

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/04-02/06
Date: 16 December 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 for reconsideration of order setting certain deadlines

The Office of the Prosecutor

Ms Fatou Bensouda
 Mr James Stewart
 Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
 Mr Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
 Mr Dmytro Suprun

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, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 67 of the Rome Statute ('Statute') and incorporating by reference the applicable law set out in the 'Decision on the Defence request for reconsideration and clarification',¹ issues this 'Decision on Defence request for reconsideration of order setting certain deadlines'.

I. Procedural history and submissions

1. On 19 October 2016, the Chamber issued an order setting certain deadlines for the parties and participants in relation to the conclusion of the presentation of evidence by the Office of the Prosecutor ('Prosecution'), and, *inter alia*, preparations for any defence case ('Order').²
2. On 14 December 2016, the defence team for Mr Ntaganda ('Defence') filed an expedited request for reconsideration of the Order ('Request')³ seeking, in particular, that: (i) the deadline for the filing of its preliminary witness list be postponed to 16 February 2017 ('First Issue');⁴ and (ii) the scheduled eighth evidentiary block be divided into two shorter evidentiary blocks and not commence before 23 January 2017 ('Second Issue').⁵ The Defence submits, *inter alia*, that significant new facts have arisen since the date of the Order, including in relation to the material recently disclosed as a result of Article 70 investigations conducted by the Prosecution,⁶ as well as the postponement of the testimony of certain witnesses to the eighth evidentiary block.⁷

¹ 27 February 2015, ICC-01/04-02/06-483, para. 13.

² Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution, ICC-01/04-02/06-1588. A corrigendum was issued on 12 December 2016 (ICC-01/04-02/06-1588-Corr).

³ Expedited Request on Behalf of Mr Ntaganda Seeking Reconsideration of Order Setting certain Deadlines regarding the Presentation of Evidence by the Prosecution and the Defence Case, ICC-01/04-02/06-1683-Conf. A courtesy copy was provided to the Chamber and Prosecution by way of e-mail on 14 December 2016 at 18:03.

⁴ Request, ICC-01/04-02/06-1683-Conf, paras 7-18.

⁵ Request, ICC-01/04-02/06-1683-Conf, paras 19-29.

⁶ See in this regard Prosecution's Communication of the Disclosure of Evidence obtained pursuant to Article 70, 7 November 2016, ICC-01/04-02/06-1616.

⁷ Request, ICC-01/04-02/06-1683-Conf, para. 6.

3. Having been so directed,⁸ on 15 December 2016, the legal representatives of victims ('LRVs')⁹ and the Prosecution¹⁰ submitted responses to the Request.
4. The LRVs and Prosecution all submit that the standard for reconsideration has not been met.¹¹ Notwithstanding, the LRVs either take no position or do not oppose amendments to the schedule along the lines suggested by the Defence in relation to the Second Issue.¹² Similarly, the Prosecution, while submitting that the standard for reconsideration has not been met, states that it does not oppose starting the eighth evidentiary block on 23 January 2017, given that the Prosecution witness list will contain nine witnesses and the block will consequently end in or about mid-February 2017.¹³

II. Analysis

5. In respect of the First Issue, the Chamber considers that the standard required for reconsideration has not been met. While the Defence identifies certain new facts which have arisen since the date of the Order, it fails to establish that these facts demonstrate either a clear error of reasoning or that reconsideration of the Order is necessary to prevent an injustice. In particular, the Defence fails to acknowledge that the preliminary list of witnesses is only required to be provided *ex parte* to the Chamber, purely in order to assist with planning, and

⁸ E-mail communication from Legal Officer of the Chamber to the parties and participants on 15 December 2016 at 9:19.

⁹ E-mail communication from the Legal Representative of the victims of the attacks on 15 December 2016 at 15:26 ('CLR2 Response'); Response of the Common Legal Representative of the Former Child Soldiers to the "Expedited Request on Behalf of Mr Ntaganda Seeking Reconsideration of Order Setting certain Deadlines regarding the Presentation of Evidence by the Prosecution and the Defence Case", ICC-01/04-02/06-1685-Conf ('CLR1 Response').

¹⁰ Prosecution's response to the "Expedited Request on Behalf of Mr Ntaganda Seeking Reconsideration of Order Setting certain Deadlines regarding the Presentation of Evidence by the Prosecution and the Defence case", ICC-01/04-02/06-1683-Conf, ICC-01/04-02/06-1684-Conf ('Prosecution Response').

¹¹ CLR2 Response; CLR1 Response, ICC-01/04-02/06-1685-Conf, paras 2, 25 and 30; Prosecution Response, ICC-01/04-02/06-1684-Conf, paras 1, 22 - 28.

¹² CLR2 Response; CLR1 Response, ICC-01/04-02/06-1685-Conf, para. 29.

¹³ Prosecution Response, ICC-01/04-02/06-1684-Conf, paras 1, 3 and 29-30.

that the Chamber has specifically ‘emphasise[d] that it will not consider the Defence bound by the contents of [the preliminary] list’.¹⁴

6. In these circumstances, noting that no deadline has yet been set for the filing of the Defence’s final witness list, and the unrestricted ability of the Defence to make modifications to its witness list in the interim, the Chamber does not consider that any prejudice arises. As the Defence did not argue that there had been a clear error of reasoning in the Order, the Chamber will not address that aspect further.
7. In respect of the Second Issue, considering that the Prosecution witness list for the eighth evidentiary block had not yet been provided at the time of filing the Request, the Chamber finds the Defence’s submissions regarding the feasibility, or otherwise, of the completion of the presentation of evidence by the Prosecution during the scheduled block to have been premature.
8. In light of the information now provided by the Prosecution, indicating an intention to call nine witnesses,¹⁵ rather than the 16 upon which the Defence submissions were premised, the Chamber considers the Defence submissions do not demonstrate that any injustice or infeasibility would result from the existing scheduling. The seven weeks of hearings scheduled should provide ample time for, *inter alia*, the testimony of the remaining Prosecution witnesses. Nor, in these circumstances, does the Chamber consider that simultaneous preparations for cross-examination of these nine witnesses, review of the recently disclosed material¹⁶ and continuation of preparations for the defence case would place an unfair burden on the Defence. As the Defence did not argue that there had been

¹⁴ Order, ICC-01/04-02/06-1588-Corr, para. 11.

¹⁵ Prosecution Response, ICC-01/04-02/06-1684-Conf, paras 3 and 28; E-mail communication from the Prosecution on 15 December 2016 at 17:49.

¹⁶ The Chamber notes also in this regard the Defence’s indication that additional resources have been allocated to it by the Registry for the purpose of assisting with the review of this disclosed material.

a clear error of reasoning in the Order, the Chamber will not address that aspect further.

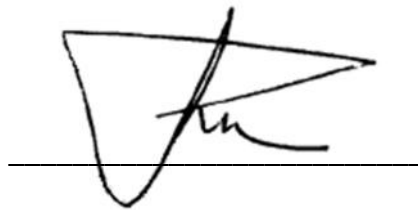
9. The Chamber notes that the Prosecution and LRVs nonetheless do not oppose certain changes to the schedule of the eighth block, in particular, starting the block one week later on 23 January 2017. The Chamber, however, notes the indication by the Legal Representative for victims of the attacks that he may seek to present evidence or views and concerns, and therefore considers it appropriate to maintain the start date of 16 January 2017, including in order to preserve greater scheduling flexibility for any such hearings.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request; and

DIRECTS the parties and participants to file public redacted versions of their respective filings within four weeks from the date of this decision.

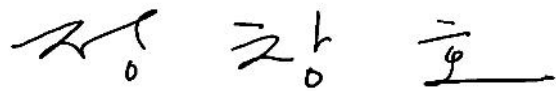
Done in both English and French, the English version being authoritative.



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 16 December 2016

At The Hague, The Netherlands