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No.: ICC-01/04-02/06
Date: 18 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

Request on behalf of Mr Ntaganda seeking leave to reply to “Prosecution response to the Defence request for the Prosecution final trial brief to be provided in Kinyarwanda before the submission of the Defence final trial brief”

Source: Defence Team of Mr Bosco Ntaganda

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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Unrepresented Victims

**Unrepresented Applicants
(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**

Further to the submission of the “Prosecution response to the Defence request for the Prosecution final trial brief to be provided in Kinyarwanda before the submission of the Defence final trial brief” by the Office of the Prosecutor (“Prosecution”) on 14 December 2017 (“Prosecution Response”),¹ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Request on behalf of Mr Ntaganda seeking leave to reply to “Prosecution response to the Defence request for the Prosecution final trial brief to be provided in Kinyarwanda before the submission of the Defence final trial brief”

“Defence Request for Leave to Reply”

INTRODUCTION

1. The Defence respectfully seeks leave to reply to the Prosecution Response in respect of the following Prosecution submissions:
 - a. That final trial briefs should be filed simultaneously – Prosecution Response paragraphs 3, 4, 13, 14, 19 and 20; and
 - b. That providing Mr Ntaganda with an interpreter in order to translate the Prosecution final brief in person is sufficient in the circumstances.
2. As set out below, the Prosecution’s submissions on these issues could not have reasonably been foreseen. Replying to the Prosecution’s misguided submissions would assist Trial Chamber VI (“Chamber”) by correcting erroneous material statements of fact and misinterpretations of case law cited. A reply would also assist the Chamber by clarifying matters affecting the fairness and expeditiousness of the trial.

¹ ICC-01/04-02/06-2156.

SUBMISSIONS

- I. **First issue: Fairness and expeditiousness of the proceedings require that the Parties' final trial briefs be submitted in sequence in accordance with ICC practice**
3. The Prosecution inappropriately used its right of response to the Defence request for Mr Ntaganda to be provided with a Kinyarwanda translation of the Prosecution final trial brief to make additional submissions concerning the parties' submission of their respective final trial briefs.
4. The Prosecution's submissions on this issue – which was argued *inter partes* during the last Status Conference could not have reasonably been foreseen at the time the Defence request was submitted. It is necessary to reply to these Prosecution submissions on this issue to assist the Chamber adjudicating the Defence Request.
5. If leave to reply is granted, the Defence will first address the arguments at paragraphs 3 and 20 of the Prosecution response. The Defence will then address the indirect arguments raised by the Prosecution on this issue at paragraphs 4, 13 and 14.
6. More particularly, the Defence will address the Prosecution's argument that the sequential submission of the parties' final trial briefs is not necessary since the Accused is not in a position to provide input on most of the submissions found therein.² The Defence will further elaborate as to why the Prosecution's position violate the rights of the Accused to be informed of the charges against him as well as why this approach would impact the fairness of the trial.
7. The Defence will also address the Prosecution erroneous submission that translation of the Updated Document Containing the Charges in Kinyarwanda is sufficient for Mr Ntaganda to be fully informed of the

² Prosecution Response, para. 4, 21-24.

charges against him. More importantly, the Defence will address and explain why the Prosecution's submission that "there has been no change in the nature, cause and content of the charges against the Accused subsequent to the provision of the Updated DCC"³ must be disregarded. In fact the Defence will demonstrate how the charges in the UDCC and in the Prosecution's case described in its Pre-Trial Brief have significantly changed since 2015.

II. Second issue: Services which can be rendered by an interpreter are not sufficient to protect the rights of the accused.

8. According to the Prosecution, providing Mr Ntaganda with the services of an interpreter to translate the Prosecution final brief in person, is sufficient to ensure that the Accused is informed of the content thereof. The Prosecution goes further by arguing that 'assigning an interpreter to conduct a sight interpretation only of the most critical parts of the Prosecution brief would ensure the expeditiousness of the proceedings'.⁴
9. It was not reasonably foreseeable that the Prosecution could suggest such a different mechanism than the one suggested by the Defence in its Request.
10. If leave to reply is granted by the Chamber, the Defence will explain, using relevant case law, the marked difference between having a sight interpretation of a lengthy and key document on one occasion and having a written translated Prosecution final brief Mr Ntaganda could use every day to provide his essential input during the drafting of the Defence brief.

RELIEF SOUGHT

In light of the above submissions, the Defence respectfully requests the Chamber to:

GRANT leave to reply on the two issues.

³ Prosecution Response, para. 13-14.

⁴ Prosecution Response, para. 27.

RESPECTFULLY SUBMITTED ON THIS 18TH DAY OF DECEMBER 2017

A handwritten signature in black ink, consisting of a stylized 'S' followed by a '+' sign and a 'B', with a horizontal line underneath.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands