

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: **2 November 2016**

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Confidential, *EX PARTE* - only available to the Prosecution and Registry

Prosecution's request to provide Bosco Ntaganda with access to evidence obtained pursuant to article 70

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. The Prosecution requests that the Single Judge order the Registry to provide Bosco Ntaganda with access to his and Thomas Lubanga's ICC Detention Centre call records and recordings, *via* the TRIM folder where such material is located.
2. From 30 September 2015 onwards, pursuant to an order from the Single Judge, the Prosecution was given access to all the ICC Detention Centre non-privileged contact and visitor logs, as well as with recordings of telephone conversations pertaining to both Bosco Ntaganda and Thomas Lubanga, from 22 March 2013 onwards.
3. Further to the Prosecution's review of certain of these telephone conversations, the Prosecution assesses that these communications are material to the Defence's preparation of its case, which is set to start in 2017. The Prosecution also intends to rely on certain communications. Accordingly, the Prosecution intends to disclose all telephone communications of Bosco Ntaganda and Thomas Lubanga in its possession to Bosco Ntaganda.
4. In order to avoid any unnecessary delay, the Prosecution requests that the Registry immediately provide Bosco Ntaganda with access to these communications *via* the TRIM folder where they are located.

Confidentiality

5. This filing is classified as "Confidential, *ex parte* - only available to the Prosecution and Registry" pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court since they relate to an on-going Prosecution investigation and refer to filings and decisions bearing the same classification. The Prosecution will request the re-classification of this filing and related filings, or file confidential redacted

versions thereof, as necessary, following the Single Judge's decision on the present request.

Background

6. On 13 August 2015, the Prosecution submitted its *Request for judicial assistance to obtain evidence for investigation under article 70¹* to Pre-Trial Chamber II.
7. On 21 August 2015, the Presidency reassigned the Situation in the Democratic Republic of the Congo to Pre-Trial Chamber I.²
8. On 3 September 2015, Pre-Trial Chamber I "designat[ed] Judge Cuno Tarfusser as the Single Judge of Pre-Trial Chamber I responsible for carrying out the functions of the Chamber with respect to the situation in the Democratic Republic of the Congo and any cases emanating therefrom."³
9. On 18 September 2015, the Single Judge granted the Prosecution's request to obtain recorded materials from the ICC Detention Centre.⁴
10. From 30 September 2015 onwards, the Registry provided the Prosecution with access to the relevant audio files and their corresponding call logs and metadata, *via* a folder in TRIM.

Prosecution's Request

11. The Prosecution requests that the Single Judge order the Registry to provide Bosco Ntaganda with access to his and Thomas Lubanga's ICC Detention Centre call records and recordings, *via* the TRIM folder where such material is located.

¹ ICC-01/04-638-Conf-Exp.

² ICC-01/04-639.

³ ICC-01/04-728.

⁴ ICC-01/04-729-Conf-Exp.

12. Further to the Prosecution's review of certain telephone conversations of Bosco Ntaganda and Thomas Lubanga the Prosecution assesses that these communications are material to the Defence's preparation of its case, which is set to start in 2017. The Prosecution also intends to rely on certain communications. Consequently, the Prosecution intends to disclose all of telephone communications of Bosco Ntaganda and Thomas Lubanga in its possession to Bosco Ntaganda.
13. This material is voluminous.⁵ Its disclosure through the Prosecution's ordinary disclosure channel, namely its Ringtail database, would, for technical reasons which are briefly outlined below, unnecessarily complicate and delay the disclosure process.
14. Indeed, each audio recording of a telephone communication was provided together with separate electronic files containing the relevant call log and additional metadata. These separate electronic files are not linked to the audio files. Additionally, the audio recordings and separate electronic files are named or titled using non-standardised naming conventions.⁶
15. Registering and disclosing the audio recordings through the Prosecution's ordinary disclosure channel would require the Prosecution to extract over 23,000 files from TRIM and to re-construct an existing database by properly linking corresponding files to one another, a resource-intensive and time-consuming task.
16. Instead, the Prosecution requests that Bosco Ntaganda be given access to the exact same database of audio recordings and related metadata that the Prosecution has access to. Such access can be given without delay.

⁵ The Prosecution is currently in possession of 23,109 audio files, call logs and metadata files, and continues to receive additional files on an ongoing basis.

⁶ The naming convention used is neither standardised nor intuitive. The convention uses numerical values for years followed by nominal values for months. Filenames employ an arbitrary identifying suffix without leading zeroes. The convention does not provide the day or the time that a given phone call was recorded, which further complicates the proper identification and association of the material.

17. In *Bemba et al.*, following an identical request made by the Prosecution to amend the rights of access of the TRIM folder containing Jean-Pierre Bemba's ICC Detention Centre calls,⁷ which the Registry indicated was technically feasible, the Single Judge "[noted] the Prosecutor's submission that an amendment to the rights of access to the relevant TRIM folder would be the most efficient way to make the material [...] available to the Defence teams" and indeed ordered the Registry to extend access to the TRIM folder to all Defence teams in that case.⁸
18. The Prosecution further notes that it has summarised approximately 400 audio recordings of non-privileged telephone conversations of both Bosco Ntaganda and Thomas Lubanga, and is in the process of fully transcribing and translating certain of those conversations that it intends to rely upon in the case of *the Prosecutor v. Bosco Ntaganda*. As soon as practicable the Prosecution will disclose these summaries, transcripts and translations, together with the corresponding audio recordings, to Bosco Ntaganda through its ordinary disclosure channel, in compliance with the e-Court protocol applicable in the case.⁹

⁷ ICC-01/05-01/13-360.

⁸ ICC-01/05-01/13-409, pages 5-6 and 8.

⁹ ICC-01/04-02/06-47-Anx1.

Request

19. Based on the foregoing, the Prosecution requests that the Single Judge order the Registry to provide Bosco Ntaganda with immediate access to the TRIM folder containing his and Lubanga's ICC Detention Centre call records and recordings.



Fatou Bensouda
Prosecutor

Dated this 2nd day of November 2016

At The Hague, The Netherlands