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

Date: **12 July 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

Response on behalf of Mr Ntaganda to “Prosecution’s request for a limited extension of the page limit for its response to the Defence’s 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 “Order providing directions related to the closing briefs and statements” (“Order”) issued on 28 December 2017,¹ the “Prosecution’s request for a limited extension of the page limit for its response to the Defence’s closing brief” (“Prosecution Request”) submitted on 10 July 2018² and the Chamber’s electronic correspondence addressed to the parties and participants on 11 July 2018, Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Response on behalf of Mr Ntaganda to “Prosecution’s request for a limited extension of the page limit for its response to the Defence’s closing brief”

“Defence Response”

INTRODUCTION

1. The Prosecution Request fails to demonstrate the existence of exceptional circumstances justifying an extension of the applicable page limit for its response to the Defence’s closing brief pursuant to Regulation 37(2) of the Regulations of the Court (“RoC”).
2. Nonetheless, subject to being granted the same 15-page extension for the submission of the Defence Reply pursuant to the Order, the Defence does not oppose the Prosecution being granted a limited 15-page extension for the purpose of presenting “a better product for the purposes of assisting the Trial Chamber”.³

¹ Order providing directions related to the closing briefs and statements, 28 December 2017, ICC-01/04-02/06-2170.

² Prosecution’s request for a limited extension of the page limit for its response to the Defence’s closing brief, 10 July 2018, ICC-01/04-02/06-2300.

³ Prosecution Request, para.9.

RELEVANT PROCEDURAL BACKGROUND

3. Pursuant to the 28 December 2017 Order, the parties were authorized to submit closing briefs comprising 400 pages while the participants were authorized to submit closing briefs of respectively 150 pages (LRV1) and 100 pages (LRV2).
4. On 13 April 2018, 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’”,⁴ the Prosecution was authorized to submit a closing brief comprising 450 pages while the participants were authorized to submit closing briefs of respectively 175 pages (LRV1) and 115 pages (LRV2).⁵
5. On 4 May 2018, in the circumstances resulting from its Decision to grant the Prosecution’s and the participants’ requests,⁶ thereby authorizing the filing of submissions comprising a total of 740 pages, the Defence was authorized to submit a closing brief comprising 500 pages or 150,000 words.⁷
6. On 2 July 2018, the Defence submitted its closing brief⁸ comprising 463 pages and 148,666 words, well within the parameters set by the Chamber.

⁴ 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.

⁵ Decision providing further directions on the closing briefs, 13 April 2018, ICC-01/04-02/06-2272, p.9

⁶ Decision on Defence request for an extension of page limit for its closing brief, 4 May 2018, ICC-01/04-02/06-2283, para.2,fn.4.

⁷ Decision on Defence request for an extension of page limit for its closing brief, 4 May 2018, ICC-01/04-02/06-2283, para.11,p.8.

⁸ Defence Closing Brief, 2 July 2018, ICC-01/04-02/06-2298-Conf.

SUBMISSIONS

7. Pursuant to the Order, the parties were authorized to submit their respective response and reply comprising a maximum of 100 pages while the participants were authorized to submit responses of respectively 40 pages (LRV1) and 25 pages (LRV2).⁹
8. The number of pages authorized for the parties' respective response and reply, *i.e.* 100 pages or 20% of the page limit authorized for the Defence closing brief, is both significant and exceptional.
9. Moreover, the Prosecution's claim that it "must address a significant number of inaccurate references to evidence and law arising from the Defence's closing brief in its response"¹⁰ does not constitute exceptional circumstances. Indeed, the purpose of the Prosecution response and Defence reply is precisely to highlight deficiencies in each other's submissions and the same standard applies to both parties.
10. As for the reference to the "Prosecution's often extensive footnote references", it constitutes a practice over which the Prosecution exercises full control and as such, also does not amount to exceptional circumstances.
11. Notwithstanding the above, the Chamber has previously noted "the interest for the parties, participants and the Chamber to have closing briefs, which are comprehensive and accurate to the greatest extent possible (...)"¹¹ and to this

⁹ Order providing directions related to the closing briefs and statements, 28 December 2017, ICC-01/04-02/06-2170, para.15.

¹⁰ Prosecution Request, para.7.

¹¹ Decision providing further directions on the closing briefs, 13 April 2018, ICC-01/04-02/06-2272, para.10.

end, the Defence does not oppose the Prosecution being granted a limited 15-page extension, providing that the same extension is granted to the Defence and that the parties and participants adhere to the average 300 word-per-page requirement.

RESPECTFULLY SUBMITTED ON THIS 12TH DAY OF JULY 2018

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda