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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 “Response on behalf of Mr Ntaganda to ‘Request by the Common Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns’”, 3 February 2017, ICC-01/04-02/06-1773-Conf

Source: Defence Team of Mr Bosco Ntaganda

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Further to: (i) the *Request by the Common Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns* ("LRV" and "LRV Request") submitted on 23 January 2017,¹ and; (ii) the LRV's email² dated 31 January 2017 providing – further to Trial Chamber VI ("Chamber")'s request³ – additional information regarding two victims he intends to call to present evidence, Counsel representing Mr Ntaganda ("Defence") hereby submit this:

Response on behalf of Mr Ntaganda to 'Request by the Common Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns'

"Defence Response"

INTRODUCTION

1. Pursuant Article 68(3) of the Statute of the International Criminal Court ("Statute" and "ICC" or "Court"), victims at the ICC are entitled to legal representation and as such enjoy certain rights that may be exercised through their legal representative during the trial stage. Although it is theoretically possible for victims to appear individually, this would of course be totally impractical in view of the high number of victims. Accordingly, victims are represented in ICC's proceedings by common legal representatives. Moreover, contrary to the LRV's assertion,⁴ neither the statutory framework of the ICC nor its jurisprudence ever recognized victims, a right to personally tell their story to the Judges nor a right to have their story heard by the Judges during the trial stage.

¹ Confidential Redacted Version of Request by the Common Legal Representative of the Victims of the Attacks for leave to present evidence and victim's views and concerns, ICC-01/04-02/06-1739-Conf-Red, 23 January 2017..

² Email of the CLRV to the Chamber, Parties and Participants, 31 January 2017 at 15h15.

³ Email of the Chamber to the CLRV, Parties and Participants, 31 January 2017 at 14h31.

⁴ CRLV Request, para.1.

2. Based on Article 68(3) of the Statute, and as mentioned below, ICC Trial Chambers have recognized that: (i) victims are participants entitled to present their “views and concerns” in cases where their personal interests are affected (which may include the expression of “views and concerns” by individual victims in person), and; (ii) victims may be authorized to present evidence in order to assist the Chamber in the determination of the truth.⁵
3. There is a significant difference between victims expressing their “views and concerns” and victims “giving evidence”. The requirements allowing victims to do either are also different. On the one hand, based on Article 74(2) of the Statute, “views and concerns” expressed by victims – personally or by the intermediary of their legal representative – will not form part of the trial evidence. On the other hand, participating victims authorized to give evidence contribute to the determination of the truth and as such must give their evidence under oath from the witness box.⁶
4. The threshold to grant applications by victims to give evidence is thus significantly higher than the threshold applicable to applications by victims to express their views and concerns in person.⁷
5. Based on the criteria set out below, as required by the ICC jurisprudence for victims to either solely express “views and concerns” or give evidence, the Defence: (i) does not oppose – under certain conditions – the LRV Request to present victims’ “views and concerns”; (ii) opposes the LRV Request regarding the presentation of evidence through the testimony of eight victims/witnesses, and; (iii) requests, in the event the Chamber authorizes any victim to present

⁵ *Bemba*, Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, ICC-01/05-01/08-2138, 22 February 2012, para.13ff.

⁶ *Lubanga*, Decision on the request by victims a/0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial, 26 June 2009, ICC-01/04-01/06-2032-Anx, para.25.

⁷ *Bemba*, Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138, para.20.

“views and concerns” or to give evidence, that all fundamental guarantees which protect the rights of the Accused to a fair trial be met.

SUBMISSIONS

I. Presentation of “views and concerns” by four victims

A. Applicable law

6. The expression of “views and concerns” is a mode of victim participation that is expressly mentioned in Article 68(3) of the Statute. However, the ICC legal framework does not define the terms “views and concerns”.⁸
7. In *Katanga and Ngudjolo*, Trial Chamber II held that “[e]xcept for provisions such as those of Rule 91 of the Rules, which provide for certain modalities of participation, the founding texts do not provide an exhaustive definition of the terms ‘views and concerns’, and each Chamber has the discretion to define their content according to the specific circumstances of the case before it.”⁹
8. In *Bemba*, Trial Chamber III distinguished the presentation of “views and concerns” as an autonomous modality and set the procedure to be followed in case the legal representatives wished the victims to be allowed to participate in this manner.¹⁰ The legal test applied in considering a victim’s application to present “views and concerns” was “whether the personal interests of the individual are affected and whether the accounts expected to be provided are representative of a larger number of victims”, considering “the nature of the

⁸ The law and practice of the international court, Carsten Stahn, 2015, *Victim Participation Revisited – What the ICC is Learning about Itself*, Sergey Vasiliev, p.1164..

⁹ Decision on the Modalities of Victim Participation at Trial, ICC-01/04-01/07-1788, 22 January 2010, para.53.

¹⁰ The law and practice of the international court, Carsten Stahn, 2015, *Victim Participation Revisited – What the ICC is Learning about Itself*, Sergey Vasiliev, p.1166ff.

harm suffered and the location of the events alleged by the victims who were proposed to express their views and concerns”.¹¹

9. On this basis, Trial Chamber III ultimately authorized three victims to present their views and concerns in person. These victims were allowed to express their views and concerns without taking the oath and they were not to be questioned on the details of the circumstances they experienced, but only to be guided by their legal representative. The Chamber also requested the victims to focus on the harm suffered and on the impact of the alleged crimes on their lives.¹²

B. Presentation of “view and concerns” of the four victims must be confined to the harm suffered by these latter

10. In the present case, the LRV seeks leave to present four victims’ “views and concerns”, namely Victims a/01243/13, a/20126/14, a/30169/15 and a/20018/14.
11. Significantly, the LRV neither explain how the presentation of these four victims’ “views and concerns” would be representative of the interests of a large number of participating victims in this case and even less so, how their “views and concerns” would assist in the Chamber’s determination of the truth.
12. The LRV asserted that these four individuals are intended to present “views and concerns” in relation to attacks that occurred in [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as well as in relation to crimes which would have been committed by UPC/FPLC’s troops in the course of these attacks, in or around these locations. In this regard, the Defence underscores that the Prosecution already called several dual witnesses who extensively testified on these topics and to whom the LRV had the

¹¹ *Bemba*, Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138, para.22.

¹² *Bemba*, ICC-01/05-01/08-T-227-Red, 25 June 2010, 20:11-22:15; *Bemba*, ICC-01/05-01/08-T-228-Red, 26 June 2010, 10:1-16.

opportunity to ask questions.¹³ This necessarily provided the LRV an opportunity – as the legal representative of a group of 1859 victims admitted to participate in the proceedings – to express their “views and concerns” as well as that of the dual witnesses themselves. Indeed, the Chamber not only authorized the LRV to “elicit responses on the concrete harm suffered by the witness”, it ruled that “questions may also extend to the harm suffered by other victims of the same attack”.¹⁴

13. However, should the Chamber be inclined to authorize one or more of the four victims to express their “views and concerns”, the Defence posits that they should only be heard on the prejudice and the harm suffered by them and their relatives.
14. In addition, considering that these victims would not be giving evidence they should only be questioned on the harm they suffered and on the consequences of the same on their lives.
15. This would be consistent with the past practice of other Trial Chambers as well as with the Chamber’s jurisprudence in relation to the scope of the LRV’s questions which may be put to Prosecution witnesses. Indeed, since the beginning of the trial, the Chamber has limited the scope of LRV’s questions to Prosecution witnesses “on harm suffered by each individual and his or her family, or other closely connected matters.”¹⁵
16. As set out *infra*, should the Chamber be inclined to allow questions going beyond the harm suffered by these four victims and their relatives, thereby allowing them *de facto* providing evidence, the Defence underscores *inter alia* the necessity for full disclosure of all material obtained from and related to

¹³ See *inter alia* testimonies of Witness P-0010, Witness P-0100, Witness P-0113, Witness P-0790, Witness P-0805, Witness P-0859, Witness P-0863, Witness P-0868, Witness P-0883, Witness P-0887 and Witness P-0892.

¹⁴ ICC-01/04-02/06-T-26-ENG, 24:18-25:11.

¹⁵ ICC-01/04-02/06-T-25-ENG, 8:12-16. See also ICC-01/04-02/06-T-26-ENG, 24:18-25:11.

these victims, as well as these victims taking the oath and being cross-examined.

II. Presentation of evidence by eight victims

A. Applicable law

17. Based on Article 69(3) and 64(6)(d) of the Statute, the Appeals Chamber considered that the right to lead evidence pertaining to the guilt or innocence of the Accused and the right to challenge the admissibility or relevance of evidence in trial proceedings, lies primarily with the parties, namely the Prosecutor and the Defence. The ICC legal framework contains numerous provisions supporting this interpretation, which are closely related to the role of the Prosecutor¹⁶. Indeed, Article 66(2) of the Statute provides that “[t]he onus is on the Prosecutor to prove the guilt of the accused” and it is thus the Prosecutor’s function to lead evidence on the guilt or innocence of the Accused.¹⁷
18. Consequently, victims’ legal representatives should not act as so-called “Prosecutor *bis*”. This would indeed be wholly unfair if the Defence had to counter not just the Prosecutor’s accusations, but also those of the victims’ legal representatives.¹⁸
19. Nonetheless, as acknowledged by the Appeals Chamber, the general principle that victims are not parties to the proceedings and, as such, do not have an automatic right to introduce evidence does not “preclude the possibility for victims to lead evidence pertaining to the guilt or innocence of the accused and

¹⁶ *Inter alia* investigating the crimes, formulating the charges and determining what evidence should be brought in relation to the charges: see Article 15, 53, 54, 58 and 61(5) of the Statute.

¹⁷ *Lubanga*, Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para.93.

¹⁸ Victims before international criminal courts: some views and concerns of an ICC Trial Judge, Christine Van den Wyngaert Hon., Case Western Reserve Journal of International Law, Vol. 44 Issue 1, 2011, p.488.

to challenge the admissibility or relevance of evidence during the trial proceedings”.¹⁹ Accordingly, Trial Chambers have, in specific circumstances, allowed certain victims to give evidence pertaining to the guilt or innocence of the Accused, on the basis of their power to require the submission of all evidence considered necessary for the determination of the truth pursuant to Article 69(3).²⁰ It is noteworthy, contrary to the LRV’s submissions, that these Trial Chambers have not done so on the basis of a so-called “victims’ right to tell their story and have their story heard by the Judges”.²¹

20. In *Lubanga*, Trial Chamber I ruled that:

“The right to introduce evidence during trial before the Court is not limited to the parties, not least because the Court has a general right (that is not dependent on the cooperation or the consent of the parties) to request the presentation of all evidence necessary for the determination of the truth, pursuant to Article 69(3) of the Statute [...] [V]ictims participating in the proceedings may be permitted to tender and examine evidence if in the view of the Chamber it will assist it in the determination of the truth, and if in this sense the Court has ‘requested’ the evidence.”²²

21. Moreover, the Appeals Chamber held that leading evidence and challenging its admissibility is not an unfettered right of victims, but an opportunity that is subject to the Trial Chamber’s authorization in each instance. Considering the imperative need to guarantee fairness of the proceedings and to place the onus of proof squarely on the Prosecution, the Appeals Chamber held that Trial Chambers should thus exercise their discretion to allow victims to tender evidence, subject to: (i) a discrete application; (ii) notice to the parties; (iii) demonstration that personal interests are affected by the specific proceedings; (iv) compliance with disclosure obligations and protection orders; (v)

¹⁹ *Lubanga*, Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para.94.

²⁰ The law and practice of the international court, Carsten Stahn, 2015, Victim Participation Revisited – What the ICC is Learning about Itself, Sergey Vasiliev, p.1169ff.

²¹ CLRVR Request, para.1.

²² Decision on victims’ participation, ICC-01/04-01/06-1119, 18 January 2008, para.108.

determination of appropriateness; and, (vi) consistency with the rights of the Accused and a fair trial.²³

22. Based on this test, Trial Chamber I in *Lubanga* heard three participating victims to give evidence;²⁴ Trial Chamber II in *Katanga and Ngudjolo* heard the testimony of two victims,²⁵ and; Trial Chamber III in *Bemba* heard two.²⁶
23. More specifically, Trial Chambers have identified the following criteria to determine whether a victim should be allowed to give evidence: (i) whether the proposed testimony related to matters that were already addressed by the Prosecution in the presentation of its case or would be unnecessarily repetitive of evidence already tendered by the parties; (ii) whether the topic(s) on which the victim proposes to testify is sufficiently closely related to issues which the Chamber must consider in its assessment of the charges brought against the accused; (iii) whether the proposed testimony is typical of a larger group of participating victims, who have had similar experiences as the victim who wishes to testify, or whether the victim is uniquely apt to give evidence about a particular matter, and (iv) whether the testimony will likely bring to light substantial new information that is relevant to issues, which the Chamber must consider in its assessment of the charges.²⁷
24. Moreover, as held by Trial Chamber II, such testimony should not: (i) infringe the right of the Accused to be tried without undue delay as pursuant Article

²³ *Lubanga*, Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para.99ff.

²⁴ Decision on the request by victims a/0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial, ICC-01/04-01/06-2032-Anx, 26 June 2009.

²⁵ Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/07-3436, 7 March 2014, para.21

²⁶ Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, ICC-01/05-01/08-2138, 22 February 2012.

²⁷ *Bemba*, Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, ICC-01/05-01/08-2138, 22 February 2012, para.24; *Katanga and Ngudjolo*, Directions for the conduct of the proceedings and testimony in accordance with rule 140, ICC-01/04-01/07-1665, 20 November 2009, para.30.

67(1)(c); (ii) effectively amount to auxiliary prosecution; or (iii) consist in an anonymous testimony vis-à-vis the Defence.²⁸

B. The LRV Request does not meet the requirements to be granted leave to present evidence through eight victims/witnesses

25. In the present case, the LRV seeks leave to present evidence through one witness who is not a participating victim and through seven participating victims. As a preliminary matter, the Defence notes that to the best of its knowledge, only participating victims have been authorized to give evidence in past cases. Nonetheless, the Defence takes the view that for both categories, whether a participating victim or a non-participating victim is allowed to give evidence, the issue at hand remains whether presentation of evidence by a LRV is appropriate and should be allowed.
26. The evidence that the LRV intends to present through eight victims/witnesses relates to the following topics: the attacks on/and presence of the UPC/FPLC's troops in [REDACTED],²⁹ [REDACTED],³⁰ [REDACTED],³¹ [REDACTED],³² [REDACTED]³³ and [REDACTED]³⁴ as well as all the alleged crimes that would have been committed in these areas and their surroundings, namely murder,³⁵ attacking civilians,³⁶ rape,³⁷ sexual slavery of civilians,³⁸ pillaging,³⁹

²⁸ *Katanga and Ngudjolo*, Directions for the conduct of the proceedings and testimony in accordance with rule 140, ICC-01/04-01/07-1665, 20 November 2009, para.22.

²⁹ Victim a/30012/15 and Victim a/01635/13.

³⁰ Victim a/30365/15.

³¹ Victim a/30286/15.

³² Victim a/00256/13 and Victim a/00045/13.

³³ Witness CLR2-1, Victim a/00256/13 and Victim a/00045/13.

³⁴ Victim a/30287/15.

³⁵ Witness CLR2-1, Victim a/30012/15, Victim a/30365/15, Victim a/00256/13, Victim a/00045/13 and Victim a/30287/15.

³⁶ Witness CLR2-1, Victim a/30365/15, Victim a/01635/13, Victim a/30286/15, Victim a/00256/13, Victim a/00045/13, Victim a/30287/15.

³⁷ Victim a/30365/15, Victim a/30286/15, Victim a/30169/15 and Victim a/20018/14.

³⁸ Victim a/01635/13.

³⁹ Witness CLR2-1, Victim a/30365/15 and Victim a/00256/13.

displacement of civilians,⁴⁰ destroying the enemy's property,⁴¹ enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities,⁴² persecution⁴³ and forcible transfer of population.⁴⁴

27. First, the Defence underscores that the Prosecution has already adduced evidence on the attacks on/and presence of the UPC/FPLC's troops in all these locations as well as in relation with the crimes allegedly committed in these areas.⁴⁵ This includes the alleged presence of the Accused in [REDACTED].⁴⁶
28. Consequently, allowing the LRV to present evidence through the testimony of these eight victims/witnesses would be superfluous and unnecessarily repetitive.
29. In this regard, it is noteworthy that the LRV neither explains how the testimony of these eight victims/witnesses would likely bring to light **substantial new**

⁴⁰ Victim a/30365/15, Victim a/30286/15, Victim a/00045/13 and Victim a/30287/15.

⁴¹ Witness CLR2-1, Victim a/30365/15, Victim a/00256/13 and Victim a/00045/13.

⁴² Victim a/30365/15

⁴³ Witness CLR2-1, Victim a/30012/15, Victim a/30365/15, Victim a/01635/13, Victim a/30286/15, Victim a/00256/13, Victim a/00045/13 and Victim a/30287/15.

⁴⁴ Witness CLR2-1, Victim a/30365/15, Victim a/01635/13, Victim a/00045/13, Victim a/30287/15.

⁴⁵ For the attack on [REDACTED] and the presence of UPC/FPLC's troops in that locality and its surroundings as well as the alleged crimes committed by these latter in the area, see *inter alia* Witness P-0017, Witness P-0877, Witness P-0850, Witness P-0901, Witness P-0300; Witness P-0790 and Witness P-0245; For the attack on [REDACTED] and the presence of UPC/FPLC's troops in that locality and its surroundings as well as the alleged crimes committed by there latter in the area, see *inter alia* Witness P-0800, Witness P-0912, Witness P-0892, Witness P-0886, Witness P-0863, Witness P-0805, Witness P-0017, Witness P-0038, Witness P-0041, Witness P-0010, Witness P-0190, Witness P-0911, Witness P-0901, Witness P-0907, Witness P-0894, Witness P-0888, Witness P-0887, Witness P-0898, Witness P-0859, Witness P-0877, Witness P-0850, Witness P-0039, Witness P-0792, Witness P-0790 and Witness P-0245; For the attack on [REDACTED] and the presence of UPC/FPLC's troops in that locality and its surroundings as well as the alleged crimes committed by these latter in the area, see *inter alia* Witness P-0113, Witness P-0105 and Witness P-0127; For the attack on [REDACTED] and the presence of UPC/FPLC's troops in that locality and its surroundings as well as the alleged crimes committed by these latter in the area, see *inter alia* Witness P-0863, Witness P-0907, Witness P-0113 and Witness P-0245; For the attack on [REDACTED] and the presence of UPC/FPLC's troops in that locality and its surroundings as well as the alleged crimes committed by these latter in the area, see *inter alia* Witness P-0100, Witness P-0027, Witness P-0868, Witness P-0805, Witness P-0907, Witness P-0300, Witness P-0105, Witness P-0121, Witness P-0790 and Witness P-0245; For the attack on [REDACTED] and the presence of UPC/FPLC's troops in that locality and its surroundings as well as the alleged crimes committed by these latter in the area, see *inter alia* Witness P-0113 and Witness P-0790.

⁴⁶ See Witness P-0877 (T-108, T-109 and T-110) and Witness P-0850 (T-112 and T-113).

information on issues which the Chamber must consider in its assessment of the charges.

30. In these circumstances, granting leave to the eight proposed victims/witnesses to give evidence would amount to allowing the LRV to act as a “Prosecutor *bis*”, contrary to the ICC Statutory framework and jurisprudence, by presenting evidence on issues already covered by the Prosecution which do not bring light to substantially new information likely to assist the judges in the assessment of the charges.
31. What is more, the LRV neither explains whether the proposed testimony is typical of a larger group of participating victims who have had similar experiences as the victims who wishes to testify or whether the victim is uniquely apt to give evidence about a particular issue.
32. Regarding the charge of enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities, the Defence posits that it is surprising, if not inappropriate, for the LRV to present evidence on this topic, whereas the legal representative of the alleged former child soldiers herself did not deem appropriate to do so.
33. Concerning Victim a/00045/13, the Defence notes that the latter was a [REDACTED] at the time of the events [REDACTED].
34. [REDACTED], the LRV did not make clear whether Victim a/00045/13 [REDACTED]. The LRV also did not provide information regarding any communication he would have had in this regard either with the [REDACTED].
35. More generally, with regards to the eight victims/witnesses with whom the LRV requests to present evidence, the Defence posits that their personal interests as well as the ones of the group’s victims to which they belong, have already been addressed at length during the testimony of dual witnesses.

Moreover, it is submitted that where such evidence addresses the same events as those described by Prosecution witnesses, there must be some indicia of uniqueness or further clarification in the evidence sought to be adduced. Quit to the contrary the LRV has not demonstrated that there is anything unique in this evidence, which would make it complementary as opposed to repetitive.

36. For all these reasons, LRV Request to have victims/witnesses to give evidence must be denied.

III. The presentation of evidence and victims' "views and concerns" by the LRV must not be prejudicial to/or inconsistent with the rights of the accused

37. Victims' participation should not have a negative impact on the rights of the Accused. Article 68(3) of the Statute provides that the Court must permit victims to present their views and concerns "in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial". In other words, allowing victims to participate in the criminal trial of an Accused must not come at the expenses of the latter.⁴⁷
38. Indeed, the testimony of a victim must not come as an "unfair surprise" to the Defence, which is entitled to disclosure and adequate time for preparation.⁴⁸
39. In this case, the Defence notes that the LRV – being on notice since 2 June 2015²⁴⁹ of the possibility of victims giving evidence – could and should have submitted his request earlier. More importantly the LRV should have disclosed the material relevant to the eight proposed victims/witnesses as it was obtained and not after the submission of its Request with multiple redactions.

⁴⁷ Victims before international criminal courts: some views and concerns of an ICC Trial Judge, Christine Van den Wyngaert Hon., Case Western Reserve Journal of International Law, Vol. 44 Issue 1, 2011, p.488.

⁴⁸ The law and practice of the international court, Carsten Stahn, 2015, Victim Participation Revisited – What the ICC is Learning about Itself, Sergey Vasiliev, p.1174..

⁴⁹ ICC-01/04-02/06-619, para.69.

40. Here, the prejudice to the Accused hinges in particular on two aspects.
41. First, to this very day, the Defence is not in a position to investigate the evidence sought to be adduced by the LRV through the testimony of eight victims/witnesses. Second, due to the timing of the LRV Request, the Defence has been deprived of a genuine opportunity to address the evidence sought to be adduced through its cross-examination of past Prosecution witnesses who have testified. Had the material been provided by the LRV in a more timely manner, the Defence would have been able to take these statements into account and to raise any assertions by the proposed victims/witnesses with Prosecution's witnesses who testified in relation with the same events. As it stands, the Defence will not be able to question Prosecution witnesses the evidence sought to be adduced through the eight proposed victims/witnesses, unless the Chamber authorizes that they be recalled. Had the Defence been able to test the evidence sought to be adduced by confronting the same with the testimony of Prosecution witnesses, it would have contributed to the ascertainment of the truth.
42. Should the Chamber be inclined to grant the LRV Request and grant leave to one or more victims/witnesses to give evidence, the Defence underscores the imperatives necessities to ensure that the Accused is provided all guarantees necessary to safeguard its right to a fair trial.
43. Therefore, considering that victims/witnesses fall under the umbrella of "témoins à charge", and as Trial Chamber II previously ruled, the LRV must disclose to the Defence for each victims/witnesses granted leave to testify, at a minimum, a signed witness statement containing a comprehensive narrative of the victims/witnesses' account.

44. The victims/witnesses' statement should also be devoid of any redactions unless specifically required in accordance with the Protocol.⁵⁰
45. Moreover, it will be imperative for the Defence to be allocated adequate time and facilities for the purpose of investigating sought to be adduced by the victims/witnesses granted leave to give evidence, as well as for preparation of the cross-examination of these victims/witnesses.
46. In this regard, the Defence notes that in *Bemba*, the two victims who testified, presented their evidence between 1 and 8 May 2012, whereas the Prosecution concluded the presentation of its evidence on 20 March 2012, before the Defence started its case on 14 August 2012.⁵¹ In *Lubanga*, the three victims who testified, presented their evidence between 12 and 22 January 2010, after the Prosecution concluded the presentation of its evidence on 14 July 2009.⁵² Finally, in *Katanga and Ngudjolo*, the two victims who testified, presented their evidence between 21 and 25 February 2011, after the Prosecution concluded the presentation of its evidence on 8 December 2010, before the Defence started the presentation of its case on 24 March 2011.⁵³
47. Consequently, in the event the Chamber is inclined to grant leave to one of more victims/witnesses to give evidence, the Defence requests a minimum of one month adjournment – once disclosure is complete – for the purpose of conducting the necessary investigation and preparing for the testimony and its cross-examination of the victims/witnesses.
48. The Defence posits that any adjournment granted for this purpose should not be calculated in the time period allotted to the Defence – after the Prosecution

⁵⁰ *Katanga and Ngudjolo*, Directions for the conduct of the proceedings and testimony in accordance with rule 140, ICC-01/04-01/07-1665, 20 November 2009, para.27ff.

⁵¹ Judgment pursuant Article 74 of the Statute, ICC-01/05-01/08-3343, para.10-17.

⁵² Judgment pursuant Article 74 of the Statute, ICC-01/04-01/06-2842, para.11.

⁵³ Judgment pursuant Article 74 of the Statute, ICC-01/04-01/07-3436, para.20-21.

has closed its case and all evidence “à charge” has been adduced – to prepare the presentation of the case of the Defence.⁵⁴

49. Only such measures would compensate the resulting prejudice to the Accused related to the additional evidence being adduced at such a late stage.
50. Lastly, the Defence submits that the time granted for its cross-examination of victims/witnesses granted leave to present evidence should be equivalent to the time spent by the LRV and the Prosecution for their respective examination of the victims/witnesses.

CONFIDENTIALITY

51. Pursuant to Regulation 23bis (1) and (2) of the Regulations of the Court (“RoC”), this Defence Response is submitted on a confidential basis as it refers to a filing bearing the same classification.

RELIEF SOUGHT

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

ADJUDICATE the LRV Request to present the “views and concerns” of four victims with the applicable jurisprudence;

DENY the LRV Request to present evidence through eight victims/witnesses;

And in the alternative,

ORDER the LRV to disclose signed witness statement for each victims/witnesses granted leave to give evidence;

⁵⁴ Decision supplementing the Decision on the Conduct of Proceedings (ICC-01/04-02/06-619) and providing directions related to preparations for the presentation of evidence by the Defence ICC-01/04-02/06-1757, para.14-16.

ORDER a one month adjournment between the end of the Prosecution case and the presentation of the LRV's evidence;

GRANT the Defence request to be allocated for its cross-examination of the victims/witnesses granted leave to give evidence, at least as much time as that used by the LRV and the Prosecution for their respective examination.

RESPECTFULLY SUBMITTED ON THIS 28TH 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