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

Date: 24 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***

Public

Public redacted version of "Urgent motion on behalf of Mr Ntaganda seeking a limited variation of the time limit to respond to the 'Prosecution's application under rule 68(2)(c) to admit the statements and related documents of deceased witnesses P-22, P-41 and P-103'", ICC-01/04-02/06-706-Conf-Exp, 9 July 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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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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Section**

Further to the submission of the “Prosecution's application under rule 68(2)(c) to admit the statements and related documents of deceased witnesses P-22, P-41 and P-103” (“Prosecution Application”) on 18 June 2015, Counsel representing Mr Ntaganda (“Defence or Mr Ntaganda”) hereby submit this:

Urgent motion on behalf of Mr Ntaganda seeking a limited variation of the time limit to respond to the “Prosecution's application under rule 68(2)(c) to admit the statements and related documents of deceased witnesses P-22, P-41 and P-103”
(“Urgent Defence Motion”)

INTRODUCTION

1. The aim of this Urgent Defence Motion is to seek a limited variation of the applicable time limit to respond to the Prosecution Application pursuant to Regulation 35 of the Regulations of the Court (“RoC”).
2. The Defence is currently actively analysing the material provided in support of the Prosecution Application.
3. Nonetheless, for the reasons set out herein, the Defence submits that ‘good cause’ justifies granting a limited extension of the applicable time limit until 17 July 2015.

PROCEDURAL BACKGROUND

4. The Prosecution Application was submitted on 18 June 2015.
5. On 23 June 2015, further to the submission by the Prosecution [REDACTED]¹, the Chamber issued [REDACTED].²
6. On 25 June 2015, the Defence informed the Chamber [REDACTED].³

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

7. On 26 June 2015, the Defence filed its “Urgent motion on behalf of Mr Ntaganda seeking an immediate adjournment of the proceedings until the necessary conditions are in place to ensure a fair trial”⁴ on the basis *inter alia* [REDACTED] to deliver its opening statement on 7 July 2015 and to prepare for the beginning of trial on 24 August 2015.
8. On 3 July 2015, the Chamber held an *ex parte* status conference in relation to the Defence’s urgent motion seeking an adjournment of the proceedings, following which, it issued a decision postponing the commencement of trial until 2 September 2015 (opening statements) and 15 September 2015 (evidentiary phase).
9. Pursuant to the present schedule, the Defence is due to submit its response to the Prosecution Application on Monday 13 July 2015.

SUBMISSIONS

10. The Defence is currently actively analysing the material provided in support of the Prosecution Application notified to the Defence on 19 June 2015. However, for the reasons set out herein, the Defence submits that ‘good cause’ justifies granting a limited extension of the time limit until 17 July 2015.
11. First, while the Defence acknowledges having received the material related to witnesses P-22, P-41 and P-103 as early as 2013 and having undertaken a cursory review of this material some time ago in the context of its general assessment of the case for the Prosecution, the analysis required to respond to the Prosecution Application is entirely different and much more detailed.
12. Indeed, the Defence must not only analyze the impact of the evidence provided by witnesses P-22, P-41 and P-103 – which in and of itself requires thorough scrutiny of this material – but also verify whether the applicable criteria for admission of this material pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence (“Rules”) are fulfilled.

⁴ ICC-01/04-02/06-677-Conf-Exp.

13. As acknowledged by the Prosecution, the admission of evidence pursuant to Rule 68(2)(c) is an exception to the rule that witnesses should testify orally and be cross-examined. Accordingly, it is paramount for the Defence to meticulously review every aspect of the proposed evidence provided by the three deceased witnesses to ensure that this material satisfies the standard set out in Rule 68(2)(c) and to ascertain that their admission will not prejudice the right of Mr Ntaganda to a fair trial.
14. As of today, considering the volume of material submitted in support of the Prosecution Application – which includes no less than 85 annexes amounting to more than 850 pages – the Defence has not been able to complete this demanding analysis to a sufficient degree to be in a position to submit its response on Monday 13 July 2015.
15. The insufficient amount of time available to the Defence to perform the necessary work must be assessed in the context of its submission that pursuant to the existing schedule for the commencement of trial – when the Prosecution Application was filed – the Defence did not have adequate time and facilities to prepare for trial, which necessarily involved having to prioritise the order and the extent to which witness evidence disclosed was reviewed.
16. The insufficient amount of time available to the Defence must also be considered in the context of [REDACTED]. As there will be no second opportunity to challenge the proposed evidence in the event it is admitted, this is significant.
17. In this regard, the Defence takes this opportunity to underscore that [REDACTED]. [REDACTED].
18. Furthermore, the Defence [REDACTED].
19. 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, justifying the requested limited variation of the time limit.

RELIEF SOUGHT

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

GRANT this Urgent Defence Motion; and

ORDER the Defence to submit its response to the Prosecution Application no later than Friday 17 July 2015.

RESPECTFULLY SUBMITTED ON THIS 24th DAY OF JULY 2015

A handwritten signature in black ink, appearing to read 'StB-'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands