

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 20 January 2017

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
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

Former Child Soldiers' response to the "Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal"

Source: Office of Public Counsel for Victims (CLR1)

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

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**Unrepresented Applicants
(Participation/Reparation)**

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**The Office of Public Counsel for the
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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. The Common Legal Representative of the former child soldiers (the “Legal Representative”) hereby files her response to the “Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal” (the “Defence Application”).¹ The Legal Representative opposes the Application as the Defence fails to demonstrate good cause for the extension of time sought. In particular, the Defence Application fails to elaborate on the particular complexity or novelty of the issues on appeal, and thus does not satisfy the requirements prescribed under regulation 35 of the Regulations of the Court.

2. However, should the Appeals Chamber (the “Chamber”) be minded to grant the Defence Application, the Legal Representative respectfully requests to be allotted equal time to file her response to the document in support in the appeal so as to preserve the parity and fairness of the proceedings.

II. PROCEDURAL HISTORY

3. On 4 January 2017, Trial Chamber VI issued the “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9” whereby it dismissed the Defence’s jurisdictional challenge.²

4. On 10 January 2017, the Defence filed the “Appeal on behalf of Mr Ntaganda against Trial Chamber VI’s ‘Second decision on the Defence’s challenge to the

¹ See the “Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal”, No. ICC-01/04-02/06-1720 OA5, 17 January 2017, (the “Application”). See also the “Corrected version of ‘Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal’, 17 January 2017, ICC-01/04-02/06-1720”, No. ICC-01/04-02/06-1720-Corr, 19 January 2017 (dated 18 January 2017).

² See the “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9”(Trial Chamber VI), No. ICC-01/04-02/06-1707, 4 January 2017.

jurisdiction of the Court in respect of Counts 6 and 9', ICC-01/04-02/06-1707" (the "Appeal").³

5. On 17 January 2017, the Defence filed the "Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal", in which it requested a 7-day extension of time to file the Document in support of the Appeal.⁴

III. RESPONSE

6. Regulation 35 of the Regulations of the Court allows the Chamber to extend the time limit where good cause is shown. A good cause exists only when it is based on "*sound reasons*" that would "*objectively*" justify the inability of a party to comply with its obligations.⁵

7. At the outset, the Legal Representative submits that the circumstances of the present appeal are distinguishable from those giving rise to many of the decisions cited in the Defence Application. Several decisions quoted in said application either relate to an extension of time in respect of a more limited ten-day time limit for appeals filed under Regulation 65(5) of the Regulation of the Court⁶ or, concern appeals against a conviction decision involving time-consuming difficulties

³ See the "Appeal on behalf of Mr Ntaganda against Trial Chamber VI's 'Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9', ICC-01/04-02/06-1707", ICC-01/04-02/06-1710 OA5, 10 January 2017.

⁴ See the Application, *supra* note 1.

⁵ See the "Reasons for the 'Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007' issued on 16 February 2007" (Appeals Chamber), 21 February 2007, No. ICC-01/04-01/06-834 OA8, para. 9.

⁶ For instance, the "Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor's document in support of the appeal" (Appeals Chamber), No. ICC-01/04-01/06-190 OA3, 11 July 2006.

attributable to translation.⁷ It is submitted that those decisions are misleading and do not apply to the determination of the Defence Application. On the other hand, the Defence has not made any reference to decisions on variation of time limits in respect of appeals against decisions on admissibility or jurisdiction under Regulation 64 of the Regulations of the Court, for which a 21-day time limit applies.

8. Notwithstanding the foregoing, the Legal Representative notes that the Chamber has generally recognised that the *“concurrent heavy work load in the trial proceedings combined with the potential legal and factual complexity of the issue on appeal”* may justify an extension of time.⁸ Thus, in considering a request for variation of a time limit pursuant to Regulation 35 of the Regulations of the Court, it is not sufficient to simply rely on the burden of work or on the multiplicity of proceedings to establish the existence of good cause. Indeed, by their nature, interlocutory appeals take place while trial proceedings are ongoing. In assessing the merits of the Defence Application, due regard must be given to the potential legal and factual complexity of the issue on appeal.

9. The present appellate proceedings relate to one discrete legal issue namely, whether the Trial Chamber erred in holding that *“members of the same armed force are not per se excluded as potential victims of the war crimes of rape and sexual slavery, as listed in Article 8(2)(b)(xxii) and (e)(vi)”*.⁹

10. Contrary to the Defence’s assertions,¹⁰ the fact that the Appeal may have “ramifications for other cases” does not *per se* render the issue more complex.

⁷ For instance, the “Decision on requests for an extension of the time limit for the filing of the documents in support of the appeal” (Appeals Chamber), No. ICC-01/05-01/13-2046 A A2 A3 A4 A5, 23 November 2016.

⁸ See the “Decision on the ‘Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal’” (Appeals Chamber), No. ICC-01/04-02/06-1549 OA4, 28 September 2016, para. 10.

⁹ See the “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9” (Trial Chamber VI), *supra* note 2, para. 54.

¹⁰ See the Application, *supra* note 1, para. 7.

Moreover, the issues likely to arise from this Appeal are not new and have been raised by the Defence as early as February 2014, and thereafter on at least four occasions, at length, in writing.¹¹ Accordingly, numerous aspects of this Appeal were already submitted to the Appeals Chamber, which considered the Defence's arguments in its Judgment and subsequently remanded the matter to the Trial Chamber with further specific instructions and guidance.¹² Previous proceedings – including those on appeal – concerning the Defence's jurisdictional challenge have significantly contributed to narrowing the issues in dispute. Most of the issues likely to arise at this stage have already been addressed at length by the parties, participants as well as by various Chambers throughout pre-trial and trial proceedings.¹³

¹¹ See the transcript of the hearing held on 13 February 2014, No. ICC-01/04-02/06-T-10-RED-ENG, p. 27. See also the "Conclusions écrites de la Défense de Bosco Ntaganda suite à l'Audience de confirmation des charges", No. ICC-01/04-02/06-292-Red2, 14 April 2014, paras. 250-263; the "Application on behalf of Mr Ntaganda challenging the jurisdiction of the Court in respect of Counts 6 and 9 of the Document containing the charges", No. ICC-01/04-02/06-804, 1 September 2015; the "Appeal on behalf of Mr Ntaganda against Trial Chamber VI's 'Decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9', ICC-01/04-02/06-892". No. ICC-01/04-02/06-909, 19 October 2015 and the "Consolidated submissions challenging jurisdiction of the Court in respect of Counts 6 and 9 of the Updated Document containing the charges", No. ICC-01/04-02/06-1256, 7 April 2016.

¹² See the "Judgment on the appeal of Mr Bosco Ntaganda against the "Decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9"(Appeals Chamber), No. ICC-01/04-02/06-1225 OA3, para. 40.

¹³ *Idem*. See also *supra* note 11 and the "Conclusions écrites de la Défense de Bosco Ntaganda suite à l'Audience de confirmation des charges, 14 April 2014", No. ICC-01/04-02/06-292-Red2, 15 avril 2014 ; the "Observations finales au nom des anciens enfants-soldats", No. ICC-01/04-02/06-273, 7 March 2014; the "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda"(Pre-Trial Chamber II), No. ICC-01/04-02/06-309, 9 June 2014; the "Former child soldiers' response to the 'Application on behalf of Mr Ntaganda challenging the jurisdiction of the Court in respect of Counts 6 and 9 of the Document containing the charges'", No. ICC-01/04-02/06-814, 9 September 2015; the "Prosecution Response to the 'Application on behalf of Mr Ntaganda challenging the jurisdiction of the Court in respect of Counts 6 and 9 of the Document Containing the Charges', ICC-01/04-02/06-804", No. ICC-01/04-02/06-818, 11 September 2015; the "Decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9"(Trial Chamber VI), No. ICC-01/04-02/06-892, 9 October 2015; the "Consolidated submissions challenging jurisdiction of the Court in respect of Counts 6 and 9 of the Updated Document containing the charges", No. ICC-01/04-02/06-1256, 7 April 2016; the "Prosecution's response to Mr Ntaganda's 'Consolidated submissions challenging jurisdiction' regarding Counts 6 and 9'", No. ICC-01/04-02/06-1278, 14 April 2016; and the "Former child soldiers' Response to the 'Consolidated submissions challenging jurisdiction of the Court in respect of Counts 6 and 9 of the Updated Document containing the charges'", No. ICC-01/04-02/06-1279, 14 April 2016.

11. Moreover, in assessing the requirements for good cause, it is important to note that this Appeal constitutes a second attempt by the Defence to challenge the jurisdiction of the Court in respect of counts 6 and 9 of the charges. The Defence cannot therefore reasonably argue that the contingency of the ongoing trial proceedings militates in favour of a variation of the time limit.

12. Accordingly the Defence Application fails to demonstrate that there exists good cause justifying an extension of the time limit for the filing of the document in support of the Appeal. Nonetheless, should the Appeals Chamber grant the Defence Application, the Legal Representative requests to be granted a similar extension to file her response to the Document in support of the appeal. This is in line with the practice of the Chamber in the case with respect to requests for extension of time.¹⁴

FOR THESE REASONS, the Legal Representative respectfully requests the Chamber to dismiss the Defence Application. However, should the Appeals Chamber be minded to grant the Defence Application, the Legal Representative respectfully requests to be allotted equal time to file her response to the document in support in the appeal.



Sarah Pellet
Common Legal Representative of the Former
Child soldiers

Dated this 20th Day of January 2017

At The Hague, The Netherlands

¹⁴ See the "Decision on the 'Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal'", *supra* note 8, para. 12.