

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06  
Date: 30 January 2017

**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**

**Decision supplementing the Decision on the Conduct of Proceedings (ICC-01/04-02/06-619) and providing directions related to preparations for the presentation of evidence by the Defence**

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**

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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**

**Others**

**Trial Chamber VI** ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 31, 66 and 67 of the Rome Statute ('Statute'), Rules 78-80 of the Rules of Procedure and Evidence ('Rules'), and Regulation 54 of the Regulations of the Court ('Regulations'), issues this 'Decision supplementing the Decision on the Conduct of Proceedings (ICC-01/04-02/06-619) and providing directions related to preparations for the presentation of evidence by the Defence'.

## I. BACKGROUND

1. On 2 June 2015, having received submissions from the parties and participants, including on the scope and timing of defence disclosure,<sup>1</sup> the Chamber issued its 'Decision on the conduct of proceedings'.<sup>2</sup> Therein, the Chamber noted, *inter alia*, that should the defence team for Mr Ntaganda ('Defence') indicate an intention to call evidence, the Chamber would subsequently issue a decision setting out the procedure for any applicable disclosure.<sup>3</sup>
2. 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 Office of the Prosecutor ('Prosecution') completing its case 'within the first couple of months of 2017', directing the Prosecution to plan accordingly and emphasising also that the Defence should be making ongoing preparations for any defence case it may wish to present.<sup>4</sup>
3. On 19 October 2016, the Chamber issued an order directing, amongst other things, that the Defence file by 16 December 2016 a notice as to whether it intends

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<sup>1</sup> Prosecution submissions on the conduct of proceedings and the modalities of victim participation at trial, ICC-01/04-02/06-547; Submissions on behalf of Mr Ntaganda on the conduct of proceedings and on modalities of victims' participation at trial, ICC-01/04-02/06-548; Joint submissions on the conduct of proceedings, ICC-01/04-02/06-543; Transcript of hearing on 22 April 2015, ICC-01/04-02/06-T-19-ENG ET.

<sup>2</sup> ICC-01/04-02/06-619.

<sup>3</sup> Decision on the Conduct of Proceedings, ICC-01/04-02/06-619, para. 18.

<sup>4</sup> Transcript of Hearing on 15 July 2016, ICC-01/04-02/06-T-122-CONF-ENG, pages 65-66.

to call evidence and, relatedly, to provide the Chamber, on an *ex parte* basis, with a preliminary non-binding list of the witnesses it intends to call.<sup>5</sup>

4. On 16 December 2016, the Defence duly provided such provisional list<sup>6</sup> and notice, indicating an intention to present evidence on ‘at least some of the charges’.<sup>7</sup>
5. The Chamber notes that the Prosecution’s presentation of witness evidence is expected to conclude during the current evidentiary block.

## II. DIRECTIONS

6. As a preliminary matter, the Chamber notes that the disclosure obligations of the Prosecution and Defence differ significantly under the statutory framework. The Defence must, however, at a minimum, permit inspection of any books, documents, photographs and other tangible objects in its possession or control, which are intended for use by it as evidence for the purposes of the trial.<sup>8</sup> The Chamber may set deadlines, issue orders and require information on, *inter alia*: a summary of the evidence the accused intends to rely on; the number and identity (including any pseudonyms) of the witnesses to be called; the length of questioning of the witnesses; the issues the accused proposes to raise during the trial; and disclosure of evidence.<sup>9</sup>

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<sup>5</sup> Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution, ICC-01/04-02/06-1588, paras 10-11. See also para. 12. A corrigendum was issued on 12 December 2016 (ICC-01/04-02/06-1588-Corr). On 16 December 2016, the Chamber rejected Defence request for reconsideration of the deadline for providing a provisional list of witnesses (ICC-01/04-02/06-1688).

<sup>6</sup> Preliminary list of Defence Witnesses, ICC-01/04-02/06-1690-Conf-Exp.

<sup>7</sup> Notice on behalf of Mr Ntaganda pursuant to Trial Chamber VI Order of 19 October 2016, ICC-01/04-02/06-1588, ICC-01/04-02/06-1689.

<sup>8</sup> Rule 78 of the Rules.

<sup>9</sup> Rule 79(4) of the Rules; Regulation 54 of the Regulations. See also Trial Chamber III, *The Prosecutor v Jean-Pierre Bemba Gombo*, Decision on defence disclosure and related issues, 24 February 2012, ICC-01/05-01/08-2141, page 18; Trial Chamber II, *The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the ‘Prosecution’s Application Concerning Disclosure by the Defence Pursuant to Rules 78 and 79(4)’, 14 September 2010, ICC-01/04-01/07-2388, page 23; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, 3 November 2015, ICC-01/05-01/13-1450, para. 2.

7. Further, the Chamber notes the Defence's prior indication that it did not, at that time, intend to raise a defence of alibi, or other specific defences, as mentioned in Rule 79 of the Rules,<sup>10</sup> and, noting the provisions of Rule 79(2), considers that any such notice should have been provided at this stage.
8. The Chamber hereby decides that the timelines and procedures set out in paragraphs 16, 20-36 and 41-68 of the Chamber's 'Decision on the conduct of proceedings', and any variations thereto,<sup>11</sup> will remain applicable, *mutatis mutandis*, to the proceedings during the presentation of evidence by the Defence.
9. In order to ensure the fair and expeditious conduct of the trial pursuant to Article 64(2) of the Statute and to facilitate the preparations of the parties and participants, the Chamber hereby sets the following schedule leading up to the commencement of the presentation of evidence by the Defence.

*Lists of witnesses and evidence*

10. By **31 March 2017**, the Defence must provide a further provisional list of witnesses. This should include estimates for the number of hours it intends to examine each witness, as well as a summary of the anticipated testimony of the witness. Noting that witness statements may not be available in all cases, the Defence is requested to prepare the summaries in a sufficiently detailed and comprehensive manner to enable the parties, participants and Chamber to prepare meaningfully. The Defence is to simultaneously file a confidential redacted version of the provisional list of witnesses.

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<sup>10</sup> Transcript of Hearing on 17 February 2015, ICC-01/04-02/06-T-18-Red-ENG, p.16, lines 14-24.

<sup>11</sup> *See, in particular*, Supplemental decision on matters related to the conduct of proceedings, 27 May 2016, ICC-01/04-02/06-1342; E-mails from Legal Officer of the Chamber on 1/08/2016 at 16:44 and on 24/08/2016 at 10:47 and Transcript of Hearing dated 5 September 2016, ICC-01/04-02/06-T-123-Red-ENG, page 3, line 17 – page 4, line 4 (regarding creation of lesser redacted transcripts); E-mail from Legal Officer of the Chamber on 12/07/2016 at 12:34 and Transcript of Hearing dated 5 September 2016, ICC-01/04-02/06-T-123-Red-ENG, page 4, lines 5-7 (regarding transcript correction proposals); and E-mail from Legal Officer of the Chamber on 1/08/2016 at 16:51 and Transcript of Hearing dated 5 September 2016, ICC-01/04-02/06-T-123-Red-ENG, page 3, lines 7-10 (regarding efficient scheduling of witnesses).

11. By **26 April 2017**, the Defence must provide the final version of its list of witnesses, together with accompanying estimates for length of examination and statements or summaries of anticipated testimony as described above, as well as its final list of evidence.<sup>12</sup> The Defence shall also indicate any intention to raise an alibi or grounds for excluding criminal liability in accordance with Rule 79 of the Rules.
12. The Chamber further directs the Defence and Victims and Witnesses Unit to engage actively with each other as early as possible in order to ensure full clarity and cooperation regarding necessary procedures for the making of any witness referrals, for the purposes of, *inter alia*, protection assessments, necessary travel arrangements and for the smooth scheduling of witness testimony.

*Disclosure deadlines*

13. The Chamber directs that disclosure should take place on a rolling basis from completion of the presentation of evidence by the Prosecution. By **31 March 2017**, the Defence must disclose all material in its possession which falls under its disclosure obligations.
14. By **26 April 2017**, the Defence must disclose all remaining materials it intends to rely upon during the presentation of its evidence.
15. Redactions may be applied in accordance with the Chamber's redaction protocol.<sup>13</sup>

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<sup>12</sup> The Chamber notes that the current procedure for additions to the List of Evidence, which should be kept to a minimum, will continue to apply (Transcript of hearing on 22 April 2015, ICC-01/04-02/06-T-19-ENG, page 11, line 7 - page 12, line 7; Decision on Defence request for reconsideration, 27 May 2015, ICC-01/04-02/06-611).

<sup>13</sup> Annex to the Decision on the Protocol establishing a redaction regime, 12 December 2014, ICC-01/04-02/06-411-AnxA.

*Presentation of evidence by the Defence*

16. The Chamber hereby indicates its intention that the presentation of evidence by the Defence should commence within one month following the final Defence disclosure deadline.

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

**DECIDES** to direct 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.



**Judge Robert Fremr, Presiding Judge**



**Judge Kuniko Ozaki**



**Judge Chang-ho Chung**

Dated 30 January 2017

At The Hague, The Netherlands