

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 21 December 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 of "Prosecution request for leave to reply to the 'Response on behalf of Mr Ntaganda to the 'Prosecution request to admit evidence related to Agreed Fact 69", ICC-01/04-02/06-2119-Conf and Prosecution response to new Defence requests", 21 November 2017, ICC-01/04-02/06-2122-Conf

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

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Introduction

1. Pursuant to regulation 24(5) of the Regulations of the Court (“Regulations”), the Prosecution requests leave to reply to the Defence’s response regarding the request to admit evidence related to Agreed Fact 69 (“Response”).¹
2. Pursuant to regulation 24(1), the Prosecution responds to the new Defence requests to admit a recent statement taken by the Defence, which was disclosed for the first time in its filing, and to admit additional portions of the prior recorded testimony of Witness [REDACTED] and Witness [REDACTED].

Confidentiality

3. This filing is classified as “Confidential” under regulation 23*bis*(1) and (2) of the Regulations consistent with the classification of the Response.

Procedural Background

4. The Prosecution incorporates the procedural history set out in the “Prosecution request to admit evidence related to Agreed Fact 69” (“Request”).²
5. On 10 November 2017, the Prosecution filed the Request.³
6. On 17 November 2017, the Defence filed its Response.⁴

¹ ICC-01/04-02/06-2119-Conf.

² ICC-01/04-02/06-2108-Conf.

³ ICC-01/04-02/06-2092-Conf.

⁴ ICC-01/04-02/06-2097-Conf.

Prosecution's Submissions

(i) Request for leave to reply

7. The Prosecution submits that the Chamber would be assisted by a reply to a limited number of issues raised by the Defence in its Response. The Prosecution's reply, if allowed, will address the issues below:

(i) [REDACTED];⁵

(ii) whether Witness [REDACTED]'s statement is "internally inconsistent" on the provision of weapons to the UPC/RP from Rwanda starting in the summer of 2002 and whether he ever deviated from this fact;⁶

(iii) whether Witness [REDACTED]'s statement is "internally inconsistent" on the provision of weapons to the UPC/RP from Rwanda starting in the summer 2002 and whether he ever deviated from this fact;⁷

(iv) whether the statements of Witnesses [REDACTED] and [REDACTED] contradict each other on material points as opposed to minor points;⁸

(v) whether admission of the material in any way prejudices the Defence in terms of investigation or challenging the admitted evidence when the Defence case is not yet over;⁹ and

⁵ Response, paras. 17-18 (the Defence omits the interpreter's correction which appears five lines later than the passage the Defence quotes, see transcript T-97, p. 44, lns. 19-21).

⁶ Response, paras. 2, 8-9.

⁷ Response, paras. 17-20.

⁸ Response, para. 14.

⁹ Response, para. 35.

(vi) whether the Chamber has admitted reports from [REDACTED] that were tendered by the Defence and that contain similar language and information on sources as the documents now being tendered.¹⁰

8. 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.

(ii) Response to the new Defence requests

9. **First**, the Defence requests that the Chamber admit additional passages from the prior recorded testimony of Witnesses [REDACTED] and [REDACTED], if the Chamber admits the passages tendered by the Prosecution.¹¹

10. The Prosecution selected portions of Witnesses [REDACTED] and [REDACTED]'s prior recorded transcripts on the basis of precise relevance to Agreed Fact 69. Indeed, the passages selected from Witness [REDACTED]'s prior recorded interviews amounted to 21 pages, in an effort to be both focused but comprehensive on the Agreed Fact. The passages from Witness [REDACTED]'s statement amounted to 10 pages.

11. The Prosecution, however, has no objection to admission of additional passages as the Defence requests, should the Chamber deem it appropriate to do so.

12. **Second**, the Defence requests that the Chamber admit a statement provided by Witness [REDACTED] to the Defence on [REDACTED].¹² The Prosecution opposes admission of this statement on the basis that it does not conform to

¹⁰ Response, paras. 3, 24, 25, 27-28. [REDACTED].

¹¹ Response, paras. 12 and 22.

¹² Response, p. 21.

the requirements of rule 68(2)(b) in that there is no accompanying declaration certifying to the accuracy and authenticity of the statement.

13. The Prosecution also opposes the admission of the statement on the basis of its probative value. The substance of the statement covers a total of 6 paragraphs of 2-4 lines each. While the witness confirms that [REDACTED], the statement makes no mention of whether Bosco Ntaganda knew where the weapons came from. Indeed, no questions about Bosco Ntaganda or his knowledge appear to have been posed, or at least none are recorded. Nor is there any effort to have the witness explain the timing of events, since the language in the statement is solely “*à ce moment là*”¹³ and “*plus tard*”.¹⁴

14. Critically, the prior recorded testimony that the Prosecution seeks to tender from Witnesses [REDACTED] and [REDACTED] is a verbatim transcript of their exact words and the exact questions posed. It is not in the interests of justice, nor will it assist the Chamber in determining the truth, to admit a statement of six short and at times vague paragraphs that give no indication of the exact questions posed or responses given, or the timing of events, and that make no express reference to Bosco Ntaganda’s knowledge of the provision of weapons from Rwanda. The Prosecution also notes that the witness’s lawyer was not present yet the meeting was apparently not audio-recorded.

Request

15. 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.

¹³ Response Annex I, para. 15.

¹⁴ Response Annex I, para. 17.

16. The Prosecution also requests that the Chamber deny the Defence request to admit a statement allegedly given by Witness [REDACTED] that lacks probative value and currently fails to meet the requirements of rule 68(2)(b).



Fatou Bensouda
Prosecutor

Dated this 21st day of December 2017
At The Hague, The Netherlands