



Original: English

No.: ICC-01/04-02/06
Date: 24 September 2019

THE APPEALS CHAMBER

Before: Judge Howard Morrison, Presiding Judge
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

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)

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart
Ms Helen Brady

Counsel for the Defence

Mr Stéphane Bourgon
Mr Christopher Gosnell
Ms Kate Gibson

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Submissions

1. Mr Ntaganda's request for reconsideration of the Appeals Chamber's 20 September Decision should be dismissed.¹ He has not demonstrated that reconsideration of the Decision is merited. Mr Ntaganda has not shown a clear error of reasoning by the Appeals Chamber or that reconsideration is necessary to prevent an injustice. Nor has he identified new facts or arguments that are relevant to this assessment.²

2. As Mr Ntaganda acknowledges,³ the Appeals Chamber was aware of the concurrent sentencing and reparation proceedings and factored them in its Decision.⁴ The Appeals Chamber was also aware of the issues regarding Ground 1 (judicial independence)⁵ and Ground 2 (fair trial rights).⁶

3. Likewise, Mr Ntaganda was cognisant of the time limit to file his sentencing submissions long before 20 September 2019.⁷ On 12 September 2019, Mr Ntaganda was given advance notice that his written sentencing submissions would be due on 30 September 2019.⁸ In addition, he has had prior notice of the permitted length of the submissions and the approximate date for its filing since 11 July 2019, when Trial Chamber VI notified the parties and participants of its intention to schedule a sentencing hearing for the first or second week of September and to request written

¹ ICC-01/04-02/06-2417 ("Urgent Request") and ICC-01/04-02/06-2415 ("Decision").

² See e.g. ICC-02/04-01/15-1259, para. 12; ICC-02/04-01/15-1210-Red, para. 6; ICC-02/04-01/15-468, para. 4; ICC-01/05-01/13-1896, para. 8; ICC-01/05-01/13-1812, para. 6; ICC-01/05-01/13-1282, para. 8; ICC-01/04-02/06-611, para. 12; ICC-01/04-02/06-483, para. 13; ICC-01/09-01/11-1813, para. 19.

³ Urgent Request, para. 14.

⁴ Decision, para. 12.

⁵ Compare Urgent Request, para. 25 with ICC-01/04-02/06-2396 ("Notice of Appeal"), p. 7.

⁶ Compare Urgent Request, para. 23 with ICC-01/04-02/06-2398 ("Request Extension"), para. 15 and Notice of Appeal, pp. 7-8. See also ICC-01/04-02/06-2400 ("CLRV Response"), para. 14.

⁷ Contra Urgent Request, para. 16 ("on 20 September 2019, the Defence was ordered to file a 60-page sentencing brief on 30 September 2019 as well as a 35-page response to the Prosecution and the Participants' sentencing briefs, by 7 October 2019").

⁸ E-mail from Trial Chamber VI, 12 September 2019, 10:33 ("The Chamber will formally announce the deadlines at the start of the hearings, when it will also put on the record several other matters, but hereby provides advance notice that the written submissions will be due on 30 September 2019, with responses thereto to be filed by 8 October 2019") (emphasis added).

submissions approximately one week after the hearing.⁹ On 20 August 2019, the Chamber scheduled the sentencing hearing for the third week of September (17, 18 and 20 September 2019).¹⁰ In fact, Mr Ntaganda was mindful of these time lines at the time of his original request for extension of time limit and pages (filed on 11 September 2019), as he indicated that he was “required to file its sentencing submissions before the Trial Chamber on or around 27 September 2019”.¹¹

4. With respect to reparations, on 18 September (the day before the filing was due) Mr Ntaganda requested an extension of time to file his observations to the Registry’s submissions “due to the concurring deadlines related to the concurrent Appeal and Sentencing”.¹² Trial Chamber VI granted the request.¹³ It should be noted that the Registry’s submissions largely relate to confined issues regarding the methodology for the identification of non-participating victims.¹⁴ Parties and participants will be entitled to file substantive observations on reparations six weeks after the Sentencing Decision is issued.¹⁵

5. The Prosecution further notes that Mr Ntaganda’s alternative request—to address Ground 3 (as well as Ground 1, and instead of Ground 2) in any appeal brief to be filed by 11 November—appears to be inconsistent with his former position. While he now says that Ground 3 “does not raise any translation issue”,¹⁶ he had

⁹ E-mail from Trial Chamber VI, 11 July 2019, 16:42 (“To facilitate the organisation of any necessary arrangements for your respective teams, please be informed that the Chamber, at this stage and subject to the request to submit further evidence, if any, and the Chamber’s decision thereon, indicates that it provisionally intends: (i) to schedule the hearing of further evidence and/or submissions relevant to the sentence for the first or second week of September 2019; (ii) that the deadline for written submissions by the parties and legal representatives of victims on sentencing will be set for approximately one week after the end of the aforementioned hearing(s), with written responses thereto to follow; and (iii) to set the page limits for those written submissions at 50 pages for the Prosecution, 60 pages for the Defence, and 25 pages each for the Legal Representatives of victims”) (emphasis added).

¹⁰ ICC-01/04-02/06-2384-Red, paras. 59-60. The Chamber noted that this change of the intended schedule was due to the impact that the Ebola situation in eastern DRC had on the appearance of two of the witnesses.

¹¹ Request Extension, para. 19.

¹² ICC-01/04-02/06-2411.

¹³ E-mail from Single Judge, 18 September 2019, 18:50 (also noting that the parties and participants had to file their written submissions on sentencing by 30 September 2019).

¹⁴ ICC-01/04-02/06-2366 (“Reparations Preliminary Order”), para. 4 (a). See ICC-01/04-02/06-2391 (“Registry Observations”), with annexes I and II.

¹⁵ Reparations Preliminary Order, para. 5.

¹⁶ Urgent Request, para. 28.

previously specified that translations of parts of the Judgment into Kinyarwanda were necessary in order to prepare Ground 3.¹⁷

6. Finally, if the Appeals Chamber reconsiders its Decision and extends the time limit for the first part of Mr Ntaganda's appeal brief to 11 November 2019 and grants Mr Ntaganda's alternative request to also brief Ground 3 (together with Ground 1) by the same date,¹⁸ the Prosecution respectfully requests that its response to this part of Mr Ntaganda's appeal is extended 75 days after 11 November (that is on 27 January 2020), so that the judicial recess is still taken into account.¹⁹ The Prosecution also requests an extension of time to file its appeal brief on the same date that Mr Ntaganda files the first part of his appeal brief, to ensure synchronisation.



Fatou Bensouda, Prosecutor

Dated this 24th day of September 2019

At The Hague, The Netherlands

¹⁷ ICC-01/04-02/06-2405, para. 9.

¹⁸ Urgent Request, para. 28.

¹⁹ Decision, para. 17.