

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **10 July 2020**

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung, Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuccion

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

**Decision on Defence Request for an Extension of Time Limit to File a Request for Leave
to Appeal**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for Bosco Ntaganda

Mr Stéphane Bourgon
Ms Kate Gibson

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 Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Others

Trial Chamber VI ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Regulation 35(2) of the Regulations of the Court ('Regulations'), issues this 'Decision on Defence Request for an Extension of Time Limit to File a Request for Leave to Appeal'.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 26 June 2020, the Chamber issued the 'First Decision on Reparations Process' ('First Decision').¹ Among other things, the Chamber issued instructions in relation to documents submitted for the Chamber's consideration in the context of the aforesaid decision, namely: (i) the Registry to file a confidential redacted version of Annex II to the 'Registry's Observations on Reparations' ('Registry Submissions')² by 6 July 2020;³ and (ii) the LRV2 to file a confidential redacted version of its submissions filed on 21 April 2020 ('LRV2 COVID-19 Submissions'),⁴ within three days after the filing of a confidential redacted version of the aforementioned Annex II.⁵ It also directed the Registry to liaise with Trial Chamber II, as necessary and as soon as possible, for the purpose of either reclassifying Annex III to the Registry Submissions as confidential or, alternatively, of filing a confidential redacted version thereof.⁶
2. On 6 July 2020, the Defence filed a request for an extension of time until 13 July 2020 to submit a request for clarification, reconsideration, and/or leave to appeal the First Decision ('Defence Request').⁷ The Defence argues that good cause justifies the requested extension, since access to confidential redacted versions of Annexes II and III to the Registry Submissions and of the LRV2 COVID-19 Submissions (jointly, the 'Three Documents') is necessary for it to determine whether to submit a request for clarification, reconsideration, and/or leave to appeal the First Decision.⁸ In support of its

¹ ICC-01/04-02/06-2547.

² ICC-01/04-02/06-2475, 28 February 2020 (at the time of filing, with public Annex I, confidential *ex parte* Annex II available only to the LRVs, the TFV, and the Registry, and confidential *ex parte* Annex III only available to the Registry).

³ First Decision, p. 19.

⁴ Submissions by the Common Legal Representative of the Victims of the Attacks pursuant to the "Order to provide information on the impact of COVID-19 measures on operational capacity", ICC-01/04-02/06-2518-Conf-Exp (confidential *ex parte*, available only to the LRVs, the Registry, and the TFV; a public redacted version was notified on the same day as ICC-01/04-02/06-2518-Red).

⁵ First Decision, p. 19.

⁶ First Decision, p. 20.

⁷ Expedited request on behalf of Mr. Ntaganda seeking a limited extension of time to submit a request for clarification, reconsideration and/or leave to appeal the "First Decision on Reparations Process", ICC-01/04-02/06-2550-Conf.

⁸ Defence Request, paras 1-2, 17-19.

argument, the Defence refers to the fact that the Three Documents are referred to in three of the footnotes to the First Decision.⁹

3. That same day, the Registry filed a confidential redacted version of Annex II to the Registry Submissions.¹⁰
4. On 7 July 2020, in line with the deadline set by the Chamber,¹¹ the LRVs jointly responded to the Defence Request, opposing it.¹² They argue that the request is untimely, although the Defence had been fully aware, as of 26 June 2020, that the Three Documents would not be available to it before 6 July 2020.¹³ They further submit that, in any event, there is no indication that the materials contained in the Three Documents were determinative for the Chamber's First Decision and therefore necessary for the Defence to determine whether to submit a request for leave to appeal.¹⁴ In relation to Annex III to the Registry Submissions, the LRVs also aver that the Defence indirectly conceded that the document is irrelevant for the purposes of a potential request for leave to appeal, since at the time of filing of the Defence Request there was no indication that the document would be provided to the Defence before the proposed new deadline for leave to appeal.¹⁵ Therefore, the LRVs submit that the Defence fails to show good cause justifying the requested extension.¹⁶
5. That same day, pursuant to Trial Chamber II's instruction dated 3 July 2020, Annex III to the Registry Submissions was reclassified as confidential.¹⁷
6. On 8 July 2020, the LRV2 filed a confidential redacted version of the LRV2 COVID-19 Submissions.¹⁸

⁹ Defence Request, para. 16 and footnote 12.

¹⁰ ICC-01/04-02/06-2475-Conf-AnxII-Red.

¹¹ Email from the Chamber to the parties, the Prosecution, the Registry, and the TFV on 7 July 2020, at 10:04.

¹² Joint Response of the Common Legal Representatives of victims to the "Expedited request on behalf of Mr. Ntaganda seeking a limited extension of time to submit a request for clarification, reconsideration and/or leave to appeal the 'First Decision on Reparations Process'", ICC-01/04-02/06-2551-Conf ('LRVs Response').

¹³ LRVs Response, paras 9-10, 14.

¹⁴ LRVs Response, paras 11-12. *See also* para. 13.

¹⁵ LRVs Response, para. 13.

¹⁶ LRVs Response, paras 9, 13-14.

¹⁷ ICC-01/04-02/06-2475-Conf-AnxIII.

¹⁸ ICC-01/04-02/06-2518-Conf-Red2.

II. ANALYSIS

7. At the outset, the Chamber notes that the Defence Request is to be understood as a request for an extension of time to file a request for leave to appeal the First Decision. It further notes that, in accordance with Rule 155(1) of the Rules of Procedure and Evidence and Regulation 33(1) of the Regulations, the deadline for filing a request for leave to appeal the First Decision was Friday, 3 July 2020. The Defence Request was thus filed after the lapse of the relevant time limit.
8. Pursuant to Regulation 35(2) of the Regulations, the Chamber may extend or reduce a time limit if good cause is shown. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control. The Chamber notes that the Defence has not attempted to demonstrate that it was unable to file the request within the above-mentioned time limit for reasons outside of its control.
9. Nevertheless, the Chamber considers it in the interests of justice to assess the merits of the Defence Request. The Chamber notes the Defence's argument that access to the Three Documents is necessary for it to assess whether to file a request for leave to appeal the First Decision, in light of the fact that the decision refers to the Three Documents in three of its footnotes.¹⁹ However, the Chamber also notes that, as pointed out by the LRVs:²⁰ (i) footnotes 22 and 23 of the First Decision refer to Annexes II and III to the Registry Submissions in the context of the decision's procedural history, and that their existence, as well as the type of information that they comprise, was known to the Defence at the time of filing of the Registry Submissions;²¹ and (ii) footnote 81 refers to, among other things, a number of paragraphs from the LRV2 COVID-19 Submissions as one of two sources indicating that the LRV2 supported the carrying out of a Registry-led mapping exercise, a procedure adopted by the Chamber in the First Decision.²² While some of the referenced paragraphs of the LRV2 COVID-19 Submissions contain some redactions vis-à-vis the Defence, the matter referred to by the Chamber in footnote 81 – that is, the LRV2's support for a

¹⁹ Defence Request, paras 16-18, referring to footnotes 22, 23, and 81 of the First Decision.

²⁰ LRVs Response, para. 12.

²¹ Registry Submissions, para. 11.

²² First Decision, paras 34-35 and p. 19.

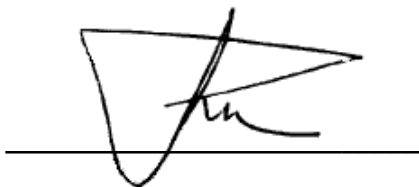
Registry-led mapping exercise – is evident from the paragraphs referred to of the public redacted version of the LRV2 COVID-19 Submissions.²³ In these circumstances, the Chamber considers that access to the Three Documents is not necessary for the Defence to assess whether to request leave to appeal the First Decision. Therefore, the Chamber considers that good cause for the requested extension has not been shown.

10. In light of the foregoing, the Chamber rejects the Defence Request.

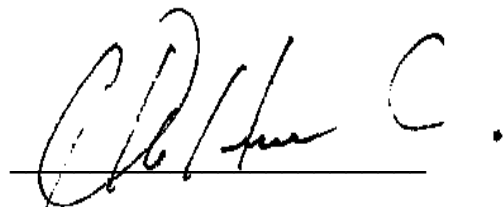
Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Robert Fremr



Judge Olga Herrera Carbuccion

Dated 10 July 2020

At The Hague, The Netherlands

²³ ICC-01/04-02/06-2518-Red, paras 14-17, 19.