

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 22 December 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

Order providing directions related to the closure of the presentation of evidence

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64, 67, and 68 of the Rome Statute ('Statute'), Rules 140 and 141 of the Rules of Procedure and Evidence ('Rules'), and Regulation and 43 of the Regulations of the Court ('Regulations'), issues this 'Order providing directions related to the closure of the presentation of evidence'.

I. Background

1. On 2 June 2015, the Chamber issued the 'Decision on the conduct of proceedings'.¹
2. On 5 December 2017, the Chamber convened a status conference ('Status Conference') to hear submissions on the timeline for the conclusion of the presentation of evidence, as well as on the length and timing of closing briefs and statements.²
3. On 12 December 2017, the defence team for Mr Ntaganda ('Defence') made further submissions on the issue of closing briefs,³ to which the Office of the Prosecutor ('Prosecution') and the Legal representatives of victims responded on 14 December 2017.⁴ On 18 December 2017, the Defence sought leave to reply on two issues raised in the Prosecution's response.⁵ The Chamber will determine the timelines and modalities of presentation of the closing briefs and closing statements in a separate decision.

¹ ICC-01/04-02/06-619.

² See Order scheduling a status conference, 28 November 2017, ICC-01/04-02/06-2131; Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT.

³ Email communication from the Defence to the Chamber on 12 December 2017, at 20:36.

⁴ Prosecution response to the Defence request for the Prosecution final trial brief to be provided in Kinyarwanda before the submission of the Defence final trial brief, ICC-01/04-02/06-2156; Joint Response of the Common Legal Representatives of Victims to the Defence submissions on the final trial briefs, ICC-01/04-02/06-2158.

⁵ Request on behalf of Mr Ntaganda seeking leave to reply to "Prosecution response to the Defence request for the Prosecution final trial brief to be provided in Kinyarwanda before the submission of the Defence final trial brief", ICC-01/04-02/06-2162.

II. Submissions and directions

A. Defence presentation of evidence

4. Considering the submissions made at the Status Conference, the Chamber expects that the Defence's presentation of evidence will be completed by the end of the sixth evidentiary block, currently scheduled from 22 January to 16 February 2018.

Remaining Defence witnesses

5. During the Status Conference, the Defence stated that, should Witness D-0080 be called to testify, which is dependent on the resolution of certain issues regarding the possibilities for him to testify *viva voce*, the Defence would also call Witness D-0207 to testify during the sixth evidentiary block.⁶
6. The Chamber recalls its decision of 7 November 2017, rejecting the Defence's request for admission of Witness D-0080's prior recorded testimony pursuant to Rule 68(2)(c) on the basis that, at that stage, the witness could not be considered 'unavailable' to testify orally.⁷ The Chamber further added that '[i]n order to facilitate any discussions between the Registry and the Defence regarding arrangements for the *viva voce* testimony of the witness, and noting that the Chamber has previously considered that use of video-link testimony does not require exceptional justification, the Chamber indicate[d] [...] that it would be appropriate for the witness to testify by way of video-link, should it be possible for this to be safely facilitated. In this respect, the Chamber emphasise[d] that, given the current stage of proceedings, any such arrangements should be

⁶ Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT, page 3, lines 6-19 and page 4, lines 1-4.

⁷ Public redacted version of 'Decision on Defence request for admission of the prior recorded testimony of Witness D-0080', 7 November 2017, ICC-01/04-02/06-2100-Red ('Decision on Witness D-0080'), para. 16.

finalised in sufficient time to allow the witness's testimony to be scheduled during the sixth evidentiary block, as appropriate.⁸

7. The Chamber further notes the information provided by the Registry concerning its efforts to obtain the cooperation of the relevant State in order to facilitate the witness's testimony via video-link.⁹
8. In line with the usual practice,¹⁰ the Defence shall provide a list of witnesses it intends to call during the sixth evidentiary block, and the order in which it intends to call them, four weeks prior to the start of the evidentiary block, that is by **27 December 2017**. While noting that at this stage uncertainty exists as to the possibility for the testimony of Witness D-0080 to be safely arranged, should the Defence still wish to call him, and subject to any necessary arrangements being made, this witness should be placed on the list, as well as Witness D-0207, if applicable.
9. Noting the submissions of the Registry on the length of time it may be expected to receive a response in relation to Witness D-0080,¹¹ should it become apparent that video-link testimony for Witness D-0080 cannot be arranged for the sixth evidentiary block, the Defence shall indicate within two days of being informed of this fact as to whether it renews its application to admit the witness's prior recorded testimony pursuant to Rule 68(2)(c) of the Rules.

Further requests for admission of evidence other than through a witness

10. With reference to the procedure previously set out in the 'Decision on the conduct of proceedings',¹² the Chamber set the deadline for the filing of any

⁸ Decision on Witness D-0080, ICC-01/04-02/06-2100-Red, para. 17.

⁹ Email communications from the Registry to the Chamber, the parties, and the participants on 1 December 2017 at 15:19, and on 15 December 2017 at 12:28.

¹⁰ Decision on further matters related to the presentation of evidence by the Defence, 11 May 2017, ICC-01/04-02/06-1900, para. 45. *See also* Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 16.

¹¹ Registry's observations on the feasibility of Witness D-0080's testimony through video-link, 30 October 2017, ICC-01/04-02/06-2088-Conf, para. 15.

¹² ICC-01/04-02/06-619, paras 52-53.

Defence requests for admission of documentary evidence other than through the remaining witnesses it intended to call for 31 October 2017, a deadline which was subsequently extended,¹³ 'to be complemented if necessary in light of the evidence presented after this deadline'.¹⁴

11. On 23 November 2017, the Defence filed a request for admission of evidence from the 'bar table'.¹⁵ During the Status Conference, the Defence indicated that 'at this point in time [it does] not intend to file any further request', noting, however, that it is currently reviewing one source.¹⁶
12. Accordingly, any further request by the Defence for the admission of documentary evidence other than through a witness shall be filed one week after the completion of the testimony of the last Defence witness or, should the Defence not be calling any further witnesses, by **10 January 2018**.

Items marked for identification

13. The Chamber notes that a number of items were marked for identification during the presentation of evidence by the Defence, including certain transcripts and translations of audio-video excerpts admitted into evidence. In line with its previous practice,¹⁷ the Chamber directs the parties to make joint submissions on transcripts and translations that have been marked for identification pending review, indicating any remaining disagreements as to their accuracy or any agreements on corrections thereon. Any outstanding disagreements will be

¹³ Transcript of hearing of ICC-01/04-02/06-T-249-CONF-ENG ET, page 56, line 24 to page 58, line 4 ('[...] the Defence is directed, as proposed in the [request for extension of time], to submit its proposals for the admission of documentary evidence to the Prosecution no later than 10 November 2017 and to file a request before the Chamber three days after having received the Prosecution's position in relation to the proposed documents').

¹⁴ Email communication from the Chamber to the parties and the participants on 9 October 2017, at 14:22.

¹⁵ Defence request for the admission of evidence from the bar table, 23 November 2017, ICC-01/04-02/06-2128-Conf, with Confidential Annex A.

¹⁶ Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT, page 5, lines 1-6.

¹⁷ Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution, 19 October 2016, ICC-01/04-02/06-1588, para. 15. A corrigendum was filed on 12 December 2016 (ICC-01/04-02/06-1588-Corr). Order referring certain translation matters to the Registry, 28 December 2016, ICC-01/04-02/06-1705, with one confidential Annex. Order concerning certain translation matters referred to the Registry, 3 April 2017, ICC-01/04-02/06-1846. Second order referring certain transcription and translation matters to the Registry, 9 May 2017, ICC-01/04-02/06-1897.

referred to the translation services of the Registry for review, with a view to ensuring the accuracy of the relevant portions.

14. The aforementioned submissions and any submissions on any other outstanding items marked for identification during the Defence's presentation of evidence shall be made by **12 January 2018**.

B. Potential rebuttal evidence

15. In its 'Decision on the conduct of proceedings', the Chamber indicated the order of presentation for any evidence in rebuttal, if applicable.¹⁸ During the Status Conference, the Prosecution indicated that it is considering calling one or two witnesses and submitting several documents through the bar table as rebuttal evidence. The Prosecution also submitted that it cannot be expected to put forward its rebuttal case before the completion of the Defence's presentation of evidence, which the Defence opposed.¹⁹
16. Noting that the Defence's presentation of evidence is drawing to a close, the Chamber considers that the Prosecution should, already at this point, be in a position to assess whether it wishes to present certain rebuttal evidence in relation to the evidence presented by the Defence so far. Under these circumstances, and mindful of its duty to ensure that the trial is expeditious, the Chamber directs the Prosecution to file a preliminary request for the presentation of rebuttal evidence by **11 January 2018**, to be complemented within one week after the close of the Defence's presentation of evidence, if necessary.

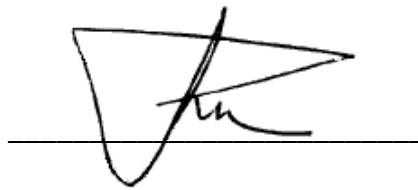
¹⁸ Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 12.

¹⁹ Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT, page 5, lines 22 to page 9, line 20.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the parties, the participants, and the Registry to proceed in accordance with the directions set out in the present order.

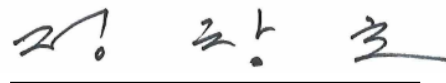
Done in both English and French, the English version being authoritative.

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Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to read 'Kuniko Ozaki', positioned above a horizontal line.

Judge Kuniko Ozaki

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

Judge Chang-ho Chung

Dated 22 December 2017

At The Hague, The Netherlands