

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 28 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

Order providing directions related to the closing briefs and 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 Herman von Hebel

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 ('Statute'), Rule 141 of the Rules of Procedure and Evidence ('Rules'), and Regulations 24(5) and 37 of the Regulations of the Court ('Regulations'), issues this 'Order providing directions related to the closing briefs and statements'.

I. Background

1. On 2 June 2015, the Chamber issued the 'Decision on the conduct of proceedings'.¹
2. On 5 December 2017, the Chamber convened a status conference ('Status Conference') to hear submissions on the timeline for the conclusion of the presentation of evidence, as well as on the length and timing of closing briefs and statements.²
3. On 12 December 2017, the defence team for Mr Ntaganda ('Defence') made further submissions on the issue of closing briefs, requesting that 'at least a draft translation of the Prosecution's final trial brief into Kinyarwanda be provided to Mr Ntaganda before submission of the Defence final trial brief' ('Request for Translation').³
4. In accordance with a deadline set by the Chamber,⁴ on 14 December 2017, the Office of the Prosecutor ('Prosecution') and the Legal representatives of victims ('Legal Representatives') filed their responses, opposing the Request for Translation.⁵

¹ ICC-01/04-02/06-619.

² See Order scheduling a status conference, 28 November 2017, ICC-01/04-02/06-2131; Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT.

³ Email communication from the Defence to the Chamber on 12 December 2017, at 20:36.

⁴ Email communication from the Chamber to the parties and the participants on 13 December 2017, at 12:26.

⁵ 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, ICC-01/04-02/06-2156; Joint Response of the Common Legal Representatives of Victims to the Defence submissions on the final trial briefs, ICC-01/04-02/06-2158.

5. On 18 December 2017, the Defence sought leave to reply on two issues raised in the Prosecution's response ('Request for Leave to Reply').⁶
6. On 22 December 2017, the Chamber issued an order setting deadlines related to the end of the presentation of evidence, and indicating that the timelines and modalities of presentation of the closing briefs and closing statements would be determined in a separate decision.⁷

II. Submissions and directions

7. As a preliminary matter, with regard to the Request for Leave to Reply, noting the issues the Defence seeks to reply to, the Chamber does not consider that it would be assisted by further submissions on any of the identified issues in ruling upon the Request for Translation. The Chamber therefore rejects the Request for Leave to Reply.
8. Taking into account the submissions made during the Status Conference,⁸ the circumstances of this case, as well as the Chamber's obligation to ensure that the trial is fair and expeditious, the Chamber is of the view that the Prosecution and the Legal Representatives should be in a position to file their respective closing briefs within **four weeks** from the date upon which the Presiding Judge declares the presentation of evidence in the case to be closed pursuant to Rule 141 of the Rules.
9. As to the language of the closing briefs, the Chamber notes that the parties and the participants will file their respective briefs in English.⁹ It further notes the

⁶ 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", ICC-01/04-02/06-2162.

⁷ Order providing directions related to the closure of the presentation of evidence, ICC-01/04-02/06-2166.

⁸ Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT, page 10, line 14 to page 28, line 16.

⁹ Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT, page 27, line 5 to page 28, line 16.

Request for Translation for a draft translation of the Prosecution closing brief into Kinyarwanda, a language that the accused fully speaks and understands.

10. The Chamber recalls that Article 67(1)(a) of the Statute gives the accused the right to be informed of the 'nature, cause and content of the charge' in a language he or she fully understands and speaks. In addition, Article 67(1)(f) of the Statute entitles the accused to the 'assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness'.
11. The Chamber notes that the Prosecution's closing brief is mainly intended to set out the Prosecution's position in relation to the evidence presented during the proceedings in support of the charges brought against the accused and of his alleged individual criminal responsibility. Therefore, while the accused does not have an absolute right to have all documents in the case translated into a language that he or she fully speaks and understands, the Chamber is of the view that the Prosecution's closing brief may contain information that the accused should receive translation of into Kinyarwanda.¹⁰ The Defence submits, and the Chamber considers, that a draft translation suffices for this purpose. Furthermore, translation of the entire document may not be necessary, as Mr Ntaganda may not be in a position or intend to review all parts of the brief to assist his defence team in the preparation of the Defence's closing brief. Therefore, and mindful that the Court's limited resources should not be employed unnecessarily, the Chamber urges the Defence to communicate to the Registry, as soon as possible after notification of the Prosecution's closing brief, any parts that it does not require translation of.
12. In light of the foregoing, the Chamber orders the Prosecution to liaise with the Registry's Language Services Section in order to facilitate, to the extent possible,

¹⁰ See, similarly, *The Prosecutor v. Jean-Pierre Bemba Gombo*, 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, para. 29.

the Registry's production of a draft translation of the Prosecution's closing brief, which apart from those portions the Defence has indicated it does not require translation of, if any, should be provided to the Defence within **six weeks** of the date of its filing. The Registry is to provide the Defence with the draft translations of relevant sections, as soon as they become available.

13. The Defence shall file its closing brief within **eight weeks** of notification of the Prosecution and Legal Representatives' closing briefs.
14. As to the length of the closing briefs, the Prosecution and the Defence's briefs shall not exceed 400 pages each,¹¹ the brief of the Legal Representative of the Victims of the Attacks shall not exceed 150 pages, and the brief of the Legal Representative of the Former Child Soldiers shall not exceed 100 pages. The parties and the participants shall also comply with the format requirements set out in Regulation 36 of the Regulations.¹² Annexes, if any, to the briefs should not include any substantive arguments. In relation to the footnotes in the closing briefs, in the case of discrepancies between the English and French transcripts, the relevant reference shall refer to both transcripts.
15. The Prosecution and the Legal Representatives will be allocated **two weeks** to respond to the Defence's closing brief, and the Defence will be allocated **two weeks** to reply. The Prosecution's response and the Defence's reply shall not exceed 100 pages. The response by the Legal Representative of the Attacks shall not exceed 40 pages, and the response by the Legal Representative of the Former Child Soldiers shall not exceed 25 pages.
16. Closing statements will be scheduled approximately **two weeks** after the filing of the Defence's reply. The Chamber will determine at a later stage the time allotted

¹¹ The Chamber has taken note of the parties' respective submissions in this respect, including that the Defence requested the same amount of pages as the Prosecution (Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT, page 11, lines 10-11, and page 15, line 20 to page 16, line 7). The Chamber will 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.

¹² Regulation 36 of the Regulations. In addition, an average page shall not exceed 300 words.

to the parties and the participants for the presentation of their respective closing statements.

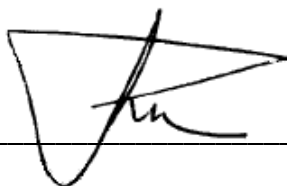
17. Finally, in this regard, the Chamber notes that it is considering hearing closing statements in the region (including in the Democratic Republic of the Congo, or at a location relatively proximate to it), and directs the parties, the participants, and the Registry to file their submissions on this issue by **30 January 2018**.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request for Leave to Reply; and

DIRECTS the parties, the participants, and the Registry to proceed in accordance with the directions set out in the present order.


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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated 28 December 2017

At The Hague, The Netherlands