

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **19 April 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 “Prosecution’s additional request for in-court
protective measures for [REDACTED]”, 15 March 2016,
ICC-01/04-02/06-1212-Conf-Exp**

Source: The Office of the Prosecutor

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

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Other

Introduction

1. The Prosecution requests that Witness [REDACTED]'s testimony be heard entirely in private session, as an in-court protective measure provided for in article 68(2) of the Statute and rule 87 of the Rules of Procedure and Evidence ("Rules") in order to address the risks to [REDACTED]'s family ("Prosecution's Request").
2. Witness [REDACTED] is scheduled to testify on [REDACTED]. Trial Chamber VI (the "Chamber") granted the use of a pseudonym and face and voice distortion [REDACTED].
3. Nonetheless, these protective measures are insufficient to prevent [REDACTED] from identifying [REDACTED].
4. First, [REDACTED].
5. Second, [REDACTED]. Moreover, redactions to the transcript will not be effective to protect information disseminated to persons in the public gallery.
6. There is an objectively justifiable risk to [REDACTED] and his family, should the fact that he testified in this case become known publicly. [REDACTED].
7. [REDACTED]. As such, [REDACTED], there are no measures that the Court could take to protect [REDACTED] other than the measure sought by the Prosecution's Request.
8. Should the Chamber grant the Prosecution's Request, a *post facto* review of the transcripts of [REDACTED]'s testimony and reclassification of any portions thereof deemed suitable for publication should draw the appropriate balance

between the Accused's right to a public hearing under article 67(1) of the Statute and the need to protect witnesses appearing before the Court and their families, pursuant to articles 64(2), 68(1) and 68(2) of the Statute and the Decision on the conduct of proceedings.¹

Confidentiality

9. This request is classified as "Confidential, *ex parte* – only available to the Prosecution and Victims and Witnesses Unit" pursuant to regulation 23bis (1) of the Regulations of the Court, as it provides specific information on security concerns and protective measures [REDACTED]. The Prosecution will file a confidential version of this filing.

Background

10. [REDACTED].

11. [REDACTED].

12. [REDACTED].²

13. [REDACTED].³

14. [REDACTED].

15. [REDACTED].⁴

16. [REDACTED]⁵ [REDACTED],⁶ [REDACTED].⁷

¹ ICC-01/04-02/06-619, para. 61.

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

17. [REDACTED].

18. [REDACTED].⁸

19. [REDACTED],⁹ [REDACTED].¹⁰ [REDACTED].¹¹

20. [REDACTED].

21. [REDACTED].¹²

22. [REDACTED].¹³

23. [REDACTED].

24. [REDACTED].¹⁴

25. [REDACTED].

26. [REDACTED].¹⁵

27. [REDACTED].¹⁶

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

Prosecution's Submissions

28. The Prosecution requests that Witness [REDACTED]'s testimony be heard entirely in private session, as a measure to protect the Witness's family [REDACTED]¹⁷ [REDACTED].

I. [REDACTED]

29. [REDACTED].¹⁸

30. [REDACTED].¹⁹

31. [REDACTED].²⁰

32. [REDACTED].²¹

33. [REDACTED].²² [REDACTED].²³ [REDACTED].²⁴ [REDACTED].²⁵

34. [REDACTED].²⁶ [REDACTED].²⁷

35. [REDACTED].

36. [REDACTED].²⁸ [REDACTED].²⁹ [REDACTED].³⁰

¹⁷ [REDACTED]

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

37. [REDACTED].³¹ [REDACTED].³² [REDACTED].³³

38. [REDACTED].³⁴ [REDACTED].

39. [REDACTED].³⁵

40. [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED].

41. [REDACTED].³⁸ [REDACTED]. [REDACTED].³⁹ [REDACTED].⁴⁰ [REDACTED].

II. The risk to [REDACTED] and his family, should he testify

42. The Prosecution submits that the risks faced by [REDACTED] and his family to their safety, physical and psychological well-being and dignity are objectively justified.

43. [REDACTED].⁴¹ [REDACTED].⁴²

44. [REDACTED].⁴³ Despite the protective measures in place, [REDACTED].⁴⁴ [REDACTED].⁴⁵ [REDACTED].

45. [REDACTED], the Prosecution submits that the risks to [REDACTED]'s family can only be mitigated by granting the Prosecution's Request.

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

46. [REDACTED].

47. [REDACTED].⁴⁶ [REDACTED].⁴⁷ [REDACTED].⁴⁸ [REDACTED].⁴⁹

48. [REDACTED]⁵⁰ [REDACTED]⁵¹ [REDACTED], the Prosecution submits that there is an objectively justifiable risk to [REDACTED]'s family [REDACTED], in that they are likely to face real risks to their security, suffer [REDACTED] exclusion or stigmatisation if [REDACTED] is known to have testified against the Accused.

III. The existing protective measures are insufficient to protect [REDACTED]'s family

49. While the existing protective measures, may be considered sufficient to mitigate the risks faced by the Witness, these measures are insufficient to mitigate the risks faced by his family.

50. [REDACTED].⁵² [REDACTED].⁵³ [REDACTED].⁵⁴

51. [REDACTED].

52. [REDACTED] is easily identifiable on the basis of his anticipated evidence.⁵⁵
[REDACTED].⁵⁶ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

53. [REDACTED].

54. [REDACTED].⁵⁷

55. [REDACTED].⁵⁸

56. In the circumstances, the Prosecution submits that it is necessary to hear [REDACTED]'s evidence wholly in private session, to prevent the fact that he is testifying from becoming known. [REDACTED].⁵⁹

57. The Prosecution is of the view that, [REDACTED], the protective measure sought will ensure that he is able to give evidence without fear for his psychological well-being and for his family's safety, physical and psychological well-being and dignity, consistent with article 68(1) of the Statute. The protective measure requested will also ensure [REDACTED]'s family's protection. There are no alternative measures available to protect [REDACTED]'s family, specifically [REDACTED].

58. Other Chambers of this and other international courts have previously found that the protective measure of full *in camera* testimony can be properly balanced against the rights of the Accused.⁶⁰

59. In the instant case, the Prosecution submits that the requested protective measure does not unfairly prejudice the rights of the Accused, as he has been provided with the name and identifying information of this Witness. The Witness will remain anonymous to the public only.

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ See for example [REDACTED].

60. Moreover, even if the testimony of [REDACTED] is heard entirely *in camera*, the Chamber has the power to direct the Parties to identify any parts of the transcripts of said testimony that can be reclassified as public, upon a *post facto* review, as foreseen by the Chamber in the Decision on the conduct of proceedings.⁶¹

Request

61. The Prosecution requests that the Chamber authorise Witness [REDACTED]'s testimony to take place entirely in private session, as an in-court protective measure under article 68(2) of the Statute and rule 87 of the Rules.



Fatou Bensouda
Prosecutor

Dated this 19th day of April 2016
At The Hague, The Netherlands

⁶¹ ICC-01/04-02/06-619, para. 61.