

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **20 August 2019**

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

Public redacted version of ‘Decision on requests to call witnesses in relation to sentencing and for increased monitoring of Mr Ntaganda’s contacts and scheduling the sentencing hearing’

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Others

Trial Chamber VI of the International Criminal Court (‘Chamber’), in the case of *The Prosecutor v. Bosco Ntaganda* (‘Ntaganda case’), pursuant to Articles 64(2), 67, 68, 69(2), 76 and 78(1) of the Rome Statute (‘Statute’), Rules 68(3), 86, 87, 140 and 143 of the Rules of Procedure and Evidence (‘Rules’) and Regulations 35(2), 43, 44 and 101(2) of the Regulations of the Court (‘Regulations’), issues this ‘Decision on requests to call witnesses in relation to sentencing and for increased monitoring of Mr Ntaganda’s contacts and scheduling the sentencing hearing’.

I. PROCEDURAL HISTORY

1. On 8 July 2019, the Chamber convicted Mr Ntaganda of several crimes against humanity and war crimes.¹ That same day, the Chamber ordered the Office of the Prosecutor (‘Prosecution’), the Defence and the LRVs to file any requests to submit further evidence or to call witnesses in relation to sentencing by 29 July 2019, with any responses to follow by 5 August 2019.²
2. On 11 July 2019, the Chamber notified the parties and participants of its intention to schedule the hearing of further evidence and/or submissions relevant to the sentence for the first or second week of September 2019.³
3. On 29 July 2019, the Prosecution requested, *inter alia*, to call one expert witness (‘Proposed Expert Witness’) to provide *viva voce* evidence relevant to sentencing, for whom it also requested in-court protective measures, and that monitoring of Mr Ntaganda’s contacts be increased until the sentencing phase of the case is complete.⁴
4. On the same day, the Defence requested, *inter alia*, to call three *viva voce* witnesses, the evidence of two of them to be presented either pursuant to Rule 68(3) of the Rules

¹ Judgment, ICC-01/04-02/06-2359 (with Annexes A, B and C).

² Order on sentencing procedure, ICC-01/04-02/06-2360 (‘Order on Sentencing Procedure’). The Chamber indicated that any requests pursuant to Rule 68(2)(b) of the Rules did not need to include the actual statement, but rather an indication that the relevant witness, if permitted to be called, would provide a witness statement to be submitted for admission under the aforementioned rule. *See* Order on Sentencing Procedure, footnote 2.

³ Email from the Chamber to the parties and participants, 11 July 2019, at 16:42.

⁴ Prosecution’s request to submit additional evidence on sentencing, ICC-01/04-02/06-2368-Conf (‘Prosecution Request’).

or entirely *viva voce* ('Defence Request').⁵ The Defence also requested protective measures for one of its proposed witnesses.⁶

5. The LRVs both informed the Chamber that they did not intend to request leave to submit further evidence or to call witnesses for the purposes of the sentencing proceedings.⁷
6. On 5 August 2019, the Prosecution, the Defence and the LRVs filed their respective responses. The Prosecution requested, *inter alia*, that the Chamber limit the scope of the evidence to be adduced by two of the witnesses to be called by the Defence and reject the Defence's request to use Rule 68(3) of the Rules with these witnesses ('Prosecution Response').⁸ It also opposed the Defence's request for protective measures for one of its witnesses.⁹ The Defence opposed, *inter alia*, the Prosecution's request to call the Proposed Expert Witness and the Prosecution's request for increased monitoring of Mr Ntaganda's contacts ('Defence Response').¹⁰ The LRVs, *inter alia*, supported the Prosecution's requests to call the Proposed Expert Witness and for protective measures in relation to the witness, as well as its request for increased monitoring of Mr Ntaganda's contacts, and opposed the Defence's request to call the three proposed *viva voce* witnesses.¹¹
7. On the same day, the Defence supplemented its request for protective measures for one of its proposed witnesses ('Defence Protective Measures Request').¹²

⁵ Defence request for admission of sentencing evidence, ICC-01/04-02/06-2369-Conf-Exp (with confidential *ex parte* Annexes A, B and C only available to the Chamber and the Registry and confidential Annex D; confidential redacted versions were notified the same day, ICC-01/04-02/06-2369-Conf-Red, ICC-01/04-02/06-2369-Conf-AnxA-Red and ICC-01/04-02/06-2369-Conf-AnxB-Red, respectively).

⁶ Defence Request, para. 19.

⁷ Email from the Common Legal Representative for the former child soldiers to the Chamber, 29 July 2019, at 15:19; and email from the Common Legal Representative for the victims of the attacks to the Chamber, 29 July 2019, at 16:45.

⁸ Prosecution's response to the "Defence request for admission of sentencing evidence", ICC-01/04-02/06-2369-Conf-Red, 29 July 2019, ICC-01/04-02/06-2375-Conf (a corrected version was notified on 8 August 2019, ICC-01/04-02/06-2375-Conf-Corr, with confidential annex ICC-01/04-02/06-2375-Conf-Corr-Anx).

⁹ Prosecution Response, paras 40-41.

¹⁰ Defence response to "Prosecution's request to submit additional evidence on sentencing", ICC-01/04-02/06-2373-Conf.

¹¹ Joint Response of the Common Legal Representatives of Victims to the "Prosecution's request to submit additional evidence on sentencing" (ICC-01/04-02/06-2368-Conf) and the "Confidential redacted version of Defence request for admission of sentencing evidence" (ICC-01/04-02/06-2369-Conf-Red), ICC-01/04-02/06-2374-Conf ('LRVs Response').

¹² Request for in-court protective measures for Witness D-0306, ICC-01/04-02/06-2372-Conf.

8. On 6 August 2019, the VWU provided the Chamber with its protective measures assessment in relation to the witnesses proposed by the Prosecution and the Defence, supporting the measures requested, as well as with an update concerning the security situation in eastern Democratic Republic of the Congo ('DRC').¹³
9. On 7 August 2019, the Defence, *inter alia*, requested leave to reply to three issues arising from the Prosecution Response.¹⁴ On the same day, the Prosecution requested leave to reply to three issues arising from the Defence Response ('Prosecution Request for Leave to Reply').¹⁵ On 8 August 2019, the Chamber rejected the Defence's aforementioned request for leave to reply, noting that it would not be assisted by further submissions on the issues identified ('First Decision Rejecting Leave to Reply').¹⁶
10. Also on 8 August 2019, in line with the deadline set by the Chamber,¹⁷ the Prosecution responded to the Defence Protective Measures Request, not opposing it, and requesting a variation of the time limit to respond to the Defence's request to introduce D-0306's evidence under Rule 68(3) of the Rules and submitting that the proposed witness's evidence be heard entirely *viva voce* ('Prosecution Protective Measures Response and Further Requests').¹⁸ The LRVs informed the Chamber that they did not intend to respond to the Defence Protective Measures Request.¹⁹
11. That same day, the Defence requested leave to reply to the Prosecution Protective Measures Response and Further Requests and opposed the Prosecution's request for a variation of time limit.²⁰ On 9 August 2019, the Chamber rejected the Defence's

¹³ Email from the VWU to the Chamber, 6 August 2019, at 14:41.

¹⁴ Response and request for leave to reply to Prosecution's response to the "Defence request for admission of sentencing evidence", ICC-01/04-02/06-2369-Conf-Red, 29 July 2019, ICC-01/04-02/06-2377-Conf.

¹⁵ Prosecution's Request for leave to Reply to "Defence response to 'Prosecution's request to submit additional evidence on sentencing'", ICC-01/04-02/06-2373-Conf, ICC-01/04-02/06-2379-Conf (notified on 8 August 2019).

¹⁶ Email from the Chamber to the parties and participants, 8 August 2019, at 10:50.

¹⁷ Email from the Chamber to the parties and participants, 5 August 2019, at 17:37.

¹⁸ Prosecution's response to the "Request for in-court protective measures for Witness D-0306" and request, pursuant to regulation 35, to oppose the use of rule 68(3) during Witness D-0306's testimony, ICC-01/04-02/06-2378-Conf.

¹⁹ Email from the Common Legal Representative of the victims of the attacks to the Chamber, 8 August 2019, at 11:02; and email from the Common Legal Representative of the former child soldiers to the Chamber, 8 August 2019, at 15:42.

²⁰ Request for leave to reply to "Prosecution's response to the 'Request for in-court protective measures for Witness D-0306' [sic] and request, pursuant to regulation 35, to oppose the use of rule 68(3) during Witness D-0306's testimony", ICC-01/04-02/06-2380-Conf ('Defence 8 August Request'). While

request for leave to reply, noting that it would not be assisted by further submissions on the issues identified (‘Second Decision Rejecting Leave to Reply’).²¹ It also granted the Prosecution Request for Leave to Reply in relation to one issue arising from the Defence Response and rejected its request for leave to reply in relation to the two other identified issues, noting that it would not be assisted by further submissions thereon (‘Decision Granting Partial Leave to Reply’).²²

II. ANALYSIS

A. *Viva voce* witnesses

1. *Proposed Expert Witness*

Submissions

12. The Prosecution submits that the anticipated testimony of the Proposed Expert Witness is unique and goes beyond other evidence on the record in that it will provide a more complete overview of the harm suffered as a result of Mr Ntaganda’s crimes and is significant in demonstrating the gravity of the crimes and the extent of the damage caused, in particular the harm caused to the victims and their families and community.²³
13. The LRVs support the Prosecution’s request and submit that the proposed evidence is not duplicative of the evidence admitted in the case record and will assist the Chamber in assessing the extent of harm caused to the victims and their families, a key consideration in determining the appropriate sentence.²⁴ They submit that transgenerational harm is a relevant consideration in the assessment of the appropriate sentence due to the multiple, chronic and multidimensional impacts of rape on victims, their families and communities.²⁵

not referred to as such by the Defence, the Chamber understands paras 6-7 of the Defence’s request for leave to reply to constitute a response to the Prosecution’s request for a variation of time limit.

²¹ Email from the Chamber to the parties and participants, 9 August 2019, at 09:42.

²² Email from the Chamber to the parties and participants, 9 August 2019, at 09:55.

²³ Prosecution Request, paras 7, 9-11, 26-30, 32.

²⁴ LRVs Response, paras 2, 12, 17.

²⁵ LRVs Response, paras 13-16.

14. The Defence responds that the proposed testimony does not satisfy the threshold for expert testimony.²⁶ It further argues that: (i) the Chamber does not need assistance in assessing the gravity of crimes of sexual violence and that the Chamber has already heard extensive testimony concerning the long-term impact of sexual violence and other traumatic events;²⁷ (ii) the Prosecution could have further examined its other expert witnesses on the long-term impact of sexual violence;²⁸ and (iii) in light of the complex issues of causation that it involves, testimony about transgenerational harm is unhelpful.²⁹ Lastly, the Defence argues that the Proposed Expert Witness demonstrated his bias by publicly indicating that [REDACTED] and that he ‘previously collaborated closely with the [Prosecution]’.³⁰

Analysis

15. The Chamber notes the Prosecution’s submission that the Proposed Expert Witness is expected to testify about: (i) medical, psychological and social consequences of sexual violence on victims in eastern DRC, including the impact of these crimes on individual victims, their families and the affected communities; and (ii) long-term harm and broader sociological consequences such as inter-generational trauma.³¹ The Chamber further notes that, in its Judgment, it made a number of findings in relation to the physical and psychological consequences of sexual violence on individual victims of the crimes that Mr Ntaganda has been convicted of, as well as concerning relevant social circumstances leading to the delayed reporting of rape.³² Under these circumstances, the Chamber considers that only parts of the Proposed Expert Witness’s testimony would be unique and would go beyond other evidence on the record, specifically those concerning the broader consequences of sexual violence, such as inter-generational and long-term harm, and the impact of sexual violence crimes on the affected communities. However, in relation to these topics, the Chamber notes that, while the proposed witness is proposed to testify as an expert

²⁶ Defence Response, paras 1, 4, 24.

²⁷ Defence Response, paras 1, 4, 25.

²⁸ Defence Response, para. 25.

²⁹ Defence Response, paras 1, 4, 26.

³⁰ Defence Response, para. 28.

³¹ Prosecution Request, para. 10.

³² See Judgment, ICC-01/04-02/06-2359, paras 88, 410-411, 519-520, 601, 623.

witness, he is [REDACTED],³³ and his professional expertise therefore does not lie in the field of psychological and societal issues. The fact that, as submitted by the Prosecution, the witness [REDACTED]³⁴ does not make him an expert on such issues. Were his testimony to be limited to his area of expertise, the Chamber considers that it would not be unique and it would not go beyond other evidence on the record.

16. The Chamber further notes that these considerations as regards the relation between the proposed testimony and the evidence on the record would also apply were the witness to be called as a regular witness. Moreover, in such a case the Chamber considers that it would likely be difficult or impossible to establish a connection between the victims [REDACTED] by the proposed witness, and thus his direct observations, and the crimes that Mr Ntaganda has been convicted of.
17. In light of the foregoing, the Chamber decides that it is not appropriate to hear the proposed witness as an expert witness at this stage of the proceedings. As the Proposed Expert Witness will not be called to testify, the Prosecution's request for in-court protective measures is moot.

2. D-0306

Submissions

18. The Defence submits that the evidence of D-0306, who was a Lendu community leader at the time and is expected to testify about his interactions with Mr Ntaganda in 2004 – particularly Mr Ntaganda's leadership in initiating a campaign of ethnic reconciliation in collaboration with Lendu community leaders – is relevant for the purposes of mitigation as it pertains to Mr Ntaganda's efforts and undertakings, primarily after the time period of the charges, to bring about ethnic reconciliation.³⁵ The Defence indicates that, depending on the Chamber's preference, the witness's evidence could be presented entirely *viva voce* or pursuant to Rule 68(3) of the Rules.³⁶ The Defence further requests that the witness be heard via video-link and indicates that it has been informally notified by the Registry that it would be possible

³³ See Prosecution Request, para. 9.

³⁴ See Prosecution Request, para. 9.

³⁵ Defence Request, paras 3, 16, 19; and D-0306 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 4.

³⁶ Defence Request, para. 34.

to make the necessary arrangements in time for the proposed hearing period of early September.³⁷

19. The LRVs argue that the proposed evidence is cumulative in nature and pertains to matters that have been extensively litigated at trial and would therefore not assist the Chamber in its assessment of the appropriate sentence.³⁸ They highlight that the Chamber dismissed arguments regarding Mr Ntaganda's efforts to bring about peace and ethnic reconciliation during the trial in light of significant evidence in contradiction of this alleged goal of Mr Ntaganda.³⁹
20. In the Prosecution Response, the Prosecution did not make any submissions in relation to D-0306,⁴⁰ but in its subsequent submissions the Prosecution argues that the Defence's late provision of additional information in relation to D-0306 in the Defence Protective Measures Request provides good cause to vary the deadline to submit a response to the Defence's request to introduce the witness's evidence pursuant to Rule 68(3) of the Rules.⁴¹ It avers that, in light of newly provided information concerning the witness's current role and occupation, which allowed the Prosecution to connect the witness to individuals allegedly engaged in witness interference and coaching in both the case of *The Prosecutor v. Thomas Lubanga* ('Lubanga case') and the *Ntaganda* case, it is in the interests of justice and the determination of the truth to vary the limit so as to allow the Prosecution to oppose the Defence's request.⁴²
21. In opposition to the Defence's request that D-0306 be called under Rule 68(3) of the Rules, the Prosecution argues that: (i) the witness's position as special adviser to an individual in relation to whom the Prosecution has received credible information that he engaged in witness interference in the *Lubanga* case; and (ii) the fact that the witness is mentioned in several Detention Centre telephone conversations from 2013 and 2014 between Mr Ntaganda and an individual believed to have engaged in witness coaching activities in the *Ntaganda* case, create a heightened need for

³⁷ Defence Request, paras 19, 32, 34.

³⁸ LRVs Response, paras 3, 19, 25-27.

³⁹ LRVs Response, para. 21.

⁴⁰ See Prosecution Response.

⁴¹ Prosecution Protective Measures Response and Further Requests, paras 13-14.

⁴² Prosecution Protective Measures Response and Further Requests, paras 13-14.

scrutiny of D-0306's evidence, as the witness may have been influenced by the aforementioned two individuals.⁴³ It also notes that the use of Rule 68(3) with the witness would only save 30 minutes, which, in the Prosecution's submission, would not justify the risks involved.⁴⁴

22. The Defence avers that the Prosecution failed to show good cause to obtain an extension of time to respond to a part of the Defence Request, arguing that on the basis of information in its possession, it would have been readily possible for the Prosecution to connect D-0306 to the individual allegedly involved in witness interference in the *Lubanga* case.⁴⁵

Preliminary matter

23. The Chamber notes that the Defence did disclose D-0306's identity in the Defence Request,⁴⁶ which should have allowed the Prosecution to carry out its investigations in relation to the proposed witness. However, considering the seven-day deadline to respond to the Defence Request in relation to a number of proposed witnesses, and the fact that, on the basis of his name only, this person appears to not have been immediately identifiable in the relevant Detention Centre telephone conversations,⁴⁷ the Chamber considers that the Prosecution has demonstrated that it was 'unable to file the application within the time limit for reasons outside [its] control'.⁴⁸ The Chamber therefore grants the requested extension.

Analysis

24. The Chamber considers that D-0306's proposed evidence is unique and goes beyond other evidence on the record in light of the time period that it purportedly relates to.⁴⁹ In this respect the Chamber notes that, in line with Article 74 of the Statute, any findings made in its Judgment concerning Mr Ntaganda's alleged efforts to bring about peace and ethnic reconciliation in Ituri relate solely to the period of the charges.

⁴³ Prosecution Protective Measures Response and Further Requests, paras 15-26.

⁴⁴ Prosecution Protective Measures Response and Further Requests, para. 26.

⁴⁵ Defence 8 August Request, paras 6-7.

⁴⁶ See Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 2.

⁴⁷ See Prosecution Protective Measures Response and Further Requests, para. 20 and footnote 29.

⁴⁸ Regulation 35(2) of the Regulations.

⁴⁹ See Defence Request, para 19; and D-0306 Witness Summary, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 4.

It further considers that the proposed testimony may indeed be relevant in order to determine the existence of mitigating circumstances, such as Mr Ntaganda's conduct after the events forming part of the charges.⁵⁰ Accordingly, the Chamber grants the request to call D-0306 as a witness.

25. In relation to whether the witness's evidence be introduced pursuant to Rule 68(3) of the Rules, the Chamber recalls that, pursuant to Rule 68(3), it may allow the introduction of the prior recorded testimony of a witness who is present before the Chamber: (i) where the individual does not object to the introduction of their prior recorded testimony; and (ii) if both parties and the Chamber have an opportunity to examine the witness. It further recalls that in setting out the procedure to be adopted with regard to the introduction of prior recorded testimony under Rule 68(3) of the Rules, it previously indicated that it 'may rule on any preliminary objections in advance but will not issue a decision on a Rule 68(3) [a]pplication until the relevant witness has appeared before [the] Chamber and attested to the accuracy of the document to be tendered into evidence'.⁵¹

26. In the present circumstances, the Chamber notes the Prosecution's opposition to the introduction of D-0306's evidence under Rule 68(3) of the Rules. Considering further the content of the witness's testimony as put forward by the Defence, who is expected to testify, *inter alia*, in relation to his perception of Mr Ntaganda's state of mind as well as private conversations he had with him,⁵² as well as the fact that the total estimated time which would be saved by the introduction of the witness's statement under Rule 68(3) would be of only 30 minutes,⁵³ the Chamber considers it appropriate for the witness to testify entirely *viva voce*.

27. As for the Defence's request that the witness's testimony be heard via video-link, the Chamber recalls that, as previously held,⁵⁴ it considers that the Statute and the Rules

⁵⁰ Rule 145(2)(a)(ii) of the Rules. *See also* Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba*, Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing, 4 May 2016, ICC-01/05-01/08-3384, para. 27; and Trial Chamber I, *The Prosecutor v. Thomas Lubanga*, Order on the defence request to present evidence during the sentencing hearing, 11 June 2012, ICC-01/04-01/06-2895, paras 10 and 19.

⁵¹ Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 43.

⁵² *See* D-0306 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 4, paras 4-5.

⁵³ *See* Defence Request, para. 34; and Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 2.

⁵⁴ *See, inter alia*, transcript of hearing on 29 May 2017, ICC-01/04-02/06-T-206-CONF-ENG ET, pages 36-37; Decision on Defence's request to hear Witness D-0054's testimony via video-link and advance notice

give the Chamber a broad discretion to permit evidence to be given *viva voce* by means of video or audio technology, provided, *inter alia*, that such measures are not prejudicial to, or inconsistent with, the rights of the accused. In the present circumstances, noting particularly that the request for video-link testimony emanates from the Defence, and the fact that the witness appears not to be in the possession of a passport,⁵⁵ the Chamber authorises Witness D-0306 to testify via video-link.

28. In light of the foregoing, the Chamber decides that the witness be heard *viva voce*, via video-link. The Defence shall have one hour to examine the witness. The Chamber further notes that the summary of D-0306's proposed evidence⁵⁶ refers to a video.⁵⁷ Although it is not clear whether the Defence considers this video to be an associated exhibit under Rule 68(3) of the Rules, given the Chamber's decision to hear the witness's evidence *viva voce* only, any admission of this video or excerpts thereof, as well as any related transcription and translation, must be done during the witness's examination-in-chief.

3. D-0047

Submissions

29. The Defence requests to call D-0047, a former member of the UPC, who is expected to testify about Mr Ntaganda's involvement in two demobilisation programs adhered to by the UPC and his close partnership with MONUC in the implementation thereof.⁵⁸ The Defence argues that D-0047's evidence is relevant for the purposes of mitigation as it details efforts made by Mr Ntaganda after the period of the charges to

concerning Witness D-0210, 23 May 2017, ICC-01/04-02/06-1919; Decision on Prosecution's request to hear P-0933's testimony via video-link, 16 March 2016, ICC-01/04-02/06-1213-Red, para. 6; and Decision on Prosecution's request to hear P-0039's testimony by way of video-link, 12 October 2015, ICC-01/04-02/06-897-Red2, para. 12, *referring to, inter alia*, Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the "Second Further Revised Defence Submissions on the Order of Witnesses" (ICC-01/05-01/08-2644) and on the appearance of Witnesses D04-02, D04-09, D04-03, D04-04 and D04-06 via video-link, 31 May 2013, ICC-01/05-01/08-2646, para. 8; and Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Redacted Decision on the defence request for a witness to give evidence via video-link, 9 February 2010, ICC-01/04-01/06-2285-Red, paras 14-15.

⁵⁵ See Defence Request, para. 18, where the Defence referred to D-0305 as 'the only witness who possesses a passport'.

⁵⁶ See D-0306 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 4, para. 3.

⁵⁷ DRC-OTP-0118-0002.

⁵⁸ Defence Request, paras 3, 20; and D-0047 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 5.

bring about peace and stability and to encourage demobilisation.⁵⁹ The Defence indicates that, depending on the Chamber's preference, the proposed witness's evidence could be presented entirely *viva voce* or pursuant to Rule 68(3) of the Rules.⁶⁰ The Defence further requests that the proposed witness be heard via video-link and indicates that it has been informally notified by the Registry that it would be possible to make the necessary arrangements in time for the proposed hearing period of early September.⁶¹

30. The LRVs argue that the proposed evidence is cumulative in nature and pertains to matters that have been extensively litigated at trial and would therefore not assist the Chamber in its assessment of the appropriate sentence.⁶² They specifically highlight that: (i) the Chamber dismissed arguments regarding Mr Ntaganda's efforts to bring about peace and ethnic reconciliation during the trial in light of significant evidence in contradiction of this alleged goal of Mr Ntaganda;⁶³ and (ii) the Chamber already heard evidence in relation to demobilisation and found that the UPC/FPLC did not effectively engage in the demobilisation process and that some individuals who were demobilised were re-armed or threatened into re-integrating into the UPC forces.⁶⁴ The LRVs further argue that the proposed witness lacks credibility and highlighted that two Prosecution witnesses in the *Ntaganda* case indicated that they had been contacted and/or threatened by D-0047, for the purpose of discouraging them from testifying.⁶⁵

31. The Prosecution does not oppose hearing or admitting evidence from D-0047 as such, but requests the Chamber to limit the scope of his testimony, arguing that some aspects are irrelevant to sentencing and/or cumulative of other evidence on the record.⁶⁶ It also points out that the timing of certain aspects the witness is expected to testify on is unclear, making it impossible to assess their relevance.⁶⁷ The Prosecution further opposes the use of Rule 68(3) with D-0047, noting certain credibility concerns

⁵⁹ Defence Request, paras 3, 16.

⁶⁰ Defence Request, para. 34.

⁶¹ Defence Request, paras 20, 32, 34.

⁶² LRVs Response, paras 3, 19, 25-27.

⁶³ LRVs Response, para. 21.

⁶⁴ LRVs Response, para. 23.

⁶⁵ LRVs Response, paras 28-30, 32-34.

⁶⁶ Prosecution Response, paras 2, 17, 20-21.

⁶⁷ Prosecution Response, para. 21.

in relation to the witness and the fact that he allegedly previously sought to interfere with witnesses in the *Ntaganda* case.⁶⁸

Analysis

32. The Chamber notes that, in its Judgment, it made certain findings concerning UPC/FPLC demobilisation efforts up to and including July 2003.⁶⁹ It further notes that, as pointed out by the Prosecution, on the basis of the information provided by the Defence,⁷⁰ the timing of certain aspects of the witness's expected testimony remains unclear. However, the Chamber considers parts of D-0047's expected evidence to be unique and to go beyond other evidence on the record, especially with regard to events that occurred in 2004.⁷¹ Furthermore, to the extent that it details efforts made by Mr Ntaganda to bring about peace and security in the DRC after the events forming part of the charges, including by effectively cooperating with MONUC, the expected testimony may be relevant for the purposes of mitigation.⁷²

33. As for the arguments concerning the proposed witness's credibility, the Chamber notes that at this stage they remain speculative and that, in any case, the Prosecution and the LRVs may challenge D-0047's credibility in cross-examination.

34. In light of the foregoing, the Chamber grants the request to call D-0047 as a witness.

35. In relation to whether the witness's evidence be introduced pursuant to Rule 68(3) of the Rules or entirely *viva voce*, the Chamber recalls the procedure set out with regard to the introduction of prior recorded testimony under the aforementioned rule and notes the Prosecution's objection in this respect. Considering further that only 30 minutes would be saved through the use of Rule 68(3) with the witness,⁷³ and bearing in mind the need to limit the evidence to be adduced to what is relevant for the

⁶⁸ Prosecution Response, paras 35, 37-38.

⁶⁹ See Judgment, ICC-01/04-02/06-2359 (with Annexes A, B and C), paras 417-430.

⁷⁰ See D-0047 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 5.

⁷¹ See Defence Request, para. 20; and D-0047 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 5, para. 6.

⁷² Rule 145(2)(a)(ii) of the Rules. See also Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba*, Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing, 4 May 2016, ICC-01/05-01/08-3384, para. 27; and Trial Chamber I, *The Prosecutor v. Thomas Lubanga*, Order on the defence request to present evidence during the sentencing hearing, 11 June 2012, ICC-01/04-01/06-2895, paras 10 and 19.

⁷³ See Defence Request, para. 34; and Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 2.

purposes of sentencing, the Chamber considers it appropriate for the witness to testify entirely *viva voce*.

36. As for the Defence's request that the witness's testimony be heard via video-link, the Chamber recalls its above considerations in relation to video-link testimony, the fact that the request for video-link testimony emanates from the Defence, and the fact that the witness appears not to be in the possession of a passport.⁷⁴ Under these circumstances, the Chamber decides that the witness be heard via video-link. The Defence shall have one hour to examine the witness. The Chamber further instructs the Defence to conduct its examination-in-chief in such a way as to avoid re-litigating matters already litigated at trial, particularly as concerns demobilisation in the period up to and including July 2003.

4. D-0305

Submissions

37. The Defence requests to call D-0305, arguing that she will provide evidence regarding: (i) Mr Ntaganda's character, personal circumstances and mitigating conduct by virtue of her having personally witnessed him giving speeches in 2002, 2003 and 2004 that emphasised the importance of protecting the civilian population of Ituri without distinction as to ethnicity and being part of a broader campaign of ethnic reconciliation in Ituri;⁷⁵ and (ii) Mr Ntaganda's attitude towards women.⁷⁶ The Defence indicates that, depending on the Chamber's preference, the witness's evidence could be presented entirely *viva voce* or pursuant to Rule 68(3) of the Rules.⁷⁷

38. The LRVs submit that the proposed evidence is cumulative in nature and pertains to matters that have been extensively litigated at trial and would therefore not assist the Chamber in its assessment of the appropriate sentence.⁷⁸ They specifically argue that

⁷⁴ See Defence Request, para. 18, where the Defence referred to D-0305 as 'the only witness who possesses a passport'.

⁷⁵ Defence Request, paras 3, 16, 18; and D-0305 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 3.

⁷⁶ Defence Request, para. 18; and D-0305 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 3.

⁷⁷ Defence Request, para. 34.

⁷⁸ LRVs Response, paras 3, 19, 25-27.

the Defence already presented evidence at trial as to the treatment of women within the UPC/FPLC, in relation to which the Chamber rejected arguments that Mr Ntaganda was mindful of the need to punish instances of rape,⁷⁹ as well as in relation to Mr Ntaganda's reputation and conduct after the crimes, including his ability to maintain military discipline.⁸⁰

39. The Prosecution does not oppose hearing or admitting evidence from D-0305 as such, but requests that the Chamber limit the scope of her testimony as some aspects are irrelevant to sentencing and/or cumulative of other evidence on the record.⁸¹ It also argues that, as the proposed witness was a member of the UPC, any assistance she may have received from Mr Ntaganda is both irrelevant for mitigation purposes and not disputed by the Prosecution.⁸² The Prosecution further requests that the proposed witness be heard entirely *viva voce*, arguing that credibility concerns arise from her position within the UPC.⁸³

Analysis

40. The Chamber considers D-0305's expected testimony to be unique and to go beyond other evidence on the record, in so far as it concerns events which occurred outside the temporal scope of the charges,⁸⁴ as well as to some extent concerning Mr Ntaganda's character *vis-à-vis* others. The expected testimony may also be relevant in determining the existence of mitigating circumstances, including efforts made by Mr Ntaganda to secure peace in the region after the events forming part of the charges.⁸⁵ Under these circumstances, the Chamber grants the request to call D-0305 as a witness.

41. In relation to whether the witness's evidence be introduced pursuant to Rule 68(3) of the Rules or entirely *viva voce*, the Chamber recalls its above considerations in

⁷⁹ LRVs Response, para. 22.

⁸⁰ LRVs Response, para. 24.

⁸¹ Prosecution Response, paras 2, 17, 20, 23.

⁸² Prosecution Response, para. 23.

⁸³ Prosecution Response, paras 35-36, 39.

⁸⁴ See e.g. D-0305 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 3, para. 5.

⁸⁵ Rule 145(2)(a)(ii) of the Rules. See also Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba*, Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing, 4 May 2016, ICC-01/05-01/08-3384, para. 27; and Trial Chamber I, *The Prosecutor v. Thomas Lubanga*, Order on the defence request to present evidence during the sentencing hearing, 11 June 2012, ICC-01/04-01/06-2895, paras 10 and 19.

relation to the introduction of prior recorded testimony under the aforementioned rule and notes the Prosecution's objection in this respect. Considering further the expected content of the witness's testimony, who is expected to testify, *inter alia*, in relation her direct interactions with and perception of Mr Ntaganda,⁸⁶ the fact that only 30 minutes would be saved through the use of Rule 68(3) with the witness,⁸⁷ and bearing in mind the need to limit the evidence to be adduced to what is relevant for the purposes of sentencing, the Chamber considers it appropriate for the witness to testify entirely *viva voce*.

42. The Defence shall have one hour to examine the witness. The Chamber instructs the Defence to conduct its examination-in-chief in such a way as to avoid re-litigating any matters already litigated at trial. The Chamber further notes that the summary of D-0305's proposed evidence⁸⁸ refers to two videos,⁸⁹ one of which⁹⁰ has already been admitted in the case record. As a result of the Chamber's decision to not permit Rule 68(3) for this witness, any admission of the other video, or excerpts thereof, and of the related transcription and translation, must be done during the witness's examination-in-chief.

B. Protective measures

1. Preliminary matter

43. At the outset, the Chamber notes that, in the Defence Request, the Defence did not make any specific submissions in support of its request for 'the utmost in-court security measures' for D-0306,⁹¹ and only made such specific submissions in the Defence Protective Measures Request, filed one week later. It further notes that, despite the Chamber's order that any requests to call witnesses in relation to sentencing include, *inter alia*, any requests for protective measures,⁹² the Defence did not request an extension of the time limit pursuant to Regulation 35 of the Regulations for its request for protective measures in relation to D-0306.

⁸⁶ See D-0305 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 3, paras 3, 6.

⁸⁷ See Defence Request, para. 34; and Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 2.

⁸⁸ See D-0305 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 3, paras 5-6.

⁸⁹ DRC-D18-0001-0436; DRC-OTP-0159-0477.

⁹⁰ DRC-OTP-0159-0477.

⁹¹ Defence Request, para. 19.

⁹² Order on Sentencing Procedure, para. 2(iii).

44. While it would have been preferable for the Defence to abide by the time limit set by the Chamber in making its substantiated submissions, considering: (i) that the Defence did indicate, by the required deadline, its intention to request protective measures for D-0306, thereby putting the VWU on notice that it ought to submit an assessment in relation to the proposed witness; (ii) the Chamber's obligations in relation to the protection of victims and witnesses pursuant to Article 68(1) of the Statute; and (iii) that no prejudice arose from the Defence's late filing of its substantiated submissions, given that the Prosecution and the LRVs still had time to respond, had they wished to do so, and the Chamber to issue a decision sufficiently in advance of the witness's expected testimony,⁹³ the Chamber considers it in the interests of justice to accept the late filing of the Defence's substantiated request.

2. Submissions

45. The Defence requests facial and voice distortion in conjunction with the use of a pseudonym for Witness D-0306.⁹⁴ It argues that the witness has expressed objectively well-founded fears about potential negative repercussions to his security and well-being arising from his testimony.⁹⁵ The Defence also submits that, in light of the nature of his work, the witness travels widely and comes into contact with a large number of people and appearing as a witness for the Defence may put him at risk of retaliation.⁹⁶ It further submits that, given his 'high profile' within the Lendu community and the nature of his expected testimony, publicly revealing his identity would put him and his family members at risk.⁹⁷

46. After initially requesting that the Chamber reject the Defence's request for protective measures as unsubstantiated,⁹⁸ the Prosecution responds to the Defence Protective Measures Request noting that, while the Chamber could reject the request *in limine* on the basis of its late filing, the Prosecution does not oppose the requested protective measures.⁹⁹

⁹³ See email from the Chamber to the parties and participants, 11 July 2019, at 16:42.

⁹⁴ Defence Protective Measures Request, para. 1.

⁹⁵ Defence Protective Measures Request, paras 1, 7-8.

⁹⁶ Defence Protective Measures Request, paras 6-7, 9.

⁹⁷ Defence Protective Measures Request, paras 7-9.

⁹⁸ Prosecution Response, para. 40.

⁹⁹ Prosecution Protective Measures Response and Further Requests, paras 1, 10.

3. Analysis

47. The Chamber incorporates by reference the applicable law as set out in its ‘Decision on request for in-court protective measures relating to the first Prosecution witness’.¹⁰⁰
48. The Chamber recalls that it has previously held that the general security situation in a region may be relevant to risks faced by individual witnesses.¹⁰¹ In assessing the existence of such a risk, the Chamber has referred to Registry reports outlining the security issues in the DRC.¹⁰² The Chamber further recalls that, in assessing whether an objectively justifiable risk to a witness and/or his or her family exists, the Chamber has previously considered several factors, including, *inter alia*, the witness’s place of residence or area of travel, the witness’s professional responsibilities, the witness’s family situation, and the nature of the witness’s anticipated testimony.¹⁰³
49. In the present instance, the Chamber has considered the witness’s place of residence and areas of travel, and the Defence’s submission that, due to his occupation, he comes into contact with a large number of people,¹⁰⁴ which it considers may increase the risks faced by the witness. The Chamber has also considered the information received from the VWU, which indicates that the security situation in eastern DRC remains precarious and that the situation in Ituri province is characterised by attacks by unidentified armed groups on the Armed Forces of the DRC.¹⁰⁵
50. The Chamber further notes the Defence’s submissions with respect to the subjective fears expressed by the witness regarding the risk of retaliation.¹⁰⁶ While the witness is not reported to have experienced any specific security incidents, the Chamber recalls

¹⁰⁰ Decision on request for in-court protective measures relating to the first Prosecution witness, 14 September 2015, ICC-01/04-02/06-824-Conf (‘First Protective Measures Decision’, a public redacted version was notified on 16 September 2015, ICC-01/04-02/06-824-Red), paras 5-6.

¹⁰¹ See e.g. First Protective Measures Decision, ICC-01/04-02/06-824-Conf, paras 14-15.

¹⁰² See e.g. transcript of hearing of 12 September 2017, ICC-01/04-02/06-T-242-CONF-ENG ET, page 61, lines 3 to 11; transcript of hearing of 15 September 2017, ICC-01/04-02/06-T-245-CONF-ENG ET, page 61, lines 9 to 11.

¹⁰³ See e.g. Decision on Prosecution request for in-court protective measures for Prosecution Witness P-0551, 15 February 2017, ICC-01/04-02/06-1786, para. 10; Confidential redacted version of ‘Decision on Prosecution’s request for in-court protective and special measures for Witness P-0800’, 10 February 2017, ICC-01/04-02/06-1160-Conf-Red, para. 7; transcript of hearing of 15 September 2017, ICC-01/04-02/06-T-245-CONF-ENG ET, page 61, lines 12 to 17.

¹⁰⁴ See Defence Protective Measures Request, para. 6.

¹⁰⁵ Email from the VWU to the Chamber, 6 August 2019, at 14:41.

¹⁰⁶ See Defence Protective Measures Request, paras 7-9.

that threats to a witness or his or her family are not a prerequisite to determining whether the witness faces an objectively justifiable risk, and that there are reported instances where other witnesses were allegedly threatened as a result of their involvement with the Court.¹⁰⁷

51. Moreover, the Chamber has taken into account the nature of the witness's anticipated testimony as put forward by the Defence,¹⁰⁸ which, as noted above, may be relevant for the purposes of mitigation. In light of the witness's position as a Lendu community leader, the Chamber considers that the content of his expected testimony would place the witness and his family at risk were he to testify without protective measures.

52. Furthermore, the Chamber has considered the protective measures assessment of the VWU in relation to the witness, wherein the VWU notes that it agrees with the Defence's assessment that D-0306's expected testimony for Mr Ntaganda would place him and his family in a precarious situation.¹⁰⁹

53. In light of the foregoing, while conscious of the principle that the fairness of the trial generally favours the identity of the witnesses being made known to the public,¹¹⁰ the Chamber is satisfied that an objectively justifiable risk exists with respect to the security of the witness and his family, warranting the shielding of his identity from the public. Accordingly, and pursuant to Rule 87 of the Rules, the Chamber grants the measures of face and voice distortion during Witness D-0306's testimony, and the use of a pseudonym for the purposes of the trial.

C. Increased monitoring of Mr Ntaganda's contacts

54. The Chamber recalls that on 19 February 2018, it lifted all previously imposed restrictions on Mr Ntaganda's contacts and communications.¹¹¹

¹⁰⁷ See e.g. transcript of hearing on 12 December 2016, ICC-01/04-02/06-T-176-CONF-ENG ET, page 4, lines 18-23. See also First Protective Measures Decision, para. 14.

¹⁰⁸ See Defence Request, para. 19; D-0306 Witness Summary in Annex A, *annexed to* ICC-01/04-02/06-2369-Conf-Exp, page 4; and Defence Protective Measures Request, para. 9.

¹⁰⁹ Email from the VWU to the Chamber, 6 August 2019, at 14:41.

¹¹⁰ See Decision on Defence request for in-court protective measures for Witness D-0017, 22 November 2017, ICC-01/04-02/06- 2125, para. 8.

¹¹¹ Decision on the present restrictions on Mr Ntaganda's contacts, ICC-01/04-02/06-2236-Conf ('Final Decision on Restrictions'; a public redacted version was notified the same day, ICC-01/04-02/06-2236-Red).

1. *Submissions*

55. The Prosecution requests that Mr Ntaganda's contacts be subjected to increased monitoring until the completion of the sentencing phase and for Mr Ntaganda to be ordered to speak in either Kinyarwanda or Swahili so as to permit effective monitoring, arguing that such measures would be necessary as three of its proposed witnesses reside in areas where Mr Ntaganda has associates and the security situation is unstable.¹¹² It further refers to the Chamber's previous finding that Mr Ntaganda intended to interfere with witnesses and instructed his interlocutors to coach witnesses using his non-privileged telephone conversations from the Detention Centre.¹¹³

56. The Defence argues that the Prosecution's request is manifestly unjustified, as there has never been any suggestion that Mr Ntaganda or his associates sought to influence any non-insider witnesses.¹¹⁴ Considering the occupation of the proposed witnesses, it submits that the Prosecution's assertion that Mr Ntaganda or his associates would seek to influence such witnesses is unfounded.¹¹⁵

2. *Analysis*

57. The Chamber recalls the applicable law set out in its previous decisions relating to the placing of restrictions on Mr Ntaganda's contacts.¹¹⁶ The Chamber further notes that, in the present circumstances, where all previously imposed restrictions on Mr Ntaganda's contacts and communications have been lifted,¹¹⁷ and considering that the imposition of restrictions – including increased monitoring – on a detained person's contacts constitutes the exception and not the rule,¹¹⁸ the Chamber's analysis shall be focussed on whether the Prosecution has provided information which raises

¹¹² Prosecution Request, para. 64.

¹¹³ Prosecution Request, para. 63, referring to Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts, 18 August 2015, ICC-01/04-02/06-785-Red ('Decision on Restrictions'), paras 55, 57.

¹¹⁴ Defence Response, para. 31.

¹¹⁵ Defence Response, para. 31.

¹¹⁶ See Decision on the Prosecution request for restrictions on contact and the Defence request for access to logs, 8 December 2014, ICC-01/04-02/06-410-Conf-Exp-Red (a corrected version was notified on 16 February 2015, ICC-01/04-02/06-410-Conf-Exp-Red-Corr), paras 40-44; Decision on Restrictions, paras 39-42; Decision reviewing the restrictions placed on Mr Ntaganda's contacts, 7 September 2016, ICC-01/04-02/06-1494-Red4, paras 16-18; and Further decision reviewing the restrictions placed on Mr Ntaganda's contacts, 19 May 2017, ICC-01/04-02/06-1913-Red2, paras 13-14.

¹¹⁷ See Final Decision on Restrictions.

¹¹⁸ Regulations 98(2), 99(h) and (i), 100(1) and 101(2) of the Regulations.

serious concerns that, were Mr Ntaganda's contacts not to be restricted, any of the situations described under Regulation 101(2)(a) to (f) of the Regulations would arise.

58. In this respect, the Chamber considers that, based on the information provided, the Prosecution has failed to demonstrate that the increased monitoring of Mr Ntaganda's contacts would be necessary. While submitting that three of its four proposed witnesses reside in areas where 'Mr Ntaganda has associates and where the security situation is unstable',¹¹⁹ the Prosecution has not provided any indication that Mr Ntaganda and/or individuals related to or associated with him would have attempted to interfere with proposed sentencing witnesses and/or to engage in any other prohibited activity. The Chamber's previous findings on Mr Ntaganda's alleged intention to engage in witness interference¹²⁰ do not, without more, demonstrate that, at the present stage of the proceedings, a reasonable basis exists to believe that Mr Ntaganda would engage in such conduct. In light of the foregoing, the Chamber rejects the Prosecution's request that Mr Ntaganda's contacts be subjected to increased monitoring until the completion of the sentencing phase and that Mr Ntaganda be ordered to speak in either Kinyarwanda or Swahili so as to permit effective monitoring.

D. Matters related to scheduling

59. The Chamber recalls that it previously indicated its intention to schedule the sentencing hearing for the first or second week of September 2019.¹²¹ However, the Chamber has since then received information from the VWU that the Ebola situation in eastern DRC impacts on the appearance of two of the witnesses. The Registry has further explained the necessary protocols to be followed, including the medical screening of the relevant witnesses, as well as the associated timelines. Bearing in mind this information, the Chamber considers it appropriate for the sentencing hearing to instead be scheduled for the third week of September 2019. In light of the foregoing, on 17 September 2019, the Chamber will hear the testimony of Witness D-0305, and Witnesses D-0047 and D-0306 will appear via video-link on 18 September 2019.

¹¹⁹ See Prosecution Request, para. 64.

¹²⁰ See *e.g.* Decision on Restrictions, paras 55, 57.

¹²¹ Email from the Chamber to the parties and participants, 11 July 2019, at 16:42.

60. The Chamber further recalls that it had informed the parties and the participants that on the occasion of such a hearing it may, in addition to hearing further evidence, also hear submissions relevant to the sentence.¹²² The Chamber decides to hear the preliminary statements related to sentencing on 20 September 2019. As the parties and participants are to file their comprehensive written submissions on sentencing after the date of the sentencing hearing,¹²³ in order for the submissions to be able to take into account the further evidence heard and/or admitted by that time, the oral submissions need only be preliminary in nature and need not be exhaustive. The Chamber therefore considers one hour for each of the parties to suffice for the presentation of their respective preliminary statements in relation to sentencing. The LRVs shall have half an hour each to present their respective preliminary statements.

61. In case the accused intends to make an unsworn statement in relation to sentencing, the Defence is directed to inform the Chamber thereof by 30 August 2019, by email, in order for such a statement to be scheduled during one of the aforementioned hearing days.

IN VIEW OF THE ABOVE, THE CHAMBER HEREBY

PLACES ON THE RECORD the First Decision Rejecting Leave to Reply, the Second Decision Rejecting Leave to Reply and the Decision Granting Partial Leave to Reply;

REJECTS the request to hear the testimony of the Proposed Expert Witness;

GRANTS the request to hear the testimony of Witnesses D-0047, D-0305 and D-0306 and **DECIDES** that their testimony be heard entirely *viva voce*;

GRANTS the request for in-court protective measures in the form of face and voice distortion during the testimony of Witness D-0306, and the use of a pseudonym for the purposes of the trial;

¹²² Email from the Chamber to the parties and participants, 11 July 2019, at 16:42.

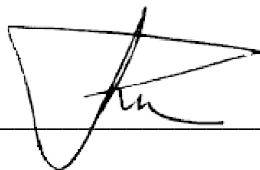
¹²³ See email from the Chamber to the parties and participants, 11 July 2019, at 16:42.

REJECTS the request that Mr Ntaganda's contacts be subjected to increased monitoring until the completion of the sentencing phase and that Mr Ntaganda be ordered to speak in either Kinyarwanda or Swahili so as to permit effective monitoring;

SCHEDULES a hearing for 17, 18 and 20 September 2019 to hear the testimony of Witnesses D-0305, D-0047 and D-0306, and the preliminary closing submissions of the parties and the participants; and

DIRECTS the Registry to make the necessary arrangements for hearing the testimony of Witnesses D-0047 and D-0306 via video-link.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 20 August 2019
At The Hague, The Netherlands