

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 17 November 2016

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

**Addendum to the "Prosecution's Communication of the Disclosure of Evidence
obtained pursuant to Article 70", 7 November 2016, ICC-01/04-02/06-1616**

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Introduction

1. Further to the Chamber's directions of 16 November 2016, the Prosecution provides the Chamber, Defence and participants with further information regarding the evidence obtained pursuant to Article 70 that was disclosed on 7 November 2016.

Background

2. On 7 November 2016, the Prosecution disclosed the Accused's and Lubanga's ICC Detention Centre call logs and recordings, *via* a folder in TRIM ("TRIM Folder"), and offered to discuss this disclosure with the Defence. On the same day, the Prosecution filed a notice of the disclosure of evidence obtained under Article 70 ("Notice").¹ The Prosecution further advised that it had reviewed approximately 450 of these telephone conversations and would disclose summaries thereof on an ongoing basis.²
3. On 16 November 2016, the Chamber directed the Prosecution to (1) "identify for the Defence the reviewed recordings in question, in order to assist the Defence in prioritising its review" and "provide the Defence with any information it has which may assist to catalogue and identify calls, including for example, based on the identity of the caller and counterpart and/or the date on which the call was made".³

¹ ICC-01/04-02/06-1616.

² ICC-01/04-02/06-1616, para.16.

³ See real time transcript ICC-01/04-02/06-159-ENG, p.9, lns.2-12.

Addendum to the Prosecution's Notice

4. Further to the Chamber's directions of 16 November 2016, the Prosecution provides the Chamber, Defence and participants with further information regarding the evidence obtained pursuant to Article 70 that was disclosed on 7 November 2016.

I. Overview of the contents of the Trim Folder

5. The TRIM Folder to which the Defence has been given access contains 20968 records. Of these records, 9409 pertain to Bosco Ntaganda ("Ntaganda") and 11559 records pertain to Thomas Lubanga ("Lubanga").

6. These records include for each individual (Lubanga and Ntaganda): (1) audio recordings of non-privileged telephone conversations, (2) individual spreadsheets containing the metadata of each telephone conversation,⁴ (3) a spreadsheet containing the monthly log of the detainee's telephone contacts,⁵ (4) a list of registered non-privileged contacts, and (5) several spreadsheets containing the detainee's visitation record.

7. The Prosecution notes that, the Registry having been ordered to provide the Prosecution with non-privileged telephone conversations and visitation

⁴ For each audio file, the TRIM folder contains a corresponding spreadsheet with the metadata associated with the audio file. Associated audio files and metadata files have the same title, which systematically includes the following elements: initials of the detainee, the words "NON PRIV CALLS", a reference to a time period and a call identification number (e.g. "BN NON PRIV CALLS FROM 22 to 31 MARCH 2013 (15)"). The identical call identification number in the title of both files ensures that an audio file can be linked to its corresponding metadata file. The metadata files contain the following relevant information: the date, start time, end time and duration of the telephone conversation and the telephone number called by the detainee.

⁵ Each monthly call log spreadsheet contains call data records for all the calls made by a detainee during one particular month. These call data records include the following relevant information: the call identification number, which corresponds to the number included in the title of the audio files and metadata files, the date, start time, end time and duration of the telephone conversation, and the telephone number called by the detainee.

records on an ongoing basis, additional records will be added to the TRIM Folder on an ongoing basis.

8. As of the date of the filing of this addendum, 17 November 2016, the TRIM Folder contains the following records pertaining to Ntaganda: (1) one list of non-privileged contacts, (2) three visitation records, (3) 37 spreadsheets containing call data records, (4) 4684 audio files of telephone conversations and (5) 4684 metadata files containing information related to these telephone conversations.
9. As regards Lubanga, the TRIM folder currently contains the following records: (1) one list of non-privileged contacts, (2) one visitation record, (3) 31 spreadsheets containing call data records, (4) 5763 audio files of telephone conversations and (5) 5763 metadata files containing information related to these telephone conversations.
10. The Prosecution notes, however, that the TRIM folder appears to contain a number of duplicated audio recordings and metadata files. As a consequence, the number of *audio files* provided above does not correspond to the actual number of *telephone conversations* in the TRIM folder. The number of telephone conversations is actually lower than the figures for audio files set out above.

II. The Chamber's directions

11. It follows from the above description of the contents of the TRIM Folder that the Defence has already been provided with "information [...] which may assist to catalogue and identify calls, including for example, based on the identity of the caller and counterpart and/or the date on which the call was made". Indeed, the spreadsheets containing the monthly log of the detainees' telephone contacts contain precisely this information. To the extent that

Lubanga and Ntaganda have communicated with unauthorised non-registered individuals through the telephones of their registered contacts, this is not reflected in the monthly call logs.

12. As regards the identification of the telephone calls that have been reviewed and summarised, the Prosecution will, on 17 November 2016, provide the Defence with a spreadsheet listing all the telephone calls the Prosecution has reviewed or is in the process of reviewing.



Fatou Bensouda
Prosecutor

Dated this 17th day of November 2016
At The Hague, The Netherlands