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N° : ICC-01/04-02/06
Date : 23 September 2014

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

PUBLIC

Defence Response to Redress/ASF Application

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 *Application by the Redress Trust and Avocats sans Frontières for Leave to Submit Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence* (“Redress/ASF Application”) submitted on 1 September 2014 and the *Joint Response to the “Application by the Redress Trust and Avocats sans Frontières for Leave to Submit Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence” dated 29 August 2014*” submitted by the Legal Representatives of victims on 8 September 2014 (“Joint Response” and “Legal Representatives”), Counsel representing Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submits this *Defence Response to Redress/ASF Application* in accordance with Regulations 24(1) and 34(b) of the Regulations of the Court (“RC”).

OVERVIEW

1. The Defence opposes the Redress/ASF Application.
2. Whereas the Applicants "do not propose to argue the legal merits and challenges associated with the two systems currently before the Chamber [...]”¹, this Court and other *ad hoc* Tribunals have ruled that the participation of *amicus curiae* in proceedings must allow the Court to obtain expert views on legal matters relevant to the proceedings. Hence, *amicus curiae* observations on factual matters are not permitted.
3. Moreover, the Applicants did not clarify how their consultations (to be conducted) and observations will add to the information already submitted to Trial Chamber VI ("Chamber") by the Registry and the Legal Representatives.
4. Lastly, the right to Mr Ntaganda to be tried within a reasonable delay outweighs *inter alia* the proposed four weeks delay required by the Applicants to conduct their consultations.

¹ ICC-01/04-02/06-359, para.25.

SUBMISSIONS

5. Rule 103(1) of the Rules of Procedure and Evidence ("RPE") provides that "a Chamber may, if it considers it desirable for the proper determination of the case" grant leave to submit observations to a non-participant to the proceeding.
6. It is well established before this Court and *ad hoc* Tribunals that *amicus curiae* must offer their views on legal matters relevant to the proceedings.² In the situation in DRC, the Pre-Trial Chamber held: "[...] it is the view of the Chamber that the rationale for admitting *amicus curiae* in the proceedings is to have the opportunity to get experts' information on relevant issues of legal interest for the proceedings in order to provide the Chamber with a contribution to the proper determination of the case."³
7. The fact that the Redress/ASF Application proposes to provide solely observations "on the factual information both with regards to the implementation of the Kenyan model in Kenya and with regards to the possible implementation of such model in DRC"⁴ is thus dispositive of the matter.
8. Moreover, it is significant that the Legal Representatives and the Registry have already presented submissions to the Chamber concerning the issues raised in the Redress/ASF Application.⁵ Indeed, further to the 11 September Status

² ICC-01/04-373, para.4; ICTY: Information concerning the submission of *amicus curiae* briefs, IT/122, 27 March 1997, Art. 5(b); *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, " Decision on Request by the Government of the Republic of Croatia for Leave to Appear as *Amicus Curiae* ", 11 October 2006, pp.4-5; *Prosecutor v. Gotovina and al.*, Case No. IT-06- 90-PT, "Decision on Requests of Republic of Croatia to Appear as *Amicus Curiae*", 18 October 2006, p.3; SCSL :*The Prosecutor v. Kallon*, Case No. SCSL-2003-07, "Decision on Application by the Redress Trust, Lawyers Committee for Human Rights for leave to file *Amicus Curiae* Brief and to present Oral Submissions", 1 November 2003, para.8; ICTR, *The Prosecutor v.. Semanza*, Case No. ICTR-97-20-T, "Decision on the Kingdom of Belgium's Application to File an *Amicus Curiae* Brief and on the Defence Application to Strike Out the Observations of the Kingdom of Belgium Concerning the Preliminary Response by the Defence", 9 February 2001, para.10.

³ ICC-01/04-373, para.4.

⁴ ICC-01/04-02/06-359, para.22.

⁵ ICC-01/04-02/06-363, para.17.

Conference, the Chamber possesses ample information for the purpose of determining the appropriate system of victims' application. Hence, it is difficult to conceive how the proposed additional submissions could assist the Chamber. What is more, the Redress/ASF Application does not clarify how the Applicants' participation in the proceedings may be of assistance to the Chamber beyond the information already in its possession, which also militates in favor of its dismissal.⁶

9. Lastly, should the Applicants be granted permission to submit observations as requested - which would require a minimum period of four weeks - this will necessarily impact Mr Ntaganda's right to be tried within a reasonable delay. The Redress/ASF Application is thus contrary to the principle of efficiency of the proceedings.

RELIEF SOUGHT

10. In light of the above submissions, Mr Ntaganda respectfully requests the Chamber to:

DENY the Redress/ASF Application.

RESPECTFULLY SUBMITTED ON THIS 23rd DAY OF SEPTEMBER 2014



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

⁶ ICC-01/04-02/06-363, para.17.