

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 6 May 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 Confidential Redacted Response of the Common Legal Representative of the Victims of the Attacks to the Prosecution's Twelfth request for in-court protective measures and Request pursuant to article 68(2) of the Rome Statute and rule 88(1) of the Rules of Procedure and Evidence

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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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his response to the “Prosecution’s Twelfth request for in-court protective measures” (the “Prosecution Request” or “Request”),¹ whereby it *inter alia* seeks the protective measures of facial and voice distortion as well as the use of pseudonym to be ordered in respect of P-0887’s upcoming *viva voce* testimony before the Trial Chamber VI (the “Chamber”).²

2. As the Legal Representative represents dual status witness P-0887 in her capacity as participating victim [REDACTED] in the present proceedings, he respectfully presents these submissions in response to the Prosecution Request, as the personal interests of his client are directly concerned. The Legal Representative fully supports the Prosecution Request with respect to both P-0887 [REDACTED] P-0907 [REDACTED], and requests that the Chamber grant the Prosecution Request in its entirety.

3. In addition, and pursuant to article 68(2) of the Rome Statute and rule 88(1) of the Rules of Procedure and Evidence (the “Rules”), the Legal Representative respectfully requests that the Chamber reserve the possibility to grant additional special measures under article 68(2) of the Rome Statute and rule 88 of the Rules, namely that the [REDACTED], if it becomes apparent during her testimony that [REDACTED] will have a negative impact on her psychological well-being. Likewise, and on the same basis, the Legal Representative requests that the Chamber order [REDACTED] support assistant to remain on stand-by during the testimony of Witness P-0887 in the event that it becomes necessary for P-0887 to benefit from the in-court assistance of a qualified psychological support assistant during the evidence she is expected to give [REDACTED].

¹ See the “Prosecution’s Twelfth request for in-court protective measures”, No. ICC-01/04-02/06-1224-Conf-Exp, 22 March 2016 (the “Request”).

² *Idem*, paras. 1 and 24.

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, according to which P-0887 is the seventh witness to be called.³

5. On 22 March 2016, the Prosecution filed the Request.

III. SUBMISSIONS

(i) In-court protective measures of face and voice distortion as well as pseudonym

6. The Legal Representative fully supports the Prosecution Request in relation to Witness P-0887. Furthermore, although P-0907 is not a participating victim in the present proceedings, the Legal Representative respectfully submits that granting the Prosecution Request [REDACTED] P-0907 [REDACTED] P-0887, [REDACTED]. As P-0887 and P-0907 [REDACTED], and [REDACTED] it is vital that it does not become known to the public that either one [REDACTED] is testifying against the Accused in this case in order to guarantee their and their family's safety and physical and psychological well-being.

7. The Prosecution's submissions [REDACTED]. In this regard, the Legal Representative recalls his previous submissions [REDACTED].⁴ This included [REDACTED].⁵ In these circumstances, it is submitted that there can be no doubt as to the existence and seriousness of the threat to P-0887's and P-0907's safety and security as well as their physical and psychological well-being. The probability of post-testimony interference is particularly high in this case.

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.

⁴ See [REDACTED].

⁵ *Idem.*

8. Moreover, P-0887's and P-0907's [REDACTED] is at a particularly heightened risk of being harmed or otherwise interfered with, [REDACTED]. Granting both P-0887 and P-0907 face and voice distortion in conjunction with the use of pseudonym will thus be the most appropriate, adequate, and least intrusive measure to effectively shield their identity from the public during their upcoming testimony and thus protect the safety, security, and well-being of their [REDACTED].

9. Where an objectively justifiable risk has been identified, the witness's security and well-being warrants the protection of his or her identity.⁶ 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-0887 and P-0907 and [REDACTED] family. No lesser measures are feasible in the circumstances.

10. Furthermore, the requested in-court protective measures do not in any way prejudice the rights of the Accused. These protective measures will enable the witnesses to give parts of their testimony in open session. The Defence is aware of their identities and, moreover, the Defence will be able to see and hear the witnesses in court without distortion.⁷ The publicity of the proceedings is not unduly affected by their remaining anonymous *vis-à-vis* the public.

(ii) In-court special measures of in camera evidence for P-0887

11. The Legal Representative, pursuant to article 68(2) of the Rome Statute and rule 88(1) of the Rules, requests that the Chamber reserve the possibility to grant additional special in-court measures for P-0887 should it become necessary in the circumstances of her testimony before the Chamber.

⁶ See the "Confidential redacted version of 'Decision on Prosecution's request for in-court protective measures for Witness P-0859'" (Trial Chamber VI), No. ICC-01/04-02/06-1004-Conf-Red, 13 November 2015, para. 6. See also the "Decision on Prosecution's request for in-court protective measures for Witness P-0790" (Trial Chamber VI), No. ICC-01/04-02/06-1083-Conf, 15 January 2016, para. 10.

⁷ *Idem*.

12. Article 68(2) of the Rome Statute sets out that, “[a]s an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims, witnesses or an accused, conduct any part of the proceedings in camera [...]”.
[REDACTED]

13. While the Legal Representative appreciates that, if the Chamber is minded to grant the Prosecution Request, the witness’s identity is effectively protected from the public, and therefore, [REDACTED], the Legal Representative submits that the requested additional special measures may still be necessary. The protective measures requested by the Prosecution address the matter of identification and, in the context of P-0887’s [REDACTED]. Nevertheless, it must be recalled that measures envisaged under article 68(2) of the Rome Statute primarily address the other interests the Chamber is under the obligation to safeguard under the Rome Statute, namely the well-being, dignity, and physical and mental integrity of a victim, witness or the accused, as the case may be. It is significant that article 68(2) of the Rome Statute [REDACTED]. It is further significant that ordering [REDACTED] is a statutory exception to the publicity of the proceedings as such.

14. In light of the above, the Legal Representative respectfully requests that the Chamber, after having received the relevant VWS assessment, and after having observed the demeanour of the witness and/or directly consulted with the witness in court, order the special measure [REDACTED], if it is satisfied that doing so is necessary in order to ensure the psychological well-being of the witness.

15. Moreover, the Legal Representative respectfully requests that the Chamber order a qualified [REDACTED] support assistant to remain on stand-by during the testimony of P-0887 so as to ensure that she be provided with the relevant psychological support during the evidence [REDACTED], should this become necessary.

16. In this regard, the Legal Representative would like to inform the Chamber that [REDACTED]. It is therefore respectfully submitted that enhanced psychological support to P-0887 might indeed be needed before, during, and after the witness's testimony before the Chamber.

IV. CONFIDENTIALITY

17. Pursuant to regulations 23*bis*(1) and (2) of the Regulations of the Court, the present submissions are classified as "confidential – *Ex Parte* – available to the Prosecution, VWS, and CLR2 only" as they refer to the sensitive information regarding the Prosecution witnesses [REDACTED]. A confidential redacted version of the present submissions will be filed at the same time.

FOR THE FOREGOING REASONS the Legal Representative respectfully requests that the Chamber

GRANT the Prosecution Request in its entirety;

ORDER that a VWS [REDACTED] support assistant remain on stand-by during the testimony of P-0887 to provide in-court psychological assistance if required;

ASSESS the necessity of ordering P-0887's [REDACTED]; and

REMAIN SEIZED of the Legal Representative's request [REDACTED] pursuant to article 68(2) of the Rome Statute.

A handwritten signature in black ink, appearing to read 'D. 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 6th Day of May 2016

At The Hague, The Netherlands