



Original: **English**

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

Date: **22 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 “Response on behalf of Mr Ntaganda to “Additional submissions for protective and special measures concerning Prosecution Witness P-0018” dated 9 June 2016, ICC-01/04-02/06-1377-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 Christopher Gosnell

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 *“Fourth Prosecution request for in-court protective measures”* submitted by the Office of the Prosecutor (“Prosecution”) on 2 October 2015 (“Prosecution Initial Request”);¹ (ii) the *“Response on behalf of Mr Ntaganda to ‘Fourth Prosecution request for in-court protective measures’”* submitted by Counsel representing Mr Ntaganda (“Defence”) on 26 October 2015 (“Defence Initial Response”);² (iii) the confidential redacted version of the *“Additional submissions for protective and special measures concerning Prosecution Witness P-0018”* submitted by the Prosecution on 31 May 2016 (“Prosecution Additional Submissions”);³ and (iv) the *“Supplemental decision on matters related to the conduct of proceedings”* issued by Trial Chamber VI (“Chamber”) on 27 May 2016 (“Supplemental Decision on the Conduct of Proceedings”),⁴ which provides that responses to all future requests for in-court protective measures are to be filed within seven days of notification of the request,⁵ the Defence hereby submits this:

Response on behalf of Mr Ntaganda to “Additional submissions for protective and special measures concerning Prosecution Witness P-0018”

“Defence Response”

1. The Defence does not oppose the requested in-court protective measures for the testimony of Witness P-0018;⁶ does not object to evidence of the witness’s alleged abduction and rape being elicited in private session;⁷ and does not oppose a VWU support assistant sitting next to the witness during her testimony.⁸

¹ ICC-01/04-02/06-883-Conf.

² ICC-01/04-02/06-940-Conf.

³ ICC-01/04-02/06-1349-Conf-Red, which was notified on 1 June 2016.

⁴ ICC-01/04-02/06-1342.

⁵ Supplemental Decision on the Conduct of Proceedings, para.14.

⁶ Prosecution Additional Submissions, paras.7-25.

⁷ Prosecution Additional Submissions, [REDACTED], 22, 36-38.

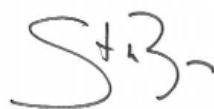
⁸ Prosecution Additional Submissions, para.33.

2. The remainder of the requested measures fall within the scope of the Chamber's discretion to govern the conduct of proceedings as and when the need arises. The Defence will oppose, however, any attempt by the Prosecution to pose leading questions to the witness, in particular in respect of matters of substance.⁹ The witness's alleged vulnerability provides no justification for suggestive questioning; on the contrary, such vulnerability enhances the need for eliciting incriminating evidence through neutral questioning only.
3. Any cross-examination will be conducted in a respectful and professional matter. Necessary cross-examination cannot, however, be curtailed at the expense of the right of the accused to test evidence and confront any incriminating testimonial evidence. These are infeasible elements of a fair trial that cannot be sacrificed on the basis of the alleged vulnerability of a witness.

CONFIDENTIALITY

4. 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. The Defence will submit a public redacted version of its Response separately.

RESPECTFULLY SUBMITTED ON THIS 22TH DAY OF JULY 2016



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

⁹ Cf. T-46-CONF-ENG, p.46, ll.23-25.