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N° : ICC-01/04-02/06

Date : 14 October 2014

TRIAL CHAMBER VI

Before : Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

PUBLIC

**Written Submissions on Behalf of Mr Ntaganda
9 October 2014 Status Conference**

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 Applicants
(Participation / Reparation)**

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Section**

Ms Fiona McKay

Further to the *“Order Scheduling a Status Conference and Setting the Commencement Date for the Trial”*¹ issued by Trial Chamber VI on 9 October 2014 (“Chamber” and “Chamber’s Order”), Counsel representing Bosco Ntaganda (“Mr Ntaganda” or “Defence”) hereby file these

Written Submissions on Behalf of Mr Ntaganda - 9 October 2014 Status Conference
 (“Defence Submissions”)

INTRODUCTION

1. In accordance with the Chamber’s Order, these Defence Submissions address:
 - (i) the need for clarification, if any, on the nature, cause and content of the charges; (ii) the Redaction Protocol being developed; and (iii) the date set for the commencement of the trial. While Mr Ntaganda acknowledges the Chamber’s encouragement to file joint Defence – Prosecution submissions on these issues, this was not possible this time around due to logistical and practical considerations.² Nevertheless, the Defence and the Prosecution will be meeting on two occasions before the 17 October Status Conference, which will allow the Parties to brief the Chamber on the status of their on going collaboration and negotiations concerning the Protocols to be adopted.

SUBMISSIONS

- A. **The need for clarification, if any, on the nature, cause and content of the charges**
2. As previously argued, Mr Ntaganda takes issue with the outcome of the confirmation of charges proceedings.³ Nonetheless, the Defence is satisfied with the general structure of the Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of The Prosecutor Against Bosco Ntaganda⁴

¹ ICC-01/04-02/06-382.

² Email from Me Bourgon to Trial Chamber VI, 9 October 2014, 17h34.

³ See inter alia ICC-01/04-02/06-312.

⁴ ICC-01/04-02/06-309.

("Decision on the Confirmation of Charges"), which allows Mr Ntaganda to understand in general the nature of the accusations brought against him.

3. Nonetheless, as mentioned during the Status Conference held on 11 September 2014, the Defence deems important and necessary to be informed of the Prosecution's understanding of the charges, as confirmed by the Pre-Trial Chamber. Thus, the Defence respectfully requests that the Prosecution be ordered to submit an updated Document Containing the Charges ("DCC") setting out clearly the charges faced by Mr Ntaganda. Although the Prosecution might elect to provide certain footnotes in its updated Document Containing the Charges, the Defence takes the view that this is not a prerequisite at this stage.
4. Of course, the Prosecution's updated DCC must accurately reflect the Decision on the Confirmation of Charges, thereby avoiding the need for any Defence challenge. The Defence further suggests that the Prosecution's updated DCC can and should be communicated to all Parties by the end of October 2014.
5. As also mentioned during the 11 September 2014 Status Conference, the Defence posits that it is necessary for the Prosecution – in addition to the submission of an updated DCC – to submit a further exhaustive document setting out in detail its theory of the case and the evidence upon which it intends to rely at Trial. Whether such a document is referred to as a 'pre-trial brief' or a 'detailed updated DCC with footnotes' is not the main issue here. The crux of the matter is the imperative necessity for Mr Ntaganda to know in detail the case he has to meet with sufficient lead time, to prepare for trial. From that point on, the Prosecution should not be authorized, other than in exceptional circumstances and with the leave of the Chamber, to add new evidence to its lists of witnesses and exhibits.
6. Consequently, Mr Ntaganda respectfully requests the Chamber to order the Prosecution - in addition to its disclosure obligations and the submission of the

lists referred to in the Chamber's Order – to provide the Defence with its 'final' document setting out its theory of the case, no later than three months prior to the beginning of Trial.

B. Redaction Protocol

7. Concerning the Redaction Protocol, a meeting is scheduled between the Defence and the Prosecution in order to discuss this matter on Thursday 16 October 2014. In addition, another meeting between the Parties will take place on Wednesday 15 October 2014 for the purpose of discussing the Protocol on the Handling of Confidential Information During Investigations and Contact between a Party and Witnesses of the Opposing Party.
8. Accordingly, the Defence expects that it will be in a position to inform the Chamber on the status of its on going discussions with the Prosecution as well as to raise any disagreement with the Prosecution regarding both protocols being developed at the 17 October Status Conference.

C. Commencement of the Trial

9. As previously mentioned during the 11 September 2014 Status Conference, the Defence takes this opportunity to reiterate Mr Ntaganda's wish to be tried within a reasonable delay in accordance with his fundamental rights.
10. Mr Ntaganda is thus satisfied with the date set by the Chamber for the commencement of trial.
11. That being said, the Defence nonetheless notes that the date set by the Chamber appears ambitious considering the extensive work that remains to be accomplished and the present conditions under which it is operating.
12. The Defence takes the view that commencing the trial on 2 June 2015 is only realistic in so far as: (i) the Defence is provided with the necessary resources to prepare and develop the case for the Defence; and, what is even more

important, (ii) the Prosecution's full compliance with its disclosure and other obligations by the date set by the Chamber, i.e. three months before the beginning of trial.

13. While the Chamber stressed that "unless compelling reasons are shown, it will not be postponed", the Defence takes the view that failure by the Prosecution to comply fully with its disclosure and other⁵ obligations would constitute such compelling reasons.

RESPECTFULLY SUBMITTED ON THIS 14TH DAY OF OCTOBER 2014

A handwritten signature in black ink, appearing to read 'S+B', with a horizontal line under the 'B'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands

⁵ Such as the Prosecution's obligation to submit an updated DCC setting out clearly its theory of the case and the evidence upon which it intends to rely at least three months before the beginning of trial.