



Original: English

**No. ICC-01/04-02/06 A A2
Date: 1 October 2019**

THE APPEALS CHAMBER

Before:
Judge Howard Morrison, Presiding
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 document

**Decision on Mr Ntaganda's request for reconsideration of the decision on time
and page extensions**

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for the Defence
Mr Stéphane Bourgon
Mr Christopher Gosnell

Legal Representatives of Victims
Ms Sarah Pellet
Mr Dmytro Suprun

REGISTRY

Registrar
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Bosco Ntaganda against the ‘Judgment’ of Trial Chamber VI of 8 July 2019 (ICC-01/04-02/06-2359),

Having before it the ‘Urgent request for reconsideration of the “Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters”’ of 23 September 2019 (ICC-01/04-02/06-2417),

Renders, pursuant to regulations 35(2), 37(2), 58 and 59 of the Regulations of the Court, the following

DECISION

1. The ‘Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters’ (ICC-01/04-02/06-2415) is varied as follows:
 - i. Mr Bosco Ntaganda shall file his appeal brief in relation to the first and third grounds of appeal identified in his notice of appeal by Monday, 11 November 2019; and
 - ii. The Prosecutor shall file a response to Mr Bosco Ntaganda’s appeal brief in relation to the first and third grounds of appeal by Monday, 27 January 2020.
2. The Prosecutor’s request for an extension of time for filing her appeal brief is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 20 September 2019, the Appeals Chamber issued the ‘Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters’ (the ‘Extension Decision’),¹ in which it, *inter alia*:

¹ [ICC-01/04-02/06-2415](#).

- (i) directed Mr Ntaganda to file his appeal brief in relation to the first two grounds of appeal identified in his notice of appeal by Monday, 7 October 2019;
 - (ii) extended Mr Ntaganda’s time limit for filing his appeal brief in relation to the remaining grounds of appeal to Tuesday, 14 January 2020;
 - (iii) directed the Prosecutor to file a response to Mr Ntaganda’s appeal brief in relation to the first two grounds of appeal in accordance with the 60 day time limit set out in regulation 59(1) of the Regulations of the Court (the ‘Regulations’);
 - (iv) directed the Prosecutor to file a response to Mr Ntaganda’s appeal brief in relation to the remaining grounds of appeal in accordance with the 60 day time limit set out in regulation 59(1) of the Regulations, commencing with notification of the appeal brief on these grounds;
 - (v) extended the page limit for the appeal brief of Mr Ntaganda by 50 pages to a total of 150 pages, to be distributed between the two filings mentioned above, as he sees fit; and
 - (vi) extended the page limit for the Prosecutor’s response by 50 pages to a total of 150 pages to be distributed between the two filings mentioned above, as she deems fit.²
2. On 20 September 2019, Mr Ntaganda filed a request for reconsideration of the Extension Decision (the ‘Request for Reconsideration’).³
3. On 24 September 2019, the Prosecutor responded to the Request for Reconsideration (the ‘Prosecutor’s Response’).⁴

² [Extension Decision](#), p. 3.

³ [‘Urgent request for reconsideration of the “Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters”’](#), ICC-01/04-02/06-2417.

⁴ [‘Prosecution response to Mr Ntaganda’s “Urgent request for reconsideration of the ‘Decision on Mr Ntaganda’s request for an extension of the page and time limit for the filing of the appeal brief and related matters” \(ICC-01/04-02/06-2417\)’](#), ICC-01/04-02/06-2418.

4. On 26 September 2019, the victims' legal representatives responded to the Request for Reconsideration (the 'Victims' Response'),⁵ within the time limit set by the Appeals Chamber.⁶

II. MERITS

5. The Appeals Chamber notes that Mr Ntaganda submits, by reference to a decision of Trial Chamber VI (the 'Trial Chamber'), that reconsideration of a decision may be appropriate when necessary to prevent an injustice.⁷ The Prosecutor submits that the Request for Reconsideration should be dismissed, as Mr Ntaganda has not 'shown a clear error of reasoning by the Appeals Chamber', demonstrated 'that reconsideration is necessary to prevent an injustice', or 'identified new facts or arguments that are relevant to this assessment'.⁸ The victims highlight the limited practice of the Court in relation to reconsideration of decisions and submit that some chambers reject all such requests as lacking a legal foundation, based on the need to ensure legal certainty and finality in judicial decisions.⁹ They submit that, if at all, such requests are 'granted: (i) in cases where the applicant was able to provide compelling new or previously unavailable information which significantly altered the basis on which the original decision was taken, or in order to accommodate new circumstances that have arisen and which have rendered the original decision unfair; or (ii) in order to correct material errors committed by the Chamber'.¹⁰

6. The Appeals Chamber notes that it has not previously addressed the circumstances under which it may reconsider its prior decisions.¹¹ It notes that Mr

⁵ 'Joint Response of the Common Legal Representatives for Victims to the Defence "Urgent request for reconsideration of the 'Decision on Mr Ntaganda's Request for an extension of the page and time limit for the filing of the appeal brief and related matters'", ICC-01/04-02/06-2421.

⁶ 'Order in relation to Mr Bosco Ntaganda's request for reconsideration', ICC-01/04-02/06-2420.

⁷ [Request for Reconsideration](#), para. 4.

⁸ [Prosecutor's Response](#), para. 1.

⁹ Victims' Response, para. 20.

¹⁰ Victims' Response, para. 23.

¹¹ See *The Prosecutor v. Callixte Mbarushimana*, '[Decision on the "Requête urgente aux fins de reconsidération de la décision n°ICC-01/04-01/10 OA4, de protestation et de réserve"](#)', 23 March 2012, ICC-01/04-01/10-505, para. 10; *The Prosecutor v. Laurent Koudou Gbagbo*, '[Decision on requests related to page limits and reclassification of documents](#)', 16 October 2012, ICC-02/11-01/11-266, paras 12, 15; *Situation in the Republic of Kenya*, '[Decision on the request for reconsideration of the decision on the request for the disqualification of the Prosecutor in the investigation against Mr David Nyekorach-Matsanga](#)', 22 April 2013, ICC-01/09-111, para. 5; *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, '[Decision on Mr Ruto's request for reconsideration of the "Decision on the request for suspensive effect"](#)', 27 September 2013, ICC-01/09-01/11-993-Red, para. 8.

Ntaganda's request is based on the need 'to prevent injustice'.¹² Without prejudice to the question of whether reconsideration may be based on such a factor, the Appeals Chamber finds that the Request for Reconsideration does not identify any injustice that would allegedly result from the implementation of its Extension Decision. The only reasons presented as justification for a further extension of the time limit and of the page limit are the alleged risk of Mr Ntaganda having to 'drop certain grounds of appeal entirely'¹³ or not being able to brief them meaningfully,¹⁴ and the risk of 'a reasonable apprehension of bias'.¹⁵ The Appeals Chamber observes that these arguments do not demonstrate that the Extension Decision would cause an injustice, none of these arguments are novel and they were all apparent to some degree from Mr Ntaganda's original request. The Appeals Chamber cannot but see the Request for Reconsideration as an attempt to re-argue points which Mr Ntaganda already made. It is not satisfied that this is a valid basis for a reconsideration request.

7. The Appeals Chamber shares the concerns of the victims regarding further delays in the present proceedings.¹⁶ It notes that the conviction decision was issued on 8 July 2019 and that Mr Ntaganda had 90 days to prepare his appeal brief in full, in accordance with regulation 58(1) of the Regulations.¹⁷ Approximately four weeks before the deadline for filing his appeal brief, he requested a 100-day extension of time, more than double the regulatory limit.¹⁸ Having been granted the requested extension for all but two grounds of appeal in the Extension Decision, he now submits that it is impossible to meaningfully brief even those two grounds of appeal by 7 October 2019, in part because, 'up until 9 September 2019, the Defence devoted all of the resources available for the appeal on the drafting of its Notice of appeal'.¹⁹

8. It transpires from Mr Ntaganda's submissions that he is lagging behind in the preparation of his appeal brief. Irrespective of the reason for this delay, the Appeals Chamber must accept the genuine concern of his defence team that the presentation

¹² [Request for Reconsideration](#), para. 4.

¹³ [Request for Reconsideration](#), paras 7, 11.

¹⁴ [Request for Reconsideration](#), paras 9, 21.

¹⁵ [Request for Reconsideration](#), para. 25.

¹⁶ Victims' Response, para. 32.

¹⁷ 'Judgment', ICC-01/04-02/06-2359.

¹⁸ '[Request for extension of page limit and time to file appeal brief](#)', 11 September 2019, ICC-01/04-02/06-2398.

¹⁹ [Request for Reconsideration](#), para. 18.

of Mr Ntaganda's arguments on appeal may be significantly hindered by the current briefing schedule. Therefore, on an exceptional basis, the Appeals Chamber will vary the briefing schedule for the appeal to allow Mr Ntaganda to file the first and third ground of appeal as identified in his notice of appeal by Monday, 11 November 2019.

9. The Appeals Chamber underlines, however, that it will not consider similar requests from Mr Ntaganda in future. If the Trial Chamber has not issued its sentencing decision by 11 November 2019, Mr Ntaganda's submissions may be filed with the appropriate level of confidentiality under regulation 23*bis* of the Regulations to restrict access to the Appeals Chamber and participants in the appeals proceedings. This should address any concerns regarding the risk of bias if the first ground of appeal is filed before the sentencing decision is issued.²⁰

10. The Prosecutor requests that her response to this part of Mr Ntaganda's appeal be extended 75 days after 11 November, so that the judicial recess is still taken into account.²¹ The Appeals Chamber finds this request to be reasonable under the circumstances and extends the time limit for the filing of the Prosecutor's response to the first part of the appeal brief to 27 January 2020.

11. The Prosecutor also requests that the deadline for the filing of her appeal brief be extended so that it falls on the same date that Mr Ntaganda files the first part of his appeal brief, 'to ensure synchronisation'.²² The Appeals Chamber notes that the Prosecutor intends to raise two grounds of appeal that are unrelated to the grounds that Mr Ntaganda will address in the first part of his appeal brief.²³ The Prosecutor has also not provided any reason for an extension of the time limit for the filing of her appeal brief other than synchronisation of the appeals.²⁴ The Appeals Chamber finds that this does not provide good cause for an extension of time under regulation 35(2)

²⁰ [Request for Reconsideration](#), para. 25.

²¹ [Prosecutor's Response](#), para. 6.

²² [Prosecutor's Response](#), para. 6.

²³ '[Mr Ntaganda's Notice of Appeal against the Judgment pursuant to Article 74 of the Statute](#)', 9 September 2019, ICC-01/04-02/06-2396; '[Prosecution notice of appeal](#)', 9 September 2019, ICC-01/04-02/06-2395.


²⁴ [Prosecutor's Response](#), para. 6.

of the Regulations. Accordingly, the Appeals Chamber rejects the Prosecutor's request for an extension of the time limit for the submission of her appeal brief.

12. In the Request for Reconsideration, Mr Ntaganda also requests the Appeals Chamber to grant a further extension of 50 pages for the entire appeal brief.²⁵ Mr Ntaganda submits that it will not be possible for him 'to meaningfully brief all 15 grounds of appeal within a maximum of 150 pages, in particular if the appeal brief is split in two documents'.²⁶ He argues that, in view of the scope, range and complexity of the anticipated arguments, he would have to drop certain grounds of appeal.²⁷ The Prosecutor and the victims argue that Mr Ntaganda has not demonstrated that reconsideration of the Extension Decision is merited.²⁸

13. The Appeals Chamber is not persuaded that it is necessary to vary the Extension Decision with respect to the page limit set for Mr Ntaganda's appeal brief. If counsel, acting upon the instructions of their client, are of the view that it would be more beneficial to drop certain grounds of appeal rather than argue all grounds concisely, that is a matter that is entirely within their discretion. It should be noted that the Appeals Chamber intends to schedule an oral hearing at which the parties will be given an opportunity to amplify their written submissions. The Appeals Chamber is confident that Mr Ntaganda will have ample opportunity to fully develop his arguments in written and oral form.

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



Judge Howard Morrison
Presiding

²⁵ [Request for Reconsideration](#), paras 2, 30.

²⁶ [Request for Reconsideration](#), para. 9.

²⁷ [Request for Reconsideration](#), para. 11.

²⁸ [Prosecutor's Response](#), para. 1; Victims' Response, paras 2, 24.

Dated this 1st day of October 2019

At The Hague, The Netherlands