

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**

Date: **26 September 2016**

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmański
Judge Raul C. Pangalangan

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public

**Prosecution's response to Ntaganda's request for an extension of time to submit
the Document in Support of the Appeal**

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

Legal Representatives of Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

Introduction

1. The Prosecution opposes the *Ntaganda* Defence's request to extend its deadline until 10 October 2016 to file its document in support of its appeal challenging the decision continuing the restrictions placed on Bosco Ntaganda's contacts.¹ The Defence fails to show good cause for this extension of time. Nor does it justify the length of the sought extension. Not only does the Defence fail to explain why its request—labelled urgent—comes a full ten days after leave to appeal was granted, and less than three days before the expiry of its deadline,² none of the reasons advanced are new. Moreover, although the Defence claims that it merely seeks “a six-day extension of the statutory time limit”,³ in effect, the sought extension will give the Defence approximately 23 days—and more than twice the allotted time—to submit its appeal brief.⁴ Not only will this alter the parity of the time allotted to the parties and participants on this appeal, it would also negatively affect, at this late stage, the Prosecution's legitimate expectation of the briefing schedule and its team's own internal scheduling and allocation of resources across multiple competing commitments on appeal.

2. If, however, the Appeals Chamber is minded to grant the Defence a limited extension of time, the Prosecution does not object to extending the Defence's deadline until Monday, 3 October 2016, and requests a similar extension of time for its response.

Submissions

3. Regulation 35 of the Regulations of the Court allows the Chamber to extend the time limit, if good cause is shown. A cause is good, only when it is based on “sound

¹ ICC-01/04-02/06-1543 OA4 (“Request”). See also ICC-01/04-02/06-1513 (“16 September 2016 Decision granting leave to appeal”).

² Leave to appeal was granted on 16 September 2016. The defence appeal is due on 29 September 2016.

³ Request, para. 1.

⁴ The Defence was on notice for this appeal since 16 September 2016.

reasons” that would “objectively” justify the inability of a party to comply with his/her obligations.⁵ Moreover, as the Appeals Chamber has held, “any departure from the time limits set by the Rules or Regulations of the Court must not derail the proceedings from their ordained course, requiring that they be conducted and concluded within a reasonable time”.⁶

4. The Defence fails to show good cause for its requested extension of time.

5. *First*, contrary to the Defence’s claims on “the legal and factual complexity of the issues”,⁷ the appeal itself is limited to one discrete issue.⁸ The appeal does not require the parties to unravel the “factual foundation of the litigation”.⁹ Likewise, the Defence fails to justify the relevance of “numerous hours of audio-recordings” to the subject-matter of the appeal, and indeed, the corrective nature of the appellate process, where an appellant is confined to showing error on appeal.¹⁰

6. *Second*, that the Defence is currently “in the midst of the 6th evidential block of the Prosecution case” is irrelevant to its Request.¹¹ By its nature, interlocutory appeals are scheduled while trial proceedings are ongoing. Moreover, the Defence team, well-equipped with several counsel, was well aware that it would be required to cross-examine witnesses.¹²

7. *Third*, Mr Ntaganda’s family visit should have no bearing on this Request. And the Defence barely expresses why this should even be a relevant factor. Even so, Mr

⁵ ICC-01/04-01/07-653 OA7, para. 5.

⁶ ICC-01/04-01/07-653 OA7, para. 6; ICC-01/05-01/08-827 OA3, para. 10.

⁷ Request, para. 1.

⁸ See 16 September 2016 Decision granting leave to appeal, paras. 6, 17-19, p. 10, granting leave to appeal only on the Third Alternative Issue: whether the Trial Chamber erred in determining that the continued restrictions are necessary and proportionate to the objectives being served, including in respect of Regulation 101(2) of the Regulations of the Court.

⁹ *Contra* Request, para. 5.

¹⁰ *Contra* Request, para. 5.

¹¹ *Contra* Request, para. 6.

¹² *Contra* Request, para. 6.

Ntaganda continues to have full access to his counsel during his family visit, and he can guide them on the “presentation of the appeal” as needed.¹³

8. *Fourth*, and finally, the Defence fails to justify the length of the extension sought. Contrary to the Request, the extension sought is not “limited”.¹⁴ It would, in effect, give the Defence approximately twice the allotted time to submit its appeal brief. Nor is it accurate to state that the Prosecution will not be prejudiced.¹⁵ To the contrary, as the Appeals Chamber has held and given the lateness of this Request, the Prosecution team was entitled to assume the normal briefing schedule and that the Defence would have already made substantial progress on the appeal.¹⁶ The Prosecution has therefore allocated its limited resources accordingly, especially with its current multiple competing commitments on appeal.¹⁷ The Defence has not shown why it was compelled to make this Request at the eleventh hour, and less than three days prior to the expiry of the time limit.

9. Nevertheless, if the Appeals Chamber were minded to grant the Defence a limited extension, the Prosecution does not object if the Defence deadline is extended to 3 October 2016, and requests a similar extension for its response.

¹³ *Contra* Request, para. 7.

¹⁴ *Contra* Request, paras. 1- 8.

¹⁵ *Contra* Request, para. 8.

¹⁶ See ICC-01/05-01/08-827 OA3, paras. 10-11, where the Appeals Chamber considered the Prosecution’s expectation in deciding if the length of the extension was justified.

¹⁷ *Inter alia*, the Prosecution’s appeals section is currently responding to Bemba’s conviction appeal, due on 21 November 2016. The Prosecution’s sentence appeal brief in the *Bemba* Main case is due on 21 October 2016. The delivery of the article 70 trial judgement is scheduled for 19 October 2016, thus triggering the final appeal in that case.

Conclusion

10. The Defence fails to show good cause to extend time until 10 October 2016. Its Request should therefore be rejected. If the Appeals Chamber is so minded, the Prosecution does not object to a limited extension of time until Monday, 3 October 2016, and requests a similar extension accordingly.



Fatou Bensouda, Prosecutor

Dated this 26th day of September 2016

At The Hague, The Netherlands