



Original: **English**

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

Date: **19 March 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

Corrected version of “Corrigendum to ‘Consolidated response on behalf of Mr Ntaganda to Prosecution Application and Prosecution Request and seven additional related submissions’”, 10 March 2015, ICC-01/04-02/06-502-Conf-Corr2

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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Further to: (i) the *“Order Scheduling a Status Conference and Setting the Commencement Date for the Trial”* issued by Trial Chamber VI of the International Criminal Court (“Chamber” and “Court”) on 9 October 2014 (“Order”); (ii) the *“Confidential redacted version of ‘Prosecution request for redactions’, 16 February 2015, ICC-01/04-02/06-462-Conf-Exp”* filed on 17 February 2015 (“Prosecution Request”); (iii) the *“Confidential redacted version of ‘Prosecution application for delayed disclosure’, 16 February 2015, ICC-01/04-02/06-461-Conf-Exp”* filed on 17 February 2015 (“Prosecution Application”); (iv) seven additional submissions filed between 23 February 2015 and 2 March 2015; and (v) the Chamber’s *“Decision on the Defence’s urgent motion for an extension of page limit to respond to the Prosecution’s delayed disclosure and non-standard redactions requests”* issued on 3 March 2015, Counsel representing Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submit this:

**Consolidated response on behalf of Mr Ntaganda to Prosecution Application and Prosecution Request and seven additional related submissions
 (“Defence Consolidated Response”)**

OVERVIEW

1. The Defence hereby responds to the Prosecution Application and Prosecution Request, as well as to seven additional submissions filed by the Prosecution and the Victims and Witnesses Unit (“VWU”) during the period from 23 February 2015 to 2 March 2015 (“Seven Submissions”).¹

¹ “Prosecution withdrawal of request for redactions in relation to P-0109”, 23 February 2015, ICC-01/04-02/06-470 (“Prosecution P-0109 Submission”); “Prosecution request for authorization to provide a summary of P-0901’s statement”, 25 February 2015, ICC-01/04-02/06-473-Conf-Red (“Prosecution P-0901 Request”); “Victims and Witnesses Unit’s observations on the ‘Prosecution request for redactions’ ICC-01/04-02/06-462-Conf-Exp”, 26 February 2015, ICC-01/04-02/06-474-Conf (“VWU Observations on Prosecution Request”); “Victims and Witnesses Unit’s observations on the ‘Prosecution application for delayed disclosure’ ICC-01/04-02/06-461-Conf-Exp”, 26 February 2015, ICC-01/04-02/06-476-Conf-Red (“VWU Observations on Prosecution Application”); “Prosecution withdrawal of its application for delayed disclosure in relation to P-0758, P-0761, P-0773, P-0887, P-0898, P-0907, P-0914 and P-0918”, 26 February 2015, ICC-01/04-02/06-475-Conf-Red (“Prosecution Withdrawal”); “Prosecution request for redactions to P-0882’s statement”, 2 March 2015, ICC-01/04-02/06-486 (“Prosecution P-0882 Request”); “Prosecution proposed redactions to three documents relevant to P-0911”, 2 March 2015, ICC-01/04-02/06-493 (“Prosecution P-0911 Request”).

2. The Prosecution's application for the delayed disclosure of the identity and/or material related to 10 trial witnesses, and the Prosecution's request for non-standard redactions concerning the identity and/or material related to 8 trial witnesses and 11 so called non-trial witnesses fail to meet the test developed in the jurisprudence of the Court for most of the witnesses addressed therein.

3. When adjudicating the Prosecution Application and Prosecution Request, it is imperative for the Chamber to carefully consider a number of issues addressed in this Defence Consolidated Response which directly impact and undermine the Prosecution's submissions and arguments therein.

4. In many instances, the information available to the Defence to respond is plainly insufficient. The amount and extent of redactions included in the Prosecution Application and Prosecution Request – *proprio motu* and subject to no control – often make it impossible for the Defence to respond. In light of the fact that all appended annexes are *ex parte* and unavailable to the Defence, the Prosecution failed in its duty to ensure that, in spite of the information redacted, its submissions could be understood by the Defence. In addition, the Prosecution should have provided the Defence with the anonymous summaries it proposes to disclose *in lieu* of the witnesses' material. As a result, in a number of cases the Defence is unable to respond unless additional information is provided by the Prosecution.

5. The Prosecution Application and Prosecution Request conflate the potential risk to the safety of witnesses created by the availability *to the public* of the identity and/or material related to certain witnesses with the potential risk arising from disclosure of the same information *to the Defence*. There is a significant difference between *the Defence* – which is bound by many instruments not to make confidential information available to the public and is required to follow specific procedures set out in binding protocols designed to alleviate potential risks – and *the public*, and the two must be distinguished.

6. For the Chamber to authorize the non-disclosure of information *to the Defence* the risk to the safety of the person concerned must arise from disclosing the particular information *to the Accused*. In many instances, the Prosecution fails to demonstrate that the risk to the safety of the witnesses for whom delayed disclosure of the identity and/or the application of non-standard redactions are sought, arises from disclosing the particular information to the Accused.

7. The main justification put forward by the Prosecution to delay the disclosure to the Accused of the identity of certain witnesses as well as of certain information concerning witnesses – [REDACTED] – must be disregarded [REDACTED]. What is more, the Prosecution ignores that [REDACTED]² [REDACTED].

8. In requesting that measures approved by the Single Judge during the pre-trial phase – including *inter alia*, non-standard redactions, delayed disclosure to the Accused of certain information related to Prosecution witnesses and the disclosure of witness summaries *in lieu* of the genuine statements and material related to the same – the Prosecution ignores the fundamental difference between the confirmation of charges hearing and the trial. Fundamental rights of the Accused dictate that certain measures approved during the pre-trial stage be lifted at the trial stage with a view to ensuring that the Accused is able to prepare for trial. This entails but is not limited to, being informed promptly and in detail of the nature, cause and content of the charges laid against him and to have adequate time for the preparation of the defence.

9. The Prosecution Application and Prosecution Request ignore that when deciding on the need to impose protection measures, respect for the rights of the Accused must be given priority. While due regard must be had for the protection of victims and witnesses, this is a secondary consideration to the rights of the Accused. Hence, requests for non-disclosure and/or non-standard redactions must be denied if they result in a violation of the rights of the Accused.

² [REDACTED].

10. It is well established in the jurisprudence of the Court that in requesting the delayed disclosure of certain information related to witnesses and/or non-standard redactions, a party must demonstrate nothing less than the existence of an objectively justifiable risk *to the safety* of the person concerned. On many occasions, the Prosecution erroneously advances as justification to delay disclosure to the Defence of information related to Prosecution witnesses – either directly or through non-standard redactions – the potential risk to the *well-being, dignity and privacy* of witnesses.

11. In support of many of its requests for the delayed disclosure of certain information related to witnesses and/or the application of non-standard redactions to material concerning witnesses, the Prosecution wrongly relies on tasks it was unable to perform within the time allotted, such as the transcription/translation of interviews and the fact that VWU has yet to determine whether additional protective measures are necessary. Considering that the trial of the Accused is scheduled to begin in less than three months, the failure of the Prosecution to fulfil its obligations within the time allocated cannot serve as justification for the non-disclosure of material concerning witnesses to the Defence.

12. Moreover, when adjudicating the Prosecution Application and Prosecution Request, the Chamber must assess whether the requested delayed disclosure of information related to witnesses and/or non-standard redactions will unduly prejudice the fair trial rights of the Accused. Concretely, such prejudice comprises at least two components, namely: (i) whether the measures requested impact the ability of the Accused to prepare for the testimony of the *particular* witness and that of the other witnesses relied upon by the Prosecution for the same events; and, more importantly, (ii) whether the measures requested impact the ability of the Accused to know the case he has to meet, in the sense of having a comprehensive understanding of the case for the Prosecution, or, in other words, knowledge of the totality of the inculpatory evidence the Prosecution intends to rely upon. In other words, the Accused must have sufficient information to develop the case for the Defence.

13. Despite the Prosecution's argument to the contrary, it is evident that in many cases, its requested delayed disclosure of the identity of witnesses and/or non-standard redactions will unduly prejudice the fair trial rights of the Accused.

14. Lastly, while the Prosecution Application comprises a sub-section entitled "*No lesser restrictive measures are feasible*", it is evident that the Prosecution made no efforts to identify such lesser restrictive measures, thereby showing no regard for the rights of the Accused.

15. In light of the above mentioned issues – which the Defence posits must imperatively be considered by the Chamber when adjudicating every Prosecution request for delayed disclosure and/or non-standard redactions, in respect of each individual witness addressed in the Prosecution Application and Prosecution Request – the Defence analysis and assessment of the measures requested reveals that most of the Prosecution requests must be denied.

PROCEDURAL BACKGROUND

16. On 9 October 2014, the Chamber ordered the Prosecution to disclose to the Defence: (i) all material currently already in the Prosecution's possession, for which delayed disclosure is not requested and authorised not later than 31 January 2015;³ and (ii) all remaining incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as disclosure of all Article 67(2) material and provision of all Rule 77 material for inspection to the Defence by 2 March 2015, save where delayed disclosure has been specifically requested and authorised.⁴

17. On 9 October 2014, the Chamber also ordered the Prosecution to file any application for delayed disclosure relating to Prosecution witnesses (including any request for redactions that, pursuant to the Redaction Protocol, require approval by

³ Order, para. 9.d.

⁴ Order, para. 9.d.

the Chamber) by no later than 16 February 2015.⁵ Any responses to the Prosecution's request for delayed disclosure and redaction had to be filed no later than 23 February 2015.⁶

18. On 12 December 2014, the Chamber issued its "Decision on the Protocol establishing a redaction regime".⁷

19. On 17 February 2015, the Prosecution filed its Prosecution Request.

20. On 17 February 2015, the Prosecution also filed its Prosecution Application.

21. On 23 February 2015, the Prosecution filed its Prosecution P-0109 Submission.

22. On 25 February 2015, the Prosecution submitted its Prosecution P-0901 Request.

23. On 26 February 2015, the Prosecution filed its Prosecution Withdrawal.

24. On the same day, VWU submitted its VWU Observations on Prosecution Request and VWU Observations on Prosecution Application.

SUBMISSIONS

I. APPLICABLE LAW

25. In its Decision on Protocol on Redactions,⁸ the Chamber recalled that the Appeals Chamber held that requirements to authorise the non-disclosure of information are the following: (i) the existence of an "objectively justifiable risk"⁹ to the safety of the person concerned or which may prejudice further or ongoing investigations;¹⁰ (ii) the risk must arise from disclosing the particular information to

⁵ Order, para. 9.b.

⁶ Order, para. 9.b.

⁷ Decision on the Protocol establishing a redaction regime, ICC-01/04-02/06-411 ("Decision on Protocol on Redactions").

⁸ Decision on Protocol on Redactions, para.15.

⁹ ICC-01/04-01/07-475, para.71.

¹⁰ ICC-01/04-01/07-475, para.97.

the accused;¹¹ (iii) the infeasibility or insufficiency of less restrictive protective measures;¹² (iv) an assessment as to whether the redactions sought are “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”;¹³ and (v) the obligation to periodically review the decision authorising the redactions should circumstances change.¹⁴

II. IMPERATIVE CONSIDERATIONS IN ASSESSING REQUESTS FOR DELAYED DISCLOSURE AND NON-STANDARD REDACTIONS

A. In many cases, insufficient information is provided allowing the Defence to respond

26. At the outset, the Defence notes that the Prosecution Application and the Prosecution Request, as well as many of the Seven Submissions, contain extensive redactions. Moreover, all appended annexes, which support the Prosecution's arguments regarding the potential risks to the witnesses, have not been communicated to the Defence.

27. In this regard, the absence of specific provisions or protocols governing permissible redactions when submitting a redacted version of an *ex parte* confidential filing is significant. Consequently, it is essential for the party filing such a submission to ensure that the party not having access to the original submission be able to understand and have sufficient information to effectively respond to the same. To this end, the Defence respectfully submits that it is also essential for the Chamber to control the extent of the redactions applied by the submitting party and to order the provision of additional information when excessive and/or unwarranted redactions are used. Hence, the two versions must be compared with a view to determining whether the responding party is in fact able to understand and respond effectively. This is particularly important in light of the Prosecution's history of excessive redactions which often make it impossible for the Defence to respond.

¹¹ ICC-01/04-01/07-475, para.71(b).

¹² ICC-01/04-01/06-568, para.37; ICC-01/04-01/06-773, para.33.

¹³ ICC-01/04-01/06-773, para.34.

¹⁴ ICC-01/04-01/07-475, para.73(c); ICC-01/04-01/07-476, para.64.

28. To provide but one example, paragraph 18 of the Prosecution Request reads as follows: “Witness P-0809 provided a witness statement in [REDACTED]. He expressed serious security concerns given that [REDACTED]. P-0813 provided a witness statement in [REDACTED]. He expressed concerns for his and his family’s safety and security given that [REDACTED]. [...]” In this form, paragraph 18 is of no assistance to the Defence in responding.

29. The Defence understands that there might be a need for the Prosecution not to disclose certain information concerning witnesses P-0809 and P-0813, including their individual witness security assessments provided in confidential *ex parte* annex A.

30. However, it is evident that the Prosecution could have either applied less redactions and/or provided much more information regarding these witnesses, thereby allowing the Defence to respond while still meeting its objectives not to disclose certain information to the Accused.

31. As a result, in many instances, the Defence is unable to respond to the Prosecution Request and Prosecution Application. The Defence thus respectfully requests the Chamber to review and pronounce on the appropriateness of all redactions applied by the Prosecution in the Prosecution Request, the Prosecution Application and all related filings.¹⁵

B. Difference between disclosure to the Defence/Accused and disclosure to the public

32. The Prosecution’s approach to delayed disclosure and non-standard redactions does not distinguish between the risk resulting from the disclosure of sensitive material to the *public in general* and the risk attached to disclosure of the same to the Defence. While blindly disclosing the identity of a particular witness to the public

¹⁵ See Prosecution Request, paras.18, 21-23, 25-26, 28, 30-33; Prosecution Application, paras.2-3, 16, 18-19, 21-24, 26, 28-30, 32-44, 46; Prosecution P-0901 Request, paras.4, 6; Prosecution Withdrawal, paras.4-5, 9-10, 14-15; VWU Observations on Prosecution Application, paras.1-3, 7-9.

may increase the risk to the safety of that witness, such risk is in most cases inexistent when it comes to disclosing the same to the Defence.

33. Indeed, the Defence – which is comprised of members of two different bars – is bound by several instruments concerning the protection of confidential information, which can ultimately lead to its members being disbarred and/or contempt proceedings.

34. Significantly, Article 8(1) of the Court's Code of Professional Conduct for Counsel provides that "counsel shall respect and actively exercise all care to ensure respect for professional secrecy and the confidentiality of information in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court."

35. Likewise, Article 2.3.2 of the *Code de déontologie des avocats de l'Union européenne* provides that "a lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity." Professional secrecy as envisaged in Article 2.2 of the French *Règlement intérieur national de la profession d'avocat* includes all the evidence of a case.

36. Article 3.06.01 of the Québec Code of Ethics of Advocates prescribes that "an advocate shall not use, for his benefit [...] or for the benefit of a person other than the client, confidential information obtained while he engages in his professional activities."

37. What is more, in addition to these legal instruments, the *Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or of a Participant* ("Protocol on the Handling of Confidential Information")¹⁶ – which governs the conduct of the Defence's investigations – provides additional safeguards with respect to the identity of witnesses at risk. For example, paragraph 9 of the Protocol on the

¹⁶ ICC-01/04-02/06-412-AnxA.

Handling of Confidential Information prohibits members of the Defence from using visual and/or non-textual material, which would contain elements tending to reveal the involvement of a person with the Court. Paragraph 25 of the same Protocol forbids the disclosure of the fact that a witness has stated that he/she suffered sexual and/or gender-based violence to family members or to persons who will communicate the information to family members.

38. Consequently, when applying for protective measures requiring the non-disclosure of the identity of a particular witness to the Defence until a later stage in the proceedings, the Prosecution must show that such disclosure, *despite the obligations imposed on the Defence in relation to disclosure by its members to the public*, may put the witness in danger or at risk.¹⁷

39. Absent any objective risk resulting from the immediate disclosure of the material – for which delayed disclosure and non-standard redactions are sought – to the Defence, the Prosecution must establish that disclosure of this material specifically *to the Accused* may put the witnesses in danger or at risk.

40. This obligation is an essential component of the applicable test developed by the Appeals Chamber and followed by the Chamber. Quite significantly, the Prosecution did not even mention this part of the test when addressing the law applicable to the Prosecution Application.¹⁸ Moreover, for the reasons explained below, the Prosecution Request and the Prosecution Application failed to substantiate why disclosure of the identify of certain witnesses should be delayed or redactions applied to their statements due to the Accused.

C. Mr Ntaganda is not in a position to disclose confidential information and/or to interfere with witnesses

¹⁷ *The Prosecutor v. Radoslav Brđanin*, IT-99-36-T, Decision on Motion by Prosecution for Protective Measures, 3 July 2000, para.26.

¹⁸ See Prosecution Application, para.15.

41. The main justification put forward by the Prosecution in support of its request for delayed disclosure of the identity of certain witnesses and/or non-standard redactions to witnesses' material is baseless. Indeed, [REDACTED]¹⁹ [REDACTED].²⁰

42. More importantly, the Prosecution ignores that [REDACTED]. The Prosecution also fails to take into account [REDACTED]. Indeed, as a result of [REDACTED]²¹ [REDACTED].

43. It is significant in this regard that in deciding [REDACTED]²² [REDACTED].

D. The aim of disclosure before trial is entirely different from the aim of disclosure at the confirmation stage

44. At the pre-trial stage, pursuant to Article 61(5) of the Statute, the Prosecution may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial. The reason for this is the aim of the confirmation proceedings, which is to determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. As a result, the information which must be disclosed to the Accused might not be as extensive or complete. Consequently, Pre-Trial Chambers often grant Prosecution requests for non-standard redactions and non-disclosure of the identity of witnesses on the basis that the impact of their decisions is restrained to the confirmation of charges and that the redacted information will be disclosed to the Accused at trial.

45. In its "Redacted First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", the Single Judge – on behalf of the Pre-Trial Chamber – specifically held that "[m]indful of the particular stage of the proceedings, [she] will assess the proposed redactions in view of the finding of the Appeals Chamber that it is 'permissible to withhold the disclosure of certain information from the

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

Defence prior to the hearing to confirm the charges that could not be withheld prior to trial’”.²³

46. Indeed, the situation at trial is quite different. The Accused must have sufficient information to prepare for trial and to be able to challenge the Prosecution’s witnesses when the trial begins. This requires that disclosure must be complete long before trial – at a minimum three months before – and that any delayed disclosure or non-standard redactions be authorized only in exceptional circumstances.²⁴

47. The Prosecution’s numerous requests to maintain at this stage decisions rendered by the Single Judge during pre-trial – with less than three months to go before trial – fail to take into account the imperative necessity for the Defence to have full access to all material the Prosecution intends to rely upon at trial.

48. A further example of the Prosecution’s misunderstanding of its disclosure obligations at this stage stems from its request to provide anonymous summaries *in lieu* of redacted statements. Whereas the Prosecution may rely on anonymous or summarized versions of witness interviews at pre-trial²⁵ – as opposed to interview transcripts or signed statements – this is not permissible at trial. Accordingly, at this stage, the Defence is preparing for witnesses who will be called to testify at trial, which requires more information than what is found in a summary. Indeed, the proposed summaries are inevitably subjective – i.e. prepared solely for the purpose of highlighting how the information provided by the witnesses supports the Prosecution case – and incomplete, if only because they do not include the necessary information for the Defence to investigate and prepare for its cross-examination of the witnesses.

²³ ICC-01/04-02/06-117-Conf-Red2, para.18. *See also* ICC-01/04-01/07-475, para.68.

²⁴ *The Prosecutor v. Ramush Haradinaj*, IT-04-84-PT, Decision on Second Haradinaj Motion to Lift Redactions of Protected Witness Statement, 22 November 2006 (“*Haradinaj Decision*”), para.2.

²⁵ *See* Article 61(5) of the Statute.

49. In the alternative, considering that the proposed summaries were filed *ex parte* – even though they necessarily do not contain any information which the Prosecution does not want to give to the Defence – the Defence is not in a position to confirm whether the information contained therein is sufficient for the purpose of preparing for trial and therefore to respond. Consequently, the Defence respectfully requests the Chamber to delay adjudication of the Prosecution’s requests to provide summaries *in lieu* of redacted statements until the Defence has had an opportunity to analyse these summaries.

E. Priority must be given to the rights of the Accused

50. Article 64(2) of the Statute makes it clear that the rights of the Accused must be given priority over the protection of victims and witnesses.

51. Similarly, before the ICTY, Trial Chambers have held that when adjudicating requests for delayed disclosure and/or the application of non-standard redactions, the balance between the rights of the Accused and the protection of witnesses favours the rights of the Accused.²⁶ Indeed, while due regard must be had for the protection of victim and witnesses, this is a secondary consideration to the rights of the Accused.²⁷ Consequently, the Trial Chamber will refuse to grant any order for non-disclosure where such order would infringe the rights of the Accused, even where the Prosecution has shown exceptional circumstances justifying non-disclosure.²⁸

52. At this stage, with less than three months to go before beginning of the trial, the balance must favour the rights of the Accused. As clearly stated in Article 68(5) of the Statute, protection measures for witnesses “shall be exercised in a manner

²⁶ *The Prosecutor v. Radovan Karadžić*, IT-95-5/18-PT, Decision on Prosecution’s Motion for Delayed Disclosure for KDZ456, KDZ493, KDZ531 and KDZ432, and variation of protective measures for KDZ489, 5 June 2009 (“*Karadžić Decision*”), para.12.

²⁷ *Karadžić Decision*, para.12.

²⁸ *Haradinaj Decision*, para.3.

which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”.

53. In many instances, it appears evident that the Prosecution is incorrectly requesting the Chamber to give priority to the protection of witnesses over the rights of the Accused to be informed promptly and in detail of the nature, cause and content of the charges and to have adequate time for the preparation of the defence.

F. A potential risk to the well-being, dignity and privacy of witnesses is insufficient in and of itself to justify delayed disclosure or the application of non-standard redactions

54. In support of its Prosecution Application, the Prosecution incorrectly posits that “[a]ny disadvantage to the Accused stemming from delayed disclosure is outweighed by the Court’s obligation to take appropriate measures to ensure due regard for the protection of the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”.²⁹

55. Firstly, the references relied upon by the Prosecution in footnotes 46 and 47 do not support the Prosecution’s contentions. In particular, the *Katanga* appeal decision referred to by the Prosecution dealt with a substantially different request, namely the relocation of a witness – a matter which does not engage the rights of the Accused.

56. Secondly, while the well-being, dignity and privacy of witnesses are indeed important considerations for the Court pursuant to Article 68 of the Statute, it is well established that they are in and of themselves insufficient to justify delayed disclosure of the identity of a witness and/or the application of a non-standard redaction. Indeed, such far-reaching measures, especially at this stage, require nothing less than the existence of a potential risk to the *safety* of the witness.³⁰

²⁹ Prosecution Request, para.48.

³⁰ See Decision on Protocol on Redactions, para.15.

57. Consequently, unless the Prosecution establishes convincingly an objectively justifiable risk *to the safety* of the witnesses concerned – which it failed to do in respect of, *inter alia*, its requests that images of vulnerable witnesses in various photos be redacted³¹ – its requests must be denied.

58. The jurisprudence of ICTY Trial Chambers supports this position. Broad allegations of dangerous conditions for victims and witnesses in general will not suffice to justify the issuance of non-disclosure order.³² A real fear for the security of the witness or his family must be shown to exist. Subjective fears of the potential witness that he or she may be in danger or at risk are not sufficient.³³

G. The timing of disclosure to the Accused cannot be contingent on the Prosecution's continuous investigations

59. In many cases, the Prosecution requests the delayed disclosure of and/or the application of non-standard redactions to witnesses' material on the basis of work that remains to be done within its Office and the time necessary for VWU to determine whether additional protective measures are necessary. The Defence is concerned by the lack of diligence displayed by the Prosecution Application and Prosecution Request. The Prosecution was well aware of the timeline set by the Chamber on 9 October 2014,³⁴ as well as of the Defence's constructive approach from the beginning, to commence the trial without delay contingent upon disclosure being complete and the filing of the Prosecution pre-trial brief a minimum of three months before the start of trial.³⁵ The Prosecution is also well informed of the delays involved when referring a witness to VWU for an updated security assessment.

³¹ As acknowledged by VWU in other proceedings, a witness' perception to be at a very high level of risk in the event that his/her pictures are shown to third parties "does not always correspond to the objective level of risk": ICC-01/04-01/07-2148, para.3, *referred to* in Prosecution Request, para.40.

³² *Haradinaj* Decision, para.2.

³³ *The Prosecutor v. Milan Lukić*, IT-98-32/1-T, Order on Milan Lukić's Request for Protective Measures, 23 July 2008, pp.3-4.

³⁴ Order, paras.9.b and 9.d.

³⁵ See, for example, ICC-01/04-02/06-T-15-ENG ET WT 17-10-2014 1-21 NB T, p.10; ICC-01/04-02/06-T-17-CONF-ENG ET 02-12-2014 1-35 SZ T, pp.11-12.

60. In these circumstances, the Prosecution could and should have put an end to its continuous investigations earlier with a view to meeting the disclosure deadlines set by the Chamber. It appears from the Prosecution Application and Prosecution Request that the Prosecution has been aware for quite some time that it would not be able to meet these deadlines. Thus, the Prosecution could also have informed the Chamber and have requested an extension of the disclosure deadline, which it failed to do. Should the Chamber be inclined to grant any of the Prosecution's requests on the basis of actions which remain to be taken in respect of certain witnesses, the Defence respectfully submits that the Accused should not be penalized for this reason and the trial schedule be adjusted accordingly.

61. The Defence is also concerned by certain Prosecution requests to apply non-standard redactions to remain in force either throughout the trial³⁶ or until there is a "relevant change of circumstances".³⁷

62. First, the Prosecution omits to provide any information regarding what change of circumstances would justify the lifting of the requested non-standard redactions. Thus, the reference to a "relevant change of circumstances" is much too vague.

63. Second, pursuant to the applicable test,³⁸ one of the requirements to authorize the non-disclosure of information is the obligation to periodically review the decision authorising the redactions should circumstances change. Again, the Prosecution Request omits to provide any information regarding the periodical review of the circumstances justifying the non-standard redactions.

64. Not only does the Prosecution approach prejudice the Defence, it also puts the burden on the Defence to request a lifting of the non-standard redactions which is both time consuming and impact the Defence's limited resources.

³⁶ See, for example, Prosecution Request, para.35.

³⁷ See, for example, Prosecution Request, para.16.

³⁸ See Decision on Protocol on Redactions, para.15.

65. Consequently, should the Chamber consider granting such Prosecution requests, the Defence respectfully submits that any such requests granted must be accompanied by: (i) a periodical review mechanism; and, more importantly, (ii) specific information regarding the circumstances, for each witness concerned, which could lead to the lifting of the non-standard redactions authorized.

H. The delayed disclosure and non-standard redactions sought will unduly prejudice the fair trial rights of the Accused

66. It is well established that the authorization of the non-disclosure of information requires “[a]n assessment as to whether the redactions sought are ‘prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’”.³⁹

67. In this regard, it must be recalled that: (i) the overriding principle is that full disclosure should be made; and (ii) it must also always be borne in mind that the authorisation of non-disclosure of information is the exception to this general rule.⁴⁰

68. The requested delayed disclosure and non-standard redactions impact on two specific fundamental rights of the Accused, namely: (i) to be informed promptly and in detail of the nature, cause and content of the charges; and (ii) to have adequate time for the preparation of the defence.

69. The Prosecution Application, the Prosecution Request and related submissions addressed herein – taking into account the Prosecution’s withdrawals of certain requests for delayed disclosure and non-standard redactions – lead to the non-disclosure of information to the Defence concerning no less than 12 trial witnesses and 11 non-trial witnesses for various periods of time.⁴¹

70. While section III herein addresses each of these witnesses individually – leading to a specific sought for each – it is crucial for the Chamber to assess the

³⁹ See Decision on Protocol on Redactions, para.15.

⁴⁰ ICC-01/04-01/07-475, para.70.

⁴¹ P-0018, P-0019, P-0113, P-0875, P-0883, P-0806, P-0888, P-0901, P-0907, P-0911, P-0758 and P-0898 (trial witnesses); P-0087, P-0125, P-0809, P-0813, P-0871, P-0876, P-0882, P-0899, P-0013, P-0044 and P-0816 (non-trial witnesses).

Prosecution's requests in respect of each witness taking into account the overall prejudice on the above-mentioned rights of the Accused.

71. The main prejudice which the Prosecution attempts to downplay is the cumulative of the Prosecution's requests on the ability for the Defence to prepare for trial. This is even more critical considering that the trial is scheduled to commence within less than three months.

72. Preparation for trial implies that the Defence must be able to approach the Prosecution phase of the trial with full knowledge and understanding of *all* evidence the Prosecution intends to rely upon at trial as well as *all* exculpatory material which came to the Prosecution's attention in the course of its investigations. This undoubtedly includes materials in the possession of the Prosecution which are material to the case for the defence on the basis that these materials constitute an important source of exculpatory evidence and/or investigation leads.

73. Preparation for trial also includes that the Defence must be able to engage and effectively cross-examine each Prosecution witness with a view to ensuring that the Chamber is able to perform its truth-seeking function on the basis of properly tested and reliable evidence without wasting valuable judicial resources.

74. The Accused cannot benefit from a fair trial unless the Defence has had the opportunity to adequately prepare for trial in this manner. This requires full disclosure by the Prosecution, a meaningful opportunity to effectively investigate, time and the necessary human and financial resources.

75. In fact, the Defence has a duty to fully investigate every possible avenue which can benefit the Accused, not leaving any stone unturned. Indeed, "[t]he point of defence investigations is to give the Accused a fair opportunity to challenge the charges and the evidence against him. Thus, even if in the end the accused is convicted the defence's investigatory efforts will still have made a very important contribution to the trial process, namely by showing that the incriminating evidence

was so strong that it could not be defeated by whatever evidence the defendant could – or, crucially, could not – find to contradict the charges.”⁴²

76. A meaningful opportunity to effectively investigate flows directly from the principle of equality of arms. It must be noted in this regard that in the field of investigations, the Defence is seriously disadvantaged in comparison to the Prosecution. The Defence does not have professional investigators, remunerated at professional levels, who can rely on full logistic support and who have been investigating since 2005. The Defence must rely on resource persons/investigators having minimal remuneration and very little resources to perform their work. Resource persons/investigators must directly and physically be supported by members of the Defence team, which in turn impacts the time available to the Defence to perform all tasks which must be completed at the seat of the Court as well as to analyse the results of the team’s investigations. Consequently, Defence investigations take much more time.

77. In assessing whether the delayed disclosure of the identity of a witness or a non-standard redaction prejudices the Defence, much more than the number of witnesses impacted – all be it very high in this case – must be considered. While it might be tempting to focus on the Prosecution’s withdrawal of some of its requests and the fact that in the end the Prosecution is requesting the delayed disclosure of the identity of only four witnesses, this would be inappropriate in light of the numerous other considerations highlighted herein. The Defence respectfully submits that the Chamber must look at both the overall prejudice to the Accused as well whether each individual Prosecution request meets the applicable test.

78. The Prosecution’s requests are directed at alleged victim witnesses, so-called insider witnesses and non-trial witnesses.

⁴² ICC-01/04-01/07-3436-AnxI, para.92.

79. In respect of alleged victim witnesses, it is of paramount importance for the Defence to have an effective opportunity to investigate their narrative with a view to verifying at a minimum their credibility. The information for which the Prosecution seeks authorization not to disclose – identity of the witness and his/her family members, pictures, specific timing and location of the alleged crime – will inevitably impede the Defence's ability to effectively investigate or at a minimum seriously render such investigations more complicated, resource consuming and longer. To provide but one example, it is significant that in the *Lubanga* case the Prosecution was not able to adduce reliable evidence concerning one single child soldier as a result of the effective investigations conducted by the Defence.

80. With less than three months to go before trial, authorizing the non-disclosure of such information will prejudice the Defence, which will not be able to prepare adequately for trial.

81. So-called insider witnesses are undoubtedly the most important for the purpose of understanding the case for the Prosecution and being able to challenge the Prosecution case. It would be unthinkable and irresponsible for the Defence to begin the trial without having at least begun an effective investigation into the narrative, credibility and motivations of these witnesses. It must be noted in this regard that insiders, having been interviewed pursuant to Article 55(2) of the Statute on the basis that there are grounds to believe that they committed a crime, have an objective incentive to lie or at a minimum to evade responsibility. With less than three months to go before trial, authorizing the non-disclosure of information sought by the Prosecution for these witnesses will prejudice the Defence, which will not be able to prepare adequately for trial.

82. Regarding non-trial witnesses, they are of the utmost importance for the Defence for the purpose of identifying exculpatory evidence and/or investigation leads. When the Prosecution meets with a potential witness and obtains a statement from the same, only to later decide not to call that person as a witness, the

information provided by the person is undoubtedly material to the Defence in preparing for trial.

83. With less than three months to go before trial, authorizing the non-disclosure of information sought by the Prosecution for these non-witnesses will impede the Defence's ability to identify, locate and obtain information from them, thereby prejudicing the rights of the Accused, as the Defence will not be able to prepare adequately for trial.

84. It is also significant that the objective risk to the safety of a person who will not testify at trial is necessarily less. Consequently, the non-disclosure of information concerning such persons should not be authorized other than in very exceptional circumstances, which the Prosecution has not established.

85. In sum, the prejudice to the Accused arising from the Prosecution Application and Prosecution Request includes: (i) the fact that the Defence is deprived of the necessary witness information to be able to investigate; (ii) the fact that even where the Defence is able to investigate, much more time and resources will be required, despite the limited resources available; and (iii) the fact that the Defence will not be able to begin the trial with a full understanding of the Prosecution case and/or the ability to effectively engage Prosecution witnesses.

86. This situation is seriously compounded by the fact that the trial is scheduled to commence within less than three months. Consequently, in authorizing any requests for delayed disclosure and/or non-standard redactions, the Defence respectfully submits that the trial must be adjusted accordingly. In this regard, the Defence posits that although it is not consideration related specifically to the Prosecution requests taken individually, the fact that the burden on the Defence in terms of material disclosed has tripled since 15 January 2015, must be taken into account.

III. ANALYSIS OF PROSECUTION REQUESTS BY WITNESS AND DEFENCE POSITION

1. Witness P-0087

87. Witness P-0087 is a non-trial witness who is a former UPC member for whom the Defence is in possession of redacted screening notes⁴³ that do not reveal his identity.⁴⁴

88. The Prosecution requests that the redactions authorised by the Single Judge in relation to the screening note of Witness P-0087 be maintained until there is a relevant change in circumstances.⁴⁵

89. The Prosecution justifies its request on the basis that it “has been unable to inform [Witness P-0087] of the disclosure and provide him with the relevant security information in the event of an emergency”.⁴⁶ The Prosecution points out that if it “manage[s] to obtain either of [this individual’s] contact information, consent for disclosure, and complete and current security information, it will duly inform the Chamber”.⁴⁷

90. As a result, should the Prosecution’s request be granted, the Defence would only be in possession of redacted screening notes not revealing the identity of the witness even though it may contain information that may be potentially exonerating and/or Rule 77 information.⁴⁸

91. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution’s request related to witness P-0087. In particular, the Prosecution’s request fails to establish an objectively identifiable risk to the safety of that witness and ignores that certain information which can be redacted during the Confirmation stage must be disclosed at the trial

⁴³ DRC-OTP-0113-0265.

⁴⁴ ICC-01/04-02/06-233-Conf-Exp-AnxII.

⁴⁵ Prosecution Request, paras.3 and 16.

⁴⁶ Prosecution Request, para.17.

⁴⁷ Prosecution Request, para.17.

⁴⁸ Prosecution Request, para.15.

stage.⁴⁹ If granted, the Prosecution's request would seriously hamper Defence investigations related to non-trial witnesses by denying the Defence information which is necessary for this purpose.⁵⁰ Consequently, the Prosecution's request unduly prejudices the fair trial rights of the Accused as the Defence would be deprived of the necessary time and facilities to prepare adequately for trial.⁵¹

2. Witness P-0125

92. Witness P-0125 is a non-trial witness. He is a former UPC member for whom the Defence is solely in the possession of a redacted interview note⁵² that does not reveal his identity.⁵³

93. The Prosecution requests that the redactions authorised by the Single Judge in relation to the interview note of Witness P-0125 be maintained until there is a relevant change in circumstances.⁵⁴

94. The Prosecution's request is based on the fact that it "has been unable to inform P-0125 of disclosure and provide P-0125 with the relevant security information in the event of an emergency".⁵⁵ The Prosecution points out that if it manages to obtain P-0125's contact information, consent for disclosure and complete and current security information, it will duly inform the Chamber.⁵⁶

95. Should the Prosecution's request be granted, the Defence would only be in possession of a redacted interview note not revealing the identity of the witness even though it contains information that may be potentially exonerating and/or Rule 77 information.⁵⁷

⁴⁹ See *supra*, paras.44-49.

⁵⁰ See *supra*, paras.82-84.

⁵¹ See *supra*, paras.66-77.

⁵² DRC-OTP-0150-0469-R01.

⁵³ ICC-01/04-02/06-233-Conf-Exp-AnxII.

⁵⁴ Prosecution Request, paras.3 and 16.

⁵⁵ Prosecution Request, para.17.

⁵⁶ Prosecution Request, para.17.

⁵⁷ Prosecution Request, para.15.

96. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to witness P-0125. In particular, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of that witness and ignores that certain information which can be redacted during the Confirmation stage must be disclosed at the trial stage.⁵⁸ If granted, the Prosecution's request would impede Defence investigations related to non-trial witnesses by denying the Defence critical information necessary for this purpose.⁵⁹ The Prosecution's request unduly prejudices the fair trial rights of the Accused as it deprives the Defence of the necessary time and facilities to prepare for trial.⁶⁰

3. Witness P-0809

97. Witness P-0809 is a non-trial witness. He is a civilian who allegedly witnessed several attacks in Ituri for whom the Defence is solely in possession of a redacted witness statement⁶¹ that does not reveal his identity.⁶²

98. The Prosecution requests that the redactions authorised by the Single Judge in relation to the statement of witness P-0809 be maintained until there is a relevant change in circumstances.⁶³

99. The Prosecution justifies its request on the basis that P-0809 expressed serious security concerns.⁶⁴ In this respect, the Defence underscores that the Prosecution's justification is heavily redacted.

100. Should the Prosecution's request be granted, the Defence would only be in possession of a redacted statement, which does not reveal the identity of the witness

⁵⁸ See *supra*, paras.44-49.

⁵⁹ See *supra*, paras.82-84.

⁶⁰ See *supra*, paras.66-77.

⁶¹ DRC-OTP-2062-0217-R01.

⁶² ICC-01/04-02/06-233-Conf-Exp-AnxII.

⁶³ Prosecution Request, paras.3, 16 and 18.

⁶⁴ Prosecution Request, para.18.

even though it contains information that may be potentially exonerating and/or Rule 77 information.⁶⁵

101. **Relief sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0809. More particularly, the Prosecution fails to demonstrate an objectively identifiable risk to the safety of the witness⁶⁶ and ignores that certain information which can be redacted during the Confirmation stage must be disclosed at the trial stage.⁶⁷ If granted, the Prosecution's request would seriously hamper Defence investigations related to non-trial witnesses by denying the Defence information which is necessary for this purpose.⁶⁸ Consequently, the Prosecution's request unduly prejudices the fair trial rights of the Accused as the Defence would be deprived of the necessary time and facilities to prepare adequately for trial.⁶⁹

102. In the alternative, the Prosecution's request fails to provide the Defence with sufficient information to effectively respond and the Chamber must delay adjudication of the request and order the Prosecution to provide additional information.⁷⁰

4. Witness P-0813

103. Witness P-0813 is a non-trial witness. He is a civilian who allegedly witnessed an attack on Mongbwalu for whom the Defence is solely in possession of a redacted witness statement⁷¹ that does not reveal his identity.⁷²

⁶⁵ Prosecution Request, para.15.

⁶⁶ See *supra*, paras.54-58.

⁶⁷ See *supra*, paras.44-49.

⁶⁸ See *supra*, paras.82-84.

⁶⁹ See *supra*, paras.66-77.

⁷⁰ See *supra*, paras.26-31.

⁷¹ DRC-OTP-2067-1817-R01.

⁷² ICC-01/04-02/06-334-Conf-Exp-AnxII.

104. The Prosecution requests that the redactions authorised by the Single Judge in relation to the statement of witness P-0813 be maintained until there is a relevant change in circumstances.⁷³

105. The Prosecution justifies its request on the basis that this witness expressed concerns for his and his family's safety and security.⁷⁴ In this respect, the Defence underscores that essential parts of the Prosecution's justification are redacted.

106. As a result, should the Prosecution's request be granted, the Defence would only be in possession of a redacted statement not revealing the identity of the witness even though it likely contains information that may be potentially exonerating and/or Rule 77 information.⁷⁵

107. Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0813. In particular, the Prosecution fails to demonstrate an objectively identifiable risk to the safety of P-0813⁷⁶ and ignores that certain information which can be redacted during the Confirmation stage must be disclosed at the trial stage.⁷⁷ If granted, the Prosecution's request would hamper Defence investigations related to non-trial witnesses by denying the Defence important information necessary for this purpose.⁷⁸ Hence, the Prosecution's request unduly prejudices the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to prepare adequately for trial.⁷⁹

108. In the alternative, the Prosecution's request fails to provide the Defence with sufficient information allowing the Defence to respond effectively and the Chamber

⁷³ Prosecution Request, paras.3, 16 and 18.

⁷⁴ Prosecution Request, para.18.

⁷⁵ Prosecution Request, para.15.

⁷⁶ See *supra*, paras.54-58.

⁷⁷ See *supra*, paras.44-49.

⁷⁸ See *supra*, paras.82-84.

⁷⁹ See *supra*, paras.66-77.

must delay adjudication of its request and order the Prosecution to provide additional information.⁸⁰

5. Witness P-0109

109. The Defence understands that the Prosecution has withdrawn its request in respect of all material related to Witness P-0109. As long as all information in possession of the Prosecution concerning this witness is disclosed to the Defence (to this day, it has not been possible to confirm this), the Defence has no objection.

6. Witness P-0871

110. Witness P-0871 is a non-trial witness. He is an alleged former UPC child soldier whose witness statement contains information of a potentially exculpatory nature or that could otherwise be material to the Defence's preparation.⁸¹

111. The Defence has not been provided with any material concerning this witness.

112. The Prosecution requests authorisation for the application non-standard redactions to the P-0871 witness' statement until there is a relevant change in circumstances.⁸²

113. The Prosecution justifies its request on the basis of the alleged vulnerability of P-0871 to retaliatory attacks if [REDACTED] cooperation with the Prosecution is made known.⁸³ In this respect, the Defence underscores that essential parts of the Prosecution's justification are redacted.

114. Should the Prosecution's request be granted, the Defence would only be in possession of a redacted statement not revealing the identity of this witness even though it likely contains information that may be potentially exonerating and/or Rule 77 information; and that, for an indefinite period of time.

⁸⁰ See *supra*, paras.26-31.

⁸¹ Prosecution Request, para.19.

⁸² Prosecution Request, para. 3.

⁸³ Prosecution Request, para. 22.

115. Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0871. In particular, the Prosecution failed to establish an objectively identifiable risk to the safety of the witness.⁸⁴ It must be recalled in this regard that the potential risk to the safety of a person who will not testify, if any, is necessarily less depending on the alleged threat identified. If granted, the Prosecution's request will impede Defence investigations related to non-trial witnesses by denying the Defence essential information for this purpose.⁸⁵ The Prosecution's request unduly prejudices the fair trial rights of the Accused as it deprives the Defence of the necessary time and facilities to prepare adequately for trial.⁸⁶

7. Witness P-0876

116. Witness P-0876 is a non-trial witness who is an alleged former UPC child soldier and whose witness statement contains information of a potentially exculpatory nature or that could otherwise be material to Defence preparations for trial.⁸⁷

117. The Defence has not been provided with any material concerning P-0876.

118. The Prosecution requests the application of non-standard redactions to the witness statement of P-0876 until there is a relevant change in circumstances.⁸⁸

119. The Prosecution justifies its request on the basis that the witness decided [REDACTED] could not continue with the interview.⁸⁹ The Defence underscores that the reasons underlying the witness' decision are redacted.

120. As a result, should the Prosecution's request be granted, the Defence would only be in possession of a redacted statement not revealing the identity of this

⁸⁴ See *supra*, paras.54-58.

⁸⁵ See *supra*, paras.82-84.

⁸⁶ See *supra*, paras.66-77.

⁸⁷ Prosecution Request, para.2.

⁸⁸ Prosecution Request, para.3.

⁸⁹ Prosecution Request, para.23.

witness even though it likely contains information that may be potentially exonerating and/or Rule 77 information; and that, for an indefinite period of time.

121. Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0876. In particular, the Prosecution fails to demonstrate an objectively identifiable risk to the safety of the witness.⁹⁰ The Prosecution's request, if granted, will impede the Defence investigations related to non-trial witnesses by denying the Defence essential information necessary for this purpose.⁹¹ The Prosecution's request unduly prejudices the fair trial rights of the Accused as the Defence is deprived of the necessary time and facilities to prepare for trial.⁹²

122. In the alternative, the Prosecution's request fails to provide the Defence with sufficient information allowing the Defence to effectively respond and the Chamber must delay adjudication of its request and order the Prosecution to provide additional information.

8. Witness P-0882

123. Witness P-0882 is a non-trial witness whose statement contains information of a potentially exculpatory nature or that could be material to the Defence's preparation.⁹³ Significantly, the Prosecution provides no details concerning the witness' capacity/identity and/or the information this person would provide.

124. At this time, no documentary evidence has been provided to the Defence concerning this witness.

125. The Prosecution initially sought authorisation to submit its proposed non-standard redactions in relation to the transcripts of P-0882's audio-recorded

⁹⁰ See *supra*, paras.54-58.

⁹¹ See *supra*, paras.82-84.

⁹² See *supra*, paras.66-77.

⁹³ Prosecution Request, para.19.

interview by 2 March 2015.⁹⁴ On 2 March 2015, the Prosecution submitted its proposed redactions and asked the Chamber to authorise the application of the said redactions to the witness statement.⁹⁵

126. The Prosecution's request is based on the security concerns expressed by the witness.⁹⁶ The Defence underscores that significant information concerning this witness is redacted from the Prosecution Request.

127. As a result, should the Prosecution's request be granted, the Defence would only be in possession of the redacted transcription of P-0882's interview – most likely provided pursuant to Article 55(2) – even though it likely contains information that may be potentially exonerating and/or Rule 77 information⁹⁷, and that for an indefinite period of time.

128. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0882. In particular, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of the witness.⁹⁸ If granted, the Prosecution's request will impede Defence investigations related to non-trial witnesses by denying the Defence very important information, which is necessary for this purpose.⁹⁹ Hence, the Prosecution's request unduly prejudices the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to prepare for trial.¹⁰⁰

129. In the alternative, the Prosecution's request fails to provide sufficient information allowing the Defence to respond effectively. It is thus necessary for the Chamber to delay adjudication of the Prosecution's request and order the Prosecution to provide additional information.

⁹⁴ Prosecution Request, para.20.

⁹⁵ Prosecution P-0882 Request, paras. 1-3.

⁹⁶ Prosecution Request, para. 24.

⁹⁷ Prosecution Request, para. 19.

⁹⁸ See *supra*, paras.54-58.

⁹⁹ See *supra*, paras.82-84.

¹⁰⁰ See *supra*, paras.66-77.

9. Witness P-0899

130. Witness P-0899 is a non-trial witness who is an alleged former child soldier. On 2 March 2015, the Prosecution disclosed to the Defence screening notes related to witness P-0899, to which non-standard redactions were applied.¹⁰¹

131. The Prosecution requests the application of non-standard redactions in relation to witness P-0899's screening notes until [REDACTED].¹⁰²

132. The Prosecution justifies its request on the basis that Witness P-0899 expressed security concerns.¹⁰³ In this respect, the Defence underscores that essential parts of the Prosecution's justifications are redacted.

133. [REDACTED]¹⁰⁴

134. As a result, should the Prosecution's request be granted, the Defence would only be in possession of redacted screening notes that do not reveal the identity of the witness even though such notes likely contain information that may be potentially exonerating and/or Rule 77 information,¹⁰⁵ and that for an indefinite period of time.

135. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0899. In particular, bearing in mind that the potential risk to persons who will not testify is necessarily less, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of the witness.¹⁰⁶ If granted, the Prosecution's request would hamper Defence investigations related to non-trial witnesses by denying and/or delaying essential information necessary for this purpose.¹⁰⁷ The

¹⁰¹ DRC-OTP-2078-2323.

¹⁰² Prosecution Request, paras.3 and 26.

¹⁰³ Prosecution Request, para.26.

¹⁰⁴ [REDACTED]

¹⁰⁵ Prosecution Request, para.25.

¹⁰⁶ See *supra*, paras.54-58.

¹⁰⁷ See *supra*, paras.82-84.

Prosecution's request thus unduly prejudices the fair trial rights of the Accused by depriving the Defence of the time and facilities required to adequately prepare for trial.¹⁰⁸

136. In the alternative, the Prosecution's request fails to provide sufficient information allowing the Defence to effectively respond and the Chamber must delay adjudication of the Prosecution's request and order the Prosecution to provide additional information.

10. Witness P-0013

137. Witness P-0013 is a non-trial witness. Significantly, the Prosecution provides no background information concerning the witness' capacity or other information regarding the information was provided to the Prosecution by this person. Moreover, while the Single Judge authorised the Prosecution to disclose an anonymous summary related to this witness,¹⁰⁹ to this day, the Defence has been unable to find this summary.

138. The Prosecution requests the non-disclosure Witness P-0013's identity and statement, arguing that the anonymous summary – found in confidential, *ex parte* Annex C2 – it proposes to provide, suffices for the purposes of disclosure as it contains all information which is material to the preparation of the Defence pursuant to Rule 77. The Prosecution further requests that disclosure should be maintained until there is a relevant change in circumstances.¹¹⁰

139. The Prosecution justifies its request on the basis that the witness expressed the view "that providing the Prosecution with a statement would pose a high risk to

¹⁰⁸ See *supra*, paras.66-77.

¹⁰⁹ ICC-01/04-02/06-248-Conf-Exp, para. 21, with confidential redacted version ICC-01/04-02/06-248-Conf-Red, para.21.

¹¹⁰ Prosecution Request, paras.3 and 31.

[REDACTED] [REDACTED] family's security."¹¹¹ Once again, the Defence underscores that several parts of the Prosecution's justifications are redacted.

140. As a result, should the Prosecution's request be approved, the Defence would only be in possession of an anonymous summary not revealing the identity of the witness, even though it very likely contains information that could otherwise be material to the Defence's preparation regarding, *inter alia*, the role of foreign parties in the conflict"¹¹², and that for an indefinite period of time.

141. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0013. In particular, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of the witness¹¹³ and ignores that certain information which can be redacted during the Confirmation stage must be disclosed at the trial stage.¹¹⁴ If granted, the Prosecution's request would impede Defence investigations related to non-trial witnesses by denying the Defence crucial information necessary for this purpose.¹¹⁵ In this regard, the anonymous summary proposed by the Prosecution is insufficient and inadequate to effectively inadequate.¹¹⁶ Hence, the Prosecution's request unduly prejudices the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to adequately prepare for trial.¹¹⁷

142. In the alternative, the Prosecution's request fails to provide sufficient information allowing the Defence to respond effectively and the Chamber must delay adjudication of the Prosecution's request and order the Prosecution to provide additional information.

11. Witness P-0044

¹¹¹ Prosecution Request, para.31.

¹¹² Prosecution Request, para.27.

¹¹³ See *supra*, paras.54-58.

¹¹⁴ See *supra*, paras.44-49.

¹¹⁵ See *supra*, paras.82-84.

¹¹⁶ See *supra*, para.48.

¹¹⁷ See *supra*, paras.66-77.

143. Witness P-0044 is a non-trial witness who is testifying on the political context. Pursuant to a decision rendered by the Single Judge, the Defence is in possession of an anonymous summary of his statement.¹¹⁸

144. The Prosecution requests the Chamber to authorise the non-disclosure witness P-0044's identity and statement, arguing that the proposed anonymous summary provided at confidential, *ex parte* Annex C1 suffices for the purposes of disclosure as it contains all information in the statement which is material to the Defence pursuant to Rule 77; until there is a relevant change in circumstances.¹¹⁹

145. The Prosecution justifies its request solely on the sole basis that the witness refused to have his statement disclosed.¹²⁰ The Defence underscores in this regard that several essential parts of the Prosecution's justifications are redacted.

146. As a result, should the Prosecution's request be granted, the Defence would only be in possession of an anonymous summary, even though it very likely contains information that could otherwise be material to Defence preparations regarding, *inter alia*, the role of foreign parties in the conflict"¹²¹, for an indefinite period of time.

147. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0044. In particular, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of the witness¹²² and ignores that certain information which can be redacted during the Confirmation stage must be disclosed at the trial stage.¹²³ If granted, the Prosecution's request would impede Defence investigations related to non-trial witnesses by denying the Defence crucial information necessary for this

¹¹⁸ DRC-OTP-0164-0281.

¹¹⁹ Prosecution Request, paras.3 and 29.

¹²⁰ Prosecution Request, para.28.

¹²¹ Prosecution Request, para.27.

¹²² See *supra*, paras.54-58.

¹²³ See *supra*, paras.44-49.

purpose.¹²⁴ In this regard, the anonymous summary proposed by the Prosecution is insufficient and inadequate to effectively investigate.¹²⁵ Hence, the Prosecution's request unduly prejudices the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to adequately prepare for trial.¹²⁶

148. In the alternative, the Prosecution's request fails to provide sufficient information allowing the Defence to respond effectively and the Chamber must delay adjudication of the Prosecution's request and order the Prosecution to provide additional information.

12. Witness P-0816

149. According to the Prosecution, witness P-0816 is a non-trial witness for whom no material was disclosed to the Defence.

150. The Prosecution requests the Chamber to authorise the non-disclosure of witness P-0816's identity and statement and authorise disclosure of the proposed anonymous summary found in confidential, *ex parte* Annex C3. The Prosecution argues that the proposed summary contains all of the information potentially exculpatory and/or material to the Defence in nature. The Prosecution adds that no more is require until there is a relevant change in circumstances.¹²⁷

151. The Prosecution's request is based entirely on reasons that have been redacted.¹²⁸

152. As a result, should the Prosecution's request be approved, the Defence would only be in possession of an anonymous summary – that has not even been provided if only for the purpose of allowing the Defence to be in a position to respond to this request – even though the statement provided by the P-0815 contains exculpatory

¹²⁴ See *supra*, paras.82-84.

¹²⁵ See *supra*, para.48.

¹²⁶ See *supra*, paras.66-77.

¹²⁷ Prosecution Request, paras.3 and 33.

¹²⁸ Prosecution Request, para.32.

information as well as information otherwise material to Defence preparations regarding, *inter alia*, the role of foreign parties in the conflict”¹²⁹, for an indefinite period of time.

153. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution’s request related to Witness P-0044. In particular, bearing in mind that the potential risk to the safety of a person who will not be called to testify is necessarily less, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of the witness.¹³⁰ The prosecution also ignores that certain information which can be redacted during the Confirmation stage must be disclosed at the trial stage.¹³¹ If granted, the Prosecution’s request would impede Defence investigations related to non-trial witnesses by denying the Defence crucial information necessary for this purpose.¹³² In this regard, the anonymous summary proposed by the Prosecution is insufficient and inadequate to effectively investigate.¹³³ Hence, the Prosecution’s request unduly prejudices the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to adequately prepare for trial.¹³⁴

154. In the alternative, the Prosecution’s request fails to provide sufficient information allowing the Defence to respond effectively and the Chamber must delay adjudication of the Prosecution’s request and order the Prosecution to provide additional information.

13. Witnesses P-0018, P-0019 and P-0113

155. Witnesses P-0018, P-0019 and P-0113 are trial witnesses who are civilians and alleged victims of sex and gender-based crimes for whom the Defence is in

¹²⁹ Prosecution Request, para.27.

¹³⁰ See *supra*, paras.54-58, 84.

¹³¹ See *supra*, paras.44-49

¹³² See *supra*, paras.82-84.

¹³³ See *supra*, para.48.

¹³⁴ See *supra*, paras.66-77.

possession of non-standard redacted photographs¹³⁵ and of a standard redacted witness statements.¹³⁶ With respect to Witness P-0113, the Defence is also in possession of investigator's notes.¹³⁷

156. The Prosecution seeks redactions to Witnesses P-0018's, P-0019's and P-0113's photographs for the duration of the trial.¹³⁸

157. The Prosecution justifies its requests on the basis of: (i) an alleged vulnerability of these witnesses; (ii) the fact that these photographs could reveal the witnesses' involvement with the Court; and (iii) the need to ensure protection of their safety and privacy.¹³⁹

158. As a result, should the Prosecution's requests be approved, the Defence would be in possession of redacted photographs for the duration of the trial.

159. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's requests related to Witnesses P-0018, P-0019 and P-0113. In particular, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of these witnesses.¹⁴⁰ If granted, the Prosecution's requests will impede Defence investigations related to victim witnesses by denying the Defence very important information, which is necessary for this purpose.¹⁴¹ Furthermore, the redaction of the photographs for the duration of the trial will seriously affect the ability of the Defence to investigate.¹⁴² Hence, the

¹³⁵ Witness P-0018: Prosecution Request, footnotes 44 and 52; Witness P-0019: DRC-OTP-0108-0155 to DRC-OTP-0108-0170 Prosecution Request, footnotes 45 and 52; Witness P-0113: DRC-OTP-2059-0047 (identifying document).

¹³⁶ Witness P-0018: DRC-OTP-2052-0176-R02; Witness P-0019: DRC-OTP-0108-0172 ; DRC-OTP-2054-0060-R02; Witness P-0113: DRC-OTP-2069-2078, DRC-OTP-2052-0040.

¹³⁷ DRC-OTP-2059-0092.

¹³⁸ Prosecution Request, para.34.

¹³⁹ Prosecution Request, paras.5, 36 et 37.

¹⁴⁰ See *supra*, paras.54-58.

¹⁴¹ See *supra*, paras.79-80.

¹⁴² See *supra*, para.57.

Prosecution's requests unduly prejudice the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to prepare for trial.¹⁴³

14. Witnesses P-0875, P-0883 and P-0758

160. Witness P-0875 is a trial witness who was an alleged former child soldier for whom the Defence is in possession of redacted materials – witness' statements,¹⁴⁴ screening notes¹⁴⁵ and investigator's notes¹⁴⁶ – and a non-standard redacted photograph.¹⁴⁷ On 2 March 2015, the Prosecution disclosed an investigation note.¹⁴⁸

161. The Prosecution seeks redactions to witness P-0875's photograph for the duration of the trial.¹⁴⁹ The Prosecution justifies its request on the basis of an alleged vulnerability of the witness and in order to protect his safety and privacy.¹⁵⁰ As a result, should the Prosecution's request be granted, the Defence would be in possession of a redacted photograph for the duration of the trial.

162. Witness P-0883 is a trial witness who was an alleged former child soldier and an alleged victim of sexual violence for whom the Defence is in possession of a redacted witness' statement¹⁵¹ and non-standard redacted photographs.¹⁵²

163. The Prosecution seeks redactions to witness P-0883's photographs for the duration of the trial.¹⁵³ The Prosecution justifies its request on the basis of the alleged vulnerability of the witness and in order to protect his safety and privacy.¹⁵⁴ As a result, should the Prosecution's request be granted, the Defence would be in possession of a redacted photograph for the duration of the trial.

¹⁴³ See *supra*, paras.66-77.

¹⁴⁴ DRC-OTP-2070-0180-R01.

¹⁴⁵ DRC-OTP-2069-2200.

¹⁴⁶ DRC-OTP-2078-2296-R01.

¹⁴⁷ DRC-OTP-2070-0073 (electoral card).

¹⁴⁸ DRC-OTP-2078-2323.

¹⁴⁹ Prosecution Request, para.34.

¹⁵⁰ Prosecution Request, paras.5, 36 et 37.

¹⁵¹ DRC-OTP-2074-0393-R01.

¹⁵² DRC-OTP-2075-1004 to DRC-OTP-2075-1006, DRC-OTP-2078-2735 (electoral card).

¹⁵³ Prosecution Request, para.34.

¹⁵⁴ Prosecution Request, paras.5, 36 et 37.

164. Witness P-0758 is a trial witness who is an alleged former child soldier and victim of sexual violence for whom the Defence was, until 2 March 2015, in possession of – identity and identifying information redacted¹⁵⁵ – witness statement¹⁵⁶, screening notes¹⁵⁷ and investigator’s notes.¹⁵⁸ On 2 March 2015 the Prosecution redisclosed to the Defence those documents – standard and non-standard redacted. Witness P-0758 is also expected to provide evidence as an insider.

165. The Prosecution seeks the application of non-standard redactions to witness P-0758’s photographs¹⁵⁹ – which have not yet been disclosed to the Defence – for the duration of the trial.¹⁶⁰ The Prosecution justifies its request on the basis of the alleged vulnerability of the witness and in order to protect his safety and privacy.¹⁶¹

166. As a result, should the Prosecution’s be granted, the Defence would be in possession of a redacted photograph for the duration of the trial.

167. **Relief sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution’s requests related to Witnesses P-0875, P-0883 and P-0758. In particular, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of these witnesses.¹⁶² If granted, the Prosecution’s requests will impede Defence investigations related to both victim witnesses and insider witnesses by denying the Defence very important information, which is necessary for this purpose.¹⁶³ Furthermore, the redaction of the photographs for the duration of the trial will seriously affect the ability of the Defence to investigate.¹⁶⁴ Hence, the Prosecution’s requests unduly prejudice the fair trial rights

¹⁵⁵ ICC-01/04-02/06-165-Conf-Exp.

¹⁵⁶ DRC-OTP-2058-0194.

¹⁵⁷ DRC-OTP-2052-0522.

¹⁵⁸ DRC-OTP-2067-2374.

¹⁵⁹ DRC-OTP-2066-0154. The Defence notes that the Prosecution withdrew its request for delayed disclosure in relation to this witness: Prosecution Withdrawal, para. 6.

¹⁶⁰ Prosecution Request, para.34.

¹⁶¹ Prosecution Request, para.5.

¹⁶² See *supra*, paras.54-58.

¹⁶³ See *supra*, paras.79-80, 81.

¹⁶⁴ See *supra*, para.57.

of the Accused by depriving the Defence of the necessary time and facilities to prepare for trial.¹⁶⁵

15. Witnesses P-0761, P-0773, P-0887, P-0914 and P-0918

168. As long as all information in possession of the Prosecution related to trial witnesses P-0761, P-0773, P-0887, P-0914 and P-0918 is disclosed, the Defence has no objection.

16. Witness P-0898

169. Witness P-0898 is a trial witness who is an alleged former child soldier for whom the Defence is in possession of redacted witness statements, investigation notes and screening notes. Witness P-0898 is also expected to provide evidence as an insider in relation to a number of crimes and modes of liability.¹⁶⁶

170. The Prosecution seeks the application of non-standard redactions to the photographs of witness P-0898 for the duration of the trial in order to protect witness P-0898's safety and privacy.¹⁶⁷

171. As a result, should the Prosecution's request be granted, the Defence would only have access to *redacted* photographs.

172. **Relief sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0898. In particular, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of this witness.¹⁶⁸ If granted, the Prosecution's request will impede Defence investigations related to both victim witnesses and insider witnesses by denying the Defence very important information, which is necessary for this

¹⁶⁵ See *supra*, paras.66-77.

¹⁶⁶ Prosecution Application, para.31.

¹⁶⁷ Prosecution Application, para.5. The Defence notes that the Prosecution withdrew its request for delayed disclosure in relation to this witness: Prosecution Withdrawal, paras.14-15.

¹⁶⁸ See *supra*, paras.54-58.

purpose.¹⁶⁹ Furthermore, the redaction of the photographs for the duration of the trial will seriously affect the ability of the Defence to investigate.¹⁷⁰ Hence, the Prosecution's requests unduly prejudice the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to prepare for trial.¹⁷¹

17. Witness P-0907

173. Witness P-0907 is a trial witness who was an alleged former UPC/FPLC military member and the husband of witness P-0887, for whom the Defence has in its possession redacted investigator interview notes.

174. The Prosecution seeks variation of time limit until the end of April 2015 to disclose the audio recordings, transcriptions and translation of witness P-0907's interview conducted pursuant to Article 55(2) of the Statute.¹⁷² The Prosecution justifies its request on the basis that the corresponding transcripts will not be completed by 2 March 2015.

175. **Relief sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0907. If granted, the Prosecution's request will impede Defence investigations related to insider witnesses by denying the Defence very important information, which is necessary for this purpose.¹⁷³ Furthermore, the summary proposed by the Prosecution is insufficient and inadequate to allow the Defence to effectively investigate.¹⁷⁴ Hence, the Prosecution's requests unduly prejudice the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to prepare for trial.¹⁷⁵

18. Witness P-0888

¹⁶⁹ See *supra*, paras.79-80, 81.

¹⁷⁰ See *supra*, para.57.

¹⁷¹ See *supra*, paras.66-77.

¹⁷² Prosecution Withdrawal, para.11.

¹⁷³ See *supra*, para.81.

¹⁷⁴ See *supra*, para.48.

¹⁷⁵ See *supra*, paras.66-77.

176. Witness P-0888 is a trial witness who is an alleged former child soldier for whom the Defence has in its possession a redacted witness statement, notes and identifying documents. Witness P-0888 is also expected to provide insider evidence relevant to a number of crimes and modes of liability.

177. The Prosecution seeks the application of non-standard redactions to witness P-0888's materials until [REDACTED].¹⁷⁶ The Prosecution also seeks the application of non-standard redactions to witness P-0888's photographs for the duration of the trial in order to protect his safety and privacy.¹⁷⁷

178. As a result, should the Prosecution's requests be granted, the Defence would only have access to these non-standard redacted documents until VWU's decision by 30 April 2015 as well as non-standard redacted photographs for the duration of the trial.

179. **Relief sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's requests related to Witness P-0888. In particular, the Prosecution failed to demonstrate an objectively identifiable risk to the safety of this witness.¹⁷⁸ If granted, the Prosecution's requests will impede Defence investigations related to both victim witnesses and insider witnesses by denying the Defence very important information, which is necessary for this purpose.¹⁷⁹ Furthermore, the redaction of the photographs for the duration of the trial will seriously affect the ability of the Defence to investigate.¹⁸⁰ Hence, the Prosecution's requests unduly prejudice the fair trial rights of the Accused by depriving the Defence of the necessary time and facilities to prepare for trial.¹⁸¹

19. Witness P-0806

¹⁷⁶ Prosecution Application, para.30.

¹⁷⁷ Prosecution Request, para.5.

¹⁷⁸ See *supra*, paras.54-58.

¹⁷⁹ See *supra*, paras.79-80, 81.

¹⁸⁰ See *supra*, para.57.

¹⁸¹ See *supra*, paras.66-77.

180. Witness P-0806 is the sister of witness P-0758, an alleged former child soldier, for whom the Defence is in possession of a redacted witness statement¹⁸² that does not reveal her identity.¹⁸³

181. The Prosecution requests that the non-standard redactions applied to the statements and other materials of this witness be maintained until VWU determines whether additional protective measures are required, a process which should be finalised by 16 March 2015.¹⁸⁴ Yet, VWU states that this date is provisional and that it cannot provide complete time estimation at this juncture.¹⁸⁵ It is worth noting that information regarding this process is redacted in the Prosecution Application.¹⁸⁶ Furthermore, the Prosecution Application provides no reasons justifying the maintaining of the non-standard redactions for this witness.

182. As a result, should the Prosecution's request be granted, there is a high likelihood that the Defence would only be in possession of P-0806's redacted witness statement for a period extending beyond 16 March 2015.

183. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to witness P-0806. In particular, the Prosecution's request fails to establish an objectively identifiable risk to the safety of that witness¹⁸⁷ and ignores that certain information which can be redacted during the Confirmation stage must be disclosed at the trial stage.¹⁸⁸ If granted, the Prosecution's request would seriously hamper Defence investigations related to alleged victim witnesses by denying the Defence information which is necessary for this purpose.¹⁸⁹ Consequently, the Prosecution's

¹⁸² DRC-OTP-2058-1087-R01, DRC-OTP-2062-0814-R01.

¹⁸³ ICC-01/04-02/06-165-Conf-Exp-AnxII.

¹⁸⁴ Prosecution Application, paras.4 and 28.

¹⁸⁵ ICC-01/04-02/06-476, para.4.

¹⁸⁶ Prosecution Application, para.28.

¹⁸⁷ See *supra*, paras.54-58.

¹⁸⁸ See *supra*, paras.44-49.

¹⁸⁹ See *supra*, paras.79-80.

request unduly prejudices the fair trial rights of the Accused as the Defence would be deprived of the necessary time and facilities to prepare adequately for trial.¹⁹⁰

184. In the alternative, the Prosecution's request fails to provide the Defence with sufficient information to effectively respond and the Chamber must delay adjudication of the request and order the Prosecution to provide additional information.¹⁹¹

20. Witness P-0901

185. Witness P-0901 is a former UPC/FPLC military member.¹⁹² Witness P-0901 is expected to provide information regarding the alleged conscription, enlistment and use of child soldiers and other crimes as well as on the alleged Accused's position of authority and his direct perpetration of crimes.¹⁹³

186. The Prosecution requests the Chamber to delay the disclosure of the identity and identifying information of witness P-0901 and to delay disclosure of the audio-recordings of its interview until [REDACTED] 30 April 2015. [REDACTED]¹⁹⁴

187. The Prosecution justifies its request on the basis of the existence of an alleged risk to the safety of witness P-0901 due to his position as former military insider.

188. On 25 February 2015, the Prosecution further filed a Request for authorisation to provide a summary of witness P-0901's statement instead of non-standard redactions.¹⁹⁵ It alleges that non-standard redactions would not suffice to protect the identity of witness P-0901 due to the presence of identifying information throughout the interview.¹⁹⁶

¹⁹⁰ See *supra*, paras.66-77.

¹⁹¹ See *supra*, paras.26-31.

¹⁹² Prosecution Application, para.2.

¹⁹³ Prosecution Application, para.34.

¹⁹⁴ [REDACTED]

¹⁹⁵ Prosecution P-0901 Request.

¹⁹⁶ Prosecution P-0901 Request, para.5.

189. On 2 March 2015, the Defence received a summary of the investigator's notes of witness P-0901's interview.

190. Should the Prosecution's request be granted, the Defence would only be in possession of a summary. Audio recordings, transcriptions and translations of witness P-0901's interview would be disclosed to the Defence only once VWU implements protective measures.¹⁹⁷

191. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0901. More particularly, the Prosecution fails to demonstrate an objectively identifiable risk to the safety of the witness.¹⁹⁸ If granted, the Prosecution's request would seriously hamper Defence investigations related to insider witnesses by denying the Defence information which is necessary for this purpose.¹⁹⁹ Furthermore, the anonymous summary proposed by the Prosecution is insufficient and inadequate to allow the Defence to effectively investigate.²⁰⁰ Consequently, the Prosecution's request unduly prejudices the fair trial rights of the Accused as the Defence would be deprived of the necessary time and facilities to prepare adequately for trial.²⁰¹

21. Witness P-0911

192. Witness P-0911 is a former UPC/FPLC military member who took part in various UPC/FPLC operations and who will provide evidence relevant to a number of charges against the Accused.²⁰²

¹⁹⁷ Prosecution P-0901 Request, para.8.

¹⁹⁸ See *supra*, paras.54-58.

¹⁹⁹ See *supra*, paras.81.

²⁰⁰ See *supra*, para.48.

²⁰¹ See *supra*, paras.66-77.

²⁰² Prosecution Application, para.37.

193. The Prosecution requests the Chamber to authorise the delay disclosure of all material related to witness P-0911 until [REDACTED] 30 April 2015.²⁰³ [REDACTED]²⁰⁴

194. The Prosecution justifies its request on the basis of an alleged risk to the safety of the witness due to his position as former military insider.

195. On 2 March 2015, the Prosecution filed its Prosecution P-0911 Request in which it proposes non-standard redactions to three documents, namely two notes on witness P-0911's interview and a document provided by the witness. The Prosecution provided these documents to the Defence on the same day.

196. Should the Prosecution's request be granted, there is a high likelihood that the Defence would only be in possession of these three non-standard redacted documents for a period extending beyond 30 April 2015.

197. **Relief Sought:** Taking into account the imperative considerations explained in Section II above, the Defence opposes the Prosecution's request related to Witness P-0911. More particularly, the Prosecution fails to demonstrate an objectively identifiable risk to the safety of the witness.²⁰⁵ If granted, the Prosecution's request would seriously hamper Defence investigations related to insider witnesses by denying the Defence information which is necessary for this purpose.²⁰⁶ Consequently, the Prosecution's request unduly prejudices the fair trial rights of the Accused as the Defence would be deprived of the necessary time and facilities to prepare adequately for trial.²⁰⁷

RELIEF SOUGHT

In addition to the reliefs sought above, the Defence respectfully requests the Chamber to **REVIEW** and **PRONOUNCE** on the appropriateness of the redactions

²⁰³ Prosecution Application, paras.1, 4, 13, 37-39, 49 and 53.

²⁰⁴ [REDACTED]

²⁰⁵ See *supra*, paras.54-58.

²⁰⁶ See *supra*, paras.81.

²⁰⁷ See *supra*, paras.66-77.

applied to the information contained in paragraphs 18, 21-23, 25-26, 28 and 30-33 of the Prosecution Request, paragraphs 2-3, 16, 18-19, 21-24, 26, 28-30, 32-44 and 46 of the Prosecution Application, paragraphs 4 and 6 of the Prosecution P-0901 Request, paragraphs 4-5, 9-10, and 14-15 of the Prosecution Withdrawal, and paragraphs 1-3 and 7-9 of the VWU Observations on Prosecution Application.

Furthermore, should the Chamber be inclined to grant any of the Prosecution's requests, the Defence respectfully requests that the trial schedule be amended accordingly to minimize the prejudice to the fair trial rights of the Accused.

CONFIDENTIALITY

The Defence requests that this Defence Consolidated Response be received as "Confidential", pursuant to Regulation 23*bis*(1) of the Regulations of the Court, as it responds to the Prosecution Application and the Prosecution Request, which were both filed with the same designation.

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF MARCH 2015

A handwritten signature in dark ink, appearing to read 'St. B.' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands