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No.: ICC-01/04-02/06
Date: 25 January 2016

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

**With confidential *ex parte* Annex A, only available to the Chamber, Registry and
Defence**

**Public redacted version of “Request on behalf of Mr Ntaganda seeking Trial
Chamber VI to modify the schedule for evidentiary blocks 3 and 4”**

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 William St-Michel

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Further to the postponement of the continuation of the cross-examination of Witness P-0790 from 20 to 21 January 2016¹ and the most recent information obtained regarding [REDACTED] of Mr Luc Boutin (“Associate Counsel”), Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

**Request on behalf of Mr Ntaganda seeking Trial Chamber VI to modify the
schedule for evidentiary blocks 3 and 4**

“Defence Request”

INTRODUCTION

1. As confirmed by Lead Counsel for the Defence during the hearing of 21 January 2016, Defence Associate Counsel’s [REDACTED] is such that he must [REDACTED], as soon as [REDACTED], for the purpose of [REDACTED].
2. According to the latest information, the earliest date upon which Associate Counsel could come back to The Hague is [REDACTED]. It follows that Associate Counsel is unavailable to represent the Accused during the third evidentiary block.
3. In order to protect Mr Ntaganda’s rights to have adequate time and facilities for the preparation of his defence and to *effectively* have examined the witnesses against him, the Defence submits that it is necessary to modify the schedule of the third evidentiary block by providing additional preparation time between the next three scheduled witnesses and postponing the testimony of Witnesses [REDACTED] to the fourth evidentiary block, as set out below. While ensuring the fairness of the proceedings, the proposed amended schedule would have a minimal impact on their expeditious conduct.

¹ T-55-CONF-ENG, p.10, ll.6-8, 11-13.

BACKGROUND

4. On 18 January 2016, the Office of the Prosecutor (“Prosecution”) commenced its examination-in-chief of Witness P-0790, which was completed on 19 January 2016.
5. On the same day, Associate Counsel began his cross-examination of Witness P-0790.
6. On 20 January 2016, at the beginning of the morning session, Defence Lead Counsel informed Trial Chamber VI (“Chamber”) that the Associate Counsel was unable to continue with his cross-examination due to [REDACTED]. While indicating his preference to postpone the continuation of Witness P-0790’s cross-examination after the confirmation of charges hearing in the *Ongwen* case, the Lead Counsel undertook to do his utmost to resume cross-examination in the afternoon.
7. By way of e-mail sent at 13:28 later that day, the Lead Counsel indicated that despite a *bona fide* attempt to be able to replace the Associate Counsel on such a short notice, he was unable to proceed with cross-examination of Witness P-0790 in the afternoon. The Defence thus requested to adjourn the proceedings until 21 January 2016 at the earliest, a request which was granted by the Chamber in an open session held later in the afternoon.
8. On 21 January 2016, the Defence resumed cross-examination of Witness P-0790. Prior to resuming cross-examination, the Defence informed the Chamber that the Associate Counsel’s [REDACTED] is such that he must [REDACTED], as soon as [REDACTED], for the purpose of [REDACTED].

SUBMISSIONS

- I. **The Defence is unable to proceed with cross-examination of the remaining witnesses for the third evidentiary block as scheduled**
9. As a result of the unavailability of the Associate Counsel, the Defence is unable to proceed with the testimony of all five remaining witnesses scheduled to testify during the third evidentiary block, namely [REDACTED].
10. As explained during the court hearing of 20 January 2016,² the responsibility to represent the Accused during the testimony of Prosecution witnesses is divided between Lead Counsel and Associate Counsel.
11. Even though the Lead Counsel and Associate Counsel for the Defence work together and are both aware in general of: (i) the contents of the material disclosed by the Prosecution for all of its witnesses; and (ii) the strategy to be employed with each, the detailed preparation for cross-examination is done separately. As the Chamber is most likely aware, it appears that the Prosecution proceeds the same way with the preparation for examination-in-chief of its witnesses.
12. The current situation is compounded by: (i) the fact that the Defence did not have the adequate time and facilities to prepare for trial before the beginning of the Prosecution's case; and (ii) the difficulties encountered by the Defence in the conduct of investigations.
13. In the absence of the Associate Counsel, the Lead Counsel respectfully submits that he is unable to proceed with all the witnesses scheduled to testify in the third evidentiary block without the benefit of significant delays between each witness.

² T-55-CONF-ENG, p.3, l.25; p.4, ll.1-10.

14. Immediately upon being informed of [REDACTED] of the Associate Counsel, the Defence took steps to obtain the necessary resources to secure the services of an additional Associate Counsel for [REDACTED].
15. This request was addressed to the Counsel Support Section ("CSS") in a meeting on 20 January 2016 as well as in a letter dated 22 January 2016.³ To this date, CSS has not responded to this request.
16. The Defence stresses that even if its request for additional assistance is granted, it would not be possible to secure the services of an Associate Counsel who could be ready to represent the Accused during the testimony of any Prosecution witness for [REDACTED].
17. In such circumstances, amending the schedule of the third evidentiary block and postponing the testimony of Witnesses [REDACTED] until the fourth evidentiary block remains the only solution available to ensure that Mr Ntaganda is effectively represented.
18. If deemed necessary, the Defence is ready to provide the Chamber with additional information at any time.

II. Amending the schedule of the third evidentiary block and postponing the testimony of Witnesses [REDACTED] until the fourth evidentiary block is the only solution to ensure an effective representation of Mr Ntaganda in the present circumstances

19. As the Chamber has previously indicated, in the event the Defence faces 'concrete difficulties', it may take – as part of its inherent trial management powers⁴ – particular measures to assist the Defence, including amendments to the ordering of witnesses and the sitting schedule.⁵

³ Annex A to the present Defence Request.

⁴ Cf. Article 64(6)(f).

⁵ "Decision on Defence request for leave to appeal the Chamber's decision on postponement of the trial commencement date", 21 May 2015, ICC-01/04-02/06-604, paras.19-20.

20. Taking into consideration the non-availability of the Associate Counsel at least until [REDACTED], the Defence and the Prosecution had an opportunity to discuss possible amendments to the schedule of the third evidentiary block with a view to accommodating the Defence in its preparation for cross-examination of Prosecution witnesses. However, despite *bona fide* attempts to agree on possible modifications to the existing schedule, the Defence and Prosecution were not able to reach an agreement in this regard.
21. Based on the Prosecution estimate of the duration of the testimony of the five remaining witnesses [REDACTED],⁶ 22 hearing days are required to complete the testimony of these witnesses.
22. Assuming the trial proceedings will resume on 27 January 2016, the testimony of the five remaining witnesses – without any breaks in between each – would be completed at best by 25 February 2016, leaving only one free day before the end of the third evidentiary block.
23. In the present circumstances, which are exceptional, the Defence requests that:
 - (i) the testimony of Witnesses [REDACTED] be rearranged as follows:
 - a. Witness [REDACTED]: 27, 28, 29 January, 1, 2 February 2016
 - b. Witness [REDACTED]: 8, 9, 10, 11, 12 February 2016; and
 - c. Witness [REDACTED]: 15, 16 February 2016;
 - and (ii) to postpone the testimony of Witnesses [REDACTED] – the last two witnesses scheduled to appear in the third evidentiary block –to the fourth evidentiary block.

⁶ Email from Ms Selamawit Yirgou to the Chamber, the parties and participants, 27 November 2015, 14:58.

24. This would allow the Defence to effectively represent the Accused during the testimony of the next three Prosecution witnesses as well as to prepare for the last two at the beginning of the fourth evidentiary block.
25. Pursuant to the Defence's proposal, the fourth evidentiary block would start as scheduled on 6 April 2016, thus minimizing the impact on the expeditious conduct of the proceedings. The Defence is further ready to envisage extending the fourth as well as the upcoming fifth evidentiary block in order to compensate the delay resulting from amending the schedule of the third evidentiary block at this time.

CONFIDENTIALITY

26. Pursuant to Regulation 23*bis* (1) of the Regulations of the Court, this Defence Request is classified as confidential, as it refers to information related to the personal situation of the Defence Associate Counsel. Annex A is classified as confidential, *ex parte* – only available to the Chamber, Registry and Defence, as it refers to matters related to the internal functioning of the Defence. A public redacted version of the Defence Request will be submitted separately

RELIEF SOUGHT

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

AMEND the schedule for the third evidentiary block as follows:

- a. Testimony of Witness [REDACTED]: 27, 28, 29 January, 1, 2 February 2016
- b. Testimony of Witness [REDACTED]: 8, 9, 10, 11, 12 February 2016; and
- c. Testimony of Witness [REDACTED]: 15, 16 February 2016;

and

POSTPONE the testimony of Witnesses [REDACTED] until the fourth evidentiary block.

RESPECTFULLY SUBMITTED ON THIS 25TH DAY OF JANUARY 2016

A handwritten signature in black ink, appearing to read 'StB', is centered on the page. The signature is written in a cursive, stylized font.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands