

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 29 February 2016

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 Document

**Registrar's observations on the defence application
ICC-01/04-02/06-1166**

Source: The Registry

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. Pursuant to the instruction of Trial Chamber VI (“the Chamber”),¹ the Registry hereby submits its observations on the *Application on behalf of Mr Ntaganda seeking judicial review of the Registry’s decision on the Defence requests for resources for review of transcriptions and translations prepared by the Prosecution* (“Application”).²

Applicable Law

2. Article 67 of the Rome Statute, rules 20 to 22 of the Rules of Procedure and Evidence, regulations 83 to 85 of the Regulations of the Court and the Legal Aid Policy (LAP).³

Observations

I. The Registry has applied the Chamber’s directions

1. The Chamber has set the scope of the services of the Registry in checking transcriptions or translations to those cases where disagreements arise and cannot be resolved: the “Decision on the conduct of proceedings”⁴ established a specific procedure to deal with translations or transcripts to be presented in court:

“57. To facilitate the presentation of audio-visual material in court, the party intending to use the recoding shall, as early as practicable, indicate the sections of the transcript corresponding to the excerpts of the material it intends to use; as well as, if applicable, the corresponding sections of the translation. The parties shall then consult to try and resolve any disagreement as to the transcription or translation of the excerpts. If any disagreement cannot be resolved, the parties shall notify the Chamber, who may ask the Registry to advise on the transcription or translation.”⁵

¹ Email sent on 15 February 2016 at 18:02.

² ICC-01/04-02/06-1166, dated 11 February 2016.

³ Registry’s single policy document on the Court’s legal aid system, ICC-ASP/12/3 (4 June 2013).

⁴ ICC-01/04-02/06-619, 2 June 2015.

⁵ *Ibid*, para. 57.

2. The Chamber had the opportunity to further clarify this instruction in its oral ruling of 16 November 2015 on the admission of several documents:

“in the event of concrete disagreement I am highlighting concrete disagreement, and if the Chamber considers it appropriate, the Registry may be requested by the Chamber to assist with particular transcription or translation issues. The transcripts and translations do not otherwise require verification or certification.”⁶

3. This ruling was reiterated by the Chamber as recently as 28 January 2016, when the Presiding Judge read the ruling reproduced above.⁷

4. The approach of the Registry has thus taken these two premises as the basis for the assistance to the defence in this regard:

- a. In principle, the transcripts and translations provided do not require verification or certification.
- b. Should a specific disagreement on a transcription or translation arise, the Registry is ready to assist the defence by checking the relevant section, provided it does not have an excessive length.⁸

5. During a meeting with the defence on 18 January 2016, the Registry mistakenly indicated that the Registry services would be available to verify the interpretation of certain video excerpts. This error was corrected immediately after the meeting indicating that the verification of “complete excerpts” will not be possible. Only the verification of specific terms/words would be feasible.

6. It will be noted that the Registry, in order to better allow the defence to address potential problems, did not require the intervention of the Chamber before putting the necessary resources at its disposal.⁹

⁶ ICC-01/04-02/06-T-50, p. 72, l. 2-6.

⁷ ICC-01/04-02/06-T-58, p. 6, l. 3-7.

⁸ As explained by the Head of the Legal Aid Unit in his electronic message of 18 January 2016, “the registry will not be able to look into the complete footage or complete excerpts (18’, 20’...) but will only be able to look into the translation/transcription of specific terms/words” (Annex D to the Application).

II. The defence has not provided sufficient reasons to challenge the generality of the documents

7. The Registry, following the indications of the Chamber, has been constant in stating that there is no basis for the Registry to verify all material disclosed by the Prosecution simply because it was translated or transcribed by its language services.

8. The only argument advanced by the defence in this regard has been that “it has always been our intention to oppose the admission of this material into evidence unless it was transcribed and/or translated by an independent party such as the Registry”¹⁰ and that “[the counsel does] not have the ability to verify whether the transcriptions of these excerpts are accurate”.

9. As of today, the Registry has not received any information that might challenge the transcriptions or translations disclosed by the Office of the Prosecutor to the Defence. This lack of basis had already been shared with the defence in the Registrar’s letter of 13 November 2015¹¹ but the defence insists that, contrary to the Chamber’s repeated decisions, “the ‘solution’ of limiting language assistance to looking into the transcription/translations of ‘specific terms/words’ does not fall within the range of reasonable legal aid measures that can allow for an ‘effective and efficient defence’ pursuant to Regulation 83(1).”¹²

10. Furthermore, the Registry would like to indicate that the interpreters and translators in the Office of the Prosecutor possess the same qualifications as their colleagues in the Registry and have received similar training. Moreover, the present request is the first in its kind which has been received by the Registry.

⁹ The defence thus errs when it states that “the Registry merely confines itself to the role envisioned by the Chamber in its Decision on the Conduct of Proceedings” (par. 20 of the Application). Furthermore, had the Registry actually done so, it would already have been a perfectly admissible approach.

¹⁰ See *Request for resources for transcriptions and translations*, ICC-01/04-02/06-1166-Conf-Exp-AnxA, p. 2.

¹¹ ICC-01/04-02/06-1166-Conf-Exp-AnxB.

¹² Paragraph 24 of the Application.

III. Conclusion

11. The Registrar respectfully submits that it has scrupulously complied with the decisions of the Chamber regarding the provision of assistance to the defence for the verification of transcripts or translations. At the present stage, he does not find sufficient justification to consider the request of the defence reasonably necessary for the effective and efficient defence of Mr. Bosco Ntaganda.

12. The Registry remains available should the Chamber require further assistance in this matter.

pp. P. Craig.

Marc Dubuisson, Director of the Division of Judicial Services
per delegation of
Herman von Hebel, Registrar

Dated this 29 February 2016

At The Hague, Netherlands