

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **29 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 the Defence request for an extension of time to file its closing brief

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

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Legal Representatives of Victims

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Legal Representatives of Applicants

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**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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**The Office of Public Counsel for the
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States' Representatives

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Mr Peter Lewis

Counsel Support Section

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Detention Section

**Victims Participation and Reparations
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Others

Trial Chamber VI ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda* ('Ntaganda case'), having regard to Articles 64 and 67 of the Rome Statute and Regulation 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision on the Defence request for an extension of time to file its closing brief'.

I. Procedural history

1. On 28 December 2017, the Chamber provided directions related to the closing briefs and statements, including time limits for the submission of the closing briefs ('Directions').¹ Specifically, the Chamber ordered that the closing brief of the defence team for Mr Ntaganda ('Defence') be filed within eight weeks of notification of the closing briefs of the Office of the Prosecutor ('Prosecution') and the Legal representatives of victims ('Legal Representatives').² It further ordered that draft translations of the Prosecution's closing brief into Kinyarwanda, apart from the portions for which the Defence indicates it does not require translation, be provided to the Defence on a rolling basis, as soon as they become available, and at the latest within six weeks of its filing.³

2. On 13 April 2018, further to a Prosecution request ('Prosecution Extension Request')⁴ and a related request from the Legal Representatives,⁵ the Chamber extended the time limit for the submission of the closing briefs of the Prosecution and Legal Representatives ('Further Directions').⁶

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. 13.

³ Directions, ICC-01/04-02/06-2170, para. 12.

⁴ Prosecution's Request for a short extension of time to file its closing brief, 3 April 2018, ICC-01/04-02/06-2267. The Prosecution requested an extension from Monday, 16 April 2018 to Friday, 20 April 2018.

⁵ Joint Response of the Common Legal Representatives of Victims to the 'Prosecution's Request for a short extension of time to file its closing brief', 4 April 2018, ICC-01/04-02/06-2269, para. 2.

⁶ Decision providing further directions on the closing briefs, ICC-01/04-02/06-2272, and Dissenting Opinion of Judge Kuniko Ozaki, ICC-01/04-02/06-2272-Anx, in which Judge Ozaki disagreed with the Majority's

3. On 20 April 2018, in line with the extended time limit set by the Chamber,⁷ the Prosecution⁸ and the Legal Representatives⁹ filed their respective closing briefs.
4. On 21 May 2018, the Defence requested ‘a three-week extension of time to file its closing brief, until 9 July 2018’ (‘Request’).¹⁰
5. On 24 May 2018, in line with the time limit set by the Chamber,¹¹ the Prosecution and the Legal Representatives filed their respective responses,¹² with the latter filing a joint response (‘Prosecution Response’ and ‘LRV Response’, respectively).
6. On 28 May 2018, further to the Chamber’s direction,¹³ the Registry provided an update concerning the draft translation of the Prosecution’s closing brief.¹⁴

conclusion that an extension of the time limit for the submission of the Prosecution’s and Legal Representatives’ closing briefs was warranted.

⁷ Email from the Chamber to the parties and participants, and the Registry on 20 April 2018, at 15:16, in which the Chamber granted a Prosecution request to file its closing brief by 18:00 on 20 April 2018.

⁸ Prosecution’s Final Closing Brief, ICC-01/04-02/06-2277 and confidential Annex 1 and public Annexes A, B, C and D. A corrected version was filed on 7 May 2018 and notified on 8 May 2018 as ICC-01/04-02/06-2277-Conf-Anx1-Corr and ICC-01/04-02/06-2277-Conf-Anx1-Corr-Anx.

⁹ 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.

¹⁰ Request for Extension of Time, ICC-01/04-02/06-2287, para. 1.

¹¹ Email from the Chamber to the parties and participants on 22 May 2018, at 10:16, 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.

¹² Prosecution response to the “Request for Extension of Time”, 21 May 2018, ICC-01/04-02/06-2287, ICC-01/04-02/06-2290; Joint Response of the Common Legal Representatives of Victims to the Defence “Request for Extension of Time”, ICC-01/04-02/06-2289.

¹³ Email from the Chamber to the Registry and the parties and participants on 25 May 2018, at 09:13.

¹⁴ Email from the Registry to the Chamber and the parties and participants at 10:58.

II. Submissions and analysis

1. Submissions

Defence

7. The Defence submits that '[g]ood cause arises under Regulation 35(2) [...] for some of the same reasons' identified in the Prosecution Extension Request and for 'further reasons'.¹⁵
8. The further reasons purportedly include that: (i) transcript corrections have 'continued unabated' and 'are likely to continue throughout the period of the drafting of the Defence closing brief, which imposes an ongoing and cumulative additional burden that was not foreseen';¹⁶ (ii) the final list of admitted exhibits was 'nominally finalised only on 17 May 2018' and 'it is likely that further modifications or errors will need to be addressed';¹⁷ (iii) the translation of selected portions of the Prosecution's closing brief 'will likely proceed more slowly than anticipated', stressing, with reference to the translation of the Prosecution's closing brief in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ('Bemba case'), where the trial chamber required the translation of the Prosecution's closing brief in full four weeks before the time limit for the Defence's closing brief, that the need for translation is 'even greater for Mr Ntaganda whose own testimony is extensively characterised in the Prosecution's closing brief';¹⁸ (iv) the successive filing of briefs requires the Defence to 'both set out its position and to do so in a manner that is responsive to more than 650 pages of submissions by three other parties and participants', noting that an extension that assists the Defence in

¹⁵ Request, ICC-01/04-02/06-2287, para. 1.

¹⁶ Request, ICC-01/04-02/06-2287, para. 2.

¹⁷ Request, ICC-01/04-02/06-2287, para. 3.

¹⁸ Request, ICC-01/04-02/06-2287, para. 4.

consolidating and streamlining its submissions is in the long-term interest of expeditiousness’;¹⁹ (v) the requested extension would neither require any other party or participant to work during the judicial recess, nor impact on the date of the closing arguments;²⁰ (vi) the Defence had ‘under-estimated’ the extent to which, as the party presenting its case last, its workload was ‘back-loaded in a manner that made progress on the drafting of the closing brief difficult’;²¹ and (vii) ‘staff attrition on a relatively small Defence team has an unequally heavy impact on the Defence’.²²

Prosecution

9. The Prosecution opposes the Request on the basis that ‘[n]one of the seven reasons advanced by the Defence – taken individually or together - amount to “good cause” or justify additional time’.²³ In this respect, the Prosecution argues, *inter alia*, that: (i) the Defence fails to show how the review of transcript corrections has impacted its ongoing work and its arguments based on the ‘likely’ notification of corrections in the future is speculative;²⁴ (ii) the Defence failed to point to any concrete issue that might affect its ongoing work as a result of the recent finalisation of the list of evidence and merely speculates about issues that may arise in the future;²⁵ (iii) the Defence’s arguments pertaining to the translation of the Prosecution’s closing brief are ‘unsubstantiated and premature’, noting that the Defence should have focused on the necessary portions to be translated and have explored alternative measures to assist the accused in his

¹⁹ Request, ICC-01/04-02/06-2287, para. 5.

²⁰ Request, ICC-01/04-02/06-2287, para. 6. In an email sent on 9 May 2018, at 16:57, the Registry informed the parties and participants that the Chamber intends to schedule the closing hearings in the *Ntaganda* case for 28, 29 and 30 August 2018.

²¹ Request, ICC-01/04-02/06-2287, para. 7.

²² Request, ICC-01/04-02/06-2287, para. 8.

²³ Prosecution Response, ICC-01/04-02/06-2290, paras 1-2.

²⁴ Prosecution Response, ICC-01/04-02/06-2290, paras 8-11.

²⁵ Prosecution Response, ICC-01/04-02/06-2290, paras 12-13.

review of the brief;²⁶ (iv) the Defence's argument based on the need to consolidate and streamline its submissions, taking into account the extensive submissions of the parties and participants 'effectively constitutes an impermissibly late request for reconsideration' of the Directions;²⁷ (v) granting the requested extension would, contrary to the Defence's claim, require the Prosecution and Legal Representatives to file their responses four days into the judicial recess;²⁸ (vi) the Defence's submissions based on the back-loaded workload due to the presentation of its case are unconvincing;²⁹ and (vii) the Defence's arguments pertaining to staff attrition are unsubstantiated.³⁰

Legal Representatives

10. The Legal Representatives oppose the Request, arguing that it 'fails to meet the legal requirement of showing "good cause" [and] is not in compliance with the interests of justice'.³¹ They argue that none of the factors listed by the Defence, either individually or cumulatively, is capable of meeting the threshold, noting, *inter alia*, that: (i) granting the Request would give the Defence almost 12 weeks to respond to the briefs of the Prosecution and the Legal Representatives, which is 'excessively disproportionate';³² (ii) the Defence's submissions concerning the translation of the Prosecution's closing brief are 'speculative and premature', and the reference to the translation in the *Bemba* case is 'misleading', since the Prosecution's closing brief in that case was translated from one working language of the Court into the other;³³ (iii) fluctuations in staffing are not entirely

²⁶ Prosecution Response, ICC-01/04-02/06-2290, paras 14-18.

²⁷ Prosecution Response, ICC-01/04-02/06-2290, paras 19-22.

²⁸ Prosecution Response, ICC-01/04-02/06-2290, paras 23-24.

²⁹ Prosecution Response, ICC-01/04-02/06-2290, paras 25-26.

³⁰ Prosecution Response, ICC-01/04-02/06-2290, paras 27-28.

³¹ LRV Response, ICC-01/04-02/06-2289, para. 25.

³² LRV Response, ICC-01/04-02/06-2289, para. 16.

³³ LRV Response, ICC-01/04-02/06-2289, para. 19.

unforeseeable and an extension of time is not an adequate response thereto;³⁴ and (iv) granting the Request would ‘significantly shorten [...] the overall preparation time for all parties and participants that was rightly intended to lie’ between the Defence’s reply brief and the closing hearings.³⁵

2. Analysis

11. At the outset, the Chamber recalls that the schedule for the filing of the closing briefs was set more than five months ago in the Directions, which were issued after the Chamber had sought and considered the parties’ and participants’ submissions on, *inter alia*, the issue of successive filings.³⁶ Against this background, the Chamber is unpersuaded by the Defence’s argument that the need to consolidate and streamline its brief in line with the successive filings approach contributes to the existence of good cause for an extension of the time limit.
12. Further, the Chamber notes that the final list of admitted evidence was circulated by the Registry on 17 May 2018,³⁷ *i.e.*, four weeks prior to the deadline for the filing of the Defence’s closing brief, and therefore finds that the Defence fails to substantiate how this issue concretely affects its preparation of its closing brief.
13. Turning to the Defence’s submissions in relation to the ‘back-loading’ of its workload, the Chamber finds some merit in this argument. This argument is distinguishable from the Chamber’s previous consideration that the ‘extensive litigation since December 2017’, referred to in support of the Prosecution Extension Request, ‘forms part of the regular course of a trial’ and does not

³⁴ LRV Response, ICC-01/04-02/06-2289, para. 22.

³⁵ LRV Response, ICC-01/04-02/06-2289, para. 24.

³⁶ See Order scheduling a status conference, 28 November 2017, ICC-01/04-02/06-2131; Transcript of hearing of 5 December 2017, ICC-01/04-02/06-T-258-ENG-ET WT.

³⁷ Email from the Registry to the Chamber and the parties and participants, at 16:50.

‘contribute to the existence of good cause’.³⁸ Although the impact of the Defence’s presentation of evidence on the preparation of its closing brief was foreseeable at the time when the Directions were issued and could have been raised already at that stage, the Chamber considers that the ‘staff attrition’ experienced by the Defence team has compounded the ordinary difficulties it faces in preparing a closing brief.

14. The Chamber further notes that the notification of transcript corrections has been ongoing during the drafting period of the Defence’s closing brief,³⁹ and that, according to the schedule provided by the Registry, translations of four of the seven selected portions of the Prosecution’s closing brief will be provided to the Defence after the six-week schedule envisaged in the Directions.⁴⁰

15. In view of the above, the Chamber finds that good cause has been shown to grant an extension of time for the filing of the Defence’s closing brief. However, in view of its assessment of the various arguments put forward by the Defence, and noting that granting the Defence an extension of three weeks would negatively impact on the schedule of the Prosecution and Legal Representatives, the Chamber considers that an extension of two weeks is sufficient and appropriate in the circumstances.

³⁸ See Prosecution Response, ICC-01/04-02/06-2290, para. 26, referring to ICC-01/04-02/06-2272, para. 14.

³⁹ See also Dissenting Opinion of Judge Kuniko Ozaki, ICC-01/04-02/06-2272-Anx, in which Judge Ozaki considered that the ongoing notification of transcript corrections did not constitute good cause to grant the Prosecution Extension Request.

⁴⁰ According to the update provided by the Registry, translations of the portions corresponding to ‘Priorities Three and Five’ will be delivered on 8 June 2018, and translations of the portions corresponding to ‘Priorities Six and Seven’ will be delivered on 14 June 2018.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

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

DIRECTS that the Defence closing brief shall be filed by 2 July 2018.

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



Judge Robert Fremr, Presiding Judge



Judge Kuniko Ozaki



Judge Chang-ho Chung

Dated this 29 May 2018

At The Hague, The Netherlands