

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 19 March 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**

**Recommendation to the Presidency on holding part of the trial in the State  
concerned**

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**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Mr Patrick Craig

**Victims Participation and Reparations  
Section**

**Others**

The Presidency

**Trial Chamber VI** ('Chamber')<sup>1</sup> of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda* ('Ntaganda case'), having regard to Articles 3, 62, 64(2) and 68 of the Rome Statute ('Statute') and Rule 100 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Recommendation to the Presidency on holding part of the trial in the State concerned'.

## **I. Procedural history**

1. On 17 October 2014, the Chamber instructed the Registry to prepare a report on the feasibility and the security implications of holding part of the trial 'in the [Democratic Republic of the Congo ('DRC')] itself or some nearby location'.<sup>2</sup>
2. On 21 November 2014, the Registry filed its report on the feasibility of the proposal ('First Report').<sup>3</sup>
3. On 28 November 2014, the Office of the Prosecutor ('Prosecution'),<sup>4</sup> the defence team for Mr Ntaganda ('Defence'),<sup>5</sup> and, jointly, the Legal Representatives for Victims ('LRVs')<sup>6</sup> filed their responses to the First Report ('Prosecution Response', 'Defence Response' and 'LRV Response', respectively).

<sup>1</sup> Where 'Chamber' is used in this decision it refers to both Trial Chamber VI as composed by the Presidency's 'Decision replacing a judge in Trial Chamber VI', 18 March 2015, ICC-01/04-02/06-521 and to the chamber in its previous composition.

<sup>2</sup> Transcript of hearing of 17 October 2014, ICC-01/04-02/06-T-15-ENG ET, page 19, lines 4-12.

<sup>3</sup> Registry Report pursuant to oral order of 17 October 2014, ICC-01/04-02/06-404. The Registry Report is contained in the confidential *ex parte*, Registry-only annex (ICC-01/04-02/06-404-Conf-Exp-Anx). A confidential redacted version was filed on 26 November 2014 as ICC-01/04-02/06-404-Conf-Anx-Red pursuant to an email communication from a Legal Officer of the Chamber to the Registry on 25 November 2014 at 10:24.

<sup>4</sup> Prosecution submissions on conducting part of the trial *in situ*, ICC-01/04-02/06-409-Conf-Exp, available to the Prosecution and Victims and Witnesses Unit ('VWU') only. A confidential redacted version, available to the Prosecution, Defence and VWU only, was filed concurrently as ICC-01/04-02/06-409-Conf-Red and notified on 1 December 2014. A public redacted version was filed on 1 December 2014 as ICC-01/04-02/06-409-Red2.

<sup>5</sup> Observations on behalf of Mr Ntaganda on the Possibility of Holding Part of the Trial in the DRC or Some Nearby Location, ICC-01/04-02/06-408-Conf.

<sup>6</sup> Joint submissions of the Common Legal Representatives on the possibility to hold a part of trial proceedings *in situ*, ICC-01/04-02/06-407-Conf.

4. At a status conference on 2 December 2014, the parties and participants made further submissions on the issue.<sup>7</sup>
5. Following a meeting with the Registry on 16 December 2014, the Registry were directed to provide a further report focusing on the possibility of holding the opening statements away from the seat of the Court, and containing a revised costing.<sup>8</sup> On 2 February 2015, the Registry filed the revised feasibility report ('Second Report').<sup>9</sup>
6. On 13 February 2014, the Prosecution filed a response to the Second Report ('Prosecution Supplementary Submissions').<sup>10</sup>
7. At a status conference on 17 February 2015, the parties and participants made further submissions on the issue.<sup>11</sup>
8. On 12 March 2015, the Registry filed a supplementary report providing certain additional information ('Supplemental Report').<sup>12</sup>
9. Having been authorised to do so,<sup>13</sup> on 16 March 2015, the LRVs<sup>14</sup> and Prosecution<sup>15</sup> filed further observations on the basis of the Supplemental

<sup>7</sup> Transcript of hearing of 2 December 2014, ICC-01/04-02/06-T-17-Conf-ENG ET, page 20, line 15 to page 29, line 11.

<sup>8</sup> See Order scheduling a status conference on 17 February 2015 and setting the agenda, 22 January 2015, ICC-01/04-02/06-429, para. 2.

<sup>9</sup> Registry revised feasibility report on trial *in situ*, ICC-01/04-02/06-438, with Annex A (filed confidential ex-parte Registry-only as ICC-01/04-02/06-438-Conf-Exp-AnxA, with a confidential redacted version filed as 'Annex B' but registered as ICC-01/04-02/06-438-Conf-AnxA-Red).

<sup>10</sup> Prosecution supplementary submissions on conducting part of the trial *in situ*, ICC-01/04-02/06-457-Conf-Exp (filed confidential ex-parte available only to the Prosecution, Defence and Victims and Witnesses Unit ('VWU'), and notified on 16 February 2015). Pursuant to the Chamber's instruction of 17 February 2015, the filing was reclassified as 'Confidential'.

<sup>11</sup> Transcript of hearing of 17 February 2015, ICC-01/04-02/06-T-18-Conf-ENG ET, page 23, line 14 to page 34, line 24.

<sup>12</sup> Addendum to 'Registry revised feasibility report on trial *in situ*' (ICC-01/04-02/06-438), dated 2 February 2015, ICC-01/04-02/06-505-Conf.

<sup>13</sup> E-mail from Legal Officer of the Chamber to the parties and participants on 12 March 2015 at 15:42.

<sup>14</sup> Victims' observations on the Addendum to 'Registry revised feasibility report on trial *in situ*' (ICC-01/04-02/06-438), dated 2 February 2015', ICC-01/04-02/06-512-Conf ('Victims' Further Observations').

<sup>15</sup> Prosecution additional observations on conducting part of the trial *in situ*, ICC-01/04-02/06-516-Conf ('Prosecution Further Observations').

Report. The Defence indicated that it did not have any further submissions to make in light of the Supplemental Report.<sup>16</sup>

## II. Submissions

### *i. Registry*

10. In relation to its First Report, the Registry noted that it had preliminarily assessed the possibility of hearings away from the seat of the Court during the first three to four days after the commencement of trial, including the possibility of conducting such hearings in the presence of the accused, in potential locations in the DRC and Tanzania (Arusha).<sup>17</sup> The Registry also assessed other practical issues in the identified locations, such the overall security situation, budgetary impact and technical issues, including the possibility of having a live broadcast and options for interpretation in the location of the hearings or via video-link from The Hague. While noting issues regarding security and detention, the Registry observed, *inter alia*, that Bunia may be a feasible location, and suitable for bringing the trial closer to the victims.<sup>18</sup>

11. In the Second Report, the Registry focused on Bunia alone as a potential location for the hearings, scoping the feasibility of a 'more basic hearing context', and made a proposal which it states 'supersedes the [First Report]'.<sup>19</sup> The Registry proposal in the Second Report outlines: (i) the relevant parameters and requirements of the hearings;<sup>20</sup> (ii) cooperation matters;<sup>21</sup> (iii) security risk assessment;<sup>22</sup> (iv) proposed potential sites for the

<sup>16</sup> E-mail from Defence to Trial Chamber VI Communications on 16 March 2015 at 15:58.

<sup>17</sup> First Report, ICC-01/04-02/06-404-Conf-Anx-Red, page 3.

<sup>18</sup> See First Report, ICC-01/04-02/06-404-Annex A, pages 7-8.

<sup>19</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, paras 1-4.

<sup>20</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, para. 4.

<sup>21</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, paras 5-8.

<sup>22</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, paras 9-16.

hearings to be convened;<sup>23</sup> (v) details of logistical concerns;<sup>24</sup> (vi) the proposed hearing set-up;<sup>25</sup> (vii) a communication strategy;<sup>26</sup> and (viii) a cost overview.<sup>27</sup> The Registry concludes that it would be feasible to hold the opening statements in Bunia,<sup>28</sup> subject to further issues being resolved, and that if the Chamber wishes to do so, 'the Registry would need to undertake immediate steps to ensure implementation in a timely manner'.<sup>29</sup> The Registry indicated that while cooperation by national authorities and other agencies appeared likely, an in-principle decision of the Chamber would be required for the Registry to proceed in further detail with logistical arrangements.<sup>30</sup>

12. In the Supplemental Report, the Registry provided additional information relating to: (i) security and logistical arrangements;<sup>31</sup> (ii) outreach to relevant communities;<sup>32</sup> and (iii) facilities for the presentation of evidence during opening statements.<sup>33</sup>

*ii. Prosecution*

13. In response to the First Report, the Prosecution indicated that, as a general principle, it 'supports holding trials, in whole or in part, close to affected victim communities where this is feasible and where the Court can ensure the protection of victims, witnesses, Court staff and the Accused'.<sup>34</sup> The Prosecution also submitted that Bunia is the only location sufficiently close

<sup>23</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, para. 14.

<sup>24</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, paras 17-21.

<sup>25</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, paras 22-26.

<sup>26</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, paras 27-33.

<sup>27</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, paras 34-36.

<sup>28</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, para. 37.

<sup>29</sup> Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, para. 3.

<sup>30</sup> ICC-01/04-02/06-T-18-Conf-ENG ET, page 25, lines 21 to 24.

<sup>31</sup> Supplemental Report, ICC-01/04-02/06-505-Conf, paras 1-4.

<sup>32</sup> Supplemental Report, ICC-01/04-02/06-505-Conf, paras 5-7.

<sup>33</sup> Supplemental Report, ICC-01/04-02/06-505-Conf, para. 8.

<sup>34</sup> Prosecution Response, ICC-01/04-02/06-409-Red2, para. 2.

to the victims and the crimes that would fulfil this aim, but argued that it would not be feasible due to 'the substantial protection issues for this location, coupled with serious logistical concerns including lack of appropriate accommodation, intermittent internet connectivity, lack of a suitable trial venue and inability to bring the Accused in person to his own trial'.<sup>35</sup> As an alternative, the Prosecution recommended that a judicial site visit prior to the commencement of trial would be beneficial to the Chamber.<sup>36</sup>

14. In response to the Second Report, the Prosecution averred that, based on the extensive redactions applied thereto, the parties and participants lacked 'concrete logistical and security information should the opening of the trial proceed *in situ*'<sup>37</sup> and that the Prosecution is not therefore well-placed to make further submissions on the feasibility of the Registry's proposal.<sup>38</sup> The Prosecution raises a number of concerns regarding the Second Report including that: (i) it apparently fails to address serious security concerns regarding the attendance of the Accused;<sup>39</sup> (ii) there is an absence of information therein regarding accommodation for staff members;<sup>40</sup> (iii) the fact that the locations of proposed interim courtrooms have been redacted from the Second Report and are therefore unknown to parties and participants;<sup>41</sup> (iv) that cooperation arrangements have not been finalised with the DRC and the United Nations Organization Stabilization Mission in the DRC ('MONUSCO');<sup>42</sup> (v) the proposal precludes the electronic

<sup>35</sup> Prosecution Response, ICC-01/04-02/06-409-Red2, para. 2.

<sup>36</sup> Prosecution Response, ICC-01/04-02/06-409-Red2, para. 46. *See also* ICC-01/04-02/06-T-17-CONF-ENG, page 23, line 17 to page 24, line 13.

<sup>37</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 2.

<sup>38</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 20. *See also* ICC-01/04-02/06-T-18-CONF-ENG ET, page 29, line 14 to page 30, line 8.

<sup>39</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 13.

<sup>40</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 14.

<sup>41</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 15.

<sup>42</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 16.

presentation of evidence,<sup>43</sup> which the Prosecution would require for its opening statement;<sup>44</sup> (vi) the attendance of members of the public is not addressed in detail;<sup>45</sup> (vii) the security situation in Bunia is volatile and ‘must be closely monitored and risk assessments reviewed regularly’;<sup>46</sup> and (viii) the limited access to the hearing and lack of live broadcast would frustrate the aim of bringing the trial closer to the victims.<sup>47</sup>

15. Following receipt of the Supplemental Report, the Prosecution maintained its position that it is unable to determine the feasibility of the proposal without access to further important operational and security information.<sup>48</sup>

*iii. Defence*

16. In response to the First Report, the Defence submitted that ‘[i]t is in the interests of all parties concerned and desirable in the interests of justice to hold part of the trial in Bunia’,<sup>49</sup> but that it would be essential for the accused to be physically present with all required facilities.<sup>50</sup> The Defence submitted that the inconvenience of holding the trial in a location nearby Bunia, notably the logistical implications and burden imposed on the Defence, may exceed the benefits gained in holding part of the trial in the State concerned.<sup>51</sup> In response to the Second Report, however, the Defence averred that Bunia is ‘in our assessment the closest site to the location where the events took place, that the presence of the accused is provided for and that

<sup>43</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 17.

<sup>44</sup> See ICC-01/04-02/06-T-18-Conf-ENG ET, page 27, line 22 to page 28, line 9.

<sup>45</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 18.

<sup>46</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 19.

<sup>47</sup> Prosecution Supplementary Submissions, ICC-01/04-02/06-457-Conf, para. 19.

<sup>48</sup> Prosecution Further Observations, ICC-01/04-02/06- 516-Conf, paras 2-3 and 13-15.

<sup>49</sup> Defence Response, ICC-01/04-02/06-408-Conf, para. 1 and paras 4-5. See also ICC-01/04-02/06-T-17-CONF-ENG, page 21, line 6 to line 17 and page 21, line 25 to page 22, line 2.

<sup>50</sup> Defence Response, ICC-01/04-02/06-408-Conf, para. 2 and paras 6-8. See also ICC-01/04-02/06-T-17-CONF-ENG, page 22, line 7 to line 14 and page 22 line 23 to page 23, line 3.

<sup>51</sup> Defence Response, ICC-01/04-02/06-408-Conf, para. 3 and paras 11-12. See also ICC-01/04-02/06-T-17-CONF-ENG, page 21, line 17 to line 24.



we are limiting this part of the trial to opening statements and bearing in mind that the conditions will be the same for both parties, we support the proposal and we believe that it is in the interests of justice to do so'.<sup>52</sup>

*iv. LRVs*

17. In response to the First Report, the LRVs submit that holding part of the proceedings in the State concerned is both in the interests of justice and most likely to 'provide maximum access to a large public and the victims'.<sup>53</sup> The LRVs submit further that, 'given that the large majority of the victims in the present case reside in Ituri, Bunia is the only suitable location for holding such hearings when taking into account the needs and interests of the victims'.<sup>54</sup> The LRVs note that the impact of the hearings would be reduced in the absence of the accused, and that if this were to be the case, a judicial site visit may be appropriate instead.<sup>55</sup> Following receipt of the Supplemental Report, the LRVs, while noting that there are aspects on which further clarity is required,<sup>56</sup> welcomed 'a genuine commitment by the Registry to ensure effective outreach and media strategies', which they deem 'essential for the process to produce the desired result'.<sup>57</sup> In particular, the LRVs note that they place 'considerable importance' on live broadcast of the hearings being available.<sup>58</sup> Finally, the LRVs submit that security is a 'key aspect' and absent details of any specific conditions that may be imposed by

<sup>52</sup> See ICC-01/04-02/06-T-18-Conf-ENG ET, page 30, lines 17-22.

<sup>53</sup> LRV Response, ICC-01/04-02/06-407-Conf, para. 8.

<sup>54</sup> LRV Response, ICC-01/04-02/06-407-Conf, para. 10.

<sup>55</sup> LRV Response, ICC-01/04-02/06-407-Conf, paras 12-13. See also ICC-01/04-02/06-T-17-CONF-ENG, page 26, line 19 to page 27, line 12.

<sup>56</sup> Victims' Further Observations, ICC-01/04-02/06-512-Conf, paras 1-3.

<sup>57</sup> Victims' Further Observations, ICC-01/04-02/06-512-Conf, para. 2. See also ICC-01/04-02/06-T-18-Conf-ENG ET, page 31, lines 22-23, and page 32, lines 11-18, where the LRVs had, in response to the Second Report, previously expressed certain concerns regarding the degree of access that would be provided to the hearings.

<sup>58</sup> Victims' Further Observations, ICC-01/04-02/06-512-Conf, para. 2.

MONUSCO they are not in a position to submit observations in that regard.<sup>59</sup>

### III. Preliminary matter: timing of this recommendation

18. As a preliminary matter, the Chamber notes that the parties and participants have been provided only with a redacted version of the Second Report.<sup>60</sup> The Chamber acknowledges that the fact certain information - including regarding the Registry's security assessment, the specific proposed location for the hearings and the arrangements for detention of the accused - has been withheld at this time has limited the capacity of the parties and participants to comment on the specific logistics of the proposal.<sup>61</sup> The Chamber accepts that it would be premature for the full details of the proposal to be provided to the parties and participants at this stage, bearing in mind, *inter alia*, the sensitive nature of the security assessments required and that cooperation discussions are at a preliminary stage.<sup>62</sup> Nonetheless, and as discussed further below, the parties and participants have made substantive submissions in relation to the proposal which the Chamber has taken account of, together with the Registry's assessment, in making this recommendation.

19. In that regard, the Chamber also notes that this recommendation does not have the effect of determining that the hearings in question will necessarily be held away from the seat of the Court. Any such decision will be taken at a subsequent stage by the Presidency, in consultation with the Chamber, and subject to the agreement of the relevant State authorities.<sup>63</sup> The Chamber

<sup>59</sup> Victims' Further Observations, ICC-01/04-02/06-512-Conf, para. 4.

<sup>60</sup> ICC-01/04-02/06-T-18-Conf-ENG ET, page 24.

<sup>61</sup> It is noted that the Supplemental Report provided the parties and participants with certain additional information on matters which had previously been withheld.

<sup>62</sup> See e.g. ICC-01/04-02/06-404-Conf, para. 4; ICC-01/04-02/06-438-Conf-AnxA-Red, paras 6-7.

<sup>63</sup> Rule 100(2) and (3) of the Rules (as amended by resolution ICC-ASP/12/Res.7). Rule 100(2) states: The Chamber, at any time after the initiation of an investigation, may *proprio motu* or at the request of the Prosecutor

notes that making the recommendation at this stage is necessary to enable the required consultations and for concrete logistical arrangements to be put in place in view of the trial schedule.<sup>64</sup> These steps will also facilitate further information being shared with the parties and participants in a timely manner, prior to any final decision being made.<sup>65</sup>

#### IV. Analysis and recommendation

20. Article 3(3) of the Statute provides: '[t]he Court may sit elsewhere [than in The Hague], whenever it considers it desirable, as provided in this Statute'.

21. The Chamber wishes to emphasise at the outset that it is with the intention of bringing the judicial work of the Court closer to the most affected communities that it is making this recommendation to the Presidency. The Chamber notes in that regard the fact that all of the parties and participants expressed support for holding a part of trials close to affected victim communities as a general principle.<sup>66</sup> The LRVs, for example, stated that 'any effort to bring the work of the international justice closer to the victims is of paramount importance, not only for the latter but for the Court as a whole'.<sup>67</sup>

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or the defence, decide to make a recommendation changing the place where the Chamber sits. The judges of the Chamber shall attempt to achieve unanimity in their recommendation, failing which the recommendation shall be made by a majority of the judges. Such a recommendation shall take account of the views of the parties, of the victims and an assessment prepared by the Registry and shall be addressed to the Presidency. It shall be made in writing and specify in which State the Chamber would sit. The assessment prepared by the Registry shall be annexed to the recommendation. Rule 100(3) states: The Presidency shall consult the State where the Chamber intends to sit. If that State agrees that the Chamber can sit in that State, then the decision to sit in a State other than the host State shall be taken by the Presidency in consultation with the Chamber. Thereafter, the Chamber or any designated Judge shall sit at the location decided upon..

<sup>64</sup> ICC-01/04-02/06-T-18-Conf-ENG ET, page 25, lines 21-24.

<sup>65</sup> ICC-01/04-02/06-T-18-Conf-ENG ET, page 34, lines 18-24.

<sup>66</sup> First Report, ICC-01/04-02/06-404-Conf-Anx-Red, p. 7; Prosecution Response, ICC-01/04-02/06-409-Red2, para. 2; Defence Response, ICC-01/04-02/06-408-Conf, para. 1 and paras 4-5; LRV Response, ICC-01/04-02/06-407-Conf, para. 8.

<sup>67</sup> LRV Response, ICC-01/04-02/06-407-Conf, para. 10.

22. In formulating this recommendation, the Chamber has therefore been particularly mindful of the submissions of the parties and participants regarding the need to ensure that the hearings are designed in a manner which would meaningfully serve that purpose. In particular, each of the parties and participants submitted that Bunia was the only suitable location which could appropriately meet that objective.<sup>68</sup> Additionally, bearing in mind the concerns initially raised by the Prosecution and LRVs regarding the degree of public access to the hearings, the Chamber welcomes the further details in the Supplemental Report indicating the feasibility of, *inter alia*: (i) enabling attendance at the hearings on a rotational basis, including for relevant community leaders; (ii) facilitating local and international media coverage of the hearings, including the possibility of providing live feed for radio or audio-visual broadcast;<sup>69</sup> and (iii) producing and disseminating a summary of the hearings, including in video format.
23. The Chamber considers that the combination of measures described above would, in addition to the physical proximity of the hearings to the locations of the alleged crimes, serve to meaningfully bring the proceedings closer to those most affected. The Chamber therefore finds it to be in the interests of justice to make this recommendation.<sup>70</sup>
24. However, the Chamber notes that certain further concerns were raised by the Prosecution, which the Chamber finds it appropriate to address. As indicated by the Registry at the status conference on 17 February 2015 and in

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<sup>68</sup> See, e.g., LRV Response, ICC-01/04-02/06-407-Conf, para. 11; Prosecution Response, ICC-01/04-02/06-409-Red2, para. 2; Defence Response, ICC-01/04-02/06-408-Conf, paras 3, 11-12.

<sup>69</sup> The Chamber understands the Registry proposal to be that media present in Bunia will be provided access to live feed which would enable them to broadcast the hearings through radio and television, thereby enabling live coverage of the hearings beyond only those present in Bunia. The Chamber notes that live radio and/or television broadcast, in priority to, for example, internet broadcast, would better serve the purposes of making the hearings accessible to the local affected communities.

<sup>70</sup> See Rule 100(1) of the Rules.

the Supplemental Report,<sup>71</sup> its assessment, and ongoing consultations, has taken into account the need to secure suitable and secure detention facilities for the accused. Additionally, as previously noted by the Chamber, many of the security factors outlined in the Prosecution Supplementary Submissions ‘had already been explicitly factored into the Registry’s analysis, along with other potential issues’.<sup>72</sup> However, the Chamber emphasises that it is fully cognisant of the changeable security environment in the region and that this will need to be continuously monitored, and carefully considered, in any ultimate decision on whether or not to hold the hearings in the State concerned.<sup>73</sup> The Chamber notes that the Supplemental Report now provides the parties and participants with additional information regarding the proposed accommodation arrangements for relevant staff and Judges.<sup>74</sup>

25. Regarding the possibility for electronic presentation of evidence during the opening statements, the Chamber notes the Registry’s indication that a laptop, with a large projector or screen, could be provided.<sup>75</sup> In the Chamber’s view, should electronic presentation of material be permitted, the facilities proposed by the Registry would be adequate. In this regard, the Chamber considers that the inconvenience of a more basic courtroom set up, and similarly of accommodation arrangements, would be substantially outweighed by the potential benefits of enabling the hearings to be brought closer to the affected communities in a meaningful manner.

26. Finally, regarding the fact that cooperation arrangements have not yet been finalised with the DRC and MONUSCO, the Chamber recalls that it is for the

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<sup>71</sup> ICC-01/04-02/06-T-18-Conf-ENG ET, page 25, lines 1-14 ; Supplemental Report, ICC-01/04-02/06-505-Conf, para. 2.

<sup>72</sup> ICC-01/04-02/06-T-18-Conf-ENG ET, page 24, lines 11-14. *See also* Supplemental Report, ICC-01/04-02/06-505-Conf, para. 2.

<sup>73</sup> ICC-01/04-02/06-T-18-Conf-ENG ET, page 24, lines 16-18.

<sup>74</sup> Supplemental Report, ICC-01/04-02/06-505-Conf, para. 3.

<sup>75</sup> Supplemental Report, ICC-01/04-02/06-505-Conf, para. 8.

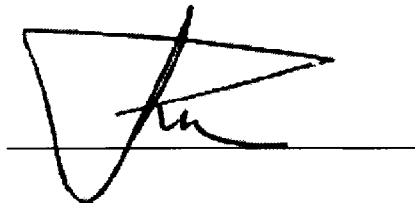
Presidency to further such cooperation consultations in light of this recommendation.<sup>76</sup> Nonetheless, the Registry has indicated that either in-principle agreement, or a positive reaction, has been received from both authorities regarding the proposal.<sup>77</sup>

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**RECOMMENDS** to the Presidency, pursuant to Rule 100(2) of the Rules, that the opening statements of the trial in the *Ntaganda* case be held in Bunia in the DRC; and

**DIRECTS** the Registry to make the Second Report, including annexes, and Supplemental Report available to the Presidency, constituting accompanying annexes to this recommendation.

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



**Judge Robert Fremr, Presiding Judge**



**Judge Kuniko Ozaki**



**Judge Chang-ho Chung**

Dated 19 March 2015

At The Hague, The Netherlands

<sup>76</sup>See e.g. Rule 100(3) of the Rules. See also the Registry's indication that an in principle decision of the Chamber was required in order to enable further consultations with relevant parties, ICC-01/04-02/06-T-18-Conf-ENG ET, page 25, lines 21-24.

<sup>77</sup> See Second Report, ICC-01/04-02/06-438-Conf-Exp-AnxA, paras 5-8.