

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 28 January 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***

Confidential

Confidential redacted version of "Prosecution's urgent request pursuant to regulation 35 to vary the time limit for disclosure of material relating to potential trial witnesses", ICC-01/04-02/06-433-Conf-Exp, 28 January 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 ("RoC"), the Office of the Prosecutor ("Prosecution") requests a variation of the time limit from 31 January 2015 to 2 March 2015 to disclose four victim applications which were in the Prosecution's possession before 9 October 2014 but that relate to witnesses whose statements will only be disclosed by 2 March 2015. If the victim applications are disclosed as incriminating information in advance of the disclosure of their witness statement and a final determination of their inclusion on the Prosecution's list of witnesses (due on 2 March 2015), it will impact the safety and well-being of these witnesses.
2. The Prosecution has good cause to request the variation and there is no prejudice to the Accused, as it is already in possession of the redacted victim application forms for these four victims.
3. The Prosecution makes this request on an urgent basis in light of the upcoming disclosure deadline of 31 January 2015.

Confidentiality

4. This document is classified as Confidential, *ex parte*, only available to the Prosecution and Legal Representatives of Victims, pursuant to regulation 23bis(1) of the RoC, since it identifies witnesses whom the Prosecution may seek to rely on at trial, whose identity has not yet been disclosed to the Defence. The Prosecution will file a confidential, redacted version of this filing.

Procedural Background

5. On 9 October 2014, Trial Chamber VI ("the Chamber") ordered *inter alia*, that "all material currently already in the Prosecution's possession, for which delayed disclosure is not requested and authorised, should be disclosed not later than 31 January 2015."¹ The Chamber also ordered that "[d]isclosure by the Prosecution to the Defence of all remaining incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as disclosure of all Article 67(2) material and provision of all Rule 77 material for inspection to the Defence shall be completed by 2 March 2015, save where delayed disclosure has been specifically requested and authorised."²
6. On 15 January 2015, the Prosecution provided, *inter alia*, a provisional list of witnesses who will be called at trial and noted that there are a number of other witnesses whom the Prosecution is considering adding to this list.³

Prosecution submissions

7. Under regulation 35(2) of the RoC, a Chamber may extend time limits ordered by a Chamber or prescribed in the RoC "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

¹ ICC-01/04-02/06-382, para.9(d) ("Order").

² Order, para.9(d).

³ ICC-01/04-02/06-426-Conf-Exp, para.6; ICC-01/04-02/06-426-Conf-Exp-AnxD.

with his/her obligations".⁴ The Appeals Chamber has further decided to extend a time limit where it was in the "interest of justice".⁵

8. There is good cause to vary the time limit in this case.
9. Since 9 October 2014, the Prosecution has interviewed four witnesses whose statements will be disclosed by 2 March 2015.⁶ For these four witnesses, the Prosecution had in its possession prior to 9 October 2014 their unredacted victim applications. Disclosure of one part of the witness material by 31 January 2015 - in advance of disclosure of the witness statement - will identify them as potential Prosecution witnesses.
10. Accordingly, the Prosecution requests an extension of time to disclose these four victim applications with fewer redactions.
11. There will be no prejudice to the Accused in granting this request. The Accused has access to the redacted victim applications, the volume of material at issue is limited and he will receive the victim applications with fewer redactions by 2 March 2015, together with all other material relevant to the witnesses' evidence should they be placed on the Prosecution's final witness list.

⁴ ICC-01/04-01/06-834, para.7.

⁵ See ICC-01/04-01/10-505, para.11.

⁶ The witnesses concerned are: [REDACTED].

Relief Requested

12. Based on the foregoing, and pursuant to regulation 35 of the RoC, the Prosecution requests that the Chamber vary the 31 January 2015 deadline to permit the Prosecution to disclose four victim applications with fewer redactions by 2 March 2015.



Fatou Bensouda,
Prosecutor

Dated this 28th day of January 2015
At The Hague, The Netherlands