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

Date: **21 July 2016**

TRIAL CHAMBER VI

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

**Public Redacted Version of “Response on behalf of Mr Ntaganda to
“Prosecution’s fourteenth request for in-court protective measures””,
9 June 2016, ICC-01/04-02/06-1376-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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Further to: (i) the confidential redacted version of the “*Prosecution’s fourteenth request for in-court protective measures*” submitted by the Office of the Prosecutor (“Prosecution”) on 19 May 2016 (“Prosecution Request”);¹ and (ii) Trial Chamber VI (“Chamber”)’s order shortening the response deadline in relation to the Prosecution Request to 9 June 2016, conveyed by way of e-mail on 26 May 2016,² Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

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

“Defence Response”

1. The Defence opposes the Prosecution’s request that Witness P-0894 be granted in-court protective measures in the form of facial and voice distortion as well as the use of a pseudonym. The Prosecution Request, like many other similarly drafted requests, fails to identify any objectively justifiable security risk *specific* to the situation of the witness which would arise from the disclosure of his identity to the public. The Defence respectfully submits that the interests of justice require Witness P-0894 to testify publicly.

SUBMISSIONS

2. At the outset, the Defence underscores that in his “*Demande de participation pour les victimes*”,³ [REDACTED], Witness P-0894 stated that he had no reason to fear for his safety, well-being, dignity or private life for himself or any other relatives as result of his “*interaction*” with the Court, “*sauf imprévu*”. According to the Prosecution’s own acknowledgement, as of today, Witness P-0894 has not been the subject of any direct or specific threat.⁴

¹ ICC-01/04-02/06-1323-Conf-Red, which was notified on 20 May 2016.

² Email from a Legal Office of the Chamber to the parties and participants, 26 May 2016, 18h16.

³ DRC-OTP-2090-0099, p.0100 (para.6).

⁴ Prosecution Request, para.13.

3. In support of its Request, the Prosecution merely puts forward arguments of a general nature – either insufficiently substantiated or unrelated and/or irrelevant to the situation of Witness P-0894 – which are routinely made in support of requests for in-court protective measures, namely:
- a. The Registry’s assessment of the situation in Ituri, as set out in reports prepared long time before commencement of the trial, in November 2014⁵ and May 2015,⁶ respectively;
 - b. The Chamber’s findings in its “*Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts*”,⁷ which adjudicated allegations of witness interference directed at *specific* insider witnesses not including Witness P-0894 nor any other crime-based witnesses. The Chamber’s decision was not aimed at establishing whether there exists a wider interference scheme in this case potentially involving all witnesses;
 - c. The alleged presence in [REDACTED] of the vaguely-defined categories of “[REDACTED]”,⁸ “[REDACTED]”,⁹ “demobilised militia”,¹⁰ “demobilised UPC/FPLC soldiers”¹¹ and “supporters of the Accused”,¹² uncorroborated by any independently acquired information; and
 - d. Instances where other (unidentified) witnesses were allegedly threatened as a result of their involvement with the Court, reported to

⁵ “Registry’s Report on the Security Situation in the Democratic Republic of the Congo”, 7 November 2014, ICC-01/04-02/06-396-Conf, *referred to* at paragraph 10 of the Prosecution Request.

⁶ “Third Report of the Registry on the Security Situation in the Democratic Republic of the Congo”, 1 May 2015, ICC-01/04-02/06-585-Conf, *referred to* at paragraph 11 of the Prosecution Request.

⁷ 18 August 2015, ICC-01/04-02/06-785-Conf-Exp, *referred to* at paragraphs 10 and 19 of the Prosecution Request.

⁸ Prosecution Request, para.7.

⁹ Prosecution Request, para.7.

¹⁰ Prosecution Request, para.9.

¹¹ Prosecution Request, para.9.

¹² Prosecution Request, para.9.

the Chamber and Prosecution on an entirely *ex parte* basis by the Legal Representative of the alleged victims of the attacks.¹³

4. In fact, the only distinctive features of Witness P-0894's situation are: (i) his alleged 'involvement' in [REDACTED];¹⁴ and (ii) his expected 'unique' evidence that [REDACTED] in the crime of murder.¹⁵
5. With respect to Witness P-0894's alleged involvement in [REDACTED] the Defence notes that: (i) the Prosecution clarifies that Witness P-0894 was not 'involved' [REDACTED] in an official capacity;¹⁶ (ii) Witness P-0894's own account of his 'involvement' in [REDACTED]¹⁷ does not reveal that he played a 'major' role, contrary to what he stated in [REDACTED];¹⁸ and (iii) Witness P-0894's perception that 'ex Hema militia' saw him during the [REDACTED]¹⁹ is entirely subjective and uncorroborated. The Defence also recalls that the Chamber found, in an analogical context, that a witness [REDACTED] the Prosecution before formally becoming a Prosecution witness does not, in itself, result in an objectively justifiable risk to the person's safety.²⁰
6. As regards Witness P-0894's expected evidence, the Defence recalls the objection to admissibility of evidence it raised in the context of its response to the "*Prosecution application under rule 68(3) to admit the prior recorded testimony and associated documents of Witness P-0894*",²¹ where it objected to Witness P-0894 being questioned about incidents of murder [REDACTED] not

¹³ Prosecution Request, para.13, referring to ICC-01/04-02/06-1160-Conf-Red and ICC-01/04-02/06-1277-Conf.

¹⁴ Prosecution Request, para.8.

¹⁵ Prosecution Request, paras.5, 6.

¹⁶ DRC-OTP-2092-0306, para.4.

¹⁷ DRC-OTP-2076-0194, para.47.

¹⁸ DRC-OTP-2092-0306, para.2.

¹⁹ DRC-OTP-2092-0306, para.2.

²⁰ "Decision on Prosecution's request for in-court protective measures for Witness P-0190", 2 June 2016, ICC-01/04-02/06-1359-Conf, para.9.

²¹ "Prosecution application under rule 68(3) to admit the prior recorded testimony and associated documents of Witness P-0894", 19 May 2016, ICC-01/04-02/06-1326-Conf.

specifically charged in the Updated Document containing the charges.²² The Defence notes that the remaining of Witness P-0894's expected testimony would be entirely crime-based.

7. The above factors – considered either individually or together – fail to establish the existence of any objectively justifiable risk to the safety of Witness P-0894 should he testify publicly.
8. In fact, the above highlights that Witness P-0894's situation is no different from that of any other crime-based witness. The Prosecution's assertions suggest, at most, Witness P-0894's discomfort with being a Prosecution witness. Such feeling is inherent to any testimony before a criminal court. Similarly, a person who wilfully accepts to testify before a criminal court accepts that his/her testimony might be the object of media attention (whether heightened or not), which is a necessary component of the publicity of criminal proceedings.
9. Furthermore, the Prosecution's repeated requests for the full set of in-court protective measures downplay the importance for the public to know the identity of witnesses. In this regard, the Defence recalls its previous submission that making a witness's identity known to the public increases the witness's commitment to tell the truth as well as his/her feeling of public accountability.²³

²² "Response on behalf of Mr Ntaganda to 'Prosecution application under rule 68(3) to admit the prior recorded testimony and associated documents of Witness P-0894'", 3 June 2016, ICC-01/04-02/06-1365-Conf, paras.20-37.

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, para.10.

CONFIDENTIALITY

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

RELIEF SOUGHT

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

REJECT the Prosecution Request.

RESPECTFULLY SUBMITTED ON THIS 21ST DAY OF JULY 2016



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands