

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **16 April 2015**

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

**Prosecution's list of expert witnesses and request pursuant to regulation 35 to
vary the time limit for disclosure of the report of one expert witness**

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 Office of the Prosecutor ("Prosecution") provides a list of the expert witnesses it intends to call at trial. The Prosecution and Defence engaged in discussions about the possibility of jointly instructing and calling expert witnesses but ultimately were unable to come to any agreement in this regard.¹
2. In accordance with the 9 October 2015 Order² of Trial Chamber VI ("Chamber"), the Prosecution will disclose the expert reports of each of its 13 expert witnesses by 17 April 2015 with one exception. Pursuant to regulation 35 of the Regulations of the Court ("RoC"), the Prosecution requests an extension of three weeks to file the report of the Prosecution's expert on trauma.

Procedural History

3. On 21 July 2014, the Chamber issued an order scheduling a status conference on 20 August 2014 and provided an agenda that included the topic of joint instructions of experts.³ The Parties submitted written observations on 14 August 2014.⁴ In its observations, the Prosecution indicated its intention to call expert witnesses and advised that it would engage in discussions with new Defence counsel about such joint instruction.⁵
4. The status conference was rescheduled for 11 September 2014.⁶ On 8 September 2014, in its additional observations, the Prosecution proposed to engage in *inter partes* discussions about the joint instructions of experts in

¹ ICC-01/04-02/06-541-Conf-Exp-Red2, para.10.

² ICC-01/04-02/06-382-Corr, para.9(e).

³ ICC-01/04-02/06-339, para.5(e).

⁴ ICC-01/04-02/06-352 (Prosecution Submissions) and ICC-01/04-02/06-364 (Defence Submissions).

⁵ ICC-01/04-02/06-352, paras.34-35.

⁶ ICC-01/04-02/06-358.

September 2014 and to begin the process of jointly instructing experts in December 2014.⁷

5. During the 11 September 2014 status conference, the Defence indicated that it would be in a position to engage in discussions about joint instructions of experts with the Prosecution as of January 2015.⁸
6. On 9 October 2014, the Chamber ordered that the “disclosure of the reports of any expert witness, who are subject to joint instruction [...], or who will be called by the Prosecution, is to be completed by 17 April 2015.”⁹
7. On 22 January 2015, the Chamber issued an order scheduling a status conference on 17 February 2015 and provided an agenda that included the progress of discussions on the possibility of joint instruction of expert witnesses.¹⁰
8. During the 17 February 2015 status conference, the Prosecution informed the Chamber that the Parties had discussed jointly instructing experts but were unable to reach final conclusions, and had agreed to meet again on 16 March 2015 with a view to determining whether joint instruction would be possible.¹¹ The Defence indicated that “due to the state of disclosure and the work to be done before trial, it is very difficult for [them] to play a meaningful role in any discussions on the joint instruction of experts.”¹²
9. On 17 March 2015, the Prosecution provided the Defence with a list of potential experts according to area of expertise. Further to the Defence’s

⁷ ICC-01/04-02/06-365-Red, para.44

⁸ ICC-01/04-02/06-T-13-ENG, p.42, lns.9-17.

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

¹⁰ ICC-01/04-02/06-429, para.3(d).

¹¹ ICC-01/04-02/06-T-18-CONF-ENG, p.21, lns.2-5.

¹² ICC-01/04-02/06-T-18-CONF-ENG, p.21, lns.14-16.

request, the Prosecution provided additional information on the topic areas for each expert on 1 April 2015.¹³

Prosecution's Submissions

I. List of expert witnesses

10. The Prosecution intends to call the following expert witnesses at trial, listed below according to the topic upon which they will offer their expertise:

Context (political and historical)

- i. Mr Roberto Garretón,¹⁴ Special Rapporteur for the United Nations Commission of Human Rights on the DRC (1994-2001)

Naming conventions and civil status/registration in the DRC

- ii. Dr Kambayi Bwatshia,¹⁵ Historian

Children associated with armed groups

- iii. Ms Radhika Coomaraswamy,¹⁶ Special Representative of the Secretary-General on Children and Armed Conflict (2006-2012)

¹³ The Legal Representatives of Victims were sent the list of potential experts on 14 April 2015 in compliance with the Chamber's 13 April 2014 decision, ICC-01/04-02/06-554, para.8.

¹⁴ Witness DRC-OTP-P-0931.

¹⁵ Witness DRC-OTP-P-0932.

¹⁶ Witness DRC-OTP-P-0885.

Sexual violence

- iv. Dr Lynn Lawry,¹⁷ Epidemiologist
- v. Ms Radhika Coomaraswamy, Special Rapporteur on Violence against Women (1994-2003)

Trauma (symptoms, behaviours and cognitive impact)

- vi. Dr John Yuille,¹⁸ Forensic Psychologist

Psychological effects of trauma with respect to four Prosecution witnesses (P-0018, P-0019, P-0108 and P-0113)

- vii. Ms Maeve Lewis,¹⁹ Psychotherapist

Physical effects of trauma with respect to four Prosecution witnesses (P-0018, P-0019, P-0108 and P-0113)

- viii. Dr Sophie Gromb Monnoyeur,²⁰ Professor of Forensic Medicine

Satellite imagery

- ix. Mr Lars Bromley,²¹ Principal Analyst, UN Institute for Training and Research Operational Satellite Applications Programme (UNITAR/UNOSAT)

¹⁷ Witness DRC-OTP-P-0453.

¹⁸ Witness DRC-OTP-P-0933.

¹⁹ Witness DRC-OTP-P-0938.

²⁰ Witness DRC-OTP-P-0939.

²¹ Witness DRC-OTP-P-0810.

Exhumations

- x. Dr Derek Congram,²² Archaeologist and Anthropologist
- xi. Dr Laurent Martrille,²³ Pathologist
- xii. Dr Lars Uhlin-Hansen,²⁴ Pathologist
- xiii. Mr Adrien Sivignon,²⁵ Photographer
- xiv. Dr Arnoud Kal,²⁶ Forensic Scientist

II. Request for variation of the time limit to file one expert report

11. Under regulation 35(2) of the RoC, a Chamber may extend a time limit 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 with his/her obligations.”²⁷

The Appeals Chamber has further decided to extend a time limit where it was in the “interest of justice.”²⁸

12. There is good cause to vary the time limit in this case.

²² Witness DRC-OTP-P-0420.

²³ Witness DRC-OTP-P-0935.

²⁴ Witness DRC-OTP-P-0937.

²⁵ Witness DRC-OTP-P-0934.

²⁶ Witness DRC-OTP-P-0945.

²⁷ ICC-01/04-01/06-834, para.7.

²⁸ ICC-01/04-01/10-505, para.11.

13. The Prosecution applied diligent and timely efforts to secure a trauma expert and began contacting potential experts in August 2014. Several individuals were identified, assessed and considered with respect to their expertise and availability, but finding an individual with suitable expertise who was available to participate in the proceedings proved difficult.
14. Once the proposed trauma expert, Dr John Yuille, was identified, making contact with him was delayed on account of his being abroad. The Prosecution first contacted Dr Yuille on 18 March 2015 and learned that he was away until 30 March 2015. The Prosecution made arrangements to speak with Dr Yuille on 30 March 2015. Dr Yuille agreed to lend his considerable expertise in the area of forensic psychology with respect to trauma and its effects on memory and a person's ability to recall and narrate his or her experience in a court setting to these proceedings as an expert witness. On 1 April 2015, the Prosecution provided Dr Yuille with a letter of instruction. Due to previous commitments and his professional schedule, Dr Yuille advised he would be unable to provide his report by 17 April 2015, but that he could do so by 6 May 2015.
15. The purpose of eliciting expert evidence is to provide a Trial Chamber with specialised information and expertise to assist in its assessment of evidence and ultimate determination. Dr Yuille will provide highly relevant, useful and unique expertise to these proceedings, which will be able to assist the Chamber in its search for truth. The more complete, informed and focused his expert report is, the greater assistance it can provide to the Parties and the Chamber, and the more valuable a witness Dr Yuille will be.
16. There is minimal, if any, prejudice to the Accused in such a delay. The Prosecution has already provided a synopsis of Dr Yuille's area of expertise to the Defence (and Legal Representatives of Victims). On 17 April 2015 the

Prosecution will disclose Dr Yuille's *curriculum vitae*, which sets out his qualifications and experience, including his numerous appearances as an expert witness for the prosecution and defence in other jurisdictions.

17. Additionally, the Prosecution will provide the reports of the other 12 expert witnesses upon whom it intends to rely by the 17 April 2015 disclosure deadline. Further, the Prosecution is seeking a relatively short three-week delay in order to accommodate the expert's professional schedule.

III. Revised version of Mr Lars Bromley's expert report

18. The Prosecution will disclose the report on satellite imagery analysis prepared by Mr Lars Bromley by the 17 April 2015 deadline. However, the Prosecution notes that Mr Bromley has advised that he encountered certain difficulties in: (a) being able to analyse certain satellite images obtained only more recently; and (b) obtaining or verifying some of the GPS coordinates necessary to analyse each location of interest (for the purpose of assessing the existence of property destruction). The Prosecution is endeavouring to assist in obtaining GPS coordinates if this is feasible, but has encountered security and logistical difficulties in doing so to date. Mr. Bromley may provide a revised version of his report once he has had sufficient time to review new images and if he receives additional information and coordinates for specific locations, allowing him to review and analyse the corresponding satellite images. Should it be necessary to provide a revised report, the Prosecution will make a request pursuant to regulation 35 of the Regulations to vary the time limit in order to file this revised report.

Relief Requested

19. Based on the foregoing, and pursuant to regulation 35 of the RoC, the Prosecution requests that the Chamber vary the deadline for the disclosure of the expert report of Dr Yuille until 8 May 2015.



Fatou Bensouda
Prosecutor

Dated this 16th day of April 2015

At The Hague, The Netherlands