



Original: **English**

No.: **ICC-01/04-02/06**
Date: **20 February 2017**

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 ‘Response on behalf of Mr Ntaganda to “Motion under rule 68(3) to admit Witness [REDACTED]’s prior recorded testimony and associated material”, 14 November 2016, ICC-01/04-02/06-1633-Conf

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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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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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: (i) the *“Motion under rule 68(3) to admit Witness [REDACTED]’s prior recorded testimony and associated material”* submitted by the Office of the Prosecutor (“Prosecution”) on 2 November 2016 (“Motion”);¹ and (ii) Trial Chamber VI (“Chamber”)’s *“Supplemental decision on matters related to the conduct of proceedings”* issued on 27 May 2016 (“Supplemental Decision on the Conduct of Proceedings”),² Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Response on behalf of Mr Ntaganda to “Motion under rule 68(3) to admit Witness [REDACTED]’s prior recorded testimony and associated material”

“Defence Response”

1. The Defence does not oppose the admission, pursuant to Rule 68(3) [REDACTED] the tendered portions of the witness’s [REDACTED] statement.³ The Defence also does not oppose the *“aide-memoire”* prepared by the witness in conjunction with the giving of his [REDACTED] statement but [REDACTED] maintains that this document must be admitted separately in compliance with the requirements of Rule 68(3) rather than as an “associated document.”

I. The Defence does not oppose admission of the Witness’s [REDACTED]

2. The Defence does not oppose the request for admission of Witness [REDACTED]’s [REDACTED]⁴ pursuant to Rule 68(3).

II. The Defence does not oppose the Witness’s [REDACTED] statement

3. The Defence does not oppose the portions of the Witness’s [REDACTED] statement tendered by the Prosecution.

¹ ICC-01/04-02/06-1606-Conf.

² ICC-01/04-02/06-1342.

³ Motion, Annex A, Section I(A).

⁴ [REDACTED].

III. Additional document

4. The Defence does not oppose the admission of the “*aide memoire*” prepared by the Witness in the context of his [REDACTED] statement to the Office of the Prosecutor, but maintains that this document may be admitted only by independently satisfying the requirements of Rule 68(3), rather than as an associated document. The “*aide memoire*”, [REDACTED],⁵ is itself a statement rather than merely an associated document. Accordingly, its admissibility is itself directly subject to the *lex specialis* standards set out in Rule 68(3).

IV. Supplementary examination

5. The Defence does not oppose the proposed supplementary examination in principle, but will object to any attempt to elicit information of which the Defence does not have prior notice either by way of the witness’s statements, [REDACTED] or “will-say”.⁶ Pre-testimonial proofing sessions are not the appropriate time or setting for giving notice of new topics or information to be elicited from the witness. Permitting such a procedure would be prejudicial.
6. The Defence further submits that an hour of supplementary examination is appropriate [REDACTED].

CONFIDENTIALITY

7. Pursuant to Regulations 23*bis* (1) and (2) of the Regulations of the Court, this Defence Response is classified as confidential, as it responds to a filing bearing the same classification.

⁵ [REDACTED].

⁶ ICC-01/04-02/06-491-Conf-AnxB, p.137.

CONCLUSION

8. The Defence does not oppose the Prosecution's request to tender Witness [REDACTED]'s [REDACTED] or the portions of the [REDACTED] statement to the investigators of the OTP pursuant to Rule 68(3); does not oppose the admission of the Witness's "*aide-memoire*" subject to independent satisfaction of the requirements of Rule 68(3); and proposes that the Prosecution be afforded one hour for supplementary examination.

RESPECTFULLY SUBMITTED ON THIS 20TH DAY OF FEBRUARY 2017

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands