

DISSENTING OPINION OF JUDGE KUNIKO OZAKI

I. Introduction

1. This Dissenting Opinion is in response to the Majority's 'Decision providing further directions on the closing briefs' ('Majority Decision'). I respectfully disagree with the Majority's conclusion that an extension of the page limit for the closing briefs is warranted in the present circumstances, as well as with its conclusion that good cause has been shown warranting an extension of time for the filing of the Prosecution's and the LRVs' closing briefs. Furthermore, as I would have rejected the Prosecution's alternative request for an extension of the page limit, I would have also addressed the Prosecution's request for reconsideration of the Chamber's Directions in this respect. I will deal with these matters in turn.

II. Prosecution's request for reconsideration and alternative request for an extension of the page limit

2. As previously noted by the Chamber, the Statute does not provide guidance on reconsideration of interlocutory decisions. However, the powers of a chamber allow it to reconsider its own decisions, whether prompted by one of the parties or *proprio motu*. Reconsideration of a decision is an exceptional measure, and should only be done if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.¹
3. In my opinion, the Prosecution merely disagrees with the Directions and has failed to meet the aforementioned standard. No clear error of reasoning has been

¹ See, e.g., Decision on the Defence request for reconsideration and clarification, 27 February 2015, ICC-01/04-02/06-483, para. 13.

demonstrated. When issuing its Directions and setting the page limits for the closing briefs and further instructing the parties and participants that the average word limit per page shall be 300 words, in addition to the format requirements set out in the amended Regulation 36 of the Regulations, the Chamber took into account a number of factors, including the parties and participants' submissions, the specificity of the present case, including its length, the number of witnesses heard and items of evidence admitted, as well as the expected length of the parties' and participants' submissions in their closing briefs. Moreover, I do not find that reconsideration would have been required to prevent an injustice, noting that the requirement to abide by the average 300 words per page limit applies equally to the parties and participants.

4. With regard to the alternative request for an extension of the page limit, I disagree with the Majority's conclusion that 'it is appropriate in [the present] circumstances to grant the extension of pages sought by the Prosecution', as well as those sought by the LRVs and the Defence.² Pursuant to Regulation 37(2) of the Regulations, '[t]he Chamber may, at the request of a participant, extend the page limit in exceptional circumstances'. In my opinion, neither the Prosecution, nor the Defence or the LRVs, have advanced any 'exceptional circumstances' within the meaning of Regulation 37(2) of the Regulations.

III. Prosecution's and LRVs' requests for an extension of time

5. With regard to the Prosecution's request for an extension of time, I respectfully disagree with the Majority's conclusion that good cause has been shown justifying the requested extension, as well as with the Majority's decision to grant the LRVs the same extension to file their respective briefs.³

² Majority Decision, para. 10.

³ Majority Decision, para. 15.

6. In this respect, I agree that it is important for the Chamber to receive comprehensive closing briefs that take into account, to the extent possible, the most recently notified corrected transcripts and which refer accurately to items admitted into evidence.⁴ Further, I also agree that the review of corrected transcripts may constitute a time-consuming exercise.⁵ However, I note that, in many instances, the corrections made to the transcripts are minor. Furthermore, in accordance with information provided by the Registry, all corrections are easily identifiable in the corrected versions of the transcripts. Lastly, the procedure for the correction of transcripts and their notification was known both to the parties and participants and the Chamber at the time when the deadlines for the filing of the closing briefs were set and when the submissions in relation thereto were made. In relation to the fact that, further to the Prosecution's request for reconsideration, the parties and participants and the Registry have identified some discrepancies between their respective lists of items admitted into evidence and are currently attempting to resolve them, I am of the opinion that, considering that the aforementioned process was set in motion approximately three weeks before the deadline for the filing of the Prosecution's closing brief, it does not constitute good cause to grant the requested extension. I further note that the end of the presentation of evidence by the Defence was notified on 23 February 2018⁶ and that the last *viva voce* Defence witness completed his testimony as early as 29 January 2018.⁷ Under these circumstances, and also considering the limited scope of the evidence tendered by the Prosecution in rebuttal, which was ultimately⁸ not admitted as rebuttal evidence,⁸ I believe that it

⁴ Majority Decision, para. 14.

⁵ Majority Decision, para. 14.

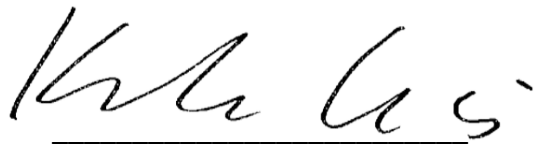
⁶ Notice on behalf of Mr Bosco Ntaganda concerning the end of the presentation of evidence by the Defence, 23 February 2018, ICC-01/04-02/06-2243.

⁷ Transcript of hearing of 29 January 2018, ICC-01/04-02/06-T-261-CONF-ENG.

⁸ See Decision on Prosecution request for presentation of evidence in rebuttal (ICC-01/04-02/06-2197-Conf) and related filings, 26 February 2018, ICC-01/04-02/06-2246; Decision on Second Prosecution request for presentation of evidence in rebuttal and related requests, 16 March 2018, ICC-01/04-02/06-2258. By way of the latter decision, the Chamber admitted six items into evidence pursuant to Articles 64 and 69 of the Statute.

was possible for the Prosecution, as well as the LRVs, to carry out substantial amounts of work on their respective closing briefs already before the presentation of evidence in this case was declared closed on 16 March 2018.⁹ In light of the foregoing, in my opinion, the Prosecution failed to show good cause for the requested extension. Consequently, I would have also denied the LRVs' request for extension.

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

A handwritten signature in black ink, appearing to read 'K. Ozaki', is written over a horizontal line.

Judge Kuniko Ozaki

Dated this 13 April 2018

At The Hague, The Netherlands

⁹ Decision closing the presentation of evidence and providing further directions, 16 March 2018, ICC-01/04-02/06-2259.