

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 28 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 the Response of the Common Legal Representative of the Victims of the Attacks to the “Confidential redacted version of ‘Prosecution’s eleventh request for in-court protective and special measures’, 17 March 2016, ICC-01/04-02/06-1218-Conf-Exp”

Source: Office of Public Counsel for Victims

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

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**Unrepresented Applicants
(Participation/Reparation)**

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**The Office of Public Counsel for the
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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his response to the Prosecution’s “Confidential redacted version of ‘Prosecution’s eleventh request for in-court protective and special measures’, 17 March 2016, ICC-01/04-02/06-1218-Conf-Exp” (the “Prosecution Request” or “Request”), whereby the Prosecution requests in-court protective measures with respect to P-0892’s and P-0912’s upcoming *viva voce* testimony before Trial Chamber VI (the “Chamber”).¹

2. The Prosecution *inter alia* requests that both Witness P-0912 and [REDACTED] dual status Witness P-0892 and victim [REDACTED] whom the Legal Representative represents in these proceedings, be provided with the in-court protective measures of face and voice distortion and the use of pseudonym, as well as the special measures of reading and writing assistance during their upcoming testimony.²

3. As the Legal Representative represents Witness P-0892 in the present proceedings, he respectfully submits this response to the Prosecution Request. The Legal Representative fully supports the Prosecution Request and arguments presented therein, and respectfully requests the Chamber to grant both the protective and special measures requested.

II. PROCEDURAL BACKGROUND

4. On 7 March 2016, the Prosecution submitted its updated list of forthcoming witnesses for the fourth evidentiary block commencing on 4 April 2016.³ According

¹ See the “Confidential redacted version of ‘Prosecution’s eleventh request for in-court protective and special measures’, 17 March 2016, ICC-01/04-02/06-1218-Conf-Exp”, No. ICC-01/04-02/06-1218-Conf-Red, 18 March 2016 (the “Prosecution Request” or “Request”).

² *Idem*, paras. 1, 6, 25 and 38. The Prosecution further requested that [REDACTED] support person. See *Ibid.*, paras. 28, 31-35 and 38. The Legal Representative does not put forth any submissions in this regard. He, however, does not oppose these additional special measures.

³ See email sent by the Prosecution to the Chamber, Defence, and Participants at 16:23 on 7 March 2016 transmitting the Prosecution’s Updated Forthcoming Witness List for the Fourth Evidentiary Block.

to this schedule, P-0892 is the third witness to be called.⁴ P-0912 is expected to appear as the fifth witness in this upcoming block.⁵

5. On 18 March 2016, the Prosecution filed the Request.⁶

III. SUBMISSIONS

(i) *The requested in-court protective measures are necessary to protect P-0892*

6. On [REDACTED], the Legal Representative met with P-0892. During this meeting, P-0892 reiterated to him that she did not feel safe [REDACTED]. She explained to the Legal Representative that she feared reprisals if it becomes known that she will testify in the case against Bosco Ntaganda. P-0892 stated that she wished to have her identity hidden from the public when testifying before the Judges. In addition, she related that she is equally afraid for the safety of her family if her collaboration with the Court becomes known, as the general security situation [REDACTED] remains inherently unstable and volatile.

7. The Legal Representative submits that the security situation in [REDACTED] remains unchanged since his previous submissions on the matter.⁷

8. Likewise, the Legal Representative incorporates by reference his previous submissions that the absence of concrete threats and/or intimidation should not be taken to mean that protective measures are not necessary to adequately protect the security, safety and physical and psychological well-being of a witness on account of their testimony before the Court.⁸ The Chamber previously found that the prevailing security situation in the territory where a witness resides may be one of the relevant

⁴ *Idem.*

⁵ *Ibid.*

⁶ See the Prosecution Request, *supra* note 1.

⁷ See the "Confidential Redacted Version of the 'Response of the Common Legal Representative of Victims of the Attacks to the 'Prosecution's ninth request for in-court protective or special measures'", No. ICC-01/04-02/06-1076-Conf-Red, 11 January 2016, para 9.

⁸ See the "[REDACTED] 4 November 2015 (the "4 November 2015 Response"), para. 7.

factors to be taken into account when deciding on whether in-court protective measures should be granted to a witness appearing before it.⁹ In the same vein, the Chamber has previously ruled that *“the proximity of anticipated testimony to the accused personally is not necessarily determinative of whether or not a witness may face an objective risk as a result of their involvement, or perceived involvement, with the Court”*.¹⁰ In that Decision, the Chamber specifically noted the Legal Representative’s references to [REDACTED] which it *inter alia* took into consideration as one of the relevant factors in deciding whether or not an objectively justifiable risk existed in the case of dual status witnesses [REDACTED].¹¹

9. The Legal Representative respectfully submits that P-0892 is a similarly situated dual-status witness. Her fears of reprisals, intimidation and threats to her physical and psychological well-being, should it become known that she cooperates with the Court are real and indeed constitute an objectively justifiable risk to her security, safety, and physical and psychological well-being as well as that of her immediate family.

10. Where an objectively justifiable risk has been identified, the witness’s security and well-being warrants the protection of his or her identity.¹² Accordingly, the in-court protective measures of face and voice distortion in conjunction with the use of pseudonym, are necessary, adequate, and the least intrusive measures available to protect the safety, physical and psychological well-being of P-0892 and that of her family.

⁹ See the “Confidential redacted version of ‘Decision on Prosecution’s request for in-court protective measures for Witness [REDACTED]’” (Trial Chamber VI), No. ICC-01/04-02/06-1004-Conf-Red, 13 November 2015 (the “13 November 2015 Decision”), para. 5. See also “Decision on Prosecution’s request for in-court protective measures for Witness [REDACTED]” (Trial Chamber VI), No. ICC-01/04-02/06-1083-Conf, 15 January 2016 (the “15 January 2016 Decision”), para. 8; the “Public redacted version of Decision on request for in-court protective measures relating to the first Prosecution witness” (Trial Chamber VI), No. ICC-01/04-02/06-824-Red, 15 September 2015, para. 14.

¹⁰ See the 13 November 2015 Decision, *supra* note 9, para. 5.

¹¹ *Idem*, paras 5-6.

¹² See the 15 January 2016 Decision, *supra* note 9, para. 10. See also the 13 November 2015 Decision, *supra* note 9, para. 6.

11. Furthermore, the requested in-court protective measures do not in any way prejudice the rights of the Accused. These protective measures will enable the witness to give most of her testimony in open session. Her identity has been disclosed to the Defence and the Defence will be able to see and hear the witness without distortion.¹³ The publicity of the proceedings is not unduly affected by her remaining anonymous *vis-à-vis* the public.

(ii) The special measures are necessary and justified

12. With respect to the special measures of reading and writing assistance, it is respectfully submitted that reading and writing assistance is necessary and justified in the circumstances. [REDACTED]. As the Court is under the obligation to take appropriate measures to, *inter alia*, protect the dignity of witnesses and victims appearing before it, these measures should be granted [REDACTED]. These special measures are not inconsistent with the rights of the Accused.

(iii) The Requests for in-court protective measures of P-0912 and P-0892 [REDACTED]

13. While Prosecution Witness [REDACTED]. Accordingly, it is respectfully requested that the Chamber be mindful of the [REDACTED] security situation. Given the above concerns brought to the Legal Representative's attention [REDACTED], the Legal Representative respectfully submits that P-0892 faces an objectively justifiable risk to her security and well-being, which by implication already militates in favour of [REDACTED] being granted the requested in-court protective measures to withhold her identity from the public when testifying before the Court. The obligation to protect both P-0892's and P-0912's security, well-being as well as that of their families requires that both their identities be withheld from the public.

¹³ See the 15 January 2016 Decision, *supra* note 9, para 10.

(iv) Effective protection requires the use of pseudonym in conjunction with face and voice distortion

14. As the Legal Representative has previously argued, effectively withholding a witness's identity requires that face and voice distortion are necessarily applied in conjunction with the protective measure of pseudonym.¹⁴

15. Furthermore, nothing in the present circumstances suggests that any lesser protective measures would adequately address the objectively justifiable risk to the security and well-being of P-0892 and her family [REDACTED].

(v) Conclusion

16. In these circumstances, the Legal Representative respectfully requests the Chamber to grant the in-court protective and special measures with respect to both P-0892 and P-0912 as sought in the Prosecution Request.

IV. CONFIDENTIALITY

17. Pursuant to regulations 23*bis*(1) and (2) of the Regulations of the Court, the present submissions are classified as "confidential" as they refer to confidential witness information and documents with the same classification.

¹⁴ See the 4 November 2015 Response, *supra* note 8, paras 39-43.

FOR THE FOREGOING REASONS the Legal Representative respectfully requests the Chamber to grant the Prosecution Request in its entirety.

A handwritten signature in black ink, appearing to read 'D. Suprun', with a long vertical stroke extending downwards.

Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 28th Day of April 2016
At The Hague, The Netherlands