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

Date: 18 March 2016

**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 leave to reply to “Prosecution’s response to the ‘Request on behalf of Mr Ntaganda seeking partial reconsideration of Decision on Defence preliminary challenges to Prosecution’s expert witnesses’, ICC-01/04-02/06-1186”**

**Source:** Defence Team of Mr Bosco Ntaganda

**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**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Further to the submission of: (i) the *“Request on behalf of Mr Ntaganda seeking partial reconsideration of Decision on Defence preliminary challenges to Prosecution’s expert witnesses”* by Counsel representing Mr Ntaganda (“Defence”) on 23 February 2016 (“Defence Request”);<sup>1</sup> and (ii) the *“Prosecution’s response to the ‘Request on behalf of Mr Ntaganda seeking partial reconsideration of Decision on Defence preliminary challenges to Prosecution’s expert witnesses’, ICC-01/04-02/06-1186”* by the Office of the Prosecutor (“Prosecution”) on 15 March 2015 (“Prosecution Response”),<sup>2</sup> the Defence hereby submits this:

**Request on behalf of Mr Ntaganda seeking leave to reply to “Prosecution’s response to the ‘Request on behalf of Mr Ntaganda seeking partial reconsideration of Decision on Defence preliminary challenges to Prosecution’s expert witnesses’”**

**(“Request for Leave to Reply”)**

1. The Defence hereby respectfully requests leave from Trial Chamber VI (“Chamber”) to reply to the Prosecution Response on three discrete issues, namely:
  - a. The Prosecution’s misrepresentation of the arguments put forward by the Defence in paragraphs 15 and 16 of its Request;
  - b. The impact, if any, of the decision of the Single Judge of Trial Chamber VII, dated 24 February 2016,<sup>3</sup> rejecting the Prosecution’s *“Prosecution’s Motion to Exclude the Testimony of Witness D22-0004 and the Submission of his Report”*<sup>4</sup> and *“Prosecution’s Motion Challenging the Qualifications of Witness D22-0004 as an Expert”*;<sup>5</sup> and

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<sup>1</sup> ICC-01/04-02/06-1186.

<sup>2</sup> ICC-01/04-02/06-1211.

<sup>3</sup> ICC-01/05-01/13-1653.

<sup>4</sup> 3 February 2016, ICC-01/05-01/13-1594

<sup>5</sup> 18 February 2016, ICC-01/05-01/13-1636.

- c. The impact of Prosecution's cross-examination of Witness P-0932 in the *Bemba et al.* proceedings, which took place on 15 March 2016,<sup>6</sup> on the Prosecution's submission that it "has not disavowed Witness P-0932's aptitude to testify as an expert witness in *Ntaganda*".<sup>7</sup>
2. The Defence submits that additional submissions on these issues would materially assist the Chamber in its adjudication of the Defence Request.
3. Firstly, the Prosecution erroneously argues that in paragraphs 15 and 16 of its Request, the Defence is attempting to supplement its earlier submissions on the admissibility of Witness P-0932's reports by raising new arguments.<sup>8</sup> Should leave to reply be granted, the Defence will demonstrate that far from raising new arguments, the Defence is simply bringing to light certain new facts related to the aptitude of Witness P-0932 to testify as an expert in the *Ntaganda* case that were unknown to the Chamber at the time it rendered its "*Decision on Defence preliminary challenges to Prosecution's expert witnesses*".<sup>9</sup>
4. Secondly, the day following the submission of the Defence Request, the Single Judge of Trial Chamber VII rejected the preliminary challenges raised by the Prosecution to Witness P-0932 being called as an expert witness in the *Bemba et al.* proceedings. In its Response, the Prosecution relies on the Single Judge's decision in support of its contention that it has not shifted its position with regard to the qualifications of Witness P-0932 for the purposes of the proceedings in the *Ntaganda* case.<sup>10</sup>
5. Should leave to reply be granted, the Defence will argue that the Single Judge's decision should have no bearing on the Chamber in its adjudication of the Defence Request, as the issue at stake is not whether Witness P-0932 has been allowed to testify as an expert in another case, but whether the

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<sup>6</sup> ICC-01/05-01/13-T-45-ENG.

<sup>7</sup> Prosecution Response, para.22.

<sup>8</sup> Prosecution Response, paras.20-21.

<sup>9</sup> 9 February 2016, ICC-01/04-02/06-1159.

<sup>10</sup> Prosecution Response, paras.23-24.

Prosecution has disavowed Witness P-0932's aptitude to testify as an expert witness in the *Ntaganda* proceedings.

6. Thirdly, as part of its cross-examination of Witness P-0932 in the *Bemba et al.* proceedings, which took place on the same day the Prosecution submitted its Response, the Prosecution suggested *inter alia* that Witness P-0932 committed plagiarism.<sup>11</sup> Should leave to reply be granted, the Defence will submit that the Prosecution's serious challenges to Witness P-0932's methodological integrity is but another illustration of the Prosecution's disavowal of Witness P-0932's aptitude to testify as an expert witness in the present proceedings, which supports the exclusion of Witness P-0932's *Ntaganda* reports *in li mine*.

#### RELIEF SOUGHT

7. For these reasons, the Defence respectfully requests the Chamber leave to file a reply on the above outlined issues.

**RESPECTFULLY SUBMITTED ON THIS 18<sup>th</sup> DAY OF MARCH 2016**



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

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<sup>11</sup> See ICC-01/05-01/13-T-45-ENG, p.75, l.24 to p.90, l.24.