

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 23 September 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 “Confidential redacted version of ‘Corrected version of ‘Prosecution’s request for in-court protective measures for Prosecution witnesses testifying in the 6th evidentiary block’”, 17 August 2016, ICC-01/04-02/06-1475-Conf-Exp”, 2 September 2016

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 request for protective measures for Prosecution witnesses testifying in the sixth evidentiary block, filed on 19 August 2016 (the “Request” or “Prosecution Request”).¹ As the Prosecution Request directly relates to the personal interests of his client [REDACTED] who is dual-status witness P-0100, the Legal Representative respectfully requests that Trial Chamber VI (the “Chamber”) grant the Request for the in-court protective measures of face and voice distortion as well as the protective measure of the use of pseudonym for the duration of the trial in relation to witness P-0100.²

2. The in-court protective measures of face and voice distortion as well as the protective measure of the use of a pseudonym for the duration of the trial are both necessary and appropriate in the case of Witness P-0100 and do not unfairly prejudice the rights of the Accused. The Legal Representative therefore fully supports the Prosecution Request in this regard.

II. PROCEDURAL BACKGROUND

3. 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

¹ See the “Confidential redacted version of ‘Corrected version of ‘Prosecution’s request for in-court protective measures for Prosecution witnesses testifying in the 6th evidentiary block’”, 17 August 2016, ICC-01/04-02/06-1475-Conf-Exp”, No. ICC-01/04-02/06-1475-Conf-Corr-Red, 19 August 2016 (the “Prosecution Request”).

² *Idem*, paras. 1 and 39.

responses are to be filed within seven days of notification of the request, unless otherwise ordered.”³

4. On 5 August 2016, the Prosecution filed its Forthcoming Witness List for the sixth evidentiary block.⁴

5. On 19 August 2016, the Prosecution communicated further scheduling arrangements regarding the order of appearance of its witnesses in the sixth evidentiary block.⁵ According to this updated list, witness P-0100 is expected to give evidence as the fifth witness in this evidentiary block.⁶

6. On the same day, the Prosecution filed its Request.

7. On 25 August 2016, the Defence submitted a request for an extension of time limit to 2 September 2016 pursuant to regulation 35 of the Regulations of the Court.⁷

8. On 26 August 2016, the Chamber granted the requested extension of time limit.⁸

9. On 29 August 2016, the Prosecution communicated further updates to the list of witnesses for the sixth evidentiary block.⁹ According to this updated list, P-0100 is still expected to testify as the fifth witness in the block.¹⁰

³ 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.

⁴ See Email communication from the Prosecution to the Chamber, Defence, and Participants dated 5 August 2016 at 17:21.

⁵ See Email communication from the Prosecution to the Chamber, Defence, and Participants dated 19 August 2016 at 17:40.

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

⁷ See Email communication from the Defence to the Chamber, Prosecution, and Participants dated 25 August 2016 at 17:57.

⁸ See Email communication from the Chamber to the Parties and Participants dated 26 August 2016 at 11:16.

⁹ See Email communication from the Prosecution to the Chamber, Defence, and Participants dated 29 August 2016 at 12:04 and 12:11.

¹⁰ *Idem*.

III. SUBMISSIONS

(i) *The requested in-court protective measures are necessary to protect Witness P-0100*

10. 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-0100's upcoming *viva voce* testimony before the Chamber.

11. P-0100 is still residing in an area where former UPC/FPLC members and other supporters of the Accused wield influence as outlined by the Prosecution in its Request.¹¹ The Legal Representative submits that P-0100's cooperation with the Court puts the witness and his family at risk of being interfered with, threatened, intimidated and/or stigmatised.

12. Should it therefore become known that P-0100 appears as a witness for the Prosecution in this case, the witness and his family are at a real and justifiable risk to their physical safety and psychological well-being.

13. 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 a pseudonym are necessary, adequate, and the least intrusive measures available to protect the safety, physical and psychological well-being of P-0100 and that of his family. No lesser measures are adequate in the circumstances.

14. Furthermore, the requested protective measures do not in any way prejudice the rights of the Accused. Rather, they will enable the witness to give most of his

¹¹ See the Prosecution Request, *supra* note 1, para. 8.

¹² 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.

testimony in open session. The Defence is aware of his identity and will be able to see and hear the witness in court without distortion.¹³ The publicity of the proceedings is not unduly affected by his remaining anonymous *vis-à-vis* the public.

IV. CONFIDENTIALITY

15. 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 submissions filed with the same classification.

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

GRANT the Prosecution Request in relation to the protective measures sought for dual-status witness P-0100.



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 23rd Day of September 2016

At The Hague, The Netherlands

¹³ *Idem.*