

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06  
Date: 12 September 2019

**APPEALS CHAMBER**

**Before:** Judge Howard Morrison, Presiding Judge  
Judge Chile Eboe-Osuji  
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**

**Joint Response of the Common Legal Representatives for Victims to the Defence  
"Request for extension of page limit and time to file appeal brief"**

**Source: Office of Public Counsel for Victims**

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

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**Detention Section**

**Victims Participation and Reparations  
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## I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks and the Common Legal Representative of the Former Child Soldiers (jointly the “Legal Representatives”) strongly oppose the extension of both page and time limit sought by the Defence in its “Request for extension of page limit and time to file appeal brief” (the “Defence Request”).<sup>1</sup>

2. The Legal Representatives oppose any extension of the applicable deadlines and of the applicable page limit as the Defence fails to demonstrate either ‘good cause’ for an extension within the meaning of Rule 150(2) of the Rules of Procedure and Evidence (the “Rules”), or ‘exceptional circumstances’ within the meaning of regulation 37(2) of the Regulations of the Court (the “Regulations”). The Defence raises arguments it has previously raised to substantiate its earlier request for an extension of time regarding its notice of appeal. It also advances arguments consisting of nothing more than a numerical comparison with other cases before this Court and other international and internationalised tribunals. However, it is submitted that any consideration under Rule 150(2) of the Rules must take into account the *case specific* circumstances of the case at hand and a decision must accordingly be taken on a case-by-case basis. In the circumstances of the present case, the Defence arguments do not amount to either ‘good cause’ or ‘exceptional circumstances’.

3. Moreover, the Legal Representatives submit that considerations of whether or not ‘good cause’ exists must also take due account of the victims’ interests in the expeditiousness of the procedure which directly impacts on their statutory right to reparation.

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<sup>1</sup> See the “Request for extension of page limit and time to file appeal brief”, [No. ICC-01/04-02/06-2398](#), 11 September 2019 (the “Defence Request”).

### III. PROCEDURAL BACKGROUND

4. On 8 July 2019, Trial Chamber VI issued its Judgment pursuant to Article 74 of the Statute.<sup>2</sup>

5. On 17 July 2019, the Defence requested an extension of time for the filing of its notice of appeal of 60 days.<sup>3</sup>

6. On 18 July 2019, the Prosecution filed its response, indicating that it did not oppose the request, subject to being granted a similar extension. It also contended that it would not be opposed to a likely further request for an extension of time in relation to the Appeal Brief.<sup>4</sup>

7. On 19 July 2019, without awaiting the joint response of the Legal Representatives, the Appeals Chamber partially granted the Defence request by extending the filing deadline for the parties' notices of appeal by 30 days.<sup>5</sup> It rejected the remainder of the requests.<sup>6</sup>

8. On 9 September 2019, the parties filed their respective notices of appeal.<sup>7</sup> The Prosecution notified its intention to raise two grounds of appeal comprising one legal and one alleged factual error.<sup>8</sup> The Defence submitted notice of 15 grounds of appeal, involving legal, factual, and procedural challenges to the entire trial judgment.<sup>9</sup>

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<sup>2</sup> See the "Judgment" (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

<sup>3</sup> See the Defence Request, *supra* note 1, paras. 2 and 24.

<sup>4</sup> See the "Prosecution's response to request for extension of time to file notice of appeal", [No. ICC-01/04-02/06-2362](#), 18 July 2019 (the "Prosecution Response"), paras. 1 and 4.

<sup>5</sup> See the "Decision on Mr Bosco Ntaganda's and the Prosecutor's requests for time extension for the notice of appeal and appeal brief", [No. ICC-01/04-02/06-2364](#), 19 July 2019 ("July Decision on Extension of Time"), p. 3.

<sup>6</sup> *Idem*.

<sup>7</sup> See the "Prosecution notice of appeal", [No. ICC-01/04-02/06-2395](#), 9 September 2019, and "Mr Ntaganda's Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/04-02/06-2359", [No. ICC-01/04-02/06-2396](#), 9 September 2019.

<sup>8</sup> See the "Prosecution notice of appeal", *supra* note 7, para. 3.

<sup>9</sup> See "Mr Ntaganda's Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/04-02/06-2359", *supra* note 7, paras 7-9.

### III. SUBMISSIONS

9. The Legal Representatives recall that the Appeals Chamber, *inter alia*, based its previous decision granting an extension of time to the parties for the submission of their notices of appeal on the fact that the requirements of regulation 57 of the Regulations required “*a thorough analysis of the impugned decision, which, in the present case, is indeed both complex and lengthy*”.<sup>10</sup> It also ruled, however, that the requested 60 day extension was “*disproportionate, bearing in mind that the regular time limit for the submission of the notice of appeal as per rule 150(1) of the Rules, is 30 days*”.<sup>11</sup> Moreover, the Appeals Chamber rejected the Prosecution request for an extension of the deadline to file the appeal briefs, as it considered the arguments made in support did not demonstrate ‘good cause’ in the terms of regulation 35(2) of the Regulations.<sup>12</sup> It specifically emphasised the significantly longer nature of the applicable statutory time limit of 90 days, which, it found, would not be affected by the judicial recess in the same way.<sup>13</sup>

10. The Legal Representatives request that the Appeals Chamber apply the same reasoning to the present request. The requested deadline of 14 January 2020 – that is to say a 100-day extension of the established deadline – is excessive, disproportionate, and unwarranted; particularly against the background of the extension already granted in relation to the notice of appeal and the lack of novel arguments that could justify such a significant extension. Indeed, the “*thorough analysis of the impugned decision*” would have already been conducted within the additional period of time granted by virtue of the Appeals Chamber’s decision of 19 July 2019.

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<sup>10</sup> *Idem*, para. 5.

<sup>11</sup> *Ibid.*, para. 6.

<sup>12</sup> *Ibid.*, para. 7.

<sup>13</sup> *Ibid.*

11. In its present request, the Defence advances no genuinely new arguments that could amount to ‘good cause’ within the meaning of Rule 150(2) of the Rules and regulation 35(2) of the Regulations. Furthermore, should the Prosecution support the Defence Request, it is submitted that such support should not in itself constitute a sufficient basis for granting the extension. The Prosecution previously requested such extension and said request was denied. The fact that, since then, the Defence filed a notice raising 15 grounds of appeal cannot, as such, constitute novel circumstances that would justify granting an extension that was previously denied. The victims were not previously heard on the matter, but would have underlined that *any* delay in the appeals proceedings negatively affects their interest in the expeditious resolution of appeals and reparations proceedings. In this regard, the “fair trial” guarantees must apply throughout the proceedings and in respect of all parties and participants, including victims.<sup>14</sup> In the same vein, the requirements of the integrity of the proceedings must apply to all parties and participants in the proceedings before the Court, and not only to the suspect/accused,<sup>15</sup> and shall furthermore prevail over the specific interests of the parties.<sup>16</sup>

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<sup>14</sup> In this regard, the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the UN General Assembly on 29 November 1985 calls for enabling victims’ access to Justice and to obtain redress as well as for providing them with fair treatment in this regard. See the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the UN General Assembly on its 96th plenary meeting, [UN Doc. A/RES/40/34](#), 29 November 1985, Principles 4 to 7.

<sup>15</sup> See the “Decision on the admission of material from the ‘bar table’” (Trial Chamber I), [No. ICC-01/04-01/06-1981](#), 24 June 2009, para. 42. See also in the same sense TRAPP (K.), *Excluding Evidence: The Timing of a Remedy*, non-published manuscript (1998), Faculty of Law, McGill University, Canada, p. 21; quoted in TRIFFTERER (O.), *Commentary on the Rome Statute of the International Criminal Court – Observer’s Notes, Article by Article*, Verlag C.H Beck, Munich, 2008, p. 1335, footnote 139. See also the “DECISION ON THE PROSECUTION’S APPLICATION FOR LEAVE TO APPEAL THE CHAMBER’S DECISION OF 17 JANUARY 2006 ON THE APPLICATIONS FOR PARTICIPATION IN THE PROCEEDINGS OF VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 AND VPRS 6” (Pre-Trial Chamber I), [No. ICC-01/04-135-tEN](#), 20 April 2006 (dated 31 March 2006), para. 38.

<sup>16</sup> See SCSL, *The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu*, [Written Reasons for the Trial Chamber’s Oral Decision on the Defence Motion on Abuse of Process due to the Infringement of Principles of Nullum Crimen Sine Lege and Non-Retroactivity as to Several Counts](#), Case No. SCSL-04-16-PT, 31 March 2004, para. 26.

12. With regard to the Defence request for an extension of time by 100 days, the Legal Representatives posit that none of the arguments, either individually or collectively, is capable of constituting good cause.

13. The Defence argues that “*the factual and legal complexity of some of [the] grounds [it seeks to advance on appeal] is self-evident, such as the purported errors committed by the Trial Chamber in its assessment of the evidence*”.<sup>17</sup> There is nothing particularly complex or exceptional to any of the foreshadowed grounds of appeal that would warrant such an excessive extension of time. The notice sets forth 15 grounds of appeal that do not distinguish themselves from any other grounds of appeal one would expect from a Defence in relation to a trial judgment. They involve alleged errors of fact and law and allegations of violations of fair trial guarantees just as any other appeal against conviction known before international and internationalised courts and tribunals. The very nature of final appeals and their self-evident complexity is already accounted for in the statutory time limit of 90 days.

14. There is also nothing novel with respect to the analysis of the telephone conversations either. This “*labour intensive issue*”<sup>18</sup> was the basis for granting the Defence additional resources at the time to assist the Defence in “*carefully review[ing] the 4,684 conversations obtained by the Prosecution*”.<sup>19</sup> In fact, the Prosecution was ordered to provide the Defence access to the conversations as early as 16 November 2016<sup>20</sup> and additional resources were made available to the Defence as of January 2017.<sup>21</sup> The labour intensive *review* of the conversations cannot now – almost

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<sup>17</sup> See the Defence Request, *supra* note 1, para. 14.

<sup>18</sup> *Idem*, para. 15.

<sup>19</sup> *Ibid.*

<sup>20</sup> See the oral decision of Trial Chamber VI rendered during the hearing of 16 November 2019, [No. ICC-01/04-02/06-T-159-Red-ENG CT WT](#) 16 November 2016, pp. 2-8.

<sup>21</sup> See the “Public redacted version of ‘Request on behalf of Mr Ntaganda seeking an extension of time for the preparation of the case for the Defence’ dated 6 March 2017 (ICC-01/04-02/06-1815-Conf)”, [No. ICC-01/04-02/06-1815-Red](#), 5 April 2017, para. 10. The Defence sought additional resources for the document review for an initial period of four months on 23 November 2016. This request was granted on 19 December 2016 and five additional team members started working on the review as of mid-January 2017 for a period of four months. *Idem*, paras. 23 and 29.

three years later – constitute good cause for an extension within the meaning of rule 150(2) of the Rules. The Defence has, in fact, previously submitted that the review of the material was “*an imperative task that must be completed before a decision can be made regarding the witnesses to be called and before disclosing its final list of witnesses by 26 April 2017*”.<sup>22</sup> Given the additional resources of five team members for an initial period of four months in order to review the material, the Defence cannot now advance the review of the conversations as a ground establishing ‘good cause’ for an extension of the deadline for the filing of its appeal brief. It is also not plausible that the Defence now needs to carefully review the trial judgment for “*indications that the prejudicial information available to the Prosecution did, in fact, have a concrete impact on the trial and the Trial Chamber’s findings*”.<sup>23</sup> Having been granted an extension of time for the filing of its notice of appeal, such ‘careful review’ should have already been conducted.

15. As regards the “*several grounds of appeal involv[ing] novel legal issues*”, the Legal Representatives submit that it lies within the very nature of appeals of cases before this Court that they may involve novel legal issues to be raised on appeal. This cannot amount to good cause for departing from the standard deadline applicable to the filing of appeal briefs.

16. The fact that the anticipated appeal will be, in the Defence’s opinion, “*by far the most complex to have been presented to the ICC Appeals Chamber to date*”<sup>24</sup> is not a reason constituting good cause. As is evident from the notice of appeal filed, the appeal will indeed be extensive. Still, there is nothing exceptional in this circumstance warranting the extension of the deadline ordinarily applicable to cases before this Court.

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<sup>22</sup> *Ibid.*, para. 4.

<sup>23</sup> See the Defence Request, *supra* note 1, para. 15.

<sup>24</sup> *Idem*, para. 17.



17. Likewise, the simple fact that the Appeals Chamber once previously granted an extension<sup>25</sup> should not result in the setting of a precedent whereby the now applicable deadline (as *recently* amended) will routinely be circumvented. As emphasised by the Appeals Chamber only two months ago, “[e]xpeditiousness forms an integral part of a fair trial”.<sup>26</sup> The victims underscore that they, too, form part of the fair trial equation before this Court. Both the expeditiousness and the outcome of the appeals proceedings directly affect their rights under the Statute.<sup>27</sup>

18. The Defence’s references to lists of varied filing deadlines at the ICTY, ICTR, and the ECCC,<sup>28</sup> are equally unmeritorious, especially when some of the cited cases involve multi-accused cases<sup>29</sup> and vastly different legal and factual issues.

19. As regards the Defence argument on the impact of the sentencing proceedings, the Legal Representatives recall that the sentencing proceedings have already been taken into account by the Appeals Chamber when it previously granted the extension of time in relation to the notices of appeal and *rejected* an extension for the briefs.<sup>30</sup> This argument cannot now be simply reiterated as a reason constituting ‘good cause’.

20. In any event, the fact that sentencing proceedings are conducted separately from the Trial Chamber’s judgment pursuant to article 74 of the Statute should not by default lead the Appeals Chamber to routinely grant extensions. Any extension must be based on ‘good cause’ being shown on a concrete and case-by-case basis. Any *potential* grounds of appeal that may or may not arise from the sentencing of

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<sup>25</sup> *Idid.*, referring to the *Bemba* case: “Decision on Mr Bemba’s request for an extension of time for the filing of his document in support of the appeal”, [No. ICC-01/05-01/08-3370](#), 15 April 2016.

<sup>26</sup> See the “Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX’s ‘Decision on Defence Motion Alleging Defects in the Confirmation Decision’” (Appeals Chamber), [No. ICC-02/04-01/15-1562 OA4](#), 17 July 2019, para. 2.

<sup>27</sup> See *supra* footnotes 14, 15 and 16.

<sup>28</sup> See the Defence Request, *supra* note 1, para. 34.

<sup>29</sup> See *e.g.* ICTY, *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88 and *The Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A.

<sup>30</sup> See the July Decision on Extension of Time, *supra* note 5, para. 5.

Mr Ntaganda will be, by their very nature, separate from the grounds pertaining to his conviction. There is therefore no need to “*streamlin[e] procedures*” as argued by the Defence,<sup>31</sup> and in any event, such argument is at this stage nothing more than speculation as no sentence has yet been pronounced and no related reasoning has been issued by the relevant Chamber.

21. With respect to the translation issue, the Legal Representatives submit that formulating the particulars of the grounds of appeal lies first and foremost with counsel in the same way that “[t]he determination of potential grounds of appeal falls primarily within the purview of Defence Counsel”.<sup>32</sup> While Mr Ntaganda is undoubtedly entitled to a translation into Kinyarwanda, this fact cannot form the basis for an extension of time to file the appeal brief, as his legal team is in a position to work on the basis of the trial judgement as issued. The recent arrival of new team members to reinforce the Defence team and their need to familiarise themselves<sup>33</sup> can likewise not constitute ‘good cause’ given that Lead Counsel and Co-Counsel remain unchanged. Lead Counsel has in fact withdrawn from his simultaneous representation of another suspect before this Court so as to “*invest all his time and energy [...] representing Mr. Ntaganda*” in his appeals proceedings.<sup>34</sup>

22. The Defence also advances the recent VPRS submissions on reparations considerations in this case as a ‘reason’ for an extension of the deadline, as it avers that said submissions “*contemplate a significant role for the Defence at that phase of identification of victims*”.<sup>35</sup> This is entirely speculative and has no bearing on the present appeals proceedings. The Legal Representatives specifically oppose this argument as entirely baseless.

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<sup>31</sup> See the Defence Request, *supra* note 1, para. 22.

<sup>32</sup> See the July Decision on Extension of Time, *supra* note 5, para. 5.

<sup>33</sup> See the Defence Request, *supra* note 1, para. 30.

<sup>34</sup> See the “Public Redacted Version of Request seeking leave to withdraw as Counsel for Mr. Alfred Rombhot Yekatom”, [No. ICC-01/14-01/18-263-Red](#), 2 August 2019, para. 12.

<sup>35</sup> See the Defence Request, *supra* note 1, para. 20.

23. As regards the extension of the applicable page limit to 250 pages, the Legal Representatives strongly oppose the excessive extension sought. The applicable page limit is established so as to hold appellants to meaningfully, articulately and succinctly formulate specific challenges, which in turn enables the expeditious disposition of the appeal. Seeking an extension of 150% of the foreseen page-limit<sup>36</sup> is excessive, disproportionate, and entirely unjustified by the reasons put forth in the Defence Request.<sup>37</sup> As a matter of procedural fairness, more voluminous submissions necessarily require additional time in response and likely result in responses matching in volume. None of this contributes to fair and expeditious proceedings. To the contrary, it will further delay the proceedings.

24. Lastly, the Legal Representatives underline that the simple fact that the Prosecution may possibly agree to an extension of time and/or page limit does not elevate the reasons put forward to fulfilling the criteria of constituting 'good cause'. The Prosecution may have its own reasons for welcoming a longer filing deadline. The victims, however, strongly oppose any extension of the deadline and/or page limit.

25. The proceedings against Mr Ntaganda, including the appeal, also involve hundreds of participating victims – some of whom have already passed away during these many years – who have legitimate expectations and a statutory right to reparation should his convictions or part thereof be upheld on appeal. By delaying appeal proceedings, eventual reparations proceedings are delayed as well. This is entirely contrary to the interests of victims who have already waited more than 15 years for justice to be done in the present case. It is prejudicial to their interests to delay the proceedings any further, particularly in circumstances when the legal requirements of Rule 150(2) of the Rules and regulation 37(2) of the Regulations have not been met.

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<sup>36</sup> *Idem*, para. 2.

<sup>37</sup> The Defence argues that its request is proportionate, given Mr Bemba was granted an extension of 100 pages for his (narrower) appeal. See the Defence Request, *supra* note 1, para. 2.

26. Should the Appeals Chamber, however, proceed to grant or partially grant the Defence Request, the Legal Representatives respectfully request that out of procedural fairness they be equally granted corresponding extensions to respond to the parties' appeals.

**FOR THE FOREGOING REASONS** the Legal Representatives respectfully request that the Appeals Chamber reject the Defence Request in its entirety. Should the Request however be granted or partially granted, the Legal Representatives request corresponding extensions in the circumstances.



Dmytro Suprun  
Common Legal Representative of the  
Victims of the Attacks



Sarah Pellet  
Common Legal Representative of the  
Child soldiers

Dated this 12<sup>th</sup> Day of September 2019

At The Hague, The Netherlands