



Original: **English**

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

Date: **5 June 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 to submit further translation corrections

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 and Regulation 24(5) of the Regulations of the Court, issues the following 'Decision on the Defence request to submit further translation corrections'.

I. Background and submissions

1. On 11 July and 2 September 2013, respectively, the Office of the Prosecutor ('Prosecution') disclosed two UPC Communication Logbooks ('Logbooks'),¹ together with French translations prepared by the Prosecution ('Translations')^{2,3}
2. On 10 February 2016, the Chamber admitted the Logbooks into evidence.⁴
3. On 28 March 2017, the Chamber marked the Translations for identification, pending verification of their accuracy.⁵
4. On 9 May 2017, having received the parties' joint submissions⁶ on the accuracy of, *inter alia*, the Translations, the Chamber: (i) referred the outstanding disagreements to the Registry's Language Services Section for review; and (ii) directed the Prosecution to implement the Registry's conclusions on the contested portions, together with any other agreement on amendments reached between the parties ('Directions').⁷

¹ DRC-OTP-0017-0033 and DRC-OTP-0017-0003.

² DRC-OTP-0171-0926 and DRC-OTP-2055-0050.

³ See Prosecution's Communication of the Disclosure of Evidence, 12 July 2013, ICC-01/04-02/06-77 and Confidential Annexes A, and Prosecution's Communication of the Disclosure of Evidence, 5 September 2013, ICC-01/04-02/06-102 and Confidential Annex A.

⁴ Transcript of hearing on 10 February 2016, ICC-01/04-02/06-T-CONF-ENG, page 83, lines 9-14.

⁵ Decision on the Prosecution's request for admission of documentary evidence, ICC-01/04-02/06-1838, para. 23 and page 39.

⁶ Joint submission by Prosecution and Defence on the French Translations of the UPC Communication Logbooks that are Marked for Identification, 26 April 2017, ICC-01/04-02/06-1880, and Confidential Annex.

⁷ Second order referring certain transcription and translation matters to the Registry, ICC-01/04-02/06-1897, para. 4.

5. On 27 June 2017, in accordance with the Directions, the Prosecution disclosed⁸ amended translations of the Logbooks ('Amended Translations').⁹
6. On 16 March 2018, the presentation of evidence was declared closed.¹⁰
7. On 28 May 2018, the defence team for Mr Ntaganda ('Defence') sought leave to submit translation correction proposals relating to the Logbooks to the Registry, in line with the procedure for correction proposals relating to transcripts of hearings ('Defence Request').¹¹ In support of its request, the Defence submits that: (i) it has 'identified further material discrepancies in the [Amended Translations] that need to be corrected'; (ii) it is 'necessary as well as in the interest of justice' for the Chamber to have the most accurate translation of these exhibits in evidence; and (iii) both the Prosecution and the Legal representatives of victims ('LRVs') referred to these items in their respective closing briefs, and the Defence will do the same in its own closing brief.
8. On 29 May 2018, in line with the time limit set by the Chamber,¹² the Prosecution opposed the Defence Request ('Prosecution Response'),¹³ arguing that: (i) the Defence has provided no exceptional circumstances or good cause to justify re-opening the evidentiary phase of the case; (ii) the Logbooks and the Translations were disclosed four years ago and were subject to a review process, in which the Defence and the accused actively engaged, including comprehensive *inter partes* correction proposals, with any disagreements being submitted to the final review by the Registry; (iii) the review process was completed by June 2017, and it is too late to revisit it at this stage; (iv) the accused testified 'extensively about

⁸ Prosecution's Communication of the Disclosure of Evidence, ICC-01/04-02/06-1977, and Confidential Annex A.

⁹ DRC-OTP-2102-3854 and DRC-OTP-2102-3828.

¹⁰ Decision closing the presentation of evidence and providing further directions, ICC-01/04-02/06-2259.

¹¹ Email from the Defence to the Chamber, the Prosecution, and the participants, at 12:26. See Confidential Annex to the present decision.

¹² Email from the Chamber to the parties and participants on 28 May 2018, at 15:02.

¹³ Email from the Prosecution to the Chamber, the Defence, and the participants on 29 May 2018, at 12:56. See Confidential Annex to the present decision.

numerous messages', with counsel for the Defence and Prosecution citing from the translations available at that time, and the accused reviewing the existing translations against the original messages without requesting corrections or identifying any 'material discrepancies'; (v) granting the Defence Request would result in 'unacceptable' and '[un]justified' delays, and cause prejudice to the trial proceedings since the Prosecution and LRVs have referred to the Logbooks and Amended Translations in their respective closing briefs; (vi) changing the Amended Translations after the closure of the evidentiary phase would be 'tantamount to [...] revoking an agreed fact', and would set the precedent for a number of similar requests to re-open the case; and (vii) the process of proposing transcript corrections is not analogous to the current situation.

9. On 29 May 2018, the Defence sought leave to reply ('Request for Leave to Reply') in relation to three issues identified in the Prosecution Response,¹⁴ which was opposed by the Prosecution.¹⁵
10. On 30 May 2018, the Chamber granted the Request for Leave to Reply in part, authorising the Defence to submit a reply in relation to issue (iii) identified in the request, considering that it would not be assisted by further submissions on the other issues ('Decision on Request for Leave to Reply').¹⁶
11. On 30 May 2018, the Defence submitted its reply,¹⁷ stating that although it took the translation review exercise seriously, it has identified further discrepancies in the context of the drafting of its closing brief, which demonstrates that the Amended Translations do not 'accurately reflect' the original Logbooks. Against this background, the Defence argues that: (i) the discrepancies must be verified

¹⁴ Email from the Defence to the Chamber, the Prosecution, and the participants at 17:16. See Confidential Annex to the present decision.

¹⁵ Email from the Prosecution to the Chamber, the Defence, and the participants on 30 May 2018, at 10:02. See Confidential Annex to the present decision.

¹⁶ Email from the Chamber to the parties and participants at 16:45.

¹⁷ Email from the Defence to the Chamber, the Prosecution, and the participants at 20:45. See Confidential Annex to the present decision.

and, if necessary, corrected to ensure that the evidence that will be assessed by the Chamber ‘truly reflects’ the original Logbooks; and (ii) it would be unfair for the trier of fact to proceed on the basis of translated exhibits, ‘in the knowledge of the possibility that they are not accurate’.

II. Analysis

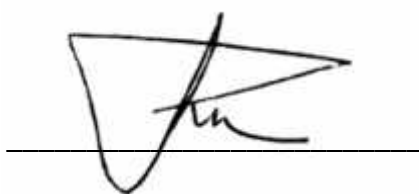
12. As set out above, the Translations have been subject to an extensive verification process, involving both parties and the Registry, and leading to the preparation of the Amended Translations, which constitute the versions admitted into evidence.
13. The Chamber also notes that the accused testified on the basis of the Logbooks, with the parties citing the translations thereof available at the time of his testimony. In these circumstances, the Chamber finds that the Defence and the accused had both the time and the opportunity to raise any correction proposals at an earlier stage.
14. While the Chamber appreciates that certain translation-related issues may have only been noticed in the context of the preparation of the Defence’s closing brief, and agrees that the charges must be assessed on the basis of accurate translations of the evidence on the case record, the Chamber does not consider that a re-opening of the verification process for translations of items admitted into evidence is warranted at this stage. Rather, the Chamber considers that any translation discrepancies which are considered to be so serious that they may potentially impact upon the Chamber’s assessment of the evidence can be brought to the Chamber’s attention in the context of the closing and reply briefs and oral closing submissions. In these circumstances, the Chamber considers it appropriate to reject the Defence Request.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

PLACES ON THE RECORD the Decision on Request for Leave to Reply; and

REJECTS the Defence Request.

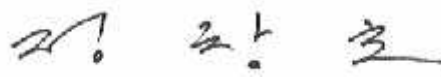
Done in both English and French, the English version being authoritative.

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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 three distinct, stylized characters, positioned above a horizontal line.

Judge Chang-ho Chung

Dated 5 June 2018

At The Hague, The Netherlands