

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 June 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 "Response of the Common Legal Representative of Victims of the Attacks to the 'Prosecution's fourteenth request for in-court protective measures'"

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 Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

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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 fourteenth request for in-court protective measures”,¹ whereby the Prosecution seeks the in-court protective measures of face and voice distortion and the use of pseudonym for dual-status witness P-0894.² Witness P-0894 has been granted the status of participating victim [REDACTED] as a victim of the attacks in the proceedings.³ The Legal Representative therefore respectfully submits the present submissions as the matter directly pertains to Witness P-0894’s safety, security and psychological well-being.

2. The Legal Representative fully supports the Prosecution Request for the reasons set out below, and respectfully requests Trial Chamber VI (the “Chamber”) grant the Request in its entirety.

II. PROCEDURAL BACKGROUND

3. On 10 May 2016, the Prosecution filed its second updated Forthcoming Witness List for the fifth evidentiary block, according to which P-0894 is to appear before the Chamber as the third witness of that evidentiary block.⁴

4. On 19 May 2016, the Prosecution filed its Request.

¹ See the “Prosecution’s fourteenth request for in-court protective measures”, No. ICC-01/04-02/06-1323-Conf-Exp, 19 May 2016 (the “Request” or “Prosecution Request”). A confidential redacted version of the Request was filed on the same day. A public redacted version of the Request was filed on 27 May 2016.

² *Idem*, paras. 1, 5 and 22.

³ See the “Second decision on victims’ participation in trial proceedings” (Trial Chamber VI), No. ICC-01/04-02/06-650-AnxA, 16 June 2015, p. 2.

⁴ See Email communication from the Prosecution to the Chamber, Defence, and Participants dated 10 May 2016 at 17:59.

5. On 26 May 2016, the Chamber shortened the deadline for responses to the Prosecution Request to 16:00 on 9 June 2016.⁵

III. SUBMISSIONS

6. The Legal Representative supports the Prosecution Request in its entirety. Witness P-0894's expected testimony is [REDACTED].⁶ The Witness is therefore at a [REDACTED] risk of retaliation from the latter's supporters, should his identity be made public in connection with his testimony before the Chamber.

7. During a recent field mission, Field Counsel met with P-0894 to, *inter alia*, discuss his security situation and that of his family. P-0894 reiterated his fears about testifying publicly, which have already been brought to the Chamber's attention by the Prosecution in its Request.⁷ Out of fear of reprisals he has temporarily relocated to [REDACTED]. However, some of his children continue to reside in [REDACTED], [REDACTED].

8. In addition to the concerns relating to demobilised UPC/FPLC soldiers and other supporters of the Accused outlined in the Prosecution Request, the Legal Representative wishes to draw the attention of the Chamber to the fact that [REDACTED] [REDACTED]. His fears that, should it become known that he testifies against the Accused, his family still residing in [REDACTED] could become the target [REDACTED] of reprisals from supporters of the Accused [REDACTED]. [REDACTED] [REDACTED] [REDACTED].⁸

⁵ See the Email correspondence from the Chamber to the parties and participants, dated 26 May 2016 at 18:17.

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

⁷ *Idem*, para. 8.

⁸ *Ibid.*, paras 8-9.

9. Moreover, P-0894 [REDACTED] [REDACTED], he did not feel safe in that location, given the relative proximity to [REDACTED] in which the Accused still counted many supporters.

10. In light of the prevailing instable security situation [REDACTED] [REDACTED], where some of P-0894's children continue to reside, the Legal Representative avers that an objectively justifiable risk to their physical safety and psychological well-being exists. Despite being geographically removed from [REDACTED], P-0894 is himself still at risk of interference and/or psychological harm, not least arising from the vulnerable position of his family members still residing in [REDACTED].

11. In these circumstances, the Legal Representative respectfully requests that the Chamber implement the necessary measures to shield P-0894's identity from the public, namely face and voice distortion in conjunction with the use of pseudonym.

12. Finally, the Legal Representative submits that the in-court protective measures requested do not unfairly prejudice the Accused. The witness's name and particulars are known to the Defence and the Defence will be able to question the witness while seeing and hearing him in person in the courtroom. Disguising P-0894's identity *vis-à-vis* the public, who will be able to hear most of his evidence, does therefore not unduly infringe upon the right of the Accused to a public trial. Given the objectively justifiable risk faced by P-0894 and his family, the in-court protective measures of face and voice distortion as well as the use of a pseudonym are the least intrusive measures available to protect the safety and security of the persons concerned.

IV. CONFIDENTIALITY

13. 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 sensitive witness information. 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.

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 27th Day of June 2016

At The Hague, The Netherlands