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Date: 3 February 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***

**Public**

**Prosecution's Observations on the Review of the Pre-Trial Detention of  
Bosco Ntaganda**

**Source:** The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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## Introduction

1. Pursuant to Trial Chamber VI (the “Chamber”)’s order of 15 January 2015,<sup>1</sup> the Office of the Prosecutor (the “Prosecution”) submits its observations on the periodic review of the pre-trial detention of Bosco Ntaganda (the “Accused”) under rule 118(2) of the Rules of Procedure and Evidence.
2. The Prosecution submits that the Accused’s continued detention is necessary as the conditions warranting his detention under article 58(1) of the Rome Statute (the “Statute”) persist. There are no changed circumstances that require modification of the previous decisions on interim release, including the most recent decision of this Chamber in which it ordered his continued detention (“Fourth Interim Release Decision”).<sup>2</sup> Rather, with the approach of the commencement date of trial the necessity for his continued detention is greater.
3. There remains a pressing need for the Accused’s detention under article 58(1)(b)(i) in order to secure his appearance, as well as under article 58(1)(ii) in order to prevent obstruction of the court proceedings. The Accused has not been detained for an unreasonable period, nor has there been inexcusable delay by the Prosecution in the conduct of its case such that the Chamber need consider his release under article 60(4).

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<sup>1</sup> ICC-01/04-02/06-424.

<sup>2</sup> ICC-01/04-02/06-391.

### **Procedural history**

4. On 22 August 2006, Pre-Trial Chamber I issued a sealed warrant of arrest for the Accused.<sup>3</sup> This warrant of arrest was made public on 28 April 2008.<sup>4</sup> On 13 July 2012, Pre-Trial Chamber II issued the second arrest warrant.<sup>5</sup>
5. On 20 March 2013, the Accused surrendered to the Court<sup>6</sup> and he was transferred on 22 March 2013.<sup>7</sup>
6. On 18 November 2013, Pre-Trial Chamber II rejected the Accused's application for interim release.<sup>8</sup> This decision was confirmed by a majority of the Appeals Chamber on 5 March 2014.<sup>9</sup> Subsequently, on 17 March 2014<sup>10</sup> and 17 July 2014,<sup>11</sup> Pre-Trial Chamber II found that the Accused's continued detention was necessary.
7. On 31 October 2014, following an oral hearing on detention,<sup>12</sup> this Chamber rendered the Fourth Interim Release Decision, concluded that there were no changed circumstances that would justify modifying the previous decision to continue the Accused's detention.<sup>13</sup>

### **Prosecution's Observations**

8. The Accused's continued detention is necessary as the conditions in article 58(1) of the Statute continue to be met. There has been no change in the facts

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<sup>3</sup> ICC-01/04-02/06-2.

<sup>4</sup> ICC-01/04-02/06-18.

<sup>5</sup> ICC-01/04-02/06-36-Red.

<sup>6</sup> ICC-01/04-02/06-44-Conf-Exp, para.1.

<sup>7</sup> *Ibid.*, paras.3 and 4.

<sup>8</sup> ICC-01/04-02/06-147.

<sup>9</sup> ICC-01/04-02/06-271-Red (OA), paras.71 and 72.

<sup>10</sup> ICC-01/04-02/06-284.

<sup>11</sup> ICC-01/04-02/06-335.

<sup>12</sup> ICC-01/04-02/06-T-16-ENG.

<sup>13</sup> ICC-01/04-02/06-391, para.16.

underlying the Fourth Interim Release Decision or any new facts that would require the Chamber to modify its ruling to continue the Accused's detention.<sup>14</sup>

9. As this Chamber stated in its prior decision, when addressing changed circumstances, the Prosecution is not required to re-establish the same underlying facts where these facts continue to apply.<sup>15</sup>

*a) To ensure his appearance at trial (article 58(1)(b)(i))*

10. There remains a pressing need for the Accused to remain detained in order to ensure his appearance at trial. In the Fourth Interim Release Decision, this Chamber referred to a list of factors which the Pre-Trial Chamber found contributed to the risk that the Accused would not appear, including that: (i) he evaded justice for a lengthy period of time; (ii) his voluntary surrender was affected by the timeliness and manner in which it took place; (iii) he is facing numerous charges with the prospect of lengthy imprisonment if convicted; (iv) he is aware of the sentence imposed against his alleged co-perpetrator, Thomas Lubanga Dyilo; and (v) he has the financial means to abscond.<sup>16</sup> All of these factors continue to apply.
11. Further, the Appeals Chamber recently confirmed the conviction and sentence imposed against Thomas Lubanga Dyilo for recruitment and use of child soldiers.<sup>17</sup> The confirmation of the conviction and sentence against Thomas Lubanga Dyilo for similar charges relating to child soldiers only serves to increase the risk of the Accused absconding.

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<sup>14</sup> *Prosecutor v. Bemba*, ICC-01/05-01/08-1019, paras.51-52.

<sup>15</sup> ICC-01/04-02/06-391, citing *Prosecutor v. Bemba*, ICC-01/05-01/08-1019, para.51.

<sup>16</sup> ICC-01/04-02/06-391, para.8

<sup>17</sup> ICC-01/04-01/06-3121.

*b) To ensure the investigation and court proceedings are not endangered or obstructed (article 58(1)(b)(ii))*

12. On 15 and 30 January 2015, the Prosecution disclosed a significant amount of material to the Accused in which minimal information is redacted, including identifying information about victims and Prosecution witnesses. As such, the identity of victims and witnesses, and the evidence that these individuals will provide against the Accused, is now largely known to him. The continued detention of the Accused is necessary under article 58(1)(b)(ii) in order to ensure court proceedings are not obstructed, including by protecting victims and witnesses from interference and intimidation.

13. This Chamber referred to the factors set out by the Pre-Trial Chamber that contributed to the risk of the Accused obstructing or endangering the investigation or court proceedings, and justifying his continued detention.<sup>18</sup> These factors included the gravity of the charges against him, his continuing influence in the DRC, his history of violence and his awareness of the identity of the majority of the Prosecution's witnesses.

14. These factors all continue to apply. In fact, the risk of the Accused exerting pressure on witnesses, either directly or indirectly, is now heightened given his greater access to unredacted information.

### **Relief**

15. For the reasons set out above, the Prosecution requests that the Chamber maintain the detention of the Accused as the conditions warranting his detention continue to be met. There are no changed circumstances necessitating a modification of the decision to detain him.

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<sup>18</sup> ICC-01/04-02/06-391, para.10

16. In the event that the Chamber considers a proposal of conditional release, the Prosecution respectfully requests the opportunity to present further submissions.



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Fatou Bensouda, Prosecutor

Dated this 3<sup>rd</sup> day of February 2015  
At The Hague, The Netherlands