



Original: English

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 "Request on behalf of Mr Ntaganda seeking clarification of Trial Chamber VI's decision rejecting the Defence request for a lesser redacted version of 'Prosecution's tenth request for in-court protective measures'", 21 January 2016, ICC-01/04-02/06-1099-Conf

Source: Defence Team of Mr Bosco Ntaganda

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Me Stéphane Bourgon
Me Luc Boutin
Me William St-Michel

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Further to: (i) the confidential redacted version of the *“Prosecution’s tenth request for in-court protective measures”* submitted by the Office of the Prosecutor (“Prosecution”) on 24 December 2015 (“Prosecution Request”);¹ (ii) the *“Preliminary response on behalf of Mr Ntaganda to ‘Prosecution’s tenth request for in-court protective or special measures’”* submitted by Counsel representing Mr Ntaganda (“Defence”) on 11 January 2016 (“Preliminary Response”);² and (iii) Trial Chamber VI’s (“Chamber”) decision rejecting the Defence request seeking the submission of a lesser redacted version of the Prosecution Request, conveyed by way of e-mail on 12 January 2016,³ the Defence hereby submits this:

**Request on behalf of Mr Ntaganda seeking clarification of Trial Chamber VI’s
decision rejecting the Defence request for a lesser redacted version of
“Prosecution’s tenth request for in-court protective measures”**

“Defence Request”

INTRODUCTION

1. On 11 January 2016, submitting that some of the redactions applied to the confidential redacted version of the Prosecution Request seemed to relate to security concerns that would have been raised by Witness P-0290, the Defence requested the Chamber to order the Prosecution to file a lesser redacted version of the confidential redacted version of its Request, with redactions solely limited to logistical issues (“Defence Request for a Lesser Redacted Version”).⁴
2. On 12 January 2016, the Chamber rejected the Defence Request for a Lesser Redacted Version, noting that “none of the redacted text contains allegations

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-01/04-02/06-1080-Conf.

³ Email from a Legal Officer of the Chamber to the parties and the participants, 12 January 2016, 15:13.

⁴ Preliminary Response, paras.2, 10.

of interference”.⁵ It further found that the redactions applied to the confidential redacted version of the Prosecution Request “are warranted”.⁶

3. The Defence respectfully requests the Chamber clarification as to the reasons which warrant the redactions applied to the confidential redacted version of the Prosecution Request.

SUBMISSIONS

4. In the confidential redacted version of the Prosecution Request notified to the Defence, redactions are applied to paragraphs 6,⁷ 7,⁸ 8,⁹ 12¹⁰ as well as to footnotes 1 and 5.¹¹ The Prosecution asserts that the redacted information relates to “protective measures, witness security, and locations of residence”.¹²
5. To the extent that: (i) there is virtually no possibility of dissemination of confidential information on the part of Mr Ntaganda as a result of the measures put in place by the Chamber in its “*Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts*”;¹³ and (ii) the Defence is bound by many instruments not to make confidential information available to the public,¹⁴ it does not appear clear to the Defence which reasons warrant the redaction of any information related to Witness P-0290 at this point in time.
6. The Defence underscores that some of the information redacted in the confidential redacted version of the Prosecution Request is clearly material to the preparation of cross-examination of Witness P-0290. To provide but one

⁵ Email from a Legal Officer of the Chamber to the parties and participants, 12 January 2016, 15:13.

⁶ Email from a Legal Officer of the Chamber to the parties and participants, 12 January 2016, 15:13.

⁷ “[REDACTED]”

⁸ “[REDACTED]”

⁹ The paragraph is entirely redacted.

¹⁰ “The Chamber has found reasonable grounds to believe that the Accused and his associates have interfered with Prosecution witnesses, [REDACTED]”

¹¹ The content of both footnotes is entirely redacted.

¹² Prosecution Request, para.3.

¹³ 18 August 2015, ICC-01/04-02/06-785-Red.

¹⁴ See e.g. Article 8(1) of the Code of Professional Conduct for Counsel; “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”, 12 December 2014, ICC-01/04-02/06-412-AnxA.

example, the identity of Witness P-0290's [REDACTED] – who are allegedly able [REDACTED] – is an information that would allow the Defence to further investigate Witness P-0290's credibility.

7. In these circumstances, the Defence respectfully requests the Chamber clarification as to the reasons which form the basis for the redactions applied to the confidential redacted version of the Prosecution Request.

CONFIDENTIALITY

8. Pursuant to Regulation 23*bis* (1) of the Regulations of the Court, this Defence Request is classified as confidential, as it refers to filings bearing the same classification.

RELIEF SOUGHT

9. In light of the above submissions, the Defence respectfully requests the Chamber to **CLARIFY** the reasons which warrant the redactions applied to the confidential redacted version of the Prosecution Request.

RESPECTFULLY SUBMITTED ON THIS 1ST DAY OF FEBRUARY 2016

A handwritten signature in dark ink, appearing to read 'StB' with a stylized flourish.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands