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

Date: **5 June 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 Observations on the
Review of the Pre-Trial Detention of Bosco Ntaganda”,
4 June 2015, ICC-01/04-02/06-624-Conf**

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Document 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 the Defence

Mr Stéphane Bourgon
Mr Luc Boutin

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Introduction

1. Pursuant to the order of Trial Chamber VI ("Chamber") of 11 May 2015,¹ the Prosecution submits its observations on the periodic review of the pre-trial detention of Bosco NTAGANDA.
2. The Prosecution submits that the Accused's continued detention is necessary as the conditions warranting his detention under article 58(1) of the Statute persist. There are no changed circumstances that require modification of the previous decisions on interim release, including the most recent decision of this Chamber in which it ordered his continued detention ("Fifth Interim Release Decision").² Rather, with the imminent trial start date, the necessity for his continued detention is even greater in order to minimise any risks to the safety and security of witnesses, and the integrity of the proceedings.
3. There remains a pressing need for the Accused's detention under article 58(1)(b)(i) in order to secure his appearance, as well as under article 58(1)(b)(ii) in order to prevent obstruction of the court proceedings. The Accused has not been detained for an unreasonable period, nor has there been inexcusable delay by the Prosecution in the conduct of its case such that the Chamber need consider his release under article 60(4).

Procedural history

4. On 22 August 2006, Pre-Trial Chamber I issued a sealed warrant of arrest for the Accused.³ This warrant of arrest was made public on 28 April 2008.⁴ On 13 July 2012, Pre-Trial Chamber II issued the second warrant of arrest.⁵

¹ ICC-01/04-02/06-595.

² ICC-01/04-02/06-477.

³ ICC-01/04-02/06-2.

⁴ ICC-01/04-02/06-18.

5. On 20 March 2013, the Accused surrendered to the Court.⁶ He was transferred to the Court on 22 March 2013.⁷
6. On 18 November 2013, Pre-Trial Chamber II rejected the Accused's application for interim release.⁸ This decision was confirmed by a majority of the Appeals Chamber on 5 March 2014.⁹ Subsequently, on 17 March 2014¹⁰ and 17 July 2014,¹¹ Pre-Trial Chamber II found that the Accused's continued detention was necessary. On 31 October 2014¹² and 26 February 2015,¹³ this Chamber found there were no changed circumstances that would justify modifying the decision to continue the Accused's detention.

Confidentiality

7. This document is classified as Confidential, pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court, as it refers to matters contained in filings bearing the same classification level. The filing also contains sensitive and security-related information about Prosecution witnesses, including those in the Court's Protection Programme ("ICCPP"). The Prosecution will file a public redacted version.

Prosecution's Observations

8. The Accused's continued detention is necessary as the conditions in article 58(1) of the Statute continue to be met. There has been no change in the facts

⁵ ICC-01/04-02/06-36-Red.

⁶ ICC-01/04-02/06-44-Conf-Exp, para.1.

⁷ ICC-01/04-02/06-44-Conf-Exp, paras.3 and 4.

⁸ ICC-01/04-02/06-147.

⁹ ICC-01/04-02/06-271-Red (OA), paras.71 and 72.

¹⁰ ICC-01/04-02/06-284.

¹¹ ICC-01/04-02/06-335.

¹² ICC-01/04-02/06-391.

¹³ ICC-01/04-02/06-477.

underlying the Fifth Interim Release Decision, or any new facts that would require the Chamber to modify its ruling to continue the Accused's detention.¹⁴

9. As this Chamber stated in its prior decision, when addressing changed circumstances, the Prosecution is not required to re-establish the same underlying facts where these facts continue to apply.¹⁵

a) To ensure his appearance at trial (article 58(1)(b)(i))

10. There remains a pressing need for the Accused to remain detained in order to ensure his appearance at trial. In the "Fourth decision on Mr Ntaganda's interim release," this Chamber articulated a list of factors which the Pre-Trial Chamber found contributed to the risk that the Accused would not appear, including that: (i) he evaded justice for a lengthy period of time; (ii) his voluntary surrender was affected by the timeliness and manner in which it took place; (iii) he is facing numerous charges with the prospect of lengthy imprisonment if convicted; (iv) he is aware of the sentence imposed against his alleged co-perpetrator, Thomas Lubanga Dyilo; and (v) he has the financial means to abscond.¹⁶ These factors continue to apply.

b) To ensure the investigation and court proceedings are not endangered or obstructed (article 58(1)(b)(ii))

11. On 2 March 2015, the Prosecution disclosed the remainder of its incriminatory information against the Accused, and provided its list of witnesses,¹⁷ witness summaries¹⁸ and list of evidence.¹⁹ On 9 March 2015, the Prosecution filed its Pre-Trial Brief.²⁰ Very little information in these documents remains redacted, including identifying information about victims and Prosecution witnesses and

¹⁴ See ICC-01/05-01/08-1019, OA4, paras.51-52.

¹⁵ ICC-01/04-02/06-391, para.5(e), citing ICC-01/05-01/08-1019, OA4, para.51.

¹⁶ ICC-01/04-02/06-391, para.8.

¹⁷ ICC-01/04-02/06-491-Conf-AnxA-Red.

¹⁸ ICC-01/04-02/06-491-Conf-AnxB-Red.

¹⁹ ICC-01/04-02/06-491-Conf-AnxC-Red.

²⁰ ICC-01/04-02/06-503-Conf-AnxA-Red.

how their information relates to the charges against the Accused. As such, the identity of victims and witnesses, and the evidence that these individuals will provide against the Accused, is now fully known to him.

12. [REDACTED].²¹ [REDACTED]²² [REDACTED].²³ [REDACTED].²⁴ [REDACTED],²⁵ [REDACTED].²⁶ [REDACTED].²⁷ This new information constitutes a further, important basis for maintaining the Accused's pre-trial detention.

13. In light of the above, the continued detention of the Accused is necessary under article 58(1)(b)(ii) in order to ensure court proceedings are not obstructed, including by protecting victims and witnesses from interference and intimidation.

14. This Chamber previously referred to the factors listed by the Pre-Trial Chamber as contributing to the persisting risks justifying the Accused's continued detention, under article 58(1)(b)(ii), to ensure he does not obstruct or endanger the investigation or the court proceedings.²⁸ These factors include his continuing influence in the Democratic Republic of the Congo, his awareness of the identity of the majority of the Prosecution's witnesses, his documented history of violence and the gravity of the charges against him.

15. These factors all continue to apply. In fact, [REDACTED], is now heightened given the disclosure of all incriminatory material in largely unredacted form and the [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ ICC-01/04-02/06-391, para.10.

Relief

16. For the reasons set out above, the Prosecution requests that the Chamber maintain the detention of the Accused as the conditions warranting his detention continue to be met. There are no changed circumstances necessitating a modification of the decision to detain him.

17. In the event that the Chamber considers a proposal of conditional release, the Prosecution respectfully requests the opportunity to present further submissions.



Fatou Bensouda
Prosecutor

Dated this 5th day of June 2015
At The Hague, The Netherlands