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No.: **ICC-01/04-02/06**
Date: **19 October 2015**

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

Public redacted version of “Submissions on behalf of Mr Ntaganda concerning the admission into evidence of transcriptions and/or translations of audio and video material”

Source: Defence Team of Mr Bosco Ntaganda

Document 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 the Defence

Me Stéphane Bourgon
Me Luc Boutin

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(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**

Further to the “*Decision on the conduct of proceedings*” issued by Trial Chamber VI (“Chamber”) on 2 June 2015 (“Decision”)¹ and the recent exchange of email correspondence with the Office of the Prosecutor (“Prosecution”), Counsel representing Mr Ntaganda (“Defence”) hereby submit these:

Submissions on behalf of Mr Ntaganda concerning the admission into evidence of transcriptions and/or translations of audio and video material

“Defence Submissions”

INTRODUCTION

1. Pursuant to the Decision, the Prosecution and the Defence shall consult to try and resolve any disagreement as to the transcription or translation of excerpts of audio-visual material a party intends to present to a witness. If the disagreement cannot be resolved, the parties shall notify the Chamber, who may ask the Registry to advise on the transcription or translation.²
2. Having no resources / qualified personnel to perform this work, the Defence is not in a position to verify the accuracy of any transcription and/or translation of the excerpts of audio and video material the Prosecution intends to show to its witnesses.
3. Consequently, the Defence hereby notifies the Chamber of its opposition to the admission of any transcription and, as the case may be, translation of audio and video material unless the accuracy of such material has been verified and certified by a neutral and independent entity such as the Registry.³

¹ ICC-01/04-02/06-898.

² Decision, para.57.

³ Another option would be for the Registry to provide the Defence with the necessary resources to verify the accuracy of transcriptions and/or translations of audio and video exhibits the Prosecution intends to use - which would probably be quicker – although this would probably cost more than having this work performed by the Registry.

BACKGROUND

4. On 13 October 2015, the Prosecution provided the Defence with a list of excerpts of a video it intends to show Witness [REDACTED] as part of its upcoming examination-in-chief of the witness, as well as the references to the corresponding transcriptions and translations.⁴
5. On 16 October 2015, the Prosecution informed the Defence of its intention to use certain extracts of two videos during Witness [REDACTED] examination-in-chief and provided the Defence with the references to the transcriptions and translations of these extracts.⁵
6. On the same day, the Defence informed the Prosecution that in the absence of the necessary resources / qualified personnel to verify the accuracy of the transcripts / translations prepared by the Prosecution, it opposes the admission into evidence of the excerpts of audio-visual exhibits the Prosecution intends to use during the examination-in-chief of Witnesses [REDACTED].⁶

SUBMISSIONS

7. Taking into consideration the Chamber's holding that "[r]egardless of whether the party is allowed to present recordings to a witness, the audio-visual material itself will not be considered for the truth of its contents unless it is admitted into evidence",⁷ it follows that audio-visual material admitted into evidence will be considered for the truth of its contents.
8. Consequently, it is of the utmost importance before transcriptions and/or translations of audio-visual exhibits or excerpts thereof can be admitted into evidence, to carefully verify their accuracy – especially if such transcriptions

⁴ Email from Nicole Samson to Stéphane Bourgon, 13 October 2015, 17:16.

⁵ Email from Nicole Samson to Stéphane Bourgon, 16 October 2015, 09:25.

⁶ Email from Stéphane Bourgon to Nicole Samson, 16 October 2015, 12:20.

⁷ Decision, para.56.

- and/or translations were prepared by one of the parties as opposed to having been prepared and certified by an independent and neutral entity.
9. This is without prejudice of course, to the position of the Defence regarding: (i) the showing of video excerpts to witnesses by the calling party (with or without the sound track); (ii) the admissibility of video exhibits and/or excerpts from video exhibits; as well as (iii) the test to be met for the admission of transcriptions / translations of video exhibits or of excerpts from video exhibits (aside from the accuracy of the said transcriptions / translations).⁸
 10. In the present circumstances, the Defence does not have the necessary resources / qualified personnel to: (i) validate the transcription of a video or audio in another language than English or French; and (ii) verify the translation of such transcription prepared by the Prosecution.
 11. Consequently, the Defence hereby provides notice to the Chamber of its opposition to the admission into evidence of any transcription and/or translation of audio-visual material used with a witness or admitted through a witness, unless the accuracy of such material has been verified and certified by a neutral and independent entity such as the Registry.
 12. The Defence takes the view in this regard that the burden to prepare and submit independently certified transcriptions and/or translations rests with the party seeking to use and/or to admit audio-visual material into evidence.
 13. The Defence reserves its right to submit additional submissions on this issue at a later stage.

⁸ The Defence notes in this regard that it will be seeking leave from the Chamber to make oral submissions, at the earliest opportunity, in respect of these three issues.

CONFIDENTIALITY

14. Pursuant to Regulation 23*bis* (1) of the Regulations of the Court, these Defence Submissions are classified as confidential as they refer to a private exchange of emails between the Prosecution and the Defence. A public redacted version will be filed separately.

RESPECTFULLY SUBMITTED ON THIS 19TH DAY OF OCTOBER 2015

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands