

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 13 November 2015

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 redacted version of

**Decision on Prosecution's request for in-court protective measures for
Witness P-0859**

Decision 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 Bosco Ntaganda

Mr Stéphane Bourgon
Mr Luc Boutin

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 Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64(2), 67(1) and 68(1) of the Rome Statute and Rule 87 of the Rules of Procedure and Evidence ('Rules'), and incorporating by reference the applicable law as set out in the 'Decision on request for in-court protective measures relating to the first Prosecution witness',¹ issues the following 'Decision on Prosecution's request for in-court protective measures for Witness P-0859'.

I. Background and submissions

1. On 14 October 2015, the Office of the Prosecutor ('Prosecution') filed a request seeking in-court protective measures for three witnesses (P-0800, P-0815 and P-0859).² In relation to Witness P-0859 ('Witness'), the Prosecution requests that the Chamber grant in-court protective measures in the form of face and voice distortion and use of a pseudonym during testimony ('Request').³ The Prosecution submits that these measures are necessary since revealing the Witness's identity to the public risks compromising his safety, privacy and physical and psychological well-being. It submits that the Witness fears that he or persons connected to him will face repercussions or be stigmatised in his community as a result of his appearance before the Court.⁴ The Prosecution also recalls that the Witness [REDACTED].⁵
2. On 4 November 2015, the Legal Representative of the Victims of the Attacks ('Legal Representative') filed a response in support of the Request ('LRV Response').⁶ The Legal Representative refers to [REDACTED]⁷ and argues that

¹ 14 September 2015, ICC-01/04-02/06-824-Conf, paras 5-6. A public redacted version was filed the following day (ICC-01/04-02/06-824-Red) ('First Protective Measures Decision').

² Fifth Prosecution request for in-court protective measures, ICC-01/04-02/06-900-Conf-Exp. A corrected version of this decision was filed on the same day (ICC-01/04-02/06-900-Conf-Exp-Corr), as well as a confidential redacted version (ICC-01/04-02/06-900-Conf-Corr-Red) and a public redacted version (ICC-01/04-02/06-900-Corr-Red2).

³ Request, ICC-01/04-02/06-900-Corr-Red2, paras 5-6.

⁴ Request, ICC-01/04-02/06-900-Corr-Red2, para. 10.

⁵ Request, ICC-01/04-02/06-900-Corr-Red2, para. 10.

⁶ Response of the Common Legal Representative of Victims of the Attacks to the "Confidential redacted version of 'Corrected version of 'Fifth Prosecution request for in-court protective measures'", 14 October 2015, ICC-

there are real and objectively justifiable risks to the security of all victims with dual status, except for those who have been admitted to the ICCPP. The Legal Representative also notes the vulnerable state of mind of the Witness and submits that there exist risks of significant harm to the psychological well-being of the Witness, should the fact that he testified against the accused be made public.⁸

3. On 6 November 2015, the defence team for Mr Ntaganda ('Defence') opposed the Request ('Response').⁹ The Defence submits that the Prosecution has failed to establish an objectively justifiable risk to the Witness's security warranting the protective measures sought.¹⁰ The Defence notes that the Witness is not expected to testify directly about the accused¹¹ and that his situation is [REDACTED].¹² The Defence further notes that it has only recently been informed of the Witness's concerns over his safety.¹³ Finally, the Defence submits that the requested measures will impede the public's ability to follow the proceedings, as well as the Chamber's ability to carry out its truth-seeking function, insofar as revealing the Witness's identity to the public may increase the Witness's 'commitment to tell the truth', as well as the Witness's feeling of public accountability.¹⁴
4. On 9 November 2015, the Victims and Witnesses Unit ('VWU') transmitted its observations on the Request to the Chamber,¹⁵ indicating that, in light of

01/04-02/06-900-Conf-Exp-Corr", ICC-01/04-02/06-977-Conf-Exp. A confidential redacted version was filed on the same day (ICC-01/04-02/06-977-Conf-Red).

⁷ LRV Response, ICC-01/04-02/06-977-Conf-Exp, paras 11-21.

⁸ LRV Response, ICC-01/04-02/06-977-Conf-Red, paras 22-30.

⁹ Response on behalf of Mr Ntaganda to "Confidential redacted version of Corrected version of Fifth Prosecution request for in-court protective measures" 14 October 2015, ICC-01/04-02/06-900-Conf-Exp-Corr, ICC-01/04-02/06-984-Conf.

¹⁰ Response, ICC-01/04-02/06-984-Conf, paras 14.

¹¹ Response, ICC-01/04-02/06-984-Conf, para. 10.

¹² Response, ICC-01/04-02/06-984-Conf, para. 13.

¹³ Response, ICC-01/04-02/06-984-Conf, para. 11.

¹⁴ Response, ICC-01/04-02/06-984-Conf, paras 5-6.

¹⁵ E-mail from VWU to the Chamber on 9 November 2015 at 17:49.

[REDACTED], it is recommended to implement all measures set out in the Request.

II. Analysis

5. The Chamber recalled in its First Protective Measures Decision that factors such as the security situation in a region may be relevant in relation to the circumstances of a specific witness.¹⁶ The Chamber also notes that the Witness is [REDACTED]. In that regard, the Chamber observes that the proximity of anticipated testimony to the accused personally is not necessarily determinative of whether or not a witness may face an objective risk as a result of their involvement, or perceived involvement, with the Court; and, more specifically, as a witness for the Prosecution. It additionally notes [REDACTED] and the VWU's assessment that [REDACTED]. Moreover, the Chamber notes the Legal Representative's references to [REDACTED].¹⁷
6. In light of the above, the Chamber is satisfied that an objectively justifiable risk exists with respect to the Witness's security and well-being that warrants the protection of his identity. Mindful of fair trial-related concerns, and noting that the Defence has been provided with the name and identifying information of the Witness, the Chamber does not consider the measures outlined in the Request to unduly infringe upon the rights of the accused. Therefore, the Chamber finds, pursuant to Rule 87 of the Rules, that the protective measures sought, specifically the allocation of a pseudonym for use during the trial and face and voice distortion during testimony, should be granted in this case.

¹⁶ First Protective Measures Decision, ICC-01/04-02/06-824-Conf, paras 14-15. Therein, the Chamber indicated it had taken note of concerns expressed in relation to the security situation in the Ituri region, referring to Third Report of the Registry on the Security Situation in the Democratic Republic of the Congo, 1 May 2015, ICC-01/04-02/06-585-Conf. The corrected annex was notified on 4 May 2015 (ICC-01/04-02/06-585-Conf-Anx-Corr).

¹⁷ LRV Response, ICC-01/04-02/06-977-Conf-Red, paras 13-20.

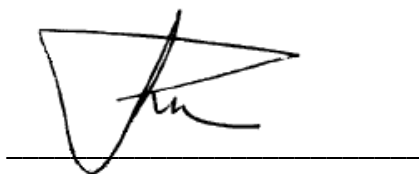
7. The Chamber will determine on a case-by-case basis, at the relevant time, whether private or closed sessions or redactions to public records are necessary in order to protect the identity of the Witness from being disclosed to the public.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request, specifically for use of a pseudonym for the purposes of the trial and voice and face distortion during testimony; and

DEFERS its decision on the Prosecution request seeking protective measures for Witnesses P-0800 and P-0815.

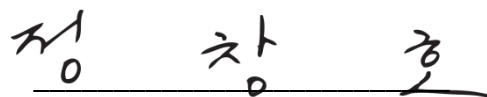
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 13 November 2015

At The Hague, The Netherlands