

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **4 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

Decision on Defence request for an extension of page limit for its 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 ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 67 of the Rome Statute and Regulation 37 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Defence request for an extension of page limit for its closing brief'.

I. Procedural history and submissions

1. On 28 December 2017, the Chamber provided directions related to the closing briefs and statements, including page limits for the submission of the closing briefs ('Directions').¹ Specifically, the Chamber ordered that the closing briefs of the Office of the Prosecutor ('Prosecution') and the defence team for Mr Ntaganda ('Defence') shall not exceed 400 pages each, the brief of the Legal Representative of the Former Child Soldiers ('LRV1') shall not exceed 100 pages, and the brief of the Legal Representative of the Victims of the Attacks ('LRV2') shall not exceed 150 pages. The Chamber also directed the parties and participants to comply with the format requirements set out in Regulation 36 of the Regulations, and further specified that 'an average page shall not exceed 300 words'.²
2. On 13 April 2018, further to the parties and participants' requests,³ the Chamber extended the page limits set out in the Directions, and directed that the Prosecution and Defence closing briefs not exceed 450 pages each, the brief of

¹ Order providing directions related to the closing briefs and statements, ICC-01/04-02/06-2170.

² Directions, ICC-01/04-02/06-2170, para. 14 and footnote 12 therein.

³ Prosecution's application for reconsideration of a discrete portion of the Chamber's "Order providing directions related to the closing briefs and statements", ICC-01/04-02/06-2260, paras 6, 17, and 19; 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'", ICC-01/04-02/06-2261, paras 2-4 and page 4; 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", ICC-01/04-02/06-2263, paras 24-26.

the LRV1 not exceed 115 pages, and the brief of the LRV2 not exceed 170 pages ('Further Directions').⁴

3. On 20 April 2018, the Prosecution, the LRV1, and the LRV2 (collectively 'LRVs') filed their respective closing briefs (respectively, 'Prosecution Closing Brief', 'LRV1 Closing Brief', and 'LRV2 Closing Brief', the latter two collectively, 'LRVs Closing Briefs').⁵
4. On 26 April 2018, the Defence requested that the Chamber increase the page limit for its closing brief to a maximum of 550 pages ('Defence Request').⁶ The Defence avers that, taking into account the average 300 word-per-page limit set by the Chamber,⁷ the LRV1 Closing Brief comprises 119.9 pages (35,998 words), the LRV2 Closing Brief 178.6 pages (53,600 words), and the Prosecution Closing Brief 395.4 pages (118,623 words).⁸ According to the Defence, having to address the LRVs' submissions presented in a total of 298.5 pages, while being limited to 450 pages to address the submissions of both the Prosecution and the LRVs, constitutes exceptional circumstances justifying an extension of page limit in accordance with Regulation 37 of the Regulations.⁹ In this regard, while acknowledging that the LRVs Closing Briefs 'repeat many of the submissions in the Prosecution Closing Brief', the Defence enumerates a number of 'specific submissions' found in various sections of the LRV1 Closing Brief and LRV2

⁴ Decision providing further directions on the closing briefs, ICC-01/04-02/06-2272, page 9, and Dissenting Opinion of Judge Kuniko Ozaki, ICC-01/04-02/06-2272-Anx, in which Judge Ozaki disagreed with the Majority's conclusion that an extension of the page limit for the closing briefs was warranted. Without prejudice to the aforementioned considerations, for the purpose of the present decision, the Defence Request is considered in the circumstances resulting from the Majority's decision to grant the previous requests for extension.

⁵ Prosecution's Final Closing Brief, ICC-01/04-02/06-2277, with Annexes A to D and confidential Annex 1; Closing brief on behalf of the Former Child Soldiers, ICC-01/04-02/06-2276-Conf with Annexes A and B; Closing Brief of the Common Legal Representative of the Victims of the Attacks, ICC-01/04-02/06-2275-Conf with Annex 1.

⁶ 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.

⁷ Directions, ICC-01/04-02/06-2170, para. 14 and footnote 12 therein.

⁸ Defence Request, ICC-01/04-02/06-2280, para. 7.

⁹ Defence Request, ICC-01/04-02/06-2280, paras 4 and 8.

Closing Brief, which it ‘deems necessary to address’.¹⁰ Finally, the Defence refers to the need to take into account ‘the specific characteristics of this case’, the ‘extensive volume of evidence’ to be analysed, and ‘the principle of parity’, making it ‘necessary, fair, as well as in the interest of justice, to provide the Defence with an effective opportunity to address the LRVs closing submissions.’¹¹

5. On 2 May 2018, in line with the time limit set by the Chamber,¹² the LRVs filed their joint response, opposing the Defence Request (LRVs Response).¹³ The LRVs submit that the Defence failed to demonstrate the existence of exceptional circumstances which would warrant an extension of page limit for the Defence closing brief.¹⁴ In this regard, they aver that the issues addressed in the LRVs Closing Briefs were foreseeable to the Defence, and also form part of the Prosecution Closing Brief.¹⁵ The LRVs further argue that the Defence should only be granted a limited extension of no more than 10 pages to allow it to address the evidence presented by victims called by the LRV2.¹⁶ Lastly, the LRVs aver that, contrary to the Defence submissions, the LRV1 Closing Brief contains 34,397 words (34,500 including the cover and notification pages) and the LRV2 Closing Brief contains 50,842 words (51,017 including the cover and notification pages).¹⁷
6. On 3 May 2018, further to the Chamber’s instruction,¹⁸ the Prosecution filed its response, arguing that it does not oppose a limited extension of 25 pages, but that

¹⁰ Defence Request, ICC-01/04-02/06-2280, para. 14.

¹¹ Defence Request, ICC-01/04-02/06-2280, paras 15-16.

¹² Email from the Chamber to the parties and participants on 26 April 2018, at 17:58.

¹³ 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), ICC-01/04-02/06-2281.

¹⁴ LRVs Response, ICC-01/04-02/06-2281, paras 12, 15, and 19.

¹⁵ LRVs Response, ICC-01/04-02/06-2281, paras 15 to 18.

¹⁶ LRVs Response, ICC-01/04-02/06-2281, para. 21.

¹⁷ LRVs Response, ICC-01/04-02/06-2281, para. 22.

¹⁸ Email from the Chamber to the parties and participants on 2 May 2018, at 16:24, ordering the Prosecution to file its response initially submitted via email on 2 May 2018, at 15:34, the day of the initial time limit, on the record of the case.

the Defence has not adequately supported its request for an additional 100 pages ('Prosecution Response').¹⁹ In this respect, the Prosecution submits that none of the issues identified by the Defence are unique to the LRVs Closing Briefs as they are also extensively addressed in the Prosecution Closing Brief, and that the Defence would have to address them in any event.²⁰ Further, the Prosecution argues that neither the Prosecution nor the LRVs used the full extent of the initial page extension as their submissions comprised 421, 105, and 169 pages, respectively, including the cover and notification pages and the tables of content.²¹

II. Analysis

7. As a preliminary matter, the Chamber notes the parties and participants' submissions in relation to the length of the LRVs Closing Briefs, notably with reference to the page limits set out in the Further Directions. In this regard, the Chamber notes that the word count generated after converting a document from 'PDF' to 'Word' appears to be higher than the word count generated from the original version. In these circumstances, and absent any indication that the LRVs may have exceeded the established page limits, the Chamber will not address this issue any further.
8. Turning to the merits of the Defence Request, the Chamber recalls that, when setting the page limit for the Defence closing brief, it indicated that it: (i) had taken note of the parties' respective submissions in that respect, including that the Defence requested the same number of pages as the Prosecution; and (ii) would 'decide at the relevant time on any request from the Defence for an extension of

¹⁹ Prosecution's Response 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, ICC-01/04-02/06-2282, paras 2 and 7.

²⁰ Prosecution Response, ICC-01/04-02/06-2282, paras 3, 4 and 6.

²¹ Prosecution Response, ICC-01/04-02/06-2282, para. 5.

pages in order to address issues contained in the [LRVs Closing Briefs]'.²² The Chamber further recalls that, when granting the parties' and participants' previous requests for extension of the page limit, it recognised that it is in the interest of the parties, participants, and the Chamber to have closing briefs which are comprehensive and accurate to the greatest extent possible.²³

9. In the present case, the Chamber notes that, as acknowledged by the LRVs,²⁴ the LRV2 Closing Brief includes references to evidence that is not addressed in the Prosecution Closing Brief. It further considers that a limited extension of the page limit would be broadly in line with the *ratio* between the closing briefs of the defence teams on the one side and the prosecution and legal representative of victims' teams on the other side in previous cases of the Court.²⁵
10. However, the Chamber is not convinced that the Defence's arguments support granting an extension of 100 pages. In this regard, the Chamber notes that: (i) the respective page limits were set in the Directions and extended in the Further Directions, taking into account the specific characteristics of and amount of evidence admitted in this case; (ii) the Prosecution Closing Brief comprises less

²² Directions, ICC-01/04-02/06-2170, page 6, footnote 11, referring to the submissions made in the context of the status conference on 5 December 2017, Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG, page 11, lines 10-11, and page 15, line 20 to page 16, line 7.

²³ Further Directions, ICC-01/04-02/06-2272, para. 10. *See also*, Dissenting Opinion of Judge Kuniko Ozaki, ICC-01/04-02/06-2272-Anx, para. 6.

²⁴ LRVs Response, ICC-01/04-02/06-2281, para. 18.

²⁵ *See, e.g., The Prosecutor v. Thomas Lubanga Dyilo*, Order on the timetable for closing submissions, 12 April 2011, ICC-01/04-02/06-2722, where the defence was granted a limit of 300 pages, and the prosecution and the legal representatives of victims were granted a combined limit of 400 pages; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public redacted version of Order on the arrangements for the submissions of the written and oral closing statements (regulation 54 of the Regulations of the Court) (ICC-01/04-01/07-3218-Conf), 4 January 2012, ICC-01/04-01/07-3218-Red, where the defence teams were initially granted a limit of 300 pages each, and the prosecution and the legal representatives of victims were granted a combined limit of 420 pages; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the requests of the parties and participants for an extension of the page limit for their written closing submissions, 17 February 2012, ICC-01/04-01/07-3249, where, upon request from the parties, the defence teams were granted an extended limit of 350 pages each, and the prosecution and the legal representatives of victims were granted an extended combined limit of 505 pages; and, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case, 16 July 2013, ICC-01/05-01/08-2731, where the defence was granted a limit of 400 pages, and the prosecution and the legal representative of victims were granted a combined limit of 600 pages.

than the 450 pages authorised in the Further Directions; (iii) the LRVs Closing Briefs and the Prosecution Closing Brief include, in addition to substantive arguments, information of a procedural nature to which the Defence is not required to respond individually or in detail; (iv) as acknowledged by the Defence,²⁶ ‘many of [the LRVs’] submissions repeat arguments put forward in the Prosecution Closing Brief’; and (v) the Defence has been aware, throughout the proceedings, of the issues that could reasonably be expected to be raised in the LRVs Closing Briefs.

11. In view of the above, the Chamber considers it appropriate to grant the Defence Request in part, and authorises the Defence to submit a closing brief comprising a maximum of 500 pages.

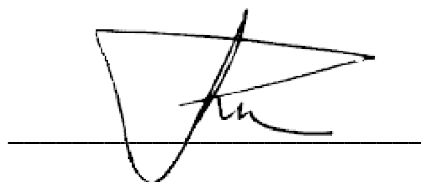
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Defence Request **IN PART**; and

DIRECTS that the Defence closing brief shall not exceed 500 pages.

²⁶ See Defence Request. ICC-01/04-02/06-2280, para. 10.

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 read 'Kuniko Ozaki', written over a horizontal line.

Judge Kuniko Ozaki

A handwritten signature in black ink, consisting of three characters in Korean (정, 장, 호), written over a horizontal line.

Judge Chang-ho Chung

Dated this 4 May 2018

At The Hague, The Netherlands