



**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Mehmet Güney, Pre-Appeal Judge  
**Registrar:** Mr. Adama Dieng  
**Decision of:** 19 January 2010

**Théoneste BAGOSORA  
Aloys NTABAKUZE  
Anatole NSENGIYUMVA**

**v.**

**THE PROSECUTOR**

*Case No. ICTR-98-41-A*

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**DECISION ON ANATOLE NSENGIYUMVA'S MOTION FOR EXTENSION  
OF WORD LIMIT FOR HIS APPEAL BRIEF**

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**I, Mehmet GÜNEY**, Judge of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively), and Pre-Appeal Judge in this case;

**NOTING** the appeal lodged by Anatole Nsengiyumva (“Nsengiyumva”)<sup>1</sup> against the Trial Judgement pronounced in this case on 18 December 2008 and filed in English on 9 February 2009;<sup>2</sup>

**NOTING** that Nsengiyumva’s appeal brief is due to be filed no later than 1 February 2010;<sup>3</sup>

**BEING SEIZED OF** “Extremely Urgent Motion for Extension of Word Limit for Filing Nsengiyumva’s Appeal Brief”, filed on 14 January 2010 (“Motion”), in which Nsengiyumva requests an extension of the page limit for his appeal brief to 130 pages or 40,000 words, “whichever is greater”, in order to adequately and exhaustively address all the points of law and fact raised in his appeal;<sup>4</sup>

**NOTING** that, in support of his Motion, Nsengiyumva argues that (i) he alleges errors relating to the assessment of the evidence which require considerable references to and analysis of extensive parts of the trial record;<sup>5</sup> (ii) “this trial is one of the most complex in the history of the Tribunal spanning several years and involving testimonies from several hundred witnesses and pieces of documentary evidence”;<sup>6</sup> (iii) the Trial Judgement is over 600 pages long;<sup>7</sup> and (iv) the issues raised in his appeal are “of considerable complexity”;<sup>8</sup>

**NOTING** that the Prosecution has not yet filed a response;

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<sup>1</sup> See Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 11 March 2009; Public Amended Notice of Appeal in the Interest of: Major Aloys Ntabakuze, 18 May 2009 (“Notice of Appeal”).

<sup>2</sup> *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Judgement and Sentence, signed on 18 December 2008, filed on 9 February 2009 (“Trial Judgement”).

<sup>3</sup> Decision on Anatole Nsengiyumva’s Motion for Extension of Time for Filing his Appeal Brief, 11 January 2010, p. 3.

<sup>4</sup> Motion, para. 4, p. 6. See also *ibid.*, para. 14. The Appeals Chamber also notes Nsengiyumva’s request that it order the filing of expedited responses and issue an expeditious decision so as to allow him sufficient time to organize his appeal brief. See Motion, para. 15.

<sup>5</sup> Motion, paras. 5-11.

<sup>6</sup> Motion, para. 12.

<sup>7</sup> Motion, para. 12.

<sup>8</sup> Motion, para. 12.

**CONSIDERING** that, pursuant to Rule 108*bis* of the Rules of Procedure and Evidence of the Tribunal, the Pre-Appeal Judge shall ensure that the proceedings are not unduly delayed and shall take any measures related to procedural matters with a view to preparing the case for a fair and expeditious hearing;

**CONSIDERING** that the Pre-Appeal Judge may dispose of a motion for an extension of word limits without giving the other party the opportunity to respond if he is of the opinion that no prejudice would be caused to the other party;<sup>9</sup>

**NOTING** that paragraph C(1)(a) of the Practice Direction provides that “the brief of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 30,000 words F...g”;

**CONSIDERING** that pursuant to paragraph C(5) of the Practice Direction, variations from word limits may be authorized if requested in advance and supported by an explanation of the exceptional circumstances that justify the oversized filing;

**RECALLING** that the quality and effectiveness of an appeal brief does not depend on the length but on the clarity and cogency of the arguments presented and that, therefore, excessively long briefs do not necessarily serve the cause of efficient administration of justice;<sup>10</sup>

**CONSIDERING** that allegations of errors in assessing the evidence do not automatically call for extensive quotations from evidentiary material in the main body of an appeal brief;<sup>11</sup>

**CONSIDERING** that an appeal is not a trial *de novo* and that the length of the Trial Judgement and the size of the trial record are not in and of themselves factors that constitute exceptional circumstances on appeal;<sup>12</sup>

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<sup>9</sup> Practice Direction on the Length of Briefs and Motions on Appeal, dated 8 December 2006, para. C(6) (“Practice Direction”).

<sup>10</sup> See, e.g., *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Defence Motions for Extension of Word Limit, 8 September 2009, p. 4; *Léonidas Nshogoza v. The Prosecutor*, Case No. ICTR-07-91-A, Decision on Léonidas Nshogoza’s Motion to Exceed Word Limits, 31 July 2009, para. 5; *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Decision on Defence Motion for Leave to Exceed the Word Limit, 12 May 2009 (“*Nchamihigo* Decision”), p. 2; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Defence Motion for Extension of Word Limit for Defence Appellant’s Brief, 6 October 2006, p. 3.

<sup>11</sup> *Nchamihigo* Decision, p. 2; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Decision on Motion for Leave to Exceed the Word Limit, 3 April 2008, p. 4. I recall that an appellant may submit with his appeal brief an appendix containing “references, source materials, items from the record, exhibits, and other relevant, non-argumentative material”. See Practice Direction, para. C(4).

<sup>12</sup> See *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Decision on Defence Motion on Behalf of Enver Hadžihasanović Seeking Leave to Exceed Words Limit for the Appeal Brief, 22 January 2007, p. 3,

**CONSIDERING**, however, that Nsengiyumva's submissions reflect that his appeal raises a particularly broad range of factual and legal issues,<sup>13</sup> some of which are of significant complexity or require the discussion of considerable parts of the voluminous trial record;

**CONSIDERING** that the requested extension of the word limit is not unreasonable in light of the particular nature of Nsengiyumva's appeal;

**FINDING** therefore that exceptional circumstances exist which justify the oversized filing;

**CONSIDERING** that the Practice Direction follows the principle of allowing the respondent to file a brief of the same length as the appeal brief and that therefore in granting an extension of the word limit the Prosecution will not be prejudiced;

**FOR THE FOREGOING REASONS,**

**GRANT** the Motion;

**ORDER** Nsengiyumva to file his appeal brief consisting of no more than 40,000 words no later than 1 February 2010; and

**ALLOW** the Prosecution to file a response brief of up to 40,000 words in response to Nsengiyumva's appeal brief.

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

Done this nineteenth day of January 2010,  
At The Hague,  
The Netherlands.

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Judge Mehmet Güney  
Pre-Appeal Judge

**FSeal of the Tribunal**

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*referring to Ferdinand Nahimana v. The Prosecutor*, Case No. ITCR-99-52-A, Decision on Ferdinand Nahimana's Second Motion for an Extension of Page Limits for Appellant's Brief, 31 August 2004, p. 3.

<sup>13</sup> I note that, in his Notice of Appeal, Nsengiyumva raises *inter alia* (i) challenges to the Trial Chamber's factual findings regarding the five "incidents" he was convicted for; (ii) legal and factual challenges relating to the two modes of liability under which he was held responsible; (iii) legal and factual challenges regarding his responsibility as a superior under Article 6(3) of the Statute; (iv) issues relating to the form of the indictment; (v) issues related to the fairness of the trial; (vi) issues regarding the burden of proof; and (vii) alleged errors relating to sentencing.