



Original : English

N° : ICC-01/04-02/06  
Date : 5 November 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 REDACTED VERSION**

**with Annexes 1 to 6 Confidential *ex parte* – Defence and Registry only**

**Written Submissions on Behalf of Mr Ntaganda on the Issue of Resources  
Available to the Defence to Prepare for Trial and the Need for an *Ex Parte* 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 :**

**The Office of the Prosecutor**

Ms Fatou Bensouda

Ms Nicole Samson

**Counsel for the Defence**

Me Stéphane Bourgon

Me Andrea Valdivia

**Legal Representatives of the Victims**

**Legal Representatives of the 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 Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Further to the “*Order Setting the Agenda for the 11 September 2014 Status Conference*”<sup>1</sup> issued by Trial Chamber VI on 10 September 2014, Counsel representing Bosco Ntaganda (“Mr Ntaganda” or “Defence”) hereby files his “*Written Submissions on Behalf of Mr Ntaganda on the Issue of Resources Available to the Defence to Prepare for Trial and the Need for an Ex Parte Status Conference*” (“Defence Submissions on Resources Required”) pursuant to Regulation 83(4) of the Court (“RoC”).

## OVERVIEW

1. These Defence Submissions on Resources Required address only the first of the two issues raised in the “*Observations de la Défense concernant l’ordre du jour provisoire pour la Conférence de mise en état du 11 septembre 2014*”<sup>2</sup>. The second issue raised therein, namely the “logistics of family visits”<sup>3</sup>, will be addressed before a different forum.
2. Having assessed the work to be accomplished to prepare the case for the Defence and be ready to commence trial at the earliest possible date, the Defence assessed the minimum resources required for this purpose, as including: one Counsel, one Associate Counsel, two permanent Legal Assistants, one Case-Manager, two Interns, as well as, *ad hoc* legal resources to be hired from time to time to work on specific tasks to be performed by the Defence, using for this purpose the Defence “fixed-rate monthly allowance to cover the expenses of the legal team” (“Defence Monthly Allowance”)<sup>4</sup> provided for in the “Registry’s Single Policy Document on the Court’s Legal Aid” (“Registry Policy”).
3. While the Registry agrees in principle with this assessment, it denied the request for a second Legal Assistant on a permanent basis, offering instead

---

<sup>1</sup> ICC-01/04-02/06-366, para.3.

<sup>2</sup> ICC-01/04-02/06-364, paras.13-18.

<sup>3</sup> ICC-01/04-02/06-366, para.3.

<sup>4</sup> ICC/ASP/12/03, p.25, para.139.

resources to hire a second Legal Assistant on a temporary basis for a period of six months, with the possibility of an extension at that time.

4. Considering the present composition of Mr Ntaganda's Defence team and the imperative necessity to hire a second Legal Assistant who will remain with the team for the entire duration of the proceedings, the Registry's proposal fails to address the Defence's concerns and falls short of what is necessary to avoid delays in preparing for trial.
5. Accordingly, the Defence respectfully posits that resolving the present *impasse* requires a decision from Trial Chamber VI ("Chamber") granting Mr Ntaganda the resources requested herein and/or convening an *ex parte* status conference - Defence and Registry- to hear the parties on the matter.
6. This document is submitted as confidential and *ex parte* – Defence and Registry only - pursuant to Regulation 23bis (1) of the RoC, as it concerns sensitive issues regarding the composition of the Defence team.

## **BACKGROUND INFORMATION**

7. On 14 May 2013, at the beginning of preparations for the Confirmation of the Charges Hearing ("Confirmation Hearing"), the Defence submitted a request to the Registry - pursuant to Regulation 83 (1) of the RoC - to obtain additional resources for the assignment of a second permanent Legal Assistant until the Decision on the Confirmation of Charges ("Confirmation Decision")<sup>5</sup>.
8. On 6 June 2013, the Registry granted the Defence's request for the assignment of a second Legal Assistant on a full time basis until the Confirmation Decision<sup>6</sup>.

---

<sup>5</sup> Annex 1.

<sup>6</sup> Annex 2.

9. On 13 January 2014, facing a dire shortage of resources while preparing for the Confirmation Hearing, the Defence submitted a request to the Registry to obtain additional resources<sup>7</sup>.
10. On 1 February 2014, the Defence withdrew its demand for additional resources and hired a third Legal Assistant for the period from 1 February to 8 April 2014, using the Defence Monthly Allowance for this purpose.
11. The confirmation of charges hearing was held from 10 to 14 February 2014.
12. On 9 June 2014, the Confirmation Decision was issued by Pre-trial Chamber II<sup>8</sup> confirming all 18 charges involving no less than six modes of liability against Mr Ntaganda.
13. On 11 June 2014, following the Confirmation Decision, the Defence submitted a further request pursuant Regulation 83(4) of the RoC, seeking the assignment of a second permanent Legal Assistant for the entire duration of the proceedings<sup>9</sup>.
14. On 4 July 2014, the Registry denied the Defence request<sup>10</sup>.
15. On 9 July 2014, Mr Ntaganda's senior Legal Assistant – who had detailed knowledge of the case due *inter alia* to her prior involvement on the Defence team of Mr Lubanga, Case No. ICC-01/04-01/06 – resigned, [REDACTED].
16. On 14 July 2014, Mr Ntaganda's Counsel, submitted a request to withdraw from the case *The Prosecutor v. Bosco Ntaganda*<sup>11</sup>.
17. On 16 July 2014, Pre-trial Chamber II authorised Mr Ntaganda's Counsel to withdraw from the case<sup>12</sup>.

---

<sup>7</sup> Letter addressed to the Registry – copy available on demand.

<sup>8</sup> ICC-01/04-02/06-309.

<sup>9</sup> Annex 3.

<sup>10</sup> Annex 4.

<sup>11</sup> ICC-01/04-02/06-332.

18. During the period from 23 to 25 July 2014, prospective Counsel met with Mr Ntaganda as well as with the remaining members of the Defence team for the purpose of assessing the work accomplished by the Defence team to that day.
19. On 25 July 2014, having assessed the work remaining to be accomplished to prepare for trial, prospective Counsel met with the Deputy Head of the Counsel Support Section (“CSS”) for the purpose of, *inter alia*, reiterating the Defence’s 11 June 2014<sup>13</sup> request for the assignment of a second permanent Legal Assistant for the entire duration of the proceedings.
20. The Deputy Head CSS denied prospective Counsel for Mr Ntaganda’s request; offering instead to provide resources for the hiring of a second Legal Assistant for a period of six months, with the possibility of an extension thereafter based on a further review of the work to be performed at that time.
21. On 28 July 2014, prospective Counsel for Mr Ntaganda wrote to the Chief CSS, requesting a meeting for the purpose of revisiting the decision of the Deputy Head CSS denying the Defence request for the assignment of a second permanent Legal Assistant for the entire duration of the proceedings.
22. On 30 July 2014, in an email addressed to prospective Counsel for Mr Ntaganda as well as during a subsequent meeting with him on the same day, the Chief CSS once again denied the Defence request for the assignment of a second permanent Legal Assistant for the entire duration of the proceedings.
23. On 31 July 2014, prospective Counsel for Mr Ntaganda addressed a letter to the Registrar, seeking clarifications regarding the terms of his possible assignment. In the same letter, prospective Counsel informed the Registrar that the resources allocated by CSS to prepare the case for trial were insufficient. Prospective Counsel further expressed the view that “the CSS representative’s

---

<sup>12</sup> ICC-01/04-02/06-333.

<sup>13</sup> Annex 3.

undertaking to provide [him] with an additional Legal Assistant for a period of six months – to be reassessed thereafter – is insufficient in light of all the work to be accomplished in a relatively short period of time”<sup>14</sup>. Nonetheless, prospective Counsel confirmed that “bearing in mind that it will be possible for [him] to seize the Trial Chamber of a request in this regard and to make [his] case before the Chamber that further additional resources are absolutely required on a permanent basis, there is no need to delay [his] accepting the proposed assignment to represent Mr Ntaganda for this reason”<sup>15</sup>.

24. On 12 August 2014, the Registrar replied to prospective Counsel for Mr Ntaganda. Regarding the issue of additional resources, the Registrar supported the decision of the Chief CSS not to authorise the assignment of a second Legal Assistant on a permanent basis. Furthermore, the Registrar informed prospective Counsel – contrary to what had already been decided by the Deputy Chief CSS – that the resources necessary to hire a second Legal Assistant for a period of six month were *not* additional resources but rather resources which would have to be drawn from the Defence Monthly Allowance. Nevertheless, the Registrar noted with satisfaction prospective Counsel’s decision not to delay his acceptance of the proposed assignment on the basis of this particular matter<sup>16</sup>.
25. On 15 August 2014, prospective Counsel for Mr Ntaganda was officially appointed as Counsel representing the Accused.
26. On 3 September 2014, Counsel informed the Chief and Deputy Head CSS of his intention to seize the Chamber of a request for an *ex parte* status conference – Defence and Registry – to address the issue of resources allocated to the Defence to prepare for trial. During this meeting, the Deputy Head CSS recalled and confirmed his earlier decision to provide the Defence with

---

<sup>14</sup> Annex 5, p.3.

<sup>15</sup> *Ibid*, p.3.

<sup>16</sup> Annex 6, p.2.

*additional* resources to hire a second Legal Assistant for a period of six months, i.e. that these resources would not be drawn from the Defence Monthly Allowance.

27. On 8 September 2014, the Defence filed its “*Observations de la Défense concernant l’ordre du jour provisoire pour la Conférence de mise en état du 11 septembre 2014*” respectfully requesting the Trial Chamber to convene an *ex parte* status conference – Defence and Registry - either before or after the 11 September 2014 status conference to resolve the matter.

## SUBMISSIONS

### **A. The Resources Requested are Justified and it Is Necessary for the Chamber to Pronounce on the Matter**

28. On no less than four occasions, the Registry was seized of the Defence request seeking additional resources for the hiring of a second permanent Legal Assistant with the aim of preparing the case of the Defence and being ready to commence trial at the earliest possible date.
29. All Defence requests were denied by the Registry.
30. Pursuant to Regulation 83(4) RoC, it is thus necessary for the Trial Chamber to review the Registry’s decisions with a view to resolving the present *impasse*.
31. Accordingly, the Defence respectfully request the Trial Chamber to issue a decision granting the Defence request for additional resources for the purpose of hiring a second permanent Legal Assistant for the entire duration of the proceedings.
32. Should the Trial Chamber deem necessary to obtain additional views on the matter beforehand, the Defence respectfully request that an *ex parte* status conference –Defence and Registry- be convened at the earliest possibility.



33. As mentioned during the 11 September 2014 Status Conference, the Defence takes the view that this case is *prima facie* the largest and most complex to date before the International Criminal Court ("ICC")<sup>17</sup>.
34. The Defence's assessment of the work to be accomplished to prepare the case for the Defence and be ready for trial on the date set by the Trial Chamber reveals that the minimum resources required for this purpose include: one Counsel, one Associate Counsel, two permanent Legal Assistants, one Case-Manager, two Interns, as well as, *ad hoc* legal resources to be hired from time to time to work on specific tasks, using for this purpose the Defence Monthly Allowance.
35. The detailed written submissions of the Parties, supplemented by their oral submissions during the 11 September 2014 Status Conference<sup>18</sup> undoubtedly support the Defence's assessment regarding the minimum resources required.
36. Considering, *inter alia*, the new composition of Mr Ntaganda Defence's team and the extensive work which must be performed before the commencement of trial – which could take place as early as 1 June 2015 – the resources required are both very reasonable and as well as wholly justified.
37. The existing mechanism by which Defence Counsel may request additional resources – the FTE system<sup>19</sup> - also militates in favor of granting the resources requested by the Defence.
38. Indeed, the initial request submitted by the Defence on 11 June 2014, included calculations based on the FTE's system, highlighting a requirement for the assignment of eight additional Legal Assistants to perform the work required to prepare for trial. In its response denying the Defence's request, the Registry

---

<sup>17</sup> ICC-01/04-02/06-T-13-ENG, p.18, lines 14-16.

<sup>18</sup> ICC-01/04-02/06-352; ICC-01/04-02/06-350; ICC-01/04-02/06-T-13-ENG.

<sup>19</sup> ICC-ASP/12/3, p.15.

neither commented on the Defence calculations – 8.145 FTE – nor highlighted any error in the Defence calculations<sup>20</sup>.

39. The Registry's proposal to grant the Defence additional resources to hire a second Legal Assistant for a period of six months, with a possibility of extension thereafter, fails to address the Defence's concerns and falls short of what is necessary to avoid delays in preparing for trial.
40. The Defence's ability to be ready for trial at the date set by the Trial Chamber, rests *inter alia* on two main considerations, namely: (i) the timely and complete fulfilment by the Prosecution of its disclosure obligations three months prior to trial; and (ii) having the necessary resources to perform all tasks required.
41. Bearing in mind the departure of two members of the Defence team having detailed knowledge of the facts of the case and the relatively limited factual knowledge of the remaining members of the team, continuity in the composition of the Defence team is imperative at this stage. Not only does the Defence require highly qualified personnel who will be able to master the complex factual and legal aspects of the case, it is also of the utmost importance that its members remain with the team until the end of the proceedings.
42. Recruiting highly qualified and committed jurists is simply not possible without the ability to offer some kind of employment security. Quality candidates contacted by the Defence are reluctant to join the team knowing that their employment might cease after six months.
43. In this regard, the Registry's proposal plainly places the Defence at a disadvantage *vis-à-vis* the Prosecution.
44. The principle of equality of arms requires that the Defence be granted the necessary resources to achieve the tasks required to prepare adequately for

---

<sup>20</sup> Annex 3.

trial. This, however, is not sufficient. Equality of arms also requires that the Defence possess the ability to recruit highly qualified jurists who will remain with the team until the end of the proceedings.

**B. The Registry Arguments Are Not Convincing**

45. Firstly, the Registry's suggestion that the recruitment of an Associate Counsel following the Confirmation Decision militates in favor of postponing the granting of additional resources to hire a second permanent Legal Assistant fails to address the Defence's concerns.
46. The work which will be performed by the Associate Counsel is entirely different from that performed by Legal Assistants. The core task of the Associate Counsel is to master the factual framework and to prepare for the presentation of the case for the defence at trial, in cooperation with Counsel. The assignment of an Associate Counsel at this stage, neither addresses the volume of work that must be performed, nor the type of work to be executed by Legal Assistants.
47. Secondly, the Registry's argument that the Defence Monthly Allowance must be used to hire any necessary supplementary legal resources, before additional financial resources can be granted in accordance with the Registry's policy is inappropriate.
48. The use of the Defence Monthly Allowance to hire supplementary legal personnel fails to address the need for continuity in the composition of the Defence. The Defence Monthly Allowance is limited and does not allow for the hiring of personnel over long periods of time.
49. More importantly, the Defence request seeking additional resources to hire a second permanent Legal Assistant is made on the basis that the Defence Monthly Allowance will be used to hire supplementary legal personnel (i.e. a

third Legal Assistant on a temporary basis) from time to time to work on specific tasks to be accomplished by the Defence.

50. Thirdly, the Registrar's decision to postpone the decision to grant additional resources to hire a second permanent Legal Assistant "pending further clarity on the resources that will be required for the effective defence of Mr Ntaganda"<sup>21</sup> is unreasonable.
51. Based on past experience during the proceedings leading to the Confirmation Decision, the need for a second permanent Legal Assistant is well established. There are no indications whatsoever that less resources will be required during the period leading to the trial, as well as during trial proceedings. The situation is quite the opposite.
52. Moreover, bearing in mind the extensive work that remains to be accomplished before the beginning of trial - as highlighted during the 11 September Status Conference - and considering the possibility for the trial to begin as early as 1 June 2015, the resources required for the effective defence of Mr Ntaganda are already plain, obvious and clear.

## **RELIEF SOUGHT**

53. In light of the above submissions and arguments, Mr Ntaganda respectfully requests the Chamber to:

**ISSUE** a decision granting the Defence additional resources for the purpose of hiring a second permanent Legal Assistant for the entire duration of the proceedings; and/or

**CONVENE** an *ex parte* status conference –Defence and Registry- to hear the Parties on the matter, if deemed necessary.

---

<sup>21</sup> Annex 6, p.2.

**RESPECTFULLY SUBMITTED ON THIS 5<sup>th</sup> DAY OF NOVEMBER 2014**

A handwritten signature in black ink, appearing to read 'StB-'.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands