



**Original: English**

**No. ICC-01/04-02/06 OA 4  
Date: 28 September 2016**

**THE APPEALS CHAMBER**

**Before:** Judge Howard Morrison, Presiding Judge  
Judge Sanji Mmasenono Monageng  
Judge Christine Van den Wyngaert  
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**

**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”**

**Decision 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  
Mr Christopher Gosnell

**Legal Representatives of Victims**  
Ms Sarah Pellet  
Mr Dmytro Suprun

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**Registrar**  
Mr Herman von Hebel

**Detention Section**  
Mr Patrick Craig

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI entitled “Public redacted version of ‘Decision reviewing the restrictions placed on Mr Ntaganda’s contacts’” of 7 September 2016 (ICC-01/04-02/06-1494-Red3),

Having before it the “Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal” of 26 September 2016 (ICC-01/04-02/06-1543),

*Renders*, pursuant to regulation 35 (2), read with regulation 33, of the Regulations of the Court, the following

## DECISION

1. The time limit for the filing of Mr Bosco Ntaganda’s document in support of the appeal is extended to 16h00 on Thursday, 6 October 2016.
2. The time limit for the filing of the responses to the document in support of the appeal by the Prosecutor and the victims participating in this case is extended to 16h00 on Monday, 24 October 2016.

### Reasons

#### I. PROCEDURAL HISTORY

1. On 18 August 2015, Trial Chamber VI (“Trial Chamber”) issued the “Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts”<sup>1</sup> ordering, *inter alia*, certain restrictions that had been placed on Mr Bosco Ntaganda’s (“Mr Ntaganda”) communications on an interim basis to remain in place.

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<sup>1</sup> ICC-01/04-02/06-785-Conf-Exp. A public redacted version was filed on the same day as ICC-01/04-02/06-785-Red.

2. On 7 September 2016, the Trial Chamber issued the “Decision reviewing the restrictions placed on Mr Ntaganda’s contacts”<sup>2</sup> (“Impugned Decision”) in which it decided to, *inter alia*, (i) maintain the restrictions originally imposed; (ii) reinstate a certain individual to Mr Ntaganda’s list of non-privileged contacts; and (iii) continue to periodically review the restrictions.<sup>3</sup>
3. On 13 September 2016, Mr Ntaganda filed a request for leave to appeal the Impugned Decision (“Request for Leave”).<sup>4</sup> On the same day, the Trial Chamber shortened the time limit for responses to the Request for Leave to 14 September 2016.<sup>5</sup>
4. On 16 September 2016, following receipt of responses by the Prosecutor<sup>6</sup> and the victims<sup>7</sup>, the Trial Chamber issued the “Decision on Defence request for leave to appeal the ‘Decision reviewing the restrictions placed on Mr Ntaganda’s contacts’”<sup>8</sup> (“Decision on Leave to Appeal”), whereby the Trial Chamber, by majority, Judge Chung dissenting, granted Mr Ntaganda leave to appeal in relation to a single issue.<sup>9</sup>
5. On 26 September 2016, Mr Ntaganda filed before the Appeals Chamber an “Urgent request on behalf of Mr Ntaganda seeking an extension of time limit to submit the Document in Support of the Appeal”<sup>10</sup> (“Request”).

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<sup>2</sup> ICC-01/04-02/06-1494-Conf-Exp, confidential, *ex parte*, Registry only. Two confidential, *ex parte*, redacted versions were filed on the same day, Prosecution and Registry only (ICC-01/04-02/16-1494-Conf-Exp-Red) and Defence and Registry only, (ICC-01/04-02/06-1494-Conf-Exp-Red2). A public redacted version was also filed on the same day (ICC-01/04-02/06-1494-Red3).

<sup>3</sup> Impugned Decision, para. 36 and p. 19.

<sup>4</sup> “Request for leave to appeal decision maintaining restrictions on Mr Ntaganda’s communications and contacts”, ICC-01/04-02/06-1501-Conf-Exp, confidential, *ex parte*, Defence, Prosecution and Registry only. On the same day a public redacted version was filed (ICC-01/04-02/06-1501-Red).

<sup>5</sup> See Transcript of hearing on 13 September 2016, ICC-01/04-02/06-T-130-CONF-ENG, p.17, lines 12-13.

<sup>6</sup> “Prosecution’s response to the Defence’s request for leave to appeal the decision reviewing restrictions placed on Mr Ntaganda’s contacts”, ICC-01/04-02/06-1506-Conf-Exp, confidential, *ex parte*, Prosecution and Registry only, registered on 15 September 2016.

<sup>7</sup> “Response of the Common Legal Representative of the Attacks to the ‘Public redacted version of “Request for leave to appeal decision maintaining restrictions on Mr Ntaganda’s communications and contacts’””, ICC-01/04-02/06-1505, registered on 15 September 2016 and “Former child soldiers’ response to the ‘Public redacted version of “Request for leave to appeal decision maintaining restrictions on Mr Ntaganda’s communications and contacts’””, ICC-01/04-02/06-1507.

<sup>8</sup> ICC-01/04-02/06-1513.

<sup>9</sup> Decision on Leave to Appeal, p. 10.

<sup>10</sup> ICC-01/04-02/06-1543 (OA4).

6. On 26 September 2016, the Prosecutor filed the “Prosecution’s response to Ntaganda’s request for an extension of time to submit the Document in Support of the Appeal”<sup>11</sup> (“Response”).

## II. MERITS

7. Regulation 65(4) of the Regulations of the Court provides, in relevant part, that [w]hen leave to appeal is granted, the appellant shall file, within ten days of notification of the decision granting leave to appeal, a document in support of the appeal in accordance with regulation 64, sub-regulation 2. [...]”.

8. Mr Ntaganda requests that the ten day time limit for the filing of his document in support of the appeal against the Impugned Decision be extended by six days. In his submission, if the extension is granted it would “postpone the deadline to 10 October 2016”.<sup>12</sup> In support of his request, Mr Ntaganda submits that the appeal in question “involves complex litigation that goes back to 2014”.<sup>13</sup> Furthermore, he submits that “[t]he factual foundation of the litigation includes numerous hours of audio-recordings” and that the possible identification and presentation of “some selected issues” effectively and succinctly will require extra time.<sup>14</sup> Mr Ntaganda also points to the defence’s heavy work load at this stage of the trial proceedings and claims that “[p]reparing an appeal of appropriate quality within the statutory time-limit would be jeopardized”.<sup>15</sup> In addition, the defence “notes that Mr Ntaganda is currently receiving a family visit that makes it difficult for the Defence to have full access to information that may be relevant to presentation of the appeal”.<sup>16</sup> Lastly, Mr Ntaganda avers that a “limited extension of time will cause no prejudice to the victims or the Prosecution”.<sup>17</sup>

9. The Prosecutor opposes the Request and submits that Mr Ntaganda “fails to show good cause for this extension of time”, while he also does not “justify the length

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<sup>11</sup> ICC-01/04-02/06-1545 (OA4).

<sup>12</sup> Request, paras 1, 9.

<sup>13</sup> Request, para. 5.

<sup>14</sup> Request, para. 5.

<sup>15</sup> Request, para. 6.

<sup>16</sup> Request, para. 7.

<sup>17</sup> Request, para. 8.

of the sought extension”.<sup>18</sup> The Prosecutor notes that, “although the Defence claims that it merely seeks ‘a six-day extension of the statutory time limit’, in effect, the sought extension [until 10 October 2016] will give the Defence approximately 23 days – and more than twice the allotted time – to submit its appeal brief”.<sup>19</sup> In her view, this would “alter the parity of the time allotted to the parties and participants on this appeal” and “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”.<sup>20</sup> The Prosecutor disagrees with Mr Ntaganda’s view as to the legal and factual complexity of the appeal.<sup>21</sup> She also avers that the current work load of the defence in the trial proceedings is irrelevant. In her submission, interlocutory appeals are by their nature scheduled while trial proceedings are ongoing.<sup>22</sup> The Prosecutor submits that “Mr Ntaganda’s family visit should have no bearing on this Request” and that “Mr 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”.<sup>23</sup> Nevertheless, the Prosecutor avers that, should the Appeals Chamber be minded to grant the Request, she would not be opposed to a limited extension to 3 October 2016 and requests a similar extension for her response to the document in support of the appeal.<sup>24</sup>

10. Regulation 35 (2) of the Regulations of the Court permits a Chamber to “extend or reduce a time limit if good cause is shown [...]”. In the particular circumstances of this case, while it is unclear why Mr Ntaganda would not have full access to his defence team during a family visit, the Appeals Chamber nevertheless is persuaded by Mr Ntaganda’s submissions concerning the defence’s concurrent heavy work load in the trial proceedings combined with the potential legal and factual complexity of the issue on appeal. Thus, the Appeals Chamber considers that “good cause” is established and accordingly grants the request for an extension of time.

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<sup>18</sup> Response, para. 1.

<sup>19</sup> Response, para. 1.

<sup>20</sup> Response, para. 1. *See* also para. 8.

<sup>21</sup> Response, para. 5.

<sup>22</sup> Response, para. 6.

<sup>23</sup> Response, para. 7.

<sup>24</sup> Response, paras 2, 9-10.

11. However, as regards the length of the extension sought, the Appeals Chamber finds merit in the argument of the Prosecutor that the length of the extension requested – until 10 October 2016 – is unsubstantiated. In addition, the Appeals Chamber considers that Mr Ntaganda’s calculation of the extension sought is incorrect. Regulation 33 (1) (a) of the Regulations of the Court provides that “[d]ays shall be understood as calendar days”; this, by definition, includes weekends. As such, should an extension of time be granted until 10 October 2016, the number of days granted would well exceed the apparent six day extension sought. In the circumstances, the Appeals Chamber considers an extension of the time limit until Thursday, 6 October 2016, to be reasonable.

12. Consequently, the Appeals Chamber deems it appropriate to also extend the time limit for the filing of the Prosecutor’s response to the document in support of the appeal to Monday, 24 October 2016. In these circumstances, the Appeals Chamber also considers it appropriate to extend the time limit for the filing of any response by the victims participating in the case to the same date.

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



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**Judge Howard Morrison**  
**Presiding Judge**

Dated this 28<sup>th</sup> day of September 2016

At The Hague, The Netherlands