

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: 14 July 2017

**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**

**Joint Response of the Common Legal Representatives of Victims  
to the Defence Request to Reply**

**Source:** Office of Public Counsel for Victims

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)**

**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**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks and the Common Legal Representative of the Former Child Soldiers (the “Legal Representatives”) hereby file their joint response to the Defence “Request for Leave to Reply to the ‘Joint Response of the Common Legal Representatives of Victims to the ‘Defence ‘Appeal from decision denying leave to file a ‘no case to answer motion’” and the Prosecution’s ‘Response to Bosco Ntaganda’s appeal against the decision denying leave to file a ‘no case to answer motion’” (the “Request to Reply”), filed on 13 July 2017.<sup>1</sup>

2. The Legal Representatives oppose the Request to Reply. The four identified submissions to which the Defence seeks to reply are neither ‘new issues’, nor would it be in the interests of justice to allow the Defence to supplement its appeal submissions on these topics.<sup>2</sup>

3. The Request to Reply should accordingly be denied.

## II. PROCEDURAL BACKGROUND

4. On 1 June 2017, the Chamber rendered the “Decision on Defence request for leave to file a ‘no case to answer’ motion.”<sup>3</sup>

5. On 6 June 2017, the Defence sought leave to appeal three issues it argued arose from the Impugned Decision.<sup>4</sup>

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<sup>1</sup> See the “Request for Leave to Reply to the ‘Joint Response of the Common Legal Representatives of Victims to the ‘Defence ‘Appeal from decision denying leave to file a ‘no case to answer motion’” and the Prosecution’s ‘Response to Bosco Ntaganda’s appeal against the decision denying leave to file a ‘no case to answer motion’”, No. ICC-01/04-02/06-1986, 13 July 2017 (the “Request to Reply”).

<sup>2</sup> See the “Appeal from decision denying leave to file a ‘no case to answer motion’”, No. ICC-01/04-02/06-1975 OA6, 27 June 2017 (the “Appeal”).

<sup>3</sup> See the “Decision on Defence request for leave to file a ‘no case to answer’ motion” (Trial Chamber VI), No. ICC-01/04-02/06-1931, 1 June 2017 (the “Impugned Decision”).

6. On 7 June 2017, The Request was opposed both by the Legal Representatives and the Prosecution.<sup>5</sup>
7. On 14 June 2017, the Trial Chamber rendered an oral decision, certifying the first and third issues for appeal.<sup>6</sup>
8. On 27 June 2017, the Defence filed its Appeal.<sup>7</sup>
9. On 10 July 2017, the Prosecution and Legal Representatives, respectively, responded to the Appeal (respectively, the “Prosecution’s Response”<sup>8</sup> and the “Legal Representatives’ 10 July Response”<sup>9</sup>).
10. On 13 July 2017, the Defence filed the Request to Reply.<sup>10</sup>

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<sup>4</sup> See the “Urgent Request for leave to appeal ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’, 1 June 2017, ICC-01/04-02/06-1931”, No. ICC-01/04-02/06-1937, 6 June 2017. A courtesy copy of the Request was communicated to the Chamber, parties, and participants by Email on 5 June 2017 at 22:28.

<sup>5</sup> See the “Joint Response of the Common Legal Representatives for the Victims to the Defence’s Urgent Request for Leave to Appeal Trial Chamber VI’s Decision of 1 June 2017”, No. ICC-01/04-02/06-1941, 7 June 2017 (the “LRV Response to Leave to Appeal”) and the “Prosecution’s response to the ‘Urgent Request for leave to appeal ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’, 1 June 2017, (ICC-01/04-02/06-1931)’ (ICC-01/04-02/06-1937)”, No. ICC-01/04-02/06-1943, 7 June 2017.

<sup>6</sup> See the transcript of the hearing held on 14 June 2017, No. ICC-01/04-02/06-T-209-CONF ENG ET, p. 4, lines 6-15. The Chamber did not define the certified issues. The Legal Representatives will thus refer to the first and third issues as defined in the “Urgent Request for leave to appeal ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’”, *supra* note 4, para. 2.

<sup>7</sup> See the “Appeal from decision denying leave to file a ‘no case to answer motion’”, *supra* note 2.

<sup>8</sup> See the “Response to Bosco Ntaganda’s appeal against the decision denying leave to file a “no case to answer motion”, No. ICC-01/04-02/06-1982, 10 July 2017 (the “Prosecution’s Response”).

<sup>9</sup> See the “Joint Response of the Common Legal Representatives of Victims to the Defence “Appeal from decision denying leave to file a ‘no case to answer motion’”, No. ICC-01/04-02/06-1983, 10 July 2017 (the “Legal Representatives’ 10 July Response”).

<sup>10</sup> See the Request to Reply, *supra* note 1, para 4.

### III. SUBMISSIONS

11. The Defence itself impliedly concedes that the four “issues” or submissions it identifies in the Legal Representatives’ 10 July Response as well as the Prosecution’s Response, respectively, are not “new issues”.<sup>11</sup> It nevertheless moves the Appeals Chamber to receive additional submissions on these matters “*in the interests of justice*”.<sup>12</sup>

12. In fact, all submissions identified by the Defence have previously been argued before the Trial Chamber.<sup>13</sup> While the Legal Representatives will only address the issues relating to their 10 July Response in more detail below,<sup>14</sup> it should nevertheless be noted that identified issues/submissions (iii) and (iv)<sup>15</sup> relating the Prosecution’s Response have also largely been discussed in previous submissions before the Trial Chamber,<sup>16</sup> and have indeed, in relevant part, been referred to in the “Submissions” section of the Impugned Decision itself.<sup>17</sup> For instance, the Defence seeks to make additional submissions on aspects of the confirmation of charges procedure covered by the Prosecution in the Prosecution’s Response.<sup>18</sup> Yet, the Defence already addressed the confirmation of charges procedure in its Appeal.<sup>19</sup> Against this background, it is clear that these matters could have been reasonably anticipated and that it is not in the interests of justice to grant the Defence leave to submit a reply on such matters. The Defence should not be allowed to effectively remedy its own failure to address and develop different aspects of the arguments contained in the four issues when it previously had the opportunity to do so and chose to not avail itself of that opportunity.

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<sup>11</sup> *Idem.*

<sup>12</sup> *Ibid.*

<sup>13</sup> See *e.g.* the “Joint Response by the Common Legal Representatives of the Victims to the Defence ‘Request for Leave to file motion for partial judgment of acquittal’, No. ICC-01/04-02/06-1891-Conf, 8 May 2017 (the “Legal Representatives’ 8 May Response”), paras. 14 and 17-21.

<sup>14</sup> See *infra*, paras. 14-16.

<sup>15</sup> See the Request to Reply, *supra* note 1, para. 1.

<sup>16</sup> See the Legal Representatives’ 8 July Response, *supra* note 13, paras. 14 and 17.

<sup>17</sup> See the Impugned Decision, *supra* note 3, paras. 17 and 21-23.

<sup>18</sup> See the Request to Reply, *supra* note 1, para. 1(iv).

<sup>19</sup> See the Appeal, *supra* note 2, para. 18.

13. In particular, the Defence has been on notice of the Legal Representatives' general arguments regarding a 'no case to answer' motion since their 8 May Response. While the arguments provided in the 10 July Response to the Defence's Appeal are specific to the grounds of appeal raised, they do not exceed the scope or the subject matter those general arguments previously submitted before the Trial Chamber.

### *First Issue*

14. The Defence fails to quote in its entirety the sentence taken from the Legal Representatives' 10 July Response. By doing so, it misrepresents their argument. The complete sentence referred to reads as follows:

*"Likewise, a Trial Chamber may legitimately decline to hear submissions as its duty to provide a reasoned opinion does not limit it in its discretion to decide whether or not to receive substantive submissions on a procedure not expressly provided for within the legal framework of the Court".<sup>20</sup>*

15. The matter is not a new one, and the argument, that the Defence could not foresee the specificity of the proposition,<sup>21</sup> should be dismissed. The Legal Representatives, in their response to the Defence's request for leave to present a motion for 'no case to answer'<sup>22</sup> made extensive submissions on their understanding of the legal framework of the Court in relation to 'no case to answer' motions, or rather their absence within the Court's statutory framework.<sup>23</sup> The Defence thus had ample opportunity to make submissions in this regard in its Appeal. It chose not to do so. There is no pertinent reason why it should now be allowed to effectively supplement its submissions on this issue by way of a reply.

<sup>20</sup> See the Legal Representatives' 10 July Response, *supra* note 9 para. 20 (emphasis added).

<sup>21</sup> See the Request to Reply, see *supra*, note 1, para. 2.

<sup>22</sup> See the Legal Representatives' 8 May Response, *supra* note 13.

<sup>23</sup> *Idem*, paras. 22-25 and 27-28.

## *Second Issue*

16. The second issue, namely the Legal Representatives' submission that: "[...] *the Judges are in a position to discern whether the case presented by the Prosecution is riddled with substantive flaws or other obvious special circumstances that would otherwise significantly affect the case against the Accused*"<sup>24</sup> is also not a "new issue". The selected sentence cover submissions previously made before the Trial Chamber, namely that the present case was distinguishable from the *Ruto and Sang* case for specific reasons prevailing in the latter case.<sup>25</sup>

17. Furthermore, as the matter relates to the Trial Chamber's exercise of its discretion, and the Defence in fact argues that the "[a]rgument [...] *misconceive[s] the nature of the discretion exercised in the Impugned Decision*"<sup>26</sup> it could, in any event, have been reasonably anticipated, given the subject matter of the present appeal. Granting leave to reply would not be in the interests of justice, as it would effectively allow the Defence to make submissions it could have previously made in its Appeal.

## IV. CONCLUSION

18. The Legal Representatives submit that the Defence fails to demonstrate that the four issues are either new or that it would be in the interests of justice to grant leave to reply with respect to any of the four identified submissions. They stress that the possibility to seek leave to reply contemplated in Regulation 24(5) of the Regulations of the Court should not be used to remedy one's own failure to address and develop different aspects of the arguments contained in one's original submissions when the opportunity to do so existed and one chose not to make use of it.

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<sup>24</sup> See the Legal Representatives' 10 July Response, *supra* note 9, para. 26. See also the Appeal, *supra* note 2, para. 1(ii).

<sup>25</sup> *Idem*, paras. 22-23 and 25-28.

<sup>26</sup> See the Request to Reply, *supra* note 1, para. 2.

**FOR THE FOREGOING REASONS** the Legal Representatives respectfully request that the Appeals Chamber

**DENY** the Request to Reply in its entirety.



Dmytro Suprun  
Common Legal Representative of the  
Victims of the Attacks



Sarah Pellet  
Common Legal Representative of the  
Former Child soldiers

Dated this 14<sup>th</sup> Day of July 2017

At The Hague, The Netherlands