



Original: English

**No. ICC-01/04-02/06 A
Date: 13 March 2020**

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 request for extension of page limit and
Order on the filing of public redacted versions of submissions**

Decision and order 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

Ms Kate Gibson

Legal Representatives of Victims

Ms Sarah Pellet

Mr Dmytro Suprun

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 ‘Prosecution Request for an extension of the page limit for its response to the “Defence Appeal Brief - Part II”’ of 5 March 2020 (ICC-01/04-02/06-2482-Conf),

Pursuant to regulations 23*bis* and 37(2) of the Regulations of the Court,

Renders unanimously the following

DECISION AND ORDER

1. The Prosecutor’s request for an extension of the page limit for her response to the second part of Mr Bosco Ntaganda’s appeal brief is rejected.
2. Mr Bosco Ntaganda shall file a public redacted version of the ‘Defence Appeal Brief – Part II’ (ICC-01/04-02/06-2465-Conf) and annex D thereto (ICC-01/04-02/06-2465-Conf-AnxD) or request their reclassification as public by Friday, 27 March 2020.
3. The Prosecutor shall file a public redacted version of the ‘Prosecution request for an extension of the page limit for its response to the “Defence Appeal Brief - Part II”’ (ICC-01/04-02/06-2482-Conf) or request its reclassification as public by Tuesday, 7 April 2020.
4. Mr Bosco Ntaganda shall file a public redacted version of the ‘Defence response to “Prosecution Request for an extension of the page limit for its response to the ‘Defence Appeal Brief - Part II”’ (ICC-01/04-02/06-2487-Conf) or request its reclassification as public by Thursday, 9 April 2020.

REASONS

I. PROCEDURAL HISTORY

1. On 20 September 2019, the Appeals Chamber, *inter alia*, extended the page limit for Mr Bosco Ntaganda's appeal brief and the Prosecutor's response thereto to 150 pages and directed that the appeal brief be filed in two parts to facilitate the timely resolution of the appeal (the 'Decision of 20 September 2019').¹
2. On 1 October 2019, the Appeals Chamber, *inter alia*, rejected Mr Ntaganda's request for a reconsideration of the Decision of 20 September 2019 and rejected his request for a further 50-page extension of the page limit, indicating that the parties would be given an opportunity to amplify their written submissions at an oral hearing.²
3. On 11 November 2019, Mr Ntaganda filed the first part of his appeal brief totalling eleven pages.³
4. On 27 January 2020, the Prosecutor responded to the first part of the appeal brief using 26 pages of the 150-page limit.⁴
5. On 31 January 2020, Mr Ntaganda filed the second part of his appeal brief.⁵
6. On 5 March 2020, the Prosecutor requested a 40-page extension of the page limit for her response to the second part of the appeal brief (the 'Request').⁶
7. On 10 March 2020, Mr Ntaganda responded to the Request (the 'Response').⁷

¹ [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, paras 16, 20-21.

² Decision on Mr Ntaganda's request for reconsideration of the decision on time and page extensions, ICC-01/04-02/06-2426 (the '[Decision of 1 October 2019](#)'), para. 13.

³ Defence Appeal Brief – Part I, ICC-01/04-02/06-2443 (the '[Appeal Brief I](#)').

⁴ Prosecution Response to "Defence Appeal Brief – Part I", ICC-01/04-02/06-2464.

⁵ Defence Appeal Brief – Part II, ICC-01/04-02/06-2465-Conf (the '[Appeal Brief II](#)').

⁶ Prosecution request for an extension of the page limit for its response to the "Defence Appeal Brief - Part II", ICC-01/04-02/06-2482-Conf.

⁷ Defence response to "Prosecution Request for an extension of the page limit for its response to the 'Defence Appeal Brief - Part II'", ICC-01/04-02/06-2487-Conf.

II. MERITS

6. The Prosecutor submits that the 124-page limit that remains for her response to the second part of Mr Ntaganda's appeal brief is insufficient.⁸ She argues that she must develop Mr Ntaganda's submissions and place them in their proper context, in order to properly respond to them.⁹ Given the nature of Mr Ntaganda's submissions, she submits that she requires proportionately more text to apprise the Appeals Chamber 'in a concise yet accurate and complete manner, of all relevant information'.¹⁰

7. Mr Ntaganda opposes the Request on the basis that the Prosecutor's arguments do not establish 'exceptional circumstances' as required by regulation 37(2) of the Regulations of the Court (the 'Regulations') and that allowing the Prosecutor more pages for her response would 'impact the fairness of the appeals proceedings'.¹¹ He submits that the nature of his submissions and the 'wide-ranging scope of his appeal' do not constitute exceptional circumstances and that the Prosecutor merely describes the process of responding to an appeal brief in her Request.¹² He argues that the defence was required 'to concisely articulate its arguments' and 'make strategic choices' in order to comply with the page limit set by the Appeals Chamber and that it would be prejudicial to him to allow the Prosecutor a greater number of pages to respond to these arguments.¹³ Finally, he submits that the law and practice of the Court is to allow the parties the same number of pages in response to the related appeal briefs.¹⁴

8. Regulation 37(2) of the Regulations provides that '[t]he Chamber may, at the request of a participant, extend the page limit in exceptional circumstances'.

9. The Appeals Chamber notes that, when Mr Ntaganda initially requested an additional 150 pages for his appeal brief citing the scope and complexity of the arguments he intended to raise, the Prosecutor objected and argued that a moderate

⁸ Request, para. 9.

⁹ Request, paras 11-15.

¹⁰ Request, paras 15-16.

¹¹ Response, paras 1, 13, 19.

¹² Response, paras 14-18.

¹³ Response, para. 19.

¹⁴ Response, para. 20.

and reasonable extension of 50 pages would suffice.¹⁵ As set out above, in the Decision of 20 September 2019, the Appeals Chamber extended the page limit for Mr Ntaganda's appeal brief and the Prosecutor's response thereto by 50 pages, thereby ensuring that the appellate briefs would be the same length at 150 pages.¹⁶ The Prosecutor again objected when Mr Ntaganda insisted that he would be unable to meaningfully brief his appeal in 150 pages and requested an additional 50 pages.¹⁷ The Appeals Chamber did not grant the additional extension requested by Mr Ntaganda; the page limit for the appeal brief and the response thereto remained 150 pages and Mr Ntaganda complied with this page limit.¹⁸

10. The extension currently sought by the Prosecutor for her response to the appeal brief is in addition to the 50 pages already granted and would result in the Prosecutor filing a greater number of pages in her response than that permitted to be filed by Mr Ntaganda. It is against that background that the Appeals Chamber must consider whether the Prosecutor has demonstrated that exceptional circumstances exist to justify a further extension of the 150 page limit.

11. The Appeals Chamber takes note of the Prosecutor's submission that, in view of the brevity and nature of Mr Ntaganda's arguments, she is required to provide greater context in her response and needs proportionately more pages to do so. The Appeals Chamber has previously held, in relation to extensions of page limits for responses, that '[o]n its own, the fact that certain arguments may merit a response that is longer than the original argument as put by the appellant is not an exceptional circumstance'.¹⁹ In the circumstances of the present appeal, the Appeals Chamber acknowledges that Mr Ntaganda was required to present his arguments concisely given the page limit that was imposed and accepts his argument that he would be put

¹⁵ [Prosecution response to Mr Ntaganda "Request for extension of page limit and time to file appeal Brief" \(ICC-01/04-02/06-2398\)](#), 17 September 2019, ICC-01/04-02/06-2408, paras 4-5.

¹⁶ [Decision of 20 September 2019](#), paras 20-21.

¹⁷ [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"](#), 23 September 2019, ICC-01/04-02/06-2417, paras 8-12; [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'" \(ICC-01/04-02/06-2417\)](#), 24 September 2019, ICC-01/04-02/06-2418, para. 1.

¹⁸ See [Decision of 1 October 2019](#), para. 13; [Appeal Brief I](#); [Appeal Brief II](#).

¹⁹ *The Prosecutor v Jean-Pierre Bemba Gombo*, [Decision on the Prosecutor's request for an extension of the page limit for her response to the document in support of the appeal](#), 4 November 2016, ICC-01/05-01/08-3463, para. 13.

at a disadvantage if the Prosecutor were permitted greater scope to expound the relevant context in her response.

12. For the foregoing reasons, the Appeals Chamber finds that there are no exceptional circumstances warranting a further extension of the page limit for the Prosecutor's response to the second part of Mr Ntaganda's appeal brief. The Request is therefore rejected.

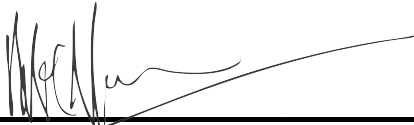
13. Nevertheless, as the Appeals Chamber previously highlighted in relation to Mr Ntaganda's request for an extension of the page limit for his appeal, the parties will be given an opportunity to amplify their written submissions at the oral hearing to be held between 29 June 2020 and 1 July 2020. The Appeals Chamber is of the view that the Prosecutor will be able to present her key submissions in writing within the 150-page limit and may develop those arguments as necessary at the hearing.

14. Finally, the Appeals Chamber notes that the second part of Mr Ntaganda's appeal brief and annexes thereto were filed on a confidential basis because they refer to 'confidential material and evidence on the record'.²⁰ Because the Request and Response refer to the second part of the appeal brief, they were also filed confidentially.

15. The Appeals Chamber considers it appropriate, under regulation 23bis(1) of the Regulations to order Mr Ntaganda to file a public redacted version of the second part of his appeal brief and annex D thereto or request their reclassification as public by Friday, 27 March 2020. The Prosecutor shall file a public redacted version of the Request or request its reclassification as public by Tuesday, 7 April 2020, and Mr Ntaganda shall file a public redacted version of his Response or request its reclassification as public by Thursday, 9 April 2020.

²⁰ Appeal Brief II, fn. 2, *referring to* annex C (list of *ex parte* filings (ICC-01/04-02/06-2465-Conf-AnxC)) and annex D (list of authorities (ICC-01/04-02/06-2465-Conf-AnxD)).

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



Judge Howard Morrison
Presiding

Dated this 13th day of March 2020

At The Hague, The Netherlands