

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **16 May 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
with Confidential Annex**

**Decision on the Defence request concerning the corrected version of the
Prosecution's closing brief**

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 Peter Lewis

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, issues the following Decision on the Defence request concerning the corrected version of the Prosecution's closing brief.

I. Procedural history and submissions

1. On 20 April 2018, in line with the extended time limit set by the Chamber,¹ the Office of the Prosecutor ('Prosecution') filed the 'Prosecution's Final Closing Brief'.²
2. On 7 May 2018, the Prosecution filed a 'Corrected version of Prosecution's Final Closing Brief' ('Corrected Prosecution Closing Brief'),³ and further provided a courtesy copy containing the tracked changes.⁴ The Prosecution also clarified that the number of footnotes in the filed version differs from the number in the version with tracked changes because two footnotes have been modified or deleted.⁵
3. On 14 May 2018, the defence team for Mr Ntaganda ('Defence') requested that the Chamber order the Prosecution to submit a second Corrected Prosecution Closing Brief, containing the same number of footnotes as the original version (thus including one footnote identified as having been deleted) and all tracked changes reflecting the 'multiple changes' in the footnotes ('Defence Request').⁶

¹ Decision providing further directions on the closing briefs, 13 April 2018, ICC-01/04-02/06-2272, and Dissenting Opinion of Judge Kuniko Ozaki, ICC-01/04-02/06-2272-Anx. *See also* email from the Chamber to the parties and participants and the Registry on 20 April 2018, at 15:16, in which the Chamber granted a Prosecution request to file its closing brief by 18:00 on 20 April 2018.

² ICC-01/04-02/06-2277 and confidential Annex 1 and public Annexes A,B,C and D.

³ ICC-01/04-02/06-2277-Conf-Anx1 and ICC-01/04-02/06-2277-Conf-Anx1-Corr-Anx.

⁴ Email from the Prosecution to the Chamber, the Defence, and the participants at 17:39.

⁵ Email from the Prosecution to the Chamber, the Defence, and the participants at 17:39.

⁶ Email from the Defence to the Chamber, the Prosecution, and the participants at 10:25. *See* confidential Annex to the present decision.

4. In support of its request, the Defence argues that: (i) having to analyse the changes in the Corrected Prosecution Closing Brief constitutes a ‘time consuming exercise’; (ii) the ‘substantive changes brought by the Prosecution to certain references implies having to reevaluate certain witness testimony at this very late stage’ and ‘to work simultaneously with two Prosecution Closing Briefs’; and (iii) the ‘substantive changes justify the submission of a second corrected Final Closing Brief containing tracked changes in the footnotes with a view to allowing the Chamber and the Defence to take these changes into account’. In addition, the Defence lists a number of corrections made by the Prosecution, in order to ‘highlight the high number of changes’ in the Corrected Prosecution Closing Brief and ‘more importantly, the substantive changes therein’.

5. On 15 May 2018, in line with the time limit set by the Chamber,⁷ the Prosecution responded to the Defence Request, opposing it (‘Prosecution Response’).⁸ The Prosecution argues that: (i) the Defence Request is ‘at least partially, moot’, given that the Prosecution has already identified all changes made to its closing brief through a detailed explanatory note to the corrigendum as well as a courtesy copy containing tracked changes in which all modifications are apparent, thus providing the Defence with ‘all the tools it requires to easily identify’ the relevant corrections; (ii) the Defence ‘cannot reasonably claim’ that its ongoing work would be ‘derailed’ by the deletion of a single footnote in the Prosecution’s closing brief, which only alters the numbering of certain footnotes; and (iii) none of the corrections are substantive in nature, since the Prosecution ‘strictly limited itself to making corrections of typographical errors’ or, in so far as corrections to transcript references in footnotes are concerned, ‘merely sought to correct manifestly erroneous or incomplete references to evidence’.

⁷ Email from the Chamber to the parties and participants on 14 May 2018, at 13:33. In its email, the Chamber further stated that ‘[i]n the circumstances, email submissions are being permitted on an exceptional basis.’

⁸ Email from the Prosecution to the Chamber, the Defence, and the participants at 10:24. See confidential Annex to the present decision.

II. Analysis

6. As a preliminary matter, noting the number of corrections made in the Corrected Prosecution Closing Brief⁹ as well as the fact that the corrected version was filed more than two weeks after the original, the Chamber considers that it would have been preferable if the Prosecution had more thoroughly proof-read the brief prior to its filing, or filed its corrigendum at an earlier date.

7. Turning to the merits of the Defence Request, the Chamber has assessed the nature and scope of the changes made in the context of the Corrected Prosecution Closing Brief as well as the parties' submissions on the matter. In this regard, the Chamber notes, in particular, that: (i) the changes made are clearly reflected in both the explanatory note to the Corrected Prosecution Closing Brief¹⁰ and the version containing tracked changes provided as a courtesy copy by the Prosecution,¹¹ as well as further explained in the Prosecution Response; (ii) the deletion of a single footnote in the Corrected Prosecution Closing Brief as opposed to the initial version does not appear to require complex and time-consuming changes to the references contained in the draft Defence's closing brief; and (iii) none of the changes to the Prosecution's closing brief referred to by the Defence in its request are substantive in nature. In these circumstances, and noting further that the Corrected Prosecution Closing Brief was filed six weeks prior to the deadline for the filing of the Defence's closing brief, the Chamber finds that the provision of a second corrected version of the Prosecution's brief is not warranted.

⁹ See ICC-01/04-02/06-2277-Conf-Anx1-Corr-Anx, containing a six-page long table, listing the corrections applied for the purpose of the Corrected Prosecution Closing Brief, in addition to 'minor formatting changed throughout [the] brief'.

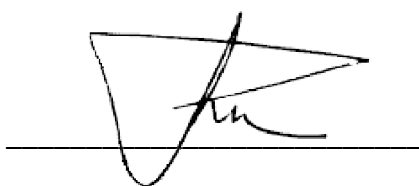
¹⁰ ICC-01/04-02/06-2277-Conf-Anx1-Corr-Anx.

¹¹ Email from the Prosecution to the Chamber, the Defence, and the participants on 7 May 2018, at 17:39.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Defence Request.

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 a smaller, more fluid signature, positioned above a horizontal line.

Judge Robert Fremr, Presiding Judge

A handwritten signature in black ink, appearing to be 'K. Ozaki', positioned above a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of several stylized characters, positioned above a horizontal line.

Judge Chang-ho Chung

Dated this 16 May 2018

At The Hague, The Netherlands