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Date: **20 February 2017**

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 application under rule 68(2)(b) to admit the prior recorded testimony of Witness P-0039’”, 8 November 2017, ICC-01/04-02/06-1620-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 the *“Prosecution’s application under rule 68(2)(b) to admit the prior recorded testimony of Witness P-0039”* submitted by the Office of the Prosecutor (“Prosecution”) on 14 October 2016 (“Prosecution Application”),¹ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Response on behalf of Mr Ntaganda to “Prosecution’s application under rule 68(2)(b) to admit the prior recorded testimony of Witness P-0039”

“Defence Response”

1. The Prosecution requests that Trial Chamber VI (“Chamber”) admit into evidence: (i) a statement provided by Witness P-0039 in 2005; (ii) a statement provided by Witness P-0039 in 2013; (iii) a sketch provided by Witness P-0039 in 2013, and; (iv) Witness P-0039’s victim’s application form provided in 2013 (“Witness P-0039’s Prior Recorded Testimony”) as ‘prior recorded testimony’ under Rule 68(2)(b) of the Rules of Procedure and Evidence (“Rules”) or, in the alternative, pursuant to Articles 69(3) and (4) and 64(9)(a) of the Statute.
2. The Defence opposes the Prosecution Application in its entirety.

PROCEDURAL BACKGROUND

3. On 14 October 2015, the Prosecution requested in-court protective measures for Witness P-0039 in the form of facial and voice distortion and the use of a pseudonym (“Prosecution First Request”).² On 28 October 2015, the Chamber granted Witness P-0039 the use of a pseudonym but denied facial and voice distortion (“Chamber First Decision”).³ Following that decision, Witness P-0039 refused to testify. The Prosecution then requested reconsideration of the Chamber First Decision or alternatively to compel Witness P-0039 to testify. The Chamber orally rejected both requests considering that the in-court

¹ ICC-01/04-02/06-1585.

² ICC-01/04-02/06-899-Conf-Red.

³ ICC-01/04-02/06-956-Conf.

protective measure granted was adequate to level of the risk concerning this witness and that the proposal to compel the witness to testify would not be efficient. The Chamber also invited the Prosecution to contemplate other legal avenues for admission of Witness P-0039's testimony into evidence or, in the alternative, to pursue a request for reconsideration if the witness's situation changed.⁴

4. On 3 November 2015, the Prosecution requested protective and special measures for Witness P-0039 as well as leave to appeal the Chamber First Decision ("Prosecution Second Request").⁵ On 10 December 2015, the Chamber rejected these requests ("Chamber Second Decision") on the basis that the Chamber had not been provided with additional information warranting a modification of its earlier decision and that it would not be appropriate now to grant the same measures under Rule 88 of the Rules.⁶
5. On 30 March 2016, the Prosecution requested that P-0039's Prior Recorded Testimony be admitted under Rule 68(2)(c) ("Prosecution Third Request").⁷ On 19 May 2016, the Chamber denied the request ("Chamber Third Decision") as the Chamber's decision not to summon him, combined with the witness's voluntary refusal to testify, did not constitute unavailability pursuant to Rule 68(2)(c) of the Rules.⁸ The Chamber also recalled that "recourse to Article 69(2) or 69(4) of the Statute is not permissible if the requirements under Rule 68 are not observed" as such course of action would "render rule 68 of the Rules meaningless and would enable the party seeking introduction of the evidence to avoid the stringency of [Rule 68]".⁹

⁴ ICC-01/04-02/06-T-40-CONF-ENG, p.81, l.2-p.82, l.6.

⁵ ICC-01/04-02/06-973-Conf.

⁶ ICC-01/04-02/06-1049-Red, para.10-15.

⁷ ICC-01/04-02/06-1238.

⁸ ICC-01/04-02/06-1325, para.9-10.

⁹ Appeals Chamber, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony", 12 February 2016, ICC-01/09-01/11-2024, OA 10, para.86.

Accordingly, the Chamber found it inappropriate to resort to its broader powers to admit into evidence the prior recorded testimony of Witness P-0039 under these provisions.¹⁰

6. The Prosecution, following the rejection of these various devices by the Chamber, is now requesting admission Witness P-0039's Prior Recorded Testimony under Rule 68(2)(b) or alternatively under articles 69(3) and (4) and 64(9)(a) of the Statute.

SUBMISSIONS

Preliminary remarks

7. The majority of this Trial Chamber has already made clear on at least two occasions that Rule 68 is *lex specialis* for the admission of testimonial statements of witnesses.¹¹ Accordingly, the Defence does not thus understand the Prosecution's citation of other statutory provisions¹² as intended to circumvent or question this ruling.
8. Secondly, even though the Defence acknowledges the principled benefits to the expeditious conduct of the proceeding in admitting the prior recorded testimony of witnesses under Rule 68 of the Rules, when such prior recorded testimony comes from a witness who is not present to testify within the meaning of Rule 68(2)(b) – the admission of which results in evidence not being tested through cross-examination – it is of paramount importance to meticulously assess whether: (i) the requirements of the sub-rule are met; and

¹⁰ Chamber Third Decision, para.11.

¹¹ *Chamber's Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103*, ICC-01/04-02/06-1029, 20 November 2015, para.46; Chamber Third Decision, para.11; See also in *Katanga & Ngudjolo* where Trial Chamber II hold that "Once the Chamber has determined that an out-of-court statement is testimonial, that statement can only be allowed into evidence under the conditions provided in rule 68", ICC-01/04-01/07-2635, para.50.

¹² Prosecution Application, para.22-24.

(ii) the admission of the prior recorded testimony is not prejudicial to, or inconsistent with, the rights of the Accused.¹³

I. Witness P-0039's Prior Recorded Testimony does not meet the criteria to be admitted under Rule 68(2)(b)

9. Under Rule 68(2)(b), the prior recorded testimony of a witness who is not present can be admitted into evidence if substantive and formal conditions are met, which are essential to ensuring that such admission is not prejudicial to, or inconsistent with, the rights of the Accused.¹⁴

A. Witness P-0039's Prior Recorded Testimony does not meet the substantive conditions listed in Rule 68(2)(b)

10. Rule 68(2)(b) prescribes that prior recorded testimony of a witness can be admitted without appearing before the Trial Chamber for cross-examination only where:

- (i) The prior recorded testimony goes to proof of a matter other than the acts and conduct of the accused;
- (ii) The prior recorded testimony:
 - Relates to issues that are not materially in dispute;
 - Is of cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts;
 - Relates to background information;
 - Is such that the interests of justice are best served by its introduction; and
 - Has sufficient indicia of reliability.

1. Witness P-0039's Prior Recorded Testimony goes to proof of a matter related to the acts and conduct of Mr Ntaganda

11. The Prosecution's previous attempts to introduce the witness's testimony by other means already suggests that it considers that the witness's statements do not satisfy the criteria and conditions set out in Rule 68(2)(b). The present appears, instead, to be driven by the Prosecution failure to tender the

¹³ Rule 68(1) of the Rules.

¹⁴ Rule 68(1) of the Rules.

witness's testimony by means that it apparently also, in the past, considered to be more appropriate.

12. "Acts and conduct" has been interpreted in the context of Rule 92 *bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia ("ICTY") – the twin provision of Rule 68(2)(b) of the Rules of the ICC – as excluding proof of facts upon which the prosecution relies to establish that the accused: (a) committed any of the crimes charges; (b) planned, instigated, or ordered the crimes; (c) otherwise aided or abetted the alleged perpetrators; (d) was the superior of the perpetrators; (e) knew or had reason to know that those crimes were about to be or had been committed by his subordinates; or (f) failed to take reasonable steps to prevent or punish.¹⁵
13. Moreover, if "acts or conduct of the accused" means deeds and behaviour of the accused, it also refers to any act or conduct of the accused that the prosecution relies upon to establish that the accused was a superior to those who did actually commit the crimes or that he knew or had reason to know of those crimes, or that he failed to prevent or punish them.¹⁶
14. Rule 92 *bis* also excludes any written statement which goes to proof of any act or conduct of the accused upon which the Prosecution relies to establish that the accused participated in a joint criminal enterprise or shared with the person who did commit the crime the requisite intent for those crimes.¹⁷
15. The Prosecution relies on Witness P-0039's Prior Recorded Testimony to argue that Mr Ntaganda is criminally responsible as a commander and

¹⁵ *Prosecutor v. Dordjević*, IT-05-97/1-T, *Decision on Prosecution's Motion for Admission of Transcripts of Evidence of Forensic Witnesses in lieu of Viva Voce Testimony Pursuant to Rule 92 bis*, 11 February 2009, para.5.

¹⁶ *Prosecutor v. Orić*, No. IT-02-68-T, *Decision on Defence Motion for the Admission of the Witness Statement of Avdo Husejnović Pursuant to Rule 92*, 15 September 2005.

¹⁷ *Prosecutor v. Dordjević*, IT-05-97/1-T, *Decision on Prosecution's Motion for Admission of Transcripts of Evidence of Forensic Witnesses in lieu of Viva Voce Testimony Pursuant to Rule 92 bis*, 11 February 2009, para.5.

superior of the UPC/FPLC soldiers for the crimes allegedly committed during the Second Attack. Witness P-0039 is [REDACTED] who is expected to testify, *inter alia*, about: [REDACTED] when UPC/FPLC militia invaded the area; fleeing along with [REDACTED] due to the UPC/FPLC attacks; the targeting of [REDACTED] alike by UPC/FPLC forces; living in the bushes and more importantly being [REDACTED] [REDACTED] and [REDACTED] in [REDACTED].¹⁸

16. According to the Prosecution's Pre-Trial Brief, "[a]t all times, NTAGANDA knew of the existence of an armed conflict and of the Attack and knew or intended that the conduct was part of a widespread or systematic attack directed against the civilian population, because of: (a) First, of his role as Deputy Chief of Staff, and as the UPC/FPLC Operational Commander who was involved in the assaults and in conflicts against opposing Lendu-Ngiti militia and APC forces; and (b) second, the well-published accounts of the criminal activities of both the UPC/FPLC forces and the opposing Lendu-Ngiti militia by the UN Security Council, local and international media, and Non-Governmental Organisations ("NGO")".¹⁹
17. Regarding the [REDACTED] which is at the heart of Witness P-0039's Prior Recorded Testimony, the Prosecution asserts that the "[REDACTED]" and that "[REDACTED]".²⁰
18. In support of its allegation that "[REDACTED]"²¹, the Prosecution relies on Witness P-0039's Prior Recorded Testimony.²²
19. Consequently, it is evident that the Prosecution contends that Mr Ntaganda is criminally responsible as a superior, for the alleged crimes committed by his

¹⁸ DRC-OTP-0104-0015, para.27ff ; DRC-OTP-2062-0244, para.34ff.

¹⁹ ICC-01/04-02/06-503,Conf-AnxA-Red, para.118.

²⁰ Prosecution's Pre-Trial Brief, para.254.

²¹ Prosecution's Pre-Trial Brief, para.492ff.

²² Prosecution's Pre-Trial Brief, para.501, FN.1425.

22. Witness P-0039's Prior Recorded Testimony is not, contrary to the Prosecution's claim, consistent with the accounts of other witnesses and as such is not of a corroborative nature.
23. For example, while Witness P-0039 explained that he [REDACTED],²⁴ other witnesses stated [REDACTED].²⁵
24. Therefore, even though Witness P-0039's Prior Recorded Testimony is [REDACTED], it is neither of a cumulative nor corroborative nature.

Witness P-0039's Prior Recorded Testimony does not relate to background information but to crimes allegedly committed by the UPC/FPLC forces

25. As briefly explained in the Will-Say of Witness P-0039,²⁶ his prior recorded testimony does not relate to background information but to the charges of murder and attempted murder (count 1-2), attacks against the civilian population (count 3), persecution (count 10), pillaging (count 11), forcible transfer of population (counts 12 and 13, and destructions of property (count 18), a total of 8 of the 18 counts with which Mr Ntaganda is charged.
26. Accordingly, this in itself is sufficient to deny the Prosecution Application to have Witness P-0039's Prior Recorded Testimony admitted in the absence of the latter and without cross-examination.

The interests of justice will not be best served by the introduction of Witness P-0039's Prior Recorded Testimony

27. Admitting Witness P-0039's Prior Recorded Testimony without cross-examination would damage the fairness of the trial by permitting the

²⁴ DRC-OTP-0104-0015, para.32ff.

²⁵ See Witness P-0301, DRC-OTP-2080-0078, para.17 : « [REDACTED] » ; Witness P-0800, DRC-OTP-2078-2669, para.45 : « [REDACTED] ». Regarding Witness P-0800, it is noteworthy that Witness P-0039 [REDACTED].

²⁶ ICC-01/04-02/06-491-Conf-AnxB, p.85.

admission of testimonial evidence without cross-examination in respect of matters that are materially in dispute.

28. Allowing such information to be received as evidence might compel the Defence to bring counter-evidence that would otherwise be unnecessary. This would defeat the very purposes of Rule 68(2)(b) which is to “reduce the length of ICC proceedings and streamline evidence presentation”.²⁷ Indeed, the sole and unique reason why the Prosecution requests for Witness P-0039’s Prior Recorded Testimony to be admitted under Rule 68(2)(b) is because the latter refused to testify under the conditions set out by the Chamber in its First Decision – certainly not to serve the interest of justice, even less to safeguard the fair trial rights of the Accused.
29. Consequently, it is not in the interest of justice that Witness P-0039’s Prior Recorded Testimony be admitted under Rule 68(2)(b) as this would gravely prejudice the Defence by permitting the introduction of uncross-examined evidence related to acts and conducts that the Prosecution attribute to Mr Ntaganda to hold him criminally responsible.

Witness P-0039’s Prior Recorded Testimony does not have sufficient indicia of reliability to be admitted under Rule 68(2)(b)

30. Witness P-0039 various statements, contrary to the Prosecution’s claims,²⁸ are replete with inconsistencies.²⁹ His statements to the OTP are substantially

²⁷ Prosecution Application, para.15.

²⁸ Prosecution Application, paras.12, 15.

²⁹ Compare e.g. Witness P-0039’s first statement (DRC-OTP-0104-0015), p.0019, para.22, with Witness P-0039’s second statement (DRC-OTP-2062-0244), p.0249, para.19 and p.0251, para.27-29. The Defence further notes the evolving nature of certain aspects of Witness P-0039’s evidence: Witness P-0039’s second statement, p.0251, paras.28-29, p.0252, paras.31, 33, 34.

contradicted by his *Demande de participation pour les victimes*.³⁰ For example, in the latter he [REDACTED], while in both statements he [REDACTED].³¹

31. While Witness P-0039's first statement dated from [REDACTED] contains 10 pages, the one from [REDACTED] contains 16. Witness P-0039 added numerous information and corrections in the latter³², as if his memory would have been better 10 years after the war instead of 2 years later.
32. The Defence notes also that much of the evidence provided by Witness P-0039 in his Prior Recorded Testimony constitute hearsay.³³ Yet, the reliability of hearsay testimony evidence depends on the identification and quality of the information provided which requires in itself that cross-examination be conducted.
33. Witness P-0039's second statement³⁴ from 2013 also contains a completely new story at paragraphs 52 to 56 recounting that when leaving Kobu [REDACTED]; that he had a conversation with [REDACTED] – a leader of Lendu fighters; and that he found his two daughters who came to Gutsi to [REDACTED]. These entirely new stories – recalled ten years after the events and eight years after his first statement – Witness P-0039's Prior Recorded Testimony became unreliable.
34. Finally the Defence notes that, as with several other witnesses testifying about the Second Attack, he was identified as a potential witness by Intermediary P-0154.

³⁰ DRC-OTP-2078-2253.

³¹ DRC-OTP-0104-0015, para.26ff ; DRC-OTP-2062-0244, para.33ff.

³² DRC-OTP-2062-0244, para.28 : « [REDACTED] » ; DRC-OTP-2062-0244, para.31 : « [REDACTED] » ; DRC-OTP-2062-0244, para.36 : « [REDACTED] » ; DRC-OTP-2062-0244, para.51 : « [REDACTED] » ; DRC-OTP-2062-0244, para.57 : « [REDACTED] ».

³³ DRC-OTP-2062-0244, para.10 : « [REDACTED] » ; DRC-OTP-2062-0244, para.11 : « [REDACTED] » ; DRC-OTP-2062-0244, para.19 : « [REDACTED] » ; DRC-OTP-2062-0244, para.21 : « [REDACTED] » ; DRC-OTP-2062-0244, para.27 : « [REDACTED] », etc.

³⁴ DRC-OTP-2062-0244.

35. In that connection, Witness P-0039 met collectively with Intermediary P-0154 and the following witnesses: (i) in [REDACTED] with Witnesses P-0106, P-0113, P-0100 and P-0027³⁵; (ii) in [REDACTED] with Witnesses P-0300, P-0127, P-0301, P-0103, P-0018, P-0027, P-0100, P-0113, P-0019, P-0106 and P-0108³⁶; (iii) in [REDACTED] with Witnesses P-0300, P-0127, P-0301, P-0103, P-0018, P-0027, P-0100, P-0113, P-0019, P-0106 and P-0108³⁷, and; (iv) in [REDACTED] with Witnesses P-0300, P-0127, P-0301, P-0103, P-0018, P-0027, P-0100, P-0113, P-0019, P-0106 and P-0108³⁸.
36. Previous cross-examination of some of these witnesses suggests a reasonable possibility, if not a likelihood, that contamination of testimony occurred during these meetings. The Chamber has heard details that appear canned, as if learned by rote; has heard a group of three witnesses all simultaneously come forward with allegations of rape long after their initial statements; and has heard a curious attempt by witnesses to situate events by reference to the days of the week without any plausible explanation. Conversely, when pressed on details that the witnesses have not rehearsed, the witnesses often give divergent or flatly contradictory accounts.
37. The Witness, during his preparation session in [REDACTED] 2015, Witness P-0039 “[REDACTED]” and “[REDACTED]”.³⁹
38. The least that may be inferred is that the witness wants money in return for his testimony which, in turn, suggests that he would be inclined to manipulate his testimony according to his understanding of what would be perceived as valuable to the Office of the Prosecutor. The Prosecution is therefore incorrect to assert that “there is no indication of a motive for P-0039

³⁵ DRC-OTP-2092-0230: [REDACTED].

³⁶ DRC-OTP-2092-0319.

³⁷ DRC-OTP-2092-0321.

³⁸ DRC-OTP-2092-0323 and DRC-OTP-2092-0229.

³⁹ DRC-OTP-2089-0053, para.1-2.

to fabricate or distort his account”.⁴⁰ If its prior recorded testimony were to be admitted under Rule 68(2)(b), the Defence will be deprived of its right to cross-examine every piece of evidence presented against the accused, which should not be permitted.

39. Last but far from least, there is no verbatim account of the questions asked by investigators, or the witness’s answers. It is impossible to discern the extent to which the witness’s testimony may have been shaped by suggestive or leading questioning; to know the exact words used by the witness when answering; or what documentary aids may have been relied upon in the taking of the statement. Although neither Rule 68(2)(b) nor jurisprudence precludes the admission of a statement in such a form, this must be deemed a relevant consideration in conjunction with other considerations, especially in light of the Prosecution’s own expert testimony indicated that importance of making such a verbatim record precisely in order to avoid contamination a witness’s memory.⁴¹ The degree of variation and contradiction in the witness’s various statements already suggests that this may have occurred.
40. Witness P-0039’s Prior Recorded Testimony does not bear sufficient indicia of reliability to be admitted under Rule 68(2)(b). His statements are contradictory, concern issues that are contested, were produced after contact with an intermediary or other witnesses that may have contaminated his recollection of events, and he is manifestly motivated by money. Rule 68(2)(b) is not an appropriate mechanism for admission of testimony from a witness of this nature.

⁴⁰ Prosecution Application, para.20.

⁴¹ Cf. T-87-CONF-ENG (RT), p.52, ll.1-5.

The material of Witness P-0039's Prior Recorded Testimony to be admitted under Rule 68(2)(b)

41. If the Chamber were to admit Witness P-0039's Prior Recorded Testimony without any Defence cross-examination, all the material related to Witness P-0039 – including all investigation notes and other documents mentioning contacts between Intermediary P-0154 and Witness P-0039 as well as the Witness Preparation Session Log – should also be admitted.
42. Indeed, the Prosecution cannot be allowed to pick and choose among Witness P-0039's Prior Recorded Testimony what should be admitted under Rule 68(2)(b) and what should be left aside. This would not reflect the real nature of Witness P-0039's Prior Recorded Testimony.

B. Formal conditions of Witness P-0039 Prior Recorded Testimony's admission under Rule 68(2)(b)

43. The declaration⁴² provided by the Prosecution to accompany Witness P-0039's Prior Recorded Testimony does not correspond to the proposed form⁴³ approved by the Chamber in its Decision on Prosecution's request to designate a person authorised to witness a declaration under Rule 68(2)(b) of the Rules.⁴⁴
44. Indeed, the declaration provided for Witness P-0039 does not mention that the latter has received a copy of article 70 of the Rome Statute and that he was informed in a language that he understand, that if the contents of his prior recorded testimony is not true, he may be subject to proceedings for having given false testimony before the Court.

⁴² Prosecution Application, Annex 1.

⁴³ ICC-01/04-02/06-657-AnxA.

⁴⁴ ICC-01/04-02/06-729.

45. Moreover, the Prosecution did not demonstrate that in the Democratic Republic of the Congo, an *Officier de Police Judiciaire* has indeed the authority to witness such declaration and attest its conformity.⁴⁵
46. These basic requirements are not burdensome and should applied stringently to ensure the highest level of solemnity to the certification process.
47. Finally, the Defence notes that Rule 68(2)(b)(ii) states that “[a]ccompanying declarations may not contain any new information and must be made reasonably close in time to when the prior recorded testimony is being submitted”. Considering that the accompanying declaration of Witness P-0039 is dated [REDACTED]⁴⁶ – respectively [REDACTED] after the first statement and [REDACTED] after the second statement of Witness P-0039 – the Defence posits that the reasonable time during which the Prosecution should have had the accompanying declaration signed by the witness, has not been respected.
48. For all these reasons, Prosecution Application should be denied.

II. The admission of Witness P-0039’s Prior Recorded Testimony is prejudicial and inconsistent with the rights of the Accused

49. Pursuant to Article 67(1)(e) of the Statute, Mr Ntaganda has the fundamental right to examine or have examined witnesses against him. Any probative value of Witness P-0039’s Prior Recorded Testimony is outweighed by the prejudicial impact of the admission into evidence of the prior recorded

⁴⁵ Rule 68(2)(b)(iii) states that « *Accompanying declarations must be witnessed by a person authorised to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State.* ». In this regard, the Defence recalls that in its Decision on Prosecution’s request to designate a person authorised to witness a declaration under Rule 68(2)(b) of the Rules, the Chamber authorised the Registry Legal Counsel, or any appropriate person delegated by him, to be the person authorised to witness declarations made pursuant to Rule 68(2)(b) of the Rules for the purposes of this case.

⁴⁶ Prosecution Application, Annex 1.

testimony of a witness unwilling to testify, whose statements include a number of inconsistencies that would remain unchallenged.

50. The need for Witness P-0039's evidence to be tested through cross-examination is further bolstered by the fact that his Prior Recorded Testimony only comprises statements, with no verbatim of the questions asked by investigators, thereby making it impossible to see whether there have been any suggestions that could lead to false memories.⁴⁷

CONFIDENTIALITY

51. Pursuant to Regulations 23*bis* (1) and (2) of the Regulations of the Court, this Defence Request is submitted on a confidential as it refers to filings bearing the same classification.

RELIEF SOUGHT

52. In light of the above submissions, the Defence respectfully request the Chamber to **REJECT** the Prosecution Application.

RESPECTFULLY SUBMITTED ON THIS 20TH DAY OF FEBRUARY 2017



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⁴⁷ Cf. T-87-CONF-ENG (RT), p.52, ll.1-5.