



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 twentieth request for in-court protective and special measures”
dated 20 June 2016, ICC-01/04-02/06-1411**

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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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

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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 twentieth 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 twentieth 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-0019; does not object to evidence of the witness’s [REDACTED] being elicited in private session;³ and does not oppose a VWU support assistant sitting next to the witness during her testimony.⁴
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.⁵ 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

¹ ICC-01/04-02/06-1383-Conf-Red.

² ICC-01/04-02/06-1342.

³ Prosecution Request, paras.15-19.

⁴ Prosecution Request, para.25.

⁵ Cf. T-46-CONF-ENG, p.46, ll.23-25.

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.

4. The Defence adds that it does not agree with many of the assertions in the Prosecution Request as to the basis for the request, including the assertion that Mr Ntaganda [REDACTED];⁶ the mischaracterization of [REDACTED] to imply that they might be relevant to the situation of Witness P-0019;⁷ and the unsupported allegation that [REDACTED] pose a threat to the witness.⁸

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

⁶ Prosecution Request, para.10.

⁷ Prosecution Request, para.13.

⁸ Prosecution Request, para.8.