



Original: English

**No. ICC-01/04-02/06 A
Date: 20 September 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

Urgent

Public document

**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**

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 ‘Request for extension of page limit and time to file appeal brief’ of 11 September 2019 (ICC-01/04-02/06-2398),

Having before it the ‘Request for translation of parts of the Judgment’ of 16 September 2019 (ICC-01/04-02/06-2405),

Having before it the ‘Request for leave to reply to Joint Response of the Common Legal Representatives for Victims to the Defence “Request for extension of page limit and time to file appeal brief”, ICC-01/04-02/06-2400’ dated 16 September 2019 and registered on 17 September 2019 (ICC-01/04-02/06-2406),

Having before it the ‘Prosecution response to Mr Ntaganda “Request for extension of page limit and time to file appeal brief” (ICC-01/04-02/06-2398)’ of 17 September 2019 (ICC-01/04-02/06-2408), in which the Prosecutor requests a time and page extension for the filing of her response to Mr Ntaganda’s appeal brief, and an extension of time for the filing of her appeal brief,

Having before it the ‘Request for leave to reply to Prosecution response to Mr. Ntaganda’s “Request for extension of page limit and time to file appeal brief” (ICC-01/04-02/06-2398)’ of 20 September 2019 (ICC-01/04-02/06-2412),

Renders, pursuant to rule 144(2) of the Rules of Procedure and Evidence, regulations 24(5), 35(2), 37(2), 58, and 59 of the Regulations of the Court, the following

DECISION

1. The Registrar shall provide translation into Kinyarwanda of the sections of the ‘Judgment’ (ICC-01/04-02/06-2359) identified in paragraph 9 of the ‘Request for translation of parts of the Judgment’ (ICC-01/04-02/06-2405) on a rolling basis and in the order set out by Mr Bosco Ntaganda; the full translation of these sections shall be provided by no later than Tuesday, 7 January 2020.

2. Mr Bosco Ntaganda shall file his appeal brief in relation to the first two grounds of appeal identified in his notice of appeal by Monday, 7 October 2019.
3. The time limit for Mr Bosco Ntaganda's appeal brief in relation to the remaining grounds of appeal is extended to Tuesday, 14 January 2020.
4. The Prosecutor shall file a response to Mr Bosco 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.
5. The Prosecutor shall file a response to Mr Bosco 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 of the Court, commencing with notification of the appeal brief on these grounds.
6. The page limit for the appeal brief of Mr Bosco Ntaganda is extended by 50 pages to a total of 150 pages, to be distributed between the two filings mentioned above, as he sees fit.
7. The page limit for the Prosecutor's response is extended by 50 pages to a total of 150 pages to be distributed between the two filings mentioned above, as she deems fit.
8. The Prosecutor's request for an extension of the time limit for the submission of her appeal brief is rejected.
9. Mr Ntaganda's 'Request for leave to reply to Joint Response of the Common Legal Representatives for Victims to the Defence "Request for extension of page limit and time to file appeal brief", ICC-01/04-02/06-2400' is rejected.
10. Mr Ntaganda's 'Request for leave to reply to Prosecution response to Mr. Ntaganda's "Request for extension of page limit and time to file appeal brief" (ICC-01/04-02/06-2398)' is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 8 July 2019, Trial Chamber VI convicted Mr Ntaganda of crimes against humanity and war crimes (the ‘Conviction Decision’).¹ Mr Ntaganda and the Prosecutor have appealed the Conviction Decision.²
2. On 11 September 2019, Mr Ntaganda filed a request seeking an extension of the page and time limits for the filing of his appeal brief (the ‘Request’).³
3. On 12 September 2019, the victims’ legal representatives filed the ‘Joint Response of the Common Legal Representatives for Victims to the Defence “Request for extension of page limit and time to file appeal brief”’⁴ (the ‘Victims’ Response’), objecting to Mr Ntaganda’s Request, but requesting ‘corresponding extensions to respond’ if the request is granted.
4. On 13 September 2019, the Appeals Chamber issued an order setting a deadline for the Prosecutor to respond to the Request and the Victims’ Response, and requested Mr Ntaganda to further specify aspects of his stated need to have particular sections of the Conviction Decision translated into the language that he fully understands and speaks, Kinyarwanda.⁵
5. On 16 September 2019, Mr Ntaganda filed further particulars of his request to have sections of the Conviction Decision translated into Kinyarwanda (the ‘Translation Request’).⁶
6. On 16 September 2019, Mr Ntaganda requested leave to reply to the Victims’ Response (the ‘Request for Leave to Reply to the Victims’ Response’).⁷

¹ ‘[Judgment](#)’, ICC-01/04-02/06-2359.

² ‘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 (A) (the ‘[Notice of Appeal](#)’); ‘Prosecution notice of appeal’, 9 September 2019, ICC-01/04-02/06-2395 (A) (the ‘[Prosecutor’s Notice of Appeal](#)’).

³ ‘[Request for extension of page limit and time to file appeal brief](#)’, ICC-01/04-02/06-2398 (A).

⁴ ‘[Joint Response of the Common Legal Representatives for Victims to the Defence “Request for extension of page limit and time to file appeal brief”](#)’, ICC-01/04-02/06-2400 (A).

⁵ ‘[Order in relation to Mr Bosco Ntaganda’s request for page and time extension for the appeal brief](#)’, ICC-01/04-02/06-2401 (A).

⁶ ‘[Request for translation of parts of the Judgment](#)’, ICC-01/04-02/06-2405 (A).

7. On 17 September 2019, the Prosecutor responded to Mr Ntaganda's Request, indicating that she would not object to a reasonable extension of the relevant time and page limits (of up to 60 days and 50 pages, respectively) (the 'Prosecutor's Response').⁸ The Prosecutor submits that, if Mr Ntaganda is granted an extension of 30 or 60 days for filing his appeal brief, she and the victims' legal representatives should also be granted an extension of 30 days for the filing of their responses to the appeal brief, and additional time to respond if a page extension is granted to Mr Ntaganda.⁹ Similarly, she requests that they be granted an equivalent extension of the page limit to any granted to Mr Ntaganda for his appeal brief.¹⁰ Finally, the Prosecutor seeks an equivalent extension of time for filing the appeal brief in relation to her appeal so that the time limits for the two appeals are synchronised.¹¹

8. On 17 September 2019, the victims' legal representatives responded to the Request for Leave to Reply to the Victims' Response.¹²

9. On 20 September 2019, Mr Ntaganda filed a request seeking leave to reply to the Prosecutor's Response (the 'Request for Leave to Reply to the Prosecutor's Response').¹³

II. MERITS

10. In relation to appeals against convictions, regulation 58(1) of the Regulations of the Court (the 'Regulations') provides that 'the appellant shall file an appeal brief within 90 days of notification of the relevant decision'. Pursuant to regulation 35(2) of the Regulations, a 'Chamber may extend or reduce a time limit if good cause is shown'.

⁷ [Request for leave to reply to Joint Response of the Common Legal Representatives for Victims to the Defence "Request for extension of page limit and time to file appeal brief", ICC-01/04-02/06-2400](#), 16 September 2019, ICC-01/04-02/06-2406 (A).

⁸ [Prosecution response to Mr Ntaganda "Request for extension of page limit and time to file appeal brief" \(ICC-01/04-02/06-2398\)](#), ICC-01/04-02/06-2408 (A), paras 4-6.

⁹ [Prosecutor's Response](#), para. 6.

¹⁰ [Prosecutor's Response](#), para. 5.

¹¹ [Prosecutor's Response](#), para. 7.

¹² [Joint Response of the Common Legal Representatives for Victims to the Defence Request for leave to reply to the Joint Response of the Common Legal Representatives](#), ICC-01/04-02/06-2409 (A).

¹³ 'Request for leave to reply to Prosecution response to Mr. Ntaganda's "Request for extension of page limit and time to file appeal brief" (ICC-01/04-02/06-2398)', ICC-01/04-02/06-2412 (A).

11. The Appeals Chamber considers that it is sufficiently briefed on whether an extension is warranted in the present case and that further submissions would not assist it in its determination of Mr Ntaganda's Request. Accordingly, the Request for Leave to Reply to the Victims' Response and the Request for Leave to Reply to the Prosecutor's Response are rejected.

12. In the circumstances of the present case, the Appeals Chamber considers that Mr Ntaganda has provided convincing justification for his Request and that good cause has been shown for a reasonable extension of the 90-day time limit prescribed in regulation 58(1) of the Regulations. The Appeals Chamber notes, in particular, Mr Ntaganda's submissions regarding: (i) the factual and legal complexity and the scope of the appeal; (ii) the concurrent burdens of the sentencing and reparations proceedings; and (iii) the unavailability of the Conviction Decision in the language that Mr Ntaganda fully understands and speaks.¹⁴ The Appeals Chamber further notes that the Prosecutor does not object to a reasonable extension of time for the filing of Mr Ntaganda's appeal brief.¹⁵

13. Mr Ntaganda has requested a 100-day extension of the time limit such that his appeal brief would be due on 14 January 2020 instead of 7 October 2019.¹⁶ The length of time requested by Mr Ntaganda is partially contingent on his stated need to have sections of the Conviction Decision in Kinyarwanda, necessitating translation work which he estimates would take two to three months.¹⁷ Mr Ntaganda indicates that the Registry has informed him that a judicial order is required before such work can be undertaken.¹⁸ He disputes this requirement, although he has not presented any arguments on this issue in either the Request or the Translation Request.¹⁹

14. The Appeals Chamber considers that Mr Ntaganda's Translation Request can be accommodated within the schedule set out below without impacting the consideration of the present appeal. Therefore, the Registrar is ordered to provide translation into Kinyarwanda of the sections of the Conviction Decision identified in

¹⁴ [Request](#), paras 13-28.

¹⁵ [Prosecutor's Response](#), paras 4, 6.

¹⁶ [Request](#), para. 1.

¹⁷ [Request](#), paras 1, 26.

¹⁸ [Request](#), para. 25.

¹⁹ [Request](#), para. 25; [Translation Request](#), para. 11.

the Translation Request on a rolling basis in the order set out by Mr Ntaganda. The full translation of these sections shall be provided no later than 7 January 2020. This order is made without prejudice to the question of whether a judicial order is required for translation to be effectuated in accordance with rule 144(2) of the Rules of Procedure and Evidence.

15. Regarding the appropriate schedule for the filing of the appeal brief, the Appeals Chamber notes that the translation issue does not appear to impact on the first two grounds of appeal.²⁰ In order to allow Mr Ntaganda adequate time to prepare his arguments, while ensuring the expeditious conduct of proceedings and a timely consideration of the appeal, the Appeals Chamber considers it appropriate to maintain the briefing schedule set out in the Regulations in relation to the first two grounds of appeal, while granting the extension requested in respect of the remaining grounds of appeal.

16. Accordingly, Mr Ntaganda shall file the first two grounds of appeal identified in his notice of appeal by Monday, 7 October 2019, while the time limit for Mr Ntaganda's remaining grounds of appeal is extended to Tuesday, 14 January 2020.

17. The Appeals Chamber notes that the Prosecutor has requested an extension of time for the filing of her response to the appeal brief on the basis that a significant part of the period for drafting the response briefs would fall during the judicial recess and there is likely to be other appeal litigation, including in relation to sentencing.²¹ The Appeals Chamber considers that the staggered schedule set out above for the filing of the appeal brief will facilitate the Prosecutor's task in responding, noting in particular that the judicial recess is no longer a concern. Accordingly, the Prosecutor's request for an extension of time for filing her response to the appeal brief is rejected.

18. Mr Ntaganda has also requested that the page limit for his appeal brief be extended by 150 pages to a total of 250 pages in order to accommodate the scope and

²⁰ See [Notice of Appeal](#), pp. 7-8; [Translation Request](#), para. 9.

Ground one reads: 'The Trial Chamber erred in rendering a Judgment with the participation of a Judge who did not satisfy the requirements of Article 40 of the Statute, and who was not, as required by Article 74(1) of the Statute, "present at each stage of the trial and throughout [its] deliberations"'. Ground two reads: 'Mr. Ntaganda's right to a fair trial was violated by manifest procedural irregularities in the conduct of the trial proceedings against him'.

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

range of issues he intends to raise on appeal.²² The Prosecutor considers this request to be excessive and submits that an extension of 50 pages would appear reasonable in the circumstances.²³ The Prosecutor also requests that she be granted a matching extension of the page limit for her response, should such be granted to Mr Ntaganda.²⁴

19. Regulation 58(3) of the Regulations provides that the appeal brief shall not exceed 100 pages. Pursuant to regulation 37(2) of the Regulations, a Chamber may grant an extension of the page limit ‘in exceptional circumstances’.

20. The Appeals Chamber finds that the scope and range of the arguments anticipated in the present appeal constitute exceptional circumstances justifying the grant of a reasonable extension of the page limit. It considers that a page extension of 50 pages should be sufficient to allow Mr Ntaganda to clearly and concisely articulate his arguments and considers that the additional pages requested by Mr Ntaganda would not contribute to the clarity or focus of his arguments. The page limit of 150 pages applies to the entirety of the arguments raised in the appeal brief and may be distributed as Mr Ntaganda deems fit between his initial filing on the first two grounds of appeal and the subsequent filing on the remaining grounds of appeal.

21. The Appeals Chamber finds it appropriate to grant the same page extension to the Prosecutor for her response to the appeal brief. Accordingly, the Prosecutor has 150 pages to respond to Mr Ntaganda’s arguments to be distributed as she deems fit between the initial filing in response to the first two grounds of appeal and the subsequent filing in response to the remaining grounds of appeal.

22. Turning to the Prosecutor’s request for the same extension of time for her appeal brief in order to synchronise the time limits for the two appeals, the Appeals Chamber finds that the Prosecutor’s arguments do not demonstrate ‘good cause’ in terms of regulation 35(2) 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.


²² [Request](#), paras 36-37.

²³ [Prosecutor’s Response](#), para. 5.

²⁴ [Prosecutor’s Response](#), para. 5.

23. Finally, the Appeals Chamber notes that a number of responses have been filed by the victims' legal representatives in relation to the procedural matters addressed in the present decision. A decision regulating the timing and manner of victims' participation in the appeals proceedings will be issued in due course. The appropriate time and page limit for the victims' legal representatives' submissions on the appeal briefs will be addressed in that particular decision.

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



Judge Howard Morrison
Presiding

Dated this 20th day of September 2019

At The Hague, The Netherlands