



Original: **English**

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

Date: **12 October 2017**

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

Request for revised deadline for tendering documentary evidence

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)**

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Detention Section

**Victims Participation and Reparations
Section**

Other

Request for revised deadline for tendering documentary evidence

INTRODUCTION

1. The Trial Chamber, by email of 9 October 2017, *proprio motu* set a deadline of 31 October 2017 for the Defence to submit any request for the admission of documentary evidence other than through witnesses.¹ The Defence requests, taking into account the procedure prescribed in paragraph 53 of the *Decision on the Conduct of Proceedings*,² that the Trial Chamber extend to 10 November 2017 the deadline for the Defence to send its list of documents to the Prosecution, with the motion due to the Trial Chamber three days after receipt of the Prosecution's comments on that list. This timeline is in the interests of justice and is supported by good cause given the volume of potential documentary evidence involved.

APPLICABLE LAW

2. The usual standard for extending or shortening a time limit, pursuant to Regulation 35(2) of the Regulations of the Court ("RoC"), is a showing of "good cause." The Defence notes that the standard applicable for reconsideration should not apply where, as in this case, a judicial determination is made without submissions from the parties.

SUBMISSIONS

3. Several factors favour extending the deadline set by the Trial Chamber.
4. First, the volume of potential documentary evidence is substantial. Prosecution disclosure alone consists of approximately 16902 documents (138207 pages). These documents have, of course, been the object of ongoing review by the Defence during the case. Nevertheless, the decision whether to

¹ Ntaganda: *Deadline for filing of requests for admission of documentary evidence*, 9 October 2017, 14:22.

² 2 June 2015, ICC-01/04-02/06-619 ("Decision on Conduct of Proceedings").

seek to tender particular documents depends on a variety of factors that evolve over the course of trial. A reasonable amount of additional time is required to adequately review this volume of material and make a final choice of which documents to tender in light of the evidence admitted so far.

5. Second, the Defence should be afforded reasonable notice between the time of the announcement of the deadline and the deadline itself. The deadline imposed by the Chamber expires 21 days after notification to the Defence. The Prosecution, by contrast, was afforded more than three months' notice before the expiry of the time-limit of submission of its bar table submission.³ Although other factors may militate in favour of a shorter period of notice for the Defence, twenty-one days does not provide the Defence with an adequate opportunity to complete the necessary review.
6. Third, paragraph 53 of the *Decision on Conduct of Proceedings* prescribes an intermediate procedure allowing the opposing party to comment on documents proposed for tendering before the motion seeking admission is filed.⁴ This procedure was followed in respect of the Prosecution's motion for admission⁵ and, accordingly, should also be followed in respect of the Defence motion. Additional time is required to permit this intermediate procedure to be conducted.
7. The foregoing considerations are "good cause" for extending the applicable deadline. The Defence hereby requests that it be required to send its proposed list of documents for admission to the Prosecution by 10 November 2017, and

³ Corrigendum of 'Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution', 19 October 2016, ICC-01/04-02/06-1588, 12 December 2016, ICC-01/04-02/06-1588-Corr., para. 5 ("the deadline for the filing of any Prosecution requests for admission of evidence as part of the Prosecution case, other than through the remaining witnesses it intends to call, for 3 February 2017").

⁴ Decision on Conduct of Proceedings, para. 53.

⁵ Response on behalf of Mr Ntaganda to "Prosecution's request for the admission of exhibits from the bar table", 27 February 2017, ICC-01/04-02/06-1805-Conf, para. 2 ("[o]n 13 January 2017 and 2 February 2017, the Defence informed the Prosecution of its position regarding the admissibility of the four sets of documents sought to be admitted from the bar table. The Defence also provided the Prosecution with initial observations supporting its position.")

that the deadline for final submission of tendered documents be set as three days after receiving the Prosecution's position on its proposal.

RELIEF SOUGHT

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

GRANT this Defence Motion; and

ORDER the Defence to submit its proposal for the admission of documentary evidence to the Prosecution no later than 10 November 2017 and submit its motion for the admission of documentary evidence three days after the Prosecution's response regarding the proposed documents.

RESPECTFULLY SUBMITTED ON THIS 12TH DAY OF OCTOBER 2017

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands