

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **19 May 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**

**Public redacted version of “Prosecution’s request pursuant to regulation 35 to vary the time limit for disclosure of [REDACTED]’s recent interview”, 18 May 2015, ICC-01/04-02/06-598-Conf**

**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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**REGISTRY**

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**Detention Section**

**Victims Participation and Reparations  
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## Introduction

1. On [REDACTED], the Office of the Prosecutor (“Prosecution”) re-interviewed [REDACTED] to obtain information on three UPC/FPLC lists of recruits,<sup>1</sup> one of which names him. [REDACTED] is on the list of witnesses the Prosecution intends to call to testify during the trial. The three UPC/FPLC lists were collected on [REDACTED].<sup>2</sup> Due to conflicting mission and disclosure priorities, it was not possible for the Prosecution to meet [REDACTED] in the short time between the collection of the documents in [REDACTED] and the 2 March 2015 disclosure deadline. The earliest possible interview period was in [REDACTED].
2. Pursuant to regulation 35 of the Regulations of the Court (“RoC”), and rule 76 of the Rules of Procedure and Evidence, the Prosecution requests a variation of the deadline to rely upon the audio-recording of the interview with [REDACTED] conducted pursuant to article 55(2) of the Rome Statute (“Request”). The audio recording can be disclosed immediately if the Chamber so authorises. The Prosecution will disclose the transcript and translation of this interview as soon as each is completed. The transcript is expected to be ready by 22 May 2015 and the translation by 15 June 2015.
3. Disclosure of the brief re-interview as incriminatory will not cause undue prejudice to the Defence. The audio recording of the interview will be disclosed three months before the start of the evidentiary phase of the trial and well in advance of [REDACTED]’s testimony.

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<sup>1</sup> DRC-OTP-2081-0003; DRC-OTP-2081-0005; DRC-OTP-2081-0072.

<sup>2</sup> The three lists were disclosed on 10 April 2015, [REDACTED].

### **Confidentiality**

4. This filing is classified as “Confidential” pursuant to regulation 23*bis*(1) of the RoC since it refers to confidential witness information and interview dates. The Prosecution will file a redacted version of this filing.

### **Procedural Background**

5. On 9 October 2014, the Chamber set 2 March 2015 as the deadline for disclosure of Prosecution materials<sup>3</sup> and 2 June 2015 as the commencement date for the trial.<sup>4</sup>
6. During the 22 April 2015 Status Conference, the Chamber postponed opening statements until the second or third week of July 2015 and decided that the hearing of evidence will provisionally commence in the week of 17 August 2015.<sup>5</sup> Although the Chamber rejected the Prosecution’s request for disclosure deadlines to be revised in conformity with any changes to the trial commencement date, it noted that this was “without prejudice to the potential needs to reconsider or reset discrete deadlines”.<sup>6</sup>

### **Prosecution’s Submissions**

7. Under regulation 35(2) of the RoC, a Chamber may extend a time limit “if good cause is shown”. The Chamber may extend the time limit after it has elapsed if it can be demonstrated that the extension of the time limit could not be sought prior to its expiration for reasons outside a participant’s control.
8. In granting a request under regulation 35 where the applicable deadline had elapsed, the Single Judge of Pre-Trial Chamber II in this case took into

<sup>3</sup> ICC-01/04-02/06-382-Corr, paras.8, 9(d).

<sup>4</sup> ICC-01/04-02/06-382-Corr, para.9(f).

<sup>5</sup> The Chamber also noted that until decided otherwise, deadlines to be calculated on the basis of the start of trial shall take 7 July as a commencement date for trial, ICC-01/04-02/06-T-19-ENG, p.7, lns.7-18 (open session).

<sup>6</sup> ICC-01/04-02/06-T-19-ENG, p.7, ln.22 – p.8, ln.3 (open session).

consideration the “circumstances at the time”, including upcoming major disclosure deadlines in the case.<sup>7</sup>

9. In *Katanga and Ngudjolo*, Trial Chamber II held that even where the conditions of regulation 35(2) are not met the Chamber may authorise the late addition of incriminating evidence pursuant to its powers under articles 64(6)(d) and 69(3) of the Statute to order the production of evidence that it deems necessary for the determination of the truth, provided it can be shown that:

(i) the new material is either significantly more compelling than other items of evidence already disclosed to the Defence, or brings to light a previously unknown fact which has a significant bearing upon the case, and (ii) the late addition will not cause undue prejudice to the Defence in relation to the latter's right to have adequate time and facilities to prepare in accordance with article 67(l)(b) of the Statute.<sup>8</sup>

10. In this case, the requested variation of the time limit will not “derail the proceedings from their ordained course”<sup>9</sup> and is not unduly prejudicial.

**[REDACTED]’s recent interview**

11. [REDACTED] is on the Prosecution’s list of witnesses who will testify during the trial. The Prosecution disclosed [REDACTED]’s previous interview transcripts in May, July and November 2013 and re-disclosed several of them with fewer redactions in January 2015.<sup>10</sup>

<sup>7</sup> See ICC-01/04-02/06-175-Conf, paras.11-13, with public redacted version at ICC-01/04-02/06-175-Red. See also ICC-01/05-01/08-3046, paras.8, 9 and 13.

<sup>8</sup> ICC-01/04-01/07-2325, para.15 (footnotes omitted).

<sup>9</sup> ICC-01/04-01/07-653, para.6.

<sup>10</sup> DRC-OTP-0161-2979; DRC-OTP-0161-2999; DRC-OTP-0161-3030; DRC-OTP-0161-2865; DRC-OTP-0161-2890; DRC-OTP-0161-2929; DRC-OTP-0161-2945; DRC-OTP-0161-2777; DRC-OTP-0161-2809; DRC-OTP-0161-2855; DRC-OTP-0161-2458; DRC-OTP-0161-2649; DRC-OTP-0161-2697; DRC-OTP-0161-2729; DRC-OTP-0161-2762; DRC-OTP-0161-2502; DRC-OTP-0161-2522; DRC-OTP-0161-2535; DRC-OTP-0161-2563; DRC-OTP-0161-2602; DRC-OTP-0215-0019; DRC-OTP-2055-0079; DRC-OTP-2055-0089; DRC-OTP-2055-0109; DRC-OTP-2055-0127; DRC-OTP-2055-0146; DRC-OTP-2055-0159; DRC-OTP-2055-0163; DRC-OTP-2055-0192; DRC-OTP-2055-0202.

12. The Prosecution met with [REDACTED] for limited additional questioning on [REDACTED]<sup>11</sup> in order to show the witness three UPC/FPLC recruitment lists<sup>12</sup> provided by [REDACTED] on [REDACTED].<sup>13</sup> [REDACTED]'s name appears on one of the lists.<sup>14</sup>
13. The disclosure of the further interview at this stage will not cause undue prejudice to the Defence: the interview is focused and brief (just over 75 minutes) and the hearing of witness evidence will not commence until the week of 17 August 2015, which is three months from now. Additionally, [REDACTED] is not part of the first group of witnesses to testify.
14. Should the Chamber grant the Request, the Prosecution will immediately disclose the audio recording of the interview as an item upon which the Prosecution intends to rely during the trial. The Prosecution is able to disclose the transcription of the audio recording by 22 May 2015, when the transcription will be completed.
15. Although this Request is made solely in relation to the audio recording as the original evidence of the interview under rule 112,<sup>15</sup> the Prosecution equally intends to disclose the transcription of the audio recording as an item upon which it intends to rely during trial. This is because the disclosure category of the transcription should mirror the disclosure category of the audio recording on which it is entirely based.<sup>16</sup> Accordingly, should its Request be granted, the

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<sup>11</sup> The ERN of the audio recording of this interview is DRC-OTP-2084-0611.

<sup>12</sup> DRC-OTP-2081-0003; DRC-OTP-2081-0005; DRC-OTP-2081-0072.

<sup>13</sup> [REDACTED].

<sup>14</sup> DRC-OTP-2081-0003.

<sup>15</sup> In *Banda*, the Appeals Chamber held that "[...] rule 76 requires the Prosecutor to disclose, prior to the trial, copies of statements of persons he or she intends to call to testify, irrespective of the form in which such statements are recorded. Disclosure serves to inform the accused person of the prior statements and likely future testimony of the witnesses against him or her, thereby enabling him or her to prepare and to conduct his or her defence. A complete audio- or video-record of the questioning of a person will provide the fullest and most accurate account of the questioned person's statements." ICC-02/05-03/09-295, para.27.

<sup>16</sup> The Kinyarwanda translation of the interview, which the Prosecution will disclose under rule 77, will be completed on or before 15 June 2015. The translation can only begin once the transcription has been completed.

Prosecution will file an updated List of Evidence in the case record to reflect the addition of the audio recording and transcription of the interview.<sup>17</sup>

### **Relief Requested**

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



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Fatou Bensouda  
Prosecutor

Dated this 19<sup>th</sup> day of May 2015

At The Hague, The Netherlands

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The Chamber has previously noted “the labour-intensiveness of the transcription process, and the existence of finite transcription and translation resources”, ICC-01/04-02/06-580, para.17.

<sup>17</sup> See the Chamber’s decision on amendments to the List of Evidence: ICC-01/04-02/06-T-19-ENG, p.11, ln.7 - p.12, ln.3 (open session).