

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: **28 January 2016**

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 Defence request to modify the schedule
for the third and fourth evidentiary blocks'**

Decision 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 the Defence

Mr Stéphane Bourgon

Mr Luc Boutin

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**

Ms Paolina Massidda

**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 ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Article 64 and 67 of the Rome Statute, issues this 'Decision on Defence request to modify the schedule for the third and fourth evidentiary blocks'.

I. Procedural history and submissions

1. On 25 January 2016, the defence team for Mr Ntaganda ('Defence') filed a request seeking an amendment to the schedule for the third and fourth evidentiary blocks ('Request').¹ In particular, the Defence requests the following revised schedule: 27 January – 2 February (Witness [REDACTED]); 8 – 12 February (Witness [REDACTED]); 15 – 16 February (Witness [REDACTED]); and the postponement of the testimony of Witnesses [REDACTED] and [REDACTED] to the fourth evidentiary block.² The Defence submits that this adjustment is necessary as the Defence is 'unable' to proceed with the cross-examination of the remaining scheduled witnesses of the third evidentiary block, due, in particular, to the unexpected unavailability of Associate Counsel.³ The Defence indicates that although the strategy for cross-examination of each witness is shared between the Lead and Associate Counsel, the 'detailed preparation' is done separately.⁴ The Defence submits that its proposal would allow the Defence to 'effectively represent' Mr Ntaganda during the examination of the witnesses in question.⁵ The Defence indicates that it is 'ready

¹ Request on behalf of Mr Ntaganda seeking Trial Chamber VI to modify the schedule for evidentiary blocks 3 and 4, ICC-01/04-02/06-1102-Conf with confidential, *ex parte*, Annex A. A public redacted version of the Request was filed on the same day, ICC-01/04-02/06-1102-Red.

² Request, ICC-01/04-02/06-1102-Conf, paras 23 and 27.

³ Request, ICC-01/04-02/06-1102-Conf, paras 9-17.

⁴ Request, ICC-01/04-02/06-1102-Conf, para. 11.

⁵ Request, ICC-01/04-02/06-1102-Conf, para. 24. *See also* paras 20-23.

to envisage' extending the fourth or fifth scheduled blocks in order to 'compensate' for the delay resulting from the revised schedule.⁶

2. That same day, the Chamber shortened the deadline for any responses to the Request to midday on Wednesday 27 January 2016.⁷
3. On 27 January 2016, the Legal Representatives of victims jointly informed the Chamber that they do not intend to make any submissions in relation to the Request.⁸
4. Also on 27 January 2016, the Office of the Prosecutor ('Prosecution') responded opposing the Request ('Response').⁹ The Prosecution submits that the increased workload resulting from the unavailability of Associate Counsel for the Defence does not compromise the rights of the Defence to prepare, including due to the availability of other Defence team members for assistance.¹⁰ The Prosecution emphasises the degree of logistical planning and organisation required for the scheduling of witnesses, and notes the difficulty and cost of altering these arrangements on late notice.¹¹ The Prosecution specifically notes that Witness [REDACTED], and that the testimony of Witness [REDACTED].¹² The Prosecution additionally recalls: (i) [REDACTED]; and (ii) [REDACTED].¹³ The Prosecution proposes that, should the testimony of any witness from the current evidentiary block be postponed, it should be that of Witness [REDACTED].¹⁴

⁶ Request, ICC-01/04-02/06-1102-Conf, para. 25.

⁷ E-mail from Legal Officer of the Chamber to the parties and participants on 25 January 2015 at 20:00.

⁸ E-mail from Legal Representatives of victims to the Chamber on 27 January 2016 at 8:45.

⁹ Prosecution's response to the "Request on behalf of Mr Ntaganda seeking Trial Chamber VI to modify the schedule for evidentiary blocks 3 and 4", ICC-01/04-02/06-1102-Conf, ICC-01/04-02/06-1112-Conf-Exp. A confidential redacted version was notified on the same day, ICC-01/04-02/06-1112-Conf-Red.

¹⁰ Response, ICC-01/04-02/06-1112-Conf-Red, paras 2, 16-17.

¹¹ Response, ICC-01/04-02/06-1112-Conf-Red, paras 3, 13-14.

¹² Response, ICC-01/04-02/06-1112-Conf-Red, paras 3-4 and 14.

¹³ Response, ICC-01/04-02/06-1112-Conf-Exp, paras 5 and 15. The Chamber notes that a confidential redacted version of ICC-01/04-02/06-1061-Conf-Exp-Red, available to the Defence, was notified shortly after the filing of the Response, see ICC-01/04-02/06-1061-Conf-Corr-Red3.

¹⁴ Response, ICC-01/04-02/06-1112-Conf-Red, paras 6, 18 and 20.

5. On 27 January 2016, the Defence sought leave to reply to the Response on three issues ('Request to Reply'), namely: i) 'the consequences and the weight to be attributed to the Prosecution's practice of having its witnesses arrive in The Hague weeks before their scheduled testimony'; ii) the Prosecution's submissions regarding the state of Defence's preparation which, in its view, does not compromise Mr Ntaganda's right to have effectively examined the witnesses against him; and iii) the Registry's decision on the Defence request for additional resources, which, according to the Defence, 'is bound to negatively impact on the ability of the Defence to prepare for witnesses scheduled to testify during the third and fourth evidentiary blocks'. In the Defence's view, issue iii amounts to new information which the Chamber 'must be made aware of before adjudicating the Defence Request'. The Defence submits that an oral reply during the 28 January 2016 hearing would 'best serve the interests of justice'.¹⁵
6. At the beginning of the 28 January 2016 hearing, the Chamber indicated that it had decided to reject the Request to Reply, noting that further information related to issues identified by the Defence would not assist the Chamber in rendering its decision on the Request.¹⁶

II. Analysis

7. The Chamber has acknowledged that the unavailability of Associate Counsel for the Defence was an 'unexpected and exceptional' event, which warranted some adjustment to the hearing schedule in respect of the witness who was then testifying.¹⁷ The Chamber further recognises that the current circumstances will place an additional burden on Lead Counsel, although the Chamber notes that support is also available from the wider Defence team, whom the Chamber

¹⁵ Email communication from Defence to the Chamber on 27 January 2016 at 22:48.

¹⁶ Transcript of hearing on 28 January 2016, ICC-01/04-02/06-T-58-ENG RT, page 5, lines 7-10.

¹⁷ Transcript of hearing on 20 January 2016, ICC-01/04-02/06-T-55-CONF-ENG, p.10.

would expect are involved in the preparation for witnesses and should, at least, be in a position to assist Lead Counsel with any final detailed preparations which may be outstanding. Nonetheless, the Chamber finds that some further modification of the current schedule may be warranted to assist the Defence, given the unexpected nature, and timing, of Associate Counsel's absence. For the future, the Chamber would expect both parties to organise their preparations in a manner that would minimise the need for any scheduling adjustments resulting from such circumstances.

8. The Chamber notes that the option to prolong the current evidentiary block and give the Defence some days between the testimony of the scheduled witnesses in order to carry out further preparations is not available due to scheduling limitations and the need to accommodate multiple cases in the two available courtrooms. As the timing of the evidentiary blocks is not flexible, the Chamber will consider what modifications within the time frame of the present evidentiary blocks are appropriate.
9. In the Chamber's view, however, the Defence has not adequately explained why the absence of Associate Counsel would necessitate adjustments to the schedule of the scope sought in the Request, including, in particular, the postponement of both Witnesses [REDACTED] and [REDACTED], scheduled to appear as the last two witnesses for the present block. The Chamber notes that this would result in the conclusion of hearings in this evidentiary block on 16 February 2016 – 10 days in advance of its scheduled conclusion. The Chamber considers that even allowing for additional time between the witnesses in this block, as requested by the Defence, there remains ample time to enable final detailed preparations for, and the hearing of, a further witness.
10. In this regard, the Chamber notes, in particular, that any additional preparation required for examination of Witness [REDACTED] should be extremely limited,

given that this witness was originally scheduled to testify during the second evidentiary block and that [REDACTED]. Both parties should therefore be at a very advanced stage of their preparations. The Chamber additionally understands that it was Lead Counsel for the Defence who had prepared for the examination of Witness [REDACTED].¹⁸ Even in the case of Witness [REDACTED], the Chamber notes that the Defence would potentially have a full five days for final preparations after the conclusion of Witness [REDACTED]'s testimony, and before it would be necessary to start Witness [REDACTED]'s testimony. While the Chamber has had due regard to the voluminous materials associated with this witness, it considers that this should nonetheless provide adequate time for detailed preparations by Lead Counsel, noting, in particular, the preparations which should have already been conducted and the support which should be available from other members of the Defence team.

11. While the Chamber recognises that, in the particular circumstances, proceeding with the testimony of both those witnesses at this time may limit the amount of preparation time of Lead Counsel, it is satisfied that the hearing of either Witness [REDACTED] or [REDACTED] during this evidentiary block would not unfairly prejudice the Defence. It is noted that postponement of the testimony of one of those witnesses would also facilitate short breaks in hearings between the remaining witnesses in the block. On that basis, and recognising the existence of significant logistical and other considerations which must be balanced by a calling party, the Chamber directs the Prosecution to notify the Chamber, the Defence and the Legal Representatives of victims of an amended schedule of witnesses for the current evidentiary block, conforming to the guidance below, not later than the filing deadline on Monday 1 February 2016.

¹⁸ [REDACTED].

12. In light of the foregoing, the Chamber adopts the following revised schedule, which allows for a break prior to the last witness's testimony:

- Commencing on 8 February 2016, until approximately 12 February 2016: Witness [REDACTED];
- Commencing on 15 February 2016, until approximately 17 February 2016: Witness [REDACTED]; and
- Commencing on 22 February 2016, until approximately 26 February 2016: either Witness [REDACTED] *or* Witness [REDACTED].

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

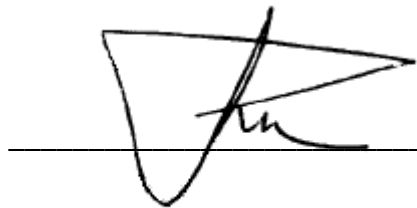
PARTIALLY GRANTS the Request;

DECIDES that the hearing schedule shall be adjusted in accordance with paragraph 12 above;

DIRECTS the Prosecution to notify the Defence, participants and Chamber of the amended schedule by the filing deadline on Monday 1 February 2016; and

REJECTS all other requests.

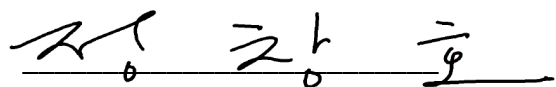
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 28 January 2016

At The Hague, The Netherlands