

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 11 December 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

Public redacted version of "Response of the Common Legal Representative of the Victims of the Attacks to the 'Confidential redacted version of 'Prosecution's submission pursuant to regulation 35 to vary the time limit for the sixth request for in-court protective measures concerning Prosecution Witness P-0039', 14 October 2015'"

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Mr Stéphane Bourgon
Mr Luc Boutin

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his response to the “Prosecution’s submission pursuant to regulation 35 to vary the time limit for the sixth request for in-court protective measures concerning Prosecution Witness P-0039’, 14 October 2015” (the “Prosecution Request” or “Request”),¹ as Witness P-0039 is a dual status witness [REDACTED] represented by the Legal Representative in the present proceedings and his personal interests are affected by the Prosecution Request.

2. The Legal Representative fully supports the Prosecution’s submissions and respectfully requests that Trial Chamber VI (the “Chamber”) grant the Prosecution Request in its entirety.

II. PROCEDURAL BACKGROUND

3. On 18 September 2015, the Prosecution submitted its list of forthcoming witnesses for the second evidentiary block commencing on 19 October 2015, according to which P-0039 is the third witness to be called.²

4. On 30 September 2015, the Prosecution filed a request for hearing P-0039’s evidence via video link. A confidential redacted version of which was filed on 1st October 2015.³

¹ See the “Confidential redacted version of ‘Prosecution’s submission pursuant to regulation 35 to vary the time limit for the sixth request for in-court protective measures concerning Prosecution Witness P-0039’, 14 October 2015”, No. ICC-01/04-02/06-899-Conf-Red, 14 October 2015.

² See email sent by the Prosecution to the Chamber, Defence, and Participants at 18:47 on 18 September 2015 transmitting the Prosecution’s Forthcoming Witness List for the Second Evidentiary Block.

³ See the “Public redacted version of ‘Prosecution’s request to hear DRC-OTP-P-0039’s testimony *via* video-link’, 30 September 2015, ICC-01/04-02/06-875-Conf”, No. ICC-01/04-02/06-875-Red, 1st October 2015.

5. On 1st October 2015, the Chamber shortened the deadline for responses to the Prosecution request to 9 October 2015, in accordance with regulation 34 of the Regulations of the Court.⁴

6. On 5 October 2015, the Defence filed its response to the Prosecution request, indicating that, exceptionally, it was not opposed to the request.⁵

7. On 9 October 2015, the Legal Representative filed a response to the Prosecution's request in which he, *inter alia*, stated that he was not, in principle, opposed to the request.⁶

8. On same date, the Registry confirmed that it can support the hearing of P-0039's testimony by video-link from Bunia on 28-29 October 2015.⁷

9. On 12 October 2015, the Chamber granted the Prosecution request for hearing P-0039's testimony via video link and directed the Registry to make the necessary arrangements in this regard.⁸

10. On 14 October 2015, the Prosecution filed the Request.

11. On same date, the Chamber shortened the deadline for any responses to the Prosecution Request to 22 October 2015.⁹

III. SUBMISSIONS

12. [REDACTED] Field Counsel met with P-0039 in order to address a number of his concerns. During the course of this meeting, P-0039 informed Field Counsel that,

⁴ See email sent by the Chamber to the Parties and Participants at 12:42 on 1st October 2015.

⁵ See the "Response on behalf of Mr Ntaganda to 'Prosecution's request to hear DRC-OTP-P-0039's testimony *via* video-link'", No. ICC-01/04-02/06-887-Conf, 5 October 2015, paras. 3, 5 and 6.

⁶ See [REDACTED]

⁷ See email sent by the Registry to the Chamber at 16:07 on 9 October 2015.

⁸ See the "Confidential redacted version of the 'Decision on Prosecution's request to hear P-0039's testimony by way of video-link'", No. ICC-01/04-02-06-897-Conf-Red, 12 October 2015, para. 15.

⁹ See email sent by the Chamber to the Parties and Participants at 17:00 on 14 October 2015.

when testifying, he would like his identity to be protected as he does not want to put himself and his family at risk of reprisals. He stated that Ntaganda still has a large number of supporters in the region. Although [REDACTED] he is convinced that if Ntaganda's supporters become aware of the fact that he is testifying against the accused, these supporters could harm himself and his family. This information was communicated to the Prosecution [REDACTED].

13. [REDACTED] The Legal Representative has recently obtained information about security incidents [REDACTED]. It indeed appears from said information that the general security situation in Ituri is a matter of great concern with regard to persons known to be or suspected to be cooperating with the Court. [REDACTED] Accordingly, the concern expressed by P-0039 should be taken very seriously. The protective measures requested are not unfairly prejudicial to the rights of the Defence, but enable P-0039 to testify without putting himself and others in his immediate family at risk.

14. Finally, Witness P-0039 [REDACTED]. In these circumstances, the Legal Representative respectfully submits that the protective measures sought are necessary not only to protect P-0039's and his family's physical safety, but also to protect the witness's psychological well-being.

IV. CONFIDENTIALITY

15. Pursuant to regulations 23*bis*(1) and (2) of the Regulations of the Court, the present request is classified as "confidential" as it refers to confidential witness information and documents with the same classification.

FOR THE FOREGOING REASONS the Legal Representative respectfully requests that the Prosecution Request is granted in its entirety.

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a long vertical stroke extending downwards from the bottom of the signature.

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 11th Day of December 2015

At The Hague, The Netherlands