

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 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

Joint Response of the Common Legal Representatives of Victims to the "Request on behalf of Mr Ntaganda seeking an extension of the page limit for the submission of the Defence Closing Brief" (ICC-01/04-02/06-2280)

Source: Office of Public Counsel for Victims

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

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1. The Common Legal Representative of the Former Child Soldiers and the Common Legal Representative of the Victims of the Attacks (jointly the “Legal Representatives”) hereby submit a joint response to the “Request on behalf of Mr Ntaganda seeking an extension of the page limit for the submission of the Defence Closing Brief” (the Defence Request”).¹

I. Procedural Background

2. On 28 December 2017, Trial Chamber VI (the “Chamber”) issued its “Order providing directions related to the closing briefs and statements” wherein it decided that the Prosecution and the Defence’s briefs shall not exceed 400 pages each,² the brief of the Legal Representative of the Former Child Soldiers shall not exceed 100 pages and the brief of the Legal Representative of the Victims of the Attacks shall not exceed 150 pages.³ The Chamber indicated that it “*w[ould] decide at the relevant time on any request from the Defence for an extension of pages in order to address issues contained in the Legal Representatives’ briefs*”.⁴

3. On 22 March 2018, the Prosecution filed the “Prosecution’s application for reconsideration of a discrete portion of the Chamber’s ‘Order providing directions related to the closing briefs and statements’” (the “Request for reconsideration”) whereby it requested an extension of the limit of an average of 300 words per page or that the word count apply only to the text of each page, and not to the footnotes. In the alternative, the Prosecution requested an extension of the page limit to 450 pages.⁵

¹ See the “Request on behalf of Mr Ntaganda seeking an extension of the page limit for the submission of the Defence Closing Brief”, No. ICC-01/04-02/06-2280, 26 March 2018 (The “Defence Request”).

² See the “Order providing directions related to the closing briefs and statements” (Trial Chamber VI), No. ICC-01/04-02/06-2170, 28 December 2017, para. 14.

³ *Idem*, para. 14.

⁴ *Ibidem*, p. 6, footnote 11.

⁵ See the “Prosecution’s application for reconsideration of a discrete portion of the Chamber’s “Order providing directions related to the closing briefs and statements”, No. ICC-01/04-02/06-2260, 22 March 2018, paras. 18 and 19.

4. The Legal Representatives, in a joint response filed on the same day, requested the Chamber to grant the Request for reconsideration and impose no word limit per page or, in the alternative, that the word count excludes the footnotes. In the further alternative, they sought reconsideration of the page limit to 115 pages for the Former Child Soldiers' closing brief and 170 pages for the Victims of the Attacks' closing brief, or an equivalent extension under Regulation 37 of the Regulations of the Court.⁶

5. On 26 March 2018, the Defence filed a response to the Request for reconsideration arguing that, if granted, the Chamber should grant the same extension for the Defence.⁷

6. On 13 April 2017, the Chamber issued its Decision providing further directions on the closing briefs where it granted the requests for extension of pages and directed that the Prosecution and the Defence's closing briefs shall not exceed 450 pages each, the brief of the Legal Representative of the Victims of the Attacks shall not exceed 170 pages, and the brief of the Legal Representative of the Former Child Soldiers shall not exceed 115 pages.⁸

7. On 20 April 2018, the Prosecution⁹ and the Legal Representatives¹⁰ filed their respective briefs in compliance with the page and words limits set out by the Chamber.

⁶ See the "Joint Response of the Common Legal Representatives of Victims to the 'Prosecution's application for reconsideration of a discrete portion of the Chamber's 'Order providing directions related to the closing briefs and statements'", No. ICC-01/04-02/06-2261, 26 March 2018, p. 4.

⁷ See the "Response on behalf of Mr Ntaganda to Prosecution request for reconsideration of the Chamber's 'Order providing directions related to the closing briefs and statements'", No. ICC-01/04-02/06-2263, 26 March 2018, paras. 24-26.

⁸ See the "Decision providing further directions on the closing briefs" (Trial Chamber VI), No. ICC-01/04-02/06-2272, 13 April 2018, p. 9.

⁹ See the "Prosecution's Final Closing Brief", No. ICC-01/04-02/06-2277 + Anxs, 20 April 2018.

¹⁰ See the "Closing Brief of the Common Legal Representative of the Victims of the Attacks", No. ICC-01/04-02/06-2275-Conf + Anxs, 20 April 2018 and the "Closing Brief on behalf of the Former Child Soldiers", No. ICC-01/04-02/06-2276-Conf + Anxs, 20 April 2018.

8. On 26 April 2018, the Defence filed its “Request on behalf of Mr Ntaganda seeking an extension of the page limit for the submission of the Defence Closing Brief”.¹¹ It submits that having to address the Legal Representatives’ submissions while being limited to 450 pages to address the submissions of both the Prosecution and the victims constitutes exceptional circumstances justifying an extension of the page limit for the submission of the Defence Closing Brief.¹² Accordingly, it requests an extension for a maximum of 550 pages.¹³

II. Submissions

9. Regulation 38(1) of the Regulations of the Court provides that, “[u]nless otherwise ordered by the Chamber, the page limit shall not exceed 120 pages for the following documents and responses thereto, if any: [...] (c) a closing brief”. Regulation 37(2) of the Regulations of the Court provides that a “Chamber may, at the request of a participant, extend the page limit in exceptional circumstances”.

10. The Legal Representatives note the jurisprudence of the Appeals Chamber relevant to requests for extensions of the page limit pursuant to Regulation 37(2) of the Regulations. Indeed, in rejecting a request for extension, the Appeals Chamber took into account whether:

- a. an extension of the page limit had already been granted in relation to the document to be filed;¹⁴
- b. the complexity and the scope of the issues likely to be developed was already considered, as part of a previous determination to extend the page limit;¹⁵

¹¹ See the Defence Request, *supra* note 1.

¹² *Idem*, para. 8.

¹³ *Ibidem*, para. 17.

¹⁴ See the “Decision on Mr Bemba’s request for extension of the time and page limits for his document in support of the appeal” (Appeals Chamber), No. ICC-01/05-01/13-2129 A A2 A3 A4 A5, 29 March 2017, paras. 13 and 15.

¹⁵ *Idem*, para. 16.

- c. the circumstances raised are not exceptional in view of the type of submissions to be filed, for which the Regulations set out the page limit that is ordinarily considered sufficient;¹⁶
- d. compelling reasons related to the nature, scope and complexity of the document would make the page limit insufficient.¹⁷

11. The Appeals Chamber also made it clear that it is for the party requesting the extension to demonstrate the existence of exceptional circumstances warranting a further extension of the page limit.¹⁸ Finally, the Appeals Chamber set out that the parties and participants are expected to present their submission in a concise and focused manner, avoiding repetitions.¹⁹

12. In the submission of the Legal Representatives, the Defence has failed to demonstrate the existence of exceptional circumstances warranting the extension of page limit for its closing brief and therefore the request shall be rejected.

13. At the outset, the Legal Representatives note that during the status conference held on 5 December 2017, the Defence requested the same amount of pages as the Prosecution for its closing brief.²⁰ The Defence argued that the Prosecution's and Defence's briefs should be not be longer than 250 pages, underlying that: *"if we get the proper time and if we do the sequential approach, there is no reasons that we cannot argue this case in 250 pages"*.²¹ When making this statement, the Defence could not ignore that the Legal Representatives would also submit closing briefs and, despite this obvious course of action, the only concern of the Defence oral submissions was the

¹⁶ *Ibidem*, para. 17.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, para. 15.

¹⁹ See the "Decision on requests of Mr William Samoei Ruto and Mr Joshua Arap Sang for extension of page limit for their documents in support of the appeal" (Appeals Chamber), No. ICC-01/09-01/11-1335, 3 June 2014, para. 5.

²⁰ See the transcripts of the hearing held on 5 December 2017, No. ICC-01/04-02/06-T-258-ENG ET WT, p. 15.

²¹ *Idem.*

closing brief of the Prosecution whilst in the Defence Request, conveniently for purposes of obtaining an extension of the page limit, a response to the closing briefs of the Legal Representatives turns out indispensable.

14. The main purpose of the closing brief is to set out the position of the parties and the participants in relation to the legal aspects of the case and the evidence submitted before the Chamber at trial. As recently pointed out by Trial Chamber IX, closing briefs “*are not meant to be a discussion between the parties and participants on how they assess the evidence but simply an additional tool for the assessment by the Chamber.*”²² The mere fact that the Defence may need to address the submissions of the Legal Representatives does not *per se* qualify as an exceptional circumstance. Indeed, this is not an exceptional circumstance in a Closing Brief, for which 120 pages are ordinarily considered sufficient as per Regulation 38(1)(c) of the Regulations of the Court.

15. The topics addressed by the Legal Representatives in their closing briefs were wholly foreseeable at the time the Defence requested 250 pages for the submission of its final brief²³ and could have hardly taken the Defence by surprise. As such, the issues developed by the Legal Representatives fall squarely under the remit of topics which merited the previous determinations of the Chamber, by which the page limit was first extended from 120 pages to 400 pages²⁴ and then to 450 pages.²⁵ Hence, the Defence has not demonstrated the existence of exceptional circumstances in support of its request.

16. Indeed, the Legal Representatives did not address all aspects of the case, but instead focused on the elements of the case mostly pertaining to the interests of the

²² See the “Directions on Closing Briefs and Closing Statements” (Single Judge, Trial Chamber IX), No. ICC-02/04-01/15-1226, 13 April 2018, para. 3.

²³ See *supra* para. 13.

²⁴ See the “Order providing directions related to the closing briefs and statements” (Trial Chamber VI), No. ICC-01/04-02/06-2170, 28 December 2017, para. 14.

²⁵ See the “Decision providing further directions on the closing briefs” (Trial Chamber VI), No. ICC-01/04-02/06-2272, 13 April 2018, p. 9.

victims they represent. Notwithstanding, all issues mentioned in paragraph 14 of the Defence Request were obvious part of the Pre-trial and trial litigation and have been addressed by the Prosecution in its Closing Brief.

17. In relation to the submissions of the Legal Representative of the Former Child Soldiers, the topic of age assessment, also discussed at length in the Pre-Trial phase of the case,²⁶ the existence of training camps and the presence of child soldiers therein are all central issues to the present case and as such have been addressed by the Prosecution in its Closing Brief.²⁷ The same applies to the question of demobilisation,²⁸ also addressed by the Legal Representative of the Former Child Soldiers when questioning relevant witnesses.²⁹ The charges of rape and sexual slavery and the evidence tendered in support of the underlying factual allegations have also been at the heart of extensive litigation in all phases of the proceedings, have been repeatedly addressed by the Legal Representative of the Former Child Soldiers³⁰ and are part of the Prosecution Closing Brief.³¹

18. In relation to the closing brief filed by the Legal Representative of the Victims of the Attacks, the Defence does not seek to address “*specific submissions found in various sections of the CLR2 closing brief*”,³² but instead, basically, refers to all main chapters of the Brief.³³ Indeed, the submissions on factual circumstances of the crimes are contained on pages 41-128, on criminal responsibility of Mr Ntaganda are contained on pages 151-160, and on victims’ suffering are contained on pages 129-

²⁶ See the “*Observations finales au nom des anciens enfants-soldats*”, No. ICC-01/04-02/06-273, 7 March 2014, paras. 22-34.

²⁷ See the “Prosecution’s Final Closing Brief”, *supra* note 9, paras. 643-650.

²⁸ *Idem*, paras. 751-762.

²⁹ See in particular the questioning of P-46, in the transcript of the hearing held on 14 June 2016, No. ICC-01/04-02/06-T-101-CONF-ENG CT and the questioning of P-31, in the transcript of the hearing held on 8 December 2016, No. ICC-01/04-02/06-T-174-CONF-ENG ET.

³⁰ See the “Closing Brief on behalf of the Former Child Soldiers”, *supra* note 10, para. 173 and footnotes 554 and 555.

³¹ See the “Prosecution’s Final Closing Brief”, *supra* note 9, paras. 767-790.

³² See the Defence Request, *supra* note 1, para. 14.

³³ See the “Closing Brief of the Common Legal Representative of the Victims of the Attacks”, *supra* note 10.

150. The first two aspects have been addressed in full by the Prosecution in its Closing Brief.³⁴ As regards the third aspect, admittedly, the Legal Representative refers to evidence that is not addressed in the Closing Brief of the Prosecution. However, if the Defence wishes to challenge said observations, it can do so within the allocated page limit. The impact of this matter in the overall size of the Defence brief would be negligible and, as such, can be properly overcome by preparing focused and concise submissions.

19. In conclusion, the Chamber already extended the page limit set out in the Regulations of the Court (120 to 400 pages) and subsequently granted an extension of the page limit (to 450 pages). Moreover, the Defence has failed to show exceptional circumstances in support of a further 100-page extension because it has invoked the need to respond to issues that were already before the Chamber, when adjudicating on the previous page limit extensions.

20. In the view of the Legal Representatives, it cannot be argued both: that the reason in support of the request is the need to respond to the Closing Briefs of the Legal Representatives³⁵ and that their submissions and the evidence relied upon have been covered by the Prosecution.³⁶ Rather, everything indicates that the Defence is misconstruing the indication of the Chamber, that it "*w[ould] decide at the relevant time on any request from the Defence for an extension of pages in order to address issues contained in the Legal Representatives' briefs*", to disguise yet another request for extension of the page limit to, in essence, respond to submissions covered by the Prosecution.

21. If the Chamber were to decide to grant an extension of page limit, such an extension should be limited to allow the Defence to address the evidence presented

³⁴ See the "Prosecution's Final Closing Brief", *supra* note 9, paras. 231-622.

³⁵ See the "Request on behalf of Mr Ntaganda seeking an extension of the page limit for the submission of the Defence Closing Brief", No ICC-01/04-02/06-2280, 26 March 2018, para 14.

³⁶ *Idem*, para 10.

by victims called by the Legal Representative of the Victims of the Attacks. However, if anything, such an extension should not be larger than 10 pages. An extension of 100 pages seems wholly disproportionate.

22. Last but not least, mindful that *“in the interest of efficiency, the Chamber encourages the parties and participants to refrain from making submissions on procedural matters of remote relevance to the issue at stake and that can adequately be addressed by the Chamber itself without unnecessary litigation on collateral matters”*,³⁷ the Legal Representatives deem it necessary to clarify that, contrary to the submissions at paragraph 7 of the Defence Request, the Legal Representatives strictly observed the very limit granted by the Chamber. The closing brief submitted by the Legal Representative of the Victims of the Attacks contains 50,842 words (51,017 when including the cover and notification pages) and not 53,600 words. Moreover, as per the certification of the Legal Representative of the Former Child Soldiers, her Final Brief contains 34,397 words (34,500 when including said certification).³⁸

FOR THE FOREGOING REASONS the Legal Representatives respectfully requests the Chamber to reject the Defence Request.



Dmytro Suprun
Common Legal Representative of the
Victims of the Attacks



Sarah Pellet
Common Legal Representative of the
Child soldiers

Dated this 2nd Day of May 2018

At The Hague, The Netherlands

³⁷ See the “Decision on Second Prosecution request for presentation of evidence in rebuttal and related requests” (Trial Chamber VI), No. ICC-01/04-02/06-2258, 16 March 2018, para. 15.

³⁸ The Legal Representatives respectfully note that should they have been asked by the Defence they would have provided them with a WORD version of their respective closing briefs for them to be able to verify the advanced figures, if proof were necessary.