



Original: **English**

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

Date: **12 June 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

**Defence response on the Prosecution 'Request for Clarification of Decision on
further matters related to the testimony of 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:

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(Participation / Reparation)**

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REGISTRY

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**Victims Participation and Reparations
Section**

Further to: (i) Trial Chamber VI's ("Chamber") Decision on further matters related to the testimony of Mr Ntaganda ("Chamber Decision");¹ and (ii) Prosecution 'Request for Clarification of Decision on further matters related to the testimony of Mr Ntaganda' ("Prosecution Request for Clarification"),² Counsel representing Mr Ntaganda ("Defence") hereby submit this:

Defence response on the Prosecution 'Request for Clarification of Decision on further matters related to the testimony of Mr Ntaganda'

"Defence Response"

INTRODUCTION

1. The Defence hereby responds to the Prosecution Request for Clarification submitted *in extremis* after 1600 hour on Monday 12 June 2017.
2. The Defence opposes both requests for clarification on the basis that the Chamber Decision on both issues is clear as to the nature of the relationship between Counsel and Accused once Mr Ntaganda's testimony begins as well as what is permissible in both instances.
3. If only for reasons of judicial economy, the Prosecution Request for Clarification should be rejected *in limine*.

SUBMISSIONS

4. Regarding the first issue, the Defence recalls the following observations and findings in the Chamber Decision:

[The Chamber] does not consider that the Witness Preparation Protocol, a purpose of which is to allow the calling party to 'assess and clarify the witness's evidence', applies to the testimony of an accused person, compared to a witness who may have had limited contact with the calling party.³

¹ ICC-01/04-02/06-1945.

² Courtesy copy received by the Prosecution on Monday 12 June at 17:06.

³ Chamber Decision, para.14.

[I]n light of Articles 64 and 67(1)(d) of the Statute, and noting the approach taken by Trial Chamber II in the Katanga and Ngudjolo case, the Chamber is of the view that it would encroach upon the fundamental rights of Mr Ntaganda to deny him all contact with counsel throughout his testimony, and does not consider this to be a proportionate measure to the aim of avoiding that his testimony is unduly influenced. (emphasis added)⁴

The Chamber therefore finds that communication between the accused and the Defence may be maintained during the entirety of his testimony, noting that any such communication should always be appropriate, in the sense that counsel is not permitted to advise Mr Ntaganda as to how he ought to respond to a question or line of questioning.⁵

5. The Defence respectfully submits that the above provide sufficient and clear guidance and that further clarity on these points would *not* be of assistance to the Parties and participants, and in particular, to the Accused and his Counsel.
6. Regarding the second issue, the Defence recalls the following observations and findings in the Chamber Decision:

[T]he Chamber considers that Mr Ntaganda shall not be provided with the List of Items. It follows that the Defence shall also not be permitted to discuss any material on the List of Items with the accused, save by leave of the Chamber.⁶

This is with the exception of the items already referred to in the 'Prosecution's request to use non-privileged Detention Centre communications during the testimony of Bosco Ntaganda', which the Defence has had knowledge of since 26 May 2017, and which will be the subject of a discrete decision of the Chamber.⁷

[S]hould the Prosecution intend to use material it has not yet disclosed as of the start of Mr Ntaganda's testimony, it must clearly indicate this on its List of Items, including the date of disclosure. The Chamber will address at that stage whether such items may be used during cross-examination and/or whether it is appropriate to permit the Defence to provide any such items to the accused, or to discuss them with him.⁸

⁴ Chamber Decision, para.19.

⁵ Chamber Decision, para.20.

⁶ Chamber Decision, para.21.

⁷ Chamber Decision, para.21.

⁸ Chamber Decision, para.21.

7. The Defence respectfully submits that the above provide sufficient and clear guidance and that further clarity on these points would *not* be of assistance to the Parties and participants, and in particular, to the Accused and his Counsel.

RELIEF SOUGHT

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

REJECT the Prosecution Request for Clarification.

RESPECTFULLY SUBMITTED ON THIS 12TH DAY OF JUNE 2017

A handwritten signature in black ink, appearing to read 'StB-'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands