

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 2 March 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

**Public redacted version of "Prosecution's request pursuant to
regulation 35", 2 March 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 Trial Chamber VI (“the Chamber”) to grant a variation of the time limit from 2 March 2015 to disclose the transcriptions of “Radio Candip” broadcasts when these are completed (“Request”).
2. The Prosecution has good cause to request the variation.
3. Below, the Prosecution also provides information on certain relevant developments in relation to [REDACTED].

Confidentiality

4. This document is classified as “Confidential, *EX PARTE*”- only available to the Prosecution” pursuant to regulation 23*bis*(1) of the RoC and Rule 81(2) of the Rules of Procedure and Evidence,[REDACTED]. The Prosecution will file a redacted version of this filing.

Procedural Background

5. On 9 October 2014, the Chamber set 31 January 2015 and 2 March 2015 as the deadlines for disclosure¹ and set 16 February 2015 as the deadline for any applications for delayed disclosure relating to Prosecution witnesses² and requests for redactions.³

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

² Order, para.9(b).

³ Order, fn.15.

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 attempting to locate and additional witnesses whom the Prosecution is considering adding to its witness list.⁴

Prosecution submissions

“Radio Candip” broadcasts

7. The Prosecution collected audio copies of five “Radio Candip” broadcasts⁵ [REDACTED]. The Prosecution will disclose them to the Defence by the 2 March 2015 deadline set by the Chamber as incriminatory, and notes that the broadcasts equally contain information that is material to the preparation of the Defence.
8. The Prosecution also intends to provide corresponding transcriptions of the broadcasts to assist the Chamber, parties and participants in their review of the material. However, the transcriptions will not be available until after 2 March 2015. This is due to the fact that the Prosecution has prioritised the transcription of a number of interviews conducted under article 55(2) of the Rome Statute (“Statute”). Moreover, the broadcasts are in both French and Swahili, requiring additional time to transcribe in two languages.
9. The Prosecution estimates that the transcription of these broadcasts will be completed by 30 April 2015. Therefore, pursuant to regulation 35 of the RoC, the Prosecution requests the Chamber to grant a variation of the time limit from 2 March 2015 for the disclosure of these transcriptions until they are

⁴ ICC-01/04-02/06-426-Conf-Exp, para.6 with confidential redacted version at ICC-01/04-02/06-426-Conf-Red, para.6; ICC-01/04-02/06-426-Conf-Exp-AnxD (“15 January 2015 filing”).

⁵ The audio copies of these broadcasts bear the following ERN numbers: DRC-OTP-2077-0083, DRC-OTP-2077-0084, DRC-OTP-2077-0085, DRC-OTP-2077-0086 and DRC-OTP-2077-0087.

completed, by 30 April 2015. The Prosecution will disclose the transcription as soon as it is completed, which may be in advance of the 30 April 2015 deadline.

10. 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”.⁶ There is good cause to vary the time limit in this case since the transcriptions will assist the Chamber and the parties in the review of the broadcasts. The Accused will not be unduly prejudiced by the delay since audio copies of the broadcasts will be disclosed on 2 March 2015. Therefore, the variation of the time limit as requested will not “derail the proceedings from their ordained course”.⁷

[REDACTED]

11. [REDACTED]⁸

12. [REDACTED]

13. [REDACTED]

14. [REDACTED]

15. [REDACTED]

16. [REDACTED]

⁶ 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 with his/her obligations”, ICC-01/04-01/06-834, para.7. The Appeals Chamber has further decided to extend a time limit where it was in the “interest of justice”, ICC-01/04-01/10-505, para.11.

⁷ ICC-01/04-01/07-653, para.6.

⁸ [REDACTED]

[REDACTED]

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

Relief Requested

21. Based on the foregoing, and pursuant to regulation 35 of the RoC, the Prosecution asks that the Chamber grant its Request.



Fatou Bensouda,
Prosecutor

Dated this 2nd day of March 2015
At The Hague, The Netherlands