

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 August 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

Decision on Defence request to reconsider the Second order on closing statements

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 67 of the Rome Statute, Rule 141 of the Rules of Procedure and Evidence ('Rules'), and Regulation 54(a) of the Regulations of the Court, issues the following 'Decision on Defence request to reconsider the Second order on closing statements'.

1. On 2, 6, and 13 August 2018, pursuant to the Chamber's order,¹ the defence team for Mr Ntaganda ('Defence'),² the Legal Representative of the Former Child Soldiers, jointly with the Legal Representative of the Victims of the Attacks ('Legal Representatives'),³ and the Office of the Prosecutor ('Prosecution')⁴ made submissions related to the public hearing for the closing statements.
2. On 15 August 2018, the Chamber issued an order ('Second Order'),⁵ in which it set the time limits for the oral closing arguments of the parties and participants,⁶ and decided that 'the Prosecution should present its closing statements first, to be followed by the Legal Representatives, the Defence, the unsworn statement by the accused, and then any submissions by the parties in response or reply, as appropriate, with the Defence being given the opportunity to speak last'.⁷
3. On 21 August 2018, the Defence requested reconsideration of the Second Order ('Request').⁸ It submits that the Prosecution should not be given the opportunity

¹ Order on closing statements, ICC-01/04-02/06-2299.

² Email from the Defence to the Chamber, the Prosecution, and the Legal Representatives on 2 August 2018, at 15:51.

³ Email from the Legal Representatives to the Chamber and the parties on 6 August 2018, at 12:36.

⁴ Email from the Prosecution to the Chamber, the Defence, and the Legal Representatives on 13 August 2018, at 15:50.

⁵ Second order on closing statements, ICC-01/04-02/06-2308.

⁶ The Chamber granted 'the parties five hours each for the presentation of their respective closing statements, as well as half an hour each for any submissions in response, or reply, as appropriate. The Legal Representatives shall have one hour each to present their closing statements and the accused shall have a maximum of 30 minutes to make an unsworn statement.' Second Order, ICC-01/04-02/06-2308, para. 6.

⁷ Second Order, ICC-01/04-02/06-2308, para. 7.

⁸ Defence Request on behalf of Mr Ntaganda seeking reconsideration of the 'Second order on closing statements', ICC-01/04-02/06-2309.

to comment on the accused's unsworn statement.⁹ It therefore requests the Chamber to modify its order so as to ensure that Mr Ntaganda's unsworn statement offers the final words in the case before the deliberations.¹⁰

4. On 24 August 2018, in line with the deadline set by the Chamber,¹¹ the Prosecution responded ('Response').¹² It avers that no clear error of reasoning has been demonstrated, nor is it necessary to reconsider the Second Order to prevent an injustice.¹³
5. That same day, the Legal Representatives informed the Chamber that they did not intend to respond to the Request.¹⁴
6. The Chamber recalls that reconsideration is an 'exceptional measure', and that it will only reconsider a decision if 'a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice'.¹⁵ The Chamber considers that no error was made and there is no injustice to be prevented, because the procedure requested by the Defence was in fact covered by the Second Order.
7. In determining the sequence of the submissions by the parties and indicating that the parties may respond to each other's submissions during a reply and sur-reply, as appropriate,¹⁶ the Chamber envisioned the Prosecution replying to the Defence's closing arguments, rather than to Mr Ntaganda's unsworn statement.

⁹ Request, ICC-01/04-02/06-2309, paras 1, 5-12.

¹⁰ Request, ICC-01/04-02/06-2309, paras 1, 6-7, and 12-13.

¹¹ Email from the Chamber to the parties and participants on 21 August 2018, at 18:08.

¹² Prosecution's response to the 'Request on behalf of Mr Ntaganda seeking reconsideration of the 'Second order on closing statements'', ICC-01/04-02/06-2310-conf.

¹³ Response, ICC-01/04-02/06-2310-conf, paras 1, 4 and 5, referring to ICC-01/04-02/06-483, para. 13.

¹⁴ Email from Ms Pellet to the Chamber and the parties on 24 August 2018, at 11:22; and email from Mr Suprun to the Chamber and the parties on 24 August 2018, at 11:27.

¹⁵ Decision on the Defence request for reconsideration and clarification, 27 February 2015, ICC-01/04-02/06-483, para. 13; and Decision on Prosecution request for reconsideration of, or leave to appeal, decision on use of certain material during the testimony of Mr Ntaganda, 23 June 2017, ICC-01/04-02/06-1973, para. 14.

¹⁶ Second Order, ICC-01/04-02/06-2308, para. 7.

As the Chamber stated before,¹⁷ such a statement does not constitute evidence. As such, a response is normally not warranted, and leave to respond would have to be requested.

8. The Chamber further reiterates its indication that the Defence will be 'given the opportunity to speak last'.¹⁸ In using the wording derived from the language of Rule 141(2) of the Rules, the Chamber in no way limited the right of the accused, who generally addresses the Chamber through counsel, to have the last word. Mr Ntaganda is free to exercise his right to be the last to address the Chamber by having either his defence team make submissions on his behalf, or instead to opt for addressing the Chamber himself, as the last speaker.

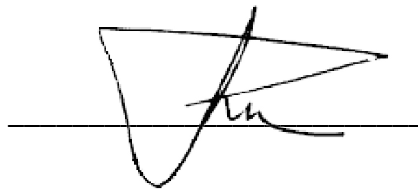
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

¹⁷ Decision on the conduct of proceedings, 2 June 2015, ICC-01/04-02/06-619.

¹⁸ Second Order, ICC-01/04-02/06-2308, para. 7.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a large, stylized 'F' and 'R' followed by a horizontal line.

Judge Robert Fremr, Presiding Judge

Two handwritten signatures in black ink. The first is a cursive signature, and the second is a signature in Korean characters.

Judge Kuniko Ozaki

Judge Chang-ho Chung

Dated this 27 August 2018

At The Hague, The Netherlands