

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **30 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 Response to the "Confidential redacted version of 'Urgent motion on behalf of Mr Ntaganda seeking immediate adjournment of the proceedings until the necessary conditions are in place to ensure a fair trial'", 30 June 2015, ICC-01/04-02/06-685-Conf-Exp

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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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

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Other

Introduction

1. The Defence requests a postponement of the start of the trial, including of opening statements, [REDACTED] (“Defence Request”).¹
2. The Defence Request relies [REDACTED]. The Office of the Prosecutor (“Prosecution”) does not oppose a reasonable delay to the start of trial, including opening statements, [REDACTED]. Further, any adjournment must be balanced against [REDACTED] the preservation of witness evidence. To this end, the Prosecution may be required to seek measures under article 56 of the Rome Statute (“Statute”) to preserve evidence if any postponement is granted.
3. The Prosecution disagrees with the Defence’s assertion that the start of trial is contingent on determining whether [REDACTED].² Rather, the Chamber has and will evaluate whether [REDACTED] is sufficient to warrant the relief sought.
4. A reasonable adjournment will give the Defence an opportunity [REDACTED] to complete necessary investigations to start trial. To this end, the Prosecution proposes that the trial commence on 7 September 2015. This allows a two month delay for opening statements and the Prosecution’s first three witnesses. Once the first three witnesses have been heard, the Prosecution proposes that trial adjourn until 19 October 2015, the date currently set for the second evidentiary block. Thereafter, the Chamber’s current schedule would continue.
5. Were the Chamber to hear opening statements on 7 July 2015, followed by a lengthy adjournment before the presentation of evidence, it would defeat the purpose of opening statements. There should not be a lengthy delay between opening statements and the hearing of evidence. It is paramount that the Parties

¹ ICC-01/04-02/06-677-Conf-Exp-Corr-Red3, para.76. A confidential and a public redacted version were simultaneously filed: ICC-01/04-02/06-677-Conf-Corr-Red2 and ICC-01/04-02/06-677-Corr-Red.

² [REDACTED].

and participants present their case coherently and proximate in time to the actual hearing of the evidence.

Confidentiality

6. This response is classified as “Confidential, *EX PARTE* – only available to the Prosecution, Defence and Victims and Witnesses Unit” pursuant to regulation 23bis(2) of the Regulations of the Court, consistent with the classification of the Defence Request. The Prosecution will file a public redacted version.

Procedural History

7. On 16 June 2015, the Chamber ordered that opening statements commence on 7 July 2015.³
8. [REDACTED].⁴
9. [REDACTED].⁵
10. [REDACTED].⁶
11. [REDACTED].⁷

Prosecution’s Submissions

12. [REDACTED], on that basis, the Prosecution does not oppose a reasonable adjournment of the start of trial, including opening statements. [REDACTED].
13. [REDACTED].⁸ Lastly, any adjournment must also be balanced against [REDACTED] the preservation of witness evidence. The Prosecution therefore

³ ICC-01/04-02/06-649, para.5.

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

suggests that delaying the start of trial for two months until 7 September 2015 is a reasonable adjournment period. There would be a short break after the Prosecution's first three witnesses and the Chamber would reconvene on 19 October 2015 as scheduled for the second evidentiary block.

14. The Prosecution disputes the Defence submission concerning which issues need to be decided before the trial can commence. The Defence conflates the need to determine whether there is a sufficient basis to grant discrete requests [REDACTED], change to the order of witness appearance or [REDACTED]. To date, the Chamber has not been asked to determine whether [REDACTED]. Even if such a request is made in the future, it would not impact on the start date of the trial on substantive issues. The Chamber is only seized with requests for prophylactic measures squarely falling within the purview of article 68 (1), and which are completely separate, and accordingly independent from, [REDACTED]. In other words, the Chamber must decide whether the information [REDACTED] filed in support of [REDACTED] is sufficient to warrant a remedy, but it is not otherwise conducting a separate evaluation of the veracity of the information filed in support [REDACTED].⁹

15. In any event, the Chamber has already conducted a *prima facie* assessment of the supporting information [REDACTED].¹⁰ Contrary to the Defence's assertions, no further matters related to the [REDACTED]¹¹ [REDACTED].¹²

16. The Prosecution equally disputes the Defence's argument that not granting the Defence's Request would lead to a reasonable apprehension of bias, in particular because the premise of the Defence Request is ill-founded, at least in part. As set out above, the Prosecution submits that the Chamber cannot delay the start of

⁸ [REDACTED].

⁹ ICC-01/04-02/06-677-Conf-Exp-Red, para.3 and [REDACTED].

¹⁰ [REDACTED].

¹¹ ICC-01/04-02/06-677-Conf-Red, para.3 and [REDACTED].

¹² [REDACTED].

trial for an unreasonable period of time or until such time as the Chamber rules on issues that are not actually before it. These are legitimate reasons not to grant the full Defence request that, should the Chamber do so, would not raise a reasonable – or any – apprehension of bias.

17. Finally, the Prosecution sought [REDACTED]. The Prosecution takes serious issue with the Defence's claim that in requesting this relief the Prosecution had the aim of [REDACTED].¹³ [REDACTED].

Conclusion

18. Based on the foregoing, the Prosecution does not oppose a reasonable adjournment of the start of trial, including opening statements, until 7 September 2015.



Fatou Bensouda, Prosecutor

Dated this 30th day of June 2015
At The Hague, The Netherlands

¹³ [REDACTED].