

**Cour
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**International
Criminal
Court**



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Date: 26 February 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***

Public

**Prosecution response to Mr Ntaganda's request for reconsideration and
clarification (ICC-01/04-02/06-471)**

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. Trial Chamber VI ("Chamber") granted the Office of the Prosecutor ("Prosecution") an extension of seven days to file the Pre-Trial Brief.¹ The Defence seeks reconsideration of this decision on the basis that the Prosecution's requests for delayed disclosure² and redactions,³ filed on 16 February 2015, amount to "new circumstances" that warrant a review of the decision granting the extension.⁴ The Defence wants the Chamber to order the Prosecution to file an initial Pre-Trial Brief on 2 March 2015 and a final Pre-Trial Brief on a date to be set ("Request for Reconsideration").
2. The Defence also seeks clarification on three issues, all related to notice to the Accused of the nature, cause and content of the charges ("Request for Clarification").
3. The Prosecution opposes both Requests in their entirety.

Prosecution Submissions

Request for Reconsideration

4. The Prosecution accepts that a Chamber has the power to reconsider its own decisions, but does not accept that there are new circumstances in the present case that warrant reconsideration or that the consequences of the decision are manifestly unsatisfactory.
5. First, the circumstances described by the Defence are not new. The Prosecution filed its request for delayed disclosure on 16 February 2015, notified to the Defence on 17 February 2015. The Chamber rendered its decision on 19 February 2015 with full knowledge of the Prosecution's

¹ ICC-01/04-02/06-467.

² ICC-01/04-02/06-461-Conf-Exp with confidential redacted version at ICC-01/04-02/06-461-Conf-Red and public redacted version at ICC-01/04-02/06-461-Red2.

³ ICC-01/04-02/06-462-Conf-Exp with confidential redacted version at ICC-01/04-02/06-462-Conf-Red, and public redacted version at ICC-01/04-02/06-462-Red2.

⁴ ICC-01/04-02/06471, paras.2 and 4.

delayed disclosure request. Moreover, the Prosecution's application for redactions, filed 16 February 2015, does not affect the material that will be part of the Pre-Trial Brief, as the redaction request deals in the main with *non-trial witnesses*. The Defence is incorrect when it states that there are 28 witnesses that will need to be analysed later for inclusion in the Pre-Trial Brief.⁵

6. Second, the factual underpinnings of the Defence's submission are flawed. The Defence surmises that the Prosecution will not provide a complete Pre-Trial Brief on 9 March 2015, yet this is the very point of the extension. Where there are witnesses for whom the Chamber may grant delayed disclosure, the Prosecution will disclose a summary of each witness's anticipated evidence or a redacted statement on 2 March 2015. The Prosecution intends to refer to the evidence of these witnesses in its Pre-Trial Brief. Moreover, at present only four witnesses are concerned by the Prosecution's request for delayed disclosure.⁶
7. The Chamber has already determined that a delay of seven days to allow the Prosecution to include several witness statements collected later than anticipated is not unduly prejudicial to the Accused.⁷ The Defence repeats an argument of undue prejudice⁸ in its Request for Reconsideration that has already been addressed by the Chamber⁹ and is not a manifestly unsatisfactory consequence of the decision, nor does it justify reconsideration.
8. Critically, the Pre-Trial Brief is now due on 9 March 2015 and the Prosecution is working towards this deadline. The Defence's repeat of its earlier request,¹⁰ filed on 24 February 2015, that the Prosecution file a version of its Pre-Trial Brief on 2 March 2015 and an updated version on 9 March 2015 is unrealistic at this stage, and unnecessary.

⁵ ICC-01/04-02/06-471, para.15(B).

⁶ ICC-01/04-02/06-475-Conf-Exp with confidential redacted version at ICC-01/04-02/06-475-Conf-Red and public redacted version at ICC-01/04-02/06-475-Red2.

⁷ ICC-01/04-02/06-467, para.13.

⁸ ICC-01/04-02/06-T-18-CONF-ENG ET, p.36, lines 12-18, p.37, lines 8-10.

⁹ ICC-01/04-02/06-467, paras.12-13/

¹⁰ ICC-01/04-02/06-T-18-CONF-ENG ET, p.37.

Request for Clarification

9. There is no need for further clarification on the three points raised by the Defence. The first two points question the sufficiency of the notice to the Accused of the case against him and the third point is a repetition of his arguments in the Request for Reconsideration.
10. On the first and second points, the Defence wants to know which materials in particular provide notice to the Defence.¹¹ This does not require clarification.
11. The Chamber recalled¹² the Prosecution's submissions¹³ detailing the materials it identified as providing notice to the Accused: (i) the Prosecution's comprehensive written and oral submissions at the confirmation hearing which contain detailed sourcing to the evidence; (ii) the decision on the confirmation hearing; (iii) the in-depth analysis chart which links the evidence collected at the time of the confirmation hearing to each charge; (iv) the provisional list of evidence filed before the confirmation hearing and again on 15 January 2015; (v) a provisional list of 60 Prosecution trial witnesses (of which the Accused has the identity and full statements of 52 witnesses); (vi) anticipated summaries of relevant evidence for 52 witnesses; (vii) an updated Document Containing the Charges ("DCC") filed on 16 February 2015; and (viii) the final Prosecution list of witnesses, underlying statements and relevant evidence for these witnesses, summaries of anticipated evidence and final list of evidence, all of which will be disclosed on 2 March 2015. These are the documents that provide notice to the Accused.
12. The Pre-Trial Brief will be an additional tool to provide assistance and notice to the Defence of the Prosecution's case, but it is not a statutory requirement. This does not require further clarification. The Defence's contention that an accused "is on notice only when the Prosecution files an updated DCC in conjunction with a second document – in this case, a Pre-Trial Brief"¹⁴ is

¹¹ ICC-01/04-02/06-471, para.16.

¹² ICC-01/04-02/06-467, paras.17-18.

¹³ ICC-01/04-02/06-454-Conf, para.6.

¹⁴ ICC-01/04-02/06-471, para.19.

inconsistent with the Rome Statute and Rules of Procedure and Evidence, which do not require the submission of a Pre-Trial Brief. The Defence has the decision on the confirmation hearing and the updated DCC, which together form the basis of the charges against the Accused and include material facts relevant to these charges. It also has the underlying evidence and all other documents referred to in paragraph 11, above.

13. Lastly, the Accused's third point is a repetition of arguments in his Request for Reconsideration¹⁵ and the Prosecution's response is set out above. The Prosecution intends to include relevant information from all witnesses in the Pre-Trial Brief due on 9 March 2015, including the four witnesses for whom delayed disclosure is still being sought, on the basis of either the comprehensive summaries disclosed or redacted statements.



Fatou Bensouda,
Prosecutor

Dated this 26th day of February 2015
At The Hague, The Netherlands

¹⁵ ICC-01/04-02/06-471, paras.2, 4 and 12.