



Original: **English**

No.: ICC-01/04-02/06
Date: **1 September 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 “Notice on behalf of Mr Ntaganda informing the Chamber of the assignment of a new Defence investigator and a new Defence resource person, and the consequences thereof”

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
Defence**

States' Representatives

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REGISTRY

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**Victims Participation and Reparations
Section**

Further to [REDACTED] issued by Trial Chamber VI (“Chamber”) on 23 June 2015 (“[REDACTED]”)¹ and the [REDACTED] rendered by the Chamber on 12 August 2015 (“[REDACTED]”)², Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Notice on behalf of Mr Ntaganda informing the Chamber of the assignment of a new Defence investigator and a new resource person and the consequences thereof

“Defence Notice”

1. The aim of this Defence Notice is to inform the Chamber that further to the [REDACTED], a new Defence investigator and a new Defence resource person has been assigned to Mr Ntaganda’s Defence team.
2. This Defence Notice also aims at addressing the consequences of these new members joining the Defence team of Mr Ntaganda at this time.

BACKGROUND INFORMATION

3. On 19 June 2015, the Prosecution submitted, [REDACTED] (“[REDACTED]”)³
4. On 23 June 2015, the Chamber issued its [REDACTED].
5. On 25 June 2015, the Defence submitted a notice informing the Chamber of the steps taken pursuant to [REDACTED], including [REDACTED].⁴
6. On 3 July 2015, in the course of an *ex parte* status conference, the Defence underscored the gravity and the seriousness of [REDACTED]. On the same occasion, the Defence also explained the crucial importance and the urgency

¹ ICC-01/04-02/06-667-Conf-Exp.

² ICC-01/04-02/06-777-Conf-Exp.

³ ICC-01/04-02/06-658-Conf-Red.

⁴ ICC-01/04-02/06-673-Conf-Exp.

- for the Defence – since [REDACTED] – to secure the services of a new Defence investigator and a new Defence resource person.⁵
7. On 8 July 2015, further to numerous meetings involving, *inter alia* the Chief of the Counsel Support Section, the Defence obtained confirmation from the Director of the Division of Court Services of the resources that would be made available for the purpose of securing the services of a new Defence investigator and a new Defence resource person.
 8. On 5 August 2015, the Defence responded to [REDACTED].⁶
 9. On 6 August 2015, the Defence succeeded in selecting a candidate for the position of Defence investigator. The assignment of this candidate was formally requested on 7 August 2015 and the new Defence investigator was officially assigned on 17 August 2015.
 10. On 12 August 2015, the Chamber issued the [REDACTED], in which [REDACTED].⁷
 11. On 26 August 2015, the Defence succeeded in selecting a candidate for the position of Defence resource person. The assignment of this candidate was formally requested on 27 August 2015 and the new Defence person was assigned on the Defence team of Mr Ntaganda on 28 August 2015. It is expected that the new Defence resource person would be able to be physically present in the field as of 8 September 2015.

SUBMISSIONS

12. As a result of [REDACTED], the Defence has been deprived of the services of a Defence investigator and a Defence resource person from 23 June 2015 to early September 2015, *i.e.* a period of more than two months.

⁵ ICC-0104-0206-T-22-CONF-ENG.

⁶ ICC-01/04-02/06-767-Conf-Exp.

⁷ ICC-01/04-02/06-777-Conf-Exp.

13. The Defence respectfully submits that at least one month will be required for the new Defence investigator and the new Defence resource person to gain the minimum necessary knowledge of the facts of the case to be able to conduct any meaningful investigations.
14. More importantly, as a result of [REDACTED]. This was recognized by the Chamber when referring to adjustments made to the trial schedule for the purpose of, *inter alia*, verifying “[REDACTED].”⁸
15. The Defence underscores in this regard that [REDACTED]. To provide but one example, Prosecution Witness P-0901 is expected to provide evidence in relation to the full spectrum of charges laid against Mr Ntaganda and events taking place during the entire period covered by the charges.
16. The Defence also notes that even though the Chamber [REDACTED],⁹ [REDACTED].
17. As a result, the Defence estimates that a minimum period of three months, working full time, will be required by the new Defence investigator and the new Defence resource person [REDACTED].
18. In these circumstances, the Defence respectfully submits that it is not capable of protecting the rights of Mr Ntaganda and fulfilling its duty to efficiently challenge the evidence expected to be adduced by the first Prosecution witnesses, starting on 15 September 2015.
19. Nevertheless, the Defence does not at this time seek any adjournment or postponement of the beginning of the presentation of the Prosecution’s case.
20. This notice is nonetheless submitted at the earliest opportunity in order to inform the Chamber of the difficulties that may arise during the next several months of trial proceedings. The remedies that may be requested to mitigate

⁸ ICC-01/04-02/06-761-Conf-Exp, para. 36.

⁹ ICC-01/04-02/06-777-Conf-Exp, para. 35.

the difficulties arising from the absence of investigative capacity and the necessity to verify the reliability of past investigations, include: (i) supplementary time to cross-examine certain witnesses; (ii) additional time to prepare between witnesses; (iii) longer preparation time between evidentiary blocks; (iv) leave to recall certain Prosecution witnesses for additional cross-examination at a later time; (v) leave to split the examination in chief and the cross-examination of certain Prosecution witnesses; and (vi) other measures aimed at ensuring the fairness of the proceedings.

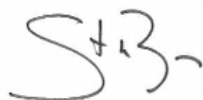
CONCLUSION

21. This Defence Notice, submitted on the eve of trial, stems from the firm belief of the Defence that it is essential – as well as in the interest of justice – that all possible measures be envisaged, and where necessary taken, to ensure the fairness of the proceedings in full respect for the rights of Mr Ntaganda.

CONFIDENTIALITY

22. Pursuant to Regulation 23*bis* (1) and (2) of the Regulations of the Court, this Defence Notice is submitted on a confidential *ex parte* basis – only available to the Chamber, the Prosecution and the Defence – as it is directly related to pleadings and decisions bearing the same classification. A public redacted version will be filed separately.

RESPECTFULLY SUBMITTED ON THIS 1ST DAY OF SEPTEMBER 2015



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands