

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 27 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

**Decision on the Defence's urgent motion for an extension of time to respond to the
Prosecution's delayed disclosure and non-standard redactions requests**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Luc Boutin

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 64(6)(f) of the Rome Statute and Regulations 34 and 35(2) of the Regulations of the Court ('Regulations'), issues this 'Decision on the Defence's urgent motion for an extension of time to respond to the Prosecution's delayed disclosure and non-standard redactions requests'.

I. Procedural history

1. On 9 October 2014, the Chamber ordered the Office of the Prosecutor ('Prosecution') to file any applications for delayed disclosure relating to Prosecution witnesses, including any requests for redactions which require approval by the Chamber, by 16 February 2015 and directed that any responses thereto be filed no later than 23 February 2015.¹
2. On 16 February 2015, the Prosecution filed applications for delayed disclosure² and for non-standard redactions³ ('Prosecution Applications').
3. On 18 February 2015, the Chamber requested the Victims and Witnesses Unit ('VWU') to provide any observations on the Prosecution Applications by 25 February 2015.⁴
4. On 19 February 2015, the defence team for Mr Ntaganda ('Defence') filed an urgent motion requesting an extension of time limit to respond to the Prosecution Applications ('Defence Motion').⁵

¹ Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, 9 October 2014, ICC-01/04-02/06-382, para. 9(b), including footnote 15. (A corrected version was filed on 28 November 2014: ICC-01/04-02/06-382-Corr).

² Prosecution application for delayed disclosure, ICC-01/04-02/06-461-Conf-Exp, with annexes A-C3. Confidential redacted (ICC-01/04-02/06-461-Conf-Red) and public redacted (ICC-01/04-02/06-461-Red2) versions were filed on 17 February 2015. A corrigendum of Annex A was filed on 19 February 2015.

³ Prosecution request for redactions, ICC-01/04-02/06-462-Conf-Exp, with annexes A-C3. Confidential redacted (ICC-01/04-02/06-462-Conf-Red) and public redacted (ICC-01/04-02/06-462-Red2) versions were notified on 17 February 2015. Corrigenda of annexes C1 and C3 were filed on 17 February 2015 and a corrigendum of annex A was filed on 19 February 2015.

⁴ E-mail from a Legal Officer of the Chamber to VWU on 18 February 2015 at 11:58.

⁵ Urgent Motion on Behalf of Mr NTAGANDA Requesting an Extension of Time Limit to Respond to the "Prosecution request for redactions" and the "Prosecution application for delayed disclosure", ICC-01/04-02/06-466-Conf.

5. The Prosecution⁶ and the Legal Representatives of Victims⁷ informed the Chamber that they do not oppose the Defence Motion.
6. On 23 February 2015, the Chamber informed the parties and participants, by way of e-mail, that an extension of deadline until 4 March 2015 had been granted for the Defence to respond to the Prosecution Applications.⁸ The Chamber now provides its reasoning for that decision.

II. Submissions and analysis

7. The Defence requested an extension of the deadline until 9 March 2015 to file its response to the Prosecution Applications.⁹
8. The Defence submitted that: (i) it would need to have the benefit of the VWU's observations, due to be filed by 25 February 2015, before it could respond;¹⁰ (ii) the deadline established by the Chamber was shorter than the 21 day period provided for in the Regulations;¹¹ (iii) the confidential redacted versions of the Prosecution Applications were only notified on 17 February 2015, which resulted in a 'drastic' reduction of the time available for the Defence response;¹² (iv) given the 'direct impact' of disclosure on the rights of the accused, a 'comprehensive response' to the Prosecution Applications is 'essential', and existing Defence resources would not enable such a response within the specified time limit;¹³ (v) the extent of the Prosecution Applications 'could not' have been anticipated by the Defence and required that the 'statutory time limit' for responses apply;¹⁴ and (vi) the

⁶ E-mail from Prosecution to the Chamber on 20 February 2015 at 18:58.

⁷ E-mail from Legal Representatives of Victims to the Chamber on 23 February 2015 at 8:59.

⁸ E-mail from Legal Officer of the Chamber to the Defence on 23 February 2015 at 16:27.

⁹ Defence Motion, ICC-01/04-02/06-466-Conf, page 8.

¹⁰ Defence Motion, ICC-01/04-02/06-466-Conf, paras 9-12.

¹¹ Defence Motion, ICC-01/04-02/06-466-Conf, paras 13-14.

¹² Defence Motion, ICC-01/04-02/06-466-Conf, para. 15.

¹³ Defence Motion, ICC-01/04-02/06-466-Conf, paras 16-20.

¹⁴ Defence Motion, ICC-01/04-02/06-466-Conf, paras 21-23.

Defence's lack of access to the *ex parte* annexes 'compounds the difficulties' faced by it in responding within the timeline set by the Chamber.¹⁵

9. The Defence submitted that the Defence Motion was filed at the earliest possible time.¹⁶ Recognising that an extension of time limit to 9 March 2015 would result in a decision on the Prosecution Applications after the 2 March 2015 disclosure deadline, the Defence proposes an initial disclosure with redactions as requested by the Prosecution pending a final decision of the Chamber.¹⁷
10. The Chamber recalls that, pursuant to Regulation 35(2) of the Regulations, 'good cause' must be shown for an extension of deadline.
11. The Chamber notes that the confidential redacted versions of the Prosecution Applications were not notified until 17 February 2015, and that this would impact the ability of the Defence to meet the deadline which had previously been established by the Chamber. The Chamber also recognises the importance of the issue of disclosure to Defence preparations for trial. Having considered each of the submissions as well as the nature and the scope of the Prosecution Applications, the Chamber is not persuaded that an extension of time until 9 March 2015 has been objectively justified. The Chamber nonetheless finds that good cause has been shown and that it is justified to grant an extension of the deadline originally established by the Chamber.
12. The Chamber additionally recalls that pursuant to the Redactions Protocol¹⁸ the material in question should be disclosed to the Defence, with redactions in place, pending the Chamber's determination.

¹⁵ Defence Motion, ICC-01/04-02/06-466-Conf, paras 24-25.

¹⁶ Defence Motion, ICC-01/04-02/06-466-Conf, paras 26-29.

¹⁷ Defence Motion, ICC-01/04-02/06-466-Conf, paras 30-31.

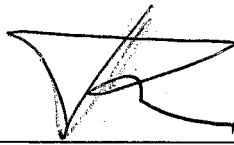
¹⁸ Decision on the Protocol establishing a redactions regime, ICC-01/04-02/06-411-Anx, para. 49.

13. In addition to disclosing this redacted material, the Prosecution may also provide further information as proposed in the Prosecution Applications, such as summaries, to assist the Defence's understanding of the redacted material pending the Chamber's determination.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

CONFIRMS that any responses from the Defence to the Prosecution Applications are to be filed not later than 4 March 2015.

Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Geoffrey Henderson

Dated 27 February 2015
At The Hague, The Netherlands