

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Corrigendum of 'Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution', 19 October 2016, ICC-01/04-02/06-1588

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 Christopher Gosnell

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**

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, 67 and 68 of the Rome Statute, Rule 140 of the Rules of Procedure and Evidence ('Rules'), and Regulation 43 of the Regulations of the Court, issues this 'Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution'.

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'.¹
2. On 27 May 2016, the Chamber issued a supplemental decision on certain issues concerning the conduct of proceedings, in which it, *inter alia*, directed the Office of the Prosecutor ('Prosecution') to review the number of witnesses it intended to call, time estimates for examination and intended mode of testimony.²
3. At the end of the fifth evidentiary block, on 15 July 2016, the Chamber gave guidance to the parties and participants on the future progress of the case, indicating that it envisaged the Prosecution completing its case 'within the first couple of months of 2017', directing the Prosecution to plan accordingly and emphasising also that the defence team for Mr Ntaganda ('Defence') should be making ongoing preparations for any defence case it may wish to present.³
4. Following the Chamber's indication, on 11 October 2016, that it would shortly issue an order specifying certain deadlines related to the end of the Prosecution case,⁴ the Defence submitted observations on, amongst other things, the scheduling of the eighth evidentiary block.⁵ In particular, the Defence requested

¹ ICC-01/04-02/06-619.

² Supplemental decision on matters related to the conduct of proceedings, ICC-01/04-02/06-1342.

³ Transcript of Hearing on 15 July 2016, ICC-01/04-02/06-T-122-CONF-ENG, pages 65-66.

⁴ Transcript of Hearing on 11 October 2016, ICC-01/04-02/06-T-151-CONF-ENG, page 45.

⁵ E-mail from the Defence to the Chamber on 13 October 2016 at 18:33.

that the block not start until 16 January 2017 and expressed a preference for two shorter evidentiary blocks, rather than one long block.

II. DIRECTIONS

Deadline for Prosecution requests for admission into evidence

5. The Chamber has previously set out the procedure for the submission of evidence other than through a witness.⁶ The Chamber hereby sets the deadline for the filing of any Prosecution requests for admission of evidence as part of the Prosecution case,⁷ other than through the remaining witnesses it intends to call, for **3 February 2017**.

Rule 68(2) requests

6. On 29 July 2016, the Prosecution submitted an updated version of its list of witnesses⁸ in which it indicated that it intends to make five requests for the admission of witness evidence under Rule 68(2)(b) of the Rules. To allow for these requests to be addressed before the start of the Prosecution's last evidentiary block, the Chamber considers it appropriate to set **2 December 2016** as the deadline for the Prosecution to file those requests.
7. Any further Prosecution applications under Rule 68(2) should be filed no later than **3 February 2017**. With respect to Rule 68(2)(b) specifically, the Chamber hereby indicates that such applications may be made in advance of the required accompanying declarations having been obtained, while noting that any favourable ruling on such applications could only be made on a conditional basis.

⁶ Decision on the conduct of proceedings, ICC-01/04-02/06-619, paras 52-53.

⁷ The Chamber notes that, if granted leave to do so, the Prosecution may in rebuttal present further evidence for admission (see Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 12).

⁸ Prosecution's revised time estimates for the list of witnesses, ICC-01/04-02/06-1471-AnxA.

Presentation of evidence or views and concerns by victims

8. As directed in the Decision on the conduct of proceedings, the Legal Representatives of Victims ('LRVs') are to 'file any request for leave to present evidence no later than two days after the Prosecution concluded its presentation of evidence'.⁹ The Chamber, however, strongly encourages the LRVs to make any such application as far in advance of that deadline as possible.
9. Additionally, to facilitate the planning of the case, the LRVs are directed to indicate by **16 December 2016** whether they anticipate bringing a request to present evidence and/or for the views and concerns of victims to be presented to the Chamber, and the likely scope of any such request. In relation to any such request, the Chamber notes that relevant disclosure will be required by the LRVs within a timeframe which facilitates Defence preparations, and, in the event of such an application, the Chamber will establish the applicable procedure and deadlines. The LRVs should, however, make any necessary preparations to facilitate expeditious disclosure in connection with any intended applications. Should the LRVs indicate an intention for views and concerns of victims to be presented, the Chamber may direct that these be presented directly after the testimony of the last Prosecution witness, at the end of the eighth evidentiary block.

Defence case

10. The Chamber has previously indicated that towards the end of the presentation of evidence by the Prosecution, the Defence would be instructed to file a notice as to whether it intends to call evidence.¹⁰ The Chamber hereby directs the Defence to file the aforementioned notice by **16 December 2016**.

⁹ Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 69.

¹⁰ Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 18; ICC-01/04-02/06-T-122-CONF-ENG ET, pages 65-66.

11. To facilitate the expeditious planning of the case, and in the event the notice indicates that the Defence intends to call evidence, the Defence is further instructed to provide the Chamber, **by the same deadline**, on an *ex parte* basis, with a preliminary list of witnesses it intends to call, indicating the time estimates for the examination of the witnesses. Mindful that the Defence's notice will necessarily be based on the situation prevailing at that time, the Chamber emphasises that it will not consider the Defence bound by the contents of that list.
12. With regard to disclosure by the Defence, the Chamber recalls that it deferred setting out a procedure to be followed for any such disclosure until a later stage.¹¹ The Chamber observes that the parties have already made certain submissions on this issue,¹² and considers that at this stage, it does not require any further submissions.

Corrections to transcripts

13. In the supplemental decision of 27 May 2016, the Chamber set the deadline for transcript correction requests for 21 days from the date of notification of the edited version of a transcript.¹³ In the same decision, the Chamber recommended the Registry to 'adopt a procedure whereby French and English transcripts are checked [...] against each other when edited versions are being prepared'.¹⁴ On 6 September 2016,¹⁵ the Registry informed the Chamber that it had implemented

¹¹ Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 18.

¹² Prosecution submissions on the conduct of proceedings and the modalities of victim participation at trial, 7 April 2016, ICC-01/04-02/06-547, paras 88-98; and Submissions on behalf of Mr Ntaganda on the conduct of proceedings and on modalities of victims' participation at trial, 7 April 2016, ICC-01/04-02/06-548, paras 76-78.

¹³ Supplemental decision on matters related to the conduct of proceedings, ICC-01/04-02/06-1342, para. 21. The Chamber subsequently clarified that this deadline applied from notification of both the English and French edited transcripts (E-mail from Legal Officer of the Chamber to the parties and participants on 12 July 2016 at 12:34).

¹⁴ Supplemental decision on matters related to the conduct of proceedings, ICC-01/04-02/06-1342, para. 21.

¹⁵ The Chamber had instructed the Registry by e-mail to file a report by 5 September 2016 on the steps that had been taken to ensure the accuracy of edited transcripts in the case (E-mail from Legal Officer of the Chamber to the parties, participants and Registry on 24 August 2016, at 10:47).

certain measures to improve the quality of the transcripts,¹⁶ but that resources limitations had ‘prevented the Registry from performing additional checks in the form of comparing English and French versions before distributing the edited version’.¹⁷ While noting the steps already implemented, as well as the recommendations made by the Registry,¹⁸ the Chamber stresses that the measure of checking the English and French version against each other should be put in place as soon as the Registry’s resources allow for it.

14. Furthermore, in light of the aforementioned information provided by the Registry and the Prosecution’s request for an extension of the deadline for correction requests,¹⁹ the Chamber considers it appropriate to modify the deadline for requests for corrections to transcripts so as to fall after the end of the Prosecution case, namely to **21 days after the notification of the last edited transcripts of the eighth evidentiary block, in both French and English versions.**

Items marked for identification

15. In case of requests for admission into evidence of transcriptions and/or translations of audio/visual-material in a language other than French or English, prepared by the Prosecution, the Chamber has, upon request, marked these items for identification. The Chamber hereby directs the parties to make a joint submission on all outstanding transcripts and translations that have been marked for identification pending review: i) indicating any agreement that the status of items can be amended to admitted, rather than marked for identification; ii) in

¹⁶ Registry’s Report pursuant to Trial Chamber VI’s direction of 24 August 2016, ICC-01/04-02/06-1490 (‘Registry Report’), para. 11. The Registry Report was submitted on 5 September 2016 after 16:00 and notified the next day.

¹⁷ Registry Report, ICC-01/04-02/06-1490, para. 9.

¹⁸ Registry Report, ICC-01/04-02/06-1490, para. 15.

¹⁹ On 22 August 2016, the Prosecution, by way of e-mail, requested the Chamber for ‘an extension of all deadlines for transcript corrections and proposals of lesser redacted versions from 21 days from the date of notification of the edited transcript [...] to the end of the Prosecution’s presentation of evidence’ (E-mail from the Prosecution to the Chamber on 22 August 2016, at 16:16).

case of agreement on corrections, submitting amended versions for admission into evidence, identifying any changes which have been made; and iii) making submissions on any items on which the parties cannot agree. Without prejudice to the parties making prior rolling submissions on this matter, the deadline for filing the said submission is **17 March 2017**.

Dates for upcoming evidentiary blocks

16. As previously indicated,²⁰ the seventh evidentiary block is scheduled for **7 November to 16 December 2016**. Having considered all relevant circumstances, including the submissions received as well as certain logistical constraints in terms of courtroom availability, the Chamber hereby preliminarily schedules the eighth evidentiary block for **16 January 2017 to 3 March 2017**. As mentioned above, the Chamber may direct that both Prosecution witnesses and any views and concerns of victims be heard during the eighth block.

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.

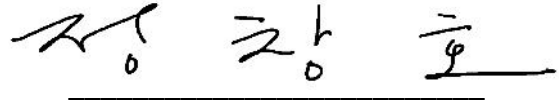
²⁰ E-mail from Legal Officer of the Chamber to the parties and participants on 25 July 2016, at 15:55; and ICC-01/04-02/06-T-151-CONF-ENG, p. 45.

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by 'remr', written over a horizontal line.

Judge Robert Fremr, Presiding Judge

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

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of three distinct characters, written over a horizontal line.

Judge Chang-ho Chung

Dated 12 December 2016

At The Hague, The Netherlands