

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 January 2016

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

**Public redacted version of "Prosecution request to file a reply to the Defence's
"Confidential Redacted Version of 'Final Observations on Prosecution Requests
for Restrictions on Mr Ntaganda's Communications', 3 August 2015,
ICC-01/04-02/06-759-Conf-Exp", ICC-01/04-02/06-759-Conf-Exp-Red",
11 August 2015, ICC-01/04-02/06-775-Conf-Exp**

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
Mr Christopher Gosnell

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

Mr Patrick Craig

**Victims Participation and
Reparations Section**

Other

Introduction

1. Pursuant to regulation 24(5) of the Regulations of the Court (“Regulations”), the Prosecution seeks leave to reply to the Defence’s final observations on the Prosecution’s requests for restrictions to the Accused’s contacts.¹

2. The Prosecution seeks to reply to the following Defence submissions:
 - (i) whether the cases cited by the Defence regarding the applicable standard for the imposition of restrictions on communication with, and visits to, a detainee² constitute the applicable jurisprudence on these issues;

 - (ii) the applicability of the protocol on handling confidential information and regulating contact with witnesses of the opposing party and regulation 42 [REDACTED] of the Regulations in relation to the Accused’s obligation not to disclose confidential information;³

 - (iii) whether the Accused’s conduct during the past months warrants any easing of the restrictions currently imposed on his contacts;⁴

 - (iv) whether any further information obtained through the monitoring of the Accused’s communication should be provided to an *amicus curiae* rather than to the Prosecution;⁵ and

 - (v) whether it is appropriate for the Defence to rely, in its observations, on recordings of the Accused’s conversations to which the Prosecution does not have access.⁶

¹ ICC-01/04-02/06-759-Conf-Exp-Red (“Defence Observations”).

² See, e.g. Defence Observations, paras.16, 34, 52.

³ See Defence Observations, paras.19-20, 23.

⁴ See Defence Observations, paras.31-36.

⁵ See Defence Observations, paras.77, 79-80.

Confidentiality

3. This filing is classified as “Confidential, *EX PARTE* – only available to the Prosecution, Defence, Registry and Victims and Witnesses Unit” under regulation 23*bis*(2) of the Regulations, in line with the classification of related filings. The Prosecution submits that it is appropriate to file a public redacted version of this filing.⁷

Procedural Background⁸

4. On 3 July 2015, Trial Chamber VI (the “Chamber”), ordered the Prosecution to submit final observations on restrictions to the Accused’s contacts by 21 July 2015 and the Defence to submit a consolidated response by 30 July 2015.⁹
5. On 15 July 2015, the Defence requested the disclosure of the audio-recordings of non-privileged telephone conversations of the Accused which had been translated, transcribed and/or summarised by the Registry, and submitted to the Chamber as annexes to the Registry’s First Report and Second Report.¹⁰
6. On 20 July 2015, the Prosecution responded to the Defence’s request for the disclosure of audio-recordings.¹¹ Although the Prosecution did not oppose this request, it noted that it “reserves the right to request access to the same audio-recordings, with redactions imposed by the Chamber, should the Defence dispute the accuracy of the translations, summaries and transcripts, and ultimately the grounds for restriction of communications.”¹²

⁶ See, e.g. Defence Observations, paras.48, 60.

⁷ See ICC-01/04-02/06-725-Conf-Exp.

⁸ For a more detailed procedural background see ICC-01/04-02/06-738-Conf-Exp.

⁹ ICC-01/04-02/06-697-Conf-Exp-Red.

¹⁰ ICC-01/04-02/06-719-Conf-Exp.

¹¹ ICC-01/04-02/06-735-Conf-Exp.

¹² ICC-01/04-02/06-735-Conf-Exp, para.8.

7. On 21 July 2015, the Chamber granted the Defence request for the disclosure of audio-recordings and extended the 30 July 2015 deadline for the Defence response to 3 August 2015.¹³
8. On the same date, the Prosecution filed its final observations.¹⁴
9. On 3 August 2015, the Defence filed its response.¹⁵

Prosecution's Submissions

10. Pursuant to regulation 24(5) of the Regulations, the Prosecution seeks to address the following issues in its reply.
11. First, the Prosecution seeks to provide a concise analysis for this Chamber on the applicable standard for the imposition of restrictions to detainee communications and visits¹⁶ and, in particular, to elucidate whether jurisprudence concerning contempt proceedings is relevant to the Chamber's decision on the imposition of restrictions to the Accused's contacts.
12. Second, the Prosecution seeks to provide, in reply, its views as to the applicability of the protocol on handling confidential information and contact with witnesses of the opposing party and regulation 42 [REDACTED] of the Regulations in relation to the Accused's obligation not to disclose confidential information.¹⁷
13. Third, the Prosecution seeks to reply to the Defence assertions that the Accused's conduct during the past months warrants any easing of the

¹³ See ICC-01/04-02/06-739-Conf-Exp, para.15.

¹⁴ ICC-01/04-02/06-738-Conf-Exp.

¹⁵ Defence Observations. An advance copy of this filing was provided *via* email on 3 August 2015 at 21:28 p.m. The filing was officially notified on 4 August 2015.

¹⁶ See, *e.g.* Defence Observations, paras.16, 34, 52.

¹⁷ See Defence Observations, paras.19-20, 23.

restrictions currently imposed on his contacts.¹⁸ The Prosecution should be given the opportunity to reply to the Defence's specific requests regarding the easing of restrictions.¹⁹ In order to enable the Prosecution to adequately respond to these requests, the Prosecution asks the Chamber to order the Defence to provide it with the names of the three individuals with whom the Accused seeks to communicate.²⁰

14. Fourth, the Prosecution seeks to reply to the Defence contention that any further information obtained through the monitoring of the Accused's communication should be provided to an *amicus curiae* rather than to the Prosecution,²¹ particularly in view of the non-privileged nature of the communication at issue.

15. Finally, the Prosecution seeks to address, in reply, whether it is appropriate for the Defence to rely, in its observations, on recordings of the Accused's telephone conversations to which the Prosecution does not have access.²² Should the Chamber entertain such arguments, the relevant recordings should be made available to the Prosecution in order to enable a comprehensive reply.²³

16. The Prosecution's reply would assist the Chamber in its determination. Should the Chamber grant leave, the Prosecution will succinctly set out its substantive submissions in its reply.

¹⁸ Defence Observations, paras.31-36.

¹⁹ Defence Observations, para.83.

²⁰ These names are redacted from the Prosecution, see Defence Observations, paras.36, 83(ii).

²¹ See Defence Observations, paras.77, 79-80.

²² See, e.g. Defence Observations, paras.48, 60.

²³ See ICC-01/04-02/06-735-Conf-Exp, para.8.

Request

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



Fatou Bensouda
Prosecutor

Dated this 15th day of January 2016
At The Hague, the Netherlands