

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 April 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

**Decision on Prosecution's additional request for in-court protective measures for
Witness [REDACTED]**

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**

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 and 88 of the Rules of Procedure and Evidence, 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 additional request for in-court protective measures for Witness [REDACTED]'.

I. Procedural background

1. [REDACTED]²[REDACTED].³
2. [REDACTED].⁴
3. [REDACTED].⁵
4. [REDACTED],⁶[REDACTED].
5. On 15 March 2016, the Prosecution filed a request for additional protective measures for Witness [REDACTED], seeking that the witness's testimony be heard entirely in private session ('Request').⁷ [REDACTED].
6. On 30 March 2016, the Defence filed its response, opposing the Request ('Response').⁸

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).

² [REDACTED]

³ [REDACTED]

⁴ [REDACTED]

⁵ [REDACTED]

⁶ Email communication from the Prosecution sent on 10 March 2016, at 10:15.

⁷ Prosecution's additional request for in-court protective measures for [REDACTED], ICC-01/04-02/06-1212-Conf-Exp, with confidential *ex parte* Annexes A and B. A confidential version of the request was filed on 16 March 2016, ICC-01/04-02/06-1212-Conf-Red, with Confidential redacted Annex A and Confidential Annex B.

⁸ Response on behalf of Mr Ntaganda to 'Prosecution's additional request for in-court protective measures for [REDACTED]', ICC-01/04-02/06-1237-Conf.

II. Submissions

7. The Prosecution requests that Witness [REDACTED]'s testimony be heard entirely in private session, as a measure to protect the witness's family [REDACTED] due to [REDACTED] potential repercussions his testimony may have on their personal security [REDACTED].⁹ [REDACTED]¹⁰ [REDACTED].¹¹
8. The Prosecution submits that the risks faced by Witness [REDACTED] and his family to their safety, physical and psychological well-being and dignity are objectively justified.¹² The Prosecution submits that the existing protective measures are insufficient to mitigate such risks,¹³ and that Witness [REDACTED] is easily identifiable on the basis of his anticipated evidence.¹⁴
9. In its Response, the Defence first stresses the inappropriate character of what it submits is an unsubstantiated suggestion that [REDACTED].¹⁵ The Defence further submits that the risk identified by the Prosecution, namely the possibility of the fact of Witness [REDACTED] testifying in the present case becoming known [REDACTED]; and (iii) the 30-minute delay between the hearings and their broadcast, ensuring that no one following remotely can become aware of any identifying information inadvertently mentioned in public session. It submits that the only scenario in which Witness [REDACTED] as a result of an inadvertent reference being made in open session to identifying information, is through an individual familiar with the witness's involvement with the Court sitting in the public gallery – which the Defence submits is unlikely and unsubstantiated.¹⁶

⁹ Request, ICC-01/04-02/06-1212-Conf-Red, para. 28.

¹⁰ Request, ICC-01/04-02/06-1212-Conf-Red, paras 28-41, 43. [REDACTED].

¹¹ Request, ICC-01/04-02/06-1212-Conf-Red, paras 4, 28, 36 and 51.

¹² Request, ICC-01/04-02/06-1212-Conf-Red, paras 42-48.

¹³ Request, ICC-01/04-02/06-1212-Conf-Red, paras 49-58.

¹⁴ Request, ICC-01/04-02/06-1212-Conf-Red, paras 52, 54.

¹⁵ Response, ICC-01/04-02/06-1237-Conf, paras 5-10.

¹⁶ Response, ICC-01/04-02/06-1237-Conf, paras 12-14.

10. The Defence however agrees that any questions on the topics [REDACTED] should be asked and answered in private session. With regard to several other topics of the expected testimony, the Defence argues that the witness is not in an exclusive position to provide information and therefore the evidence should be elicited in open session.¹⁷ Finally, the Defence stresses the accused's right to a public hearing, averring further that testifying in public increases witnesses' commitment to speak the truth.¹⁸

III. Analysis

11. The Chamber recalls that Witness [REDACTED] already benefits from in-court protective measures, consisting of image and voice distortion, as well as the use of a pseudonym during testimony, which was granted in order to protect his identity from being disclosed to the public. It further notes that [REDACTED].
12. The Chamber notes that the nature of the anticipated evidence may lead to extensive portions of Witness [REDACTED]'s testimony being heard in private session. However, the Chamber considers that some areas of his expected testimony may not reveal his identity and could therefore be provided in open session.
13. In light of the above and mindful of the principle of publicity of the proceedings, the Chamber decides to reject the Request for the entirety of the testimony to be heard in private session. It will instead 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.

¹⁷ Response, ICC-01/04-02/06-1237-Conf, paras 22-23.

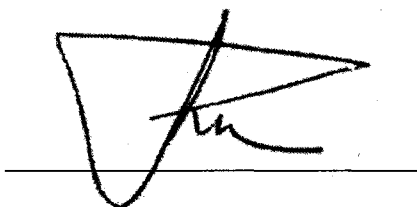
¹⁸ Response, ICC-01/04-02/06-1237-Conf, para. 25.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

DIRECTS the parties to file public redacted versions of their respective filings (ICC-01/04-02/06-1212-Conf and ICC-01/04-02/06-1237-Conf) within two weeks of the issuance of this decision.

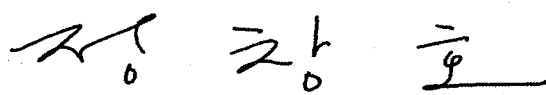
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 5 April 2016

At The Hague, The Netherlands