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

Date: 17 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

Prosecution's response to the Defence request in "Response on behalf of Mr Ntaganda opposing the Prosecution's request to change the order of appearance of its witnesses and Requests in the alternative for a delay following the hearing of the first three witnesses" or, in the alternative, leave to reply

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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Other

Introduction

1. On 17 February 2015, the Defence asserted that it required two months advance notice of the order of appearance for the first Prosecution witnesses¹ and the Chamber approved this notice period.² The Prosecution thereafter provided a list of the first witnesses it intended to call during the trial, 19 weeks (over four months) in advance of the start of evidentiary phase of the trial.³
2. On 4 June 2015, the Prosecution provided a proposed amendment to the order of appearance to the Defence and, on 5 June 2015,⁴ formally sought an amendment to the order of its first witnesses ("Prosecution's Application"). Five of the first witnesses remained the same; four witnesses were replaced by other witnesses. The proposed revised order was communicated to the Defence just short of three months before the start of the evidentiary phase of the trial.
3. The Defence opposes the Prosecution's Application, in part because it "impedes the fairness of the proceedings"⁵ to propose a change to the order of witnesses nearly three months before the start of witness testimony. The Defence also makes a new request in the alternative that the Chamber order: (i) a minimum delay of two months between the hearing of the first three witnesses and the following four witnesses; and (ii) a minimum of one week preparation time between each of these four witnesses ("Defence Request").⁶
4. The Prosecution responds to the Defence Request pursuant to regulation 24(1) of the Regulations of the Court ("RoC"), which provides a right to respond.⁷ In the

¹ ICC-01/04-02/06-T-18-CONF-ENG, p.15, lns.1-5.

² ICC-01/04-02/06-507, p.11.

³ ICC-01/04-02/06-552-Conf-AnxA.

⁴ The filing was notified on 8 June 2015.

⁵ ICC-01/04-02/06-655-Red2, para.7.

⁶ ICC-01/04-02/06-644-Red2, para.4.

⁷ See, ICC-01/09-02/11-886, para.8: "Additionally, given the new and distinct issues of law raised by the Defence Response and the nature of the relief requested therein, the Chamber finds that it is appropriate to treat it as a new request to which the Prosecution is entitled to fully respond. Pursuant to Regulations 24(1) and 34 of the Regulations, the Chamber sets a deadline for the Prosecution response of Friday, 31 January 2014."

alternative, the Prosecution seeks leave to reply to the new Defence requests pursuant to regulation 24(5) of the RoC.

Prosecution's Submissions

The Defence has significant notice of the appearance of the first witnesses

5. The Prosecution has provided vast notice of the first witnesses it intends to call at trial. While the Chamber ordered that two months was an appropriate period of notice,⁸ as proposed by the Defence,⁹ the Prosecution's first list of witnesses was in fact notified over four months before the start of the evidentiary phase of the case, which is scheduled to commence on 24 August 2015.
6. Subsequently, the Prosecution disclosed its revised witness list over 11 weeks – nearly three months - before the scheduled start of the evidentiary phase of the trial. Moreover, only four witnesses from the initial group of witnesses have been replaced; the other witnesses remain the same. Importantly, both the notice period for the first witness list and for the revised version exceeds the notice period sought by the Defence during the 17 February 2015 status conference.
7. The Defence acknowledges that it received the initial and the revised list of witnesses well in advance of the two months' notice ordered by the Chamber.¹⁰ The basis for the Defence's opposition to the Prosecution's Application and its request for new relief is, in essence, its repeated statement that it is not ready to proceed to trial notwithstanding the Chamber's orders.¹¹
8. Curiously, the Defence protests that it will not be in a position to effectively challenge the evidence provided by four of the witnesses who were moved up in the order of witness appearance due to "lack of time",¹² while at the same time

⁸ ICC-01/04-02/06-507.

⁹ ICC-01/04-02/06-T-18-CONF-ENG, p.15, lns.1-5.

¹⁰ ICC-01/04-02/06-644-Red2, para.8.

¹¹ ICC-01/04-02/06-644-Red2, paras.8 and 47.

¹² ICC-01/04-02/06-644-Red2, para.44.

asserting that it will show their evidence to be “self-serving narratives based on lies and false in many respects”.¹³ Either the Defence is unable to prepare for cross-examination despite 11 weeks’ notice, or it is already advanced in its preparation, as it appears to confirm.

9. Going forward, the Chamber has ordered that the Prosecution provide a list of its upcoming witnesses four weeks prior to the start of the next block of hearings.¹⁴ This is consistent with the Defence’s request on the appropriate notice period during trial.¹⁵ In other words, the notice period for the next group of witnesses during trial will be considerably shorter than it is now. The Prosecution will oppose ongoing requests to seek adjournments after witnesses, and one week breaks between witnesses, when the justification remains solely that the Defence is not ready. This will be the case when there has been appropriate advance notice in compliance with the Chamber’s orders.

Relief Requested

10. Based on the foregoing, the Prosecution opposes the Defence Request.
11. In the alternative, the Prosecution seeks leave to reply to the new Defence requests pursuant to regulation 24(5) of the RoC.



Fatou Bensouda
Prosecutor

Dated this 17th day of June 2015
At The Hague, The Netherlands

¹³ ICC-01/04-02/06-644-Red2, para.45.

¹⁴ ICC-01/04-02/06-619, para.16.

¹⁵ ICC-01/04-02/06-T-18-CONF-ENG, p.15, lns.1-5.