

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **22 June 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 'Decision on Prosecution request for in-court protective measures for Witness P-0018'

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 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 Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

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 Rules 87-88 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 request for in-court protective measures for Witness P-0018'.

I. Procedural history

1. On 2 October 2015, the Office of the Prosecutor ('Prosecution') filed a request seeking in-court protective measures for Witness P-0018 ('Witness') in the form of face and voice distortion and the use of a pseudonym during testimony ('Request').²
2. On 26 October 2015, the defence team for Mr Ntaganda ('Defence') filed a response in which it opposed the Request.³
3. On 1 November 2015, the Prosecution informed the Chamber that the Witness was unable to testify during the second evidentiary block,⁴ and the Witness was subsequently rescheduled to testify during the fifth evidentiary block.⁵
4. On 30 May 2016, the Prosecution filed supplementary submissions in relation to the Witness ('Additional Submissions'),⁶ providing additional supporting

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

² Fourth Prosecution request for in-court protective measures, 2 October 2015, ICC-01/04-02/06-883-Conf.

³ Response on behalf of Mr Ntaganda to "Fourth Prosecution request for in-court protective measures", 26 October 2015, ICC-01/04-02/06-940-Conf.

⁴ Email communication from the Prosecution to the Chamber on 1 November 2015 at 14:12.

⁵ Email communication from the Prosecution to the Chamber on 3 May 2016 at 17:57.

⁶ Additional submissions for protective and special measures concerning Prosecution Witness P-0018, ICC-01/04-02/06-1349-Conf-Exp. A confidential redacted version was filed on 31 May 2016 and notified on 1 June 2016 (ICC-01/04-02/06-1349-Conf-Red). A public redacted version was filed and notified on 1 June 2016 (ICC-01/04-02/06-1349-Red2).

material⁷ and requesting the additional measure that evidence of [REDACTED] the Witness be elicited in private session.⁸ The Prosecution also requests certain special measures pursuant to Rule 88 of the Rules, namely: (a) regular breaks during the Witness's questioning and questions adapted to her needs and capacities; and (b) that the Witness be assisted in the courtroom by a support assistant from the Victims and Witnesses Unit ('VWU') ('Special Measures Request').⁹

5. On 9 June 2016, the Defence responded to the Additional Submissions, indicating that it no longer opposes the measures requested ('Response').¹⁰

II. Submissions

i. Prosecution

6. The Prosecution submits that the measures proposed are necessary and that the risks posed to the Witness and her family are objectively justifiable, on the basis of: (i) the Witness's expected evidence, [REDACTED];¹¹ (ii) the Witness's [REDACTED], [REDACTED];¹² (iii) the possibility that the Witness may be identified by persons [REDACTED];¹³ and (iv) the Witness [REDACTED].¹⁴ Pointing to the Court's obligations to protect vulnerable witnesses under Article 68(1) of the Statute and Rule 88 of the Rules, [REDACTED], the Prosecution submits that the Special Measures Request is also necessary 'in view of the specific needs of this [W]itness'.¹⁵

⁷ Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, Annexes A-F.

⁸ Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, paras 11, 22, 36-38.

⁹ Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, paras 1 and 29-35.

¹⁰ Response on behalf of Mr Ntaganda to "Additional submissions for protective and special measures concerning Prosecution Witness P-0018", ICC-01/04-02/06-1377-Conf.

¹¹ Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, paras 2 and 8-13.

¹² Additional Submissions, ICC-01/04-02/06-1349-Conf-Exp, paras 2 and 14-20.

¹³ Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, paras 2 and 21-23.

¹⁴ Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, paras 2 and 24-25.

¹⁵ Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, paras 2, 29-38.

ii. Defence

7. The Defence indicates that it does not oppose the requested in-court protective measures for the testimony of the Witness, and does not object to evidence regarding the Witness's [REDACTED] being heard in private session, nor does it oppose a VWU support assistant being present with the Witness in the courtroom.¹⁶ The Defence avers that the remainder of the measures requested 'fall within the scope of the Chamber's discretion to govern the conduct of proceedings as and when the need arises'.¹⁷ However, in terms of the mode of questioning of the Witness, the Defence foreshadows that it will object to any leading questions put to the Witness, and submits that the Defence must not be required to curtail the scope of any necessary cross-examination.¹⁸

III. Analysis

8. In assessing whether there exists an objectively justifiable risk to the Witness, the Chamber notes that the Witness's anticipated evidence, particularly in relation to [REDACTED], may risk revealing her identity.¹⁹ The Chamber further notes that the risk of revealing the Witness's identity is even greater because of her [REDACTED].²⁰ The Chamber considers that there exists a risk of the Witness [REDACTED], and thus to heighten the risk to her psychological wellbeing and safety.²¹ The Chamber recalls, in this regard, its particular obligations to [REDACTED] under Article 68(1) of the Statute and Rules 86 and 88 of the Rules.

¹⁶ Response, ICC-01/04-02/06-1377-Conf, para. 1.

¹⁷ Response, ICC-01/04-02/06-1377-Conf, para. 2.

¹⁸ Response, ICC-01/04-02/06-1377-Conf, paras 2-3.

¹⁹ Additional Submissions, ICC-01/04-02/06-1349-Conf-Exp, paras 10-11 and 21-23.

²⁰ Request, ICC-01/04-02/06-883-Conf, para. 5; Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, para. 12.

²¹ See Request, ICC-01/04-02/06-883-Conf, paras 5-6; Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, paras 8-13.

9. The Chamber notes further that the Witness and her family reside in an area where, as the Prosecution argues, [REDACTED].²² In this regard, the Chamber recalls that factors such as the general security situation in a region may be relevant in relation to the circumstances of a specific witness²³ and notes the Prosecution submission that armed groups remain active in the region.²⁴ The Chamber also notes the [REDACTED], [REDACTED].²⁵
10. In light of the above, the Chamber is satisfied that there exists an objectively justifiable risk with respect to the Witness's security and wellbeing warranting the shielding of her identity from the public. The Chamber further finds that the in-court protective measures sought do not unduly infringe upon the rights of the accused, given that the accused and the Defence will be able to see the Witness give evidence at trial and hear the Witness's voice without distortion. Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures of use of a pseudonym for the purposes of the trial and voice and face distortion during testimony.
11. The Chamber notes that the Prosecution's request to elicit certain evidence concerning the [REDACTED] Witness P-0018 in private session is unopposed by the Defence,²⁶ and, in this connection, recalls its obligation to take into account the needs of victims of [REDACTED] testifying before the Court.²⁷ The Chamber accepts that it may prove warranted to hear such evidence in private session to

²² Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, para. 14.

²³ First Protective Measures Decision, ICC-01/04-02/06-824-Red, paras 14-15. [REDACTED]. In this regard, the Chamber also notes Annexes A-E to the Additional Submissions, ICC-01/04-02/06-1349-Conf-Red.

²⁴ Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, para. 15.

²⁵ Request, ICC-01/04-04/06-883-Conf, para. 5; Additional Submissions, ICC-01/04-02/06-1349-Conf-Red, paras 16-17 and 24-25.

²⁶ See Response, ICC-01/04-02/06-1377-Conf, para. 1.

²⁷ Rule 88 of the Rules. See also previous orders of this Chamber that such evidence be heard in private session (Transcript of hearing of 10 November 2015, ICC-01/04-02/06-T-46-CONF-ENG, page 36, line 19 to page 37, line 11; Confidential redacted version of 'Decision on Prosecution's request for in-court protective measures and special measure for Witness P-0815', 30 March 2016, ICC-01/04-02/06-1236-Conf-Red, para. 7).

ensure, in particular, the Witness's dignity and wellbeing; however, the necessity for this will be assessed on a case-by-case basis at the relevant time.

12. Further, noting the particular remit of the VWU in making recommendations to address the needs of vulnerable witnesses,²⁸ the Chamber shall defer its decision on the Special Measures Request until receipt and consideration of the VWU vulnerability assessment for the Witness.
13. As to the issue raised by the Defence in terms of modes of questioning of the Witness,²⁹ the Chamber recalls its previous ruling in relation to the use of leading questions.³⁰ The Chamber also recalls the principles for [REDACTED]. The Chamber shall adjudicate any objections to the manner of questioning of the Witness if and when such objections arise, and in light of, *inter alia*, the aforementioned applicable law.

²⁸ See Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses, 18 February 2015, ICC-01/04-02/06-464, referring to 'Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses', ICC-01/04-02/06-445-Anx1.

²⁹ Response, ICC-01/04-02/06-1377-Conf, paras 2-3.

³⁰ Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 26.

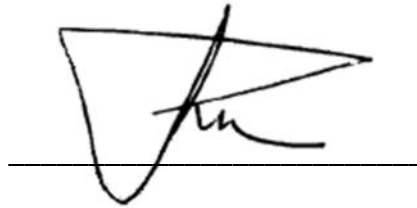
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

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

DEFERS its decision on the Special Measures Request; and

ORDERS the Prosecution to file a public redacted version of ICC-01/04-02/06-883-Conf, and the Defence to file public redacted versions of ICC-01/04-02/06-940-Conf and ICC-01/04-02/06-1377-Conf, within two weeks of notification of the present decision.

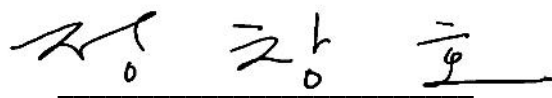
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 22 June 2016

At The Hague, The Netherlands