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No.: **ICC-01/04-02/06**
Date: **14 December 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

Joint Response of the Common Legal Representatives of Victims to the Defence submissions on the final trial briefs

Source: **Office of Public Counsel for Victims**

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

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers and the Common Legal Representative of the Victims of the Attacks (jointly the "Legal Representatives) hereby submit a joint response to the Defence submissions on the final trial briefs.[1] This filing contains the developments contained in the email sent to Trial Chamber VI (the "Chamber") in response thereof.[2]

II. PROCEDURAL BACKGROUND

2. On 28 November 2017, the Chamber scheduled a Status Conference to be held on 8 December 2017 and set the agenda to be discussed.[3]

3. The status conference was held on 5 December 2017 after the conclusion of the last Defence witness due to testify in the 5th evidentiary block;[4] the parties having stated that despite their preference for holding said status conference on the following day, they will be ready to proceed.[5]

4. On 12 December 2017, the Defence, by way of email, deemed "*necessary to inform the Chamber at this stage that Mr Ntaganda* […] *expressed the need to receive the Prosecution's final trial brief in his mother tongue,* i.e. *Kinyarwanda, before submission of the Defence final trial brief*" (the "Defence Request").[6]

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[1] See the email from the Defence Team of Mr Bosco Ntaganda to Trial Chamber VI, dated 12 December 2017, at 20.36 (the "Defence Request").
[2] See the email from the Legal Representatives to Trial Chamber VI, dated 14 December 2017, at 15.09.
[3] See the "Order scheduling a status conference" (Trial Chamber VI), No. ICC-01/04-02/06-2131, 28 November 2017, para. 2.
[4] See the transcripts of the Status Conference held on 5 December 2017, No. ICC-01/04-02/06-T-258-ENG ET.
[5] See the transcripts of the hearing held on 5 December 2017, No. ICC-01/04-02/06-T-257-CONF-ENG ET, p. 11, lines 23-24 and p. 12, lines 2-3.
[6] See the Defence Request, *supra* note 1.

5. On 13 December, the Chamber ordered that any response to the Defence Request be provided by 14 December 2017 at 16.00.[7]

6. As instructed, the Legal Representatives, hereby provide the Chamber their response on the Defence Request

III. SUBMISSIONS

7. As a preliminary matter, the Legal Representatives posit that the Defence submissions on the final written trial briefs should have been made through a filing, in order to ensure accurate trial record. The Legal representatives therefore responded to the Defence Request through email[8] but deem it necessary to file said response in the case record.

8. The Legal representatives posit that the topics discussed during the Status Conference held on 5 December 2017 were of such importance that the Accused should have been consulted beforehand. In this regard they note that the "Order scheduling a status conference" (the "Order")[9] was issued a week prior to the holding of said status conference which left ample time to do so.

9. To what is more, the Order expressly provided for an opportunity for the parties and participants to raise any additional issues via email before 1st December, at 16.00[10]. The Defence did not raise translation issues at that stage. Nor did the Defence had any submissions to raise when the Presiding Judge called for requests "*relating to language or translation issues*" during the Status Conference.[11] In particular, the Defence counsel specifically stated that "[w]*e do not have submissions other than one thing, is that there is a need, despite all the care that has been taken by the Chamber, to get all*

[7] See the the email from Trial Chamber VI to the parties and participants, dated 13 December 2017, at 12.26.
[8] See *supra* note 2.
[9] See the "Order scheduling a status conference", *supra* note 3.
[10] *Idem*, para. 3.
[11] See the transcripts of the Status Conference held on 5 December 2017, *supra* note 4, p. 27, lines 2-4.

the transcripts corrected".[12] The Defence did not further react when the Prosecution and the Legal Representatives stated they will be filing their respective final written trial brief in English.[13]

10. Accordingly, the Defence Request should be rejected *in limine*.

11. If by extraordinary the Chamber were minded to consider the merits of the Defence Request, the Legal Representatives put forward that the Defence Request is construed on the assumption that the sequential approach will be adopted by the Chamber with regard to the filing of the final trial written briefs. However, the issue is still pending before the Chamber. In this regard, the Legal Representatives reiterate their submissions made during the Status Conference to the effect that final written briefs by the parties and participants should be filed simultaneously. This is in the best interests of the expeditiousness of the proceedings in general and in the interests of the victims in particular to have truth determined with no delay. Incidentally, the Legal Representatives posit that the Defence Request itself militates for the Chamber to adopt the simultaneous approach.

12. If the chamber were to decide that final written trial briefs should be filed simultaneously, the Defence Request should be moot.

13. If the chamber were to decide otherwise, the Defence Request should be rejected for the following reasons.

14. The Rome Statute provides for the right of the accused to be informed about charges brought against him in a language he fully understands and speaks.[14] Moreover, the Rules of Procedure and evidence provide that "*the statements of*

[12] *Idem*, p. 27, lines 17-19.
[13] *Ibid.*, respectively p. 27, lines 9-10 and p. 28, lines 2-7 and 12-14.
[14] See Article 67(1)(a) of the Rome Statute.

prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks" with regard to pre-trial disclosure.[15]

15. In the present case, the two warrants of arrest, the document containing the charges[16] and the decision on the confirmation of charges were translated into Kinyarwanda to comply with article 67(1)(a) of the Rome Statute as well as witnesses statements, upon request of the Defence, to comply with Rule 76(3) of the Rules of Procedure and Evidence.[17] And most importantly, the Accused whom "*expressed the need to receive the Prosecution's final trial brief in his mother tongue,* i.e. *Kinyarwanda, before submission of the Defence final trial brief*"[18] never requested any other documents to be translated in Kinyarwanda, not even the updated document containing the charges.

16. It is therefore submitted that the accused's right to be informed on the charges in the language he fully understands and speaks is met. Incidentally, despite the fact that Mr Ntaganda adamantly maintains that the language he fully understands and speaks is Kinyarwanda, the Legal Representatives note that he testified for 155 hours in Swahili.

17. Contrary to the Defence assertion, the Prosecution final written trial brief is not a document by which the accused is supposed to be informed about the charges. Instead, this document is by nature only supposed to consider the evidence presented during the Prosecution case. It is not supposed to address any new

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[15] See Rule 76(3) of the Rules of Procedure and Evidence.

[16] See the "Decision on the ""Prosecution's Urgent Request to Postpone the Date of the Confirmation Hearing" and Setting a New Calendar for the Disclosure of Evidence Between the Parties" (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-73, 17 June 2013.

[17] See the "Decision on the "Demande de la Défense aux fins de traduction en kinyarwanda des dépositions écrites des témoins à charge P-0055, P-0315, P-0317, P-0758, P-0761, P-0773, P-0792, P-0804, P-0805 et P-0806"" (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-193, 30 December 2013. See also the "Decision on the "Demande de la Défense aux fins de traduction en kinyarwanda de la déposition écrite du témoin à charge P-0027""(Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-148, 18 November 2013.

[18] See the Defence Request, *supra* note 1.

evidence not covered during the Prosecution case. Since the accused was able to follow the presentation of evidence by the Prosecution in Kinyarwanda, the Accused is already fully aware of the evidence to be relied upon in the Prosecution final written trial brief.

18. Moreover, as stressed in the *Bemba* case, the accused does not have an absolute right to have all documents translated into the language he fully understands.[19]

19. However, the *Bemba* decision to provide the accused with a DRAFT translation of the Prosecution final brief is not transposable to the present case, insofar that the language at stake was a working language of the Court, while in the present case, the language at stake is Kinyarwanda. It has to be noted that the Registry already evaluated that "*it will take approximately 30 weeks for one person to translate 718 pages into Kinyarwanda, at the rate of 5 pages per day, 5 days per week* […]. *With the combined Prosecution and Registry translation resources assigned to the project (8 persons), the current time estimate to finalize the draft translations requested by the Defence is 4* weeks.[20] The financial factor also needs to be taken into account since the Defence Request will undoubtedly have a high cost (need to outsource part of the translation); cost that needs to be added to the costs already bore by the Court to provide M. Ntaganda with Kinyarwanda simultaneous interpretation during the whole trial, when he eventually testified in Swahili.[21] The Registry also provided an estimate of said costs when informing the judges of Pre-trial Chamber II about the financial impact of their decisions regarding translation into Kinyarwanda in conformity with the Assembly of States Parties recommendation, namely: "*In terms of the cost, at the normal rate of five pages per day, the translation of the 1051 pages are estimated to cost*

[19] See the "Decision on the timeline for the completion of the defence's presentation evidence and issues related to the closing of the case" (Trial Chamber III), No. ICC-01/05-01/08-2731, 14 October 2013, para. 29 (emphasis original).
[20] See the "Prosecution and Registry Joint Report on Translations", No. ICC-01/04-02/06-123, 14 October 2013, para. 9.
[21] See *supra*, para. 16.

€47,295. And at an urgent rate, which means more than five pages per day, the estimation is €70,942".[22]

20. The Legal Representatives submit that if the Chamber, by extraordinary, were to consider the Defence Request, it should apply a balance test where all the competing interests should be duly weighted. In the present instance, the translation into Kinyarwanda will require significant resources (both human and financial) and time. Therefore, the Defence Request is not justified.

21. Furthermore, granting the Defence Request would drastically affect the expeditiousness of the proceedings, will not be in compliance with the requirements of the integrity of the proceedings, and will be contrary to the interests of the victims who have been waiting for justice for 15 years; many of whom died and several others will not survive until the end of the proceedings given their age and health conditions.

22. Incidentally, as mentioned during the Status conference, although the two working languages of the Court are French and English, very few filings and decisions have been translated into French, despite the fact that, if any, this is the working languages spoken by the victims in the present case.[23]

23. Last but not least, the whole Defence argumentation during the Status conference revolved around the need for expeditiousness of the proceedings, and in particular Defence Counsel clearly stated that: "*there has to be a way to take a sequential approach and get a ruling. The right on expeditious trial is not only with respect to pushing the trial to go quickly, it is also to get clear submission, timely submission, and a timely judgment*".[24] However, the Defence Request, in addition to being wholly unjustified

[22] See the "Observations from the Interpretation and Translation Section", No. ICC-01/04-02/06-114, 23 September 2013, para. 9.
[23] See the transcripts of the Status Conference held on 5 December 2017, *supra* note 4, p. 28, lines 2-8.
[24] *Idem*, p. 16, lines 9-15.

and unreasonable, also runs against all the Defence arguments put forward during the Status Conference held on 5 December 2017.

FOR THE FOREGOING REASONS the Legal Representatives respectfully request the Chamber to reject the Defence Request *in limine*. If by extraordinary, the Chamber were to consider the Defence Request on the merits, they respectfully request the Chamber to deny said request since it is not justified, unreasonable and would drastically affect the expeditiousness of the proceedings

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Dated this 14th Day of December 2017

At The Hague, The Netherlands