



Original: **English**

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

Date: **13 April 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**

**Urgent request on behalf of Mr Ntaganda seeking an extension of the applicable time limit to submit request seeking leave to submit 'no case to answer' motion**

**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  
Me Christopher Gosnell  
Me Marlene Yahya Haage

**Legal Representatives of Victims**

Ms Sarah Pellet  
Mr Dmytro Suprun

**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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Further to: (i) Trial Chamber VI (“Chamber”)’s ‘Decision on the conduct of proceedings’ of 2 June 2015 (“Conduct of Proceedings Decision”),<sup>1</sup> and the close of the presentation of evidence of the Legal Representative of Victims of the Attacks (“LRV”),<sup>2</sup> Counsel representing Mr Ntaganda (“Defence”) hereby submits this:

**Urgent request on behalf of Mr Ntaganda seeking an extension of the applicable time limit to submit request seeking leave to submit ‘no case to answer’ motion**

**“Defence Request”**

1. Due to unforeseen events beyond its control, the Defence respectfully seeks a short extension of the applicable time limit until 25 April 2017 to file a request on behalf of Mr Ntaganda seeking leave to submit a ‘no case to answer’ motion. This request is necessary as the Defence, and other organs of the Court, have been informed by the Registry (CSS) that TRIM will be offline from 14 April 2017 until 20 April 2017 in order to switch to another software. The Defence submits that inaccessibility to the court record and evidence admitted in this case is beyond its control and is good cause for a moderate extension of time limit.

**APPLICABLE LAW**

2. Regulation 35 (2) provides that a Chamber may extend a time limit if “good cause is shown”.<sup>3</sup>

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<sup>1</sup> ICC-01/04-02/06-619.

<sup>2</sup> ICC-01/04-02/06-T-203-RT, p.116, ln. 6-10 (“Now I state that this testimony or concluded testimony also concluded presentation of evidence by the Legal Representatives of Victims of the attacks, so I lie light that any related deadlines therefore start running as of today”).

<sup>3</sup> Regulations of the Court.

## SUBMISSIONS

3. The Defence intends to submit 'a no case to answer' motion.
4. In accordance to the Chamber's Conduct of Proceedings Decision, the Defence must seek leave to submit a 'no case to answer' motion "no later than five days after the end of the of the Prosecution's presentation of evidence, or, if applicable, the presentation of evidence by the LRVs".<sup>4</sup>
5. The Defence request seeking leave to submit a 'no case to answer' motion should include "*inter alia*, submissions on the applicable standard and procedure".<sup>5</sup> It also requires an access to the entire case record and the material that has been admitted in this case, which will be unavailable during the TRIM blackout.
6. As the testimony of LRV witnesses was scheduled for the period from 10-13 April 2017, the applicable time limit for the submission of a request seeking leave to submit a 'no case to answer' motion was initially 24 April 2017. However, as indicated by the Chamber at the close to the presentation of evidence of the LRV<sup>6</sup> on 13 April 2017, the calculation of the applicable time limit began to run on that day. Accordingly, the Defence request seeking leave to submit a no case to answer motion should be filed by 18 April 2017.
7. On 4 April 2017, Defence teams were informed that TRIM will be inaccessible from 14 April to 20 April 2017. During the transition period to a new software, "TRIM will be **inaccessible**, major functionalities such as read/search/update/download etc. of documents in TRIM **will not** be possible".<sup>7</sup> Furthermore, "Court records **will not** be accessible via TRIM".<sup>8</sup>

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<sup>4</sup> Conduct of Proceedings, para. 17.

<sup>5</sup> Conduct of Proceedings, para. 17.

<sup>6</sup> ICC-01/04-02/06-T-203-RT, p.116, ln. 6-10.

<sup>7</sup> ICC External Counsel Portal, UPDATE= IMPORTANT: TRIM to Records Manager (RM) System upgrade Schedule, online: < <http://legal.icc.int/sites/ExternalCounsel/SitePages/Home.aspx>>.

<sup>8</sup> ICC External Counsel Portal, UPDATE= IMPORTANT: TRIM to Records Manager (RM) System upgrade Schedule, online: < <http://legal.icc.int/sites/ExternalCounsel/SitePages/Home.aspx>>.

8. Although the Defence has already conducted some research and preparation for the submission of its Request seeking leave to submit a 'no case to answer' motion, the submission of this request in accordance with the Conduct of Proceedings Decision, requires access to the entire case record and the material that has been admitted in this case. This is crucial for a request of this nature and importance. Furthermore, in the final days before submitting its request, the Defence will need to verify the authorities relied on.<sup>9</sup>
9. The Defence is not in a position to upload the entire court record onto another system before 14 April 2017 nor can the Defence afford to conduct its preparation without having access to the evidence. In addition, the Defence will not be in a position to file its submissions according to the normal procedure on 18 April 2017 as TRIM includes eFiling.
10. The Defence therefore requests an extension of 5 days, starting from 20 April 2017, when TRIM will be once again available, in order to compensate for the 5 days of inaccessibility.
11. The TRIM blackout is out of the control of the Defence and will seriously impede the work of the Defence in the preparation of its Request seeking leave to submit a 'no case to answer' motion.
12. As determined by the Appeals Chamber "[t]he unavailability of TRIM could not have been foreseen [...] in the planning of preparation of their documents in support of the appeals".<sup>10</sup> Furthermore, the Appeals Chamber considered that "good cause has been shown within the meaning of regulation 35(2)"<sup>11</sup> and an extension on time limit was granted due to the inaccessibility of TRIM.

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<sup>9</sup> See *Bemba et al.*, Decision on extension of time limits for documents in support of the appeals, ICC-01/05-01/13-2136, 10 April 2017, para. 9.

<sup>10</sup> *Bemba et al.*, Decision on extension of time limits for documents in support of the appeals, ICC-01/05-01/13-2136, 10 April 2017, para. 9.

<sup>11</sup> *Bemba et al.*, Decision on extension of time limits for documents in support of the appeals, ICC-01/05-01/13-2136, 10 April 2017, para. 10.

**RELIEF SOUGHT**

13. For the reasons set above, the Defence respectfully requests the Chamber to GRANT a moderate extension of 5 days, starting from the 20 April 2017 when TRIM will be once again accessible to the Defence.

**RESPECTFULLY SUBMITTED ON THIS 13<sup>TH</sup> DAY OF APRIL 2017**

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands