

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 6 February 2015

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

**PUBLIC
With Public Annex 1**

**Joint submissions of the Prosecution, Defence and Legal Representatives of
Victims on the proposed Familiarisation Protocol**

Source: Office of the Prosecutor
Defence for Mr Bosco Ntaganda
Legal Representatives of Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. The Office of the Prosecutor (“Prosecution”), Defence Team for Bosco Ntaganda (“Defence”) and Legal Representatives of Victims (“LRVs”) jointly file submissions on the proposed “Protocol on the practices used to prepare and familiarise witnesses for giving testimony” (“Familiarisation Protocol”) to be filed by the Victims and Witnesses Unit (“VWU”).
2. In a separate filing, the Prosecution has sought authorisation from Trial Chamber VI (“Chamber”) to prepare witnesses in the same manner authorised by Trial Chamber V in the *Ruto & Sang* and *Kenyatta* cases.¹ The Prosecution understands that the Defence is not opposed to its request to prepare witnesses, but seeks a modification to the language in the Prosecution’s proposed witness preparation protocol.
3. As directed by the Chamber, the Prosecution, Defence, LRVs and VWU engaged in discussions about the content of the Familiarisation Protocol.²
4. The VWU sought to amend paragraphs 59-66 of the Familiarisation Protocol to substitute “legal advisor” for “duty counsel” as well as other specific modifications to the manner in which external counsel are appointed. The Prosecution, Defence and LRVs were not opposed to these amendments.
5. There was unanimous agreement to amend paragraph 21 of Familiarisation Protocol to notify the calling party and LRVs (where applicable) of any specific concerns in relation to witness well-being, rather than VWU raising such issues with the Chamber on an *ex parte* basis.

¹ ICC-01/09-01/11-524 and ICC-01/09-02/11-588.

² ICC-01/04-02/06-416, para.8. This discussion was based on the Familiarisation Protocol attached as Annex 2 to the Registry’s “Victims and Witnesses Unit’s submission pursuant to Order no ICC-01/04-02/06-416” (ICC-01/04-02/06-419).

6. The Prosecution, Defence and LRVs jointly sought to amend paragraphs 24 and 39 of the Familiarisation Protocol, which address travel and accommodation arrangements for witnesses. The VWU did not agree with this joint proposal. This disagreement is the basis of these joint submissions.
7. For ease of reference, the Familiarisation Protocol with the proposed amendments to paragraphs 21, 24 and 39 set out in track changes is attached as Annex 1 to this filing.

Procedural History

8. On 14 October 2014, the Prosecution indicated its intention to seek authorisation for the Parties to prepare witnesses in advance of testimony, and noted that this would impact the scope of the familiarisation protocol to be adopted in this case.³
9. On 2 December 2014, at the status conference, the Parties raised the possibility of filing a joint application to the Chamber for authorisation to prepare witnesses.⁴
10. On 18 December 2014, the Chamber filed the "Order setting deadlines for the filing of submissions on outstanding protocols," in which it directed the Registry to file specific protocols in the form previously adopted in other proceedings in the record of the present case as the basis for subsequent submissions.⁵ The Chamber also directed the Parties, participants and VWU to file their submissions on the draft Familiarisation Protocol by 6 February 2015.⁶
11. On 22 December 2014, the Registry filed the "Victims and Witnesses Unit's submission pursuant to Order n° ICC-01/04-02/06-416,"⁷ in which it attached the

³ ICC-01/04-02/06-385, para.35.

⁴ ICC-01/04-02/06-T-17-CONF-ENG, p.17, lns.11-17 and p.18, lns.6-10.

⁵ ICC-01/04-02/06-416, para.5.

⁶ ICC-01/04-02/06-416.

⁷ ICC-01/04-02/06-419.

Familiarisation Protocol adopted in the *Bemba* proceedings (as Annex 1) and the Amended Familiarisation Protocol adopted in the Kenya cases (as Annex 2).

Joint Submissions

12. Further to discussions between the Prosecution, Defence, LRVs and VWU, the Prosecution proposed deleting paragraphs 24 and 39 of the Familiarisation Protocol in their entirety and replacing them with the following:

24. The VWU shall arrange for witnesses to travel separately to the location of testimony. In exceptional circumstances and after prior notice to the parties and participants, and approval of the Chamber, witnesses may travel jointly if, in the VWU's assessment, their particular vulnerable situation so requires. VWU shall communicate the reasons for its recommendation in its notice to the parties, participants and Chamber.

...

39. The VWU shall arrange for witnesses to be accommodated separately at the location of testimony. In exceptional circumstances and after prior notice to the parties and participants, and approval of the Chamber, witnesses may be accommodated jointly if, in the VWU's assessment, their particular vulnerable situation so requires. VWU shall communicate the reasons for its recommendation in its notice to the parties, participants and Chamber.

13. The Defence and LRVs agreed with these proposed amendments.
14. The Parties and participants acknowledged the potential benefits of joint travel and accommodation for certain witnesses, and were sympathetic to the financial and logistical considerations of VWU. Nonetheless, the Parties and participants

were concerned about the risk of contamination that could result from joint travel and accommodation of witnesses in this case.

15. The Parties and participants were unified in the view that in order to guarantee the integrity of the proceedings, joint travel and accommodation of witnesses should occur only in exceptional circumstances, after an open discussion between all of the Parties and participants (and not just between the calling party and VWU), and with the approval of the Chamber.
16. The Defence opined that the Prosecution's proposed amendment was advantageous for four reasons. First, it meets the objective of creating a mechanism that enhances witness well-being and protects witnesses in their interactions with the Court. Second, it offers the best protection against witness influence, interference or tampering. Third, it provides a transparent mechanism for *all* Parties and participants (rather than just between the calling party and VWU), which will help avoid the need for further inquiries and potential litigation. Lastly, it reduces the need for extensive cross-examination on the issue of possible witness influence, interference or tampering.

Conclusion

17. The Prosecution, Defence and LRVs respectfully request that the Chamber adopt the amendments to paragraphs 21, 24 and 39 of the Familiarisation Protocol, as set out in Annex 1.



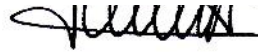
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Stéphane Bourgon, Counsel for
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Sarah Pellet, Common Legal
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Dated this 6th day of February 2015
At The Hague, The Netherlands