

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **2 June 2015**

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, with one public annex

Decision on the conduct of proceedings

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

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Others

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Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64, 67-69 of the Rome Statute ('Statute') and Rules 68, 87-88, 91, 134 and 140 of the Rules of Procedure and Evidence ('Rules'), Regulations 43 and 56 of the Regulations of the Court ('Regulations'), and Regulation 94 of the Regulations of the Registry, issues the following 'Decision on the conduct of proceedings'.

I. BACKGROUND

1. On 12 March 2015, the Chamber ordered the Office of the Prosecutor ('Prosecution'), the defence team for Mr Ntaganda ('Defence'), the Legal Representatives of Victims ('LRVs'; or 'Legal Representative' for singular use) and Registry to submit observations on a set of items concerning the conduct of the proceedings by 7 April 2015.¹
2. On 7 April 2015, the Chamber received submissions from the Prosecution,² Defence,³ LRVs,⁴ and Registry.⁵
3. On 16 April 2015, the Prosecution filed a proposed procedure for challenges to expert testimony.⁶

¹ Order requesting submissions on the conduct of proceedings pursuant to Rule 140 of the Rules and on modalities of victims' participation at trial, registered on 13 March 2015, ICC-01/04-02/06-507 ('Order of 12 March 2015'). In accordance with this order (ICC-01/04-02/06-507, para. 19), on 25 and 30 March 2015, the Prosecution informed the Chamber, Defence and LRVs that it intends to raise four additional issues in its written submissions, namely the 'Scope and timing of disclosure by the Defence', 'Procedure to introduce video evidence at trial', 'Timing and procedure for a "no case to answer" motion' and 'Scope of an unsworn statement by the Accused during trial' (see E-mail from Prosecution to Legal Officer of Chamber on 30 March 2015 at 9:49; and E-mail from Prosecution to Legal Officer of Chamber on 25 March 2015 at 16:22).

² Prosecution submissions on the conduct of proceedings and the modalities of victim participation at trial, ICC-01/04-02/06-547.

³ 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 ('Defence Submissions').

⁴ Joint submissions on the conduct of proceedings, ICC-01/04-02/06-543.

⁵ Registry Observations in response to "Order requesting submissions on the conduct of proceedings pursuant to Rule 140 of the Rules and on modalities of victims' participation at trial" (ICC-01/04-02/06-507), registered on 8 April 2015, ICC-01/04-02/06-549 and confidential annex.

⁶ Prosecution's proposed procedure for challenges to expert testimony, ICC-01/04-02/06-561.

4. On 22 April 2015, during a status conference, the parties and participants made further submissions on the conduct of proceedings.⁷

II. DIRECTIONS

5. In deciding on the directions set out in the present decision, the Chamber has taken into consideration the submissions of the parties and participants. Subject to any further decision on the matter, the Chamber adopts the following directions for the conduct of proceedings, the presentation of evidence, and the modalities of victim participation.
6. From the outset, it is emphasised that all parties and participants must be diligent in meeting the deadlines set by way of the present decision. The Chamber is nonetheless mindful that flexibility and adaptability may be required to ensure a fair and expeditious trial, and it will use its discretion to entertain out-of-time motions or requests, as appropriate.

A. Commencement of trial and opening statements

7. The Chamber directs the parties to raise any objections or observations within the meaning of Rule 134(2) of the Rules by 15 June 2015.
8. Similarly, any motion or request on matters that the parties or participants wish to bring to the Chamber's attention or wish to be decided prior to the start of trial shall be filed by 15 June 2015. On a case-by-case basis, the Chamber may shorten the deadline for responses to such requests, but in any case, responses, if any, shall be filed by 23 June 2015.
9. Article 64(8)(a) of the Statute requires the charges, as confirmed by the Pre-Trial Chamber, to be read to the accused. In this regard, the Chamber

⁷ Transcript of hearing on 22 April 2015, ICC-01/04-02/06-T-19-ENG ET. *See also* Order scheduling a status conference on 21 April 2015 and setting the agenda, 1 April 2015, ICC-01/04-02/06-536. The Chamber subsequently re-scheduled the status conference to 22 April 2015 (E-mail from Legal Officer of Chamber to parties and participants on 14 April 2015 at 19:56).

notes the Defence Submissions⁸ and decides that the Defence shall ensure that Mr Ntaganda has understood the charges previously confirmed by the Pre-Trial Chamber and consents to the charges being read to him in the manner as set out in the certified declaration, annexed to this decision. The declaration is to be filed by 29 June 2015.

10. The parties and LRVs shall disclose, no later than eight days prior to the commencement of trial, copies of any material they intend to use in the course of their opening statements, unless that material is already on the Prosecution's List of Evidence. In that case, they shall nonetheless, by the same deadline, indicate to the other party and participants which materials they intend to use during opening statements. Objections to the use of such material, if any, shall be filed no later than six days prior to the commencement of trial.
11. The opening statements will be presented in the following order: (1) Prosecution (four hours); (2) LRVs (one hour, to be divided between the LRVs); and (3) Defence (four hours).⁹ The opening statements shall be presented entirely in public session. The parties and participants are therefore instructed to prepare accordingly.

B. Presentation of the evidence

12. Unless otherwise directed by the Chamber, evidence will be presented in the following sequence:
 - i. Evidence for the Prosecution;
 - ii. Presentation of evidence by the LRVs, if leave is granted;
 - iii. Evidence for the accused, if applicable;

⁸ Defence Submissions, ICC-01/04-02/06-548, para. 41.

⁹ The Defence has not indicated that the accused wishes to exercise his right under Article 67(1)(h) of the Statute and make an unsworn oral statement as part of the opening statements. If the accused wishes to make an unsworn statement during the opening statements, the Defence is to notify the Chamber, the Prosecution and LRVs no later than eight days prior to the commencement date of trial and the time used for such a statement shall be part of the Defence's four hours.

- iv. Prosecution evidence in rebuttal, if applicable; and
 - v. Defence evidence in rejoinder, if applicable.
13. The Chamber may request the presentation of additional evidence at any time during the proceedings.

1) Presentation of evidence by the Prosecution

14. As directed in the Chamber's order of 12 March 2015,¹⁰ the Prosecution has provided a list indicating, in order, the first witnesses it intends to call.¹¹
15. As previously indicated,¹² the presentation of evidence shall be done in blocks of approximately five weeks of hearings,¹³ the first of which shall commence on 24 August 2015, lasting until 25 September 2015.¹⁴ The second block shall, provisionally, commence on 5 October 2015 and last until 6 November 2015. In between the blocks, short breaks will be taken to allow for proceedings in other cases to take place and/or to deal with pending matters. The Chamber will each time announce the scheduling of upcoming blocks at the earliest opportunity.
16. Accordingly, the Prosecution is directed to provide four weeks prior to the start of a block, by e-mail copied to the communications e-mail address of the Chamber, a list ('Forthcoming Witnesses List') setting out:
- the witnesses it intends to call in the upcoming block, and the order in which it intends to call them;
 - a final time estimate for each examination-in-chief;

¹⁰ Order of 12 March 2015, ICC-01/04-02/06-507, para. 6(ii) and page 11.

¹¹ See Prosecution's provision of the list of witnesses it intends to call until 16 July 2015, 10 April 2015, ICC-01/04-02/06-552-Conf-AnxA. On 10 April 2015, the Chamber rejected, by e-mail, the Prosecution's request to be authorised to file this list after the Chamber's ruling on the Defence request to postpone the trial date (Prosecution request for a variation of the Chamber's direction to provide the order of the Prosecution's first witnesses, 7 April 2015, ICC-01/04-02/06-544-Red; Response on behalf of Mr Ntaganda to Prosecution's request for variation of the Chamber's direction to provide the order of the Prosecution's first witnesses, 8 April 2015, ICC-01/04-02/06-551-Red; E-mail from Chamber to Prosecution, 10 April 2015, 10:23).

¹² ICC-01/04-02/06-T-19-ENG ET WT, page 10, line 20 – page 11, line 6.

¹³ In scheduling their witnesses and examinations, the parties need to leave the last day of each block free, to allow for it to be used as a spill-over day, or to deal with housekeeping matters.

¹⁴ The Chamber will not sit on 10 and 11 September 2015.

- the dual status of the witnesses, if applicable; and
- details of any in-court protective measures that will or have been sought.

2) Presentation of evidence by the Defence

17. The Chamber takes no position at this time on whether it will entertain a motion by the Defence asserting that there is no case for it to answer. Should the Defence wish to file such a motion, it should seek leave to do so including, *inter alia*, submissions on the applicable standard and procedure, no later than five days after the end of the Prosecution's presentation of evidence, or, if applicable, the presentation of evidence by the LRVs.
18. Towards the end of the presentation of evidence by the Prosecution, the Defence will be instructed to file a notice as to whether it intends to call evidence. Subsequently, if applicable, the Chamber will issue a decision setting out the procedure to be followed for any applicable disclosure by the Defence.¹⁵
19. Should the accused decide to exercise his right under Article 67(1)(h) of the Statute to make an unsworn oral or written statement,¹⁶ the Defence shall file a notice prior to the start of the Defence's case, if applicable, so as to allow the Chamber to rule on the appropriate moment and modalities. As such a statement would not constitute evidence, the Prosecution may address it in its closing brief, or in the course of its closing statement, but will not be allowed to produce (new) evidence in rebuttal.

¹⁵ This decision may include certain matters raised in the submissions by the parties, such as the provision of a list of witnesses the Defence intends to call, if any, and the filing of an outline of the legal and factual issues it intends to raise during the presentation of its evidence.

¹⁶ The Chamber notes the Defence's indication that, as of the time of filing its Submissions, 'it is too soon to even consider such a possibility'. See Defence Submissions, ICC-01/04-02/06-548, para. 75.

C. Witnesses

1) Solemn undertaking

20. The Chamber shall remind witnesses, prior to their solemn undertaking and the start of their testimony, of their duty to tell the truth.

2) Scope, order and mode of questioning

21. Subject to any amendment by the Chamber, or any further specific order of the Presiding Judge pursuant to Article 64(8)(b) of the Statute and Regulation 43 of the Regulations, the division of the questioning of witnesses appearing before the Chamber shall, in principle, be in the following order: (i) examination-in-chief, by the calling party; (ii) cross-examination, by the opposing party; (iii) if considered appropriate, re-examination, by the calling party; and (iv) further cross-examination, by the opposing party.¹⁷
22. Should a Legal Representative wish to examine a witness, he or she is directed to file an application in accordance with the procedure set out at paragraph 64 below. Where leave is granted to examine witnesses called by the Prosecution, the Legal Representative may ask questions after the Prosecution has finished its examination-in-chief.
23. The Chamber will actively ensure the efficiency and focus of the examination of witnesses.¹⁸ The Chamber may ask questions of the witnesses at any stage of the testimony, including before the questions from the calling party. These questions may go beyond mere clarification. Furthermore, if the Chamber is not satisfied by the manner in which the calling party conducts its examination-in-chief, it may intervene and conduct its own examination of the witness.

¹⁷ The Chamber notes Rule 140(2)(d) of the Rules in this regard.

¹⁸ ICC-01/04-02/06-T-19-ENG ET, page 32, lines 15-22.

24. Either on its own motion or at the request of a party, the Chamber shall rule, at any time during a witness's testimony, on the appropriateness or relevance of a given line of questioning. These decisions will be taken on a case-by-case basis. In case of an objection, the objecting party is instructed to consider, before addressing the substance of its objection, whether it is appropriate to discuss the reasons for objecting in the presence of the witness, and provide the Chamber an opportunity to decide whether the matter is best dealt with in the absence of the witness.
25. The Chamber has taken note of the time estimates provided per witness.¹⁹ Time estimates are by way of guideline and for the Chamber's scheduling purposes only. If considered appropriate, the Chamber may impose time limits on questioning, including where this would amount to less time being available than the estimates provided.
26. During examination-in-chief, the calling party shall use, as a matter of principle, non-leading questions. On preliminary matters necessary to provide background or context, as well as any other matter which is not contested or when the opposing party agrees to leading questions, or where such questions are otherwise deemed appropriate by the Chamber, the calling party may put information to a witness by way of leading questions. If a witness is not desirous of providing the expected evidence and has been declared hostile by the Chamber, the calling party may ask leading questions.²⁰
27. Where considered appropriate, the Chamber may direct the calling party to first elicit a narrative from the witness about certain matters or events before (more specific) further questions are asked.

¹⁹ Annex to Prosecution's Lists of Witnesses, Summaries, and Evidence, 2 March 2015, ICC-01/04-02/06-491-Conf-Exp-AnxB.

²⁰ On hostile witnesses specifically, *see below* at section C.7.

28. The calling party may request permission to refresh the witness's memory using the witness statement(s). If the Chamber allows the memory of the witness to be refreshed, the witness shall be given an opportunity to read the relevant section of his or her prior statement, or, as appropriate, the calling party may read the relevant section to the witness. During cross-examination, parties may use leading questions. The non-calling party may go beyond matters previously discussed in the examination-in-chief and may address, in accordance with Rule 140(2)(b) of the Rules, other matters relevant to the case, including those affecting the credibility of the witness. The cross-examining party is required to put to the witness any facts or evidence, available at the time and upon which it intends to rely to impeach his or her credibility.
29. In principle, cross-examination shall not last longer than the examination-in-chief. The Chamber will decide on a case-by-case basis, and only after having heard the examination-in-chief, whether additional time for cross-examination may be warranted.
30. The Chamber may authorise the calling party to re-examine a witness on limited and specific issues. Re-examination shall be conducted under the same conditions as the examination-in-chief and be limited to matters raised during cross-examination. The Chamber may further authorise the re-cross-examination on the issues discussed during the re-examination.
- 3) **Use of documents during the examination of witnesses**
31. Parties may show documents to a witness whose testimony has a connection with that item and have the witness comment on it. When no relation between the document and the witness has been established, the Chamber may decide not to allow the presentation of the document or certain related questions.

32. The calling party shall submit, by way of e-mail copied to the communications e-mail address of the Chamber, a list of the documents²¹ it intends to use with a witness during examination-in-chief, no later than five days prior to start of the witness's testimony. This list shall also indicate whether the calling party wishes to tender any of the documents into evidence. In case of lengthy documents, the calling party shall specifically indicate which part, or parts, it intends to use. The opposing party shall provide, by way of email, no later than two days prior to the start of the witness's testimony, notice of its objection to the use of any document with the witness, or to the document's admissibility. This is without prejudice to the possibility to object, during the testimony, to the manner in which the material is to be presented to the witness, or to a request to admit the document into evidence.
33. As regards the use of documents that have not previously been admitted into evidence the party intending to make use of the documents during cross-examination shall provide a list, by e-mail, no later than 24 hours before the commencement of the cross-examination.²² If the documents are not already part of the case record, (digital) copies shall be provided to the Chamber, the other party and the LRVs at the same time.²³ The list shall also indicate whether the cross-examining party wishes to tender any of the documents into evidence. Objection to the use of any of the documents during cross-examination shall be raised orally, prior to the start of the cross-examination.

²¹ The calling party shall only use documents that have been properly disclosed.

²² To allow the provision of the aforementioned list, the calling party is to indicate to the Chamber and the opposing party sufficiently in advance when it expects to conclude its examination-in-chief.

²³ In case the cross-examination is scheduled to start on the first working day of the week, the cross-examining party shall ensure that the documents are effectively communicated by the deadline set. This could be done by requesting that the Registry releases the Ringtail access on the last working day of the previous week, by the party itself releasing the documents in Ringtail, or by sending a courtesy copy of the relevant documents. In the latter case, the Registry is to release the Ringtail access at the earliest opportunity on the first working day of the week.

34. When referring to another witness's testimony or previous statements, the parties and participants shall quote directly the relevant passages and give the precise references, including the relevant lines. These references should only be used when appropriate and after seeking permission of the Chamber to do so.
35. After having introduced a document through a witness, the relevant party may request the documents to be admitted into evidence. The tendering party shall request admission into evidence at the first opportunity during the examination of the witness, and on an individual basis. The Chamber will decide on the admission of each item of evidence, after having heard any objection to its admission by the other party. A party need not have objected to the use of a document for it to object to the admission into evidence.
36. In accordance with Articles 64(9)(a) and 69(4) of the Statute, the Chamber shall determine the admissibility of a document on the basis of its relevance, probative value, and any prejudice that its admission may cause to a fair trial or to the evaluation of the testimony of a witness.²⁴

4) Expert witnesses

37. As ordered by the Chamber,²⁵ the Prosecution disclosed the reports of the proposed expert witnesses it intends to call at trial on 17 April and 6 May 2015.²⁶ If these reports are submitted for admission into evidence, the

²⁴ See *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the admissibility of four documents, 13 June 2008, ICC-01/04-01/06-1399, paras 26-31; *The Prosecutor v. Jean-Pierre Bemba Gombo*, First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, 9 February 2012, ICC-01/05-01/08-2012-Red, paras 13-16; and *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Prosecution's Request for Admission of Documentary Evidence, 10 June 2014, ICC-01/09-01/11-1353, paras 14-17.

²⁵ Order scheduling a status conference and setting the commencement date for the trial, 9 October 2014, ICC-01/04-02/06-382-Corr, para. 9(e).

²⁶ Prosecution's communication of the disclosure of evidence, 21 April 2015, ICC-01/04-02/06-564 and confidential Annex A; and Prosecution's communication of the disclosure of evidence, 7 May 2015, ICC-01/04-02/06-591, and confidential Annex A. The Prosecution had been granted leave for delayed disclosure of the report of one expert witness. See Decision on the Prosecution request for variation of time limit for disclosure of the report of one expert witness, 30 April 2015, ICC-01/04-02/06-581.

Chamber will apply the admissibility criteria referred to in the previous paragraph. In accordance with Rule 64(1) of the Rules, the opposing party may raise, at the time when the material is submitted to the Chamber, any issue related to the admissibility of the item in question.

38. Should the Chamber consider that the proceedings would be made more efficient by litigating admissibility in advance of submission, it may decide to entertain a pre-submission objection. In this regard, the Defence may file, before 24 August 2015, a notice indicating whether, for all the expert witnesses the Prosecution intends to call, it: i) accepts the reports as being experts' reports; ii) wishes to cross-examine the proposed expert witnesses; and/or iii) challenges the qualifications of the witnesses as an expert, or the relevance of all, or parts, of the report; and, if so, it should indicate which parts.
39. The Chamber notes that the parties have not agreed on the joint instruction of any experts. Should the parties in the near future reach an agreement to jointly instruct, pursuant to Regulation 44(2) of the Regulations, one or more of the experts the Prosecution intends to call, a notice indicating a suggested timeline to file any amended reports shall be filed jointly by the parties for the Chamber's consideration. In this regard, the Chamber orders that, at a minimum, the parties are to ensure that the LRVs remain informed of the ultimate outcome of the joint instruction process, and receive the resulting reports and any other relevant material stemming from the selection and instruction of joint experts.²⁷
40. The procedure set out in section C.2 in relation to the examination of witnesses appearing in court shall, unless otherwise ordered, apply *mutatis mutandis* to the examination of the proposed expert witnesses.

²⁷ See Decision on the request of the Legal Representatives of Victims regarding joint instruction of experts, 13 April 2015, ICC-01/04-02/06-554, para. 8.

5) Prior recorded testimony under Rule 68(3) of the Rules

41. The parties are encouraged to organise the presentation of the evidence in such a way so as to enhance the expeditiousness of the proceedings. Accordingly, the calling party shall, when appropriate, file any application seeking the introduction of previously recorded testimony of a witness present before the Chamber, in accordance with Rule 68(3) of the Rules, at the earliest opportunity, but no later than four weeks before the relevant witness is scheduled to testify ('Rule 68(3) Application'). The intention to make a Rule 68(3) Application shall also be reflected, where relevant, in the Forthcoming Witnesses List.
42. The party calling the relevant witness shall file such application together with copies of the previously recorded testimony and identify precisely which passages it wishes to tender into evidence. If these passages contain references to other material available to the calling party, without which the passages would not be understandable, these materials are to be attached to the application. Objections, if any, shall be raised by way of a written filing within 14 days of notification of the application.
43. The Chamber may rule on any preliminary objections in advance but will not issue a decision on a Rule 68(3) Application until the relevant witness has appeared before that Chamber and attested to the accuracy of the document to be tendered into evidence. Should the Chamber allow its introduction, the testimony of the witness will proceed with questions by the LRVs, if applicable, and the cross-examination by the opposing party, in accordance with the procedure set out in the present section for witnesses appearing before the Chamber.

6) Self-incrimination of witnesses

44. The Registry shall make all necessary arrangements to provide independent legal advice to witnesses who may be at risk of incriminating themselves during their testimony. Unless otherwise ordered by the Chamber, the relevant Legal Representative shall provide this advice for dual-status witnesses.
45. The calling party shall notify the Victim and Witnesses Unit ('VWU') as soon as it believes a witness may make self-incriminating statements during his/her testimony. The advising lawyer shall then seise the Chamber of any application for assurances under Rule 74(3)(c) of the Rules, if required. The Prosecution and calling party, where the Prosecution is not the calling party, shall be notified of such an application.
46. The advising lawyer shall also be responsible for informing the witness of the offence defined in Article 70(1)(a) of the Statute, in accordance with Rule 66(3) of the Rules.

7) Hostile witnesses

47. If, during the testimony of a witness, the calling party believes that a witness is hostile, or adverse, to the said party and not desirous of providing the expected evidence, it may – having provided the witness with an opportunity to explain deviations from expected testimony – make an application to have the Chamber declare the witness as 'hostile'. A request to declare the witness as hostile, without first having attempted to refresh the witness's memory, may be only made in those situations where – without recourse to a previous statement – it is clear that the witness is not desirous of providing the expected testimony at the instance of the calling party and behaves objectively hostile, or adverse, to the calling party. To assess whether a witness is hostile or adverse to the calling party, the

Chamber may consider, *inter alia*, (i) whether the witness has been hostile in his or her general demeanour; (ii) whether the witness's answers tend to show evasiveness on the part of the witness; (iii) whether the testimony of the witness before the Court has been in whole or in part deliberately or systematically inconsistent with a prior statement; (iv) whether the witness has become systematically adverse to the calling party, not only by appearing to deliberately impugn the calling party's case, but in addition by appearing to systematically support the case of the opposing party.²⁸

48. Requests to declare a witness hostile shall always be made in the absence of the witness.

49. If the Chamber grants the request, the calling party may ask the witness leading questions, including questions pertaining to the witness's credibility. When the calling party has finished its examination, the opposing party may conduct its cross-examination.

8) In-court protective measures

50. The calling party shall make any requests for in-court protective measures, in accordance with Rule 87(1) and (2) of the Rules, in such time so as to enable the VWU to make observations and advise the Chamber,²⁹ and allow for responses to the request to be filed, before the Chamber's ruling on the request. The Chamber will normally rule on such a request just prior to the

²⁸ See, e.g., *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Transcript of Hearing of 8 September 2014, ICC-01/09-01/11-T-131-CONF-ENG ET, page 94, line 13 to page 96, line 18 (ruling delivered in open session); *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Transcript of Hearing of 8 February 2010, ICC-01/04-01/07-T-97-Red-ENG, page 63, line 18 to page 67, line 19; ICTY, *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.3, Decision on appeals against decision on impeachment of a party's own witness, 1 February 2008; ICTY, *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Decision on the Prosecution's motion to admit prior statements as substantive evidence, 25 April 2006.

²⁹ If appropriate, the Chamber may order that a confidential redacted version of the VWU's report be notified to the parties.

commencement of testimony of the witness concerned.³⁰ In any event, and without prejudice to subsequent unforeseen developments, requests for in-court protective measures are to be filed no later than four weeks before the scheduled commencement of testimony.

9) Special measures

51. The Chamber shall determine the need for any measure pursuant to Rule 88 of the Rules upon receipt of VWU's report of the vulnerability assessment of an individual, which will be carried out after the witness's arrival at the location of the testimony.

D. Documentary evidence and others

1) Submission of evidence, other than through a witness

52. A party wishing to tender evidence without it being introduced through a witness shall file an application accompanied by a table containing: i) a short description of the content of each item; ii) an averment of its authenticity; iii) the reason for not tendering the item through a witness; iv) an index of the most relevant portions of the document or recording; and v) a description of its relevance and *prima facie* probative value.
53. Before submitting the application, the tendering party shall first inquire whether the opposing party consents or objects to the admission of the items, and, if applicable, the grounds for any such objection. Parties are encouraged to agree on a mechanism for the introduction of undisputed evidence.

³⁰ If the requesting party considers that reasons exist for the Chamber to rule on the request for in-court protective measures at an earlier moment, it shall state these reasons in its request, and specify by which date it wishes the Chamber to rule on the matter.

2) Agreements as to evidence

54. In addition to the procedure already set out by the Chamber,³¹ the parties are encouraged to have ongoing consultations to see whether they can agree on additional uncontested facts, including throughout the presentation of evidence, as appropriate. These agreements can relate to the case as a whole or the expected testimony of specific witnesses.

3) Prior recorded testimony under Rule 68(2) of the Rules

55. Parties may file, in accordance with Rule 68(2) of the Rules, applications for the admission, in whole or in part, of previously recorded testimony of witnesses. The tendering party shall file the application together with copies of the previously recorded testimony and any supporting material, and it shall identify precisely which passages it wishes to tender into evidence.

4) Presentation of audio-visual material

56. If a party wishes to present audio-visual material to a witness, it must establish that the witness has personal knowledge of the making of the recording or its contents. This may be achieved by playing a brief excerpt of the audio-visual material only to the extent strictly necessary for the witness to confirm his/her personal knowledge of it. Once this has occurred, the party may play the excerpt(s) of the recording it intended to present to the witness. Regardless of whether the party is allowed to present such recordings to a witness, the audio-visual material itself will not be considered for the truth of its contents unless it is admitted into evidence.

57. To facilitate the presentation of audio-visual material in court, the party intending to use the recording shall, as early as practicable, indicate the sections of the transcript corresponding to the excerpts of the material it

³¹ See *e.g.* ICC-01/04-02/06-T-19-ENG ET, page 42, line 25 to page 43, line 8. In line with the previous Chamber's decision, the LRVs shall have one week, upon notification, to file any observations on the list of proposed agreed facts (Order of 12 March 2015, ICC-01/04-02/06-507, para. 14).

intends to use; as well as, if applicable,³² the corresponding sections of the translation. The parties shall then consult to try and resolve any disagreement as to the transcription or translation of the excerpts. If any disagreement cannot be resolved, the parties shall notify the Chamber, who may ask the Registry to advise on the transcription or translation.

E. Use of private and/or closed session³³

58. Witness testimony should, as far as possible, be given in public. However, if protective measures are in place for a witness, the parties, and where appropriate the LRVs, shall at all times be cautious and ensure that questions asked during public sessions do not compromise the protective measures. When a question contains, or the expected answer to the question may contain, information that should remain confidential, the relevant party or Legal Representative shall request to move into private session. In doing so, the reasons for moving into private session shall be stated in a neutral and objective fashion. The Chamber will decide, on a case-by-case basis, whether it considers that such protective measure is necessary.

59. Parties shall endeavour, when preparing their lines of questioning, to group all identifying questions and to ask these questions at the beginning of their examination. Similarly, other questions necessitating recourse to private session are to be grouped as much as possible.

F. Production of public redacted transcripts of hearings

60. The Registry will distribute the public redacted version of a transcript at the latest on the second working day following the notification of its confidential version, or, where applicable, the edited or corrected version. This public

³² Translation shall be provided for any audio-visual material not in one of the working languages of the court.

³³ For private sessions the public in the public gallery is not removed, but no audiovisual broadcast is made to the public gallery, or outside the Court. Closed sessions are held entirely *in camera*.

redacted version will exclude the private and/or closed sessions, as well as the passages for which the Chamber ordered that redactions be applied.

61. The Chamber is mindful that a balance must be struck between the public nature of the proceedings and the Chamber's duty to protect the safety, physical and psychological well-being, dignity and privacy of witnesses and victims. Depending on the content and scope of private and/or closed sessions used during the testimony of a witness, the Chamber may direct that a lesser redacted version of the transcripts is to be published with lesser redactions to the private and/or closed sessions contained therein. In such a case, the calling party will have to propose redactions to the private and/or closed sessions, on which the opposing party may comment.³⁴ Should the Chamber approve the proposed redactions, the calling party shall transmit the transcripts to the Registry in accordance with the procedure set out by the Registry in this regard.³⁵
62. Requests for corrections to the transcript shall be submitted in accordance with the Registry's guidelines.³⁶

G. Modalities of victim participation

1) Attendance and participation of LRVs at hearings

63. The LRVs are entitled to attend all hearings, unless the Chamber decides that a particular hearing is to be conducted *ex parte*, without participation of the LRVs.

³⁴ The applicable deadlines will be set by the Chamber in its directions, taking into account the length of the transcripts concerned.

³⁵ Procedure to be used for corrections and redactions of Transcripts of hearings, Annex 1 to Registry Observations in response to "Order requesting submissions on the conduct of proceedings pursuant to Rule 140 of the Rules and on modalities of victims' participation at trial" (ICC-01/04-02/06-507) ("Transcript Correction Procedure") registered on 8 April 2015, ICC-01/04-02/06-549-Conf-Anx1, pages 4-6.

³⁶ Transcript Correction Procedure, ICC-01/04-02/06-549-Conf-Anx1, pages 2-3.

2) Examination of witnesses

64. Should a Legal Representative wish to put questions to a witness called by the Prosecution or the Defence, he or she is to file a motivated request no later than four days before the beginning of the witness's examination-in-chief.³⁷ The request shall identify the specific areas that the Legal Representative wishes to explore with the witness. After the Prosecution has finished its questioning, the Legal Representative shall inform the Chamber whether he or she maintains the request to examine the witness. Objections to the request, if any, shall be made orally at that time, without the witness being present.
65. If permission is granted to question the witness concerned, the Legal Representative shall stay within the confines of the areas identified in the request. Unless authorised by the Chamber, the Legal Representative will not ask leading questions.
66. Objections to specific questions by the Legal Representative shall be made in accordance with the procedure set out in paragraph 24 above.
67. The Legal Representative shall specify in his or her request to question a witness whether he or she intends to elicit evidence pertaining to reparations under Article 75 of the Statute. The Chamber will decide on a case-by-case basis on the appropriateness of hearing such evidence pursuant to Regulation 56 of the Regulations.
68. Should the Legal Representative wish to show any documents or other material to the witness, he or she shall state so, identifying the material in question, in the request. If the materials are not already in evidence or disclosed by one of the parties, copies shall be attached to the request.

³⁷ Should the filing of the request be due during the weekend, the Legal Representative shall file on the Monday.

3) Presentation of evidence by the LRVs

69. A Legal Representative shall file any request for leave to present evidence no later than two days after the Prosecution concluded its presentation of evidence.³⁸ If the request includes leave for witnesses to be called, it shall include a summary of the expected testimony and an estimate of the time needed for the examination.
70. Any request for admission of documentary evidence shall be filed at the same time. Such an application shall contain a short description of the content of each document, of the relevance of the document, as well as an explanation of how it may contribute to the determination of the truth. If the documents are not already disclosed by one of the parties, copies shall be attached to the request.

³⁸ The Chamber recalls that Article 69(3) of the Statute is to be read in light of Article 68(3) of same. *See The Prosecution v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432, paras 101-104.

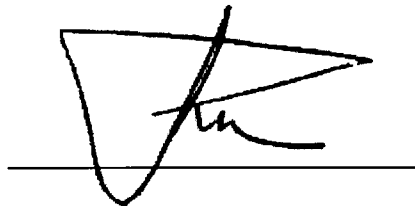
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ADOPTS the aforementioned directions regarding the conduct of proceedings;

SETS the start date of the first evidentiary block for 24 August 2015; and

DIRECTS the Defence to file a certified declaration, in the form annexed to this decision, by 29 June 2015.

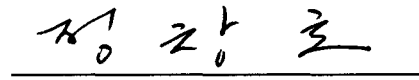
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a cursive 'r', positioned above a horizontal line.

Judge Robert Fremr, Presiding Judge

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

Judge Kuniko Ozaki

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

Judge Chang-ho Chung

Dated 2 June 2015

At The Hague, The Netherlands