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No.: ICC-01/04-02/06
Date: 31 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 extension of time to file Rule 68(3) motion for Witness D-0017

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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(Participation / Reparation)**

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Section**

REQUEST FOR EXTENSION OF TIME TO FILE RULE 68(3) MOTION FOR WITNESS D-0017

1. The Defence requests, pursuant to Regulation 35(2) of the Regulations of Court, permission to file its Rule 68(3) application for Witness D-0017 one week after the applicable deadline. The present application is made on the assumption – which is a possibility – that Witness D-0017 might appear as the first Defence witness in evidentiary Block #5 commencing on 27 November 2017. If this were the case, the applicable deadline would be today, 31 October 2017.¹ Although Witness D-0017 is not currently scheduled as the first witness in Block #5, the Defence now believes that there is a possibility that the Defence may have no choice but to call Witness D-0017 as the first witness in light of Prosecution objections to the appearance of other witnesses currently scheduled before Witness D-0017's appearance (namely, Witnesses D-0251 and D-0257). The Defence accordingly requests that the deadline for any Rule 68(3) application in respect of Defence Witness D-0017 be 7 November 2017.
2. Assuming that the time-limit is deemed to not have expired as of the moment of this application, the request is supported by good cause. A final meeting with Witness D-0017 is scheduled to take place on 4 or 5 November 2017. As previously indicated it was not possible to meet with Witness D-0017 earlier. Nonetheless, the Defence reasonably believes that a statement can be obtained from the witness by 7 November 2017.
3. The beneficial consequences of allowing the Rule 68(3) motion after the applicable deadline, include: (i) giving the Prosecution more time to prepare for the testimony of Witnesses D-0251 and D-0257, whom the Trial Chamber

¹ *Ntaganda*, Decision on the conduct of proceedings, 2 June 2015, ICC-01/04-02/06-619, para. 41 (“no later than four weeks before the relevant witness is scheduled to testify”). All further citations are to the *Ntaganda* case unless otherwise indicated.

directed should be presented towards the end of Block #5;² (ii) giving the Prosecution more precise notice of the content of Witness D-0017's testimony, notwithstanding the manner in which the witness ends up testifying; and (iii) facilitating the expeditious conduct of proceedings, by ensuring that Witness D-0017 can be called on the first day of the 5th Evidentiary Block. Conversely, a period of three weeks still provides adequate time for the Prosecution prepare for the testimony of Witness D-0017 and take a position regarding the manner in which his evidence should be adduced. Either way, the disclosure of the written statement will facilitate the Prosecution's preparations. Given the current number of witnesses remaining, reducing the applicable time-period for the Rule 68(3) motion from four to three weeks is reasonable.³

4. Assuming that the time-limit is deemed to have expired, acceptance of the late-filed submission is, nevertheless, in the interests of justice.⁴ The extension, in addition to the justifications described above, is sought almost immediately after the applicable deadline; is still one week in advance of the date on which the filing would be made, rather than on the date of the filing itself;⁵ and is brought promptly after the Defence became aware of the real possibility that Witness D-0017 might be the first witness in Block #5.

² Decision on Defence Request to add Witnesses D-0251 and D-0257 to its List of Witnesses, 20 October 2017, ICC-01/04-02/06-2079, para. 24.

³ See e.g. T-167 3:7-15 (granting a Prosecution request to file a 68(3) application late for witness P-0002).

⁴ Decision on Prosecution's request pursuant to Regulation 35 for an extension of time to submit evidence, 23 February 2017, ICC-01/04-02/06-1799, para. 6 (affirming that a late-filed filing could be entertained not only on the basis of inability, as prescribed in Regulation 35(2) of the Regulations of Court, but also where it was "in the interests of justice" to do so); T-167 3:7-9 ("[n]onetheless, having regard to the changes in schedule, the Chamber is persuaded that good cause exists to vary the deadline, including in the interests of justice, as referred to in Regulation 29").

⁵ Cf. Prosecution application under rule 68(3) and regulation 35 to admit Witness P-0002's prior recorded testimony and associated material, ICC-01/04-02/06-1631-Red, 14 November 2016, para. 6 (requesting a one week retro-active extension of the applicable deadline for the Rule 68(3) application in the application itself).

RELIEF SOUGHT

5. The Defence requests an extension to 7 November 2017 for the filing of any application to tender a portion of Witness D-0017's direct testimony in written form pursuant to Rule 68(3).

RESPECTFULLY SUBMITTED ON THIS 31ST DAY OF OCTOBER 2017

A handwritten signature in black ink, appearing to read 'S+B-'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands