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

Date: **22 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 “Confidential Redacted Version of ‘Prosecution’s eighteenth request for in-court protective measures’ 2 June 2016, ICC-01/04-02/06-1362-Conf-Exp””,
13 June 2016, ICC-01/04-02/06-1388-Conf**

Source: Defence Team of Mr Bosco Ntaganda

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
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**The Office of Public Counsel for the
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**Victims Participation and Reparations
Section**

Further to: (i) the confidential redacted version of the *“Prosecution’s eighteenth request for in-court protective measures”* submitted by the Office of the Prosecutor (“Prosecution”) on 3 June 2016 (“Prosecution Request”);¹ and (ii) Trial Chamber VI (“Chamber”)’s *“Supplemental decision on matters related to the conduct of proceedings”* (“Supplemental Decision on Conduct of Proceedings”) issued on 27 May 2016,² which provides that responses to in-court protective measures be filed within seven days of the notification of the request,³ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

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

“Defence Response”

1. The Defence opposes the Prosecution’s request that Witness P-0850 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 fails to identify any objectively justifiable security risk affecting *specifically* Witness P-0850, which would arise from the disclosure of his identity to the public. The Defence respectfully submits that the interests of justice require Witness P-0850 to testify publicly.

SUBMISSIONS

2. The Defence submits that according to the Prosecution’s own acknowledgement, Witness P-0850 has not been the subject of any direct or specific threat.⁴

¹ ICC-01/04-02/06-1362-Conf-Red.

² “Supplemental decision on matters related to the conduct of proceedings”, 27 May 2016, ICC-01/04-02/06-1342.

³ Supplemental Decision on Conduct of Proceedings, para 14.

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-0850 – 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;
 - b. The Chamber’s findings in its “*Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts*”,⁶ which adjudicated allegations of witness interference directed at *specific* insider witnesses not including Witness P-0850 nor any other crime-base witnesses. It is noteworthy in this regard that the Chamber’s decision was not aimed at establishing whether there exists a wider interference scheme in this case potentially involving all witnesses; and
 - c. The alleged presence in Witness P-0850’s area of residence of the vaguely-defined categories of “[REDACTED]”,⁷ “[REDACTED]”,⁸ “demobilised UPC militia”,⁹ and “still support Bosco Ntaganda”,¹⁰ uncorroborated by any independently acquired information.
4. There are no distinctive factors specifically related to Witness P-0850 that have been put forth by the Prosecution. In fact, the Prosecution relies on the mere facts that other similar witnesses have been granted protective measures to justify in-court protective measures in the case of P-0850.¹¹ The Prosecution further relies on [REDACTED] to argue that “some of the Hema of his

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

⁷ Prosecution Request, para.7.

⁸ Prosecution Request, para.7.

⁹ Prosecution Request, para.8.

¹⁰ Prosecution Request, para.8.

¹¹ Prosecution Request para 12.

community have publicly expressed their disapproval of Bosco Ntaganda's prosecution".¹² The Prosecution does not demonstrate how the expressions of [REDACTED] community affects in any way to the situation of P-0850. Furthermore, 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.

5. In-court protective measures should be determined on a case-by-case basis and not on general allegations that may apply to any given witness.
6. In fact, the above highlights that Witness P-0850's situation is no different from that of any other crime-base witness in any case before the court. The Prosecution's sole assertion relates to Witness P-0850's own concerns with being a Prosecution witness. Such subjective feeling is inherent to any testimony before a criminal court and would apply to any witness in this case.
7. The above factors fail to establish the existence of any objectively justifiable risk to the safety of Witness P-0850 should he testify publicly.
8. 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 increases the witness's commitment to tell the truth as well as his/her feeling of public accountability.¹³

CONFIDENTIALITY

9. 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.

¹² Prosecution Request, para 8.

¹³ 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

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

REJECT the Prosecution Request.

RESPECTFULLY SUBMITTED ON THIS 22ND 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