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

Date: **21 May 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 for Extension of Time**

**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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**Unrepresented Victims**

**Unrepresented Applicants  
(Participation / Reparation)**

**The Office of Public Counsel for  
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**The Office of Public Counsel for the  
Defence**

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Counsel Support Section**

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**Detention Section**

**Victims Participation and Reparations  
Section**

## Request for Extension of Time

1. The Defence requests a three-week extension of time to file its closing brief. Good cause arises under Regulation 35(2) of the Regulations of the Court for variation of the time-limit<sup>1</sup> for some of the same reasons identified by the Prosecution in its request for an extension of time to file its brief,<sup>2</sup> and for the further reasons as set out below. The total time accorded to respond to the parties and participants would come to eleven weeks, which is still shorter than the time accorded in *Bemba*, a case substantially narrower in scope and volume of evidence.<sup>3</sup>
2. First, the transcript corrections have continued unabated. Seventy-two revised transcripts have been notified just since 20 April 2018, when the Prosecution closing brief was filed. Additional errors continue to be identified in the transcripts of Mr Ntaganda's testimony on an ongoing basis. The Trial Chamber recognised in granting the Prosecution request for an extension of time that reviewing the corrected transcripts is "a time-consuming exercise."<sup>4</sup> The transcript corrections are likely to continue throughout the period of the drafting of the Defence closing brief, which imposes an ongoing and cumulative additional burden that was not foreseen at the time of the Scheduling Order.
3. Second, the final list of admitted exhibits was nominally finalised only on 17 May 2018. The Defence took the lead in promulgating this list; modifications to the existing list at the end of the evidentiary phase of the proceedings have already required certain issues to be revisited; and it is likely that further

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<sup>1</sup> Order providing directions related to the closing briefs and statements, 28 December 2017, ICC-01/04-02/06-2170 ("Scheduling Order").

<sup>2</sup> Prosecution's application for reconsideration of a discrete portion of the Chamber's "Order providing directions related to the closing briefs and statements", 22 March 2018, ICC-01/04-02/06-2260.

<sup>3</sup> *Bemba*, Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731 ("*Bemba* Scheduling Order"), p.23 ("ORDERS the defence to file its closing brief within twelve weeks of the filing of the prosecution's and legal representatives' closing briefs").

<sup>4</sup> Decision providing further directions on the closing briefs, 13 April 2018, ICC-01/04-02/06-2272.

modifications or errors will need to be addressed. This is a further circumstance unforeseen at the time of the Scheduling Order that warrants an extension of time.

4. Third, the translation into Kinyarwanda of selected portions of the Prosecution Closing Brief will likely proceed more slowly than anticipated. The Trial Chamber already recognised in its Scheduling Order the importance of this translation to the rights of the accused. In the *Bemba* case, the Trial Chamber required the translation of the Prosecution closing brief in full four weeks before the Defence's closing brief was due.<sup>5</sup> The need for such a translation is even greater for Mr Ntaganda whose own testimony is extensively characterised in the Prosecution's closing brief. Only 82 out of a total of 361 pages requested of the closing brief have been received so far.<sup>6</sup> The pace of translation of the Prosecution closing brief could not be concretely foreseen at the time of the Scheduling Order.
5. Fourth, the successive filing of briefs requires the Defence to both set out its position and to do so in a manner that is responsive to more than 650 pages of submissions by three other parties and participants. Doing so in a streamlined fashion imposes a different and heavier burden than would arise in respect of simultaneous briefs, but which will, in the end, enhance the expeditiousness of proceedings. An extension that assists the Defence in consolidating and streamlining its submissions, taking into account the extensive submissions of the parties and participants is in the long-term interest of expeditiousness.

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<sup>5</sup> *Bemba* Scheduling Order, para. 30 ("In light of the above and in order to meet the requirements of Article 67(1) of the Statute, the Chamber orders the prosecution to work closely with the translation and interpretation section of the Registry in order to facilitate the production of a draft translation of the full prosecution's closing brief within eight weeks of the date of its filing, at the latest. The Chamber orders the Translation and Interpretation Section of the Registry to provide the defence with completed sections of the draft translations on a rolling basis, i.e. as soon as they become available.")

<sup>6</sup> The first two tranches of translation were sent from the Counsel Support Section of the Registry to Stéphane Bourgon, Defence Lead Counsel, on 14 May 2018 at 12h20 and 21 May 2018 at 11h11.

6. Fifth, a three-week extension would not delay closing arguments nor require any other party or participant to work during the judicial recess. A three-week extension would require the Defence to file its closing brief on 9 July 2018. The other parties and participants would then have, according to the current schedule, until Monday, 22 July 2018, which is the first day of the judicial recess.<sup>7</sup> The Defence will, of course, absorb the burden of filing its reply brief two weeks thereafter, which would be in the middle of the judicial recess. The extension would not, accordingly, impact on the date previously communicated by the Trial Chamber for oral closing arguments.<sup>8</sup>
7. Sixth, as the party presenting its case last, the Defence's workload was back-loaded in a manner that made progress on the drafting of the closing brief difficult. The Defence under-estimated the extent to which this was the case and, accordingly, did not make extensive submissions on this factor when the parties were consulted prior to the issuance of the Scheduling Order.
8. Seventh, staff attrition on a relatively small Defence team has an unequally heavy impact on the Defence. Although staff attrition was not unforeseeable as of the date of the Scheduling Order, the Defence – which does not benefit from permanent staff arrangements – is unequally impacted by temporary or permanent departures of team members. The Defence is concretely facing these issues, including the unexpected permanent departure of one individual and the temporary unavailability of another key staff member.

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<sup>7</sup> Judicial recess and official holidays of the Court available online: <https://www.icc-cpi.int/visit?ln=en>.

<sup>8</sup> Email sent from Trial Chamber VI Communications to the Parties and Participants, 11 April 2018, 10h13.

**CONCLUSION AND RELIEF SOUGHT**

9. The Defence requests a three-week extension of time to file its closing brief, until 9 July 2018.

**RESPECTFULLY SUBMITTED ON THIS 21<sup>TH</sup> DAY OF MAY 2018**

A handwritten signature in black ink, appearing to read 'StB' with a flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands