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

Date: **26 May 2016**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public

**Public redacted version of “Response on behalf of Mr Ntaganda to ‘Prosecution’s
thirteenth request for in-court protective measures’”**

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 the submission of the confidential redacted version of the “*Prosecution’s thirteenth request for in-court protective measures*” by the Office of the Prosecutor (“Prosecution”) on 6 May 2016 (“Prosecution Thirteenth Request”),¹ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

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

(“Defence Response”)

INTRODUCTION

1. On 6 May 2016, the Prosecution submitted its Thirteenth Request, whereby it moves Trial Chamber VI (“Chamber”) to grant Witness P-0190 in-court protective measures, in the form of facial and voice distortion as well as the use of a pseudonym during his testimony.
2. The Prosecution Thirteenth Request rests on the premise that the requested measures “will ensure [Witness] P-0190 is able to give evidence without fear for his personal safety and security or that of his family members, and in an manner that protects his psychological well-being, dignity and privacy as provided for under article 68(1) of the Statute”.²
3. For the reasons expressed below, the Defence opposes the Prosecution Thirteenth Request.

¹ ICC-01/04-02/06-1310-Conf-Exp-Red.

² Prosecution Thirteenth Request, para.26. *See also* para.4.

SUBMISSIONS

- I. Witness P-0190 having publicly [REDACTED] and publicly [REDACTED], testifying publicly as a Prosecution witness would not pose any objectively justifiable risk to the Witness's safety
4. The Prosecution contends that 'extra caution' – including through the granting of the requested in-court protective measures – is warranted during Witness P-0190's testimony because the Witness *inter alia* [REDACTED].³
5. The Defence stresses that in his [REDACTED], Witness P-0190 never feared to have [REDACTED] known to the public or to publicly [REDACTED], including by [REDACTED].
6. In particular, during [REDACTED], Witness P-0190 revealed *himself* to the public [REDACTED].⁴ Witness P-0190 has also publicly [REDACTED]. For example, in [REDACTED], Witness P-0190 disserts in length about [REDACTED],⁵ [REDACTED].⁶ Several other [REDACTED] Witness P-0190 are [REDACTED].⁷
7. In such circumstances – and in the absence of any [REDACTED] as set out below – testifying publicly as a Prosecution witness and providing publicly incriminating evidence against Mr Ntaganda will not pose any objectively justifiable risk to Witness P-0190's safety. In fact, the nature of Witness P-0190's [REDACTED] strongly militates in favour of the Witness testifying publicly.
8. Furthermore, the fact that Witness P-0190 [REDACTED] does not, in and of itself, reveal the existence of an objectively justifiable risk to the safety of the Witness. Witness P-0190's [REDACTED] is, at most, a factor that can be taken into consideration in assessing the need to elicit evidence in private session

³ Prosecution Thirteenth Request, para.8.

⁴ [REDACTED].

⁵ See [REDACTED].

⁶ See [REDACTED].

⁷ See, e.g. [REDACTED].

should the requested in-court protective measures be granted, despite the objections raised by the Defence.

II. [REDACTED]

9. The Prosecution argues that [REDACTED].⁸
10. The Defence underscores that none of the [REDACTED]⁹ supports such a contention. Contrary to what the Prosecution asserts,¹⁰ while [REDACTED], [REDACTED].¹¹ [REDACTED].¹²
11. The same reasoning applies to the interaction between [REDACTED] and Witness P-0190.¹³ In this regard, the Defence recalls that Witness P-0190 [REDACTED]. More importantly, [REDACTED]. Contrary to what the Prosecution argues,¹⁴ [REDACTED].
12. The Defence further notes that Witness P-0190 confirmed that after [REDACTED], he was not [REDACTED].¹⁵
13. In any event, taking into consideration that [REDACTED] remains, at this stage, confidential, any questions related to this issue would have to be handled in private session and do not warrant, by and of themselves, the granting of the requested in-court protective measures.
14. It follows from the above that none of Witness P-0190's very limited [REDACTED] substantiates the existence of an objectively justifiable risk to the safety of the Witness should he testify publicly.

III. None of the [REDACTED] reveals the existence of an objectively justifiable risk to the safety of the Witness

⁸ Prosecution Thirteenth Request, para.10.

⁹ [REDACTED].

¹⁰ Prosecution Thirteenth Request, para.9.

¹¹ [REDACTED].

¹² [REDACTED].

¹³ Cf. Prosecution Thirteenth Request, paras.11-14.

¹⁴ Prosecution Thirteenth Request, para.12.

¹⁵ Annex B to the Prosecution Thirteenth Request, para.17 [REDACTED].

15. The Prosecution also alleges, as part of its Thirteenth Request, other [REDACTED].
16. At the outset, the Defence notes that three of the annexes [REDACTED] had already been submitted [REDACTED],¹⁶ namely Annexes A¹⁷, B¹⁸ and C¹⁹ to the present Request.
17. In relation to the [REDACTED] these three annexes, [REDACTED]. [REDACTED].²⁰
18. The Defence observes that the other [REDACTED], are [REDACTED] uncorroborated and ambiguous [REDACTED]. Witness P-0190's [REDACTED] – which is entirely uncorroborated by any external or independent element, [REDACTED] – does not establish the existence of an *objectively* justifiable risk to the safety of the Witness should his identity be revealed to the public.
19. Furthermore, the mere fact that [REDACTED]²¹ is plainly insufficient to warrant the requested in-court protective measures, bearing in mind that the Witness [REDACTED], as set out above. The Defence also notes that in light of Witness P-0190's own account, [REDACTED].²²

IV. Conclusion

20. For all these reasons, the Defence opposes the Prosecution Thirteenth Request. It is in the interests of justice that Witness P-0190, on the basis of the above, testifies publicly. The Defence recalls its earlier submission that

¹⁶ [REDACTED]

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ Prosecution Thirteenth Request, para.17.

²² Prosecution Thirteenth Request, para.17.

hearing a witness's testimony in public increases the witness's commitment to tell the truth as well as his/her feeling of public accountability.²³

CONFIDENTIALITY

21. Pursuant to Regulations 23*bis* (1) and (2) of the Regulations of the Court, this Defence Response is submitted on a confidential, *ex parte* basis, only available to the Chamber, Prosecution, VWU and Defence, as it responds to a filing bearing the same classification. Confidential and public redacted versions of the Defence Response will be filed separately.

RELIEF SOUGHT

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

REJECT the Prosecution Thirteenth Request.

RESPECTFULLY SUBMITTED ON THIS 26TH DAY OF MAY 2016



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

²³ See, e.g. "Response on behalf of Mr Ntaganda to 'Second Prosecution request for in-court protective measures'", 31 August 2015, ICC-01/04-02/06-801-Conf-Exp.