



Original: **English**

No.: **ICC-01/04-02/06**
Date: **22 September 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

**Request on behalf of Mr Ntaganda seeking leave to reply to
“Prosecution’s response to the ‘Request on behalf of Mr Ntaganda seeking a
declaration confirming the Prosecution’s duty to record the content of all contacts
with its witnesses,’ ICC-01/04-02/06-803-Red” (ICC-01/04-02/06-836)**

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

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**

**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**

Further to the *Prosecution's response to the 'Request on behalf of Mr Ntaganda seeking a declaration confirming the Prosecution's duty to record the content of all contacts with its witnesses', ICC-01/04-02/06-803-Red*, by the Office of the Prosecutor ("Prosecution") on 17 September 2015¹ ("Prosecution Response") and pursuant to Regulation 24(5) of the Regulations of the Court, Counsel representing Mr Ntaganda ("Defence") hereby submits this:

**Request on behalf of Mr Ntaganda seeking leave to reply to
"Prosecution's response to the 'Request on behalf of Mr Ntaganda seeking a
declaration confirming the Prosecution's duty to record the content of all contacts
with its witnesses', ICC-01/04-02/06-803-Red" (ICC-01/04-02/06-836)**

1. The Defence respectfully requests leave to reply to the Prosecution Response in respect of two circumscribed issues only: (i) the alleged impropriety of seeking guidelines or directions from the Trial Chamber VI in the absence of a concrete example of a violation of the proposed direction;² and (ii) the Prosecution's acknowledgement of a duty to record, upon the scope of which the Defence has not previously had any opportunity to comment.³
2. The foregoing arguments encompass, respectively, (i) a new and unforeseeable argument against granting the motion;⁴ and (ii) a previously unacknowledged legal explanation for the Prosecution's position.⁵ These are also matters of "novel or of particular importance."⁶

¹ ICC-01/04-02/06-836.

² Prosecution Response, para. 13. *See also ibid.*, para. 15 ("[e]ntertaining the Defence Request would be contrary to considerations of efficiency and judicial economy").

³ *Ibid.*, para. 19.

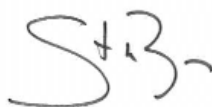
⁴ *Banda & Jerbo*, Order on the defence's application for leave to reply, ICC-02/05-03/09-261, 24 November 2011, para. 5 (granting the defence leave to reply where the Prosecution's response raised certain legal issues that were – as argued by the Defence – unforeseeable and warranted a reply).

⁵ *Bemba*, Public Redacted Version of the Chamber's 10 November 2011 Order granting leave to reply, ICC-01/05-01/08-1899-Red, 15 November 2011, para. 4.

⁶ *Katanga*, Decision granting leave to reply, ICC-01/04-01/07-3382, 6 June 2013, para. 8; *Mbarushimana*, Decision on the Prosecution's request for leave to reply to the "Defence Response to Prosecution's Request for the Review of Potentially Privileged Material", ICC-01/04-01/10-61, 24 February 2011, p. 4 (finding good cause in light of the importance and the potential effect of the issues raised).

3. The Defence respectfully requests leave to file a reply, not to exceed 5 pages of text, on the foregoing issues.

RESPECTFULLY SUBMITTED ON THIS 22ND DAY OF SEPTEMBER 2015

A handwritten signature in black ink, appearing to read 'StB-'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands