

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 9 October 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 Scheduling a Status Conference and Setting the Commencement Date for  
the Trial**

**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

**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**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Others**

**Trial Chamber VI** ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 64(3) of the Rome Statute ('Statute'), Rule 132 of the Rules of Procedure and Evidence ('Rules') and Regulation 54 of the Regulations of the Court ('Regulations'), issues the following 'Order Scheduling a Status Conference and Setting the Commencement Date of the Trial'.

### **Status conference**

1. On 11 September 2014, the Chamber held its first status conference, during which it announced that, in order for the parties and participants to provide updates to the Chamber on trial preparation, the next status conference would be scheduled during the second half of October 2014.<sup>1</sup> Thus, the Chamber hereby schedules this second status conference for 17 October 2014.
2. In the second status conference, in addition to discussing the progress of preparation for trial, the Chamber will ask the parties to address two issues, namely: (1) the need for clarification, if any, on the nature, cause and content of the charges; and (2) protocols to be agreed on in the case.
3. In respect of the item relating to the charges, the Chamber wishes to receive the views of the parties on: (i) whether besides the decision of Pre-Trial Chamber II on the confirmation of charges ('Decision on the Confirmation of Charges'),<sup>2</sup> an updated version of the document containing the charges<sup>3</sup> is warranted as an authoritative statement of the charges for the purposes of

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<sup>1</sup> Transcript of hearing of 11 September 2014, ICC-01/04-02/06-T-13-ENG ET, page 58, lines 8-14.

<sup>2</sup> Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, ICC-01/04-02/06-309.

<sup>3</sup> Annex A of Prosecution's submission of document containing the charges and the list of evidence, 10 January 2014, ICC-01/04-02/06-203-AnxA.

the trial;<sup>4</sup> and (ii) relatedly, the adequacy, or otherwise, of the Decision on the Confirmation of Charges for the purpose of ensuring that the accused is duly notified of the charges, as required under article 67(1)(a) of the Statute. To facilitate this discussion, the Chamber instructs the parties to file, by **14 October 2014**, written submissions on each of the two points identified above, including identifying the specific aspects, if any, of the Decision on the Confirmation of Charges on which they require clarification or additional precision. The Chamber encourages joint submissions by the parties on this matter, highlighting agreements or potential disputes, but the parties may also file separate submissions by the same date. The parties shall further address the appropriateness or necessity of a pre-trial brief or any other documents intended to assist in clarification of the charges.

4. In respect of the item relating to protocols, and without prejudice to the Chamber's view on the need for other protocols, the Chamber instructs the parties to focus first on a protocol pertaining to redactions ('Redaction Protocol'), as the Chamber considers that such a protocol may facilitate consistent and efficient disclosure. The Office of the Prosecutor ('Prosecution') has indicated its readiness to strive for adoption of the protocol at the earliest opportunity.<sup>5</sup> The defence team for Mr Ntaganda ('Defence') has indicated that it would be in a position to finish its discussion with the Prosecution on the Redaction Protocol by the end of October 2014.<sup>6</sup> The Chamber hereby informs the parties that any disagreement between them about the Redaction Protocol should be raised with the Chamber

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<sup>4</sup> The Chamber notes that other Trial Chambers have taken diverging views on this matter. See, for example, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Filing of a Summary of the Charges by the Prosecutor, 21 October 2009, ICC-01/04-01/07-1547-tENG, para. 16; and *Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, Decision on the content of the updated document containing the charges, 28 December 2012, ICC-01/09-02/11-584, para. 22. The request for the parties' views is without prejudice to the Chamber's decision on the appropriateness of an updated or amended document containing the charges.

<sup>5</sup> Prosecution's Submissions on the Provisional Agenda for the 20 August 2014 Status Conference, 14 August 2014, ICC-01/04-02/06-352, paras 20-22.

<sup>6</sup> Transcript of hearing of 11 September 2014, ICC-01/04-02/06-T-13-ENG ET, page 24, lines 3-15.

during the status conference on 17 October 2014, with a view to adopting a finalised version of the Redaction Protocol by the end of this month.

### **Commencement of the trial**

5. In its written and oral submissions, the Prosecution proposed that the trial commencement date be set for the beginning of June 2015.<sup>7</sup> The Defence, with reference to the Prosecution's proposed timeline for disclosure, agreed that it would be unrealistic that the trial on the merits could start before the date indicated by the Prosecution.<sup>8</sup> The Defence stressed that the start date would be dependent on when full disclosure takes place. The Defence requested that there be three months between the moment of full disclosure and the commencement date of trial.<sup>9</sup>
6. The Legal Representatives of Victims' jointly submitted that they would like the trial to start as soon as possible and without any undue delay and that they consider the proposed date of June 2015 as reasonable.<sup>10</sup>
7. In order for the Defence to be able to prepare adequately for trial, it is essential for the Prosecution to complete its disclosure obligations sufficiently in advance of trial. For this reason, the Chamber considers the Defence's request that there be three months between full disclosure by the Prosecution and the commencement of trial reasonable. Such a period

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<sup>7</sup> Prosecution's Additional Observations in preparation for the Status Conference, 8 September 2014, ICC-01/04-02/06-365-Red, para. 42; Transcript of hearing of 11 September 2014, ICC-01/04-02/06-T-13-ENG-ET, page 55, lines 4-11.

<sup>8</sup> Transcript of hearing of 11 September 2014, ICC-01/04-02/06-T-13-ENG ET, page 55, line 23 to page 56, line 4.

<sup>9</sup> Transcript of hearing of 11 September 2014, ICC-01/04-02/06-T-13-ENG ET, page 56, lines 1-3.

<sup>10</sup> Joint submissions in accordance with the "Order Scheduling a Status Conference and Setting a Provisional Agenda" issued on 21 July 2014, 14 August 2014, ICC-01/04-02/06-351, paras 34-35; Transcript of hearing of 11 September 2014, ICC-01/04-02/06-T-13-ENG-ET, page 55, lines 1-5.

should afford the Defence sufficient time to carry out all necessary preparations.

8. Having taken into account the submissions made by the parties and participants, and recalls that the Defence's lead counsel was replaced in August 2014,<sup>11</sup> and in light of the volume of the case, as well as the state of disclosure, the Chamber considers the proposal to start the trial on the merits in June 2015 to be realistic. It therefore sets the commencement date for the trial for 2 June 2015. As this date corresponds with the commencement date desired by the parties, the Chamber stresses that unless compelling reasons are shown, it will not be postponed.
9. In order to ensure the expeditious conduct of the trial pursuant to Article 64(2) of the Statute and to facilitate the preparation of the parties and participants, the Chamber sets the following schedule leading up to trial:
  - a. *Prosecution to file ex parte (Chamber and Victims and Witnesses Unit ('VWU') only), as well as redacted, provisional list of witnesses to be relied on at trial and list of evidence*

In order to assist the Chamber<sup>12</sup> and the VWU, the Prosecution is to file a provisional list of witnesses to be relied on at trial. This list shall include, for each witness, a summary of the main facts on which the witness is expected to testify. This need not be done for any expert witnesses.<sup>13</sup> In addition, the Prosecution shall indicate the estimated length of time required for each witness, as well as an estimate of the total time for the presentation of evidence, in hours. The Prosecution is

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<sup>11</sup> Registration in the record of the case of the appointment of Mr. Stéphane Bourgon as Lead Counsel of Mr. Bosco Ntaganda, 15 August 2014, ICC-01/04-02/06-353.

<sup>12</sup> See, e.g., Rule 132(2) of the Rules and Regulation 54 of the Regulations.

<sup>13</sup> The Chamber recalls that the Defence has indicated that it will not be in a position to confer with the Prosecution about joint instruction to experts until January 2015 (see Transcript of hearing of 11 September 2014, ICC-01/04-02/06-T-13-ENG-ET, page 42, lines 9-12). The provisional list of witnesses therefore need not yet include any expert witnesses.

to file a confidential redacted version of the provisional list of witnesses.<sup>14</sup> The Prosecution is also to provide a provisional list of evidence on which it intends to rely at trial. The aforementioned lists shall be filed by **15 January 2015**.

*b. Prosecution to file any requests for delayed disclosure*

The Chamber considers it appropriate to set a deadline for any applications for delayed disclosure relating to Prosecution witnesses.<sup>15</sup> The Prosecution will be required to apply to the Chamber on a case-by-case basis to delay the disclosure of information relating to any witness. Delayed disclosure will only be granted on an exceptional basis, and where justified by the circumstances. Any applications shall be filed by no later than **16 February 2015**. Responses thereto, if any, shall be filed no later than **23 February 2015**.

*c. Prosecution to file list of witnesses and list of evidence to be relied on at trial*

The Prosecution is to provide the final version of its list of witnesses, in accordance with the format described under sub-paragraph a, and its list of evidence, by **2 March 2015**. Redactions to the list of witnesses are subject to any granting of delayed disclosure by the Chamber (following a request, as mentioned in sub-paragraph b).

*d. Completion of all disclosure by the Prosecution*

The Chamber directs that disclosure should take place on a rolling basis and that all material currently already in the Prosecution's possession, for which delayed disclosure is not requested and authorised, should

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<sup>14</sup> Redactions may be made to address any potential protection issues.

<sup>15</sup> This includes any requests for redactions that, pursuant to the Redaction Protocol, require approval by the Chamber.

be disclosed not later than **31 January 2015**.<sup>16</sup> Disclosure by the Prosecution to the Defence of all remaining incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as disclosure of all Article 67(2) material and provision of all Rule 77 material for inspection to the Defence shall be completed by **2 March 2015**, save where delayed disclosure has been specifically requested and authorised. These directions are without prejudice to the ongoing nature of the Prosecution's disclosure obligations for material obtained after that date.

*e. Disclosure of expert reports*

Disclosure of the reports of any expert witness, who are subject to joint instruction pursuant to Regulation 44(2) of Regulation, or who will be called by the Prosecution, is to be completed by **17 April 2015**.

*f. Commencement of trial*

As previously indicated, the trial will commence on **2 June 2015**.

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

**SCHEDULES** a status conference for 17 October 2014 at 9h30;

**ORDERS** the Prosecution and the Defence to file written submissions, as described in paragraph 2, by 14 October 2014;

**ORDERS** the Prosecution to effectuate disclosure in accordance with the schedule described in paragraph 8;

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<sup>16</sup> The Chamber has taken note of the Prosecution's proposed time line, which lists "Prosecution's translation pursuant to rule 76(3)" as "ongoing" for the month of February 2015, but considers disclosure by the end of January 2015 to be feasible.



**SETS** the deadline for requests for delayed disclosure for 16 February 2015, as described in paragraph 8, sub-paragraph b, and the deadline for any responses thereto for 23 February 2015;

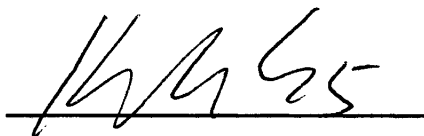
**SETS** the commencement date for the trial for 2 June 2015.

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



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**Judge Robert Fremr, Presiding Judge**



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**Judge Kuniko Ozaki**



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**Judge Geoffrey Henderson**

Dated 9 October 2014

At The Hague, The Netherlands