

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

N° : ICC-01/04-02/06

Date : 13 March 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 and *ex parte* – Chamber, Prosecution and Defence only

**Expedited motion on behalf of Mr Ntaganda seeking an extension of time limit to
file observations on the First 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 :

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the 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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Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Further to (i) the *“Decision on procedure for review of telephone communications and Defence requests”* issued by Trial Chamber VI of the International Criminal Court (“Chamber” and “Court”) on 16 February 2015 (“Decision on Review Procedure”); (ii) the *“First Report on the post factum review of the phone conversations made by Mr Ntaganda”* filed by the Registry on 6 March 2015 (“First Report”); and (iii) the *“Order instructing the Registry to put in place additional temporary restrictions on contact”* issued by the Chamber on 13 March 2015 (“Order on Additional Temporary Restrictions”), Counsel representing Mr Bosco Ntaganda (“Defence” or “Mr Ntaganda”) hereby file this:

Expedited motion on behalf of Mr Ntaganda seeking an extension of time limit to file observations on the First Registry Report on phone conversations

(“Expedited Motion”)

OVERVIEW

1. The Defence hereby requests the Chamber an extension of the time limit to file its observations with respect to the redactions to be applied to the First Report based on the following reasons which establish that good cause is shown.

PROCEDURAL BACKGROUND

2. On 8 December 2014, the Chamber instructed the Registry to conduct a *post-factum* review of the non-privileged conversations made by Mr Ntaganda since December 2013, based on parameters to be submitted by the Prosecution, and to submit a report of this review to the Chamber and the Defence.¹ The Chamber also afforded the Defence the opportunity to review the Registry’s report and raise any objections prior to releasing it to the Prosecution.²

¹ ICC-01/04-02/06-410 (“Decision on Prosecution Request”), p.27.

² Decision on Prosecution Request, para.56.

3. On 16 February 2015, the Chamber issued its Decision on Review Procedure in which it provided further clarification with respect to the methodology to be used by the Registry in the conduct of its *post-factum* review of the phone conversations made by Mr Ntaganda. The Chamber further instructed the Defence to file observations on any redactions to be applied to the First Report “within 5 days of its notification”.³

4. On 6 March 2015, the Registry filed its First Report.

5. On 13 March 2015, on the basis of the information contained in the First Report and its annexes, the Chamber issued its Order on Additional Temporary Restrictions.

SUBMISSIONS

6. Pursuant to Regulation 35 of the Regulations of the Court (“RoC”), a party may request the Chamber to extend a time limit if “good cause” is shown.

7. As a preliminary matter, it is the Defence’s understanding that the deadline set by the Chamber for the Defence to provide its observations on the First Report falls on 17 March 2015. Indeed, while the disposition of the Decision on Review Procedure instructs the Defence to file its observations within “5 days of [the] notification [of the First Report]”, paragraph 39 of the same clarifies that “[t]he Defence is to submit observations as to the redactions to be applied, if any, within five *working days* of the notification of the First Report”.⁴

8. The Defence submits that the complexity of the information provided in the First Report and its annexes, the seriousness of the issues raised by the Registry’s analysis and the fact that the annexes contain transcripts and summaries in English

³ Decision on review procedure, p.17.

⁴ Emphasis added.

only — a language not well understood by Mr Ntaganda — constitute “good cause” within the meaning of Regulation 35 RoC.

9. Indeed, in the present circumstances, the five-day time limit does not allow the Defence to provide the Chamber with meaningful observations on the redactions to be applied. Considering that the First Report and its annexes comprise no less than 106 pages and that Mr Ntaganda has difficulty to fully understand the language used in the transcripts and the summaries, the determination of which redactions should apply involves additional efforts of explaining and translating to Mr Ntaganda the contents of the First Report and its seven annexes. Based on the time necessary to review one page of the annexes with Mr Ntaganda, the Defence estimates that an extension of the time limit until 24 March 2015 is necessary to complete the assessment and determine applicable redactions.

10. The Defence further submits that there is minimal, if any, prejudice to the Prosecution. Given its limited length, the requested extension would not delay the adjudication of the *“Prosecution’s urgent request for measures under regulation 101(2) of the Regulations of the Court”*.⁵ Furthermore, considering that the protection of witnesses is the aim of the review of Mr Ntaganda’s phone conversations,⁶ the imposition of additional temporary restrictions on Mr Ntaganda’s contacts annihilates the possibility of endangering Prosecution witnesses and/or disclosing confidential information.

11. The Defence informed the Prosecution of this Expedited Motion by way of a courtesy copy sent by email on 13 March 2015.

12. For the foregoing reasons, the Defence submits that “good cause” exists warranting an extension of the time limit for the Defence to submit its observations on the First Report until 24 March 2015.

⁵ ICC-01/04-02/06-349-Conf-Red (“Prosecution Request”).

⁶ Order on Additional Temporary Measures, para.5.

CONFIDENTIALITY

13. This Expedited Motion is filed "Confidential and *ex parte* – Chamber, Prosecution and Defence only", pursuant to Regulation 23*bis*(1) Roc, as it relates to the Decision on Review Procedure, which was issued with the same designation.

RELIEF SOUGHT

14. The Defence respectfully requests the Chamber to vary the time limit for submission of the Defence observations on redactions to be applied to the First Report by 24 March 2015.

RESPECTFULLY SUBMITTED ON THIS 13th DAY OF MARCH 2015

A handwritten signature in black ink, appearing to read 'S+B' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands