

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 January 2015

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***

Confidential

Decision on Prosecution requests relating to victims applications

Decision 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 Bosco Ntaganda

Mr Stéphane Bourgon

Mr Luc Boutin

Legal Representatives of Victims

Ms Sarah Pellet

Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 64(6)(a) and (f) of the Rome Statute, Rules 76 and 77 of the Rules of Procedure and Evidence ('Rules') and Regulations 23bis, 28, 35(2) and 42 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Prosecution requests relating to victims applications'.

I. Procedural history

1. On 9 October 2014, the Chamber ordered, *inter alia*, that: (i) all material then in the possession of the Office of the Prosecutor ('Prosecution'), and for which delayed disclosure is not requested and authorised, should be disclosed not later than 31 January 2015;¹ (ii) the disclosure of 'all remaining incriminatory material in the form of witness statements and any other material to be relied on at trial', as well as of all Article 67(2) and Rule 77 material shall be completed by 2 March 2015; and (iii) the Prosecution should file its final list of witnesses to be relied on at trial by 2 March 2015.²
2. On 28 January 2015, the Prosecution filed two urgent requests, as follows: (i) for authorisation to disclose lesser redacted versions of victims' applications relating to 15 potential Prosecution witnesses ('Applications');³ and (ii) for an extension of time, until 2 March 2015, for the disclosure of four of the Applications⁴ (together the 'Prosecution Requests').

¹ Order Scheduling a Status Conference and Setting a Commencement Date for the Trial, ICC-01/04-02/06-382, para. 9(d). A corrigendum was filed on 28 November 2014 (ICC-01/04-02/06-382-Corr).

² ICC-01/04-02/06-382-Corr, para. 9(c).

³ Prosecution's urgent application to disclose lesser redacted versions of 15 victim application forms, ICC-01/04-02/06-432-Conf-Exp. A confidential redacted version was filed on the same day (ICC-01/04-02/06-432-Conf-Red).

⁴ Prosecution's urgent request pursuant to regulation 35 to vary the time limit for disclosure of material relating to potential trial witnesses, ICC-01/04-02/06-433-Conf-Exp. A confidential redacted version was filed on the same day (ICC-01/04-02/06-433-Conf-Red).

3. Also on 28 January 2015, the Chamber shortened the deadline for any responses to the Prosecution Requests.⁵
4. The Legal Representatives of Victims ('LRVs') indicated that they do not oppose the Prosecution Requests.⁶
5. On 29 January 2015, the defence team for Mr Ntaganda ('Defence') indicated that it does not oppose the Prosecution Requests, but sought disclosure of the victim numbers of the four individuals for whom the Prosecution is seeking an extension of deadline for disclosure of their application forms.⁷

II. Submissions and analysis

6. Each of the victims' applications has previously been transmitted to the Defence in redacted form pursuant to the instructions of the Single Judge of Pre-Trial Chamber II by the Registry.⁸ The Prosecution states that it intends to disclose the application forms with lesser redactions applied in accordance with the Chamber's 'Decision on the Protocol establishing a redaction regime' and its annexed protocol ('Redaction Protocol').⁹
7. In respect of four of the Applications, the Prosecution submits that there is good cause pursuant to Regulation 35(2) of the Regulations to extend the time limit for their disclosure until 2 March 2015.¹⁰ The Prosecution submits that disclosure of the identity of these victims should not be made in advance of a 'final determination' as to whether or not they will be included on the Prosecution's list of witnesses¹¹ as it would 'identify them as potential

⁵ E-mail from Legal Officer of the Chamber to the parties, participants and Victims and Witnesses Unit ('VWU') on 28 January 2015 at 16:58.

⁶ E-mail from LRVs to Legal Officer of the Chamber on 28 January 2015 at 17:10.

⁷ Response on Behalf of Mr Ntaganda to Prosecution Applications ICC-01/04-02/06-432-Conf-Red and ICC-01/04-02/06-433-Conf-Red, ICC-01/04-02/06-435-Conf.

⁸ ICC-01/04-02/06-432-Conf-Red, para. 2.

⁹ ICC-01/04-02/06-432-Conf-Red, para. 4. In respect of the Redaction Protocol see ICC-01/04-02/06-411 and Annex A thereto.

¹⁰ ICC-01/04-02/06-433-Conf-Red, paras 1-2 and 7-8.

¹¹ ICC-01/04-02/06-433-Conf-Red, paras 1 and 11.

Prosecution witnesses'¹² and impact their 'safety and well-being'.¹³ The Prosecution asserts that this would not result in any prejudice to the accused.¹⁴

8. The Defence states that it does not oppose the Prosecution Requests, provided that the redactions applied do not exceed the Redaction Protocol.¹⁵ However, in respect of the four victims for whom an extension of the disclosure deadline for their application forms is sought, the Defence contends that the Prosecution 'should have submitted' an application for delayed disclosure before the 31 January 2015 disclosure deadline. The Defence argues that from when statements were taken from those individuals, their application forms and their statements became disclosable, pursuant to either Rules 76 or 77 of the Rules.¹⁶
9. The Defence further submits that unless, 'at a minimum', the victim numbers of those four victims are disclosed it is 'incorrect to say that there is no prejudice to the Defence'.¹⁷ The Defence consequently requests disclosure of the victim numbers so that it 'will at least have some information to include in its preparations' for trial.¹⁸
10. Noting that the basis for the original redactions to the victims' applications no longer exists in the case of individuals who the Prosecution intends to call as witnesses, the Chamber authorises the Prosecution to disclose lesser redacted versions of the Applications, in a manner consistent with the Redaction Protocol.
11. Turning to the request for extension of deadline, the Chamber notes that the 31 January 2015 disclosure deadline applied to material, falling under the

¹² ICC-01/04-02/06-433-Conf-Red, para. 9.

¹³ ICC-01/04-02/06-433-Conf-Red, para. 1.

¹⁴ ICC-01/04-02/06-433-Conf-Red, paras 2 and 11.

¹⁵ ICC-01/04-02/06-435-Conf, paras 1 and 3.

¹⁶ ICC-01/04-02/06-435-Conf, paras 5-6.

¹⁷ ICC-01/04-02/06-435-Conf, para. 7.

¹⁸ ICC-01/04-02/06-435-Conf, paras 8-9.

Prosecution's disclosure obligations, which was in its possession prior to 9 October 2014. The Chamber notes that the Prosecution did not clearly indicate: (i) the basis upon which it considers the four application forms to fall within its disclosure obligations at this stage, and consequently why the 31 January 2015 disclosure deadline would apply to such material; and (ii) in light of the basis for such disclosure, why delayed disclosure should be granted in this case. The Chamber therefore considers it appropriate, prior to making a determination on the matter, to seek such further clarification from the Prosecution.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

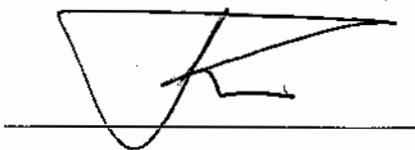
GRANTS the Prosecution request to disclose lesser redacted versions of the Applications, in a manner consistent with the Redaction Protocol;

DIRECTS the Prosecution to provide further clarification, in accordance with paragraph 11 above, by 4 February 2015;

DEFERS its determination regarding the request for an extension of time for disclosure of four of the Applications, but grants, on an interim basis, authorisation for their non-disclosure pending such determination; and

DIRECTS (i) the Prosecution to file public redacted versions of the Prosecution Requests; and (ii) the Defence to file a public redacted version of its filing ICC-01/04-02/06-435-Conf.

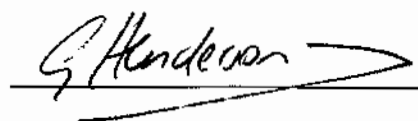
Done in both English and French, the English version being authoritative.

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Judge Robert Fremr, Presiding Judge

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Judge Kuniko Ozaki

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Judge Geoffrey Henderson

Dated 30 January 2015

At The Hague, The Netherlands