

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **12 June 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***

Confidential

**Prosecution response to the Defence "Request for leave to offer submissions on
the Prosecution allegation of a violation of the Code of Professional Conduct"**

Source: Office of the Prosecutor

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

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**Victims Participation and
Reparations Section**

Other

Introduction

1. The Prosecution takes no position with regard to the Defence "Request for leave to offer submissions on the Prosecution allegation of a violation of the Code of Professional Conduct" ("Request")¹; it notes, however, that the Defence acknowledges that "[t]he requested submissions are not necessary for determination of the [issue of the use of non-privileged Detention Centre communications during the cross-examination of the Accused]".²

Confidentiality

2. This filing is classified as "Confidential" under regulation 23*bis*(1) and (2) of the Regulations of the Court because it contains confidential information and in order to be consistent with the classification of the Response.

Procedural Background

3. On 26 May 2017, the Prosecution submitted the Prosecution's request to use non-privileged Detention Centre communications during the testimony of Bosco Ntaganda.³
4. On 31 May 2017, the Prosecution submitted the Prosecution's supplemental request to use non-privileged Detention Centre communications during the testimony of Bosco Ntaganda.⁴
5. On 6 June 2017, the Defence filed its Response.⁵

¹ ICC-01/04-02/06-1950-Conf.

² ICC-01/04-02/06-1950-Conf, para. 2.

³ ICC-01/04-02/06-1925-Conf.

⁴ ICC-01/04-02/06-1930-Conf.

⁵ ICC-01/04-02/06-1940-Conf.

6. On 7 June 2017, the Prosecution requested leave to reply to the Defence Response.⁶
7. On 8 June 2017, the Chamber granted leave to reply in part to three issues found in paragraphs 8, 10, and 12 of ICC-01/04-02/06-1942-Conf.⁷
8. On 9 June 2017, the Prosecution filed its reply to the Defence Response.⁸
9. On 12 June 2017, the Defence filed its Request for leave to offer submissions on the Prosecution's allegation of a violation of the Code of Professional Conduct.⁹

Prosecution's Submissions

10. The Defence states that the Prosecution in its 9 June 2017 Reply alleges a violation of article 24 of the Code of Professional Conduct for Counsel.¹⁰ This assertion, however, does not accurately describe the content of the Prosecution's Reply. As a plain reading demonstrates, it is clear that the Prosecution expressed its regret that the Defence, instead of focusing on legal arguments, resorted to unsupported accusations and used an unnecessarily caustic tone and a sharp choice of language in its 6 June 2017 Response.¹¹ While such tactics may in certain circumstances constitute a violation of article 24 of the Code of Professional Conduct for Counsel, the Prosecution did not, contrary to what the Defence states, make that allegation. Instead, the Prosecution simply noted the apparent tension between the practice adopted by the Defence in its Response and the duties embodied in the Code of Professional Conduct for Counsel.

⁶ ICC-01/04-02/06-1942-Conf.

⁷ Email from Trial Chamber VI Communications, Sent at 14:37, 8 June 2017.

⁸ ICC-01/04-02/06-1948-Conf.

⁹ ICC-01/04-02/06-1950-Conf.

¹⁰ Defence Request, para. 1.

¹¹ ICC-01/04-02/06-1948-Conf. paras. 18-19.

11. Should the Chamber wish to receive further submissions from the Defence to explain its language choice in its 6 June 2017 Response, then such submissions should be limited to that issue. In turn, the Prosecution should be allowed to respond to those submissions if the Prosecution considers it necessary for the purposes of correcting any possible inaccuracies or to provide factual information to the Chamber. However, as the Defence notes, further submissions on this point will not be of assistance to the Chamber on the issues it needs to resolve with regard to the use of Detention Centre communications.

Request

12. Based on the foregoing, the Prosecution takes no position with regard to the Defence Request noting that the proposed Defence submissions will not assist the Chamber in resolving the relevant issues.



Fatou Bensouda
Prosecutor

Dated this 12th day of June 2017
At The Hague, the Netherlands