

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13 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

Decision providing further directions on the closing briefs

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 and Regulations 35, 36, and 37 of the Regulations of the Court ('Regulations'), issues the following 'Decision providing further directions on the closing briefs'.

I. Procedural history and submissions

1. On 28 December 2017, the Chamber provided directions related to the closing briefs and statements ('Directions'), including page limits and time limits for the submission of the closing briefs.¹ The Chamber ordered, *inter alia*, that the closing brief of the Office of the Prosecutor ('Prosecution') shall not exceed 400 pages and that the parties and participants comply with the format requirements set out in Regulation 36 of the Regulations. In this respect, the Chamber added that 'an average page shall not exceed 300 words'.² The Chamber further directed the Prosecution and the Legal Representatives of Victims ('LRVs') to file their respective closing briefs within four weeks of 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 of Procedure and Evidence.³
2. On 16 March 2018, the presentation of evidence was declared closed.⁴

Request 2260

3. On 22 March 2018, the Prosecution requested reconsideration of a discrete portion of the Directions ('Request 2260').⁵ In particular, the Prosecution requests

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

² Directions, ICC-01/04-02/06-2170, para. 14 and footnote 12 therein.

³ Directions, ICC-01/04-02/06-2170, para. 8.

⁴ Decision closing the presentation of evidence and providing further directions, ICC-01/04-02/06-2259.

⁵ Prosecution's application for reconsideration of a discrete portion of the Chamber's "Order providing directions related to the closing briefs and statements", ICC-01/04-02/06-2260.

reconsideration of the limit of an average of 300 words per page and that the Chamber impose no word limit in line with amended Regulation 36 of the Regulations.⁶ In the alternative, it requests that the word count apply only to the text of each page and not to the footnotes.⁷ In the further alternative, the Prosecution seeks reconsideration of the page limit to 450 pages or an extension of the page limit to 450 pages under Regulation 37 of the Regulations.⁸ The Prosecution mainly highlights the specificity of the case, including its length, the number of witnesses heard and items of evidence admitted, and avers that the word limit per page limits the assistance the parties and participants can provide to the Chamber, and impacts on their ability to present their case thoroughly.⁹

4. On the same day, the LRVs filed their joint response ('LRV Response'),¹⁰ requesting that the Chamber grant the Request 2260 and impose no word limit per page. In the alternative, they request that the word count exclude the footnotes. In the further alternative, they seek reconsideration of the page limit to 115 pages for the Former Child Soldiers' closing brief and 170 pages for the Victims of the Attacks' closing brief, or an equivalent extension under Regulation 37 of the Regulations. In particular, they submit that a word limit, in addition to the new format requirements contained in the amended version of Regulation 36, have an impact on the accuracy of the references to be used in their briefs, making the work of the Chamber more difficult.¹¹

⁶ Request 2260, ICC-01/04-02/06-2260, paras 1-4, 8-15, 18.

⁷ Request 2260, ICC-01/04-02/06-2260, paras 5, 16, 18.

⁸ Request 2260, ICC-01/04-02/06-2260, paras 6, 17, 19.

⁹ Request 2260, ICC-01/04-02/06-2260, paras 3, 11 and 11-14.

¹⁰ Joint Response of the Common Legal Representatives of Victims 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'", ICC-01/04-02/06-2261.

¹¹ LRV Response, ICC-01/04-02/06-2261, paras 2-4 and page 4.

5. On 26 March 2018, the defence team for Mr Ntaganda ('Defence') filed its response, opposing the Request 2260 ('Defence Response').¹² In particular, the Defence argues that the standard for reconsideration is not met,¹³ and that the request is in fact a request for an extension of the page limit.¹⁴ It further submits that, should the Chamber consider the Prosecution Request as a request for extension of the page limit and consider that the Prosecution's submissions meet the required threshold, the Defence does not oppose it. If granted, the Defence requests that the same extension be granted to the Defence.¹⁵

Regulation 35 Request

6. On 3 April 2018, the Prosecution requested, pursuant to Regulation 35 of the Regulations, an extension of four days to file its closing brief ('Regulation 35 Request').¹⁶ The Prosecution argues that good cause exists and that granting the requested extension is in the interests of justice.¹⁷ Firstly, the Prosecution submits that since 15 March 2018, the Registry has been notifying corrections 'in bulk' to the transcripts of the accused's and several other witnesses' testimonies, which places an additional burden on the Prosecution to ensure the accuracy of citations which may be affected by the corrections.¹⁸ It further avers that, although the Chamber has indicated that the parties can make further submissions, if required, regarding any corrected transcripts notified after the filing of their closing briefs, the Prosecution requires additional time before the filing of its closing brief to

¹² Response on behalf of Mr Ntaganda to Prosecution request for reconsideration of the Chamber's "Order providing directions related to the closing briefs and statements", ICC-01/04-02/06-2263.

¹³ Defence Response, ICC-01/04-02/06-2263, paras. 1-2, 5-19.

¹⁴ Defence Response, ICC-01/04-02/06-2263, paras 3, 20-22.

¹⁵ Defence Response, ICC-01/04-02/06-2263, paras 24-26.

¹⁶ Prosecution's Request for a short extension of time to file its closing brief, ICC-01/04-02/06-2267. The Prosecution requests the Chamber an extension from Monday, 16 April 2018 to Friday, 20 April 2018. *See* Regulation 35 Request, ICC-01/04-02/06-2267, para. 1.

¹⁷ Regulation 35 Request, ICC-01/04-02/06-2267, para. 3.

¹⁸ Regulation 35 Request, ICC-01/04-02/06-2267, paras 4 and 5.

integrate the corrected transcripts notified between 13 March 2018 and the day of filing of the closing brief.¹⁹

7. Secondly, the Prosecution argues that, subsequent to its Request 2260, which referred to 1636 items of evidence admitted into evidence and provided a breakdown of their purpose of admission, and in light of the discrepancies found between the parties' and the Registry's respective lists of admitted evidence, the parties, participants, and the Registry are endeavouring to ensure an accurate list of admitted evidence for the purpose of the closing briefs, which must be completed well in advance of the Prosecution's deadline.²⁰ Lastly, the Prosecution submits that its resources had to be diverted to address numerous other substantive issues in the case, and that the extension of four days will ensure that the Prosecution's closing brief is of maximum assistance to the Chamber.²¹
8. On 4 April 2018, in line with the time limit set by the Chamber,²² the Defence and the LRVs responded to the Regulation 35 Request, indicating that they do not oppose the Prosecution being granted an extension until 20 April 2018.²³ The LRVs also submit that, should the Regulation 35 Request be granted, the LRVs and the Defence should be granted the same extension to file their respective briefs ('LRV Request').²⁴ The Defence agrees with the Prosecution that good cause has been shown justifying the requested extension, specifically acknowledging the issues raised by the Prosecution regarding corrections to transcripts and discrepancies in lists of items admitted into evidence.²⁵

¹⁹ Regulation 35 Request, ICC-01/04-02/06-2267, para. 5.

²⁰ Regulation 35 Request, ICC-01/04-02/06-2267, paras 6 and 7.

²¹ Regulation 35 Request, ICC-01/04-02/06-2267, paras 8 and 9.

²² Email from the Chamber to the parties and participants on 3 April 2018, at 16:00.

²³ Response on behalf of Mr Ntaganda to Prosecution request for an extension of time to file its closing brief, ICC-01/04-02/06-2268, para. 1. Joint Response of the Common Legal Representatives of Victims to the 'Prosecution's Request for a short extension of time to file its closing brief', ICC-01/04-02/06-2269, para. 2.

²⁴ LRV Request, ICC-01/04-02/06-2269, para. 2.

²⁵ ICC-01/04-02/06-2268, paras 3-5.

9. Via email sent on 11 April 2018,²⁶ the Chamber informed the parties and participants of the outcome of its determination, which is being placed on the record, together with the Chamber's reasons, by virtue of the present decision.

II. Analysis

Request 2260

10. The Majority of the Chamber considers that the Request 2260 constitutes in fact a request for extension of the page limit and will address it accordingly. In this respect, the Majority considers, in particular, the submissions related to the impact of the per page word limit on their closing briefs. It further notes the nature and purpose of the closing briefs and the position expressed by the parties and participants. In light of the above, and noting the interest for the parties, participants, and the Chamber to have closing briefs which are comprehensive and accurate to the greatest extent possible, the Majority considers that it is appropriate in these circumstances to grant the extension of pages sought by the Prosecution. Accordingly, it grants the requests for extension of the page limit sought by the LRVs and the Defence.
11. After consulting with the Registry, and noting the time needed to provide the Defence with a draft translation of the Prosecution's closing brief, the Chamber recalls that it urged the Defence to identify the portions of the Prosecution's brief that do not require translation. Noting that no substantial submissions may be placed in the footnotes,²⁷ the Defence is furthermore directed to liaise with the Registry's Language Services Section in order to identify any specific footnotes that require translation.

²⁶ Email from the Chamber to the parties and participants on 11 April 2018, at 10:13.

²⁷ See Regulation 36 of the Regulations.

Regulation 35 Request

12. Pursuant to Regulation 35 of the Regulations, good cause has to be shown for an extension of time limit.
13. The Chamber recalls its guidance, provided by email upon request from the Defence, that the parties and the participants should rely, for the drafting of their respective closing briefs, and to the extent possible, on the most recent available versions of the transcripts. Further in this respect, and noting the present stage of the proceedings, the Chamber has strongly encouraged the Registry to ensure that the review of the transcripts in the present case is completed as soon as possible. The Chamber finally stated that, should subsequent transcript corrections be notified after the filing of the closing briefs and result in changes that need to be brought to the Chamber's attention, the parties and participants will be able to notify the Chamber accordingly.²⁸
14. At the outset, in relation to the Prosecution's submissions that they needed to divert their resources to address numerous other substantive issues in the case, and noting the nature of the issues referred to, the Chamber does not consider, in the present case, this argument to contribute to the existence of good cause, since such litigation forms part of the regular course of a trial. In relation to the other Prosecution's arguments, the Chamber notes the number of corrected versions of transcripts notified by the Registry since mid-March 2018, and the fact that, according to the information provided by the Registry to the Chamber, more are to be notified in the coming days. In this respect, the Majority acknowledges that the review of corrected transcripts, necessary in order to ensure the accuracy of citations, may constitute a time-consuming exercise. The Majority also notes the parties' submissions that further to the Request 2260, the parties, participants, and

²⁸ See email from the Chamber to the parties and participants on 15 March 2018, at 9:24.

the Registry have identified some discrepancies between their respective lists of items admitted into evidence and are currently attempting to resolve them. The Majority additionally notes the limited scope of the extension sought, and that the Regulation 35 Request is not opposed by the Defence or the LRVs. The Majority also considers the importance of receiving comprehensive closing briefs that take into account, to the extent possible, the most recently notified corrected transcripts, and refer accurately to items admitted into evidence.

15. In light of the above, the Majority finds that good cause has been shown justifying the requested limited extension and therefore grants the Regulation 35 Request. Lastly, for the reasons specified above, the Majority grants the LRVs the same time extension to file their respective briefs.

FOR THE FOREGOING REASONS, THE CHAMBER, BY MAJORITY, JUDGE OZAKI DISSENTING, HEREBY

GRANTS the Prosecution, the LRVs and the Defence's requests for extension of pages;

DIRECTS that the Prosecution and the Defence's closing briefs shall not exceed 450 pages each, the brief of the Legal Representative of the Victims of the Attacks shall not exceed 170 pages, and the brief of the Legal Representative of the Former Child Soldiers shall not exceed 115 pages;

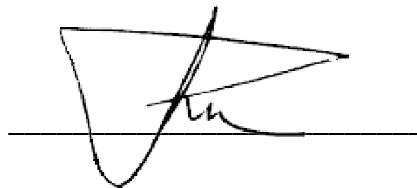
GRANTS the Regulation 35 Request;

GRANTS the LRV Request; and

DIRECTS the parties and the participants to file their respective closing briefs, in line with the Directions, by:

- Prosecution's and LRVs' closing briefs: 20 April 2018;
- Defence's closing brief: 18 June 2018;
- Prosecution and LRVs' responses: 3 July 2018 (or, in case the Defence's closing brief is filed prior to 18 June 2018, within two weeks from the day following the notification of the Defence's closing brief);
- Defence reply: 18 July 2018 (or, in case the Prosecution and LRVs' responses are filed prior to 3 July 2018, within two weeks from the day following the notification of the last response).

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

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by 'remr', written over a horizontal line.

Judge Robert Fremr, Presiding Judge

A solid horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of three distinct characters, written over a horizontal line.

Judge Chang-ho Chung

Dated this 13 April 2018

At The Hague, The Netherlands