

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 8 March 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

**Order requesting submissions on certain matters related to the conduct of
proceedings**

The Office of the Prosecutor

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Legal Representatives of Applicants**Unrepresented Applicants for
Participation/Reparation****Unrepresented Victims****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****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* ('Ntaganda case'), having regard to Articles 64 of the Rome Statute ('Statute'), Rule 137(1) and 140 of the Rules of Procedure and Evidence, and Regulation 43 of the Regulations of the Court, issues this 'Order requesting submissions on certain matters related to the conduct of proceedings'.

1. The Chamber notes that the fourth evidentiary block is scheduled to start on 4 April 2016 and observes that, since the start of the evidentiary phase of trial on 15 September 2015,¹ thirteen Prosecution witnesses have completed their testimony so far.
2. The Chamber finds it timely to review certain discrete procedural matters to ensure that the proceedings continue in as fair, expeditious and efficient a manner as possible. The Chamber notes that some of the issues listed below were previously litigated before it² but hereby invites further submissions in light of the proceedings to date, with a view to identifying best practices. Following receipt of the submissions, the Chamber will consider whether or not any further steps, or adjustments, are required.
3. Bearing in mind its responsibility to ensure that the trial is conducted in a fair and expeditious manner in accordance with Article 64(2) of the Statute, and in order to assist in its determination, the Chamber instructs the parties and the participants to submit written observations on the following items:
 - i. **The length of evidentiary blocks**, including the prospect of sitting more continuously;
 - ii. **The sitting schedule**, including, in particular, any impediment to having 5 hour daily sessions, by starting hearings at 9:00 and/or finishing them at 16:30;

¹ Transcript of hearing on 15 September 2015, ICC-01/04-02/06-T-25-Red-ENG WT.

² See, for example, Decision on the conduct of proceedings, 2 June 2015, ICC-01/04-02/06-619; and Decision on witness preparation, 16 June 2015, ICC-01/04-02/06-652.

- iii. **Witness preparation sessions**, in particular, the appropriate scope of paragraph 24 of the Protocol;³
- iv. **The implementation of in-court protective measures.** The Chamber is particularly interested in ways to ensure that less time is spent: 1) in private sessions; and 2) moving back and forth between public and private sessions (one option being for the examining party to further group together questions likely to elicit confidential information);
- v. **The modalities of witness's testimony.** Whether increased reliance on video-link testimony and/or Rule 68(3) of the Rules as ways to adduce evidence is appropriate. The Chamber specifically seeks the parties' views as to whether they would be in a position to (jointly) identify witnesses to recommend the use of video-link and/or for which Rule 68(3) could be relied on to tender (part of) a witness's evidence;
- vi. **The mode of questioning.** Whether some witnesses should first provide a narrative about the events before the calling party starts asking sets of more specific and narrow questions;⁴ whether background information should be elicited by way of leading questions;⁵
- vii. **Interpretation and transcription.** The Chamber has noted a number of differences between the French and English transcripts, some of which are material as they relate to key aspects of the witnesses' evidence. The Chamber finds this to be of great concern as such discrepancies may raise very substantial problems at later stages in

³ Transcript of hearing on 24 February 2016, ICC-01/04-02/06-T-71-CONF-ENG ET, page 39, lines 16-18.

⁴ See Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 27.

⁵ See Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 26.

the case, should they be left unresolved.⁶ The Registry, as well as the parties and participants, are invited to submit observations on how best to resolve such discrepancies and ensure greater consistency going forward. Relatedly, the Chamber finds it appropriate, in the circumstances, to lift the five day deadline set in the Registry's 'Procedure to be used for corrections and redactions of Transcripts of hearings'⁷ for the requesting of corrections to the edited transcripts; and

- viii. **Any other related matter** the parties or participants would like to raise.

⁶ See *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, Decision on discrepancies between the English and the French Transcripts and related issues, 18 June 2009, ICC-01/04-01/06-1974 (reclassified as public on 27 May 2010).

⁷ 8 April 2015, ICC-01/04-02/06-549-Conf-Anxl adopted *per* Decision on the conduct of proceedings, ICC-01/04-02/06-619, para. 62.

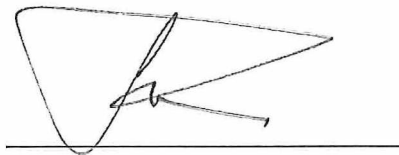
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

INVITES the parties and participants to file written submissions on the issues listed above at paragraph 3 by the filing deadline on 17 March 2016;

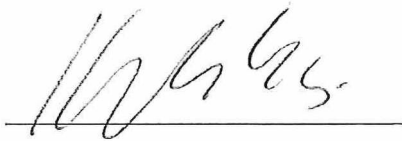
DIRECTS the Registry to file any observations on the points identified at paragraph 3(vii) and (viii) above by that same deadline; and

AUTHORISES the parties and participants to file a response to the other submissions received by the filing deadline on 23 March 2016.

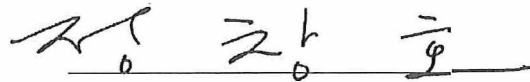
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 8 March 2016

At The Hague, The Netherlands