

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/04-02/06
Date: **9 September 2019**

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
With Confidential Annexes A, B and C**

**Notice of submission of prior recorded testimony pursuant
to Rule 68(2)(b) and the Trial Chamber's order of 23 August 2019**

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

Mrs. Fatou Bensouda
Mr. James Stewart
Mrs. Nicole Samson

Counsel for the Defence

Me Stéphane Bourgon
Me Christopher Gosnell

Legal Representatives of Victims

Mrs. Sarah Pellet
Mr. Dmytro Suprun

Legal Representatives of 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. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr. Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Further to Trial Chamber VI (“Chamber”)’s *Preliminary ruling on prior recorded testimony pursuant to Rule 68(2)(b) in relation to sentencing* rendered on 23 August 2019 (“Preliminary Ruling”),¹ Counsel representing Mr. Ntaganda (“Defence”) hereby submit this:

**Notice of submission of prior recorded testimony pursuant
to Rule 68(2)(b) and Trial Chamber’s order of 23 August 2019**

INTRODUCTION

1. The Defence hereby submits, as supplementary sentencing evidence, the prior recorded testimony of Witnesses D-0020, D-0302 and D-0303 along with associated items. The statements, including the necessary declarations, are attached as Annex A, B and C respectively. Witness D-0020’s statement is accompanied by a document tendered as an associated document, and Witness D-0303’s statement makes reference to excerpts of a video that are also tendered as associated documents, as specified below.
2. This notification is made pursuant to paragraphs 36, 40, and 45 of the Preliminary Ruling, and Rule 68(2)(b)(ii) of the Rules and Procedure and Evidence of the International Criminal Court (“Rules” and “Court”).

PROCEDURAL HISTORY

3. On 29 July 2019, the Defence requested the admission of five statements provided by witnesses, including D-0020, D-0302 and D-0303, pursuant to Rule 68(2)(b).²
4. In its 23 August 2019 Preliminary Ruling, the Chamber granted the request in respect of D-0020, D-0302 and D-0303. The Defence was instructed to submit the prior recorded testimony of these witnesses by 9 September 2019.³

¹ ICC-01/04-02/06-2385-Conf.

² Defence request for admission of sentencing evidence, ICC-01/04-02/06-2369-Conf-Exp, 29 July 2019, para. 16-24.

³ Preliminary Ruling, p. 23.

5. The Chamber recalled the requirement of Rule 68(2)(b)(ii) that any prior recorded testimony be accompanied by “a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person’s knowledge and belief,” but decided that for sentencing purposes, such declarations “need not be witnessed by a member of the Registry” pursuant to the Rule 68(2)(b)(iii).⁴

SUBMISSIONS

Witness D-0020

6. Annex A consists of: (i) the statement provided by Witness D-0020 dated 1 August 2019; (ii) the demobilisation card of the witness, referred to in paragraph 17 of his statement; and (iii) a declaration dated 1 August 2019 in relation to the statement pursuant to Rule 68(2)(b)(ii).⁵ In addition, paragraph 32 of the statement itself expressly indicates that the witness has been informed that he may be prosecuted for any false statements that may be contained in the statement.

Witness D-0302

7. Annex B consists of: (i) the statement provided by Witness D-0302 dated 4 September 2019; and (ii) the required accompanying declaration pursuant to Rule 68(2)(b)(ii) dated 4 September 2019. In addition, paragraph 39 of the statement itself expressly indicates that the witness has been informed that he may be prosecuted for any false statements that may be contained in the statement.

Witness D-0303

8. Annex C consists of: (i) the statement provided by Witness D-0303 dated 2 May 2019; (ii) an accompanying declaration pursuant to Rule 68(2)(b)(ii) dated

⁴ Preliminary Ruling, para.10.

⁵ Annex A.

2 May 2019; and (iii) an interpreter's certification. In addition, paragraph 51 of the statement itself expressly indicates that the witness has been informed that she may be prosecuted for any false statements that may be contained in the statement. Relevant portions of video DRC-OTP-0159-0477, tendered as associated documents are also identified at paragraphs 33 to 35.

CONCLUSION AND RELIEF REQUESTED

9. The statements and associated items are tendered for admissions as supplemental sentencing evidence pursuant to Rule 68(2)(b)(ii) and the Preliminary Ruling.

RESPECTFULLY SUBMITTED ON THIS 9TH DAY OF SEPTEMBER 2019

A handwritten signature in dark ink, appearing to read 'St. B.' with a stylized flourish at the end.

Me Stéphane Bourgon *Ad.E.*, Counsel for Bosco Ntaganda

The Hague, The Netherlands