



Original: English

No.: ICC-01/04-02/06  
Date: 19 October 2015

**THE APPEALS CHAMBER**

**Before:** Judge Silvia Alejandra Fernández De Gurmendi  
Judge Sanji Mmasenono Monageng  
Judge Christine Van Den Wyngaert  
Judge Howard Morrison  
Judge Piotr Hofmański

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

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

**Public**

**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**

**Source:** Defence Team of Mr Bosco Ntaganda

**Document 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 the Defence**

Me Stéphane Bourgon  
Me Luc Boutin

**Legal Representatives of Victims**

Ms Sarah Pellet  
Mr Dmytro Suprun

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation / Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Further to the “*Decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9*” issued by Trial Chamber VI (“Trial Chamber”) on 9 October 2015 (“*Impugned Decision*”),<sup>1</sup> Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

**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**

**“Defence Appeal”**

**PROCEDURAL BACKGROUND**

1. On 1 September 2015, the Defence submitted its “*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*” (“*Defence Application*”).<sup>2</sup>
2. On 9 September 2015, the Legal representative for former child soldiers filed its “*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’*”.<sup>3</sup>
3. On 11 September 2015, the Prosecution submitted its “*Prosecution Response to the ‘Application on behalf of Mr Ntaganda challenging the jurisdiction of the Court in respect of Counts 6 and 9’*” (“*Prosecution Response*”).<sup>4</sup>
4. On 17 September 2015, the Defence requested leave to reply to the Prosecution Response on three issues.<sup>5</sup> On 18 September 2015, the Trial Chamber granted leave to reply on the first issue.<sup>6</sup>

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<sup>1</sup> ICC-01/04-02/06-892.

<sup>2</sup> ICC-01/04-02/06-804.

<sup>3</sup> ICC-01/04-02/06-814.

<sup>4</sup> ICC-01/04-02/06-818.

<sup>5</sup> Request on behalf of Mr Ntaganda seeking leave to reply to "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 Documents containing the Charges', ICC-01/04-02/06-804", ICC-01/04-02/06-835.

<sup>6</sup> E-mail from Trial Chamber VI Communications, 18 September 2015 at 12:45.

5. On 9 October 2015, the Trial Chamber rendered the Impugned Decision.

### **LEGAL BASIS FOR THE APPEAL**

6. The present Appeal is submitted pursuant to: (i) Article 82(1)(a) of the Statute; (ii) Rule 154 of the Rules of Procedure and Evidence (“Rules”); and (iii) Regulation 64 of the Regulations of the Court (“RoC”).
7. Firstly, Article 82(1)(a) provides that “[e]ither party may appeal [...] a decision with respect to jurisdiction [...]”.
8. Secondly, Rule 154(1) – “Appeals that do not require the leave of the Court” – provides that “[a]n appeal may be filed under article [...] 82 paragraph 1(a) or (b) no later than five days from the date upon which the party filing the appeal is notified of the decision”.
9. Thirdly, Regulation 64(1) of the RoC provides that an appeal filed under Rule 154 shall state: (a) the name and number of the case or situation; (b) the title and date of the decision being appealed; (c) the specific provision of the Statute pursuant to which the appeal is filed; and (d) the relief sought.
10. Pursuant to Regulation 64(2) of the RoC, the Defence will submit its document in support of the appeal within 21 days of notification of the Impugned Decision. This document will set out the grounds of appeal and contain the legal and factual reasons in support of each ground.

### **RELIEF SOUGHT**

The Defence respectfully requests the Appeals Chamber to:

**GRANT** the Appeal;

**QUASH** the Impugned Decision;

**FIND** that the *rationae materiae* jurisdiction of the Court does not include rape and sexual slavery of child soldiers as war crimes; and

**HOLD** that the Trial Chamber is barred from exercising jurisdiction over Counts 6 and 9: rape and sexual slavery of child soldiers.

**RESPECTFULLY SUBMITTED ON THIS 19<sup>TH</sup> DAY OF OCTOBER 2015**

A handwritten signature in black ink, appearing to read 'S+B', is centered on the page.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands