



Original: **English**

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

Date: **18 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
With one public Annex**

**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**

Source: Defence Team of Mr Bosco Ntaganda

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

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Victims**

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States' Representatives

Amicus Curiae

REGISTRY

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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 and 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’”* (“Notice of Appeal”)² submitted on 10 January 2017, Counsel representing Mr Ntaganda (“Defence”) hereby submit this:

Application on behalf of Mr Ntaganda for variation of time limit for the filing of the document in support of the Appeal

“Defence Application”

INTRODUCTION

1. The Defence respectfully requests, pursuant to Regulation 35 of the Regulations of the Court (“RoC”), an extension of 7 days, until 3 February 2017, to file its document in support of the appeal of the Impugned Decision. The request is supported by good cause, notably: (i) the Trial Chamber’s decision to make a *proprio motu* determination of jurisdiction not only in respect of non-international armed conflicts, but also international armed conflicts; (ii) the inherent complexity of the legal issues involved, including additional scholarship that has arisen in recent months arising from this case; and (iii) the demands imposed by ongoing trial proceedings.

APPLICABLE LAW

2. Regulation 64(2) of the RoC provides that:

2. Subject to sub-regulations 5 and 6, the appellant shall file a document in support of the appeal, with reference to the appeal, within 21 days of notification of the relevant decision [...].

¹ ICC-01/04-02/06-1707.

² ICC-01/04-02/06-1710.

3. Regulation 35 of the RoC elaborates that:

1. Applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought.

2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

4. The Appeals Chamber has defined good cause as follows:

Such reasons as may found a good cause are necessarily associated with a party's duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person's capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations.³

5. The Appeals Chamber has previously recognized that "the important and complex issues at stake" in respect of a particular interlocutory appeal, combined with a concurrent heavy burden of work at a particular time, may justify an extension.⁴

6. The Appeals Chamber has also recently taken into account the "anticipated factual, legal and procedural complexity of the appeal and the novelty of the legal issues to be addressed"⁵ as good cause for an extension of the time limit for the submission of the document in support of the appeal.

³ *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, 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, 21 February 2007, ICC-01/04-01/06-834, para.9.

⁴ *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Application by Counsel for Thomas Lubanga Dyilo to Extend the Time Limit for the Filing of the Response to the Prosecutor's Document in Support of the Appeal, ICC-01/04-01/06-190, 11 July 2006, para.5.

⁵ *In the case of the Prosecutor v. Jean-Pierre Bemba Gombo et al.*, ICC-01/05-01/13 A A2 A3 A4 A5, Decision on requests for an extension of the time limit for filing of the documents in support of the appeal, 23 November 2016, ICC-01/05-01/13-2046, para.18.

SUBMISSIONS

7. The Appeal involves an inherently complex area of law concerning the jurisdiction of the Court in regards to Counts 6 and 9 and the correct interpretation of Article 8 of the Statute. The issue is not only important to the further scope of the Ntaganda case, but likely will have ramifications for other cases as well.⁶ The interests of justice are furthered, and the work of the Appeals Chamber facilitated, by allowing the parties adequate time to carefully research and present their arguments.
8. The Trial Chamber has also widened the scope of this already complex legal issue, deciding that it has jurisdiction in respect of the charges in Counts 6 and 9 not only in the context of a non-international armed conflict ("NIAC") but also during an international armed conflict ("IAC"). This extension involves an issue that has not previously been addressed by the parties, or researched by the Defence, and that involves distinct issues and arguments.
9. Meanwhile, the Defence has just embarked on the eight evidentiary block involving a steady stream of witnesses whose cross-examinations must be prepared, interlocutory submissions, analysing disclosure of evidence, and the myriad of other time-consuming issues that inevitably arise on a daily basis.
10. An extension of 7 days causes no prejudice to the victims or Prosecution nor will it cause any undue delay to the ongoing proceedings, particularly in light of the extended period during which the matter was pending for decision before the Trial Chamber.


⁶ ICC-01/04-02/06-458.

RELIEF SOUGHT

11. In light of the above submissions, the Defence respectfully requests the Chamber to:

GRANT the limited extension of time limit to file the document in support of the appeal until 3 February 2017.

RESPECTFULLY SUBMITTED ON THIS 18TH DAY OF JANUARY 2017

A handwritten signature in dark ink, appearing to read 'StB' with a small flourish at the end.

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands