

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **18 December 2014**

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

Order setting deadlines for the filing of submissions on outstanding protocols

Order 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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64(3)(a), (6)(e) and 68(1) of the Rome Statute and Regulation 34 of the Regulations of the Court, issues the following 'Order setting deadlines for the filing of submissions on outstanding protocols.

Protocols

1. On 11 September 2014, the Chamber held its first status conference, during which the following protocols were discussed: i) Proposed mechanisms for exchange of information on individuals having dual status ('Protocol on dual status witnesses'); ii) Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses ('Protocol on vulnerable witnesses'); and iii) Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony ('Familiarisation Protocol') (together, the 'Protocols').¹ In its observations in preparation for the status conference, the Registry informed the Chamber that these Protocols have been adopted in other cases and that, upon instruction from the Chamber, it was ready to file them in the record of the case.²

2. The parties have indicated an intention to consult in relation to the Protocols.³ In that context, during the status conference held on 2 December 2014, the Prosecution suggested a timeline for the making of submissions on the Protocols, as follows:

¹ Transcript of Hearing dated 11 September 2014, ICC-01/04-02/06-T-13-ENG ET, page 24, line 17 to page 25, line 7.

² Registry submission pursuant to "Order Scheduling a Status Conference and Setting a provisional Agenda", 14 August 2014, ICC-01/04-02/06-350, paras 3-7.

³ Prosecution Submissions in Preparation for the 17 October 2014 Status Conference, 14 October 2014, ICC-01/04-02/06-385, paras 34-35; Transcript of Hearing dated 2 December 2014, ICC-01/04-02/06-T-17-CONF-ENG ET, page 17, line 1 to page 18, line 21.

- A. 23 January 2015 for the proposed Protocol on dual status witnesses;
and
- B. 6 February 2015 for the proposed (i) Protocol on vulnerable witnesses;
and (ii) the Familiarisation Protocol.
3. It was noted that the Prosecution, possibly jointly with the Defence, would be making an application to the Chamber for authorisation to prepare witnesses, and that the determination of the Chamber on that matter would impact the form of the protocol on familiarisation to be adopted.⁴
4. The Legal Representatives of Victims ('LRVs') and the Victims and Witnesses Unit ('VWU') submitted that they should be involved in the consultations process in respect of the three Protocols.⁵
5. In the interests of certainty and expeditiousness, the Chamber finds it appropriate to formalise deadlines for the submissions relating to the Protocols. In doing so it has been guided by the submissions made. Noting that the Registry had suggested filing the Protocols in the form previously adopted in other proceedings, the Chamber, with a view of striving for coherence among the different Chambers of the Court, instructs the Registry to file them in the record of the case as the basis for subsequent submissions.
6. Without prejudice to any future decision regarding the participation of victims, the Chamber considers that the LRVs should be involved in the discussions regarding all three Protocols.
7. The Chamber further agrees that the VWU should be involved in the discussions regarding the three Protocols as any change to the existing models would affect its work.⁶

⁴ ICC-01/04-02/06-T-17-CONF-ENG ET, page 17, lines 11-14.

⁵ ICC-01/04-02/06-T-17-CONF-ENG ET, page 19, line 2 to page 20, line 13.

8. The Chamber therefore directs the parties, participants and VWU to expeditiously conclude discussions on the Protocols and make submissions in accordance with the timelines outlined below. The Chamber wishes to emphasise that, in the event that the parties reach an agreement as to the proposed protocols, joint submissions are welcome and shall also be filed at the date set below for submissions.

Witness List

9. The Chamber recalls that it has directed the Prosecution to file its provisional witness list by 15 January 2015, in *ex parte* and confidential redacted formats.⁷ On 2 December 2014, the Defence indicated that, at the time of submission of the provisional witness list, the Chamber should also be provided with a list of other witnesses whom the Prosecution is considering, or attempting to locate, in order to provide finality in relation to ongoing investigations.⁸ The Prosecution opposed that request to the extent it was intended to curtail Prosecution investigations.⁹
10. The Chamber notes that deadlines for provision of the final witness and evidence lists have been already established.¹⁰ Nonetheless, the Chamber considers that provision of such a supplementary list to the Chamber, to the extent possible and on an *ex parte* basis, would be of assistance for planning purposes. The Chamber nonetheless emphasises that it will not consider the Prosecution bound by the contents of that list.

⁶ ICC-01/04-02/06-T-17-ENG ET, page 19, line 22 to page 20, line 13.

⁷ Corrigendum of “Order Scheduling a Status Conference and Setting the Commencement Date for the Trial”, 9 October 2014, ICC-01/04-02/06-382-Corr, para. 9(a) (Corrigendum filed on 28 November 2014).

⁸ ICC-01/04-02/06-T-17-CONF-ENG ET, page 8, line 24 to page 9, line 19.

⁹ ICC-01/04-02/06-T-17-CONF-ENG ET, page 14, lines 17-24.

¹⁰ ICC-01/04-02/06-382-Corr, para. 9.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Registry to submit the draft Protocols into the record, in accordance with paragraph 5 above, by 22 December 2014;

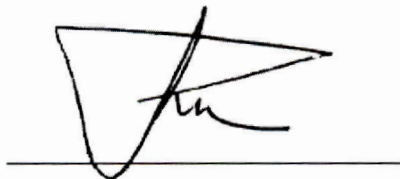
DIRECTS the Prosecution, the Defence, the LRVs and the VWU to file their submissions on the draft Protocol on dual status witnesses, as filed by the Registry, by 23 January 2015;

DIRECTS the Prosecution, the Defence, the LRVs and the VWU to file their submissions on the draft Protocol on vulnerable witnesses, as filed by the Registry, by 6 February 2015;

DIRECTS the Prosecution, the Defence, the LRVs and the VWU to file, by 6 February 2015, their submissions on the draft Familiarisation Protocol, as filed by the Registry or, in the alternative;

DIRECTS the parties to file any request for witness preparation no later than 6 February 2015, along with a proposed witness preparation protocol, as well as the appropriate protocol on familiarisation.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Geoffrey Henderson

Dated 18 December 2014

At The Hague, The Netherlands