

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 12 March 2015

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 requesting submissions on the conduct of proceedings pursuant to
Rule 140 of the Rules and on modalities of victims' participation at 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

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**

Other

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64(2), (3)(a), and (8)(b) and 68(3) of the Rome Statute ('Statute'), Rules 69, 91 and 140 of the Rules of Procedure and Evidence ('Rules') and Regulations 37(1) and 43 of the Regulations of the Court ('Regulations'), issues the following 'Order requesting submissions on the conduct of proceedings pursuant to Rule 140 of the Rules and on modalities of victims' participation at trial'.

1. On 9 October 2014, the Chamber set the date of commencement of trial as 2 June 2015.¹
2. On 2 March 2015, the Office of the Prosecutor ('Prosecution') filed its witness and evidence lists, including the expected duration of direct examination for each witness.²
3. In accordance with Article 64(8)(b) of the Statute, the Chamber intends to give directions on the conduct of proceedings, including on the order and manner in which evidence will be submitted within the meaning of Rule 140(2) of the Rules.³ In order to facilitate the preparation of these directions, the Chamber instructs the parties, the Legal Representatives of Victims ('LRVs') and the Registry, where specified, to submit observations on the items listed below.

¹Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, ICC-01/04-02/06-382, para. 8 (A corrected version was issued on 28 November 2014, ICC-01/04-02/06-382-Corr).

²Prosecution's List of Witnesses, Summaries, and Evidence, ICC-01/04-02/06-491-Conf, with annexes A-C.

³The Chamber also noted the Defence's suggestions that, for planning purposes, issues pertaining to the conduct of the proceedings be raised at least two months before the beginning of trial (Transcript of Hearing dated 17 February 2015, ICC-01/04-02/06-T-18-CONF-ENG ET, page 14, lines 7-15).

A. Opening statements

4. The Chamber instructs the parties and the LRVs to provide an estimate of the time needed for opening statements.⁴ Further, the Chamber has noted that during the status conference held on 17 February 2015 ('Status Conference'), the parties indicated that they intend to use audio-visual aids during their opening statements.⁵ Without prejudice to the Chamber's decision as to the use of such materials, in particular pending a decision as to whether the opening statements will be held *in situ*,⁶ the parties, and if applicable the LRVs, are directed to inform the Chamber of the type of material they intend to use, the technical and logistical arrangements which would be required and to submit their views about the manner and the timing of provision of such materials to the Chamber, the parties and participants.
5. Further, the Chamber instructs the Prosecution and, if applicable the Defence and the LRVs, to indicate to what extent it foresees the need to have recourse to private or closed session during opening statements.⁷

B. Prosecution's case

6. The Chamber notes that the Prosecution intends to call 75 witnesses at trial and estimates that a total amount of 836 hours would be necessary to complete the overall witness examination, on the basis that the Defence would use the same amount of time as the Prosecution to cross-examine the

⁴ See also para. 16(i) of the present order, requesting the parties and the LRVs to make submissions as to whether the LRVs shall be authorised to make opening statements.

⁵ Transcript of Hearing dated 17 February 2015, ICC-01/04-02/06-T-18-CONF-ENG ET, page 27, line 12 to page 28, line 18.

⁶ In this regard, the Chamber has noted that during the Status Conference, the Registry has indicated that a simplified way of presenting audio-visual aids during the opening statements could be provided (ICC-01/04-02/06-T-18-CONF-ENG ET, page 27, lines 6-11).

⁷ In this regard, the Chamber has noted that during the Status Conference, the Registry has indicated that closed, but not private, sessions could be accommodated should the opening statements be held *in situ* (ICC-01/04-02/06-T-18-CONF-ENG ET, page 27, lines 2-5). The Chamber also understands that the Prosecution may wish to have recourse to closed sessions (ICC-01/04-02/06-T-18-CONF-ENG ET, page 27, line 22 to page 28, line 5).

witnesses.⁸ The estimate excludes any time which may be used by the LRVs or the Chamber.⁹ The Chamber further notes the parties submissions regarding identification of the order in which witnesses are intended to be called.¹⁰ For planning purposes the Chamber decides the following:

- i) The Defence must submit its views on the estimate of time provided by the Prosecution and indicate an estimate of the time it will need for cross-examination;
- ii) The Prosecution is directed to provide a list indicating, in order, the witnesses it intends to call before the summer recess, namely until 16 July 2015 ('First List');
- iii) Beyond the First List, the Prosecution, the Defence¹¹ and, if they wish to do so, the LRVs are instructed to provide observations as to how long in advance the Prosecution should indicate the next witnesses it intends to call;
- iv) The Prosecution is ordered to indicate whether the issue of self-incrimination may arise in relation to any of its witnesses. In any event, the parties and the LRVs must provide their views as to the procedure to be adopted, should such a matter arise (Rule 74 of the Rules);
- v) The Prosecution, the Defence, the LRVs and the Victims and Witnesses Unit ('VWU') are directed to submit their observations, if any, on the timing and manner that requests for in-court

⁸ Prosecution's List of Witnesses, Summaries, and Evidence, ICC-01/04-02/06-491-Conf, para. 3 and Annex A.

⁹ ICC-01/04-02/06-491-Conf, para. 3.

¹⁰ ICC-01/04-02/06-T-18-CONF-ENG ET, page 14, lines 1-5 and page 16, lines 4-12.

¹¹ The Chamber understands that the Defence considers that the practice should be that the Prosecution provides monthly schedules (ICC-01/04-02/06-T-18- CONF-ENG ET, page 14, lines 3-5).

protective measures pursuant to Rules 87 and 88 of the Rules should be made.

C. Scope, order and mode of questioning

7. As stated above, the Chamber notes the large number of witnesses that the Prosecution intends to call as well as the significant number of hours that would be required to complete the Prosecution's case, without prejudice to the Chamber's final decision as to what time will be allotted for examination-in-chief and cross-examination (collectively 'examination').
8. 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 invites the parties to submit their views and make proposals as to how to enhance the expeditiousness of witness examination. In particular, the Chamber seeks the views of the parties on the order of examination, including, where appropriate, the possibility of letting the Chamber question the witness first and the parties, or, as applicable, participants, asking additional questions afterwards only to clarify or complete the testimony.¹²
9. Additionally, the Chamber directs the Prosecution, the Defence and the LRVs to file observations on the scope and mode of questioning, including:
 - i) Whether or not the party cross-examining the witness can touch upon issues that go beyond what was raised during any examination-in-chief, or examination by the Chamber; and
 - ii) Whether the cross-examining party should be required to confront a witness with all matters pertaining to the witness's credibility upon which that party wishes to rely, to the extent that such

¹² In this regard, the Chamber notes Rule 140(2)(c), that gives a Trial Chamber the power to question a witness *before* or after the parties.

information is known to that party at the time of the cross-examination.

D. Documentary evidence

10. The Prosecution, the Defence and the LRVs are instructed to submit their views on:

- i) The procedure for the use of material during questioning, including advance notification thereof and the procedure for objections;
- ii) The procedure for admission of material tendered through a witness as evidence; and
- iii) The procedure for admission of other material as evidence in the case (other than through a witness, including by way of Rule 68 of the Rules).

E. Charges

11. The Chamber is cognisant of the right of the accused to have the charges read out at the commencement of trial pursuant to Article 64(8)(a). The Chamber also notes the practice of other Trial Chambers of this Court to read only the counts to the accused.¹³ Hence, the Chamber instructs the Prosecution and Defence to indicate whether they agree:

¹³ See *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, Transcript of Hearing dated 26 January 2009, ICC-01/04-01/06-T-107-ENG ET WT, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II, Transcript of Hearing dated 27 November 2008, ICC-01/04-01/07-T-52-ENG ET, page 17, line 19 to page 19, line 4; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of Hearing dated 22 November 2010, ICC-01/05-01/08-T-32-ENG CTWT, page 6, line 14 to page 9, line 6; *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Trial Chamber V(a), Transcript of Hearing dated 10 September 2013, ICC-01/09-01/11-T-27-ENG ET, page 9, line 4 to page 13, line 22.

- i) To a certification being provided ahead of the commencement of trial that the accused read and understood the Decision on the Confirmation of Charges;¹⁴ and
- ii) To the counts section of the Updated Document Containing the Charges (namely section H-ii)¹⁵ being read to Mr Ntaganda at the commencement of trial in fulfilment of Article 64(8)(a).

F. Agreements as to evidence

- 12. With regard to agreed facts, the Chamber notes that during the Status Conference, the parties proposed that the Prosecution provide a list of potential agreed facts to the Defence on 3 April 2015 and the Defence respond by 1 May 2015.¹⁶
- 13. The Chamber also notes the ‘Victims’ written submissions on the issues raised during the Status Conference held on 17 February 2015’, whereby the LRVs request leave to submit observations on any agreement reached pursuant to Rule 69 of the Rules before a final decision is made by the Chamber.¹⁷
- 14. With a view to ensuring that the trial is conducted in an expeditious manner, the Chamber finds it appropriate to establish the following calendar in relation to agreed facts:
 - i) The Prosecution and the Defence shall liaise in accordance with their proposed timeline and submit, jointly if appropriate, to the Chamber a list of proposed agreed facts, by 6 May 2015; and

¹⁴ Pre-Trial Chamber II, 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.

¹⁵ Updated Document Containing the Charges, 16 February 2015, ICC-01/04-02/06-458-AnxA, pages 60-65.

¹⁶ ICC-01/04-02/06-T-18-CONF-ENG ET, page 18, line 18 to page 19, line 15.

¹⁷ Victims’ written submissions on the issues raised during the Status Conference held on 17 February 2015, 5 March 2015, paras 13-16. *See also* ICC-01/04-02/06-T-18-CONF-ENG ET, page 20, lines 4-17.

- ii) The LRVs shall be notified of such filing and may make observations on the proposed agreed facts by 11 May 2015.

15. The Chamber stresses that the timeline set out above shall not prevent the parties from submitting to the Chamber any further agreements they may reach in the future, including based on proposals that the Defence may submit to the Prosecution at a later stage.¹⁸

G. Modalities of victims' participation at trial

16. The Chamber recalls that some issues regarding victims' participation at trial have already been ruled upon in its 'Decision on victims' participation in trial proceedings'.¹⁹ The Chamber considers that the following matters still need to be decided and therefore requests the parties and the LRVs to submit their observations on:

- i) Whether the LRVs shall be entitled to make opening and closing statements;
- ii) Whether the LRVs shall be entitled to attend and participate in hearings, public, in private, closed session and *ex parte*;
- iii) The timing and manner in which the LRVs should seek authorisation for individual victims to present their views and concerns to the Chamber;
- iv) The timing and manner in which the LRVs should request authorisation from the Chamber in order to question a witness or present evidence at trial (Rule 91 of the Rules); and

¹⁸ In this regard, the Chamber has noted that the Defence indicated that it may also submit proposals but that it was unable to do so at that stage (ICC-01/04-02/06-T-18-CONF-ENG ET, page 19, lines 17-22).

¹⁹ Decision on victims' participation in trial proceedings, 6 February 2015, ICC-01/04-02/06-449, notably paras 38 and 52-56.

- v) The scope and mode of questioning by the LRVs.

H. Other issues

17. The parties, the LRVs and the Registry (including the VWU), if it wishes to do so, are requested to submit their observations on the following items:

- i) Procedure and practices to be put in place for recourse to private and/or closed sessions, including possible ways of limiting it, for example by way of using a 'Protection information sheet' as was done in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*;²⁰ and
- ii) Procedure to be adopted for the production of public redacted transcripts.

18. Noting the scope of the observations requested and acting pursuant to Regulation 37(1) of the Regulations, the Chamber accords the parties and the LRVs an extension of 10 pages for their observations.

19. Should the parties, the LRVs or the Registry intend to raise any additional issues in their observations, they are requested to inform the Chamber and the other parties and participants thereof by 25 March 2015, by way of e-mail to 'Trial Chamber VI Communications'.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

INSTRUCTS the parties, the LRVs and the Registry to submit observations, as appropriate, on the items listed above by 7 April 2015;

²⁰ *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Trial Chamber V(a), Decision No. 2 on the Conduct of Trial Proceedings (General Directions), 3 September 2013, ICC-01/09-01/11-900, para. 32 and Annex.

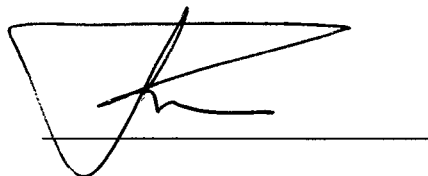
ORDERS the Prosecution to submit its First List of witnesses to be called by 7 April 2015;

EXTENDS the page limit to 30 pages for the parties' and LRVs' observations;

INSTRUCTS the parties to submit a list of proposed agreed facts by 6 May 2015; and

INSTRUCTS the LRVs to make any observations thereon by 11 May 2015.

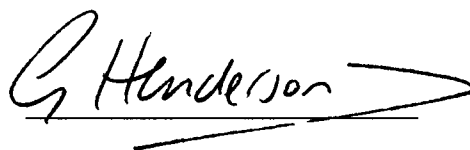
Done in both English and French, the English version being authoritative.

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 read 'K. Ozaki' in a cursive style.

Judge Kuniko Ozaki

A handwritten signature in black ink, appearing to read 'G. Henderson' in a cursive style, with a long horizontal line extending to the right.

Judge Geoffrey Henderson

Dated 12 March 2015

At The Hague, The Netherlands