



Original: **English**

No.: **ICC-01/04-02/06**
Date: **19 February 2021**

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuca

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public

Public Redacted Version of "Confidential Redacted version of 'Request on behalf of Mr Ntaganda seeking leave to reply to the 'Prosecution's Response to the Defence's expedited motion to vary the time limit to respond to the 'Prosecution's urgent request for immediate suspension of Defence investigators and other measures'", 10 July 2015, ICC-01/04-02/06-711-Conf-Exp-Red

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, *Ad.E.*

Legal Representatives of Victims

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 Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Further to the *“Prosecution’s Response to the Defence’s expedited motion to vary the time limit to respond to the ‘Prosecution’s urgent request for immediate suspension of Defence investigators and other measures’”* filed by the Prosecution on 9 July 2015 (*“Prosecution Response”*),¹ Counsel representing Mr Ntaganda (*“Defence”*) hereby submit this:

**Request on behalf of Mr Ntaganda seeking leave to reply to the
“Prosecution’s Response to the Defence’s expedited motion to vary the time limit
to respond to the ‘Prosecution’s urgent request for immediate suspension of
Defence investigators and other measures’”**

“Defence Request”

INTRODUCTION

1. On 9 July 2015, the Prosecution responded to the Expedited Defence Motion submitted on 2 July 2015.²
2. Pursuant to Regulation 24(5) Regulations of the Court (*“RoC”*), Mr Ntaganda respectfully requests the Chamber to grant the Defence leave to reply to the Prosecution Response.
3. For the reasons stated herein the Defence posits that a reply is necessary with a view to providing the Chamber with all necessary information to adjudicate the Expedited Defence Motion.

PROCEDURAL BACKGROUND

4. On 19 June 2015, the Prosecution submitted its *“Prosecution’s urgent request for immediate suspension of Defence investigators and other measures”* (*“Prosecution Request”*).³

¹ ICC-01/04-02/06-705-Conf-Exp.

² ICC-01/04-02/06-705-Conf-Exp.

5. On 23 June 2015, the Chamber *inter alia* ordered interim measures in relation to the First and Second Investigators of the Defence; directed the Prosecution to file a confidential redacted version of the urgent Prosecution Request within three days of this order; and directed the Defence to file any response to the Prosecution Request within 10 days of its notification to the Defence, including indicating the degree of access to confidential material which had been permitted to the First and Second Investigators and the existence or otherwise of statements by the First and Second Investigators addressing their contacts with P-0190.⁴
6. On 25 June 2015, the Defence filed its “Notice on behalf of Mr Ntaganda informing the Chamber of the steps taken following the Chamber’s order dated 23 June 2015” (“Defence Notice”).⁵
7. On 26 June 2015, the Prosecution filed the confidential redacted version of its Prosecution Request.⁶
8. On 2 July 2015, the Defence submitted its “Expedited motion on behalf of Mr Ntaganda seeking disclosure of necessary material; leave to engage [REDACTED] and Mr Logo concerning the allegations raised against them; and variation of the time limit for the purpose of responding to the “Prosecution’ urgent request for immediate suspension of Defence investigators and other measures” (“Expedited Defence Motion”).⁷
9. On 3 July 2015, the Prosecution disclosed to the Defence the following material: (a) the audio file of the Recorded Conversation; (b) photographs of text messages sent to Witness P-0901’s phone mentioned in his statement of 25 March 2015; (c) handwritten notes taken by Witness P-0190 during his 24 March 2015 interview with the Prosecution; (d) a report on Mobile device

³ ICC-01/04-02/06-658-Conf-Exp.

⁴ ICC-01/04-02/06-705-Conf-Exp.

⁵ ICC-01/04-02/06-673-Conf-Exp.

⁶ ICC-01/04-02/06-658-Conf-Red.

⁷ ICC-01/04-02/06-691-Conf-Exp.

image acquisition and data extraction, explaining the process of extraction of the audio file of the Recorded Conversation, and ; (e) the audio-recording of P-0190's interview with the Prosecution dated 24 March 2015.

10. On 6 July 2015, by way of email, the Chamber shortened the deadline for any response to Defence filing ICC-01/04-02/06-691-Conf-Exp to Thursday 9 July 2015.
11. On 9 July 2015, the Prosecution filed its Prosecution Response to the Expedited Defence Motion.⁸
12. On 10 July 2015, the Defence took delivery of the material provided by the Defence to Mr Logo in the course of his activities as investigator/resource person for Mr Ntaganda.

CONFIDENTIALITY

13. Pursuant to Regulation 23*bis* (1) and (2) of the Regulations of the Court ("RoC"), the present Defence Request is submitted on an *ex parte* basis – only available to the Chamber and the Defence – as it refers to submissions bearing the same confidentiality level and contains information related to the case for the Defence.
14. A confidential redacted version of this Defence Request will be filed separately on an *ex parte* basis – only available to the Chamber, the Registry, the Prosecution and the Defence.

⁸ ICC-01/04-02/06-705-Conf-Exp.

SUBMISSIONS

15. The Defence submits that a reply to the Prosecution Response is necessary for the purpose of providing the Chamber with all necessary information to adjudicate the Expedited Defence Motion.
16. Should leave to reply be granted, the Defence will provide submissions on the following issues.
17. First, the Defence will explain the reasons why the 16 July 2015 deadline suggested by the Prosecution for the submission of the Defence Response is insufficient to : (i) review and analyse all of the material submitted in support of the Prosecution Request, including the material initially provided with the Prosecution Request, the material recently disclosed and the forthcoming material; (ii) travel to two different locations in DRC to engage Mr Logo and [REDACTED] concerning the allegations raised against them and; (iii) to perform all other tasks necessary to respond to the merits of the Prosecution Request.
18. Second, in reply to paragraph 5 of Prosecution Response, the Defence will provide the reasons why it is necessary for the Chamber to order the Prosecution to disclose to the Defence any information obtained from Witness P-0190, during any contact with him, during its investigations as well as why such disclosure falls within the Prosecution's obligations in this area.
19. Lastly, in reply to paragraph 8 of the Prosecution Response the Defence will explain why there is no reason to provide to the Prosecution the information regarding: (a) the degree of access to confidential material, which had been permitted to the First and Second Investigators; (b) the existence or otherwise of statements by the First and Second Investigators addressing their contacts with P-0190, before the submission of its response.

20. Nonetheless, the Defence is in a position to confirm having obtained a statement from Mr Logo and [REDACTED] addressing not only their contacts with P-0190 but also with P-901 and P-0067.

21. Moreover, mindful of the Chamber's truth seeking responsibility and for the sake of transparency, the Defence proposes to submit these statements *ex parte*, only available to the Chamber, on Monday 13 July 2015.

RELIEF SOUGHT

22. In light of the above and pursuant to Regulation 24(5) RoC, the Defence respectfully to:

GRANT the Defence leave to file a reply to the Prosecution Response; and

INFORM the Defence whether it should submit the statements of Mr Logo and [REDACTED], *ex parte*, only available to the Chamber on Monday 13 July 2015 as proposed.

RESPECTFULLY SUBMITTED ON THIS 19TH DAY OF FEBRUARY 2021

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands