

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 February 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's request for in-court protective and special measures for Witness P-0800', 10 February 2016, ICC-01/04-02/06-1160-Conf

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**

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 ('Statute'), and 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 Prosecution's request for in-court protective and special measures for Witness P-0800'.

I. Procedural background

1. On 14 October 2015, the Office of the Prosecutor ('Prosecution') filed a request seeking, *inter alia*, in-court protective measures for Witness P-0800 ('Witness') in the form of face and voice distortion and use of a pseudonym during testimony ('First Request').²
2. On 5 November 2015, the defence team for Mr Ntaganda ('Defence') filed a response, in which it opposes the Request ('Response').³
3. On 6 January 2016, the Prosecution supplemented its First Request for in-court protective measures, and, in addition, seeks that the Chamber grant the Witness special measures [REDACTED] ('Additional Request', and together with the First Request, 'Request').⁴

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

² Fifth Prosecution request for in-court protective measures, ICC-01/04-02/06-900-Conf-Exp, notified on 15 October 2015. A corrected version of this decision was filed on the same day (ICC-01/04-02/06-900-Conf-Exp-Corr), as well as a confidential redacted version (ICC-01/04-02/06-900-Conf-Corr-Red) and a public redacted version (ICC-01/04-02/06-900-Corr-Red2).

³ Response on behalf of Mr Ntaganda to "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", ICC-01/04-02/06-984-Conf.

⁴ Additional submissions for protective and special measures concerning Prosecution Witness P-800, 6 January 2016, ICC-01/04-02/06-1074-Conf-Exp, with Confidential Annexes A, B and C and Public Annex 1. A confidential redacted version was filed on 11 January 2016 (ICC-01/04-02/06-1074-Conf-Red) and a public redacted version was filed on 13 January 2016 (ICC-01/04-02/06-1074-Red2).

II. Submissions

4. The Prosecution submits that the in-court protective measures sought are necessary since revealing the Witness's identity to the public risks compromising his safety, privacy, and physical and psychological well-being within the meaning of Article 68(1) of the Statute.⁵ In support of its Request, the Prosecution submits that the Witness, who is expected to testify about crimes committed during and following UPC/FPLC attacks on Mongbwalu and Sayo, [REDACTED],⁶ and fears retaliation and stigmatisation for him and his family from any public dissemination of his identity during testimony.⁷ The Prosecution further notes that the Witness [REDACTED].⁸ With regard to the region in question, the Prosecution submits that the inhabitants commonly know one another, that [REDACTED].⁹ Further, by reference to the statements of various witnesses and the Prosecution's own investigations, [REDACTED].¹⁰ It further submits that the Victim and Witnesses Unit ('VWU') has confirmed that one of the areas in question is [REDACTED], and that the Ituri region remains in a precarious state of post-conflict security with armed groups still active.¹¹
5. Furthermore, the Prosecution requests that the Chamber additionally grant the Witness special measures, pursuant to Rule 88 of the Rules and Article 68(1) and (2) of the Statute, [REDACTED], namely by allowing for

⁵ First Request, ICC-01/04-02/06-900-Conf-Corr-Red, para. 14; Additional Request, ICC-01/04-02/06-1074-Conf-Red, para. 11.

⁶ First Request, ICC-01/04-02/06-900-Conf-Exp-Corr, paras 15-16; Additional Request, ICC-01/04-02/06-1074-Conf-Exp, para. 17.

⁷ First Request, ICC-01/04-02/06-900-Conf-Corr-Red, para. 16; Additional Request, ICC-01/04-02/06-1074-Conf-Exp, para. 17.

⁸ First Request, ICC-01/04-02/06-900-Conf-Corr-Red, para. 16.

⁹ First Request, ICC-01/04-02/06-900-Conf-Exp-Corr, para. 16; Additional Request, ICC-01/04-02/06-1074-Conf-Exp, paras. 2.

¹⁰ Confidential Annex A to Additional Request, ICC-01/04-02/06-1074-Conf-AnxA-Red; see also Additional Request, ICC-01/04-02/06-1074-Conf-Red, para. 17.

¹¹ Additional Request, ICC-01/04-02/06-1074-Conf-Exp, paras 18-19.

additional breaks during testimony and questioning adapted to the Witness's needs.¹²

6. In its Response, the Defence submits, *inter alia*, that, in the instant case, the requested in-court protective measures will impede the public's ability to follow the proceedings, as well as the Chamber's ability to carry out its truth-seeking function, insofar as revealing the Witness's identity to the public may increase the Witness's 'commitment to tell the truth' and the Witness's sense of public accountability.¹³ In particular, the Defence submits that the Prosecution has failed to establish an objectively justifiable risk to the Witness's security which would warrant the protective measures sought.¹⁴ It notes that the Witness is not expected to testify directly about the accused¹⁵ and that his situation is similar to that of other crime-based witnesses, residing in or coming from small communities in the Ituri region.¹⁶

III. Analysis

7. The Chamber further notes that the Witness is a civilian [REDACTED] when the UPC/FPLC attacked in November 2002, and that [REDACTED]. The Chamber notes that the Witness, [REDACTED] in a region, where, as the Prosecution argues, the inhabitants know one another, [REDACTED]. The Chamber recalls in this regard that factors such as the security situation in a region may be relevant in relation to the circumstances of a specific witness.¹⁷ In addition, the Chamber recalls the reported instances where other witnesses,

¹² Additional Request, ICC-01/04-02/06-1074-Conf-Red, paras 34 and 35 (ii).

¹³ Response, ICC-01/04-02/06-984-Conf, paras 5-6.

¹⁴ Response, ICC-01/04-02/06-984-Conf, paras 21 and 24.

¹⁵ Response, ICC-01/04-02/06-984-Conf, para. 10.

¹⁶ Response, ICC-01/04-02/06-984-Conf, para. 23.

¹⁷ First Protective Measures Decision, ICC-01/04-02/06-824-Conf, paras 14-15. Therein, the Chamber indicated it had taken note of concerns expressed in relation to the security situation in the Ituri region, referring to Third Report of the Registry on the Security Situation in the Democratic Republic of the Congo, 1 May 2015, ICC-01/04-02/06-585-Conf. The corrected annex was notified on 4 May 2015 (ICC-01/04-02/06-585-Conf-Anx-Corr).

including crime based witnesses, were allegedly threatened as a result of their involvement with the Court.¹⁸ The Chamber considers that the Witness's professional responsibilities, which bring him in contact with a large number of people, may also place him at increased risk.

8. In light of the above, the Chamber is satisfied that an objectively justifiable risk exists with respect to the Witness's security and well-being that warrants the protection of the Witness's identity. With regard to the appropriate measures to address this risk, the Chamber notes that [REDACTED] may increase the likelihood of his identification should his undistorted voice be broadcast publically. Mindful of the fair trial-related concerns generally militating in favour of the identity of witnesses not being shielded from the public, and noting that the Defence has been provided with the name and identifying information of the Witness, the Chamber does not consider the measures outlined in the Request to unduly infringe upon the rights of the accused. Accordingly the Chamber grants the protective measures sought, pursuant to Rule 87 of the Rules.
9. The Chamber will determine on a case-by-case basis, at the relevant time, whether private or closed sessions or redactions to public records are necessary in order to protect the identity of the Witness from being disclosed to the public.
10. Finally, the Chamber takes note of the Prosecution's additional request for special measures pursuant to Rule 88 of the Rules, as contained in the Additional Request, but finds it appropriate to wait until it has received the VWU's vulnerability assessment of the Witness, before deciding on this part of the request.

¹⁸ 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.

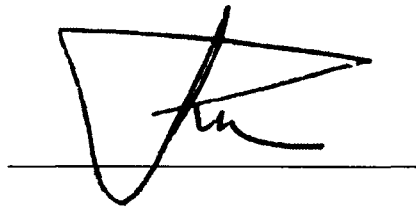
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

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

DEFERS its decision on the request for special measures; and

DIRECTS the Defence to file a public redacted version of its Response, ICC-01/04-02/06-984-Conf, by 23 February 2016.

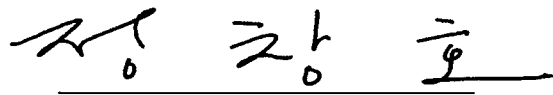
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 12 February 2016

At The Hague, The Netherlands