

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 16 September 2015

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 request for in-court protective measures relating to P-0901

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* ('Ntaganda case'), having regard to Articles 64(2) and (6)(e) and 68(1) and (2) of the Rome Statute ('Statute'), Rules 87 and 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 request for in-court protective measures relating to P-0901'.

I. Background and submissions

1. On 17 August 2015, the Office of the Prosecutor ('Prosecution') filed a request seeking in-court protective measures in relation to, *inter alia*, witness P-0901 ('Request').² The Prosecution indicates that P-0901 [REDACTED].³ It further emphasises that P-0901 has serious security concerns related to his involvement with the Prosecution, including retaliation against the witness and his/her family.⁴ The Prosecution argues that [REDACTED].⁵ The measures sought include facial and voice distortion, as well as the use of a pseudonym. The Prosecution avers that such protective measures will not 'unfairly prejudice the rights of the [a]ccused', as the witness will remain anonymous to the public only.⁶
2. On 31 August 2015, the defence team for Mr Ntaganda ('Defence') filed a response, opposing the Request ('Response').⁷ The Defence argues, *inter alia*, that the Request 'provides no references supporting any of the assertions set

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

² Second Prosecution request for in-court protective measures, 17 August 2015, ICC-01/04-02/06-782-Conf-Exp. A confidential redacted version was filed the same day and notified on 18 August 2015 (ICC-01/04-02/06-782-Conf-Red). A public redacted version was filed on 2 September 2015 (ICC-01/04-02/06-782-Red2).

³ Request, ICC-01/04-02/06-782-Conf-Red, para. 10.

⁴ Request, ICC-01/04-02/06-782- Red, para. 9.

⁵ Request, ICC-01/04-02/06-782-Conf-Red, paras 8 and 10.

⁶ Request, ICC-01/04-02/06-782-Red2, para. 2.

⁷ Response on behalf of Mr Ntaganda to "Second Prosecution request for in-court protective measures", ICC-01/04-02/06-801-Conf-Exp. A confidential redacted version was filed on 1 September 2015 (ICC-01/04-02/06-801-Conf-Red). A public redacted version was filed on 4 September 2015 and registered on 7 September 2015 (ICC-01/04-02/06-801-Red2).

out therein', impeding the ability of the Defence to provide meaningful observations on the validity of the security concerns outlined therein. In light of this, the Defence requests that the VWU observations be provided to it in a timely manner to facilitate any additional observations it may wish to make ('Notification Request').⁸

3. The Defence also argues that the Prosecution has failed to establish an objectively justifiable risk to P-0901's security. It avers that the 'serious' security concerns stemming from his/her involvement with the Prosecution, including retaliation against the witness and the witness's family, date back to before the witness met with Prosecution investigators, and that the only recent event involving contacts between third parties and P-0901 known to the Chamber are vague and do not suggest the existence of a threat to the witness's safety or security.⁹
4. In respect of the issue of proportionality, the Defence avers that the requested measures impede the Chamber's ability to carry out its truth-seeking function, insofar as concealing the witness's identity from the public may decrease the witness's commitment to tell the truth and the witness's public accountability, in particular in the case at hand, where the witness has been interviewed pursuant to Article 55(2) of the Statutes and thus has an incentive to lie to exculpate himself/herself during his/her testimony.¹⁰
5. On 9 September 2015, the VWU transmitted its observations on the Request to the Chamber ('VWU Observations'), indicating that in order for the current protective measures to remain effective, it is recommended to implement the measures requested during the witness's testimony.¹¹

⁸ Response, ICC-01/04-02/06-801-Red2, paras 5-6.

⁹ Response, ICC-01/04-02/06-801-Red2, paras 13-14.

¹⁰ Response, ICC-01/04-02/06-801-Red2, para. 18.

¹¹ Email communication from the VWU to the Chamber on 9 September 2015, at 16:17.

6. On 11 September 2015, the VWU further indicated that no special measures under Rule 88 of the Rules were recommended with respect to the witness.¹²
7. [REDACTED].¹³

II. Analysis

8. As preliminary matter, in relation to the Defence's request to have to be provided with the VWU Observations, the Chamber previously noted¹⁴ that Chamber will only order the provision of such observations to the parties if it considers it appropriate. With regards to the witness, the Chamber does not consider that to have been the case.
9. With regard to the protective measures requested, the Chamber notes that [REDACTED].¹⁵ [REDACTED].
10. Consequently, in light of these factors, and mindful of the fair trial-related concerns which generally militate in favour of the identity of witnesses being made known to the public, the Chamber is satisfied that an objectively justifiable risk exists with respect to the witness that warrants the protection of the witness's identity. The Chamber does not consider these measures to unduly infringe upon the accused's right to a public hearing. Therefore, the Chamber finds, pursuant to Rule 87 of the Rules, that the protective measures sought, specifically the allocation of a pseudonym for use during the trial and face and voice distortion during testimony, should be granted in this case.
11. [REDACTED].

¹² Email communication from the VWU to the Chamber on 11 September 2015, at 17:44.

¹³ [REDACTED].

¹⁴ First Protective Measures Decision, ICC-01/04-02/06-824-Red, para. 8.

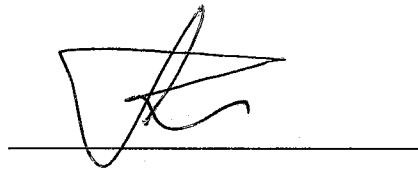
¹⁵ Request, ICC-01/04-02/06-782-Red2, para. 9; VWU Observations.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

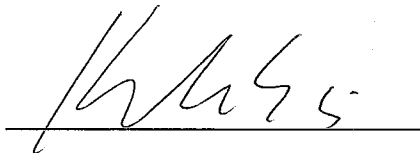
GRANTS the Request, specifically for use of a pseudonym for the purposes of the trial and voice and face distortion during testimony; and

REJECTS the Notification Request.

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

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Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line and a small flourish.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a small flourish.

Judge Chang-ho Chung

Dated 16 September 2015

At The Hague, The Netherlands