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

Date: **8 April 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 Redacted Version

**Response on behalf of Mr Ntaganda to Prosecution's request for variation of the
Chamber's direction to provide the order of the Prosecution's first witnesses**

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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Further to the *“Prosecution’s request for a variation of the Chamber’s direction to provide the order of the Prosecution’s first witnesses”* submitted by the Office of the Prosecutor (“Prosecution”) on 7 April 2015 (“Prosecution Request”),¹ Counsel representing Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submit this:

Response on behalf of Mr Ntaganda to Prosecution’s request for variation of the Chamber’s direction to provide the order of the Prosecution’s first witnesses

(“Defence Response”)

INTRODUCTION

1. The Defence hereby responds to the Prosecution Request.
2. The Prosecution requests authorisation to submit its first list of witnesses to be called (“First List”) after Trial Chamber VI (“Chamber”) decides on the *“Urgent request on behalf of Mr NTAGANDA seeking to postpone the presentation of the Prosecution’s case until 2 November 2015 at the earliest”* (“Request to Postpone”)² and, at the earliest, “two months before any new date for the commencement of trial”.³
3. Notably, although the Prosecution was ordered to submit its First List along with its submissions on the conduct of proceedings on 7 April 2015,⁴ the Prosecution failed to do so, even before the Chamber had the opportunity to rule on the Prosecution Request.
4. The Defence does not oppose the Prosecution Request, in principle, but takes issue with the arguments raised by the Prosecution in support thereof.

¹ICC-01/04-02/06-544-Conf-Exp. (“Prosecution Request”). A public redacted version of the Prosecution Request was notified to the Defence on the same day.

² ICC-01/04-02/06-541-Conf-Exp+AnxA.

³ Prosecution Request, para 2.

⁴ “Order requesting submissions on the conduct of proceedings pursuant to Rule 140 of the Rules and on modalities if victims’ participation at trial, ICC-01/04-02/06-507 (“Order Requesting Submissions”).

CONFIDENTIALITY

5. The Defence Response is classified as 'Confidential, *Ex parte* – only available to the Chamber, Prosecution, and Defence' pursuant to Regulation 23bis(2) of the Regulations of the Court as it responds to the Prosecution Request which bears the same classification and refers to an *ex parte* order and an *ex parte* decision. The Defence will submit a public redacted version of its Defence Response.

SUBMISSIONS

6. Without prejudice to its Request to Postpone, the Defence informed the Chamber that in order to be ready for the beginning of the Prosecution's case, it was necessary for the Prosecution to submit the list of the first witnesses it intends to call a minimum of two months in advance.
7. The Defence understands from the Chamber's Order Requesting Submissions that the Prosecution's First List covers the witnesses who are scheduled to testify during the first six weeks of the Prosecution's case.
8. Hence, in principle, the Defence does not oppose the Prosecution Request, providing that the Prosecution submits its First List a minimum of two months before the beginning of the presentation of its case.
9. Nevertheless, the Defence respectfully submits that being informed of the first witnesses to be called by the Prosecution at this stage, would definitely have been of assistance in preparing sooner for the testimony of these witnesses, thereby leaving more time to focus on other trial preparations. It would therefore be in the interest of justice for the Prosecution to provide its First List immediately following the Chamber's decision on the Request to Postpone. This is especially the case considering that the Prosecution is now well aware of the first witnesses it intends to call, which might not have been the case until recently.

10. More importantly, the Defence takes issue with the reasons advanced by the Prosecution to delay providing its First List to the Defence.
11. Firstly, when meeting with the Prosecution on 2 April 2015 for the purpose of discussing the modalities of the conduct of the proceedings, the submission of the Defence Request to Postpone was discussed. On this occasion, the Defence agreed not to oppose any request to delay the submission of the First List, as long as the identity of the first witnesses the Prosecution intends to call at the beginning of its case is communicated to the Defence a minimum of two months in advance.
12. Secondly, taking into consideration [REDACTED]⁵ and despite the Chamber's holding that [REDACTED]⁶, the Prosecution's suggestion that informing the Defence seven months in advance of the first witnesses it intends to call – the identity of whom is already known to the Defence – increases the risks of interference with these witnesses, is plainly far-fetched.
13. Linking the Prosecution Request to a potential increase in the risk of interference with the witnesses in the First List was not necessary.

⁵ [REDACTED]

⁶ [REDACTED]

CONCLUSION

14. When deciding on the Prosecution Request as well as on the Defence Request to Postpone, the Defence respectfully requests the Chamber to take into consideration the necessity for the Prosecution to provide the list of witnesses it intends to call during the first six weeks of the presentation of its case – regardless of the commencement date of trial – a minimum of two months in advance.

RESPECTFULLY SUBMITTED ON THIS 8th DAY OF APRIL 2015

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands