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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

Prosecution's Request for a short extension of time to file its closing brief

Source: Office of the Prosecutor

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

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 Other
Section**

Introduction

1. Under regulation 35 of the Regulations of the Court (“Regulations”), the Prosecution requests a short extension of 4 days to file its closing brief, from Monday 16 April 2018 to Friday 20 April 2018.

Prosecution submissions

2. Under regulation 35(2), the Chamber may extend time limits if good cause is shown.¹ Chambers of the Court have confirmed that even where not all requirements of regulation 35 are met, a Chamber retains discretion to grant an extension of the time limit, including in the interests of justice.²
3. The Prosecution submits that good cause exists and that it is in the interests of justice to grant a brief extension.
4. *First*, since 15 March 2018 the Registry has been notifying corrections in bulk to the Accused’s testimony and to the testimony of several other Defence witnesses. As strongly encouraged by the Chamber,³ the Registry will continue to submit transcript corrections in a steady stream, meaning that the Prosecution, Legal Representatives of Victims and Defence will have to incorporate these corrections into their closing briefs.
5. Receiving the corrected transcripts in bulk during the Prosecution’s 4-week deadline places significant additional burden on it to ensure the accuracy of citations that may be affected by newly-notified transcript corrections. At the

¹ The Appeals Chamber has held that “[s]uch reasons as may found a good cause are necessarily associated with a party’s duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations”, ICC-01/04-01/06-834, para.7.

² ICC-01/04-01/07-653, para. 6, ICC-01/04-01/10-505, para. 11, ICC-01/04-01/07-2325-Red, para. 15.

³ See Email from Trial Chamber VI dated 15 March 2018 at 9:24.

same time, it is important that the closing briefs contain references to the latest corrected transcripts where these have been notified before the filing deadline. Although the Chamber has indicated that the Parties can make further submissions, if required, regarding any corrected transcripts notified *after* their closing briefs are filed, the Prosecution requires additional time now to integrate the corrected transcripts that were notified between 13 March and the day it will file its closing brief. The Prosecution must be afforded an opportunity to present its case in a manner that accurately reflects the evidence heard during the course of the trial.

6. *Second*, subsequent to the Prosecution's 22 March 2018 request, which referred to 1636 items of evidence being admitted and provided a breakdown of the purpose of admission,⁴ the Defence informed the Prosecution that the lists of admitted items compiled by the Defence appear to be different, and also appear to differ to the lists compiled by the Registry that contain certain inaccuracies.
7. The Parties, participants and the Registry are endeavouring to ensure an accurate list of admitted evidence for the purpose of the closing briefs. This involves generating and exchanging lists of admitted evidence, reviewing each other's lists and identifying discrepancies for further discussion. This review must be completed well enough in advance of the Prosecution's deadline to ensure full accuracy. The importance of maintaining an accurate record of proceedings is reflected in the Court's regulatory framework.⁵
8. *Third*, since the Chamber issued its decision granting the Prosecution 4 weeks to submit its closing brief,⁶ litigation in the case has been heavy on a variety of

⁴ ICC-01/04-02/06-2260, para. 11, fn. 12.

⁵ Article 64(10).

⁶ ICC-01/04-02/06-2170.

substantive issues. This necessitated the diversion of Prosecution resources to address the following issues, many requiring multiple submissions per issue:

-) the Sixth Defence evidentiary block in January 2018, including requests for in-court protective measures and video-link;
 -) the admission of D-80's statement under rule 68(2)(c) of the Rules and/or his testimony *via* video-link;
 -) the use and/or admission of Detention Centre calls to challenge D-80's evidence;
 -) Prosecution requests to admit rebuttal evidence;
 -) the non-disclosure of the identity of a potential rebuttal witness and multiple Defence challenges to redactions in several Prosecution filings;
 -) the possibility of *in situ* hearings for final oral arguments;
 -) the Chamber's potential recall of Witness P-290;
 -) restrictions to the Accused's communications from the Detention Centre;
 -) responses to two Defence motions to admit documents from the bar table, including a Defence request for reconsideration of part of the Chamber's decision on this issue;
 -) the Defence request to admit additional portions of D-148's statement to the Prosecution;
 -) proposals for the re-classification of documents at the request of the Chamber; and
 -) proposals on transcript corrections and lesser redacted transcripts.
9. The Prosecution submits that this request is for a very modest extension of time and will help to present a better product for the purposes of assisting the Trial Chamber. The extra 4 days will ensure that the Prosecution's final product is of maximum assistance to the Chamber in its determination of the truth and review of the evidence.
10. Should the Chamber grant the Prosecution's request, the Prosecution does not oppose the same extension being granted to the Defence and to the Legal Representatives of Victims.

11. The Accused will not be unduly prejudiced by the delay because: (i) he will benefit from the extra 4 days when his final brief is due; (ii) the delay is not for an unreasonable length of time; and (iii) all final briefs and responses/ replies will still be filed prior to the Court recess as originally scheduled. The variation of the time limit as requested will, therefore, not “derail the proceedings from their ordained course”.⁷

Conclusion

12. For all of the foregoing reasons, the Prosecution asks that the Chamber grant its Request.



Fatou Bensouda
Prosecutor

Dated this 3rd day of April 2018
At The Hague, The Netherlands

⁷ ICC-01/04-01/07-653, para. 6.