



Original: **English**

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

Date: **12 August 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 “Further observations on behalf of Mr Ntaganda on Prosecution Request to vary the time limit for disclosure of [REDACTED]’s recent interview”, 12 June 2015, ICC-01/04-02/06-642-Conf

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 Applicants
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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”); (ii) the email sent by Trial Chamber VI (“Chamber”) on 21 May 2015 conveying the Chamber’s order to shorten the deadline for any response to the Prosecution Request to 28 May 2015; (iii) the *“Corrected version of ‘Response on behalf of Mr Ntaganda to Prosecution Request to vary time limit for disclosure of [REDACTED]’s recent interview”* filed on 28 May 2015 (“Defence Response”); (iv) the *“Prosecution request to file a reply to the ‘Corrected version of Response on behalf of Mr Ntaganda to Prosecution Request to vary time limit for disclosure of [REDACTED]’s recent interview”* filed on 29 May 2015 (“Prosecution Request to file a Reply”); (v) the *“Decision on Prosecution Request for leave to reply in relation to its request to vary the time limit for disclosure of [REDACTED]’s recent interview”* issued by the Chamber on 3 June 2015 (“Decision”); (vi) the *“Prosecution’s reply to the ‘Corrected version of Response on behalf of Mr Ntaganda to Prosecution Request to vary time limit for disclosure of [REDACTED]’s recent interview”* filed on 5 June 2015 (“Prosecution Reply”); and (vii) the email sent by the Chamber on 7 June 2015 directing the Defence to submit any further observations on the Prosecution Request, if any, by 12 June 2015 (“7 June 2015 Order”), Counsel representing Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submit these:

Further observations on behalf of Mr Ntaganda on Prosecution Request to vary the time limit for disclosure of [REDACTED]’s recent interview

(“Defence Further Observations”)

DEFENCE FURTHER OBSERVATIONS

1. Following the 7 June 2015 Order and in light of the disclosure of the audio and transcription of [REDACTED]’s recent interview, the Defence makes the following further observations on the Prosecution Request.

2. In the Defence Response, the Defence argued that: (i) the Prosecution Request had been submitted outside the time limit and did not fulfil the conditions of Regulation 35(2) of the Regulations of the Court ("RoC"), and; (ii) 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.
3. On 2 June 2015, the Prosecution disclosed the audio recording¹ and transcription of [REDACTED]'s recent interview² to the Defence.
4. The Defence carefully analysed this new material provided by the Prosecution.
5. Yet, in light of the disclosure of this new material, the Defence maintains that the Prosecution did not satisfactorily establish that "this 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",³ the criterion set out by Trial Chamber II in the *Katanga and Ngudjolo* case and recalled by the Prosecution itself in its request.
6. Indeed, it is significant that in both its Request and its Reply, the Prosecution failed to address the established criterion. Upon careful review of the newly disclosed material, the Defence underscores that it is neither significantly more compelling than other items of evidence already disclosed to the Defence nor does it bring to light a previously unknown fact - which has a significant bearing upon the case.

¹ DRC-OTP-2084-0611.

² DRC-OTP-2085-0519.

³ ICC-01/04-01/07-2325, para.15.

7. Finally, the Prosecution erroneously contends that “a request for an extension of time prior to 2 March 2015” regarding [REDACTED]’s recent interview “would have been premature”.⁴ It clear stems from the circumstances described in the Prosecution Request that the Prosecution disregarded the deadline set by the Chamber for “delayed disclosure”.
8. The Defence notes in this regard – contrary to the prosecution’s submission at paragraph 13- that witness [REDACTED] is now part of the first group of witnesses it intends to call at trial.⁵
9. Pursuant to the Chamber’s Order issued on 22 April 2015,⁶ the Defence acknowledges that the Prosecution may add the audio-recording and transcription of [REDACTED]’s recent interview on its list of evidence. However, should the Prosecution attempt to use this material or to have it admitted in evidence at whatever stage, the Defence will object.
10. Consequently, the Prosecution’s Request should be denied.

RELIEF SOUGHT

11. In the light of the above further observations, the Defence respectfully requests the Chamber to deny the Prosecution Request.

CONFIDENTIALITY

12. The Defence requests that these Defence Further Observations be received as “Confidential”, pursuant to Regulations 23*bis*(1) and (2) RoC, 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.

⁴ Prosecution Reply, ICC-01/04-02/06-627-Conf, para. 3.

⁵ ICC-01/04-02/06-630-Conf-AnxA.

⁶ ICC-01/04-02/06-T19-ENG, p.11 line 7 to p.12 line 7.

RESPECTFULLY SUBMITTED ON THIS 12th DAY OF AUGUST 2015

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands