

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/04-02/06
Date: 14 November 2014

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Geoffrey Henderson

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

With Public Annexes A, B and C

**Prosecution's Submission of an Updated Document Containing the
Charges, the Joint Submission of Areas of Disagreement and Request to File
Additional Observations**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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**Victims Participation and Reparations
Section**

Other

Submissions

1. In accordance with the 30 October 2014 order of Trial Chamber VI (“Chamber”),¹ the Office of the Prosecutor (“Prosecution”) submits an updated version of the Document Containing the Charges² (“Updated DCC”).
2. The Updated DCC, attached as Annex A to the present filing, is intended to reflect the charges as confirmed by Pre-Trial Chamber I in the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda” (“Decision”).³ The Prosecution also attaches, as Annex B, a version of the Updated DCC that contains tracked changes to clearly indicate the additions, deletions and modifications proposed.
3. As ordered, the Prosecution provided the Updated DCC to the Defence on 7 November 2014. The parties then engaged in *inter partes* consultations on the content of this document. Attached as Annex C is a chart setting out the remaining points of disagreement between the parties with respect to the Updated DCC.
4. The observations set out in Annex C are limited to the source of the disagreement and a brief comment by each party. Accordingly, the parties are of the view that more substantial observations are necessary for the Chamber to fully appreciate their respective legal positions.
5. In this regard, the parties underscore that the points of disagreement contained in Annex C fall under four main issues. The parties’ further

¹ ICC-01/04-02/06-390.

² ICC-01/04-02/06-203-AnxA.

³ ICC-01/04-02/06-309.

written observations in support of the points of disagreement will address these four issues, which are disputes relating to:

- i. the use of the word “including” in relation to locations in which a crime is alleged to have been committed;⁴
 - ii. the interpretation of the Pre-Trial Chamber’s findings in paragraphs 36 and 97 of the Decision;⁵
 - iii. the impact of Section H (ii) of the Updated DCC entitled “Legal characterization of the facts”;⁶ and
 - iv. whether specific factual allegations on which the Decision is silent necessitates the deletion of the allegation.⁷
6. The Defence has indicated that it may provide further submissions on paragraphs 44-46 and 48-51 of the Updated DCC which it disputes on issue (iv) above.
 7. The parties respectfully seek leave from the Chamber to submit additional written observations, limited to the four areas of dispute set out above, by 21 November 2014.⁸
 8. With a view to expediting the approval of the Updated DCC, the parties agree to file their observations simultaneously and not seek to respond, provided each of the parties restrict their written observations to the issues set out above.

⁴ Annex C, points n° 3, 4, 5, 6, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 29, 30, 31, 32, 33.

⁵ Annex C, points n° 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 27, 28.

⁶ Annex C, points n° 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33.

⁷ Annex C, points n° 1, 6, 7, 8, 9, 24.

⁸ Prior to the submission of this request, the parties informed the Presiding Judge’s Legal Officer of their intention on Thursday, 13 November 2014.

9. The Prosecution notes that in the Decision, the Pre-Trial Chamber concluded that the Accused's criminal responsibility fell within the parameters of article 25(3)(a) of the Rome Statute in terms of direct perpetration and indirect co-perpetration, but did not confirm the alternative mode of liability of direct co-perpetration for any of the crimes charged.⁹
10. To provide maximum guarantees to the Accused, the Prosecution stresses that, under regulation 55 of the Regulations of the Court, the Trial Chamber may change the legal characterisation of the facts to include direct co-perpetration as a form of criminal responsibility.
11. Further, the Prosecution observes that for the purposes of this case, it is immaterial whether the conflict is characterised as non-international or international although the Prosecution maintains that it was a non-international armed conflict.

⁹ ICC-01/04-02/06-309, para. 97

Request

12. The Prosecution submits the Updated DCC to the Chamber for its consideration and approval, and requests authorisation for the parties to file additional observations by Friday, 21 November 2014.



Fatou Bensouda
Prosecutor

Dated this 14th day of November 2014

At The Hague, The Netherlands