

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **21 April 2020**

TRIAL CHAMBER VI

Before:

**Judge Chang-ho Chung, Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuccia**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

**Defence observations pursuant to 'Order to provide information
on the impact of COVID-19 measures on operational capacity'**

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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Section**

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Pursuant to the Single Judge's Order to provide information on the impact of COVID-19 measures on operational capacity of 9 April 2020 ("Order"),¹ Counsel representing Mr. Ntaganda ("Defence") hereby submit this:

**Defence observations pursuant to 'Order to provide information
on the impact of COVID-19 measures on operational capacity'**

INTRODUCTION

1. As directed by the Single Judge, the Defence hereby submits its observations on the impact of the COVID-19 measures currently in place on its operational capacity in relation to the reparations proceedings in the *Ntaganda* case.

2. Bearing in mind the current stage of the reparations proceedings, the COVID-19 measures currently in place are presently impacting certain aspects of the work of the Defence to a limited extent. However, should the COVID-19 measures continue without significant change, it is anticipated that other aspects of Defence work would be impacted in the future.

I. Operational capacity

3. In relation to the Defence team's operational capacity since the COVID-19 measures were put in place in the Netherlands on 15 March 2020, the Defence team has been able to continue its work and preparations for the reparations phase even though team members are working remotely in different time zones. Daily meetings are held *via* electronic means, work is progressing almost normally, albeit at a slower pace, and the Defence has so far managed to meet statutory deadlines. The need to seek extensions of time to submit certain filings, on a case-by-case basis, might become a reality.

¹ Order to provide information on the impact of COVID-19 measures on operational capacity, 9 April 2020, [ICC-01/04-02/06-2507](#).

4. That said, in light of the current absence of child care services, certain members of the team with children are now having to balance work with child-care responsibilities, which in turn imposes the need for split shifts that impact both family and work. While work and tasks are being assigned to various members of the team in order to recognise the various domestic and professional responsibilities, which team members are balancing, care has to be taken to ensure that no member of the team becomes over-burdened, particularly in light of the difficult conditions under which all team members are operating and living, *i.e.* all are working in countries which have imposed some form of “lockdown”.

5. Another consequence of the COVID-19 measures put in place has been the suspension of all visits to the Court’s Detention Center, including privileged visits, from 16 March 2020, for an indefinite period. While instructions can be sought from Mr. Ntaganda by way of privileged telephone conversations, such consultations, particularly over a protracted period of time which can now be measured in months, are inadequate for taking detailed instructions and having any meaningful form of discussion in relation to the provision of legal advice and strategy. Language barriers are magnified, misunderstandings are more frequent, and windows for communication are impacted due to team members working in different time zones. In these circumstances, it is not possible to conduct team discussions and exchanges together with Mr. Ntaganda, who is only permitted to speak to one person at a time, and only to those team members who are entitled to privileged communications.

II. Impact on field missions

6. In relation to the long-term impact of COVID-19 measures, if they continue in their present form, it is anticipated that they will have an impact on Defence work.

7. While the Defence has no current plans to conduct field missions in the near future, it is certainly expected that field missions will be necessary and conducted, as additional information is disclosed or becomes available during the reparations

process.² It necessarily follows that in the event the travel ban in the Democratic Republic of Congo is extended and is still in force when the Defence is in a position to conduct necessary field missions, this will impact its operational capacity. Consequently, should field missions be delayed or cancelled altogether, this is likely to impact on the capacity of the Defence to provide submissions in October and thereafter.

III. Impact of the COVID-19 measures on the ongoing appeals proceedings

8. Some of the Defence 28 February 2020 Submissions to the Trial Chamber were made taking into consideration the oral hearings before the Appeals Chamber scheduled now schedule to run from 29 June to 1 July 2020 and the likelihood that the Appeals judgments, on the merits and on sentence, would likely be rendered by the Appeals Chamber between January and June 2021 at the latest.³ Although the Appeals Chamber has so far maintained those dates, it is unclear whether it will be possible to maintain the scheduled dates if the COVID-19 measures put in place are further extended.

9. Furthermore, the Defence deems it appropriate to recall its submissions concerning the impact of the appeals proceedings on the reparations proceedings, which was also addressed by the Legal Representatives of the Victims in their previous joint submission.⁴ Indeed, for so long as the appeals proceedings are ongoing, there is a reasonable possibility that Mr. Ntaganda's conviction, either in whole or in part, and/or his sentence will be overturned. This is why, the Defence submits, even though the reparations process should be carried out as expeditiously as

² See *inter alia*, Defence Request Seeking Reclassification of Annex II and III of the 'Registry's Observations on Reparation', 23 March 2020 [ICC-01/02-04/06-2493](#).

³ Defence Submissions on Reparation, 28 February 2020, [ICC-01/04-02/06-2479-Conf](#), para.10 ("28 February Defence Submissions"). A public redacted version was filed on 6 March 2020, [ICC-01/04-02/06-2479-Red](#).

⁴ Joint Response of the Legal Representatives of the Victims to the Registry's Observations on Reparations, 3 October 2020, [ICC-01/04-02/06-2430](#), para.23.

possible, it is important not to unduly raise victims' expectations until Mr. Ntaganda's appeal is finally determined.⁵ In this regard, it must be taken into consideration any delay encountered in the appeals proceedings, due to the COVID-19 measures in place, might have repercussions on the reparations proceedings.

RESPECTFULLY SUBMITTED ON THIS 21ST DAY OF APRIL 2020

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 [28 February Defence Submissions](#), para.38.