

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **2 March 2015**

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

**Prosecution request to file a reply to the “Response on Behalf of Mr Ntaganda to
‘Prosecution motion regarding witness preparation’”**

Source: Office of the Prosecutor

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

Mr Stéphane Bourgon
Mr Luc Boutin

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of the 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**

Other

Prosecution's Submissions

1. Pursuant to regulation 24(5) of the Regulations of the Court ("RoC"), the Office of the Prosecutor ("Prosecution") requests Trial Chamber VI ("Chamber") to grant the Prosecution leave to file a reply to the "Response on Behalf of Mr Ntaganda to 'Prosecution motion regarding witness preparation'" ("Response").¹
2. On 5 February 2015, the Prosecution filed a motion in which it requested the Chamber to issue guidelines permitting witness preparation ("Motion").² The Prosecution annexed a proposed witness preparation protocol to the Motion ("Proposed Protocol").³
3. In its Motion, the Prosecution also noted that the Defence had raised concerns regarding two issues: (i) access to the video recording of the witness preparation session; and (ii) the need for greater specificity on the form and content of the disclosure following such sessions.⁴ These two issues had been discussed during a meeting between the Prosecution and the Defence which was held prior to the filing of the Motion.
4. On 27 February 2015, the Defence filed its Response in which it addressed these two issues.⁵ The Defence also raised a new issue, stating that "the Prosecution's requirement for the video recording of every single witness preparation session is not based on realistic considerations. Moreover, the video recording of witness preparation sessions has not proved to be an essential measure. The proposed

¹ ICC-01/04-02/06-484.

² ICC-01/04-02/06-444.

³ ICC-01/04-02/06-444-Anx1.

⁴ Motion, para.6.

⁵ Response, paras.3-4, 14-35.

practice would also result in considerable logistic challenges for the calling party, especially for the Defence”.⁶

5. The Defence had not raised this issue during its discussions with the Prosecution, where the Defence raised questions regarding *access* to the video recording but not the recording itself. Accordingly, the Prosecution did not address this issue in its Motion since it could not have anticipated it. The Prosecution submits that it should be given an opportunity to state its views on the Defence’s proposal prior to the Chamber’s determination on the issue of witness preparation and the Proposed Protocol.
6. In light of the above, and pursuant to regulation 24(5) of the RoC, the Prosecution requests that the Chamber grant it leave to reply to the proposal that the video recording of preparation sessions with witnesses be deleted as a requirement and limited in the manner proposed in the Response.
7. Should authorisation to reply be granted, the Prosecution will provide its submissions on the Defence’s proposal. Briefly, the Defence’s proposal would unnecessarily limit the instances in which witness proofing sessions are video-recorded. This would deprive the Chamber and/or the parties of the opportunity to view such videos in relation to the majority of witnesses if such a need were to arise.
8. The Prosecution’s reply would assist the Chamber in its determination on the issue of witness preparation and the Proposed Protocol. Should the Chamber grant leave, the Prosecution will set out its substantive submissions in its reply without repeating any arguments contained in its Motion.

⁶ Response, para.2; *see also* Response, paras.5-12 in which the Defence elaborates on this submission.

Request

9. Based on the foregoing, and pursuant to regulation 24(5) of the RoC, the Prosecution requests that the Chamber grant leave to file a reply to the Response.



Fatou Bensouda, Prosecutor

Dated this 2nd Day of March 2015
At The Hague, the Netherlands