

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: 27 May 2016

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

Supplemental decision on matters related to the conduct of proceedings

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Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 67 of the Rome Statute ('Statute'), Rules 137(1) and 140 of the Rules of Procedure and Evidence ('Rules'), and Regulation 43 of the Regulations of the Court, issues this 'Supplemental decision on matters related to the conduct of proceedings'.

I. BACKGROUND

1. On 2 June 2015, having received submissions from the parties and participants, the Chamber issued its 'Decision on the conduct of proceedings' ('First Decision').¹
2. On 8 March 2016, having concluded three evidentiary blocks, the Chamber issued an order requesting further submissions on certain matters relating to the conduct of proceedings ('Order').²
3. On 17 March 2016, the parties and participants filed their submissions.³
4. On 23 March 2016, in accordance with the Order, the parties filed responses to the submissions made by the other party and participants.⁴
5. Also on 23 March 2016, having been granted an extension of deadline by the Chamber,⁵ the Registry filed its observations, relating in particular to matters of interpretation and translation.⁶

¹ ICC-01/04-02/06-619.

² Order requesting submissions on certain matters related to the conduct of proceedings, ICC-01/04-02/06-1198.

³ Prosecution's submissions on certain matters related to the conduct of proceedings, ICC-01/04-02/06-1214; Submissions of the Common Legal Representative of the Victims of the Attacks on certain matters related to the conduct of the proceedings, ICC-01/04-02/06-1215; Former child soldiers' submissions on certain matters related to the conduct of proceedings, ICC-01/04-02/06-1216; Submissions on behalf of Mr Ntaganda on certain matters related to the conduct of proceedings, ICC-01/04-02/06-1217.

⁴ Prosecution's response to the "Submissions on behalf of Mr Ntaganda on certain matters related to the conduct of proceedings", ICC-01/04-02/06-1217-Conf, ICC-01/04-02/06-1227; Response on behalf of Mr Ntaganda to the submissions made by the Prosecution and the participants on certain matters related to the conduct of proceedings, ICC-01/04-02/06-1229-Conf.

⁵ E-mail from Legal Officer of the Chamber to the Registry on 23 March 2016 at 10:20.

⁶ Registry's Observations pursuant to Trial Chamber VI's 'Order requesting submissions on certain matters related to the Conduct of proceedings' (ICC-01/04-02/06-1198), ICC-01/04-02/06-1231.

6. On 16 May 2016, the defence team for Mr Ntaganda ('Defence') made certain further submissions regarding the proposed sitting schedule, by way of e-mail,⁷ to which the Office of the Prosecutor ('Prosecution') and legal representatives of victims responded, also by e-mail.⁸

II. DIRECTIONS

7. Having considered the submissions received, and bearing in mind its responsibility to ensure that the trial is conducted in a fair and expeditious manner in accordance with Article 64(2) of the Statute, the Chamber finds it appropriate to supplement, or amend, certain parts of the First Decision, and provides the following further directions.

Evidentiary Blocks

8. As previously notified,⁹ the sixth and seventh evidentiary blocks have been scheduled for **5 September – 13 October 2016** and **1 November – 13 December 2016**, respectively. The Chamber will endeavour to continue to provide notice of the scheduling of hearings as far in advance as possible.

Sitting Schedule

9. The Chamber confirms that it intends to maintain the schedule of sitting for five hours per day. The Chamber notes that there are divergent views regarding the preferred sitting schedule. Having considered relevant factors, the Chamber hereby provides notice that the standard sitting hours for the fifth evidentiary block shall be: 09:30-11:00; 11:30-13:00; and 14:30-16:30.

⁷ E-mail from the Defence to the Chamber on 16 May 2016 at 11:00.

⁸ E-mail from the Prosecution to the Chamber on 17 May 2016 at 9:42; E-mail from the legal representative for victims of the attacks to the Chamber on 17 May 2016 at 9:59; and E-mail from the legal representative of victims of former child soldiers on 17 May 2016 at 12:06.

⁹ E-mail from Legal Officer of the Chamber to the parties and participants on 29 April 2016 at 12:37.

Witness Preparation

10. The Chamber considers that, as submitted by the Defence, minimising the time for which a witness is required to be present in The Hague is desirable. Nonetheless, it is recognised that the period of witness preparation will be variable, depending, in particular, on the volume of material to be reviewed by the witness. The Chamber notes that the procedure for an opposing party seeking to meet with a witness has already been provided for,¹⁰ and does not consider there to be a basis for amending that procedure at this stage.
11. Further, the Chamber has previously indicated that,¹¹ within the framework of paragraph 24 of the Witness Preparation Protocol,¹² potential exhibits may be shown to a witness during preparation, regardless of whether or not the witness has previously seen such materials, to ascertain whether the witness can usefully comment on them during testimony. However, the Chamber emphasises that the scope of any questioning conducted in relation to the materials must be narrowly tailored to that purpose. It is the case that an opposing party may often not receive disclosure of information provided during a witness preparation session, including information regarding which documents were shown to the witness, until shortly prior to the commencement of testimony. Nonetheless, the Chamber notes that the calling party will frequently have to provide the list of documents it intends to use with a witness prior to the completion of the witness preparation sessions.¹³ In such circumstances, this list should provisionally include, and identify, items which the calling party intends to show to the witness during the preparation session for the purpose of ascertaining whether the witness can usefully comment on them during testimony.

¹⁰ Decision on adoption of a 'Protocol on the Handling of Confidential Information During Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or a Participant', 12 December 2014, ICC-01/04-02/06-412. *See also* Transcript of Hearing on 16 September 2015, ICC-01/04-02/06-T-26-Red-ENG WT, pages 46-47.

¹¹ Transcript of Hearing on 11 April 2016, ICC-01/04-02/06-T-78-CONF-ENG, page 62.

¹² ICC-01/04-02/06-652-Anx, para. 24.

¹³ First Decision, ICC-01/04-02/06-619, para. 32.

In-court Protective Measures

12. The Chamber encourages the parties to continue to group questions likely to elicit confidential or identifying information in order to minimise the need to move in and out of private session. The Chamber further encourages the parties to consider, in appropriate cases, the use of codes - as suggested by the Legal Representative for victims of the attacks - which may facilitate the hearing of larger portions of evidence in open session.¹⁴
13. The Chamber recalls that in its First Decision,¹⁵ it established a procedure for the review of transcripts in order to facilitate preparation of lesser redacted versions. The Chamber considers it appropriate, at this stage, to initiate a review of all prior transcripts of witness evidence, with the exception of the transcripts relating to those witnesses who have testified entirely in open session and any transcript for which a review has already been conducted.¹⁶ The Prosecution is therefore directed to proceed in accordance with paragraph 61 of the First Decision to propose lesser redacted versions of each of the transcripts, upon which the Defence may comment. The lesser redacted transcript proposals are to be provided to the Chamber in batches at intervals of three weeks, each batch containing the transcripts of not less than three witnesses. The first batch of proposals should be provided to the Chamber by **20 June 2016**.
14. Finally, the Chamber hereby sets a standard deadline for responses to all future requests for in-court protective measures, and directs that any such responses are to be filed **within seven days of notification of the request**, unless otherwise ordered.

¹⁴ See, for example, Transcript of hearing on 15 September 2015, ICC-01/04-02/06-T-25bis-CONG-ENG, page 14 *et seq.*

¹⁵ 2 June 2015, ICC-01/04-02/06-619, para. 61.

¹⁶ In respect of this latter category see specifically ICC-01/04-02/06-1070-Conf, para. 18.

Witness Estimates and Modalities of Witness Testimony

15. As previously foreshadowed,¹⁷ the Chamber now directs the Prosecution to review the number of witnesses, including experts, it intends to call, as well as the time estimates for examination and the intended mode of testimony for all future witnesses, with a view to significantly reducing the size of its remaining case.¹⁸ This review should endeavour to focus remaining testimony on those topics of greatest relevance to the proceedings, minimise cumulative evidence on aspects which have been testified to by multiple previous witnesses, consider the use of Rule 68(2)(b) in appropriate cases and increase the use of Rule 68(3). The Prosecution is directed to provide its revised estimates and witness list no later than **29 July 2016**.
16. Further, the Chamber supplements paragraph 16 of the First Decision, to require that the Prosecution also identifies a reserve witness for each evidentiary block who could be called upon to testify should the proceedings progress faster than anticipated, or should one of the scheduled witnesses fail to testify for any reason.¹⁹
17. Regarding the Defence's submission that where Rule 68(3) is used the calling party should communicate its intended questions to the opposing party in advance, the Chamber finds no necessity for such a procedure. The Chamber additionally notes that the length of examination-in-chief to be permitted with witnesses whose evidence is to be presented, in whole or part, by way of Rule 68(3) is a matter to be determined on a case-by-case basis. Further, the Defence's cross-examination of a Rule 68(3) witness is not limited to the scope of

¹⁷ Transcript of Hearing on 3 May 2016, ICC-01/04-02/06-T-CONF-ENG, pages 100-102, see especially page 101, lines 11-13.

¹⁸ The Chamber considers that implementation of the suggested measures should result in at least an approximately one quarter reduction in the required remaining aggregate time estimate.

¹⁹ See similarly e-mail from Legal Officer of the Chamber to the parties and participants on 4 May 2016 at 13:11.

the Prosecution's own questions, but may extend to other aspects of the prior recorded testimony on which no questions were posed by the Prosecution.

18. In order to facilitate the Chamber ruling as expeditiously as possible, the Chamber hereby amends the First Decision²⁰ to require any objections to future Rule 68(3) applications to be raised by way of written filing **within 10 days of notification of the application.**

Mode of questioning

19. The Chamber encourages the parties, where appropriate, to continue to enable witnesses to provide a narrative account of particular topics and to elicit background information likely to be uncontested by way of leading questions. The Chamber does not consider it necessary for the calling party to provide its list of questions in advance, or to seek advance consent to the use of leading questions. However, the Chamber notes that it may facilitate the smooth conduct of proceedings for the parties to consult *inter partes*, prior to the start of the testimony of the witness concerned, to come to an agreement as to which areas of the testimony are uncontested and could be elicited by way of leading questions.

Interpretation and Transcription

20. As a preliminary matter, the Chamber reminds the parties and participants to ensure that they speak slowly, clearly and observe pauses when speaking in order to facilitate the work of the interpreters and court reporters. Although the parties and participants should remain vigilant for material errors which are apparent in the real-time transcripts, it is for the Registry to ensure that a complete and accurate record of proceedings is maintained.²¹

²⁰ See ICC-01/04-02/06-619, para. 42.

²¹ Article 64(10) of the Statute and Rule 137(1) of the Rules.

21. Having considered the Registry's submissions regarding the process for production of edited transcripts, and in light of the experience so far, the Chamber recommends that the Registry adopt a procedure whereby French and English transcripts are checked both against the audio recordings and against each other when edited versions are being prepared. The Registry should take all additional necessary measures to ensure the complete accuracy of both language versions of the transcripts.
22. Further, the procedure for requesting corrections to transcripts²² is hereby amended to require that any requests for corrections are copied to the parties and participants and the Chamber. The Chamber additionally directs that correction requests communicated to the Registry to date be provided to the other parties and participants by those who made the original request(s).
23. Finally, in order to provide certainty with regard to the transcripts, the Chamber hereby establishes a deadline of 21 days from the date of notification of the edited version of a transcript for the raising of any future correction requests.²³

Miscellaneous

24. The Chamber hereby advises the parties and participants that, to the extent possible, courtroom time should be used for the hearing of witness evidence. Unless requiring urgent resolution, organisational or procedural matters should be raised by way of written filing or, as appropriate, e-mail rather than in the courtroom.

²² ICC-01/04-02/06-549-Conf-Anx1.

²³ This deadline does not preclude material discrepancies which are subsequently identified from being notified and resolved.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the parties, participants and Registry to proceed in accordance with the directions set out herein.

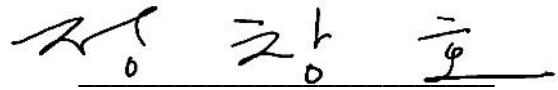
Done in both English and French, the English version being authoritative.

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Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'K. Ozaki'. The signature is written above a horizontal line.

Judge Kuniko Ozaki

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Judge Chang-ho Chung

Dated 27 May 2016

At The Hague, The Netherlands