

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **9 July 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***

**Confidential, *ex parte* – only available to the Chamber, the Prosecution,
the Registry and the Defence – with Annex A Confidential *ex parte* – only
available to the Chamber, the Registry and the Defence**

**Request on behalf of Mr Ntaganda seeking a variation of time limit to file the
Defence consolidated response on the requested restrictions on Mr Ntaganda's
communications with non-privileged contacts**

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

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Me Stéphane Bourgon
Me Luc Boutin

Legal Representatives of Victims

Legal Representatives of 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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

**Victims Participation and Reparations
Section**

Further to the confidential redacted version of the "*Order requesting final submissions on restrictions on Mr Ntaganda's contacts and related matters*" issued by Trial Chamber VI ("Chamber") on 3 July 2015 ("Chamber Order"),¹ Counsel representing Mr Ntaganda ("Defence") hereby submit this:

**Request on behalf of Mr Ntaganda seeking a variation of time limit to file the
Defence consolidated response on the requested restrictions on Mr Ntaganda's
communications with non-privileged contacts**

("Defence Request")

INTRODUCTION

1. The aim of this Defence Request is to seek a variation of the applicable time limit to submit the Defence final observations on restrictions on contacts and related matters pursuant to Regulation 35 of the Regulations of the Court ("RoC").
2. For the following reasons, the Defence submits that "good cause" exists justifying an extension of the time limit to 24 August 2015 and a minimum of 21 days after the submission by the Prosecution of its final observations, in the event the initial submission date of 21 July 2015 is modified.
3. This Defence Request is submitted without prejudice to the submission of any requests for the disclosure of additional information which might become necessary during the preparation of the Defence final observations.

PARTIAL PROCEDURAL BACKGROUND

4. On 8 August 2014, the Prosecution requested the Chamber to order the Registrar to implement restrictive measures on the contacts between Mr Ntaganda and any other persons, with exception of Counsel and Defence team.²

¹ ICC-01/04-02/06-697-Conf-Exp-Red.

² ICC-01/04-02/06-349-Conf-Exp-Red ("Prosecution's Request for Restrictive Measures").

5. On 8 December 2014 – further to numerous submissions filed by the Parties – the Chamber issued its Decision on Restrictive Measures, in which it *inter alia*, instructed the Registry to: (i) imposed interim restrictions on Mr Ntaganda's contacts and visits; and (ii) conduct a *post-factum* review of these conversations and to submit a report of this review.³
6. On 16 February 2015 – further to many related submissions filed by the Parties – the Chamber issued a decision on the procedure for the review of telephone communications and ordered the Registry to file a first report by 6 March 2015.⁴
7. On 10 March 2015, the Registry filed its first report on the *post-factum* review of the phone conversations made by Mr Ntaganda comprising 126 pages of material.⁵
8. On 20 April 2015, the Registry filed an addendum to its First Report along with three confidential annexes – comprising 44 pages of material – in which it conducted *proprio motu* the re-listening of the conversations in third position to the First Report.⁶
9. On 22 April 2015, the Defence submitted its observations with respect to the redactions to be applied to the Registry's Addendum and its annexes.⁷
10. On 29 April 2015, the Chamber issued its decision on reclassification of the Registry's First Report and ordered the Registry to: (i) disclose to the Prosecution the Registry's First Report, together with annexes 1, 2, 4 and 6, and the Addendum; and (ii) redact in part annexes 3, 8 and 9 of the Registry's First Report as well as annexes 1 to 3 of the Addendum and to further disclose

³ ICC-01/04-02/06-410-Conf-Exp-Red ("Decision on Restrictive Measures").

⁴ ICC-01/02-04/06-459-Conf-Exp.

⁵ ICC-01/04-02/06-504-Conf-Exp ("Registry's First Report").

⁶ ICC-01/04-02/06-563-Conf-Exp ("Registry's Addendum").

⁷ ICC-01/04-02/06-568-Conf-Exp-Corr.

- it to the Prosecution.⁸ On the same day, the Chamber ordered the Registry to file its second report by 22 May 2015 and directed the Defence to file observations on redactions to the second report and to annex 7 to the Registry's First Report by 4 June 2015.
11. On 22 May 2015, the Registry filed its second report on the *post-factum* review of the phone conversations along with 20 annexes, comprising no less than 173 pages of material.⁹
 12. On 4 June 2015, the Defence filed its observations on redactions to be applied to the Registry's Second Report and annexes, and to annex 7 to the Registry's First Report.¹⁰
 13. On 8 June 2015, the Defence was notified of the Prosecution's request to change the order of appearance of the first witnesses, dated 5 June 2015, in which the Prosecution alleged some security incidents related in part to the Registry's First Report.¹¹
 14. On 11 June 2015, the Defence received formal notification of the Prosecution's request to impose further restrictions to Mr Ntaganda's communications, dated 9 June 2015, in which the Prosecution acknowledged that weeks of work were required to assess the context of the Registry's First Report and annexes it relied on.¹²
 15. On 19 June 2015, a report from the Victims and Witnesses Unit ("VWU") on potential interferences with some Prosecution witnesses and other individuals, dated 9 June 2015, was made available to the Defence.¹³

⁸ ICC-01/04-02/06-578-Conf-Exp.

⁹ ICC-01/04-02/06-607-Conf-Exp ("Registry's Second Report").

¹⁰ ICC-01/04-02/06-625-Conf-Exp.

¹¹ ICC-01/04-02/06-630-Conf-Red.

¹² ICC-01/04-02/06-635-Conf-Red ("Prosecution's Request for Further Restrictions").

¹³ ICC-01/04-02/06-634-Conf-Exp ("VWU Report"); E-mail from Registry to Chamber indicating that the report had been made available to the Defence on 19 June 2015 at 11:50.

16. The Defence was scheduled to respond to the Prosecution's Request for Further Restrictions by 2 July 2015.
17. On 29 June 2015, the Chamber suspended the deadline for the Defence response to the Prosecution's Request for Further Restrictions filed the 9 June 2015.
18. On 3 July 2015, the Chamber issued its Chamber Order in which it considered that "it is appropriate at this stage to rule on the restrictions" and accordingly ordered the Parties to submit final observations on all measures sought by the Prosecution, including the Registry's Second Report, as well as VWU Report, by 21 July 2015 for the Prosecution and by 30 July 2015 for the Defence.

CONFIDENTIALITY

19. Pursuant to Regulations 23bis (1) and (2) RoC, this Defence Request is submitted on an *ex parte* basis – only available to the Chamber, the Prosecution, the Registry and the Defence – as it refers to a filing bearing the same confidentiality level.

SUBMISSIONS

20. For the following reasons, the Defence submits that "good cause" exists justifying an extension of the time limit to submit the Defence final observations to 24 August 2015.
21. First, as evidenced by the fact that the Prosecution required many weeks of work to assess the context of the Registry's First Report and annexes it relied on and taking into consideration: (i) the scope of the litigation record leading to the Chamber Order; (ii) the nature and extent of the Prosecution allegations of disclosure of confidential information to unauthorised third parties and interference/intimidation with witnesses, directly or indirectly, by the Accused; (iii) the voluminous material included in both Registry's Reports;

- (iv) the extensive and detailed submissions by the Prosecution on the basis of the First Registry's Report; (v) the difficulties encountered in reviewing the material contained in the Registry's Reports due to *inter alia* the absence of transcript in the original language in which Mr Ntaganda's conversations took place; (vi) the VWU Report which comprises new information that relates to counts not charged against Mr Ntaganda and which took place much later than the time relevant to the Document containing the charges; and (vii) the fact that much of the material used by the Prosecution and VWU is redacted and not available to the Defence, the Defence posits that more time is required to submit meaningful final observations.
22. Second, taking into consideration the nature of the inferences which have already been drawn by the Prosecution on the basis of the First Registry's Report, the Defence submits that a minimum of 21 days will be required between the submission of the Prosecution final observations and the submission of the Defence final observations.
23. Third and more importantly, the Defence submits that further to the additional resources granted by the Registrar for the specific purpose of addressing the numerous allegations raised by the Prosecution since 8 August 2014, a minimum of 45 days is required for the new associate counsel and legal assistant who will soon be recruited to review all the material and prepare the final observations.
24. In this regard, the Defence notes that following the Registrar's decision issued on 3 July 2015 (see enclosed Annex A),¹⁴ a new counsel and a new legal assistant will be recruited no later than 13 July 2015.
25. In conclusion, taking into consideration the above-mentioned circumstances, the Defence respectfully submits that "good cause" has been shown within the meaning of Regulation 35 RoC.

¹⁴ Which was communicated to the Defence on 7 July 2015.

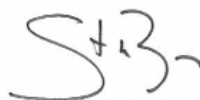
RELIEF SOUGHT

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

GRANT a variation of time limit; and

ORDER the Defence to file its final observations by 24 August 2015.

RESPECTFULLY SUBMITTED ON THIS 9TH DAY OF JULY 2015

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands