

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 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 the Response of the Legal Representative of the Victims of the Attacks to the “Prosecution’s nineteenth request for in-court protective and special measures”

Source: Office of Public Counsel for Victims

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Mohamed Abdou

Legal Representatives of the Applicants

Mr Dmytro Suprun
Ms Anne Grabowski

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby submits his response to the “Prosecution’s nineteenth request for in-court protective and special measures” (the “Request” or “Prosecution Request”) filed on 10 June 2016.¹ As the Prosecution Request directly relates to the personal interests of his client [REDACTED] who is dual-status witness P-0113, the Legal Representative respectfully requests that the Prosecution Request be granted in its entirety in that Trial Chamber VI (the “Chamber”) order the in-court protective and special measures outlined in the Request.

2. The in-court protective measures of face and voice distortion and pseudonym, as well as the special measures of in-court support assistance, regular breaks, shorter sessions, [REDACTED] are both necessary and appropriate in the case of Witness P-0113 and do not unfairly prejudice the rights of the Accused. The Legal Representative therefore fully supports the Prosecution Request for the above-listed protective and special measures.²

II. PROCEDURAL BACKGROUND

3. On 20 October 2015, the Legal Representative, jointly with the Common Legal Representative for the former child soldiers, filed a response³ to the [REDACTED].

4. On 10 May 2016, the Prosecution filed its second updated Forthcoming Witness List for the fifth evidentiary block.⁴

¹ See the “Prosecution’s nineteenth request for in-court protective and special measures”, No. ICC-01/04-02/06-1385-Conf-Exp, 10 June 2016 (the “Prosecution Request”). A confidential redacted version of the Request was filed on the same day.

² *Idem*, paras 1-2.

³ See the [REDACTED].

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

5. On 27 May 2016, the Chamber issued its Supplemental decision on matters related to the conduct of the proceedings whereby it “[set] a standard deadline for responses to all future requests for in-court protective measures, and direct[ed] that any such responses are to be filed within seven days of notification of the request, unless otherwise ordered.”⁵

6. On 9 June 2016, the Prosecution communicated further scheduling arrangements regarding the order of appearance of its witnesses in the fifth evidentiary block. According to this updated list, P-0113 is expected to give evidence as the twelfth witness in this evidentiary block.⁶

7. On 10 June 2016, the Prosecution filed its Request.

III. SUBMISSIONS

(i) *The requested in-court protective measures are necessary to protect Witness P-0113*

8. The Legal Representative entirely supports the Prosecution Request for the in-court protective measures of face and voice distortion in conjunction with the use of a pseudonym during P-0113’s upcoming *viva voce* testimony before the Chamber.

9. P-0113 is a particularly vulnerable witness who is still residing in [REDACTED] as outlined by the Prosecution in its Request.⁷ The Legal Representative submits that P-0113’s cooperation with the Court puts the witness at risk of being interfered with, threatened or intimidated. [REDACTED].

⁵ See the “Supplemental decision on matters related to the conduct of the proceedings” (Trial Chamber VI), No. ICC-01/04-02/06-1342, 27 May 2016, para. 14. Emphasis omitted.

⁶ See Email communication from the Prosecution to the Chamber, Defence, and Participants dated 9 June 2016 at 9:47.

⁷ See the Prosecution Request, *supra* note 1, para. 10.

10. As outlined in detail in the Prosecution Request, P-0113 has [REDACTED].⁸

11. [REDACTED].⁹

12. The [REDACTED] significant impact on P-0113 well-being. During various conversations with the witness either by the Legal Representative or Field Counsel, it became clear that [REDACTED].

13. P-0113 reiterated her concerns to the Legal Representative when they met in the field [REDACTED]. The witness [REDACTED]. Said information was provided to the Prosecution on [REDACTED].¹⁰

14. Following [REDACTED] brought to the attention of the Office of the Prosecutor and outlined in detail the Prosecution Request,¹¹ [REDACTED], both the Legal Representative as well as Field Counsel spoke to P-0113, who appeared to be in a very fragile and distressed state and [REDACTED]. Subsequent to this conversation, P-0113 [REDACTED]. Said information was provided to the Prosecution on [REDACTED].¹²

15. [REDACTED], the Legal Representative and Field Counsel again spoke to P-0113 who informed them that [REDACTED]. This information was provided to the Prosecution orally on [REDACTED]. Given – as outlined by the Prosecution – [REDACTED],¹³ P-0113 concerns should be taken seriously.

16. The above [REDACTED], at the very least, show that P-0113's [REDACTED]. Should it therefore become known that P-0113 appears as a witness for the Prosecution in this case, the witness and her family are at a real and justifiable risk to their physical safety and psychological well-being.

⁸ *Idem*, paras 13, 15-18.

⁹ See the [REDACTED], *supra* note 3, paras. 7 and 20.

¹⁰ See email sent by the Legal Representative to the Prosecution on [REDACTED].

¹¹ See the Prosecution Request, *supra* note 1, paras 13, 15-18.

¹² See email sent by the Legal Representative to the Prosecution on [REDACTED].

¹³ See the Prosecution Request, *supra* note 1, para. 10.

17. Where an objectively justifiable risk has been identified, the witness's security and well-being warrants the protection of his or her identity.¹⁴ Accordingly, the in-court protective measures of face and voice distortion in conjunction with the use of a pseudonym are necessary, adequate, and the least intrusive measures available to protect the safety, physical and psychological well-being of P-0113 and that of her family. No lesser measures are feasible in the circumstances.

18. 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 large parts of her testimony in open session. The Defence is aware of her identity and, will be able to see and hear the witness in court without distortion.¹⁵ The publicity of the proceedings is not unduly affected by her remaining anonymous *vis-à-vis* the public.

(ii) The requested special measures are necessary to protect the physical and psychological well-being of the Witness

19. The Legal Representative submits that the requested special measures in relation to P-0113's upcoming testimony are necessary and appropriate to ensure her physical and psychological well-being.

20. Given her generally vulnerable psychological state, these measures are all the more necessary in order to avoid putting her in a situation where the recall of painful memories is aggravated by the already stressful situation of providing *viva voce* testimony. The Legal Representative therefore submits that [REDACTED], will minimise the psychological impact on the witness.

¹⁴ 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.

¹⁵ *Idem*.

21. Furthermore, as previously argued before this Chamber,¹⁶ special measures to protect the psychological well-being of victims [REDACTED]. It is submitted that, particularly in the case of this vulnerable witness who is already suffering from [REDACTED] arising out of the events in question, hearing P-0113's evidence about the [REDACTED] private session is necessary and adequate to ensure her physical and psychological well-being.

IV. CONFIDENTIALITY

22. Pursuant to regulations 23bis(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. A public redacted version will be filed in due course.

¹⁶ See 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", No. ICC-01/04-02/06-1262-Conf-Red, 12 April 2016, para. 13.

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 13th Day of July 2016

At The Hague, The Netherlands