

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 14 March 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Public Redacted Version of Prosecution's Response to the "*Requête urgente en rejet in limine des trois annexes déposées au soutien de la « Prosecution's submissions on issues that were raised during the confirmation of charges hearing », datées du 7 mars 2014*", 13 March 2014, ICC-01/04-02/06-283-Conf

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

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Introduction

1. The Defence requests that the Pre-Trial Chamber reject *in limine* one chart and two visual representations (“Defence’s Request”) submitted by the Prosecution as annexes to its “Prosecution’s submissions on issues that were raised during the confirmation of charges hearing” (“Submissions”).
2. The three annexes submitted by the Prosecution do not contain submissions. These annexes are descriptive in nature and constitute relevant, non-argumentative material aimed at facilitating a proper and accurate understanding of the Submissions. As such, they do not constitute “submissions” within the meaning of regulation 36(2)(b) of the Regulations of the Court (“Regulations”) and should not be counted in calculating the page limit. The Defence’s Request should therefore be dismissed.

Confidentiality

3. The present filing is classified as “Confidential” under regulation 23*bis*(1) [REDACTED]. The Prosecution will file a public redacted version.

Procedural History

4. On 4 February 2014, the Single Judge issued a decision on the schedule of the confirmation hearing.¹ On 14 February 2014, the Chamber granted the parties and participants the right to submit written observations limited to issues discussed at the confirmation hearing.² The Prosecution filed its Submissions on 7 March 2014,³ to which it appended three annexes.⁴

¹ ICC-01/04-02/06-245.

² ICC-01/04-02/06-T-11-ENG ET WT, p.11, lines 9-17.

³ ICC-01/04-02/06-276-Conf.

⁴ ICC-01/04-02/06-276-Conf-AnxA, ICC-01/04-02/06-276-Conf-AnxB, and ICC-01/04-02/06-276-Conf-AnxC.

5. On 10 March 2014, the Defence requested that the Pre-Trial Chamber reject these three annexes *in limine*.⁵

Prosecution's Submissions

6. The annexes appended to the Submissions are *not* argumentative in nature; they are descriptive visual representations of aspects of the Submissions and should be accepted as such.
7. The Prosecution recalls that in calculating the number of pages of a document filed with the Registry "appendix[es] containing references, authorities, copies from the record, exhibits and other relevant, non-argumentative material" are not counted. The three annexes to the Prosecution's Response *are* appendices that contain relevant, non-argumentative material.
8. The Defence argues that Annex A "*comporte une analyse de la pertinence de chacun des témoins du Procureur*".⁶ This is incorrect. As indicated in the Submissions,⁷ Annex A is a chart stating the relevance of witnesses to the Prosecution's case. It provides descriptive information about each witness (such as their gender, whether they are an insider or a crime base witness and their role) and indicates how their information relates to the Prosecution's case.⁸ Annex A does not contain submissions, as argued by the Defence. It is purely descriptive.
9. The Defence argues that Annex B is argumentative in nature because it constitutes "*un schéma représentant la position du Bureau du Procureur sur la structure de l'UPC/RP et des FPLC, et la place qu'aurait occupé M. Ntaganda dans cette organisation*".⁹ The Prosecution notes that the part of this organigram referred to by the Defence – the UPC/FPLC's military structure and Bosco Ntaganda's

⁵ ICC-01/04-02/06-274-Conf.

⁶ ICC-01/04-02/06-277, para. 9.

⁷ ICC-01/04-02/06-276-Conf, page 7, footnote 1.

⁸ ICC-01/04-02/06-276-Conf-AnxA.

⁹ ICC-01/04-02/06-277, para. 9.

position therein – was presented as a visual aid during the confirmation hearing and is therefore already included in the record of the case.¹⁰ Annex B does not contain submissions, but is merely a visual representation of information provided in the Submissions, namely the UPC/FPLC's political and military structure [REDACTED].

10. Lastly, the Defence submits that Annex C should be rejected *in limine* because it “représente une analyse d'un élément de preuve par le Procureur, soit une analyse de certains messages contenus dans le logbook”.¹¹ Again, the Prosecution notes that the Prosecution made submissions on the logbook and several of these radio messages during the confirmation of charges hearing. The messages were also presented as visual aids,¹² along with the complete logbooks,¹³ copies of which were distributed during the hearing as a visual aid. This evidence and the Prosecution's submissions in their respect are consequently already on the record. Annex C is a visual representation of UPC/FPLC radio logbook messages relevant to the assaults in Banyali-Kilo and Walendu-Djatsi *collectivités*.¹⁴ As such, it merely constitutes a tool used to visually link evidence already introduced by the Prosecution during the hearing. This annex does not contain submissions.

11. The three annexes submitted by the Prosecution are descriptive in nature and constitute relevant, non-argumentative material aimed at facilitating a proper and accurate understanding of the Submissions. As such, they do not constitute “submissions” within the meaning of regulation 36(2)(b) and should not be counted in calculating the page limit.

¹⁰ ICC-01/04-02/06-258-AnxB1, page 19.

¹¹ ICC-01/04-02/06-277, para. 9.

¹² ICC-01/04-02/06-258-AnxB4, pages 8-10 ; ICC-01/04-02/06-258-AnxB8.c, pages 2-6 ; ICC-01/04-02/06-258-AnxB9.a, page 3 ; ICC-01/04-02/06-258-AnxB9.b, pages 3-6.

¹³ EVD-PT-OTP-00257 (translation: EVD-PT-OTP-06232); EVD-PT-OTP-00263 (translation: EVD-PT-OTP-03975).

¹⁴ ICC-01/04-02/06-276-Conf-AnxC.

12. Accordingly, the Defence's Request should be dismissed and the annexes should be considered by the Pre-Trial Chamber, together with the Submissions.

Relief

13. For the reasons set out above, the Prosecution requests that the Chamber dismiss the Defence's Request.



Fatou Bensouda,
Prosecutor

Dated this 14th day of March 2014
At The Hague, The Netherlands