

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 June 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 'Response on behalf of Mr Ntaganda to Prosecution application under rule 68(3) to admit the prior recorded testimony and associated documents of Witness P-0894' (ICC-01/04-02/06-1365-Conf)", 8 June 2016, ICC-01/04-02/06-1373-Conf

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 Christopher Gosnell

Legal Representatives of the Victims

Ms Sarah Pellet
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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

Introduction

1. Pursuant to regulation 24(5) of the Regulations of the Court (“Regulations”), the Office of the Prosecutor (“Prosecution”) requests leave to file a reply to the “Response on behalf of Mr Ntaganda to ‘Prosecution application under rule 68(3) to admit the prior recorded testimony and associated documents of Witness P-0894’” (“Response”).¹
2. The Prosecution seeks to address the issue of the admissibility of the evidence of Bosco NTAGANDA’s direct perpetration of murder of individuals who are not referred to by name in the Updated Document Containing the Charges, [REDACTED] of Witness P-0894’s statement.²

Confidentiality

3. This filing is classified as “Confidential” under regulation 23bis(1) and (2) of the Regulations because it contains confidential information and in order to be consistent with the classification of the Response. The Prosecution will file a public redacted version of this filing.

Procedural Background

4. On 19 May 2016, the Prosecution submitted its application to admit the prior recorded testimony and associated documents of Witness P-0894 pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Rules”).³
5. On 3 June 2016, the Defence filed its Response in which it, *inter alia*, objects to the admissibility of evidence about Bosco NTAGANDA having allegedly killed

¹ ICC-01/04-02/06-1365-Conf.

² ICC-01/04-02/06-1365-Conf., paras 8, 20-37 and 39.

³ ICC-01/04-02/06-1326-Conf.

himself certain individuals not referred to in the Updated Document Containing the Charges.⁴

Prosecution's Submissions

6. Pursuant to regulation 24(5) of the Regulations, the Prosecution seeks leave to reply to the Defence submission on the admissibility of evidence of Bosco NTAGANDA's direct perpetration of murder of individuals who are not referred to by name in the Updated Document Containing the Charges.
7. The Defence asserts that the risk of prejudice or confusion resulting from the admission of this evidence largely outweighs its relevance and probative value.
8. The Prosecution's reply, if allowed, will address the relevance and probative value of this evidence, *inter alia*, to: the charges of murder, persecution and attacks against the civilian population; the alternative modes of liability for these crimes including, *inter alia*, direct perpetration, indirect co-perpetration, ordering, acting with a common purpose and command responsibility; Bosco NTAGANDA's intent (including his persecutory intent) and knowledge; and background and context. The reply will also deal with the issue of alleged prejudice.
9. The Prosecution submits that the request for leave to reply should be granted as the Defence has raised an issue that goes beyond a mere response to the Prosecution's application to use the procedures as outlined under rule 68(3) of the Rules. Instead, the Defence has raised a separate and specific challenge to the admissibility of aspects of Witness P-0894's evidence to which the Prosecution submits it should have the opportunity to reply as it would were the Defence to have raised such an objection when the witness was testifying.

⁴ Response para. 39.

10. A reply by the Prosecution will assist the Chamber in its determination. Should the Chamber grant leave, the Prosecution will set out its substantive submissions in its reply.

Request

11. 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 20th day of June 2016
At The Hague, the Netherlands