

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: **29 November 2017**

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 setting deadline for submissions related to Witness P-0290

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 Bosco Ntaganda

Mr Stéphane Bourgon

Me Christopher Gosnell

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**

**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**

Other

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64, 67 and 69(3) of the Rome Statute ('Statute'), issues the following 'Order setting deadline for submissions related to Witness P-0290'.

1. Witness P-0290 ('Witness') testified during the presentation of evidence by the Office of the Prosecutor ('Prosecution') between 10 and 12 February 2016.¹ The defence team for Mr Ntaganda ('Defence') did not cross-examine the witness at that time,² and its subsequent request to recall the Witness before the end of the presentation of the Prosecution's case-in-chief, or, in the alternative, to implement the necessary conditions allowing the Defence to call him as a Defence witness, was rejected on 17 February 2017 ('Decision 1791').³ In this decision, the Chamber however stated that 'this finding is without prejudice to any future decision by the Chamber, pursuant to its power to request the submission of any evidence that it considers necessary for the determination of the truth, to itself recall the Witness at a later stage'.⁴
2. On 10 November 2017, the Chamber informed the parties and the participants that, pursuant to Articles 64(6)(d) and 69(3) of the Statute, and recalling its Decision 1791,⁵ the Chamber is considering calling Witness P-0290 to give further evidence. The parties were therefore directed to refrain from any further contact with the Witness, unless specifically authorised by the Chamber. The Chamber also indicated that it would decide in due course whether to call the

¹ Transcripts of hearings of 10 February 2016, ICC-01/04-02/06-T-65-CONF-ENG CT; 11 February 2016, ICC-01/04-02/06-T-66-CONF-ENG ET; and 12 February 2016, ICC-01/04-02/06-T-67-CONF-ENG ET.

² For the relevant procedural history in relation to the Witness, the Chamber refers to its 'Decision on Defence request for recall of Witness P-0290', 17 February 2017, ICC-01/04-02/06-1791-Red, paras 1-4.

³ Decision on Defence request for recall of Witness P-0290, ICC-01/04-02/06-1791-Red.

⁴ ICC-01/04-02/06-1791-Red, para. 17.

⁵ ICC-01/04-02/06-1791-Red, para. 17.

Witness and, if required, provide guidance on the modalities of the Witness's testimony.⁶

3. On 17 November 2017, the Defence filed a request seeking, *inter alia*, to be informed of the purpose and scope of re-calling the Witness and that a calendar for making submissions on 'the propriety of recall, as well as on the scope and modalities of questioning', be established as promptly as possible ('Request').⁷ In particular, the Defence requests that the Chamber define the topics that justify re-calling the Witness as well as, in the event the Witness is re-called, provide guidelines concerning: (i) the proper scope of any such testimony; (ii) the modalities of the Witness's testimony; and (iii) any safeguards envisaged to protect the rights of the accused.⁸
4. On 22 November 2017, in line with the deadline set by the Chamber,⁹ the Prosecution filed its response, arguing that the Request should be rejected ('Response').¹⁰ The Prosecution submits, *inter alia*, that the Chamber has the 'inherent authority' to recall witnesses, that it does not need to provide any further clarification or justification and that, as the Chamber has expressly indicated, it will provide further guidance on the modalities of this testimony in due course.¹¹
5. On 27 November 2017, the parties made oral submissions related to the Witness.¹² The Chamber has taken note of the aforementioned submissions.

⁶ Email communication from the Chamber to the parties and participants on 10 November 2017, at 15:16.

⁷ Request for clarification and directions concerning potential recall of Prosecution Witness P-0290, ICC-01/04-02/06-2120-Conf.

⁸ Request, ICC-01/04-02/06-2120-Conf, paras 4-6, and 8.

⁹ Email communication from the Chamber to the parties and participants on 20 November 2017, at 11:23.

¹⁰ Prosecution's response to the Defence "Request for clarification and directions concerning potential recall of Prosecution Witness P-0290", ICC-01/04-02/06-2120, 20 November 2017, ICC-01/04-02/06-2123-Conf.

¹¹ Response, ICC-01/04-02/06-2123-Conf, paras 2-4, 14-23.

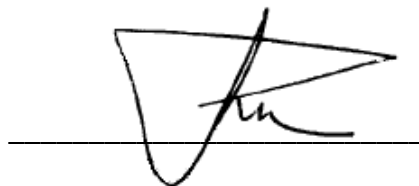
¹² Transcripts of hearing of 27 November 2017, ICC-01/04-02/06-T-252-CONF-ENG ET, pages 27-30.

6. The Chamber hereby indicates that it is considering calling the Witness, noting that the Defence did not cross-examine him, and to provide for a further examination of the Witness by the Chamber, the parties, and, if applicable, the participants, in particular in light of the evidence presented by the Defence. Under these circumstances, the Chamber invites the parties and the participants to submit any observations, including on the modalities of the Witness's testimony, such as the order, scope, mode, and length of questioning.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the parties and the participants to file any submissions as indicated in paragraph 6 above by 6 December 2017.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 29 November 2017

At The Hague, The Netherlands