

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 4 July 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 Former Child Soldiers to the 'Prosecution's sixteenth request for in-court protective measures'", No. ICC-01/04-02/06-1344-Conf-Exp

Source: Office of Public Counsel for Victims (CLR1)

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

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Ms Nicole Samson

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. The Common legal representative of the former child soldiers (the “Legal Representative”) hereby submits her response to the “Prosecution’s sixteenth request for in-court protective measures” (the “Request”),¹ whereby it requested the Chamber to grant in-court protective measures for Prosecution Witness P-0877 in the form of facial distortion, voice distortion and the use of a pseudonym during his testimony.

2. The Legal Representative represents witness P-0877 in the latter’s capacity as the person acting on behalf of his nephew, who was admitted to participate in the proceedings as victim [REDACTED].² Therefore she submits the present response to the Request as the personal interests of her client are directly concerned. The Legal Representative fully supports the Request and respectfully requests the Chamber to grant said request in its entirety.

II. SUBMISSIONS

3. On [REDACTED] 2016, the Legal Representative met with P-0877. During this meeting, P-0877 clarified that because of [REDACTED], he is [REDACTED] and in the surroundings. P-0877 explained that he fears reprisals if it becomes known that he is testifying against Bosco Ntanganda. Indeed, the [REDACTED].³ In addition, P-0877 also indicated that the general security situation [REDACTED] remains inherently unstable and volatile; phenomenon which did not improved, in the least, since the start of the present trial.

¹ See the “Prosecution’s sixteenth request for in-court protective measures”, No. ICC-01/04-02/06-Conf-Exp, 27 May 2016 (dated 26 May 2016) (the “Request”).

² See the “Third decision on victims’ participation in trial Proceedings”, No. 01/04-02/06-696, 2 July 2015.

³ See also the Request, *supra* note 1, para. 8.

4. The general security situation [REDACTED] is confirmed by all the victims the Legal Representative recently met in [REDACTED].⁴ Moreover, the Legal Representative recalls that the Chamber found there were reasonable grounds to believe that the accused and his associates have attempted to interfere with Prosecution witnesses.⁵

5. In such a context, the Legal Representative submits that the fact P-0877 did not report any concrete threats and/or intimidation,⁶ does not mean that protective measures are not necessary to adequately protect his security, safety and physical and psychological well-being on account of his testimony before the Court. In this regard, the Legal representative recalls that the Chamber previously found that the prevailing security situation in the territory where a witness resides may be one of the relevant factors to be taken into account when deciding on whether in-court protective measures should be granted to a witness.⁷

6. Moreover, the Chamber found that, in such a context, where an objectively justifiable risk has been identified, it is necessary to shield the witness's identity from the public.⁸ 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 ensure the safety, physical and psychological well-being of P-0877 and that of his family.

⁴ *Idem*, para. 10.

⁵ See the "Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts", No. ICC-01/04-02/06-785-Red, 18 August 2015, para. 55.

⁶ See also the Request, *supra* note 1, para. 12.

⁷ See the "Confidential redacted version of 'Decision on Prosecution's request for in-court protective measures for Witness P-0859'", No. ICC-01/04-02/06-1004-Conf-Red, 13 November 2015, para. 5. See also "Decision on Prosecution's request for in-court protective measures for Witness P-0790", No. ICC-01/04-02/06-1083-Conf, 15 January 2016, para. 8 and the "Public redacted version of Decision on request for in-court protective measures relating to the first Prosecution witness", No. ICC-01/04-02/06-824-Red, 15 September 2015, para. 14.

⁸ See the "Decision on Prosecution's request for in-court protective measures for Witness P-0790", *supra* note 8, para. 10. See also the Confidential redacted version of 'Decision on Prosecution's request for in-court protective measures for Witness P-0859', *supra* note 8, para. 6.

7. 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 part of his testimony in open session. His identity has been disclosed to the Defence and the Defence will be able to see and hear the witness without distortion.⁹ Moreover, the publicity of the proceedings is not unduly affected by him remaining anonymous *vis-à-vis* the public.

III. CONFIDENTIALITY

8. Pursuant to regulations 23bis(1) and (2) of the Regulations of the Court, the present submissions are classified as “confidential *ex parte*, only available to the Legal Representative of Former Child Soldiers, the Prosecution and the Victims and Witnesses Section” as they constitute a response to a request bearing the same classification.

FOR THE FOREGOING REASONS the Legal Representative respectfully requests the Chamber to grant the Prosecution’s sixteenth request for in-court protective measures in its entirety.



Sarah Pellet
Common Legal Representative of the former
Child soldiers

Dated this 4th Day of July 2016

At The Hague, The Netherlands

⁹ See “Decision on Prosecution’s request for in-court protective measures for Witness P-0790”, *supra* note 8, para 10.