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

Date: **28 May 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

Public redacted version of “Corrected version of ‘Response on behalf of Mr Ntaganda to Prosecution Request to vary the time limit for disclosure of [REDACTED]’s recent interview’, 28 May 2015”

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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REGISTRY

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**Victims Participation and Reparations
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Further to: (i) the *“Prosecution’s request pursuant to regulation 35 to vary time limit for disclosure of [REDACTED]’s recent interview”* filed on 18 May 2015 (“Prosecution Request”) and (ii) the email sent by the Chamber on 21 May 2015 to shorten the deadline for any response to the Prosecution Request to 28 May 2015, Counsel representing Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submit this:

**Response on behalf of Mr Ntaganda to Prosecution Request to vary the time limit
for disclosure of [REDACTED]’s recent interview
 (“Defence Response”)**

INTRODUCTION

1. The Defence hereby responds to the Prosecution Request.
2. The Prosecution Request was submitted outside the time limit and does not fulfil the conditions of Regulation 35(2) of the Regulations of the Court (“RoC”).
3. Should the Prosecution Request be considered as seeking the late addition of incriminatory evidence, the criteria established by the Court in that respect have not been met by the Prosecution and the information provided therein is plainly insufficient to allow the Defence to respond.
4. Either way, the Prosecution Request must be dismissed.

PROCEDURAL BACKGROUND

5. On 9 October 2014, the Chamber set 2 June 2015 as the commencement date for the trial.¹
6. On 9 October 2014, the Chamber also ordered the Prosecution to disclose to the Defence: (i) all material currently already in the Prosecution’s possession, for

¹ Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, ICC-01/04-02/06-382-Corr, para. 9 (f).

which delayed disclosure is not requested and authorised not later than 31 January 2015;² and (ii) all remaining incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as disclosure of all Article 67(2) material and provision of all Rule 77 material for inspection to the Defence by 2 March 2015, save where delayed disclosure has been specifically requested and authorised.³

7. Finally, on 9 October 2014, the Chamber ordered the Prosecution to file any application for delayed disclosure relating to Prosecution witnesses (including any request for redactions that, pursuant to the Redaction Protocol, require approval by the Chamber) by no later than 16 February 2015.⁴
8. On [REDACTED], the Prosecution was provided by [REDACTED] with a UPC/FPLC list of recruits⁵, on which the name of [REDACTED] appears. The name of [REDACTED] only appears on that first list provided on [REDACTED] and not on the ones⁶ provided on [REDACTED].
9. [REDACTED] is a witness the Prosecution intends to call to testify during the trial since 27 May 2013 – the date of the first disclosure.
10. On 16 February 2015, the Prosecution filed an application for delayed disclosure⁷ and a request for redactions.⁸
11. Between 23 February 2015 and 2 March 2015, the Prosecution filed five additional submissions related to delayed disclosure and redactions.⁹

² Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, ICC-01/04-02/06-382-Corr, para. 9.d.

³ Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, ICC-01/04-02/06-382-Corr, para. 9.d.

⁴ Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, ICC-01/04-02/06-382-Corr, para. 9.b.

⁵ DRC-OTP-2081-0003.

⁶ DRC-OTP-2081-0005; DRC-OTP-2081-0005.

⁷ Confidential redacted version of “Prosecution application for delayed disclosure”, ICC-01/04-02/06-461-Conf-Red.

⁸ Confidential redacted version of “Prosecution request for redactions”, ICC-01/04-02/06-462-Conf-Red.

SUBMISSIONS

I. The Prosecution Request fails to meet the requirements of Regulation 35(2)

12. As recognized by the Prosecution, under Regulation 35(2), a Chamber may extend a time limit “if good cause is shown”.¹⁰
13. Having received from [REDACTED] on [REDACTED], the list on which the name of [REDACTED] appears, the Prosecution knew from that moment that it would have to re-interview [REDACTED] witness it intends to call – to obtain information on this list and that this interview – regardless of its content – would have to be disclosed to the Defence by 2 March 2015.
14. As conceded by the Prosecution, it was well aware that it would not be able to meet the 2 March 2015 deadline.¹¹
15. Consequently, it was incumbent to the Prosecution to immediately file a request for delayed disclosure – before the 16 February deadline – as it did for many witnesses on its list¹².
16. Considering that the extension of time limit requested by the Prosecution could be sought prior to its expiration, good cause has not been shown.
17. It is significant in this regard, that the Prosecution provides no reason as to why it did not submit a request for delayed disclosure at that time.

⁹ “Prosecution withdrawal of request for redactions in relation to P-0109”, 23 February 2015, ICC-01/04-02/06-470 (“Prosecution P-0109 Submission”); “Prosecution request for authorization to provide a summary of P-0901’s statement”, 25 February 2015, ICC-01/04-02/06-473-Conf-Red (“Prosecution P-0901 Request”); “Prosecution withdrawal of its application for delayed disclosure in relation to P-0758, P-0761, P-0773, P-0887, P-0898, P-0907, P-0914 and P-0918”, 26 February 2015, ICC-01/04-02/06-475-Conf-Red (“Prosecution Withdrawal”); “Prosecution request for redactions to P-0882’s statement”, 2 March 2015, ICC-01/04-02/06-486 (“Prosecution P-0882 Request”); “Prosecution proposed redactions to three documents relevant to P-0911”, 2 March 2015, ICC-01/04-02/06-493 (“Prosecution P-0911 Request”).

¹⁰ Prosecution Request, para. 7.

¹¹ Prosecution Request, para.1.

¹² Defence Response, para. 10 and 11.

II. The Prosecution Request fails to meet the criteria set by the Court regarding late addition of incriminatory evidence

18. In so far as the Prosecution Request would be considered by the Chamber as seeking the late addition of new incriminatory evidence, the Defence is unable to respond on the merits of this application.
19. Indeed, as recognized by the Prosecution, two criteria govern the late addition of new incriminatory evidence, the first one being that: “the new material is either significantly more compelling than other items of evidence already disclosed to the Defence, or brings to light a previously unknown fact which has a significant bearing upon the case”¹³.
20. The only information provided by the Prosecution regarding the further interview of [REDACTED] – other than the fact that it deals with a list on which his name appears – is that “the interview is focused and brief (just over 75 minutes)”.¹⁴
21. As such the Prosecution fails to meet that first criterion.
22. Moreover, in the absence of the transcription of the audio recording of the further interview of [REDACTED] – which should have been immediately disclosed – the Defence is unable to respond to the Prosecution Request which must be denied.

¹³ Decision on the Prosecution Motion for leave to disclose and add the investigator’s report concerning Witness P-268 to the List of Incriminating Evidence, ICC-01/04-01/07, para. 15.

¹⁴ Prosecution Request, para. 13.

RELIEF SOUGHT

23. In the light of the above arguments, the Defence respectfully requests the Chamber to deny the Prosecution Request.

CONFIDENTIALITY

24. The Defence requests that this Defence Response be received as “Confidential”, pursuant to Regulation 23*bis*(1) of the Regulations of the Court, as it responds to the Prosecution Request, which was filed with the same designation. The Defence will file a public redacted version of this filing.

RESPECTFULLY SUBMITTED ON THIS 28th DAY OF MAY 2015

A handwritten signature in dark ink, appearing to read 'S. Bourgon'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands