

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 17 July 2019

THE APPEALS CHAMBER

Before:

**Judge Chile Eboe-Osuji
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public

Request for extension of time to file notice of appeal

Source: Defence Team of Mr. Bosco Ntaganda

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

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**Victims Participation and Reparations
Section**

Further to the Judgment rendered by Trial Chamber VI on 8 July 2019,¹ Counsel representing Mr. Ntaganda (“Defence”) hereby submits this:

Request for extension of time to file notice of appeal

INTRODUCTION

1. The Defence requests, pursuant to rule 150(2) of the Rules of Procedure and Evidence (“Rules”), an extension of time to file its notice of appeal of the Judgment in this case. Good cause for such an extension exists, based on: (i) the unprecedented factual and legal complexity of the anticipated appeal, the novelty of the issues to be addressed, and the fair trial arguments that the Defence intends to advance; (ii) the burden arising from concurrent sentencing proceedings before the Trial Chamber; and (iii) the absence of a translation of the essential portions of the Judgment into Kinyarwanda, to which Mr. Ntaganda is entitled under rule 144 of the Rules.
2. A reasonable duration for the requested extension is 60 days. This will provide a total of 90 days to prepare the notice of appeal, which must now set out the grounds of appeal, including the alleged errors and how they affect the appealed decision. The *Bemba* Appeals Chamber granted 90 days for the preparation of a submission similar to that now required under the amended version of regulation 57 of the RoC.
3. The Defence has consulted with the Prosecution, which does not oppose the current request on condition that it is granted the same extension in respect of any notice of appeal that it may wish to file. The Defence agrees with the Prosecution’s position.

¹ Judgment, 8 July 2019, ICC-01/04-02/06-2359 (“Judgment”).

PROCEDURAL BACKGROUND

4. On 8 July 2019, Trial Chamber VI rendered its Judgment under Article 74 of the Rome Statute. The Judgment found Mr. Ntaganda guilty of all eighteen charges against him, comprising the following crimes:
- a. Murder as a crime against humanity under Article 7(1)(a) of the Statute;
 - b. Murder as a war crime under Article 8(2)(c)(i) of the Statute;
 - c. Attacks against civilians as a war crime under Article 8(2)(e)(i);
 - d. Rape as a crime against humanity under Article 7(1)(g) of the Statute;
 - e. Rape as a war crime under Article 8(2)(e)(vi) of the Statute;
 - f. Sexual slavery as a crime against humanity under Article 7(1)(g) of the Statute;
 - g. Sexual slavery as a war crime under Article 8(2)(e)(vi) of the Statute;
 - h. Persecution as a crime against humanity under Article 7(1)(h) of the Statute;
 - i. Pillage as a war crime under Article 8(2)(e)(v) of the Statute;
 - j. Forcible transfer of population as a crime against humanity under Article 7(1)(d) of the Statute;
 - k. Displacement of civilian population as a war crime under Article 8(2)(e)(viii) of the Statute;
 - l. Conscripting, enlisting and use of children under the age of 15 years into an armed group as war crimes under Article 8(2)(e)(vii) of the Statute;
 - m. Attacks against protected objects as a war crimes under Article 8(2)(e)(iv) of the Statute; and
 - n. Destruction of the adversary's property as a war crime under Article 8(2)(e)(xiii) of the Statute.

5. On the same day, Trial Chamber VI issued an Order on the sentencing procedure, directing the parties to file any requests to call additional evidence, including testimony from additional witnesses, by 29 July 2019.² Responses to these requests are due on 5 August 2019. The Defence is informally informed that any such evidence would be heard between the first and second week of September 2019, and that written submissions on sentence would be due one week later. .

APPLICABLE LAW

6. Rule 150 of the Rules, "Appeal", provides in relevant part that:
 1. Subject to sub-rule 2, an appeal against a decision of conviction or acquittal under article 74, a sentence under article 76 or a reparation order under article 75 may be filed not later than 30 days from the date on which the party filing the appeal is notified of the decision, the sentence or the reparation order.
 2. The Appeals Chamber may extend the time limit set out in sub-rule 1, for good cause, upon the application of the party seeking to file the appeal.
7. The content of the notice of appeal prescribed by rule 150(1) of the Rules is governed by regulation 57 of the Regulations of the Court ("RoC"), as amended on 12 July 2017. The amended version of regulation 57 introduces a requirement that the notice of appeal set out the grounds of appeal, the alleged errors, and how those errors affected the Judgment:

For the purposes of rule 150, the appellant shall file a notice of appeal which shall state: [...] (e) The grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision.

² Order on the sentencing procedure, 8 July 2019, ICC-01/04-02/06-2360.

8. The notice of appeal required under regulation 57 of the RoC is no longer, as it was in the past, a *pro forma* notification. Substantive grounds of appeal must now be articulated, and prejudice identified.
9. Although the Appeals Chamber has not yet interpreted “good cause” for an extension of time under Rule 150(2) in relation to the amended version of regulation 57 of the RoC, the expression has been defined in the more general context of extension of time under regulation 35 of the RoC:

Such 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.³

10. Further guidance is provided in the Appeals Chamber’s decision granting the Bemba Defence’s request to extend the time for filing its document in support of appeal from 90 days to 180 days.⁴ The Appeals Chamber relied on three considerations:

[...] (ii) the anticipated factual and legal complexity of the appeal, the novelty of the legal issues to be addressed and fair trial arguments that Mr Bemba may wish to make; (iii) the fact that the defence team is currently absorbed in the sentencing proceedings that are ongoing before the Trial Chamber, with final defence submissions due by 25 April 2016; and (iv) the fact that the Conviction Decision is currently only available in English and that parts are being translated on a regular and expedited basis into French, the language Mr Bemba “fully understands and speaks”.⁵

³ Reasons for the “Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007” issued on 16 February 2007, 21 February 2007, ICC-01/04-01/06-834, para.9.

⁴ Decision on Mr Bemba’s request for an extension of time for the filing of his document in support of the appeal, 15 April 2016, ICC-01/05-01/08-3370 (“Bemba Extension Decision”).

⁵ *Id.* para.6 (citations omitted).

11. The Appeals Chamber also took into consideration the agreement between the Prosecution and the Defence as to the duration of the proposed extension. Mr. Bemba's involvement in concurrent article 70 proceedings was not taken as a factor in favour of granting the requested extension.⁶
12. In granting the extension, the Appeals Chamber also required the Bemba Defence to inform the Appeals Chamber within 90 days of issuance of the Judgment "[...] of, at the very least, the legal findings in the Conviction Decision that he intends to challenge within the 90 day time limit [...]" that normally applies to the filing of the document supporting the appeal.⁷ This requirement is broadly similar to the language subsequently incorporated into regulation 57 of the RoC as part of the 12 July 2017 amendments. The Appeals Chamber's direction to the Bemba Defence to file this document 90 days after the issuance of the Judgment in that case, accordingly, provides some guidance as to the factors that would justify a sixty-day extension to complete similar obligations under the amended regulation 57.
13. The Appeals Chamber also noted that the content of this document would be "[...] without prejudice to the actual formulation of the grounds of appeal that he wishes to advance in the document in support of the appeal subsequently filed."⁸

SUBMISSIONS

I. Complexity of the appeal

14. The Judgment in this case is based on charges and evidence of unprecedented scope before the ICC. The Trial Chamber has entered convictions on every charge against Mr. Ntaganda. The factual basis of these convictions is

⁶ *Id.* para.7.

⁷ *Id.* para.9.

⁸ *Id.*

extensive. The portion of the Judgment explaining factual findings is some 320 pages long, and consists of more than 2000 footnotes. This actually understates the density of the factual reasoning, as many of the vital determinations of fact are made in extensive footnotes. The sources relied on for these factual findings, as is unsurprising given the scope of the evidence heard, are extremely extensive. Challenges to some of these findings will, of necessity, go beyond the four corners of the Judgment itself, requiring a careful analysis of evidence disregarded by the Trial Chamber. Analyzing such errors is a labour-intensive exercise – far more extensive, in fact, than even the most complex legal issues.

15. The Judgment also involves complex issues of mixed fact and law, including whether all the convictions comply with article 74(2) of the Statute, as well as the requirement of fair notice. This was a major issue in the *Bemba* case that will likewise be addressed in this case. For example, the Trial Chamber even entered convictions in respect of events of which the Defence had no notice until the testimony was uttered in court.⁹ The formulation of this ground of appeal will involve, as required by the applicable legal standards, a close and exhaustive comparison of the events for which convictions were entered with the document containing the charges and the confirmation decision.¹⁰
16. Another major component of this appeal will be the serious damage to the fairness of the proceedings arising from the Prosecution's access, contemporaneous with the hearing of trial, to Mr. Ntaganda's telephone conversations. The Prosecution accessed thousands of such conversations, initially on the basis of an authorization granted by another Judge of the Court without the Trial Chamber's knowledge. The Trial Chamber refused leave to

⁹ See e.g. Judgment, para.1000.

¹⁰ *Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", 8 June 2018, ICC-01/05-01/08-3636, paras.98-119.

appeal this matter to the Appeals Chamber.¹¹ The matter must now be litigated in its entirety in the context of this appeal.

17. Granting the Defence adequate time to prepare a well-articulated notice of appeal is in the interests of judicial economy. The conduct of the appeal is likely to be more focused as a result. In the long-run, this will save the time and resources of the Appeals Chamber as well as the parties.

II. Concurrent sentencing proceedings

18. The Defence's deadline for proposing additional evidence for sentencing is 29 July 2019, with responses due on 5 August 2019.¹² The Defence intends to request leave to call additional evidence, including from witnesses. This evidence assumes heightened importance given the scope of Mr. Ntaganda's conviction. The work extends beyond merely drafting a motion: the Defence is required to conduct additional investigations and analysis to determine what additional evidence should now be adduced for sentencing. The dates for these important and fact-intensive submissions fall shortly before the deadline for the notice of appeal.
19. Additional work-load within this time-period also arises from the imminent evidential hearings on sentencing, which the Trial Chamber has informally indicated may occur between the first and second week of September 2019, and the final substantive submissions on sentence that will be due around one week later.¹³ The Judgment raises exceptional and novel issues about gravity

¹¹ Decision on Defence request for leave to appeal the 'Decision on Defence request for stay of proceedings with prejudice to the Prosecution', 13 June 2017, ICC-01/04-02/06-1955. *See also* Public redacted version of "Defence Request for a stay of proceedings with prejudice to the Prosecutor", 20 March 2017, ICC-01/04-02/06-1830-Conf, ICC-01/04-02/06-1830-Red.

¹² Order on the sentencing procedure, 8 July 2019, ICC-01/04-02/06-2360, p.4.

¹³ Email sent from Trial Chamber VI Communications to the Parties and Participants, 11 July 2019, 16h41.

and culpability. The Defence should be accorded the modest delay requested to devote adequate time to these extremely important submissions.

III. Translation of essential parts of the Judgment into Kinyarwanda

20. Rule 144 of the Rules requires that copies of decisions of the Trial Chamber “concerning [...] criminal responsibility of the accused [...] shall be provided as soon as possible to [...] [t]he accused, in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1(f).”
21. The language that Mr. Ntaganda fully understands and speaks is Kinyarwanda. The Trial Chamber has acted expeditiously to identify the essential portions of the Judgment for translation on a rolling basis into Kinyarwanda; however, the translations have yet to be provided.
22. The more time that is provided to allow for translation of essential parts of the Judgment into a language that Mr. Ntaganda fully understands and speaks, the more faithful is compliance with rule 144.
23. Good cause therefore exists for a variation of the time limits to allow Mr. Ntaganda to read the Judgment in a language he fully understands in compliance with both the Statute, and the practice of this case.

CONCLUSION AND RELIEF SOUGHT

24. Good cause exists under rule 150(2) to grant the requested extension of 60 days for the filing of the notice of appeal. The circumstances are virtually indistinguishable from those warranting an extension in the *Bemba* case; if anything, the much broader factual scope of this case and Mr. Ntaganda's conviction substantiates good cause more decisively. The Defence therefore respectfully requests the Appeals Chamber to:

GRANT authorisation to file the notice of appeal no later than 7 October 2019, being a 60 day extension of the deadline prescribed by rule 150(1) of the Rules.

RESPECTFULLY SUBMITTED ON THIS 17TH DAY OF JULY 2019



Me Stéphane Bourgon, Counsel representing Bosco Ntaganda

The Hague, The Netherlands