



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 of “Response on behalf of Mr Ntaganda to “Prosecution’s nineteenth request for in-court protective and special measures””,
20 June 2016, ICC-01/04-02/06-1410-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

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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

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Victims**

**The Office of Public Counsel for the
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States' Representatives

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**Victims Participation and Reparations
Section**

Further to: (i) the confidential redacted version of the *“Prosecution’s nineteenth request for in-court protective and special measures”* submitted by the Office of the Prosecutor (“Prosecution”) on 10 June 2016 (“Prosecution Request”);¹ and (ii) the *“Supplemental decision on matters related to the conduct of proceedings”* issued by Trial Chamber VI (“Chamber”) on 27 May 2016,² Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

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

“Defence Response”

1. The Defence does not oppose the requested in-court protective measures for the testimony of Witness P-0113. This is without prejudice to the Defence’s ability to challenge in cross-examination all aspects of Witness P-0113’s credibility, including the security incidents she purportedly experienced.³ Furthermore, the Defence does not object to evidence of [REDACTED] being elicited in private session;⁴ and does not oppose a VWU support assistant sitting next to the witness during her testimony.⁵
2. The Defence disagrees, however, with many assertions in the Prosecution Request. The insinuation that [REDACTED] was threatening,⁶ or that [REDACTED] may have been responsible for the events described at paragraph 13, is without any foundation whatsoever. Also without merit are the Prosecution’s claims that Mr Ntaganda has [REDACTED];⁷ the mischaracterization of [REDACTED] to imply that they might be relevant to

¹ ICC-01/04-02/06-1385-Conf-Red.

² ICC-01/04-02/06-1342.

³ Prosecution Request, paras.13 *et ss.*

⁴ Prosecution Request, paras.22-27.

⁵ Prosecution Request, para.33.

⁶ Prosecution Request, para.12.

⁷ Prosecution Request, para.10.

the situation of Witness P-0113;⁸ and the unsupported allegation that [REDACTED] pose a threat to the witness.⁹

3. 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.¹⁰ 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.
4. 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 indefeasible elements of a fair trial that cannot be sacrificed on the basis of the alleged vulnerability of a witness.

CONFIDENTIALITY

5. 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.

RESPECTFULLY SUBMITTED ON THIS 22ND DAY OF JULY 2016



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

⁸ Prosecution Request, para.13.

⁹ Prosecution Request, para.8.

¹⁰ Cf. T-46-CONF-ENG, p.46, ll.23-25.