



Original: **English**

No.: ICC-01/04-02/06
Date: 20 November 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 to strike the Prosecution response
from the record**

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

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Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Me Stéphane Bourgon
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Me William St-Michel

Legal Representatives of Victims

Ms Sarah Pellet
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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

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REGISTRY

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**Victims Participation and Reparations
Section**

Other

Counsel for the Defence of Thomas
Lubanga
Legal Representatives of Victims V01
Legal Representatives of Victims V02

Further to: (i) the *“Response on behalf of Mr Ntaganda to ‘Prosecution’s further observations on the ‘Order on Defence access to confidential material in the Lubanga case’ issued by Trial Chamber VI, ICC-01/04-02/06-806”* submitted on 29 October 2015 (“Defence Response”);¹ and (ii) the *“Prosecution response to ‘Response on behalf of Mr Ntaganda to ‘Prosecution’s further observations on the ‘Order on Defence access to confidential material in the Lubanga case’ issued by Trial Chamber VI, ICC-01/04-02/06-806”, 29 October 2015, ICC-01/04-02/06-964-Conf”* submitted by the Office of the Prosecutor (“Prosecution”) on 19 November 2015 (“Prosecution Response”),² Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

**Request on behalf of Mr Ntaganda to strike the Prosecution response
from the record**

1. The Defence Response was filed on 29 October 2015.
2. Further to the Defence Response, the Prosecution considers that it is entitled to respond on the basis that the Defence Response would contain a new request for relief.³
3. The Prosecution Response is but an attempt to reply to the Defence Response and, as such, is impermissible without obtaining prior leave from Trial Chamber VI (“Chamber”).
4. The Chamber has previously noted the limited circumstances where a response may be treated as a request, entitling the other party to a full response pursuant to Regulation 24(1) of the Regulations of the Court. Such circumstances are limited to: (i) when the responding party raises ‘new and

¹ ICC-01/04-02/06-964-Conf.

² ICC-01/04-02/06-1025-Conf.

³ Prosecution Response, para.19.

distinct issues of law'; or (ii) when the relief requested lies outside the normal scope of a response.⁴

5. Contrary to the Prosecution's contention, the Defence Response contains no new requests. The relief sought therein directly follows from the Prosecution's own request to order the Registry to provide the Defence with access to confidential material in the *Lubanga* case subject to the exceptions it has identified.⁵
6. In any event, the Defence respectfully submits that the Prosecution's arguments are not of such nature that they can assist the Chamber in its adjudication of the Prosecution's request. Indeed, the Prosecution merely replies to arguments that were foreseeable at the time of the request.

RELIEF SOUGHT

In light of the above arguments, the Defence respectfully requests the Chamber to:

STRIKE the Prosecution Response from the record.

RESPECTFULLY SUBMITTED ON THIS 20TH DAY OF NOVEMBER 2015



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

⁴ ICC-01/04-02/06-661-Conf-Red, para.7; ICC-01/04-02/06-637, para.5.

⁵ ICC-01/04-02/06-898, para.17.