



Original: **English**

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

Date: **21 July 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 “Response on behalf of Mr Ntaganda to “Prosecution’s
sixteenth request for in-court protective measures””,
14 June 2016, ICC-01/04-02/06-1394-Conf**

Source: Defence Team of Mr Bosco Ntaganda

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

Me Stéphane Bourgon
Me Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants (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

Further to: (i) the confidential redacted version of the “*Prosecution’s sixteenth request for in-court protective measures*” submitted by the Office of the Prosecutor (“Prosecution”) on 27 May 2016 (“Prosecution Request”);¹ and (ii) Trial Chamber VI (“Chamber”)’s order shortening the response deadline in relation to the Prosecution Request to 14 June 2016, conveyed by way of e-mail on 2 June 2016,² Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Response on behalf of Mr Ntaganda to “Prosecution’s sixteenth request for in-court protective measures”

“Defence Response”

1. The Defence opposes the Prosecution’s request that Witness P-0877 be granted in-court protective measures in the form of facial and voice distortion as well as the use of a pseudonym. The Prosecution Request, like many other similarly drafted requests, fails to identify any objectively justifiable security risk related *specifically* to Witness P-0877, which would arise from the disclosure of his identity to the public. The Defence respectfully submits that the interests of justice require Witness P-0877 to testify publicly.

SUBMISSIONS

2. At the outset, the Defence underscores that in his “*Demande de participation pour les victimes*”,³ [REDACTED], Witness P-0877 indicated that he had no reason to fear for his safety, well-being, dignity or private life for himself or any other relatives as result of his “*interaction*” with the Court. According to the Prosecution’s own acknowledgement, as of today, Witness P-0877 has not been the subject of any direct or specific threat.⁴

¹ ICC-01/04-02/06-1336-Conf-Red.

² Email from a Legal Office of the Chamber to the parties and participants, 2 June 2016, 16h30.

³ DRC-OTP-2092-0288, p.0289 (para.6).

⁴ Prosecution Request, para.12.

3. In support of its Request, the Prosecution merely puts forward arguments of a general nature – either insufficiently substantiated or unrelated and/or irrelevant to the situation of Witness P-0877 – which are routinely made in support of requests for in-court protective measures, namely:
 - a. The Registry’s assessment of the situation in Ituri, as set out in reports prepared long time before commencement of the trial, in November 2014⁵ and May 2015,⁶ respectively;
 - b. The Chamber’s findings in its “*Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts*”,⁷ which adjudicated allegations of witness interference directed at *specific* insider witnesses not including Witness P-0877 nor any other crime-base witnesses. Significantly, the Chamber’s decision was not aimed at establishing whether there exists a wider interference scheme in this case potentially involving all witnesses;
 - c. The alleged presence in Witness P-0877’s [REDACTED] of the vaguely-defined categories of “[REDACTED]”,⁸ “[REDACTED]”,⁹ “demobilised UPC militia”,¹⁰ “ex-UPC soldiers”¹¹ and “supporters of the Accused”,¹² uncorroborated by any independently acquired information; and
 - d. Instances where other (unidentified) witnesses were allegedly threatened as a result of their involvement with the Court, reported to

⁵ “Registry’s Report on the Security Situation in the Democratic Republic of the Congo”, 7 November 2014, ICC-01/04-02/06-396-Conf, *referred to* at paragraph 9 of the Prosecution Request.

⁶ “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, *referred to* at paragraph 10 of the Prosecution Request.

⁷ 18 August 2015, ICC-01/04-02/06-785-Conf-Exp, *referred to* at paragraphs 9 and 18 of the Prosecution Request.

⁸ Prosecution Request, para.7.

⁹ Prosecution Request, para.7.

¹⁰ Prosecution Request, para.8.

¹¹ Prosecution Request, para.8.

¹² Prosecution Request, para.6.

the Chamber and Prosecution on an entirely *ex parte* basis by the Legal Representative of the alleged victims of the attacks.¹³

4. In fact, the only distinctive features of Witness P-0877's situation are: (i) his prior cooperation with [REDACTED];¹⁴ and (ii) his alleged personal acquaintance [REDACTED] who would have publicly expressed their disapproval of Mr Ntaganda standing trial at the Court.¹⁵
5. With respect to Witness P-0877's alleged collaboration with [REDACTED], the Defence submits that such involvement fails to constitute a sufficient reason justifying the granting of facial and voice distortion as well as the use of a pseudonym. The Defence recalls that in a similar context, the Chamber found that a witness [REDACTED] the Prosecution before formally becoming a Prosecution witness does not, in and of itself, result in an objectively justifiable risk to the person's safety.¹⁶
6. With regards to Witness P-0877's alleged personal connection with [REDACTED] who would disapprove Mr Ntaganda's prosecution before the Court, the Defence underscores that the concerns expressed by the witness indicate, at most, a *subjective* fear of negative consequences.¹⁷ The Defence further notes that a mere expression of disappointment towards a trial or the International Criminal Court in general is insufficient to meet the threshold of an objectively justifiable significant risk
7. The above factors – considered either individually or together – fail to establish the existence of any objectively justifiable risk to the safety of Witness P-0877 should he testify publicly.

¹³ Prosecution Request, para.12, *referring to* ICC-01/04-02/06-1160-Conf-Red and ICC-01/04-02/06-1277-Conf.

¹⁴ Prosecution Request, para.8.

¹⁵ Prosecution Request, para.8.

¹⁶ "Decision on Prosecution's request for in-court protective measures for Witness P-0190", 2 June 2016, ICC-01/04-02/06-1359-Conf, para.9.

¹⁷ Annex A, para.3. ("[REDACTED]" (emphasis added))

8. In fact, the above highlights that Witness P-0877's situation is no different from that of any other crime-base witness. The Prosecution's assertions suggest, at most, Witness P-0877's discomfort with being a Prosecution witness. Such feeling is inherent to any testimony before a criminal court. Similarly, a person who willfully accepts to testify before a criminal court accepts that his/her testimony might be the object of media attention (whether heightened or not), which is a necessary component of the publicity of criminal proceedings.
9. Furthermore, the Prosecution's repeated requests for the full set of in-court protective measures downplay the importance for the public to know the identity of witnesses. In this regard, the Defence recalls its previous submission that making a witness's identity known to the public constitutes a genuine incentive for the witness to tell the truth, if only because it strengthens the witness's feeling of public accountability.¹⁸

CONFIDENTIALITY

10. Pursuant to Regulations 23*bis* (1) and (2) of the Regulations of the Court, this Defence Response is classified as confidential, as it responds to a filing bearing the same classification.

¹⁸ See e.g. "Response on behalf of Mr Ntaganda to 'Second Prosecution request for in-court protective measures'", 31 August 2015, ICC-01/04-02/06-801-Conf-Exp, para.10.

RELIEF SOUGHT

11. In light of the above submissions, the Defence respectfully requests the Chamber to:

REJECT the Prosecution Request.

RESPECTFULLY SUBMITTED ON THIS 21ST DAY OF JULY 2016

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands