livelihood depends on amicable relationships with as many people as possible without being perceived as ethnically partisan'. It further refers to the fact that: (i) the Witness has six children for whom she is the sole guardian; (ii) she regularly travels to [REDACTED], where she meets the same persons who know her very well; (iii) she has expressed fears of retaliation by individuals opposed to Mr Ntaganda and/or the activities of the UPC and FPLC at the time; and (iv) testifying about

¹ Request for in-court protective measures for Witness D-0251, 27 October 2017, ICC-01/04-02/06-2085-Conf and public Annex A.

² Request, ICC-01/04-02/06-2085-Conf, para. 1.

³ Request, ICC-01/04-02/06-2085-Conf, paras 6-9.

her role as [REDACTED] would raise her own profile in the conflict in a way that could endanger her security. Finally, the Defence argues that being a woman and a single mother increases the Witness's vulnerability to intimidation, retaliation, threats, and attack.⁴

3. On 3 December 2017, the Office of the Prosecutor ('Prosecution') opposed the Request ('Response'),⁵ on the basis that no objectively justifiable risk to the Witness's safety, physical or psychological well-being, dignity or privacy has been established.⁶ Specifically, the Prosecution argues, *inter alia*, that: (i) the Defence provides no justifiable basis for the Witness's fears and merely speculates about the potential sources of, and reasons for, negative repercussions associated with her testimony;⁷ (ii) the Witness's professional situation and travel habits do not place her at risk of retaliation, nor has it been established that the Witness faces a risk of retaliation due to testifying as a Defence witness;⁸ and (iii) none of the documents relied upon by the Defence demonstrate that the current security situation in the region creates an objectively justifiable risk for the Witness.⁹
4. On 5 December 2017, the Victims and Witnesses Unit ('VWU') provided the Chamber with its in-court protective measures assessment in relation to the Witness, recommending the same in-court protective measures as requested.¹⁰

⁴ Request, ICC-01/04-02/06-2085-Conf, paras 10-11.

⁵ Prosecution response to the Defence "Request for in-court protective measures for Witness D-0251", ICC-01/04-02/06-2096-Conf.

⁶ Response, ICC-01/04-02/06-2096-Conf, paras 1 and 9.

⁷ Response, ICC-01/04-02/06-2096-Conf, para. 10.

⁸ Response, ICC-01/04-02/06-2096-Conf, paras 13-14 and 16.

⁹ Response, ICC-01/04-02/06-2096-Conf, paras 15-16.

¹⁰ Email communication from the VWU to the Chamber on 5 December 2017, at 17:20.

II. Analysis

5. The Chamber incorporates by reference the applicable law as set out in its 'Decision on request for in-court protective measures relating to the first Prosecution witness'.¹¹
6. The Chamber recalls that it has previously held that the general security situation in a region may be relevant to risks faced by individual witnesses.¹² In assessing the existence of such a risk, the Chamber has referred to Registry reports outlining the security issues in the DRC.¹³ The Chamber further recalls that, in assessing whether an objectively justifiable risk to a witness and/or his or her family exists, the Chamber has previously considered several factors, including, *inter alia*, the witness's place of residence or area of travel, the witness's professional responsibilities, and the nature of the witness's anticipated testimony.¹⁴
7. In the present instance, the Chamber has considered the Witness's place of residence and the Defence's submission that, due to her profession, as well as her travel habits, the Witness has concerns in connection to testifying publicly, noting that she comes into contact with numerous people in the course of her employment, and fears that this risk extends to her six children, for whom she is the sole caretaker. In this respect, the Chamber has also considered the documentation attached to the Request, as well as the information provided by

¹¹ Decision on request for in-court protective measures relating to the first Prosecution witness, 14 September 2015, ICC-01/04-02/06-824-Conf ('First Protective Measures Decision'), paras 5-6. A public redacted version was filed on 16 September 2015 as ICC-01/04-02/06-824-Red.

¹² See, e.g., First Protective Measures Decision, ICC-01/04-02/06-824-Conf, paras 14-15.

¹³ See, e.g., transcript of hearing of 12 September 2017, ICC-01/04-02/06-T-242-CONF-ENG ET, page 61, lines 3 to 11; transcript of hearing of 15 September 2017, ICC-01/04-02/06-T-245-CONF-ENG ET, page 61, lines 9 to 11.

¹⁴ See, e.g., Decision on Prosecution request for in-court protective measures for Prosecution Witness P-0551, 15 February 2017, ICC-01/04-02/06-1786, para. 10; Confidential redacted version of 'Decision on Prosecution's request for in-court protective and special measures for Witness P-0800', 10 February 2017, ICC-01/04-02/06-1160-Conf-Red, para. 7; transcript of hearing of 15 September 2017, ICC-01/04-02/06-T-245-CONF-ENG ET, page 61, lines 12 to 17.

the Registry in its latest report on the security situation in the DRC, which indicates that the general security situation in the Ituri province has deteriorated since the beginning of the year, remains volatile, and that inter-ethnic violence and attacks by armed groups from different sides are reported to have increased.¹⁵

8. In this regard, the Chamber also notes the Defence submissions with respect to the subjective fears expressed by the Witness regarding the risk of retaliation. While the Witness is not reported to have experienced any specific security incidents, the Chamber recalls that threats to a witness or his or her family are not a prerequisite to determining whether the witness faces an objectively justifiable risk, and that there are reported instances where other witnesses were allegedly threatened as a result of their involvement with the Court.¹⁶
9. Moreover, the Chamber has, in particular, taken into account the nature of the Witness's anticipated testimony as detailed in the Witness's written statement,¹⁷ according to which the testimony will reveal the Witness's role as [REDACTED] at the time of the charges, and her knowledge of, and relationship with, other individuals, including witnesses who have been granted protective measures in this case.
10. Furthermore, the Chamber has considered the protective measures assessment of the VWU in relation to the Witness, wherein the VWU notes that if the Witness's cooperation with the Court were to be publicly known, it likely increases the level of risk to the Witness and her family, and therefore recommends granting the requested measures.

¹⁵ Fourth Report of the Registry on the Security Situation in the Democratic Republic of the Congo, 30 June 2017, ICC-01/04-02/06-1980-Conf, paras 1, 3-7 and confidential Annex A.

¹⁶ See, e.g., transcript of hearing on 12 December 2016, ICC-01/04-02/06-T-176-CONF-ENG ET, page 4, lines 18-23. See also First Protective Measures Decision, ICC-01/04-02/06-824-Red, para. 14.

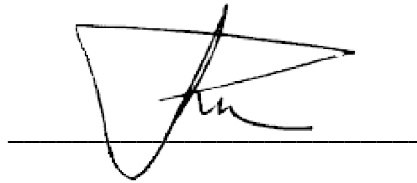
¹⁷ DRC-D18-0001-6276.

11. In light of the foregoing, the Chamber is satisfied that an objectively justifiable risk exists with respect to the security of the Witness and her children, warranting the shielding of her identity from the public. Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures of face and voice distortion during the Witness's testimony, and the use of a pseudonym for the purposes of the trial. In addition, the Chamber indicates that any testimony on matters of a sensitive nature shall be elicited in private session. The necessity for this will be assessed on a case-by-case basis at the relevant time.

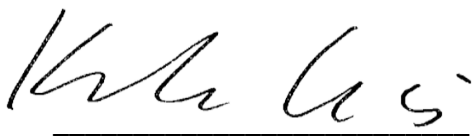
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the request for in-court protective measures in the form of face and voice distortion during the testimony of Witness D-0251, and the use of a pseudonym for the purposes of the trial.

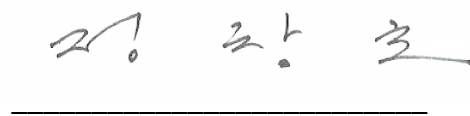
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by 'remr', positioned above a horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to read 'K. Ozaki', positioned above a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of three distinct characters, positioned above a horizontal line.

Judge Chang-ho Chung

Dated this 6 December 2017

At The Hague, The Netherlands