

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: **06 February 2015**

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Confidential, *ex parte* Chamber, Registry, Prosecution and Defence only

**Expedited Motion on Behalf of Mr NTAGANDA Requesting the Scheduling of a
Coordination Meeting in relation to the Registry Report on Phone Conversations**

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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**Victims Participation and Reparations
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Further to: (i) the *"Decision on the Prosecution request for restrictions on contact and the Defence request for access to logs"*¹ issued by Trial Chamber VI ("Chamber") on 8 December 2014 ("Restrictions Decision"); (ii) the *"Preliminary report of the Registry on the post factum review of the non-privileged conversations made by Mr Ntaganda since December 2013"*² filed by the Registry on 19 December 2014 ("Registry Preliminary Report"); (iii) the *"Decision on Defence request for leave to appeal the decision on restrictive measures and related matters"*³ issued by the Chamber on 15 January 2014 ("Decision on Request for Leave to Appeal"), and ; (iv) the *"Estimated timeline of the review and preparation of the report based on the parameters presented by the Prosecution"*⁴ filed by the Registry on 2 February 2015 ("Registry Estimated Timeline"), Counsel representing Mr NTAGANDA ("Defence") hereby submit this:

Expedited Motion on Behalf of Mr NTAGANDA Requesting the Scheduling of a Coordination Meeting in Relation to the Registry Report on Phone Conversations

PROCEDURAL BACKGROUND

1. On 8 December 2014, the Chamber instructed the Registry to conduct a *post factum* review ("Review") of the non-privileged conversations made by Mr NTAGANGA since December 2013 – based on the parameters to be submitted by the Prosecution – and to submit a report of this review ("Registry Report") to the Chamber and the Defence, by a date to be set by the Chamber in the future.⁵ The Chamber also decided that it will *"then set a deadline by which the [Registry Report] is to be sent to the Prosecution, allowing sufficient time for the Defence to raise with the Chamber any objections to certain parts of the report being provided to the Prosecution"*.⁶

¹ ICC-01/04-02/06-410-Conf-Exp-Red.

² ICC-01/04-02/06-417-Conf-Exp.

³ ICC-01/04-02/06-425-Conf-Exp.

⁴ ICC-01/04-02/06-439-Conf-Exp.

⁵ Restrictions Decision, page 27.

⁶ Restrictions Decision, para. 56.

2. On 19 December 2014, the Registry provided the Chamber with, *inter alia*, information about the *modus operandi* it intends to adopt for the Review of Mr NTAGANDA's non-privileged phone conversations.⁷
3. On 6 January 2015, the Prosecution submitted to the Registry *ex parte*, the "Prosecution's provision of parameters for the post-factum review of Bosco Ntaganda's visitation and call records".⁸
4. On 15 January 2015, the Chamber provided the Prosecution with an opportunity to modify, if necessary, its parameters initially provided to the Registry, on the basis of the more specific information to be disclosed to the Prosecution as a result of its Decision on Request for Leave to Appeal ("four lists").⁹
5. More particularly, the Chamber: (i) ordered the Prosecution, within five days of notification of the four lists, to notify the Registry of any modifications to its parameters or confirm that no such modification is required; and (ii) directed the Registry, within five days of receipt of the Prosecution's modifications or confirmation, as applicable, to file *ex parte* (Chamber, Prosecution and Defence only) an estimated timeline for completion of the Review and preparation of the Registry Report based on the parameters presented by the Prosecution.¹⁰
6. The four lists were provided to the Prosecution on 19 January 2015.¹¹
7. On 26 January 2015, the Prosecution submitted to the Registry, *ex parte*, its "Prosecution's provision of updated parameters for the post-factum review of Bosco Ntaganda's visitation and call records".¹²

⁷ "Preliminary report of the Registry on the *post factum* review of the non-privileged conversations made by Mr Ntaganda since December 2013", ICC-01/04-02/06-417-Conf-Exp ("Registry Preliminary Report"), paras.7-9.

⁸ ICC-01/04-02/06-422-Conf-Exp.

⁹ Decision on Request for Leave to Appeal, para.27.

¹⁰ Decision on Request for Leave to Appeal, p. 12.

¹¹ Email of Court Management Section, 19 January 2015, 18:03.

8. On 2 February 2015, the Registry submitted its Registry Estimated Timeline for completion of the Review and preparation of the Registry Report.¹³ The Registry indicated therein that the Review was to commence on 4 February 2015.¹⁴

SUBMISSIONS

9. While the Defence is generally aware of the methodology the Registry intends to follow in conducting the Review,¹⁵ many aspects thereof as well as many features of the Registry Report remain either vague or unknown.

A. The Methodology of the Registry's Review

10. As to the methodology that the Registry intends to follow, additional information is required concerning *inter alia*:
- The “7 hours of English summaries of conversations [that] will be accessible on a weekly basis”.¹⁶ In particular, the Defence wishes to obtain clarification regarding the identity/capacity of the person responsible for preparing the summaries, the methodology employed and the content of these summaries.
 - The nature of the communications between the Registry and the Prosecution regarding the parameters of the Review. The Registry Estimated Timeline provides that “the Prosecution prioritised the updated set of parameters and advised an order of priority in the review by the Registrar”¹⁷, suggesting that there has

¹² ICC-01/04-02/06-431-Conf-Exp.

¹³ ICC-01/04-02/06-439-Conf-Exp.

¹⁴ Registry Estimated Timeline, para. 3.

¹⁵ In the Registry Preliminary Report, the Registry explained that it “would proceed to a pre-selection by filtering the telephone calls as specified by the [Prosecution]. The listening of the selected conversations will be carried out and any relevant information contained therein will be transcribed in French or English before its review and analysis, after which a report will be provided to the Chamber” (Registry Preliminary Report, para. 9).

¹⁶ Registry Estimated Timeline, para. 3.

¹⁷ Registry Estimated Timeline, page 3.

been additional communication between the Registry and the Prosecution beyond what the Chamber ordered in the Restrictions Decision.

- The scrutiny of the “7 hours of English summaries of conversations”.¹⁸ On this aspect, the Defence wishes to obtain clarification concerning the identity/capacity of the person responsible for analysing the summaries as well as the intended recipient of these analyses.
- The identification of material requiring further consideration as *per* the Prosecution’s updated parameters and the consideration thereof.¹⁹ On this issue, the Defence wishes to obtain clarification concerning the decision making process (who and how), as well as the preparation and use of the full transcripts, advanced analysis and report to the Chamber. This is especially significant considering that in its Restriction Decision, the Chamber ordered that “*the report shall first be provided to the Defence and the Chamber*” before being provided to the Prosecution²⁰.
- The number of hours of conversations that will be the subject of the Registry Report. On this matter, the Defence queries the variation from 68 to 54 hours of conversations depending on the Prosecution parameters. Whether the former is in addition to the latter.
- The provision of reports on reviews every four weeks on the advancement of the process. On this issue, the Defence wishes to obtain clarification on the content of these reports, the intended recipients and the use that will be made thereof.
- The implementation of the Chamber’s instruction mentioned in paragraph 56 of the Restrictions Decision: “*When uncertain about the impact on witnesses of a*

¹⁸ Registry Estimated Timeline, para. 3.

¹⁹ Registry Estimated Timeline, para. 4.

²⁰ Restriction Decision, para. 56.

certain conversation, input should be sought from the VWU to assess whether the conversation concerned is to be included in the report."

B. The Format of the Registry Report on Phone Conversations

11. As to the format of the Registry Report, neither the Restrictions Decision nor the Registry Preliminary Report and Registry Estimated Timeline specify, *inter alia*:
 - The nature and type of information that will be presented in the Registry Report;
 - The format of the Registry Report, and;
 - Whether transcripts will be appended to the Registry Report and if so, what use will be made of these transcripts.
12. In light of the above observations and with the aim of streamlining the Review, avoiding any misunderstanding and preventing future litigation, the Defence respectfully submits that the scheduling of a coordination meeting involving at least one representative from: (i) the Chamber; (ii) the Registry; (iii) the Prosecution; and (iv) the Defence, is necessary to facilitate a smooth and expedited adjudication of the *"Prosecution's urgent request for measures under regulation 101(2) of the Regulations of the Court"*.²¹
13. Consequently, the Defence respectfully requests the Chamber, acting pursuant to Article 64.3a) of the Statute, to schedule a coordination meeting to discuss and determine the precise modalities of the Review and agree on the procedure and format of the Registry Report at the earliest possibility.

²¹ ICC-01/04-02/06-349-Conf-Red2, 19 December 2014.

14. While such a coordination meeting could take the form of a hearing in court, the Defence posits that an informal coordination meeting would be more effective.

THE EXPEDITED CHARACTER OF THE DEFENCE MOTION

15. Considering that the Review was set to begin on 4 February 2015 – which implies that the first 7 hours of English summaries could be available as early as 11 February 2015 and that a decision will be taken on the same shortly thereafter – and in light of the above Defence concerns on the methodology and format of the Registry Report, this Defence motion is submitted on an expedited basis.

CONFIDENTIAL AND EX PARTE STATUS

16. The Defence requests that this *“Expedited Motion on Behalf of Mr NTAGANDA Requesting the Scheduling of a Coordination Meeting in relation to the Registry Report on Phone Conversations”* be placed on the record as “Confidential *ex parte*, Chamber, Registry, Prosecution and Defence only”, pursuant to Regulation 23bis(1) of the Regulations of the Court, as it refers to a decision marked confidential *ex parte*.

RESPECTFULLY SUBMITTED ON THIS 6th DAY OF FEBRUARY 2015



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands