

**Cour
Pénale
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**International
Criminal
Court**



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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

Public Redacted Version of "Prosecution's request pursuant to regulation 35 to vary the time limit for disclosure of the Pre-Trial Brief", ICC-01/04-02/06-454-Conf-Exp, dated 12 February 2015

Source: 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 regulation 35 of the Regulations of the Court (“Regulations”), the Office of the Prosecutor (“Prosecution”) requests a variation of the time limit to file the Pre-Trial Brief until 9 March 2015.

2. On 6 February 2015, Trial Chamber VI (“Chamber”) ordered the Prosecution to file a Pre-Trial Brief “containing, for each count, a summary of the relevant evidence upon which the Prosecution intends to rely, and which clearly explains how the evidence relates to the charges [...] no later than three months before the trial commencement date.”¹ The trial is set to commence on 2 June 2015,² such that the Prosecution has understood the filing deadline for the Pre-Trial Brief to be 2 March 2015.

3. The Prosecution has good cause to request the variation of the deadline for seven days. There is minimal, if any, prejudice to the Accused for such a limited delay, as he has already received sufficient notice of the charges and case against him for the purposes of article 67(1)(a) of the Rome Statute (“Statute”) through the confirmation hearing decision, the updated DCC (due on 16 February 2015), the Prosecution’s presentation of its evidence at the confirmation hearing (including sources to the relevant evidence), the in-depth analysis chart prior to the confirmation hearing that links evidence to the charges, the list of evidence disclosed on 15 January 2015, and the full statements of 52 identified trial witnesses with summaries of key areas of their evidence. By 2 March 2015, subject to any request for delayed disclosure, the Accused will receive disclosure of the remaining evidence upon which the Prosecution intends to rely. Critically, even with a one-week

¹ ICC-01/04-02/06-450, para.89.

² ICC-01/04-02/06-382, para.9.

delay, the Accused will receive the Pre-Trial Brief 12 weeks in advance of the 2 June 2015 trial date.

4. Due to factors outside of the Prosecution's control, a number of witness interviews had to be conducted in [REDACTED], some weeks later than anticipated. Once an interview is complete, where it was conducted pursuant to article 55(2) of the Statute it needs to be transcribed, and in all cases it needs to be registered and the information contained in it analysed, before finally being incorporated into the Pre-Trial Brief. Moreover, the Prosecution is simultaneously preparing to meet other deadlines set by the Chamber, which include a disclosure deadline, a deadline to file the updated DCC, a deadline to seek non-standard redactions and delayed disclosure. As a result, the Prosecution believes it will not be in a position to file the most comprehensive version of the Pre-Trial Brief on 2 March 2015.

Confidentiality

5. This filing is classified as "Confidential, *EX PARTE*, only available to the Prosecution" pursuant to regulation 23bis(1) of the Regulations of the Court, as it contains information about [REDACTED]. The Prosecution will file a confidential redacted and public redacted version of this document today.

Procedural Background

6. On 14 August 2014, the Prosecution filed the “Prosecution’s Submissions on the Provisional Agenda for the 20 August 2014 Status Conference,” in which it proposed disclosing the Pre-Trial Brief one month before the start of trial.³
7. On 8 September 2014, the Prosecution submitted the “Prosecution’s Additional Observations in Preparation for the Status Conference,” in which it once again proposed disclosing the Pre-Trial Brief to the Defence in May 2015, one month in advance of the trial.⁴
8. At the 11 September 2014 status conference, the Defence requested to receive the Pre-Trial Brief two months prior to trial to allow the Accused to know the case he has to meet and to develop the case for the Defence.⁵ The Prosecution noted that while it suggested providing this document to the Defence one month prior to trial in its proposed timeline, as per the Defence’s request it could provide the Pre-Trial brief two months in advance of the trial.⁶
9. On 9 October 2014, the Chamber issued its “Order Scheduling a Status Conference and Setting the Commencement Date for the Trial,” in which it set the trial commencement date for 2 June 2015.⁷ The Chamber also ordered the Prosecution to complete the disclosure of all materials, save where delayed disclosure has been sought and authorised, to provide a final list of witnesses, witness summaries and a final list of evidence by 2 March 2015.⁸

³ ICC-01/04-02/06-352, para.52.

⁴ ICC-01/04-02/06-365-Red, para.52.

⁵ ICC-01/04-02/06-T-13-ENG, p.38, lns.2-10.

⁶ ICC-01/04-02/06-T-13-ENG, p.38, lns.24-25 and p.39, lns.1-2.

⁷ ICC-01/04-02/06-382, para.9.

⁸ ICC-01/04-02/06-382, para.9.

10. On 14 October 2014, the Defence filed its “Written Submissions on Behalf of Mr Ntaganda 9 October 2014 Status Conference” requesting the Chamber order the Prosecution to file its “final document setting out its theory of the case” no later than three months prior to trial.⁹ This same day, the Prosecution submitted the “Prosecution Submissions in Preparation for the 17 October 2014 Status Conference” in which it proposed submitting a Pre-Trial Brief three months prior to trial.¹⁰
11. At the 17 October 2014 status conference, the Prosecution noted its intention to provide a Pre-Trial Brief to the Defence, Chamber and participants three months prior to the start of trial.¹¹
12. At the 2 December 2014 status conference, the Defence requested that the Chamber order the Prosecution to file the Pre-Trial Brief three months prior to the start of trial.¹² In response, the Prosecution noted that it was “working towards filing a pre-trial brief three months prior to the start of trial.”¹³
13. On 6 February 2015, the Chamber issued its “Decision on the updated document containing the charges,” in which it also ordered the Prosecution to file its Pre-Trial Brief “no later than three months before the trial commencement date.”¹⁴ As set out above, the Prosecution understands this to require submission of the Pre-Trial Brief by 2 March 2015.

⁹ ICC-01/04-02/06-384, para.6.

¹⁰ ICC-01/04-02/06-385, para.26.

¹¹ ICC-01/04-02/06-T-15-ENG, p.9, lns.22-24.

¹² ICC-01/04-02/06-T-17-ENG, p.11, lns.19-23.

¹³ ICC-01/04-02/06-T-17-ENG, p.15, lns.15-17.

¹⁴ ICC-01/04-02/06-450, para.89.

Prosecution submissions

14. Under regulation 35(2) of the Regulations, a Chamber may extend a time limit ordered by a Chamber or prescribed in the Regulations “if good cause is shown.” The Appeals Chamber has held that “[s]uch reasons as may found a good cause are necessarily associated with a party’s duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations”.¹⁵ The Appeals Chamber has further decided to extend a time limit where it was in the “interest of justice”.¹⁶
15. There is good cause to vary the time limit in this case.
16. The Pre-Trial Brief is not a document provided for in the Court’s statutory framework. Rather, it is a document that previous Chambers have ordered the Prosecution to file, and one that both Parties agreed would serve as a useful tool for both the Chamber and the Defence. One of the primary purposes of the Pre-Trial Brief is to provide additional notice to the Accused of the Prosecution’s case with references to key items of evidence. As such, the more complete and comprehensive the document, the better informed the Accused will be and the more valuable a tool it will be for the Chamber.
17. The Accused has already received sufficient notice of the charges, and the case, against him as required by article 67(1)(a) of the Statute including by

¹⁵ ICC-01/04-01/06-834, para.7.

¹⁶ See ICC-01/04-01/10-505, para.11.

way of: (i) the Prosecution's comprehensive written and oral submissions at the confirmation hearing which contain detailed sourcing; (ii) the decision on the confirmation hearing; (ii) the in-depth analysis chart which links the evidence collected at the time of the confirmation hearing to each charge; (iii) the Prosecution's provisional list of evidence filed before the confirmation hearing and an updated list of evidence filed on 15 January 2015; (iv) disclosure of the underlying evidence on which the Prosecution intends to rely; (v) a provisional list of 60 Prosecution trial witnesses (of which it has the identity and full statements of 52 witnesses); and (vi) anticipated summaries of relevant evidence for 52 witnesses.

18. In addition, the Accused will have the Updated Document Containing the Charges on 16 February 2015 and a final list of witnesses, list of evidence and summaries of anticipated evidence for each of these witnesses. Subject to any request for delayed disclosure, the Accused will have full disclosure of the evidence upon which the Prosecution is relying at trial by 2 March 2015.
19. Importantly, the Accused will receive the Pre-Trial Brief only seven days later, still a full 12 weeks before the start of the trial. Any prejudice to the Accused in receiving the Pre-Trial Brief seven days later is outweighed by receiving a more complete document that provides even more detailed notice of the evidence in support of the charges against him.
20. The Prosecution anticipated finishing all of its witness interviews by [REDACTED]. For reasons relating to the personal schedules and security needs of certain witnesses, the Prosecution has been unable to interview several witnesses until later than anticipated.
21. [REDACTED]. [REDACTED]. [REDACTED].

22. The Prosecution scheduled a re-interview with Witness [REDACTED] in [REDACTED]. This interview had to be postponed until [REDACTED] [REDACTED] 2015 due to the requirement to attain additional approval from [REDACTED] and the witness' schedule.
23. Witness [REDACTED] postponed a previously arranged interview and has had work and travel commitments that have prevented the Prosecution from rescheduling [REDACTED] interview any early than [REDACTED] 2015.
24. Due to a [REDACTED], the interview of Witness [REDACTED] had to be postponed until [REDACTED] 2015.
25. Witness [REDACTED] advised the Prosecution about Witness [REDACTED] in [REDACTED] 2014 and provided the Prosecution with [REDACTED] contact information in [REDACTED] 2015. The earliest Witness [REDACTED] was able to meet with the Prosecution was [REDACTED] 2015. [REDACTED].
26. Finally, the Prosecution was only very recently provided with information about Witness [REDACTED]. [REDACTED].
27. Once an interview is complete, in some cases (such as with Witnesses [REDACTED]) the information needs to be transcribed, and in all cases it needs to be processed in preparation for disclosure and to enable the Prosecution to analyse it and to incorporate it into the Pre-Trial Brief.
28. Given that the purpose of the Pre-Trial Brief is to provide the Accused with additional notice of the case against him, it is best to provide the most complete and comprehensive document possible, including references to the

most relevant evidence. Accordingly, the Prosecution requests a short extension of time in order to properly incorporate this recently acquired information, and to provide the Defence and the Chamber with the most complete and comprehensive version of the Pre-Trial Brief.

29. The Prosecution notes that the Chamber has ordered full disclosure by 2 March 2015 of all relevant items in the Prosecution's possession that fall under its disclosure obligations, along with a final list of trial witnesses, summaries of anticipated evidence for each witness and a final list of evidence upon which the Prosecution will rely for trial. Preparation of material for disclosure requires security assessments, application of redactions and requests for non-standard redactions, where applicable. This is a resource-intensive and time-intensive process that requires careful attention to detail. The Chamber has simultaneously ordered submission of a Pre-Trial Brief intended to summarise the relevant evidence upon which the Prosecution intends to rely and clearly explain how the evidence relates to the charges.

Relief Requested

30. Based on the foregoing, and pursuant to regulation 35 of the Regulations, the Prosecution requests that the Chamber vary the disclosure deadline of the Pre-Trial Brief to 9 March 2015.



Fatou Bensouda,
Prosecutor

Dated this 12th day of February 2015
At The Hague, The Netherlands