



Original: **English**

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

Date: **19 May 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

**Defence Request seeking Trial Chamber VI to take measures allowing for the
testimony of Mr Ntaganda to take place in conditions
which best favour the Chamber's truth seeking function**

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**

Further to the: (i) Urgent Defence Request on behalf of Mr Ntaganda seeking modification of the schedule for the first two evidentiary blocks (“Defence Modification Request”) submitted on 12 May 2017;¹ (ii) Prosecution’s response to the Defence Modification Request filed on 16 May 2017,² and; (iii) Trial Chamber VI’s (“Chamber”) Decision on schedule for upcoming evidentiary blocks, issued *via* electronic correspondence on 17 May 2017 (“Chamber Decision”),³ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Defence Request seeking Trial Chamber VI to take measures allowing for the testimony of Mr Ntaganda to take place in conditions which best favour the Chamber’s truth seeking function

“Defence Request”

DEFENCE REQUEST

1. The aim of this Defence Request is to ensure that the testimony of Mr Ntaganda, now scheduled to take place during the period from 14 June to 21 July 2017, including a five-day interruption from 19 to 23 June 2017, will take place in the best possible circumstances and conditions, which best favour the Chamber’s truth seeking function.
2. Indeed, it is in the interest of Justice, that the testimony of Mr Ntaganda *not* be conducted under time constraints or in conditions which would not allow the Accused to provide the best possible evidence.
3. Accordingly, further to the Chamber Decision, the Defence hereby requests the Chamber to consider and implement one of the two following options, namely:
 - (i) add three additional court-days to the present schedule for Mr Ntaganda’s

¹ ICC-01/04-02/06-1903.

² ICC-01/04-02/06-1909.

³ See Email of 17 May 2017 at 15h05.

testimony; or (ii) schedule the re-examination, Prosecution additional questions (if allowed) and questions from the Bench after the summer recess.

SUBMISSIONS

4. Whereas the initial schedule proposed by the Defence for the testimony of Mr Ntaganda – i.e. 12 June to 21 July 2017 – comprised 29 Court days, the schedule provided for in the Chamber Decision, contains only 22.
5. Considering that the Defence intends to examine Mr Ntaganda during 40 hours and the likelihood that the Prosecution will seek to cross-examine the Accused for the same number of hours, the Defence respectfully submits that 22 Court days – with Mr Ntaganda testifying four hours per day – is insufficient to complete all of his testimony, including examination-in-chief, cross-examination, re-examination, Prosecution additional questions (if allowed) and Judges' questions, before the summer recess.
6. In addition, pursuant to the schedule presently in place, Mr Ntaganda will be required to testify on five consecutive days, three weeks in a row (3-7 July, 10-14 July and 17-21 July), which the Defence posits is too demanding and does not favour obtaining the best possible evidence from the Accused.
7. In this regard, considering the estimated total duration of the Accused's testimony, the Defence takes the view that Mr Ntaganda should be allowed to rest every third day, at least during the Prosecution cross-examination. The Defence thus requests that no hearing take place on 5, 12 and 19 July 2017.
8. Consequently, in order for the testimony of Mr Ntaganda to be conducted in the best and most humane circumstances, avoiding the pressure resulting from time constraints, the Defence respectfully requests the Chamber to consider and implement one of the following solutions:

- (1) Adding three additional court days to the present schedule of Mr Ntaganda's testimony, to be taken from the weeks of 12 to 16 June or 19 to 23 June 2017; or, should this not be possible:
- (2) Scheduling the re-examination, Prosecution additional questions (if allowed) and questions from the Chamber, after the summer judicial recess, starting either on 14 August or 28 August 2017.

First option⁴

9. Pursuant to this option, 88 hours could be devoted to the testimony of Mr Ntaganda, who would testify during 22 days and have three days to rest on 5, 12 and 19 July.
10. The proposed allocation of hours pursuant to this option would be:
 - Examination-in-chief: 38 hours
 - Cross-examination: 38 hours
 - Re-examination: 8 hours
 - Prosecution additional questions and questions of the Chamber: 4 hours

Second option

11. Pursuant to this option, taking into consideration that no hearings would be scheduled on 5, 12 and 19 July 2017, the proposed allocation of hours would be as follows:

Period from 14 June to 21 July 2017 (76 hours)

- Examination-in-chief: 38 hours

⁴ This option takes into account that the testimony of Mr Ntaganda could not begin before 12 June 2017 with a view to allowing sufficient time for the Parties and Participants to prepare.

- Cross-examination: 38 hours

Period after the summer recess (14-16 August *or* 28-30 August 2017)

- Re-examination: 8 hours
- Prosecution additional questions and questions of the Chamber: 4 hours

Conclusion

12. The Defence posits that both of these options would allow to achieve the aim of ensuring that the testimony of Mr Ntaganda, the central figure in the trial, take place in conditions which best favour the Chamber's truth seeking function.
13. While the first option appears preferable as it would allow Mr Ntaganda to testify in one single evidentiary block, the Defence would not oppose the implementation of the second option as long as the cross-examination of the Accused is not split in two parts.
14. Lastly, the Defence takes this opportunity to express the view that the other issues raised in the Prosecution Response⁵ are matters which can be discussed and decided upon in the context of a status conference, which will avoid spending too much time in written submissions.

⁵ ICC-01/04-02/06-1909, para. 4 and 15: (i) discussions between Counsel and the Accused once his testimony commences; (ii) communication of the Prosecution's list of documents to the Accused; (iii) instructions to the Accused not to discuss his testimony with anyone; (iv) outlines of the Prosecution's cross-examination; (v) applicability of rule 74; (vi) applicability of Protocol on Witness Preparation; (vii) disclosure of a statement/summary; (viii) production of the Defence's list of documents; (ix) how to have recourse to private session, and; (x) the use of the Accused's Detention Centre calls during cross-examination.

RELIEF SOUGHT

15. In light of the above, the Defence respectfully requests the Chamber to:
- Consider and implement either of the two options set out above, or
 - Take other measures which would allow to achieve the aim of this Defence Request.

RESPECTFULLY SUBMITTED ON THIS 19TH DAY OF MAY 2017

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands