

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-02/06
Date: 16 September 2019

APPEALS CHAMBER

Before: Judge Howard Morrison, Presiding Judge
Judge Chile Eboe-Osuji
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Request for leave to reply to Joint Response of the Common Legal Representatives for Victims to the Defence "Request for extension of page limit and time to file appeal brief", ICC-01/04-02/06-2400

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)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. The Defence, pursuant to Regulation 24(5) of the Regulations of the Court, seeks leave to reply to three issues raised in the LRV Response: (i) whether the victims reparations proceedings will be affected in any way by the Defence's request for an extension of time to submit its appeal brief; (ii) whether their interests or rights will be in any other way negatively affected; and (iii) whether the LRV's "were not previously heard on the matter", despite having failed to oppose the Prosecution's very similar request to that now advanced by the Defence.¹
2. None of the LRV's submissions were foreseeable, particularly in light of the LRV's failure to offer any submissions when the Prosecution and the Defence made previous requests for extension of time. A reply, accordingly, is in the interests of justice to dispel the impression that the requested extensions negatively impact the interests of victims in any way.

APPLICABLE LAW

3. Regulation 24(5) of the Regulations of the Court prescribes that "[p]articipants may only reply to a response with the leave of the Chamber" and that "[u]nless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated." Jurisprudence applying this Regulation has consistently held that a reply may be appropriate: (i) "in respect of issues raised in the response which the replying participant could not reasonably have anticipated"; and (ii) where it "would otherwise be necessary for the adjudication" of the matter.²

¹ LRV Response, para. 11.

² Decision on Mr. Ntaganda's request for leave to reply, 17 July 2017, ICC-01/04-02/06-1994, ("*Ntaganda* Appeal Decision on Replies"), para. 9.

4. A request for leave to reply must explain the intended subject-matter of the reply to some extent. As the Appeals Chamber has held, a party seeking leave to reply must: (i) do more than “point [...] to issues” to which it wishes to reply, but must rather “demonstrate [...] why they are new and could not reasonably have been anticipated”;³ and (ii) “explain why a reply to the aforementioned issues is otherwise warranted.”⁴

PROPOSED SUBMISSIONS IN REPLY

- I. **First issue: whether the reparations process will be affected in any way by the requested extension of time and page limits**
5. If granted leave to reply, the Defence would submit that the Defence’s request for an extension of time to file its appeal brief, contrary to the LRV’s express⁵ and implied⁶ submissions, would have no impact whatsoever on the timeliness of reparations for victims. In particular, the Defence would submit that reparations and appeals procedures proceed concurrently, without the calendar of the latter in any way affecting the former. Past practice demonstrates that there is no possibility of a reparations order preceding an appeals judgment in this case, even if an extension many times greater than that requested by the Defence were to be granted.
6. The Appeals Chamber should receive these submissions by way of reply which could not reasonably have been anticipated, and which are necessary for the proper assessment of the validity of the LRV’s submissions.

³ *Ntaganda* Appeal Decision on Replies, para. 13.

⁴ *Id.* para.14.

⁵ LRV Response, paras. 11 (“negatively affects their interest in the expeditious resolution of appeals and reparations proceedings”), 25.

⁶ LRV Response, paras. 3, 11.

II. Second issue: victims do not have the same rights as an accused and the rights of victims do not “prevail” over those of the accused

7. The LRV’s appears to advance the argument that victims possess the same fair trial rights as the accused, and that these rights must even “prevail over the specific interests of the parties.”⁷ The Defence, if granted leave to reply, would address this unforeseeable argument, which is unprecedented and erroneous. The purported legal foundation of this claim cited by the LRV’s would be addressed.
8. These arguments could not reasonably have been anticipated and are necessary to for the proper assessment of the validity of the LRV’s submissions.

III. Third issue: whether the LRV’s “were not previously heard” on this matter, and the significance of their previous failure to oppose a similar prosecution request for an extension of time

9. The LRV assert that they “were not previously heard on the matter,”⁸ yet they previously had the opportunity to either respond, or to seek leave to reply, to the Prosecution’s Response to the Defence’s request for an extension of time that was limited to the Notice of Appeal.⁹ In particular, the LRV’s could have sought leave to offer submissions on the Prosecution’s position, which had not been raised in the Defence’s request for an extension of time, that the parties should be accorded a 90-day extension of the time-limit for filing appeal briefs (which is just ten less than that now requested by the Defence). While the LRV’s have an unquestioned right to take a position and offer submissions on these issues, the notion that different positions appear to be taken in response to the same or similar requests emanating from the Prosecution and Defence is relevant, especially when the LRV’s offer the justification that they were “not previously heard on the matter.”

⁷ Response, para. 11.

⁸ Response, para. 11.

⁹ Prosecution’s response to request for extension of time to file notice of appeal, ICC-01/04-02/06-2362, 18 July 2019.

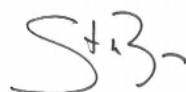
10. The LRV's argument could not have been anticipated, especially in light of their previous failure to respond, or seek leave to reply, to the Prosecution's previous submissions on extension of time. The proposed submissions are necessary to fully assess the merit in the LRV's arguments.

RELIEF SOUGHT

11. In light of the submissions and arguments presented herein, the Defence respectfully requests the Appeal Chamber to:

GRANT leave to reply as indicated above.

RESPECTFULLY SUBMITTED ON THIS 16TH DAY OF SEPTEMBER 2019

A handwritten signature in black ink, appearing to read 'S+B' with a flourish.

Me Stéphane Bourgon, *Ad.E.*, Counsel representing Mr. Ntaganda

The Hague, The Netherlands