



Original: **English**

No.: **ICC-01/04-02/06**  
Date: **30 September 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**

**Request on behalf of Mr Ntaganda seeking clarification of the admissibility of  
evidence related to any allegations of rape and sexual slavery committed  
personally by Mr Ntaganda**

**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**

Ms Fatou Bensouda  
Mr James Stewart  
Ms Nicole Samson

**Counsel for the Defence**

Me Stéphane Bourgon  
Me Luc Boutin  
Me William St-Michel

**Legal Representatives of Victims**

Ms 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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Further to the oral decision issued by the Presiding Judge of Trial Chamber VI (“Chamber”) overruling an objection raised by Counsel representing Mr Ntaganda (“Defence”) to a question asked by the Office of the Prosecutor (“Prosecution”) to Witness P-0901 on 21 September 2015,<sup>1</sup> the Defence hereby submits this:

**Request on behalf of Mr Ntaganda seeking clarification of the admissibility of evidence related to any allegations of rape and sexual slavery committed personally by Mr Ntaganda**

**“Defence Request”**

**INTRODUCTION**

1. On 21 September 2015, as part of its examination-in-chief of Witness P-0901, the Prosecution asked the witness whether he knew if Mr Ntaganda had ‘wives’ amongst his escort.<sup>2</sup>
2. Noting that Mr Ntaganda is not accused of having committed, as an individual, the crime of sexual slavery, the Defence objected to the question being asked to Witness P-0901 on the ground that the Prosecution was attempting to elicit from the witness evidence on charges not found in the Updated Document containing the charges.<sup>3</sup>
3. Noting the existence of “some linkage between [the Prosecution’s] questions and document on charges”, the Chamber overruled the objection.<sup>4</sup>
4. In light of the Chamber’s “*Decision on the updated document containing the charges*”<sup>5</sup> – whereby the Chamber directed the Prosecution to delete allegations regarding Mr Ntaganda’s direct participation in rape and sexual enslavement in its proposed updated document containing the charges<sup>6</sup> – the

<sup>1</sup> T-29-CONF-ENG, p.59, ll.5-6 (private session).

<sup>2</sup> T-29-CONF-ENG, p.58, l.16 (private session).

<sup>3</sup> T-29-CONF-FRA, p.60, ll.15-22 (private session), referring to ICC-01/04-02/06-458-AnxA (“Updated DCC”).

<sup>4</sup> T-29-CONF-ENG, p.59, ll.5-6 (private session).

<sup>5</sup> ICC-01/04-02/06-450 (“Decision on the Updated DCC”).

<sup>6</sup> Decision on the Updated DCC, para.45.

Defence hereby seeks clarification that evidence related to the commission, by Mr Ntaganda as an individual, of the crimes of rape and/or sexual slavery is not admissible and that the Prosecution is barred from attempting to elicit such evidence from its witnesses.

5. Consequently, the Defence respectfully requests the Chamber to strike from the evidentiary record the answers given by Witness P-0901 to the questions put by the Prosecution in this regard.<sup>7</sup>

## SUBMISSIONS

6. Among the points of disagreement considered by the Chamber when ruling on the Prosecution's proposed updated document containing the charges were factual allegations contained in paragraphs 104 and 105 therein regarding Mr Ntaganda's direct participation in rape and sexual enslavement. Having considered the arguments of the parties, the Chamber directed the Prosecution to delete the words 'Bosco Ntaganda and' in the first sentence of paragraph 104 as well as paragraph 105 in its entirety ("Removed Allegations"). The Prosecution's request for reconsideration or, in the alternative, leave to appeal the Chamber's instruction, was rejected.<sup>8</sup>
7. The Chamber's instruction to delete factual allegations related to Mr Ntaganda's direct participation in rape and sexual enslavement was not based on mere technical reasons. In fact, the Chamber's instruction rested on: (i) the seriousness of the Removed Allegations; and (ii) the need to avoid giving the impression that the Removed Allegations constitute acts for which Mr Ntaganda is charged.<sup>9</sup>
8. For the reasons relied upon by the Chamber when directing the Prosecution to delete the Removed Allegations from the proposed updated document

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<sup>7</sup> T-29-CONF-ENG, p.59, ll.10-12, 14, 17 (private session).

<sup>8</sup> ICC-01/04-02/06-519 ("Decision on Prosecution Request for Reconsideration and Leave to Appeal").

<sup>9</sup> Decision on the Updated DCC, para.45.

containing the charges, the Defence submits that evidence on the commission of the crimes of rape and/or sexual slavery by Mr Ntaganda as an individual, is not admissible in these proceedings. Such evidence is clearly not relevant to any of the crimes allegedly committed personally by Mr Ntaganda included in the Updated DCC. Furthermore, even if it could be argued that such evidence might be relevant in respect of other charges and/or modes of liability included in the Updated DCC, there can be no doubt that the probative value of such evidence would be plainly exceeded by its prejudicial effect on Mr Ntaganda.

9. Indeed, admitting such evidence would violate Mr Ntaganda's right to a fair trial. The Defence recalls that: (i) the charges of direct commission of the crimes of rape and sexual slavery (under Counts 4, 5, 6, 7, 8 and 9) were not confirmed by the Pre-Trial Chamber; and (ii) related allegations were removed from the Updated DCC. As such, Mr Ntaganda cannot be considered to be on notice of the need to counter such allegations.
10. Admitting evidence on the direct commission by Mr Ntaganda of the crimes of rape and/or sexual slavery would also impact on Mr Ntaganda's right to be tried without undue delay on the basis of the significant court time that will be required for the parties to elicit and counter such evidence.
11. Consequently, the Prosecution must not be permitted to put – either directly or indirectly – questions to its witnesses, the object of which would be to elicit evidence of the commission of the crimes of rape and/or sexual slavery by Mr Ntaganda as individual.
12. The Defence emphasizes that the clarification sought concerns evidence related to *any* form of rape and sexual slavery allegedly committed by Mr Ntaganda as an individual, regardless of the status, age or any other characteristic of the alleged victim.

13. The Prosecution opted not to charge Mr Ntaganda as a direct perpetrator with *any* act of rape or sexual slavery. Considering the above described prejudicial effect on Mr Ntaganda's right to a fair trial, the Defence submits that the Prosecution should not be allowed to put questions on *any* allegation regarding Mr Ntaganda's direct participation in rape and sexual enslavement.
14. Accordingly, the Defence respectfully requests that the answers given by Witness P-0901 to the questions put by the Prosecution in this regard be struck from the evidentiary record.<sup>10</sup>

### RELIEF SOUGHT

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

**CLARIFY** that evidence related to the commission, by Mr Ntaganda as an individual, of the crimes of rape and sexual slavery, is not admissible; and

**STRIKE** from the evidentiary record the answers given by Witness P-0901 to the questions put by the Prosecution in this regard.

**RESPECTFULLY SUBMITTED ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2015**



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

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<sup>10</sup> T-29-CONF-ENG, p.59, ll.10-12, 14, 17 (private session).