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No.: **ICC-01/04-02/06**

Date: **26 April 2018**

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 an extension of the page limit for the
submission of the Defence Closing Brief**

Source: Defence Team of Mr Bosco Ntaganda

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

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Further to Trial Chamber VI (“Chamber”)’s “Decision providing further directions on the closing briefs” (“Chamber’s Decision”),¹ and the submission of the: (i) “Prosecution’s Final Closing Brief” (“Prosecution Closing Brief”);² (ii) “Closing brief on behalf of the Former Child Soldiers” (“CLR1 Closing Brief”);³ and (iii) “Closing Brief of the Common Legal Representative of the Victims of the Attacks” (“CLR2 Closing Brief”)⁴ on 20 April 2018, Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Request on behalf of Mr Ntaganda seeking an extension of the page limit for the submission of the Defence Closing Brief

“Defence Request”

INTRODUCTION

1. In its 28 December 2017 “Order providing directions related to the closing briefs and statements”⁵ (“Order providing directions”), having noted the Parties’ respective submissions regarding the length of the closing briefs - including that the Defence had requested the same number of pages as the Prosecution - the Chamber decided that “the Prosecution and the Defence’s briefs shall not exceed 400 pages each”.⁶ Nonetheless, the Chamber added that it “w[ould] decide at the relevant time on any request from the Defence for an extension of pages in order to address issues contained in the Legal Representatives’ briefs”.⁷

¹ Decision providing further directions on the closing briefs, 13 April 2018, ICC-01/04-02/06-2272.

² Prosecution’s Final Closing Brief, 20 April 2018, ICC-01/04-02/06-2277.

³ Closing brief on behalf of the Former Child Soldiers, 20 April 2018, ICC-01/04-02/06-2276.

⁴ Closing Brief of the Common Legal Representative of the Victims of the Attacks, 20 April 2018, ICC-01/04-02/06-2275.

⁵ Order providing directions related to the closing briefs and statements, 28 December 2017, ICC-01/04-02/06-2170.

⁶ ICC-01/04-02/06-2170, para. 14.

⁷ ICC-01/04-02/06-2170, p. 6, footnote 11.

2. On 20 April 2018, the Prosecution and the Legal Representatives of the Victims (“LRVs”) filed their respective briefs, together comprising 689 pages.⁸
3. Having completed a preliminary assessment of the LRVs respective closing briefs, the Defence respectfully requests pursuant to Regulation 37 of the Regulations of the Court (“RoC”), an increase of 100 pages, for a maximum of 550 pages, for the submission of the Defence closing brief (“Defence Closing Brief”) addressing the submissions of both the Prosecution and the LRVs in their respective closing briefs.

SUBMISSIONS

4. Pursuant to regulation 37 RoC, a request for an extension of the applicable page limit requires the existence of exceptional circumstances.
5. In the Chamber’s Order providing directions,⁹ the Chamber decided that the length of the closing briefs shall not exceed 400 pages each for the Prosecution and Defence, 100 pages for the Legal Representative of the Former Child Soldiers (“CLR1”) and 150 pages for the Legal Representative of the Victims of the Attacks (“CLR2”).¹⁰
6. Further to the “Prosecution’s application for reconsideration of a discrete portion of the Chamber’s ‘Order providing directions related to the closing briefs and statements’” (“Prosecution Application for Reconsideration”),¹¹ the Chamber - while maintaining the requirement to adhere to the average

⁸ Prosecution’s Closing Brief (ICC-01/04-02/06-2277) comprising 415 pages, CLR1 Closing Brief (ICC-01/04-02/06-2276) containing 105 pages and CLR2 Closing Brief (ICC-01/04-02/06-2275) including 169 pages.

⁹ ICC-01/04-02/06-2170.

¹⁰ ICC-01/04-02/06-2170, para 14.

¹¹ ICC-01/04-02/06-2260.

of 300 word-per-page - increased the applicable page limit to 450 pages for the Prosecution and Defence, to 115 pages for the CLR1 and to 170 pages for the CLR2.¹²

7. Taking into consideration the average of 300 word-per-page requirement, the LRVs closing briefs submitted on 20 April 2018 respectively comprise 119.9 pages (CLR 1 – 35,998 words) and 178.6 pages (CLR2 – 53,600 words). As for the Prosecution Closing Brief, taking into account the average of 300 word-per-page requirement, it comprises 395.4 pages (118,623 words).
8. Having to address the LRVs submissions presented in a total of 298.5 pages while being limited to 450 pages to address the submissions of both the Prosecution and the LRVs constitutes exceptional circumstances justifying an extension of the page limit for the submission of the Defence Closing Brief.
9. In accordance with the Chamber's observations on this issue,¹³ the Defence deemed necessary to assess the arguments put forward by the LRVs in their respective closing briefs before submitting an application for additional pages.
10. Having now completed a preliminary assessment of the LRVs submissions in their closing briefs – noting that many of these submissions repeat arguments put forward in the Prosecution Closing Brief – the Defence respectfully requests an extension of 100 pages, for a maximum of 550 pages, for the submission of the Defence Closing Brief.
11. The 100-page extension sought amounts to less than one third of the number of pages used by the LRVs in their closing briefs.

¹² ICC-01/04-02/06-2272, p. 9.

¹³ ICC-01/04-02/06-2170, p. 6, footnote 11.

12. By way of example, in *The Prosecutor v. Lubanga*,¹⁴ the page limit for the Defence closing brief amounted to 85.7% of the total number of pages comprised in the Prosecution and LRVs respective closing briefs.¹⁵
13. Having to address the totality of the submissions in the Prosecution Closing Brief, CLR1 Closing Brief and CLR2 Closing Brief, comprising a total of 693.9 pages (taking into account the requirement to adhere to the average of 300 word-per-page) in a maximum of 450 pages is insufficient in the circumstances.
14. Taking into account that the LRVs closing briefs repeat many of the submissions in the Prosecution Closing Brief, the Defence nonetheless deems necessary to address specific submissions found in various sections of the CLR1 Closing Brief such as: (i) the issue of the age assessment; (ii) the existence of training camps and the presence of child soldiers therein; (iii) the question of demobilization; (iv) the charge of rape under article 8 (2)(e)(vi)-1; (v) sexual slavery under article 8(2)(e)(vi) and, *inter alia*, (vi) the evidence in support of Counts 6 and 9. The Defence also deems necessary to address specific submissions found in various sections of the CLR2 Closing Brief such as (i) "submissions on factual circumstances of the crimes"; (ii) "submissions of victims having suffered on account of the crimes committed by Mr Ntaganda and his subordinates"; and, *inter alia* (iii) "criminal responsibility of Mr Ntaganda for the crimes committed and the suffering inflicted upon the victims".
15. As submitted in the Prosecution Application for Reconsideration, the Defence posits that the specific characteristics of this case must also be taken

¹⁴ ICC-01/04-01/06-2722.

¹⁵ Prosecution Closing Brief: 250 pages; LRVs Closing Briefs: 100 pages; Defence Closing Brief: 300 pages

into account. As highlighted by the Prosecution, an extensive volume of evidence needs to be analyzed in the Defence Closing Brief including the evidence relied upon by the LRVs, not specifically addressed in the Prosecution's Closing Brief. In this regard, the Defence notes that further to consultations between the Prosecution and Defence, the Parties have reached a final list of 1793 items admitted into evidence.

16. Pursuant to the principle of parity referred to on many occasions by the Chamber,¹⁶ the Defence submits that it is necessary, fair, as well as in the interest of justice, to provide the Defence with an effective opportunity to address the LRVs closing submissions.
17. Hence, taking into account the 450-page limit set by the Chamber for the submission of the Defence Closing Brief, the length of both the Prosecution Closing Brief and LRVs Closing Briefs, the Defence requests an extension of 100 pages for a maximum of 550 pages for the submission of the Defence Closing Brief addressing the totality of the submissions put forward by the Prosecution and the LRVs.

¹⁶ See *inter alia* ICC-01/04-02/06-T-137-CONF-ENG ET, 58:21-22 ("I think it's in accordance with our rules that always when we, the same for Prosecution and the same for Defence [...]."); ICC-01/04-02/06-T-249-CONF-ENG CT, 57:7-8 ("the Chamber also takes note of the Defence submission that the same procedure followed during the Prosecution case should apply during the Defence case.")

RELIEF SOUGHT

18. For the reasons set out above, the Defence respectfully requests the Chamber to:

GRANT the Defence Request; and

AUTHORIZE the Defence, pursuant to regulation 37, to submit a closing brief comprising a maximum of 550 pages.

RESPECTFULLY SUBMITTED ON THIS 26TH DAY OF APRIL 2018

A handwritten signature in black ink, appearing to read 'S+B', is centered on the page. The signature is written in a cursive, somewhat stylized font.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda