



Original: English

No. ICC-02/05-01/20 OA8

Date: 14 July 2021

THE APPEALS CHAMBER

Before:

**Judge Piotr Hofmański, Presiding
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze**

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-
RAHMAN (“ALI KUSHAYB”)**

Public document

Decision on the Defence’s request for extension of time

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Ms Helen Brady

Counsel for the Defence

Mr Cyril Laucci

Legal Representatives of Victims

Ms Amal Clooney
Mr Nasser Mohamed Amin Abdalla

The Office of Public Counsel for victims

Ms Paolina Massidda

REGISTRY

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”) against the decision of Pre-Trial Chamber II entitled “Decision on the Defence ‘*Exception d’incompétence*’ (ICC-02/05-01/20-302)” of 17 May 2021 (ICC-02/05-01/20-391),

Having before it the “*Demande d’extension de délai*” of 28 June 2021 (ICC-02/05-01/20-425),

Pursuant to regulation 35(2) of the Regulations of the Court,

Renders the following

DECISION

- 1) The time limit for the filing of the Defence’s response to the observations of the victims and the UN Security Council is extended to 16h00 on 4 August 2021.
- 2) The Defence’s request to reply to the submissions of the Prosecutor is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 25 June 2021, the Appeals Chamber issued an order¹ setting the schedule for the receipt of written observations from the victims and the UN Security Council (the “Security Council”) on the Defence’s appeal brief and the Prosecutor’s response thereto. In its order, the Appeals Chamber set the date for the receipt of those observations for 21 July 2021, and the date for the receipt of the consolidated responses of the Defence and the Prosecutor to those observations for 28 July 2021.

2. On 28 June 2021, the Defence filed a request for an extension of time to file its consolidated response to the observations of the victims and the Security Council (the “Request”).² In the Request, the Defence seeks an extension of time until at least 20

¹ [Order on the submission of observations](#), ICC-02/05-01/20-424.

² [Demande d’extension de délai](#), ICC-02/05-01/20-425.

August 2021 or seven calendar days following the consolidated response of the Prosecutor to the victims and the Security Council, whichever of the two dates gives more time.³ The Prosecutor did not file a response to the Request.

II. MERITS

3. The Defence cites four reasons in support of its request for an extension of time to respond to the observations of the victims and the Security Council. First, it argues that the subject matter of the appeal is particularly important and the short time period set out in the Appeals Chamber's order of 25 June 2021 would result in insufficiently reasoned submissions.⁴ Second, the Defence argues that its workload is burdensome, in particular due to the fact that it expects the decision on the confirmation of charges on 27 July 2021 or sooner.⁵ Third, the Defence argues that the principle of equality of arms compels the granting of an extension of time as, under the current schedule, the Security Council and victims would benefit from a total of 44 days to prepare their respective observations, and the Defence would be left with only seven days to respond.⁶ And finally, the Defence notes that the due date for its response falls during a period of Court recess and argues that this justifies an extension of time, as members of the Defence team have personal and family plans for that period.⁷

4. Regulation 35(2), first sentence, of the Regulations of the Court (the "Regulations") provides that a chamber may extend a time limit previously ordered by it on the application of a party or participant if "good cause is shown". The Appeals Chamber has in the past explained that "good cause" may exist when a party has competing obligations in proceedings before the Court, resulting in the inability to meet a deadline.⁸ In addition, rule 101(1) of the Rules of Procedure and Evidence provides

³ [Request](#), paras 2, 12 and p. 7.

⁴ [Request](#), para. 3.

⁵ [Request](#), paras 4-6.

⁶ [Request](#), paras 7-8.

⁷ [Request](#), paras 9-11.

⁸ *Prosecutor v. Bosco Ntaganda*, [Decision on the 'Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal'](#), 28 September 2016, ICC-01/04-02/06-1549 (OA4), para. 10; *Prosecutor v. Mathieu Ngudjolo Chui*, [Decision on Mr Ngudjolo Chui's request for an extension of time](#), 7 June 2013, ICC-01/04-02/12-84 (A), para. 9; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Reasons for the "Decision on the 'Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor's Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation'"](#), 27 June 2008, ICC-01/04-01/07-653 (OA7), para. 5.

general guidance on the factors a chamber must take into account when setting deadlines:

In making any order setting time limits regarding the conduct of any proceedings, the Court shall have regard to the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims.

5. The Appeals Chamber finds that the Defence’s argument concerning the concurrence of the deadlines for submissions in the appellate proceedings with the coming Court recess constitutes “good cause” for a moderate extension of time. Having regard to the need to facilitate fair and expeditious proceedings, the Appeals Chamber considers that an extension of one week is appropriate; the 23 day extension sought by the Defence being excessive under the circumstances. Therefore, the Defence must submit its consolidated response to the observations of the victims and the Security Council by 4 August 2021.

6. In addition, the Defence seeks an amendment to the schedule outlined in the Appeals Chamber’s order of 25 June 2021, to allow it to file its consolidated response to the observations of the victims and the Security Council seven days after that of the Prosecutor. The Defence seeks to stagger the consolidated responses so that it is able to reply to the consolidated response of the Prosecutor in the event that those submissions raise a new issue that the Defence would not have been able to anticipate.⁹ As stated in paragraph five of this order, the Appeals Chamber considers it reasonable to allow the Defence an additional week for its consolidated response. As the Prosecutor has not also sought an extension of time, the result is that the Defence has one week more than the Prosecutor to file that document. However, for the following reasons, the Appeals Chamber considers that the Defence must confine its submissions in its consolidated response to responding only to the observations of the victims and the Security Council.

7. The Appeals Chamber notes that a party must seek leave to reply to a document pursuant to regulation 24(5) of the Regulations. This provision calls upon the relevant chamber to consider whether the issues indicated in the application for leave are “new issues raised in the response which the replying participant could not reasonably have


⁹ [Request](#), para. 12.

anticipated”. Giving authorisation *ex ante* to reply to any issues that, in a party’s estimation, are new, would remove this important element of judicial control from the chamber. This, in the view of the Appeals Chamber, is not what is contemplated in regulation 24(5) of the Regulations.

8. Therefore, the Appeals Chamber rejects as premature the Defence’s request to reply to any new issues that may arise in the Prosecutor’s response to the observations of the victims and the Security Council. The Defence may still apply for leave once the Prosecutor’s consolidated response is filed if the Defence considers that the response merits a reply.

9. Furthermore, the Appeals Chamber observes that, in its Request, the Defence makes statements that might suggest that it is of the view that it may, in its response to the observations of the victims and the Security Council, reply to arguments raised in the Prosecutor’s response to the appeal brief.¹⁰ In this regard, the Appeals Chamber reminds the Defence that a response to *any* document that is itself a response is considered a reply, governed by the aforementioned regime in regulation 24(5) of the Regulations, and requires leave of the chamber. No reply may be made to any document filed if leave has not been applied for and granted.

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



Judge Piotr Hofmański
Presiding

Dated this 14th day of July 2021

At The Hague, The Netherlands

¹⁰ [Request](#), para. 3: “[...] il serait manifestement déraisonnable de maintenir un délai aussi court obligeant la Défense à bâcler sa réponse consolidée aux argument des Distingués RLVs, du Conseil de Sécurité et du BdP”; see also para. 5: “[...] la Défense ne sera donc pas en mesure d’analyser dans le même temps les soumissions des Distingués RLVs, du Conseil de Sécurité et du BdP et, encore moins, d’y répondre”.