



Original: English

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

Date: 20 March 2015

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

**Response on behalf of Mr Ntaganda to LRVs submissions on the issues raised
during the 17 February 2015 Status Conference**

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

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Me Stéphane Bourgon
Me Luc Boutin
Me William St-Michel

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**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

Detention Section

**Victims Participation and Reparations
Section**

Further to the submission of the *“Victims’ written submissions on the issues raised during the Status Conference held on 17 February 2015”* filed by the Common Legal Representatives of Victims (“LRVs”) on 5 March 2015 (“LRVs Submissions”), Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Response on behalf of Mr Ntaganda to LRVs submissions on the issues raised during the 17 February 2015 Status Conference

1. The Defence hereby responds to the LRVs’ requests for leave to: (i) take part in the joint instruction and selection process of experts (“First Request”);¹ and (ii) file observations on any agreement reached by the Parties regarding agreed facts before a final decision is issued on the matter (“Second Request”).²

I. First Request

2. The Defence opposes the LRVs’ request to participate in the selection process of experts as well as, at this stage, in the joint instruction of experts.
3. At the outset, the Defence wishes to express its understanding that the selection of experts – including the determination of the areas of expertise – is a process different from the instruction of experts *per se*.
4. While the instruction of experts may involve all participants,³ the Defence posits that the determination of the areas of expertise and the selection of the experts are the prerogative of the Parties. The reason for this is that the personal interests of the alleged victims cannot be deemed to be ‘affected’ within the meaning of Article 68(3) of the Statute until the exact areas on which experts are to provide their expertise are determined by the Parties.

¹ LRV Submissions, para.5.

² LRV Submissions, para.16.

³ Regulation 44(2) of the Regulations of the Court.

5. Moreover, the involvement of the LRVs in the selection of experts and the determination of the areas of expertise will unnecessarily delay a process that is sensitive and complex. The added value, if any, would be limited.
6. The Defence notes that at the Status Conference held on 17 February 2015, the LRVs did not go so far as to seek leave to take part in the selection of experts.⁴
7. The *Bemba* precedent relied upon by the LRVs is not binding on the Parties. In that case, participation of the victims in the selection process of experts – which did not include the Defence⁵ – resulted from an invitation by the Prosecution.⁶ As for the decisions issued in the *Kenya* cases referred to by the LRVs, it is significant that Trial Chamber V limited the victims' participation to the instruction of the experts only to the extent "that the victims are participating on an issue or as regards evidence which is *to be* the subject of expert evidence".⁷
8. With respect to the joint instruction itself, the Defence submits that the LRVs' request is premature and that leave to take part in the joint instruction should be sought only when, and if, the Parties agree on areas for which expert evidence is required. That said, in the event the instructions given by the Parties to the experts appear incomplete to the LRVs, the Defence would not oppose a request for leave to submit further instructions to the experts selected by the Parties.

⁴ ICC-01/04-02/06-T-18-CONF-ENG ET 17-02-2015, p.22, lines 15-21: "We, however, wish at least *to be informed of the results* of the consultations between the OTP and the Defence for the same reasons mentioned above, namely that the relevance of the scope of expertise suggested could be extremely relevant to the personal interests of victims who we represent. This may also make it possible if we *are aware of this information* to be more effective in our participation and in guaranteeing the legal interests of our victims during the proceedings". (emphasis added)

⁵ ICC-01/05-01/08-681, para.5.

⁶ ICC-01/05-01/08-681, para.3.

⁷ ICC-01/09-02/11-451, fn.29; ICC-01/09-01/11-440, fn.9. (emphasis added)

II. Second Request

9. The Defence takes note of the Chamber's decision to allow the LRVs to make observations on proposed agreed facts to be submitted by the Prosecution and the Defence by 6 May 2015.⁸ The Defence acknowledges that the interests of the alleged victims – more particularly the right to the truth – might be affected by any agreements reached by the Parties on alleged facts. Indeed, the fact that no evidence would be adduced in relation to an agreed fact might deprive the alleged victims of necessary evidence for the establishment of the truth.
10. However, the Defence wishes to stress that, in accordance with Rule 69 of the Rules of Procedure and Evidence, LRVs' observations should be limited to assisting the Chamber in determining whether "a more complete presentation of the alleged facts is required in the interests of justice". Any other observations would be inappropriate and would go beyond the role of the LRVs in such a procedure.

RESPECTFULLY SUBMITTED ON THIS 20th DAY OF MARCH 2015



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

⁸ "Order requesting submissions on the conduct of proceedings pursuant to Rule 140 of the Rules and on modalities of victims' participation at trial", ICC-01/04-02/06-507, para.14(ii).