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TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

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 'Urgent Defence Request on behalf of Mr NTAGANDA seeking to postpone the presentation of the Prosecution's Case until 2 November 2015 at the earliest'", 14 April 2015,
ICC-01/04-02/06-557-Conf-Exp

Source: The 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. The Defence requests a postponement of the presentation of the Prosecution's case until 2 November 2015 at the earliest ("Defence Request").¹
2. The Office of the Prosecutor ("Prosecution") opposes this five-month delay to the start of trial. First, the Defence Request amplifies the burden placed on its preparations by the Prosecution's disclosures in 2015² – disclosures that were made in accordance with deadlines proposed by the Defence.³ Similarly, the Prosecution's requests for delayed disclosure and redactions were limited in number and scope.⁴
3. Second, the Prosecution's case and key evidence have been set out in a clear and detailed manner in the Pre-Trial Brief, which should assist the Defence in its review rather than detract from it. In addition to the Pre-Trial Brief, the Defence has several analytical tools which facilitate its understanding of the Prosecution's case: an in-depth analysis chart, detailed confirmation of charges presentations and decision, and the Updated Document Containing the Charges ("Updated DCC").
4. Third, the requested adjournment until 2 November 2015 would hamper the Prosecution in the presentation of its case. The natural flow of the Prosecution's

¹ ICC-01/04-02/06-541-Conf-Exp-Red2, para.2 with public redacted version at ICC-01/04-02/06-541-Red, para.2 ("Defence Request").

² The Defence refers, *inter alia*, to the "vast quantity of material recently disclosed by the Prosecution" and states that "[i]n sum, as a direct result of the timing and scope of disclosure by the Prosecution, it is not possible for the Defence to acquire the minimum required understanding of the Case against the Accused to be ready for the presentation of the Prosecution's Case on 2 June 2015." See Defence Request, paras.29, 35.

³ See ICC-01/04-02/06-T-13-ENG ET, p.17, lns.21-25 (open session); ICC-01/04-02/06-382-Corr, para.8. Indeed, all the deadlines set by the Chamber on key issues related to preparations for trial have largely reflected the deadlines proposed by the Defence. The Chamber set 16 February 2015 as the deadline for the filing of the Updated Document Containing the Charges ("Updated DCC") and ordered the Prosecution to file its Pre-Trial Brief three months before the commencement of trial, see ICC-01/04-02/06-450, pp.39-40. The Chamber later granted a seven-day extension for the filing of the Pre-Trial Brief until 9 March 2015, see ICC-01/04-02/06-467. These deadlines largely reflect those proposed by the Defence on these issues, see ICC-01/04-02/06-T-13-ENG ET, p.56, lns.17-20 (open session); ICC-01/04-02/06-T-18-CONF-ENG, p.36, lns.21-25 (open session). The setting of 2 June 2015 as the date of commencement of trial also reflected the Defence's request on this issue, see ICC-01/04-02/06-T-13-ENG ET, p.56, lns.3-4 (open session).

⁴ *Contra*, Defence Request, para.27.

case would be interrupted if there were to be a five-month delay between opening statements and the presentation of the evidence. It would equally be confusing to victims, witnesses and the public at large, who would expect the case to continue immediately following opening statements. Fourth, the Court will need to adjourn by 30 November 2015 to move to the permanent premises.⁵ The judicial recess follows quickly thereafter. As a result, if the start of trial were moved to 2 November 2015 the trial would be held for only a few weeks this year.

5. Nevertheless, given the Defence's submission that it is not ready for trial, the Prosecution does not oppose a reasonable postponement up to 2 September 2015, with opening statements starting on that date. As an alternative, the Prosecution proposes starting trial on 2 June 2015 and presenting its evidence immediately thereafter at a reduced pace, at least until 2 September 2015.
6. Lastly, should Trial Chamber VI ("Chamber") grant the Defence's request for a postponement, the Prosecution requests that all disclosure deadlines be extended, expiring three months before the start of the new trial date.

Confidentiality

7. This response is classified as "Confidential, *EX PARTE* – only available to the Prosecution and Defence" pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), consistent with the classification of the Defence Request. The Prosecution will file a redacted version of this response.

⁵ ICC-02/04-01/15-206, para.34.

Prosecution's Submissions

I. The Prosecution's disclosures complied with the Chamber's deadlines

8. The Defence Request magnifies the burden placed on its preparations by the Prosecution's disclosures in 2015. As shown below, the Prosecution disclosed a significant volume of evidence by 30 January 2015 – *within* the disclosure deadline set by the Chamber. However, the review of these materials should neither be as complex nor as time-consuming as the Defence Request implies. Moreover, the Defence knows the sources of the Prosecution's allegations because the identity of all but one Prosecution witness has been disclosed.

a. The timing and nature of the Prosecution's disclosures in 2015

9. Following a Defence request to complete disclosure three months before the start date of the trial,⁶ on 9 October 2014 the Chamber set 31 January and 2 March 2015 as the deadlines for disclosure and 2 June 2015 as the date for the start of trial.⁷

10. From 15 January 2015 to date, the Prosecution disclosed 5,611 items as incriminatory.⁸ This is by no means "exceptional"⁹ given the nature of this material and the assistance it can provide the Defence.

11. 3,284 of these items are photos and videos taken during the process of exhumation and *post mortem* examinations as well as in preparation for 360 degree presentations depicting the excavated sites and surrounding areas at

⁶ See ICC-01/04-02/06-T-13-ENG ET, p.17, lns.21-25 (open session).

⁷ ICC-01/04-02/06-382-Corr, para.8.

⁸ 5,589 documents were disclosed as incriminatory between 15 January 2015 and 2 April 2015, the date of the Defence Request. The Defence incorrectly state that the Prosecution disclosed 5,201 items as incriminatory on 31 January 2015, see Defence Request, para.20. The 5,201 figure corresponds to the number of items disclosed as incriminatory evidence *between* 15 January and 20 February 2015, which is the date on which the Prosecution provided the Defence with disclosure statistics, following a Defence request to this effect. As a result, this figure does not take into account evidence disclosed between 20 February and the date of the Defence Request.

⁹ *Contra* Defence Request, para.15.

[REDACTED].¹⁰ Although the Defence is entitled to examine each photo and all the video footage, this need not be a highly time-consuming exercise. Indeed, the Defence review will be further aided by the disclosure of the exhumation experts' reports by 17 April 2015.

12. Another 1,286 of the 5,611 documents had previously been disclosed.¹¹ The Defence had these documents prior to 15 January 2015 and, therefore, could have reviewed them. That some of these documents were redisclosed because they no longer required certain redactions does not imply that the Defence needed to re-review and/or re-analyse them *in toto*.¹² The Defence takes the Prosecution's statement that "redactions require multiple reviews" out of context since it related to the care required to *apply* the necessary redactions and prevent inadvertent disclosure; this statement does not apply to the review of previously reviewed documents now disclosed with fewer redactions.¹³

13. Therefore, 4,570 of the 5,611 documents disclosed as incriminatory after 15 January 2015 require little, or limited further, review. The remaining 1,041 documents disclosed after 15 January 2015 comprise 9,021 pages.

14. The same applies to the 65 videos disclosed after 15 January 2015.¹⁴ 47 of these videos depict the process of exhumation and *post mortem* examination of the

¹⁰ The materials related to the exhumations and *post mortem* examinations, as well as to the 360 degree presentation, were disclosed in two discrete disclosure packages on 30 January 2015. See ICC-01/04-02/06-441-Conf-AnxA, pp.27-104 and 105-135. Lead Counsel was informed at the disclosure meeting on 30 January 2015 that incriminating evidence disclosure packages 28 and 29 contained materials related to the exhumations.

¹¹ 375 of the 1,286 had been disclosed as incriminatory and the rest as potentially exculpatory or otherwise material to the Defence's preparation.

¹² *Contra* Defence Request, para.28.

¹³ See Defence Request, para.28, fn.4 citing ICC-01/04-02/06-65, para.19 which states, *inter alia*, that "significant time is devoted to individual assessments of evidence and to meaningful discussions about the disclosure value of certain documents, not only for the evidentiary viewpoint but also in terms of any necessary redactions or requests for protective measures. Redactions depend on the *current* security situation which requires not only an up-to-date assessment for all witnesses but also an assessment of redactions in place in the *Lubanga* proceeding. Redaction requests can be very intricate, as information requiring redaction is woven throughout one document. Care must be taken, particularly where the risk of missing an element that should be redacted is higher, as is the case with lengthy documents or witness statements. Accordingly, redactions require multiple reviews."

¹⁴ See Defence Request, para.26.

human remains from [REDACTED]. Six of the remaining videos had previously been disclosed pursuant to rule 77 of the Rules of Procedure and Evidence. The remaining 12 audio/video materials amount to 22 hours.

15. Further, the Defence's assertion that 1,104 additional items of incriminatory evidence were disclosed on 2 March 2015¹⁵ is incorrect: only 387¹⁶ items were disclosed as incriminatory on this date, 74 of which had previously been disclosed.

16. The Prosecution acknowledges that since 2 March 2015 it has disclosed 47 new¹⁷ incriminatory items. These items relate to P-0901, P-0907 and P-0911, three witnesses in relation to whom the Prosecution had requested delayed disclosure or a variation of the disclosure deadline.

b. The Prosecution's list of witnesses and the sources of the Prosecution's allegations

17. The Prosecution submitted its witness list in compliance with the Chamber's orders.¹⁸ On 15 January 2015, the Prosecution provided an initial list¹⁹ which

¹⁵ Defence Request, para.23.

¹⁶ The Prosecution notes that 268 of these items were formally disclosed, while for the remaining 119 documents only advance copies were provided on 2 March 2015; the latter were formally disclosed on 17 March. ICC-01/04-02/06-496, para.3; ICC-01/04-02/06-520, para.3.

¹⁷ The Prosecution notes that the following 148 documents, which had all previously been disclosed before 2 March 2015, were also re-disclosed after this date: (i) 9 documents received from the United Nations for which the restrictions under article 54(3)(e) were lifted on 2 March 2015, *see* ICC-01/04-02/06-520; (ii) 107 documents received by the Prosecution between 27 February and 2 March 2015 from the Office of the High Commissioner for Human Rights, *see* ICC-01/04-02/06-520; (iii) 28 photographs or documents containing photographs of witnesses, which the Prosecution re-disclosed pursuant to the Chamber's Decision on Redactions, *see* ICC-01/04-02/06-550-Conf-Exp with public redacted version at ICC-01/04-02/06-550-Red; ICC-01/04-02/06-546-Conf-Exp; ICC-01/04-02/06-545-Conf-Exp with confidential redacted *ex parte* version at ICC-01/04-02/06-545-Conf-Exp-Red and public redacted version at ICC-01/04-02/06-545-Red2 ("Decisions on Redactions"); and (iv) 4 documents related to P-0806 which the Prosecution re-disclosed pursuant to the Chamber's Decision on Delayed Disclosure, *see* ICC-01/04-02/06-537-Conf-Exp with confidential *ex parte* redacted version at ICC-01/04-02/06-537-Conf-Exp-Red and public redacted version at ICC-01/04-02/06-537-Red2 ("Decision on Delayed Disclosure").

¹⁸ ICC-01/04-02/06-382-Corr, para.9(a).

¹⁹ ICC-01/04-02/06-426-Conf-Exp-AnxA with confidential redacted version at ICC-01/04-02/06-426-Conf-AnxA-Red.

included 60 witnesses.²⁰ The identity of 15 of these witnesses was redacted in the 15 January 2015 filing.²¹ On 6 February 2015, the Prosecution filed a lesser redacted version of this list, lifting redactions to the identity of seven witnesses, which had been disclosed to the Defence on 30 January.²²

18. On 2 March 2015, again pursuant to the Chamber's order,²³ the Prosecution filed its final list of witnesses.²⁴ This list included 15 more witnesses than the initial list for a total of 75 witnesses. The identity of all but four²⁵ of these 75 witnesses was disclosed to the Defence on 2 March 2015. Since that time, the identity of three²⁶ of these four witnesses has been disclosed to the Defence.

19. Therefore, the disclosure of evidence and additions to the Prosecution's witness list since 15 January 2015 have not resulted in the Defence having to gain the required knowledge of "two thirds of the Prosecution's Case".²⁷

20. The Defence also argues that the disclosure of numerous documents since 15 January 2015 and the addition of trial witnesses have prevented it from "understanding the sources of the Prosecution allegations".²⁸ Despite limited non-standard redactions,²⁹ the Defence should be able to understand the sources of the Prosecution's allegations, because it is aware of the identity of all but one of the Prosecution's witnesses.³⁰ Nor is it correct for the Defence to suggest that standard redactions applied to Prosecution items are extensive or affect the Defence's ability to understand the items.

²⁰ ICC-01/04-02/06-426-Conf-Exp-AnxA.

²¹ ICC-01/04-02/06-426-Conf-AnxA-Red.

²² ICC-01/04-02/06-426-Conf-AnxA-Red2.

²³ ICC-01/04-02/06-382-Corr, para.9(c).

²⁴ ICC-01/04-02/06-491-Conf-Exp-AnxA with confidential redacted version at ICC-01/04-02/06-491-Conf-AnxA-Red.

²⁵ P-0806, P-0888, P-0901, and P-0911, *see* ICC-01/04-02/06-491-Conf-AnxA-Red. The identity of P-0901 was disclosed on 20 March 2015 and that of P-0806 and P-0911 was disclosed on 10 April 2015. The identity of P-0888 will be disclosed within two days [REDACTED].

²⁶ P-0806, P-0901, P-0911.

²⁷ Defence Request, para.5, 18.

²⁸ Defence Request, para.39.

²⁹ *See* para.33 and fn.53 below.

³⁰ *See* paras.29-30 below.

c. Impact of disclosure on Defence preparation

21. To a certain extent, the Defence could have anticipated the extent of disclosure since 15 January 2015.³¹ Indeed, on 14 August 2014, the Prosecution provided advance notice of material in relation to which it intended to request redactions, and which it therefore intended to disclose.³² In this filing it referred, *inter alia*, to 2,400 items collected during exhumation missions, 300 photographs and 37 witness statements.³³
22. Nevertheless, the Prosecution accepts that the Defence may require some additional time to review the incriminatory items disclosed to date, particularly in light of the change in the composition of the Defence team.³⁴
23. The Defence may also require time to review the 673 items disclosed as potentially exculpatory or pursuant to rule 77 after 15 January 2015, 147 of which were disclosed on 2 March 2015. The Prosecution affirms that through the disclosure of material as potentially exculpatory or pursuant to rule 77, the Defence is aware of instances in which the Prosecution has interviewed a potential witness and decided not to rely on such witness' evidence.³⁵

II. The Prosecution made limited requests for delayed disclosure and redactions

24. The Defence assertion that the Prosecution submitted 11 applications for non-standard redactions and delayed disclosure after the 16 February 2015 deadline set by the Chamber³⁶ is incorrect.

³¹ *Contra* Defence Request, para.30.

³² ICC-01/04-02/06-352-Conf-AnxB. As rehearsed above at para.11, the material related to the exhumations makes up roughly half of the evidence disclosed since 15 January 2015. The Prosecution notes that of the 2,400 items collected during exhumation missions it had foreseen would require redactions, only 5 items were disclosed in redacted form.

³³ ICC-01/04-02/06-352-Conf-AnxB.

³⁴ *See* Defence Request, paras.53-58.

³⁵ *See* Defence Request, para.38.

³⁶ Defence Request, paras.42-43.

25. On 16 February 2015, the Prosecution filed two applications, one for delayed disclosure³⁷ and the other for “non-standard redactions”,³⁸ pursuant to the Chamber’s order.³⁹ Between 23 February and 19 March 2015, the Prosecution made nine filings related to these two applications, in which it withdrew its requests for delayed disclosure or redactions in relation to ten witnesses or individuals for whom adequate protective measures were in place,⁴⁰ requested authorisation to provide a summary of witness statements,⁴¹ and submitted proposed redactions to the materials of four witnesses.⁴²

26. Therefore, of these nine filings after the 16 February 2015 deadline relevant to delayed disclosure or redactions, only three requested *additional* redactions. These three filings related to one trial witness and one non-trial witness.⁴³

a. Delayed disclosure

27. The Prosecution’s requests for delayed disclosure and redactions were limited in number and scope.

28. By 25 February 2015, only four witnesses remained in the Request for Delayed Disclosure, and by 19 March this number was reduced to three witnesses.⁴⁴

³⁷ 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 (“Request for Delayed Disclosure”).

³⁸ 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 (“Request for Redactions”).

³⁹ ICC-01/04-02/06-382-Corr, para.9(b).

⁴⁰ P-0109, P-0758, P-0761, P-0773, P-0887, P-0898, P-0901, P-0907, P-0914 and P-0918, *see* ICC-01/04-02/06-470; 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; ICC-01/04-02/06-523-Conf with public redacted version at ICC-01/04-02/06-523-Red.

⁴¹ ICC-01/04-02/06-473-Conf-Exp with confidential redacted version at ICC-01/04-02/06-473-Conf-Red and public redacted version at ICC-01/04-02/06-473-Red2; ICC-01/04-02/06-492-Conf-Exp with public redacted version at ICC-01/04-02/06-492-Red; ICC-01/04-02/06-497.

⁴² ICC-01/04-02/06-486; ICC-01/04-02/06-488-Conf-Exp.; ICC-01/04-02/06-492-Conf-Exp with public redacted version at ICC-01/04-02/06-492-Red; ICC-01/04-02/06-493.

⁴³ Two (ICC-01/04-02/06-492-Conf-Exp with public redacted version at ICC-01/04-02/06-492-Red; ICC-01/04-02/06-497) of these three filings, dated 2 and 4 March 2015, concerned P-0040, and the third (ICC-01/04-02/06-488-Conf-Exp), dated 2 March 2015, sought redactions to a document related to P-0883 which was identical to one which was included in the Request for Redactions.

⁴⁴ *See* fn.40 above.

29. On 2 April 2015, the Chamber authorised the delayed disclosure of the identity of P-0888 and P-0911 but rejected the request in relation to P-0806.⁴⁵ Pursuant to this decision, the Prosecution disclosed P-0806's identity on 10 April 2015. The Prosecution also informed the Defence of P-0911's identity on this date [REDACTED].

30. As of today's date, the Defence is informed of the sources of all allegations against the Accused except those emanating from P-0888.⁴⁶ Pursuant to the Chamber's decision, the Prosecution will disclose the identity of this witness within two days of [REDACTED].

b. Redactions

31. The Defence incorrectly asserts that the Prosecution applied "extensive"⁴⁷ redactions to "virtually all material disclosed",⁴⁸ preventing it from gaining "the required knowledge and understanding of these items".⁴⁹

32. Such redactions are limited in the disclosed material,⁵⁰ have been lifted in many cases, and could not prevent the Defence from understanding the items themselves or the substance of the Prosecution's allegations.⁵¹ Standard redactions are limited to certain types of information and do not affect the readability of the documents. Further, the Redaction Protocol provides that a party is entitled to raise objections to another party's application of standard redactions.⁵² To date, the Defence has not raised any such objections.

⁴⁵ Decision on Delayed Disclosure.

⁴⁶ See Defence Request, paras.37, 39.

⁴⁷ Defence Request, para.27.

⁴⁸ Defence Request, para.39(iii).

⁴⁹ Defence Request, para.27.

⁵⁰ From over 12,000 documents currently disclosed as incriminatory, potentially exculpatory or pursuant to rule 77, approximately 950 contain redactions. The remaining documents – over 11,000, more than 90 % of the materials disclosed – contain no redactions.

⁵¹ *Contra* Defence Request, para.39.

⁵² See ICC-01/04-02/06-411-AnxA.

33. Out of the more than 12,000 documents currently disclosed as incriminatory, potentially exculpatory or pursuant to rule 77, approximately 40 documents have been disclosed with non-standard redactions to date.⁵³ As noted above, these non-standard redactions currently prevent the Defence from knowing the *sources* of allegations by only one witness.⁵⁴

III. [REDACTED]

34. [REDACTED]⁵⁵[REDACTED]⁵⁶

35. [REDACTED]⁵⁷ [REDACTED]⁵⁸ [REDACTED]

IV. The tasks outlined by the Defence do not justify a five-month delay

36. The Defence asserts that it needs more time to carry out or finalise a number of tasks.⁵⁹ Based on the information currently available to the Prosecution, the Defence has not justified the requested five-month delay.

37. On 2 December 2014, the Defence indicated that its “investigations are ongoing”.⁶⁰ However, the Defence now asserts that “it would not be possible to conduct any further investigations before the presentation of the Prosecution’s case”.⁶¹ The Prosecution has no access to the reasons advanced as the information is redacted. In the absence of valid reasons, the Chamber should not consider this as a factor relevant to the requested delay. Incidentally, the Defence has not justified the redactions applied to the *ex parte* version of its Request.

⁵³ The Prosecution notes that as at 2 April 2015, the date of the Defence Request, approximately 60 items had been disclosed with non-standard redactions. However, since 2 April, non-standard redactions were lifted from about 20 of these documents pursuant to the Chamber’s Decision on Delayed Disclosure and Decisions on Redactions.

⁵⁴ See Defence Request, para.39.

⁵⁵ [REDACTED]

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ [REDACTED]

⁵⁹ Defence Request, paras.83-96.

⁶⁰ ICC-01/04-02/06-T-17-CONF-ENG, p.12, lns.14-15 (open session).

⁶¹ Defence Request, para.52.

38. With regard to the review of disclosed material,⁶² unless there are further reasons which are unknown to the Prosecution, it is to be presumed that since August 2014, when Lead Counsel was appointed, and more so since November 2014, when the Defence team was completed, substantial progress has been made.

39. [REDACTED]⁶³

40. On 11 September 2014, the Defence stated that it was trying to put its strategy together,⁶⁴ yet this is still listed as one of the pending tasks based on which it requires a five-month delay.⁶⁵ Finally, as noted above, the Prosecution's Pre-Trial Brief and other submissions set out the Prosecution's case in detail, thereby significantly reducing the time necessary for the Defence to analyse the Prosecution's case.⁶⁶

V. A shorter delay than requested may be justified

41. The ICTR Appeals Chamber has stated that "it is not possible to set a standard of what constitutes adequate time to prepare a defence. The length of the preparation period depends on a number of factors specific to each case".⁶⁷ Based on the specific circumstances of this case and the factors raised in the Defence Request, only a limited extension of time appears warranted to enable the Defence to complete its preparations.

42. The Defence states that proceeding as currently scheduled would neither be in the interests of justice nor in the interests of the Accused,⁶⁸ and that granting the Defence Request "will not have serious repercussions on his right to be tried

⁶² See Defence Request, paras.84-85.

⁶³ See Defence Request, para.96.

⁶⁴ See ICC-01/04-02/06-T-13-ENG ET, p.18, lns.5-6 (open session).

⁶⁵ See Defence Request, para.90.

⁶⁶ See Defence Request, paras.86-87.

⁶⁷ *Ngirabatware v. The Prosecutor*, ICTR-99-54-A, Decision on Augustin Ngirabatware's appeal of decisions denying motions to vary trial date, 12 May 2009, para.28.

⁶⁸ Defence Request, paras.2, 13, 100, 101.

within a reasonable delay”.⁶⁹ While this right primarily pertains to the Accused, the Chamber should also consider the perspective of victims. Indeed, it has been stated that the right to an expeditious trial also “offers a vital and concomitant guarantee to victims of war crimes and crimes against humanity [...] Victims and relatives of victims are entitled to have those accused of hideous offences which have caused them so much grief to be tried expeditiously”.⁷⁰

43. Nevertheless, the Prosecution fully acknowledges the importance of the need for the Defence to be able to adequately prepare for trial. Accordingly, the Prosecution would not oppose either: (i) starting on 2 June 2015 and proceeding at a reduced pace; or (ii) delaying the start of trial until 2 September 2015.

44. Proceeding at a reduced pace, at least for the first few months of trial, could entail, for example, holding three full-day court sessions per week rather than the usual four or five full-day sessions held in a number of other cases. This would allow the Defence more time to prepare its cross-examination and to tend to other relevant matters.

45. Alternatively, rather than a five-month delay, the Chamber could grant a three-month delay to the start of trial.

46. Should the Chamber opt to delay the start of the Prosecution’s case for any period of time, the opening statements should similarly be delayed. Holding opening statements at any time other than immediately preceding the start of the evidentiary phase of the trial disrupts the trial schedule.

⁶⁹ Defence Request, para.12.

⁷⁰ *Prosecutor v Norman et al.*, SCSL-2003-09-PT, Decision on the Application for a Stay of Proceedings and Denial of Right to Appeal, 4 November 2003, para 8.

VI. The disclosure calendar should be extended

47. The Chamber set 2 March 2015 as the deadline for disclosure, three months prior to the scheduled start of trial, in line with the Defence's request to that effect.⁷¹ The Prosecution had also proposed the imposition of a disclosure deadline three months prior to the start of trial.⁷² The Chamber also set 17 April 2015 as the deadline for disclosure of expert reports.⁷³
48. In this light, should the Chamber set a new date for trial, the disclosure calendar should be modified accordingly.

Conclusion and Request

49. Based on the foregoing, while the Prosecution opposes the requested five-month delay, it proposes that, in the circumstances, it may be more appropriate to either (i) start on 2 June 2015 and proceed at a reduced pace; or (ii) delay the start of trial to 2 September 2015.
50. The Prosecution requests that the deadlines for disclosure which have been set should be extended accordingly to three months prior to any new trial date.



Fatou Bensouda
Prosecutor

Dated this 15th day of April 2015
At The Hague, The Netherlands

⁷¹ See ICC-01/04-02/06-T-13-ENG ET, p.17, lns.21-25 (open session).

⁷² See ICC-01/04-02/06-352, para.9; ICC-01/04-02/06-T-13-ENG ET, p.20, ln.10 – p.21, ln.2 (open session).

⁷³ See ICC-01/04-02/06-382-Corr, paras.9(d)-(e).