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No.: ICC-01/04-02/06
Date: 1 February 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 "Preliminary response on behalf of Mr Ntaganda to
'Prosecution's tenth request for in-court protective or special measures'", 12
January 2016, ICC-01/04-02/06-1080-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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(Participation / Reparation)**

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Further to: (i) the confidential redacted version of the “*Prosecution’s tenth request for in-court protective or special measures*” submitted by the Office of the Prosecutor (“Prosecution”) on 24 December 2015 (“Prosecution Request”);¹ and (ii) the “*Decision on the conduct of proceedings*” issued by Trial Chamber VI (“Chamber”) on 2 June 2015,² Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Preliminary response on behalf of Mr Ntaganda to “Prosecution’s tenth request for in-court protective or special measures”

“Preliminary Defence Response”

1. The Prosecution requests – pursuant to Rule 87 of the Rules of Procedure and Evidence (“Rules”) – in-court protective measures for Witness P-0290 in the form of facial distortion, voice distortion and the use of a pseudonym.³
2. In support of its Request, the Prosecution advances justifications, a number of which are entirely redacted, and thus not available to the Defence. These redactions do not appear to be limited to mere logistical issues, such as “locations of residence”;⁴ they also seem to relate to security concerns that would have been raised by Witness P-0290. For example, the juxtaposition *in the same paragraph* of a sentence entirely redacted, with a reference to the Chamber’s conclusions in the “*Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts*”⁵ strongly suggests that the sentence and its accompanying footnote relate to allegations of interference directed at Witness P-0290.⁶

¹ ICC-01/04-02/06-1071-Conf-Red. The Prosecution Request was originally submitted on a confidential *ex parte* basis – only available to the Prosecution and Victims and Witnesses Unit on 23 December 2015. A public redacted version of the Prosecution Request was also submitted on 24 December 2015.

² ICC-01/04-02/06-619.

³ Prosecution Request, paras.1, 14.

⁴ Cf. Prosecution Request, para.3.

⁵ ICC-01/04-02/06-785-Red, 18 August 2015 (“Decision on Restrictions on Contacts”).

⁶ See Prosecution Request, para.12 and fn. 5. See also the redactions applied to paragraphs 7 and 8, which, in light of paragraph 6 (where the Prosecution contends that [REDACTED] should his identity be known to [REDACTED]), similarly suggest the existence of allegations of interference.

3. At this point in time, when Witness P-0290 is expected to testify in less than four weeks and where there is virtually no possibility of interference on the part of Mr Ntaganda,⁷ the need to conceal from the Defence information about Witness P-0290's security concerns⁸ is no longer justified.
4. To the extent that security concerns strike at the core of the existence of an 'objectively justifiable risk', the Defence's ability to provide meaningful observations on the merits of the Prosecution Request is seriously hampered by the redactions applied therein.
5. Consequently, the Defence respectfully requests the Chamber to order the Prosecution to file a lesser redacted version of the confidential version of its Request, with redactions strictly limited to logistical issues.
6. Mindful of the necessity to adjudicate the Prosecution Request as expeditiously as possible, the Defence files this Preliminary Response at this time in order to enable the Prosecution to lift the redactions applied therein before the deadline for submission of responses to the Prosecution Request.
7. Should the redactions applied to the Prosecution Request relate indeed to allegations of interference, the Defence notes that it would be informed for the first time of the existence of such allegations involving Witness P-0290. The non-disclosure of material in support of these allegations would constitute a breach of the Prosecution's disclosure obligations.⁹
8. In this regard, the Defence underscores that on 1 December 2015, it requested the Prosecution to: (i) disclose "any statement and investigators note related to [Witness P-0290] and not disclosed to this date, if any";¹⁰ and (ii) lift the redactions applied to certain documents related to Witness P-0290.¹¹ On

⁷ Cf. Decision on Restrictions on Contacts.

⁸ Cf. Prosecution Request, para.3.

⁹ Cf. [REDACTED].

¹⁰ Email from Me Stéphane Bourgon to Ms Nicole Samson, 1 December 2015, 15h35.

¹¹ Email from Me Stéphane Bourgon to Ms Nicole Samson, 1 December 2015, 15h32.

2 December 2015, the Prosecution responded that it: (i) continued its review of materials related to Witness P-0290 and would advise should there be additional material for disclosure;¹² and (ii) would lift certain redactions applied to the documents identified by the Defence, while advising that the redactions falling under categories [REDACTED] of the “*Protocol establishing a redaction regime in the case of* The Prosecutor v. Bosco Ntaganda”¹³ applied therein would remain.¹⁴

CONFIDENTIALITY

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

RELIEF SOUGHT

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

ORDER the Prosecution to file a lesser redacted version of the confidential version of its Request, with redactions solely limited to logistical issues.

RESPECTFULLY SUBMITTED ON THIS 1ST DAY OF FEBRUARY 2016



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

¹² Email from Ms Nicole Samson to Me Stéphane Bourgon, 2 December 2015, 10h01.

¹³ 12 December 2014, ICC-01/04-02/06-411-AnxA.

¹⁴ Email from Ms Nicole Samson to Me Stéphane Bourgon, 2 December 2015, 09h57.