

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No. : ICC-01/04-01/06
Date : 23 February 2006

THE APPEALS CHAMBER

Before: Judge Navanethem Pillay, Presiding
Judge Philippe Kirsch
Judge Georgios M. Pikis
Judge Sang-Hyun Song
Judge Erkki Kourula

Registrar: Mr Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

THE PROSECUTOR V. THOMAS LUBANGA DYILO

**Under Seal
Ex Parte, Prosecution Only**

**Prosecutor's Application for an Extension of the Page Limit
for the Document in Support of Appeal**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Mrs Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia, Senior Appeals Counsel
Mr Ekkehard Withopf, Senior Trial Lawyer

Background

1. On 14 February 2006, the Prosecution filed its appeal against Pre-Trial Chamber I's Decision on the Prosecutor's Application for Warrants of Arrest, Article 58.¹ As stated in that document, the Prosecution is impugning the Chamber's declaration of inadmissibility of the case against Bosco Ntaganda. The Prosecution must file within the time-limit prescribed by Regulation 64 (2) a document in support of the appeal, containing the specific grounds of appeal advanced by the Prosecution.

Application for Extension of the Page Limit

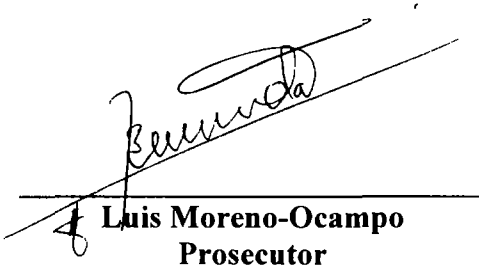
2. Regulation 37 (1) sets the page limit for the document in support of the appeal at 20 pages. The Prosecution respectfully requests, pursuant to Regulation 37 (2), that the page limit set forth in Regulation 37 (1) for the document in support of appeal be extended by a further 20 pages.
3. The Prosecution makes this request for the following reasons:
 - (a) This is the first proceeding before the Appeals Chamber, and the Prosecution considers that it is appropriate to make some brief submissions on the characterization of errors and standards of review on appeal (issues that ought not need to be readdressed once the appellate practice of the Court is established).
 - (b) The Decision impugned is the first one of this Court addressing the critical issue of admissibility and this appeal is effectively the first opportunity available to the Prosecution to discuss the terms and scope of Article 17 (1) (d). In this sense, the Prosecution notes that ordinarily, a request for a ruling regarding a question of admissibility has a page limit of 50 pages, pursuant to Regulation 38 (2) (b).
 - (c) The Prosecution will also advance grounds of appeal pertaining to the specific manner in which the Chamber dealt with the issue of admissibility in the instant case. On matters of such crucial importance,² the Prosecution submits that it is in the

¹ Document ICC-01/04-01/06-3-US-Exp

² The complexity and importance of the issues has been considered a basis for exceptional circumstances and an extension of the page limit in both the ICTY and the ICTR, especially where the grant of an extension would not prejudice any other party – see for example *Milošević v. Prosecutor*, IT-02-54-AR73.7, Order Granting Leave to Exceed the Page Limit for Interlocutory Appeal against the Trial Chamber's Decision on Assignment of Defence Counsel, 28 September 2004; *Nikolić v. Prosecutor*, IT-02-60/1-A, Decision on Prosecution's Motion for Extension of Pages, 20 October 2004; *Prosecutor v. Bagosora et al.*, ICTR-98-41-AR93, Decision on Prosecutor's Requests for Authorization to Exceed the Page Limit and for Setting of a Time Limit for Filing of a Response by the Defence, 3 November 2003.

interests of the Court as a whole that the Appeals Chamber be assisted by clear, detailed and considered argument from the Prosecution.³

4. The Prosecution submits that the combination of these factors constitutes exceptional circumstances⁴ and leaves it unable to adequately address the issues in this appeal within 20 pages.⁵



Luis Moreno-Ocampo
Prosecutor

Dated this 23rd day of February 2006

At The Hague, The Netherlands

³ See for example *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Application by Čerkez for Leave to Reply and Other Relief, 16 May 2003 at para 8.

⁴ Albeit in a slightly different context, the SCSL has recognized that “‘Exceptional circumstances’ may exist depending upon the particular facts and circumstances, where, for instance the question ... is one of general principle to be decided for the first time, ... or is one that raises serious issues of fundamental legal importance to the Special Court for Sierra Leone, in particular, or international criminal law, in general, or some novel and substantial aspect of international criminal law for which no guidance can be derived from national criminal law systems.” – *Prosecutor v Sesay, Kallon and Gbao*, SCSL-2004-15-T, Decision on Defence Application for Leave to Appeal Ruling of the 3rd of February, 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005 at para 26; *Prosecutor v Sesay, Kallon and Gbao*, SCSL-2004-15-T, Decision on Application for Leave to Appeal the Ruling on Sesay – Motion Seeking Disclosure of the Relationship between Governmental Agencies of the USA and the Office of the Prosecutor, 15 June 2005 at para 16.

⁵ So far the Prosecution has endeavored to strictly observe the default page-limit imposed by the Regulations in its pleadings before Pre-Trial Chambers. However, the Prosecution notes that the Appeals Chamber’s intervention in the first stages of the Court’s existence will frequently involve matters of constitutional importance, thus requiring a full presentation of all relevant arguments to the Chamber. In this particular context, the limit of 20 pages may often be inadequate for the purposes of effectively assisting the Chamber in the determination of the relevant issues. The Prosecution will nonetheless only apply for extensions of the page-limit when, and to the extent, absolutely necessary.