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

Date: **25 May 2015**

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

Registry Observations on the “Submission on behalf of Mr Ntaganda in relation to possible *in situ* hearings” (ICC-01/04-02/06-571)

Source: The Registry

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

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REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (“the Court,” “the ICC”)

NOTING proposals made by the Defence of Mr Bosco Ntaganda on the possible involvement of the Defence in the Outreach activities related to the *in situ* proceedings made at the status conference on 22 April 2015;

NOTING the “Submission on behalf of Mr Ntaganda in relation to possible *in situ* hearings”¹ submitted to Trial Chamber VI on 24 April 2015 by the Defence of Mr Bosco Ntaganda (“Defence Submission of 24 April 2015”);

NOTING the “Prosecution response to ‘Submission on behalf of Mr Ntaganda in relation to possible *in situ* hearings’ ”² submitted to Trial Chamber VI on 18 May 2015 by the Office of the Prosecutor;

NOTING the “Joint observations on the ‘Submission on behalf of Mr Ntaganda in relation to possible *in situ* hearings’ ”³ submitted to Trial Chamber VI on 19 May 2015 by the Office of Public Counsel for the Victims;

NOTING article 43 of the Rome Statute, rule 13(1) of the Rules of Procedure and Evidence, regulation 24 *bis* of the Regulations of the Court and regulation 5 *bis* of the Regulations of the Registry;

SUBMITS, respectfully, the following observations:

1. In the Defence Submission of 24 April 2015, the Defence of Mr Ntaganda “posits that it is essential for the parties to be involved in developing the outreach strategy in order to ensure the fairness of the strategy and equality of treatment of

¹ ICC-01/04-02/06-571

² ICC-01/04-02/06-599

³ ICC-01/04-02/06-600

both parties.”⁴ The Defence submits, in particular, that it should be consulted and present at meetings held with groups in preparation of the *in situ* hearing and should be consulted on the selection of the rough-cut materials produced from the *in situ* hearing.

2. The Registrar recalls that, as the neutral organ of the Court in charge of non-judicial aspects of the administration and servicing of the Court pursuant to article 43(1) of the Rome Statute, it is particularly entrusted with the mandate of serving as the channel of communication of the Court, pursuant to rule 13(1) of the Rules of Procedure and Evidence.

3. Outreach programmes form part of the specific mandate of the Registry pursuant to regulation 5*bis* (1) of the Regulations of the Registry. Under regulation 5*bis* (3) of the Regulations of the Registry, these are “aimed at making the Court’s judicial proceedings accessible to those communities affected by the situations and cases before the Court. To this end, the Registry shall develop appropriate communication tools and strategies, such as consultation and town-hall meetings, radio and television programmes, leaflets, booklets, posters and videos.”

4. These activities are undertaken in a neutral manner. The parties and participants are already involved in many aspects of Outreach activities (e.g. participation to interviews broadcasted as part of the Outreach activities) whenever the Registry deems it appropriate. Such involvements are distributed between the Parties and participants in a neutral manner, in order to safeguard the fairness of the proceedings and the presumption of innocence. The Defence is therefore regularly invited by the Registry to contribute to Outreach activities.

5. Developing the Outreach strategy of the Court does not form part of the functions of the Defence. A more active involvement into “developing the outreach strategy”, as proposed by the Defence, is alien to the preparation of the Defence case.

⁴ ICC-01/04-02/06-571, para. 9

This is even more so when the defendant is indigent and has his or her legal assistance paid by the Court, since it would immediately impact on the resources made available to it under the legal aid scheme.

6. Holding “face-to-face” meetings with members of the affected communities and other audiences constitutes a regular method of communication for outreach programmes at the ICC and other international tribunals. These meetings are held before, during and after important judicial proceedings. They aim at providing accurate information and receiving feedback from participants. Having the presence of defence counsels, members of the prosecution team and legal representatives of victims during such meetings is a Registry decision based purely on identified specific community’s needs and on the meetings’ topics as well as on the Registry’s evaluation of the impact resulting from such participation on the safety and security of the audience and the ICC personnel. These meetings in no way form part of the judicial proceedings in the case. They are designed based on the needs and characteristics of the target groups. The Registry has adopted this approach in a consistent manner and will indeed evaluate whether and in which meetings the presence of the parties would be beneficial to the success of the Registry’s activities in fulfilling its specific mandate as a channel of communication and as the organ in charge of the Outreach activities.

7. Also, the Registry does not support the Legal Representatives of victims’ request to prevent the Defence from participating in such meetings for security reasons.⁵ The Registry assesses, in a neutral and objective way and on a case-by-case basis, whether such participation to the face-to-face meetings would be adequate and would have an impact on security conditions. Furthermore, the Registry disagrees with the Legal representatives of Victims regarding the need for the Registry to consult with the parties and participants on the “criteria applied for the selection of

⁵ ICC-01/04-02/06-600, para. 4

the relevant representatives among affected communities”⁶. The Registry submits that such consultations are alien to the judicial proceedings and wishes to clarify that it invites various “representatives among affected communities” to attend the outreach activities depending on the type of these activities, the continuous interaction between the Outreach team and the affected communities, and on the needs in each phase of the Outreach strategy.


8. The content of “rough cut” audio visual materials, as well as of all other audio-visual and public information products of the Registry are prepared with extreme care, in full compliance of the due process and of the neutrality principle governing all Registry’s activities. Since 2008, the Registry has been producing audio and video summaries of the Court proceedings in all the cases (“rough cuts”) and radio and television programmes (the “In the courtroom” programme) with summaries of the proceedings. Radio and television programmes (“ready to broadcast”) are available in English and French and in the local languages of situation-related countries. To ensure timely distribution to media, the production of these video summaries is bound by very strict time limitations, as these need to be released speedily to reach their audience. The timing of the production is just incompatible with the proposed consultation of parties and participants, with all possible subsequent litigations before the Chamber that may arise therefrom in case of disagreement.

9. The Registrar measures that these questions of Outreach are essentially alien to the judicial proceedings and should not have been submitted to the judicial determination of Chambers normally. The Registrar observes that the Defence requests to be involved in the development of the outreach strategy without reporting any issue as to how Outreach activities have been run by the Registrar so far in the present case and with no legal ground. It is submitted that, should the Defence come to have concerns in the future with the impact of the Registry’s

⁶ ICC-01/04-02/06-600, para.4

Outreach activities in the present case on the fairness of the proceedings, it will have full opportunity to discuss that issue with the Registrar and, in the absence of the resolution, to the Chamber.

10. In the absence of such concern, the Registry respectfully prays the Chamber to disregard the Defence's request to be involved in the development of outreach strategies.



Marc Dubuisson, Director, Division of Court Services
per delegation of
Herman von Hebel, Registrar

Dated this 25 May 2015

At The Hague, The Netherlands