

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 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

**Decision on Defence request to modify the witness list for the fourth evidentiary
block**

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 Articles 64 and 67 of the Rome Statute, issues this 'Decision on Defence request to modify the witness list for the fourth evidentiary block'.

I. Procedural History and Submissions

1. On 4 March 2016, the Office of the Prosecutor ('Prosecution') notified the Chamber, the defence team for Mr Ntaganda ('Defence') and the legal representatives of victims of the number and order of witnesses it intends to call during the fourth evidentiary block ('Witness List'), scheduled to commence on 4 April 2016.¹
2. On 7 March 2016, the Defence filed a request seeking two specific adjustments to the Witness List, as follows, that: (i) the Prosecution call one less witness during the fourth evidentiary block (i.e. six witnesses rather than seven) ('First Request'); and (ii) the order of witnesses be amended so that the two witnesses for whom 10 hour examination-in-chief is anticipated not be heard directly one after the other ('Second Request').² In respect of the First Request, the Defence submits that: (i) a calculation of the days or hours of available courtroom time and the estimated examination time indicates that the schedule could not be completed without recourse to extended sitting hours (which the Defence submits places too high a burden on the participants and Court staff);³ (ii) relatedly, the tight scheduling removes 'flexibility' to address unexpected events during the course of the hearings;⁴ and (iii) with the exception of 'one or

¹ E-mail from the Prosecution to the Chamber on 4 March 2016 at 10:50.

² Request on behalf of Mr Ntaganda seeking Trial Chamber VI to order the Prosecution to modify its 'Forthcoming Witness List' for the 4th evidentiary block, ICC-01/04-02/06-1197-Conf ('Defence Request'). The Chamber notes that the Defence filing also contained a joint proposal of the Prosecution and Defence regarding the dates for the fifth and the sixth evidentiary blocks. The Chamber will not address that proposal here.

³ Defence Request, ICC-01/04-02/06-1197-Conf, paras 11-17.

⁴ Defence Request, ICC-01/04-02/06-1197-Conf, para. 18.

two' witnesses, Lead Counsel for the Defence intends to examine all of the witnesses in the fourth evidentiary block and will require 'at a minimum, some preparation time between the testimony of [...] witnesses testifying consecutively'.⁵

3. That same day, the Prosecution provided an updated witness list reordering the witnesses ('Updated Witness List') in order to accommodate the Defence's Second Request.⁶
4. On 9 March 2016, having been directed to do so,⁷ the Prosecution filed a response in which it: (i) opposed the First Request; and (ii) noted the provision of the Updated Witness List in respect of the Second Request ('Response').⁸ The Prosecution argues, *inter alia*, that: (i) based on its calculations the schedule will accommodate the hearing of all seven witnesses;⁹ (ii) the particular circumstances of certain witnesses require that they be heard in this evidentiary block, or be heard in the same evidentiary block as each other;¹⁰ and (iii) the Defence has over a month to prepare for the evidentiary block, noting, in particular, the limited quantity of material related to certain of the scheduled witnesses and the potential availability of associate counsel and the Defence team to assist with preparations and/or examination of the witnesses.¹¹
5. The legal representatives for victims indicated that they did not intend to file a response to the Defence Request.¹²

⁵ Defence Request, ICC-01/04-02/06-1197-Conf, paras 19-20.

⁶ E-mail from the Prosecution to the Chamber on 7 March 2016 at 16:23.

⁷ E-mail from Legal Officer of the Chamber to the parties and participants on 7 March 2016 at 16:01.

⁸ Prosecution's Response to the "Request on behalf of Mr Ntaganda seeking Trial Chamber VI to order the Prosecution to modify its 'Forthcoming Witness List' for the 4th evidentiary block", ICC-01/04-02/06-1197-Conf, ICC-01/04-02/06-1201-Conf.

⁹ Response, ICC-01/04-02/06-1201-Conf, paras 3, 12-14.

¹⁰ Response, ICC-01/04-02/06-1201-Conf, paras 5, 16-17 and 20.

¹¹ Response, ICC-01/04-02/06-1201-Conf, paras 4, 20-22.

¹² E-mail from Mr Suprun to the Chamber on 7 March 2016 at 16:36; E-mail from Ms Pellet to the Chamber on 7 March 2016 at 19:27.

II. Analysis

6. As a preliminary matter, noting the provision of the Updated Witness List, the Chamber considers the Second Request to now be moot and will not address it further.
7. In respect of the First Request, the Chamber accepts the Defence submission that allowance must be made for a certain percentage of hearing time being absorbed by procedural and other matters. Nonetheless, having carefully considered the Prosecution schedule as reflected in the Updated Witness List, the Chamber is confident that there is ample time for the hearing of the seven proposed witnesses during the fourth evidentiary block, noting the possibility of, as necessary, extending the block by two or three days or sitting in extended hours on occasion.
8. Regarding the Defence submissions on the ability of Lead Counsel to conduct each of the examinations, the Chamber considers that the Defence has adequate time to fully prepare for the examination of the proposed witnesses. In this respect, the Chamber has had regard, amongst other factors, to the degree of notice which has been provided, the extent to which preparations for certain of the witnesses should have already commenced, and the character and scope of the expected testimony of the proposed witnesses. The Chamber further considers that the allocation of work within the Defence team is a matter which should be resolved internally, in light of its available resources.

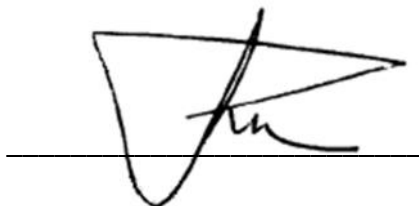
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the First Request;

DECLARES the Second Request moot; and

DIRECTS the parties to file public redacted versions of their filings (that is ICC-01/04-02/06-1197-Conf and ICC-01/04-02/06-1201-Conf), redacting, in particular, all relevant witness numbers.

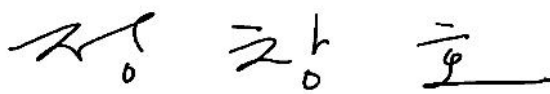
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 11 March 2016

At The Hague, The Netherlands