

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 request pursuant to regulation 35 to vary the time limit for disclosure of [REDACTED]'s supplementary interview", 5 June 2015, ICC-01/04-02/06-629-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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Introduction

1. The Office of the Prosecutor (“Prosecution”) first interviewed [REDACTED] in 2006. The Prosecution disclosed his statement and related material in May and September 2013 and in January 2014, and re-disclosed them on 2 March 2015 as material upon which the Prosecution will rely at trial.
2. As the Prosecution informed Trial Chamber VI (“Chamber”) on 2 March 2015,¹ the Prosecution intended to conduct a supplementary interview with [REDACTED]. However, due to the logistical constraints detailed in the 2 March 2015 filing and reproduced below, this could only take place after the 2 March 2015 deadline for disclosure.² The Prosecution also informed the Chamber of its intention to file a request for a variation of this deadline on completion of the supplementary interview with [REDACTED].³
3. The Prosecution was able to meet [REDACTED] on [REDACTED]. During this interview, [REDACTED] confirmed aspects of his 2006 interview and provided additional detail relevant to the *Ntaganda* case.
4. Pursuant to regulation 35(2) of the Regulations of the Court (“RoC”), and rule 76 of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests a variation of the deadline to rely upon the audio recording of the interview with [REDACTED] (“Request”). The audio recording was disclosed on 5 June 2015. 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 30 June 2015.
5. Disclosure of [REDACTED]’s supplementary interview as incriminatory will not cause undue prejudice to the Defence. The audio recording of the interview will

¹ ICC-01/04-02/06-489-Conf-Exp, paras.3, 11-16 with public redacted version at ICC-01/04-02/06-489-Red (“2 March 2015 filing”). The information relevant to [REDACTED] was redacted from the public redacted version since it contained details concerning Prosecution investigations.

² 2 March 2015 filing, paras.12-13.

³ 2 March 2015 filing, para.16.

be disclosed sufficiently in advance of the evidentiary phase of the trial and well in advance of [REDACTED]'s testimony.

Confidentiality

6. 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

7. On 9 October 2014, the Chamber set 2 March 2015 as the deadline for disclosure of Prosecution materials⁴ and 2 June 2015 as the commencement date for the trial.⁵
8. On 2 March 2015, the Prosecution informed the Chamber that it planned to meet [REDACTED] for a supplementary interview but that the interview could not take place before 2 March 2015.⁶
9. 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 2015.⁷ 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”.⁸

⁴ ICC-01/04-02/06-382-Corr, paras.8, 9(d).

⁵ ICC-01/04-02/06-382-Corr, para.9(f).

⁶ 2 March 2015 filing.

⁷ 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).

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

10. In its 2 June 2015 decision on the conduct of proceedings, the Chamber confirmed that the presentation of evidence will commence on 24 August 2015.⁹

Prosecution's Submissions

11. 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.
12. 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 consideration the "circumstances at the time", including upcoming major disclosure deadlines in the case.¹⁰
13. In this case, the requested variation of the time limit will not "derail the proceedings from their ordained course"¹¹ and is not unduly prejudicial.

[REDACTED]'s supplementary interview

14. The Prosecution conducted an interview with [REDACTED] pursuant to article 55(2) of the Rome Statute between 29 November and 1 December 2006.¹² Although [REDACTED] mainly provided incriminating information, he also provided some potentially exculpatory information. For the reasons set out below, the Prosecution disclosed the recordings and transcriptions of [REDACTED]'s interview as well as other material relevant to [REDACTED] on

⁹ ICC-01/04-02/06-619, para.15.

¹⁰ 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.

¹¹ ICC-01/04-01/07-653, para.6.

¹² The relevant transcripts are those contained in the documents bearing the following ERN numbers: DRC-OTP-0173-0028, DRC-OTP-0173-0048, DRC-OTP-0173-0075, DRC-OTP-0173-0107, DRC-OTP-0173-0134, DRC-OTP-0173-0160, DRC-OTP-0173-0162, DRC-OTP-0173-0172, DRC-OTP-0173-0184, DRC-OTP-0173-0216, DRC-OTP-0173-0387, DRC-OTP-0173-0417, DRC-OTP-0173-0431, DRC-OTP-0173-0462, DRC-OTP-0173-0488.

27 May and 24 September 2013 as material containing information of a potentially exculpatory nature. On 10 January 2014, the Prosecution disclosed one additional item as information that is material to the Defence's preparation.

15. [REDACTED]. Arranging a meeting with the witness [REDACTED] required extensive planning [REDACTED].
16. On [REDACTED], the Prosecution met with [REDACTED] and his counsel in [REDACTED]. During this meeting, [REDACTED] informed the Prosecution that he was willing to meet with the Prosecution but only after [REDACTED].
17. The Prosecution was able to meet with [REDACTED] again on [REDACTED], for the limited purpose of securing his consent to testify and to confirm his continued willingness to meet for a focused supplementary interview. As a result of the witness's consent to testify, the Prosecution re-disclosed the material relevant to [REDACTED] as incriminatory material on 2 March 2015.
18. Due to logistical issues [REDACTED], it took time to determine an appropriate location for the supplementary interview.
19. During this supplementary interview, [REDACTED] confirmed and clarified certain aspects of his 2006 interview and provided additional detail relevant to the *Ntaganda* case.
20. The disclosure of the supplementary interview at this stage will not cause undue prejudice to the Defence. The interview is focused and largely covers the same areas covered in [REDACTED]'s 2006 interview, which was disclosed over a year ago. Further, the hearing of witness evidence will not commence until 24 August 2015 and [REDACTED].

21. The Prosecution disclosed the audio recording of the interview, [REDACTED], on 5 June 2015. The transcription of the audio recording will be completed by 30 June 2015.
22. Although this Request is made solely in relation to the audio recording as the original evidence of the interview under rule 112 of the Rules,¹³ 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.¹⁴ Accordingly, should its Request be granted, the 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.¹⁵

Relief Requested

23. 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 5th day of June 2015
At The Hague, The Netherlands

¹³ 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.

¹⁴ The Kinyarwanda translation of the interview, which the Prosecution will disclose under rule 77, can only begin once the transcription has been completed.

¹⁵ 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).