

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 17 September 2019

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 “Prosecution’s request to submit additional evidence on sentencing”, 29 July 2019, ICC-01/04-02/06-2368-Conf

Source: Office of the Prosecutor

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 Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Introduction

1. The Prosecution requests the submission of additional evidence for sentence, further to article 76(2) of the Rome Statute and Trial Chamber VI's order on the sentencing procedure.
2. The additional evidence is limited to: (i) one *viva voce* expert witness; and (ii) four statements for admission under rule 68(2)(b) ("Sentencing Request"). The Prosecution requests that the expert witness testify at the seat of the Court.

Confidentiality

3. The filing is classified as Confidential pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, because it contains confidential information regarding prospective witnesses who are the subject of requests for protective measures. Revealing the information in public at this time will undermine the request for protection. The Prosecution will file a public redacted version of this application.

Procedural Background

4. On 8 July 2019, Trial Chamber VI (the "Chamber") convicted Bosco Ntaganda of 18 counts of war crimes and crimes against humanity.¹
5. On the same day, the Chamber issued an order on the sentencing procedure.² The Parties and Legal Representatives of Victims ("LRVs") shall file any requests to submit further evidence or to call witnesses by 29 July 2019. The requests are to provide the details of any documentary evidence intended to be submitted, the identities of any witnesses sought to be called, an estimated length of

¹ ICC-01/04-02/06-2359.

² ICC-01/04-02/06-2360.

examination, a summary of anticipated testimony and any requests for protective measures, video-link testimony and/or admission of prior recorded testimony.

6. The Chamber “encourages the parties and LRVs to consider whether any witness evidence can be most efficiently presented as prior recorded testimony without the witness being present before the Chamber, pursuant to rule 68(2) of the Rules”.³

Prosecution Submissions

7. The Prosecution proposes to call one witness and to admit the statements of four additional witnesses under rule 68(2)(b) to provide evidence relevant to sentencing. Their evidence will address the gravity of the crimes, the extent of the damage caused, the overall harm to victims, their families and their communities, and any long-term or intergenerational effects of these crimes.
8. The Prosecution provides the identity of the proposed witnesses sought to be called, an estimated length of examination in chief, a summary of anticipated testimony, a request for protective measures and for admission of prior recorded testimony under rule 68(2)(b).

(i) Expert witness [REDACTED]

9. The Prosecution requests that [REDACTED] testify as an expert witness. [REDACTED] is a [REDACTED], an [REDACTED]. [REDACTED]. [REDACTED]. In addition to [REDACTED]. [REDACTED].
10. [REDACTED] is expected to testify about the [REDACTED] consequences of sexual violence on victims in eastern DRC, including the physical, psychological, emotional and social impact of these crimes on individual victims, their families,

³ ICC-01/04-02/06-2360, para. 1(iv).

and the affected communities (Counts 4, 5, 8, 9). [REDACTED] will also testify on long-term harm and broader sociological consequences such as intergenerational trauma. [REDACTED] evidence is unique and was not covered by any one witness. [REDACTED].

11. Trial Chamber III in *Bemba* permitted expert evidence during the sentencing phase on the long-term and intergenerational impact of crimes such as mass rape and sexual violence on the mental health of victims, their families and the affected population.⁴ The Chamber held that the expert's evidence was relevant and may be of assistance in determining the appropriate sentence.⁵
12. The Prosecution requests two hours to examine [REDACTED]. The Prosecution's request for protective measures is set out below.

(ii) [REDACTED]

13. [REDACTED] is the [REDACTED] of [REDACTED]. In 2002, [REDACTED] was [REDACTED].
14. [REDACTED] will testify about [REDACTED], and on [REDACTED] (counts 1-2 and 10). [REDACTED] will also address the short and long-term impact of the crimes for which Bosco Ntaganda was convicted on the civilian population in Ituri (counts 3-5, 11, 12-13, 17, 18).
15. While Prosecution witnesses testified about [REDACTED], no witness testified to the impact of [REDACTED].
16. The Prosecution requests admission of [REDACTED] statement via rule 68(2)(b). The Prosecution's request for protective measures is set out below.

⁴ ICC-01/05-01/08-3384.

⁵ ICC-01/05-01/08-3384, para. 12.

(iii) Ms Mirella PAPINUTTO

17. Ms Mirella Papinutto was Project Manager for the Italian NGO COOPI (*Cooperazione Internazionale*) in Bunia from 2003 to 2006. She worked specifically with children associated with armed groups in a Transit and Orientation Centre (“CTO” - *Centre de transit et d’Orientation*), one of the demobilisation programs at the time. Ms Papinutto is expected to provide evidence primarily on the impact of the UPC crimes of rape, sexual slavery, enlistment, conscription, and use of children under the age of 15 to participate actively in hostilities (counts 4, 9, 14-16) on the direct victims, their families and communities in Ituri at the relevant time. Several witnesses testified about COOPI’s central role in assisting victims during the conflict.⁶
18. Ms Papinutto’s evidence goes well beyond the account of harm from individual witnesses, as she worked extensively with victims of sexual violence within the UPC/FPLC, including children under the age of 15.
19. The Prosecution requests admission of her statement via rule 68(2)(b).

(iv) [REDACTED]

20. [REDACTED] is [REDACTED] and [REDACTED] based in [REDACTED]. [REDACTED] assisted demobilised soldiers during the period relevant to the charges and afterwards, including children who were under 15 when they were members of the armed group (Counts 4, 9, 14-16).
21. [REDACTED] is expected to provide a unique perspective [REDACTED] on the short to long term effects of the crimes. [REDACTED] worked directly with victims of the conflict over many years.

⁶ See i.e.: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

22. The Prosecution requests admission of [REDACTED] statement via rule 68(2)(b).

(v) [REDACTED]

23. [REDACTED] was the [REDACTED], first based in [REDACTED] and then based [REDACTED]. [REDACTED]. Through [REDACTED], [REDACTED] obtained extensive and unique knowledge on the short and long-term impact of the crimes for which Mr Bosco Ntaganda has been convicted on the victims and their communities.

24. The Prosecution requests admission of [REDACTED] statement via rule 68(2)(b).

25. The Prosecution has [REDACTED] statement for sentencing.

The proposed evidence is relevant to determine the appropriate sentence

26. The additional evidence is significant in demonstrating the gravity of the crimes and the extent of damage caused, in particular the harm caused to the victims and their families and community. These are relevant considerations in determining the appropriate sentence pursuant to article 78 of the Statute and rule 145 of the Rules.

27. The request to submit additional evidence is limited in scope and goes beyond the other evidence on record.

28. During the trial, the Prosecution elicited evidence on the impact of Bosco Ntaganda's crimes from individual Prosecution witnesses. However, none of these witnesses provided evidence on: (i) the [REDACTED], psychological and social effects of sexual violence and other crimes on victims, families, and society; (ii) the broad scope of harm impacting sexual violence victims, in particular the long-term and intergenerational consequences of such victimisation on individual victims, their families, and the affected population – both for civilian

victims and victims who were children within Bosco Ntaganda's military group; (iii) the impact of the death of Abbé Bwanalunga [REDACTED] throughout the population of Mongbwalu and Ituri; and (iv) the extensive short and long-term impact of the crimes, collectively, on the affected communities.

29. When Prosecution witnesses testified about the impact of the UPC's crimes, they mainly focused on the current effects of the crimes to individuals as opposed to future or long-term effects to the victims, their family and the wider community.⁷ For example, Prosecution experts Dr Maeve Lewis and Dr John Yuille testified about Post Traumatic Stress Disorder (PTSD) in a general sense,⁸ but not from the perspective of [REDACTED] related to the transmission of intergenerational trauma. Dr Yuille also testified about the effect of trauma on memory⁹ which was relevant for the Chamber's evaluation of trial witnesses, and made general references to the effect of lack of psychosocial support for victims.¹⁰ In contrast, the additional evidence from the proposed witnesses is limited and focused on issues that are solely relevant for sentencing.
30. Dr Lewis briefly referenced studies reporting certain negative consequences of rape,¹¹ but these studies are not admitted in evidence and the references to them are brief as Dr Lewis was setting out several reasons for individual cases of under-reporting or delayed reporting of rape, rather than focusing on the impact of sexual violence in all its forms, including inter-generational, on individuals, families and communities.

⁷ P-10: T-48, p.26, l. 13 to p.29, l.18; T-50, p.64, ll.1-11; P-113: T-118, p.64, l.22 to p.65, l.7, p.67, l.7 to p.70, l.3, P-18: T-111, p.32, l.9 to p.36, l.8; P-19: T-115, p.55, l.17 to p.56, l.12; T-116, p.10, l.10 to p.11, l.14.

⁸ P-938: T-114, p. 4, l.3 to p.5, l.21, p.13, l.13 to p.16, l.20 P-933: T-84, p.20, l.15 to p.21, l.15.

⁹ P-933, T-84, p.25 to p.38; T-87, pp.7-16; DRC-OTP-2085-0221.

¹⁰ P-933: T-87, p.23, l.12 to p.24, l.15.

¹¹ P-938: T-113, p.52, l.20 to p.57:2.

31. Witness P-0365 testified [REDACTED]. However, during her testimony, she stated that [REDACTED],¹² namely [REDACTED].
32. The proposed additional evidence in the Sentence Request will provide a more complete overview of the harm suffered as a result of Bosco Ntaganda's crimes.

Request to admit statements under rule 68(2)(b)

33. Noting the Chamber's request to consider whether any witness evidence can be more efficiently presented as prior recorded testimony without the witness being present before the Chamber, the Prosecution requests admission of four witness statements under rule 68(2)(b).
34. Trial Chamber VII in *Bemba et al.* held that it was not necessary for the parties to meet the procedural pre-requisites of rule 68 in order to submit post-conviction witness statements in writing for sentencing.¹³ Trial Chamber VII noted that chambers of other international tribunals likewise are required to consider 'any relevant information' in the determination of sentence, not limited to evidence.¹⁴
35. The Prosecution nonetheless makes the following observations on these four witness statements. The statements are relevant to confined issues in the case, related to sentence. They each deal with harm suffered by victims of the crimes in Ituri, their families and the broader community, including the rape and sexual slavery of both civilians and children under the age of 15 who were recruited by the UPC/FPLC, the murder and persecution of Abbé Bwanalanga, the attacks against the civilian population and other crimes for which Bosco Ntaganda was found criminally liable.

¹² P-365: T-148, p.6, lns.2-18.

¹³ ICC-01/05-01/13-2025, paras. 6-7.

¹⁴ ICC-01/05-01/13-2025, para. 7, fn.19.

36. The witness statements do not concern the acts and conduct of the Accused. They corroborate the testimony of individual victim witnesses who testified at trial without duplicating that testimony, since the proposed additional witness statements cover a broader range of victims and cover additional types of harm relevant to the impact of the crimes. They are suitable and appropriate for admission as victim impact statements during the sentencing phase of the proceedings. When dealing with mass criminality, it is important for the Chamber to hear from persons who dealt with a number of victims and who can provide a global, measured assessment of the overall harm caused by these crimes.
37. If necessary, the Prosecution will further develop the request when it submits the witness statements and associated declarations and certifications required under rule 68(2)(b).¹⁵ The Prosecution already submits that the documents bear sufficient indicia of reliability as they will be signed and given voluntarily; will be given under declaration of honour and conscience that the statements are accurate; and will be internally consistent and coherent.
38. The Defence will not be prejudiced by the proposed additional evidence. First, the Defence may seek to present its own evidence for sentence. Second, for the expert witness who will appear live, the Defence will have the opportunity to explore and test the witness's evidence in person. Third, the Defence will also have the opportunity to put forward its own written submissions related to the statements admitted under rule 68(2)(b) in its written observations due after the admission of this evidence.
39. Moreover, the Defence's inability to cross-examine witnesses whose prior recorded testimony is sought to be admitted is only a factor to be considered in

¹⁵ ICC-01/04-02/06-2360, fn.2.

the final determination of the weight to be given to that testimony. The right to cross-examine a witness is not an absolute right.¹⁶

Protective measures for [REDACTED], [REDACTED] and [REDACTED]

40. The Prosecution requests in-Court protective measures for [REDACTED] in the form of facial and voice distortion as well as the use of a pseudonym pursuant to articles 64(2) and 68(1) of the Statute and rule 87 of the Rules.¹⁷ While [REDACTED] is a [REDACTED], [REDACTED].
41. The Prosecution also requests that the statement of [REDACTED] and [REDACTED], which are to be submitted pursuant to rule 68(2)(b), remain anonymous in the public record of the case. Indeed, [REDACTED] and [REDACTED] presently reside in [REDACTED], where Bosco Ntaganda's supporters are still active, and revealing their identity to the public would put them at risk.
42. The Prosecution may seek the Chamber's authorisation, pursuant to regulation 35, to vary the deadline to request protective measures for [REDACTED], should this be necessary following consultations with [REDACTED].
43. Granting the requested protective measures will ensure that [REDACTED], [REDACTED] and [REDACTED] are able to give evidence without fear for their personal security, that of their family members, or that of [REDACTED], where Bosco Ntaganda's associates are present and active. It will also mitigate the need for more intrusive security-related measures post-testimony.

¹⁶ Article 67(1)(3); ICC-01-04-01/06-1399, para.36. *See also e.g. ICTY, Prosecutor v Aleksovski*, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, paras.15-16, 20-21; **ECHR: Ferrantelli and Santangelo v Italy**, Application No.48/1995/554/640; *Doorson v The Netherlands*, Application No.54/1994/501/583. **National systems:** *see e.g.* sections 116 and 117 (UK) Criminal Justice Act 2003; *R v Finta* (1992), 14 C.R. (4th) 1, 73 C.C.C (3d) 65 (Ont. C.A).

¹⁷ In addition, [REDACTED], the Prosecution will request closed session testimony at appropriate times to protect [REDACTED] identity from the public.

44. The measures sought appropriately balance Bosco Ntaganda's right to a public hearing under article 67(1) of the Statute, against the need to protect witnesses appearing before the Court, pursuant to articles 64(2), 68(1) and 68(2) of the Statute. The identity of the witnesses has been provided to the Defence, and the measures sought do not prejudice the rights of Bosco Ntaganda. The witnesses' identity will be protected from the public only.

[REDACTED], [REDACTED] and [REDACTED] reside and work within Bosco Ntaganda's geographic area of influence

45. [REDACTED], [REDACTED] and [REDACTED] all reside and work within the geographic area of influence of the Accused and in an area where former UPC/FPLC, CNDP and/or M23 members as well as associates loyal to Bosco Ntaganda are present. The requested protective measures are necessary to avoid revealing the witnesses' identity, bearing in mind the potential risk of retaliation from supporters of Bosco Ntaganda as elaborated upon further below.
46. [REDACTED] is [REDACTED], [REDACTED] who [REDACTED], and is therefore [REDACTED]. Whilst the Prosecution has yet to conduct an updated risk assessment of [REDACTED], including in consultation with VWU [REDACTED], the available information strongly supports the need for the requested measures. Indeed, [REDACTED] explained to the Prosecution that [REDACTED] has important concerns about [REDACTED] security, should [REDACTED] testify in the *Ntaganda* case, because Bosco Ntaganda has many connections in the area where [REDACTED] lives and works, [REDACTED]. [REDACTED] has been and continues to be [REDACTED]. As a result of [REDACTED], [REDACTED] has been [REDACTED] and, in [REDACTED], [REDACTED].¹⁸ [REDACTED] explained to the Prosecution that, because of [REDACTED] and the [REDACTED], [REDACTED] is reluctant to put

¹⁸ [REDACTED].

[REDACTED] risk of retaliation. [REDACTED] is presently [REDACTED], which is indicative of the level of risk [REDACTED] is exposed to.

47. [REDACTED] is a [REDACTED] who has been [REDACTED]. [REDACTED] presently resides in [REDACTED], [REDACTED] where Bosco Ntaganda's and the UPC/FPLC's supporters are still active. Moreover, as part of [REDACTED] activities [REDACTED], [REDACTED], putting [REDACTED] at further risk given the volatility of the security situation in Ituri. [REDACTED] explained to the Prosecution that [REDACTED], many of whom have had strong reactions against the conviction of Bosco Ntaganda. As a result, [REDACTED] is fearful that [REDACTED] could be targeted by UPC supporters if [REDACTED] collaboration with the Court is made public.
48. [REDACTED] is the [REDACTED] and the [REDACTED], which is based in [REDACTED]. [REDACTED] also resides [REDACTED] in the area of influence of the Accused. [REDACTED] family situation and dependents is not known at this stage but [REDACTED] has been asked not to reveal [REDACTED] contact with the Prosecution. The witness's position – easily identifiable and accessible - as a [REDACTED], where the situation is extremely volatile. Should [REDACTED] identity become known to the public, [REDACTED] would face risks for [REDACTED] own safety as well as that of [REDACTED] family. Moreover, [REDACTED] if it became known in Ituri that [REDACTED] testified in the *Ntaganda* case. [REDACTED] expressed fears for [REDACTED] security and requested protective measures. Cooperating with the Prosecution in the case against *Ntaganda* could trigger retaliation from [REDACTED] as well as stigmatization.
49. Armed groups are still active in post-conflict Ituri [REDACTED]; the ethnic groups who were engaged in the Ituri conflict reside in a fragile co-existence¹⁹

¹⁹ See generally, ICC-01/04-02/06-585-Conf-Anx.

and the region has recently seen a resurgence of the violent conflict between the Hema and the Lendu.²⁰ The First Registry Report on the security situation in the Democratic Republic of the Congo (“DRC”) indicates that the “influence of Bosco Ntaganda [is] still perceptible” and mentions victims’ “fear of retaliation from supporters of the accused.”²¹

50. Moreover, the security situation in the region, in general, remains unstable. [REDACTED] Ituri [REDACTED] remains in a precarious state of post-conflict security with armed groups still active.²²
51. As previously noted by this Chamber²³ and Trial Chamber V(A)²⁴ in relation to the granting of in-court protective measures, the security situation in the region may be a relevant factor when considered in relation to the circumstances of a specific witness. Trial Chamber V(A) went on to state that “evidence of prior direct threats to a witness, or his/her family, are not required in order to determine that they face an objectively justifiable risk sufficient to support the granting of protective measures.”²⁵
52. The Chamber concluded that there were reasonable grounds to believe that the Accused sought to disguise attempts to disclose confidential information or to

²⁰ See e.g. Letter dated 20 May 2018 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council, 4 June 2018 (S/2018/531), paras.158-164; UNHCR, “Massive displacement reported in north-eastern DRC amid new violence”, 18 June 2019 (<https://www.unhcr.org/news/briefing/2019/6/5d089ee54/massive-displacement-reported-north-eastern-drc-amid-new-violence.html>).

²¹ ICC-01/04-02/06-396-Conf-Anx1, p. 7.

²² For Ituri, see generally ICC-01/04-02/06-585-Conf. For South Kivu, see e.g. Letter dated 6 June 2019 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council, 7 June 2019 (S/2019/469), pp.15-17; MONUSCO, report to the Secretary-General, 17 July 2019 (S/2019/575), paras.26-27. The *ad hoc* international tribunals have recognised that the generally volatile situation in a post-conflict region and potential threats against witnesses living in the region can justify witnesses’ fears for their safety. See e.g. *Prosecutor v Rwamakuba*, Decision on the Defence Motion for Protective Measures, Case No. ICTR-98-44C-PT, T. Ch. III, 21 September 2005, para. 9; *Prosecutor v Furundzija*, Decision on Prosecutor’s Motion Requesting Protective Measures for Witnesses “A” and “D” at Trial, Case No. IT-95-17/1-T, T. Ch.II, 11 June 1998, paras. 7-8; *Prosecutor v Delalić et al.*, Decision on the Motion by the Prosecution for Protective Measures for the Witness Designated by the Pseudonym “N”, Case No. IT-96-21-T, T.Ch., 28 April 1997, paras. 7-9.

²³ ICC-01/04-02/06-824-Red, para.14; ICC-01/04-02/06-1004-Conf-Red, para.5.

²⁴ ICC-01/09-01/11-902-Red2, para.14.

²⁵ *Ibid.*

interfere with Prosecution witnesses, during the course of telephone conversations from the detention centre with third parties. The Chamber also held that the Accused, through an interlocutor, intended to engage in a serious form of witness interference when he spoke of “silencing” certain persons.²⁶

53. Revealing the identity of [REDACTED], [REDACTED] and [REDACTED] to the public would expose them to further threats and would put them and their families’ safety at risk. In-court protective measures and the anonymity of [REDACTED] and [REDACTED]’s statements in the public record are warranted in view of the objectively justifiable risk to these witnesses’ security and well-being.

[REDACTED], [REDACTED] and [REDACTED] are not in the ICCPP

54. Although the safety and security of these witnesses is being closely monitored and assessed, they are not in the Court’s Protection Programme (ICCPP). As previously noted by the Chamber, the risks to a witness’s security and that of their family may be greater if they are not in the ICCPP.²⁷
55. Implementing the requested protective measures during the testimony of [REDACTED], [REDACTED] and [REDACTED] will likely obviate the need for additional and more intrusive protective measures, such as referral to the ICCPP, to be applied upon the completion of their testimony.

The requested protective measures do not violate the Accused’s right to a public hearing

56. The protective measures sought appropriately balance Bosco Ntaganda’s right to a fair and public hearing under articles 64(2) and 67(1) of the Statute, against the

²⁶ ICC-01/04-02/06-785-Red, paras. 50-57.

²⁷ ICC-01/04-02/06-905-Conf, para.7.

need to protect victims and witnesses appearing before the Court, pursuant to articles 64(2) and 68(1) and (2) of the Statute.

57. The Chamber has previously found that protective measures of voice and face distortion together with the use of a pseudonym does not unfairly prejudice the rights of the Accused as he has been provided with the name and identifying information of these witnesses; [REDACTED], [REDACTED] and [REDACTED] will remain anonymous to the public only.²⁸
58. Article 68(2) of the Statute explicitly provides that granting measures to take into account a witness's views is an exception to the principle of public hearings. Further, the right to a public hearing is not absolute and subject to the protection of the private life of the parties or where publicity would prejudice the interests of justice.²⁹ Moreover, if the Chamber grants the witnesses' face and voice distortion in addition to the use of a pseudonym, the hearing will still be in public as any non-identifying testimony will be given in open session and publicly available.
59. The Prosecution submits that the use of a pseudonym in concert with facial and voice distortion is necessary to adequately protect [REDACTED] and to ensure [REDACTED] safety, security, psychological well-being, dignity and privacy during and after their testimony. Likewise, the anonymity of [REDACTED] and [REDACTED]'s statements in the public record is necessary to protect these two witnesses. The Chamber has found reasonable grounds to believe that Bosco Ntaganda and his associates have interfered with Prosecution witnesses, particularly insiders prepared to provide unique and valuable testimony.³⁰

²⁸ See Witness P-0805: ICC-01/04-02/06-824-Conf, para. 16; Witness P-0901: ICC-01/04-02/06-828-Conf, para. 10; Witness P-0768: ICC-01/04-02/06-905-Conf, para. 8; Witness P-0859: ICC-01/04-02/06-1004-Conf-Red, para. 6; Witness P-0800: ICC-01/04-02/06-1160-Conf-Red, para. 8.

²⁹ See e.g. ECHR, *Guisset v France*, Appl. no. 33933/96, "Judgment", September 26, 2000, para. 73; ECHR, *B and P v UK*, Appl. nos. 36337/97 and 35974/97, "Judgment", April 24, 2001, para. 36.

³⁰ ICC-01/04-02/06-785-Red, para. 55.

60. Granting the use of a pseudonym alone would not suffice to protect [REDACTED] as unprotected images of witnesses are easily accessible to the public on a worldwide scale [REDACTED]. This necessitates the use of a pseudonym in combination with face and voice distortion.
61. The requested protective measures will ensure that [REDACTED], [REDACTED] and [REDACTED] are able to give evidence without fear for their personal safety and security, that of their family members, or that of [REDACTED], and in a manner that protects their psychological well-being, dignity and privacy as provided for under article 68(1) of the Statute. It will also mitigate the need for more intrusive security-related measures post-testimony.

Increased Monitoring of Mr Ntaganda's contacts

62. The Prosecution notes that the Chamber lifted all restrictions to Mr Ntaganda's contacts on 19 February 2018, due to a reduced risk of Mr Ntaganda engaging in prohibited conduct after the evidentiary phase of the case had ended.³¹
63. The Chamber previously found, however, that Mr Ntaganda "intended to engage in a serious form of witness interference"³² and "instructed his interlocutors to coach witnesses"³³ using his non-privileged telephone conversations from the Detention Centre. The Chamber also stated that "Mr Ntaganda is under existing obligations under the Court's statutory framework to refrain from disclosing confidential case information to his contacts, including insofar as such conduct would violate existing decisions and orders issued by the Chamber, defeat the confidential classification of filings under regulation 23 *bis* of the Regulations, or infringe article 70 of the Statute".³⁴

³¹ ICC-01/04-02/06-2236-Red, para. 24.

³² Decision on Restrictions, ICC-01/04-02/06-785-Red, para. 55.

³³ Decision on Restrictions, ICC-01/04-02/06-785-Red, para. 57.

³⁴ ICC-01/04-02/06-2236-Red, para. 33.

64. As [REDACTED] the witnesses reside in Ituri [REDACTED], where Mr Ntaganda has associates and where the security situation is unstable, the Prosecution requests that monitoring of Mr Ntaganda's contacts be increased until the sentencing phase of the case is complete. The Prosecution also requests that Mr Ntaganda be ordered to speak in either Kinyarwanda or Swahili to permit effective monitoring pursuant to articles 64(6)(f), and 68 of the Statute and regulations 23 *bis*, 34 and 101 of the Regulations of the Court.

Relief Requested

65. Based on the foregoing, and pursuant to article 76(2) of the Rome Statue, the Prosecution requests that the Chamber grant its Sentencing Request.
66. The Prosecution further requests that the Chamber order increased monitoring of Mr Ntaganda's contacts and that Mr Ntaganda be required to speak only in Kinyarwanda or Swahili during his contacts to allow the Registry to monitor his telephone or in-person contacts, pursuant to articles 64(6)(f), and 68 of the Statute and regulations 23 *bis*, 34 and 101 of the Regulations of the Court. Should the Registry discover any violations during Mr Ntaganda's contacts, the Prosecution requests to be informed immediately.



Fatou Bensouda
Prosecutor

Dated this 17th day of September 2019
At The Hague, The Netherlands