

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 19 February 2015

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Decision on 'Prosecution's request pursuant to regulation 35 to vary the time limit
for disclosure of the Pre-Trial Brief'**

Decision 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 Bosco Ntaganda

Mr Stéphane Bourgon
Mr Luc Boutin

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 64(6)(f) of the Rome Statute and Regulation 35(2) of the Regulations of the Court ('Regulations'), issues this 'Decision on Prosecution's request pursuant to regulation 35 to vary the time limit for disclosure of the Pre-Trial Brief'.

I. Procedural history

1. On 6 February 2015, the Chamber ordered the Office of the Prosecutor ('Prosecution') to file, no later than three months prior to the commencement of trial, a pre-trial brief containing a summary of evidence intended to be relied upon at trial and explaining how that evidence relates to the charges.¹
2. On 12 February 2015, the Prosecution filed a request ('Prosecution Request') for a seven day extension of that deadline, from 2 March 2015 until 9 March 2015.²
3. On 13 February 2015, the Chamber directed, by way of e-mail, that any responses to the Prosecution Request should be made by way of oral submission at the status conference to be held on 17 February 2015.³
4. During the 17 February 2015 status conference the defence team for Mr Ntaganda ('Defence') opposed the Prosecution Request. The Legal Representatives of Victims ('LRVs') stated that they do not oppose the request.⁴

¹ Decision on the updated document containing the charges, 6 February 2015, ICC-01/04-02/06-450, para. 89.

² Prosecution's request pursuant to regulation 35 to vary the time limit for disclosure of the Pre-Trial Brief, 12 February 2015, ICC-01/04-02/06-454-Conf-Exp. Confidential redacted and public redacted versions of the Prosecution Request were notified on 13 March 2015 (ICC-01/04-02/06-454-Conf-Red and ICC-01/04-02/06-454-Red2).

³ E-mail from Legal Officer of the Chamber to the Defence and Legal Representatives of Victims ('LRVs') on 13 February 2015 at 13:06.

⁴ Transcript of hearing on 17 February 2015, ICC-01/04-02/06-T-18-CONF-ENG ET, page 35 line 12 – page 37, line 24.

II. Submissions and analysis

5. The Prosecution submitted that there is 'good cause' within the meaning of Regulation 35 of the Regulations to grant the requested extension on the basis that a number of witness interviews had to be conducted later than anticipated, due to factors outside the Prosecution's control.⁵ It submitted that it does not anticipate being in a position to properly process and incorporate such material by the specified deadline, and therefore the Defence would not receive as comprehensive a document as would otherwise be the case.⁶ The Prosecution submitted that this is especially so in light of the other trial preparation deadlines falling simultaneously on 2 March 2015.⁷
6. The Prosecution further submitted that there is minimal, if any, prejudice to the accused given: (i) the limited nature of the extension requested; (ii) the fact that the Defence will still receive the pre-trial brief twelve weeks prior to the start of trial; (iii) the prior notice which the Defence has already received of the charges and of the case against the accused; and (iv) the extensive material that was already at the Defence's disposal.⁸
7. The Defence opposed the Prosecution Request, submitting that the Prosecution failed to show 'good cause'.⁹ The Defence stated that the relevant disclosure deadlines, as well as the commencement date of trial, have been known to the Prosecution for a long time.¹⁰ In addition, the Defence submitted that the Prosecution was well aware that the Defence required the pre-trial brief three months before the commencement of the

⁵ Prosecution Request, ICC-01/04-02/06-454-Red2, paras 3-4, 15 and 20-26.

⁶ Prosecution Request, ICC-01/04-02/06-454-Red2, paras 4 and 28; ICC-01/04-02/06-T-18-CONF-ENG, page 38 lines 7-9.

⁷ Prosecution Request, ICC-01/04-02/06-454-Red2, paras 4 and 29.

⁸ Prosecution Request, ICC-01/04-02/06-454-Red2, paras 3, 17-19; ICC-01/04-02/06-T-18-CONF-ENG, page 38 lines 12-17.

⁹ ICC-01/04-02/06-T-18-CONF-ENG ET, page 35, lines 12-17.

¹⁰ ICC-01/04-02/06-T-18-CONF-ENG ET, page 35, lines 18-20.

trial.¹¹ The Defence submitted that as the witness statements in question will be taken in the course of February, the Prosecution will therefore be in possession of all necessary information to file a pre-trial brief in conformity with the deadline as prescribed by the Chamber.¹²

8. Regarding prejudice, the Defence argued that the pre-trial brief is an 'essential tool' for it and that every day between receipt of the pre-trial brief and the commencement of trial is important.¹³
9. The Chamber considers that good cause has been shown for extension of the time limit. It notes, in particular, the explanations underlying the request and the fact that the delay in conducting the interviews in question arose primarily from reasons outside the Prosecution's direct control. The Prosecution therefore provided sufficient reasons that objectively justify its inability to comply with its procedural obligations as set out in the relevant order.¹⁴
10. The Chamber notes in that regard that although the interviews in question will be completed in February and prepared for disclosure by 2 March 2015, an additional layer of analysis is required to ensure that such material is accurately incorporated into the pre-trial brief.
11. The Chamber additionally recalls that a pre-trial brief, albeit of potentially significant assistance to the Defence, is not a statutory document, nor does it constitute material, the timely disclosure of which is a statutory requirement. Rather, it is one of several supplementary documents designed to provide additional assistance and notice to the Defence of the nature of the Prosecution's case and how the intended evidence relates to the charges.

¹¹ ICC-01/04-02/06-T-18-CONF-ENG ET, page 35, lines 20-24 and page 36, line 21 to page 37, line 8.

¹² ICC-01/04-02/06-T-18-CONF-ENG ET, page 36, lines 2-6.

¹³ ICC-01/04-02/06-T-18-CONF-ENG ET, page 36, lines 12-18, page 37 lines 8-10.

¹⁴ *See, in this regard, The Prosecutor v Thomas Lubanga Dyilo*, Appeals Chamber, Reasons for the "Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007" issued on the 16 February 2007, 22 February 2007, ICC-01/04-01/06-834, para 7.

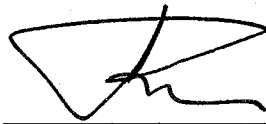
12. The Chamber has had regard to the nature of the material already in the Defence's possession. The Chamber also considers that the extension is likely to result in a more useful final document.

13. In this context, the Chamber considers the requested extension to be relatively *de minimus* and not of a nature which would prejudice the rights of the accused to conduct effective investigations or make the necessary preparations prior to the commencement of trial.


FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Prosecution Request.

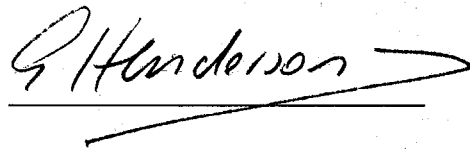
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Geoffrey Henderson

Dated 19 February 2015
At The Hague, The Netherlands