

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: **10 November 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

Order requesting parties' submissions on expert witnesses

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**

Ms Paolina Massidda

**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**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64(2) and (6)(f) of the Rome Statute ('Statute') and Regulation 44 of the Regulations of the Court, issues the following 'Order requesting parties' submissions on expert witnesses'.

I. Procedural history and submissions

1. On 16 April 2015, the Office of the Prosecutor ('Prosecution') filed a list of expert witnesses it intends to call to testify.¹
2. On 2 June 2015, the Chamber invited the defence team for Mr Ntaganda ('Defence') to file a notice indicating whether, for all expert witnesses the Prosecution intends to call, it: i) accepts the reports as being experts' reports; ii) wishes to cross-examine the proposed expert witnesses; and/or iii) challenges the qualifications of the witnesses as an expert, or the relevance of all, or parts, of the report; and, if so, to indicate which parts.²
3. On 15 September 2015,³ the Defence filed a notice setting out its position in respect of the thirteen proposed expert witnesses ('Defence Notice').⁴ The Defence informs the Chamber that it acknowledges the relevance of Witness P-0931's report to the present proceedings and recalls that it did not oppose its admission into evidence.⁵ The aforementioned report has since been admitted into evidence.⁶
4. However, the Defence objects to proposed expert witnesses P-0932, P-0885, P-0453, P-0938 ('Contested Experts') being called to provide evidence as expert

¹ Prosecution's list of expert witnesses and request pursuant to regulation 35 to vary the time limit for disclosure of the report of one expert witness, ICC-01/04-02/06-560.

² Decision on the conduct of proceedings, ICC-01/04-02/06-619, para 38.

³ The Chamber granted an extension of deadline for filing of the Defence notice, see e-mail from the Chamber to the parties on 13 August 2015 at 8:52.

⁴ Notice on behalf of Mr Ntaganda setting out the position of the Defence on proposed Prosecution expert witnesses, ICC-01/04-02/06-826-Conf. A public redacted version (ICC-01/04-02/06-826-Red) was filed on the same date.

⁵ Defence Notice, ICC-01/04-02/06-826-Red, paras 3-7.

⁶ Transcript of Hearing of 22 September 2015, ICC-01/04-02/06-T-32-Red-ENG, page 89, line 9 to page 90, line 10.

witnesses, 'whether orally or in writing' and seeks the Chamber's guidance as to when and how to formally raise its objection.⁷

5. As to the remaining proposed expert witnesses (P-0933, P-0810, P-0939, P-0420, P-0935, P-0937 and P-0934), the Defence does not challenge their qualification as experts⁸ and accepts their reports as being expert reports.⁹ In addition, it does not challenge the relevance of their reports to the trial.¹⁰ However, the Defence takes issue with the probative value of two reports¹¹ and takes no position on the probative value of the other reports for the time being.¹²
6. Lastly, the Defence submits that it is unable to provide notice of its position on Witness P-0945 as no relevant information on his background and qualifications has been provided.¹³

II. Analysis

7. The Chamber recalls that it will determine the admissibility of evidence, in accordance with Articles 64(9)(a) and 69(4) of the Statute, having assessed its relevance, probative value, and any prejudice that its admission may cause to a fair trial or to the evaluation of the testimony of a witness, once it is submitted to the Chamber.¹⁴ The Chamber therefore will not consider the probative value of the expert reports, or lack thereof, at this stage, and notes that the parties will have an opportunity to make any relevant submissions in that regard in due course.

⁷ Defence Notice, ICC-01/04-02/06-826-Red, paras 9 (P-0932), 14 (P-0885), 18 (P-0453), 26 (P-0938).

⁸ Defence Notice, ICC-01/04-02/06-826-Red, paras 20 (P-0933), 28 (P-0939), 32 (P-0810), 41 (P-0420), 45 (P-0935), 49 (P-0937) and 53 (P-0934).

⁹ Defence Notice, ICC-01/04-02/06-826-Red, paras 19 (P-0933), 27 (P-0939), 31 (P-0810), 40 (P-0420, subject to the reservation in para. 39), 44 (P-0935), 48 (P-0937), 52 (P-0934).

¹⁰ Defence Notice, ICC-01/04-02/06-826-Red, paras 21 (P-0933), 29 (P-0939), 33 (P-0810), 42 (P-0420), 46 (P-0935), 50 (P-0937), 54 (P-0934).

¹¹ Defence Notice, ICC-01/04-02/06-826-Red, paras 19 (P-0933), 31 (P-0810).

¹² Defence Notice, ICC-01/04-02/06-826-Red, paras 27 (P-0939), 40 (P-0420), 44 (P-0935), 48 (P-0937), 52 (P-0934).

¹³ Defence Notice, ICC-01/04-02/06-826-Red, paras 56-57.

¹⁴ Decision on the conduct of proceedings, ICC-01/04-02/06-619, paras 36-37.

8. The Chamber further recalls that it may entertain a pre-submission objection, should it consider that the proceedings would be more efficient when litigating admissibility in advance of submission.¹⁵ In the present circumstances, the Chamber considers it appropriate to seek the parties' submissions in relation to the Contested Experts and their reports, prior to their appearance before the Court.
9. Accordingly, the Defence is directed to supplement its submissions in relation to the Contested Experts and their reports, addressing, in particular: i) the Contested Experts' qualifications and expertise in relation to the relevant subject matter; ii) whether the proposed areas to be addressed properly fall within the scope of expert testimony; and, noting the Defence's submissions, iii) the Contested Experts' impartiality and relevance of their proposed testimony. The Prosecution is directed to file its response, if any, in accordance with the timeline set out below and the Defence may then reply, if so desired.
10. As to the background and qualifications of proposed expert witness P-0945, the Chamber notes that a *curriculum vitae* has been disclosed to the Defence on 7 October 2015.¹⁶ On the basis of this information, the Defence is directed, in accordance with the timeline set out below, to indicate whether it: i) accepts the report produced by P-0945 as being an expert report; ii) wishes to cross-examine P-0945; and/or iii) challenges the qualifications of P-0945 as an expert, or the relevance of all, or parts, of his report. To the extent that the Defence raises any objections in respect of proposed expert witness P-0945, the Prosecution is directed to file any submissions it may have together with its response in paragraph 9, to which the Defence may then reply by the timeline provided below.

¹⁵ Decision on the conduct of proceedings, ICC-01/04-02/06-619, para 38.

¹⁶ Annex to Prosecution's Communication of the Disclosure of Evidence, 8 October 2015, ICC-01/04-02/06-891-Conf-Anx, page 2, item 15.

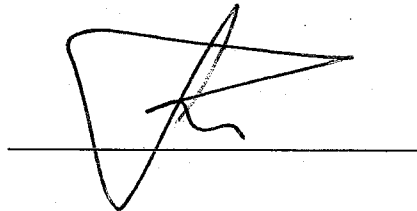
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the Defence to file its submissions in relation to P-0945 in accordance with paragraph 10 above not later than 23 November 2015;

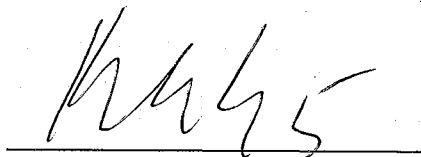
DIRECTS the Defence to supplement its submissions in accordance with paragraph 9 above not later than 23 November 2015;

DIRECTS the Prosecution to file its response, if any, in accordance with paragraph 9 above together with its response, if any, in relation to the Defence's submissions in accordance with paragraph 10 not later than 2 December 2015 and the Defence to file its reply, if any, by 8 December 2015.

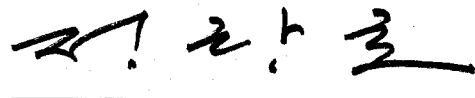
Done in both English and French, the English version being authoritative.

A stylized, handwritten signature in black ink, consisting of a large, sweeping 'F' shape with a horizontal line extending to the right.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'Kuniko Ozaki' in a cursive style.

Judge Kuniko Ozaki

A handwritten signature in black ink, appearing to be 'Chang-ho Chung' in a cursive style.

Judge Chang-ho Chung

Dated 10 November 2015

At The Hague, The Netherlands