



Original: **English**

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

Date: **10 January 2017**

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 "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***

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 Christopher Gosnell

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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Further to the “*Second 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 4 January 2017 (“Impugned Decision”),¹ Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

**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**

“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*”.² The Legal Representatives³ and the Prosecution⁴ responded on 9 and 11 September 2015, respectively. On 24 September 2015, the Defence replied to these submissions,⁵ having been granted leave to do so by the Trial Chamber.⁶
2. On 9 October 2015, the Trial Chamber rendered the “*Decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9*”, denying that the issue raised was jurisdictional.⁷ The Appeals Chamber, on 22 March 2016, overturned this finding and remitted the issue of substance to the Trial Chamber.⁸

¹ ICC-01/04-02/06-1707.

² ICC-01/04-02/06-804.

³ ICC-01/04-02/06-814.

⁴ ICC-01/04-02/06-818.

⁵ ICC-01/04-02/06-863. .

⁶ E-mail from Trial Chamber VI Communications, 18 September 2015 at 12:45. *See also* 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.

⁷ ICC-01/04-02/06-892.

⁸ 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*”, ICC-01/04-02/06-1225. *See also* 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-01/04-02/06-909.

3. The Defence and Prosecution, at the invitation of the Trial Chamber, filed consolidated submissions on the Trial Chamber's jurisdiction over Counts 6 and 9 of the Document Containing the Charges on 7⁹ and 14 April 2016,¹⁰ respectively. The Legal Representatives submitted their observations on 14 April 2016.¹¹
4. On 4 January 2017, the Trial Chamber rendered the Impugned Decision.

LEGAL BASIS FOR THE APPEAL

5. The present Appeal is submitted pursuant to Article 82(1)(a) of the Statute which provides that "[e]ither party may appeal [...] a decision with respect to jurisdiction."
6. Rule 154(1) of the Rules of Procedure and Evidence provides that such an appeal "may be filed [...] no later than five days from the date upon which the party filing the appeal is notified of the decision". Regulation 64(1) of the Regulations of the Court ("RoC") requires that an appeal filed under Rule 154 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. The arguments supporting such an appeal, pursuant to Regulation 64(2) of the RoC, are to be submitted in a document in support of the appeal within 21 days of notification of the Impugned Decision.

⁹ ICC-01/04-02/06-1256.

¹⁰ Prosecution's response to Mr Ntaganda's "Consolidated submissions challenging jurisdiction" regarding Counts 6 and 9, ICC-01/04-02/06-1278.

¹¹ 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", ICC-01/04-02/06-1279.

7. The Defence appeals the Impugned Decision pursuant to Article 82(1)(a). The relief sought is a declaration that the Trial Chamber has no jurisdiction over Counts 6 and 9; or, alternatively, that the issue be remanded to the Trial Chamber in accordance with further instructions and guidance as may be provided by the Appeals Chamber as to the proper interpretation of Article 8 of the Statute in relation to Counts 6 and 9 of the Document Containing the Charges.

RESPECTFULLY SUBMITTED ON THIS 10TH DAY OF JANUARY 2017



Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands