

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 18 August 2021

**THE APPEALS CHAMBER**

**Before:** Judge Marc Perrin de Brichambaut, Presiding Judge  
 Judge Piotr Hofmański  
 Judge Luz del Carmen Ibáñez Carranza  
 Judge Solomy Balungi Bossa  
 Judge Gocha Lordkipanidze

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

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

**Public**

**Response of the Common Legal Representative of the Victims of the Attacks to the  
 “Request on behalf on Mr Ntaganda seeking leave to reply to LRV1 and LRV2  
 Responses” (ICC-01/04-02/06-2703 A4 A5)**

**Source:** Office of Public Counsel for Victims (CLR2)

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

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Victims**

**The Office of Public Counsel for the  
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**Victims Participation and Reparations  
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## I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative” or the “CLR2”) hereby submits his response to the “Request on behalf on Mr Ntaganda seeking leave to reply to LRV1 and LRV2 Responses” (the “Defence’s Request for Leave to Reply” or the “Defence’s Request”).<sup>1</sup>

2. The Legal Representative submits that the Defence’s Request for Leave to Reply, as far as the CLR2’s Response is concerned, should be rejected because none of the issues identified by the Defence warrant further submissions. The Defence’s arguments have already been presented before the Appeals Chamber and/or amount to mere disagreements with the Legal Representative’s corresponding submissions. In essence, the Defence attempts to correct deficiencies in its Appeal Brief, which does not justify granting leave to reply. Moreover, the Defence’s submissions under the ‘preliminary issue’ should be dismissed *in limine* as they respond directly to the CLR1’s and CLR2’s observations, thereby circumventing the need to obtain prior authorisation to reply.

## II. PROCEDURAL BACKGROUND

1. On 8 March 2021, Trial Chamber VI (the “Trial Chamber”) issued the “Reparations Order” (the “Reparations Order”).<sup>2</sup>

2. On 8 April 2021, the Legal Representative and the Defence filed their respective Notice of Appeal against the Reparations Order.<sup>3</sup>

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<sup>1</sup> See the “Request on behalf on Mr Ntaganda seeking leave to reply to LRV1 and LRV2 Responses”, [No. ICC-01/04-02/06-2703 A4 A5](#), 13 August 2021 (the “Defence’s Request for Leave to Reply”).

<sup>2</sup> See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021.

<sup>3</sup> See the “Notice of Appeal of the Common Legal Representative of the Victims of the Attacks against the Reparations Order”, [No. ICC-01/04-02/06-2668 A4](#), 8 April 2021; and the “Defence Notice of Appeal against the Reparations Order”, ICC-01/04-02/06-2659”, [No. ICC-01/04-02/06-2669 A5](#), 8 April 2021.

3. On 7 June 2021, the Legal Representative<sup>4</sup> and the Defence<sup>5</sup> filed their respective Appeal Briefs against the Reparations Order.

4. On 9 August 2021, the Defence filed its response to the Legal Representative's Appeal,<sup>6</sup> and the Common Legal Representative of the Former Child Soldiers filed her response to the Appeal Briefs of the Legal Representative and the Defence (the "CLR1's Response").<sup>7</sup>

5. On the same day, the Legal Representative filed his response to the Defence's Appeal Brief (the "CLR2's Response").<sup>8</sup>

6. On 13 August 2021, the Defence filed its Request for Leave to Reply.<sup>9</sup>

### III. SUBMISSIONS

7. Pursuant to regulation 60(1) of the Regulations of the Court (the "Regulations"), the Appeals Chamber may order an appellant to file a reply whenever it considers it necessary in the interests of justice. The ordering of a reply lies within the Appeals Chamber's discretion and is to be decided on a case-by-case basis.<sup>10</sup>

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<sup>4</sup> See the "Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order", [No. ICC-01/04-02/06-2674 A4](#), 7 June 2021.

<sup>5</sup> See the "Defence Appellant Brief against the 8 March Reparations Order", [No. ICC-01/04-02/06-2675 OA4](#), 7 June 2021 (the "Defence's Appeal Brief").

<sup>6</sup> See the "Response on behalf of Mr Ntaganda to the 'Appeal Brief of the Common Legal Representative of the Victims of the Attacks against the Reparations Order'", [No. ICC-01/04-02/06-2702 A4 A5](#), 9 August 2021.

<sup>7</sup> See the "Response of the Common Legal Representative of the Former Child Soldiers on Mr Ntaganda and the Victims of the Attacks' Appeals against the Reparations Order (ICC-01/04-02/06-2659)", [No. ICC-01/04-02/06-2700 A4 A5](#), 9 August 2021.

<sup>8</sup> See the "Response of the Common Legal Representative of the Victims of the Attacks to the Defence's Appeal Brief (ICC-01/04-02/06-2675)", [No. ICC-01/04-02/06-2701 A5](#), 9 August 2021 (the "CLR2's Response").

<sup>9</sup> See the Defence's Request for Leave to Reply, *supra* note 1.

<sup>10</sup> See the "Decision on requests for leave to reply to the Prosecutor's consolidated response to the appeal briefs" (Appeals Chamber), [No. ICC-01/05-01/13-2259 A6 A7 A8 A9](#), 24 January 2018, para. 9, referring to the "Decision on Mr Bemba's request for leave to reply to the Prosecutor's Response to the Document in Support of the Appeal" (Appeals Chamber), [No. ICC-01/05-01/08-3480 A](#), 7 December 2016, para. 8 and the reference cited therein.

8. The Defence first makes submissions under a ‘preliminary issue’<sup>11</sup> and then seeks leave to reply to two issues in the CLR1’s Response and five issues<sup>12</sup> in the CLR2’s Response.<sup>13</sup>

9. The preliminary matter concerns the observations made in both the CLR1’s and the CLR2’s Responses regarding the order of presentation of the submissions in the Defence’s Appeal Brief. Although the Defence recognises that there is merit to these observations, it nonetheless argues that the chosen presentation “*did not prejudice either LRV in responding to Defence submissions*”.<sup>14</sup> The Legal Representative submits that, under this preliminary issue, the Defence advances arguments which are substantive in nature, although leave to do so has not been granted. Thus, the Defence replies directly to the CLR1’s and CLR2’s observations, thereby circumventing the need to obtain prior authorisation to reply. Consequently, the Defence’s observations under this preliminary issue should be dismissed *in limine*.

10. At the beginning of its Request for Leave to Reply, the Defence contends that it is paramount for the Appeals Chamber to “*pronounce on the role of the Defence in reparations proceedings*”<sup>15</sup> and that its Request is brought within that context.<sup>16</sup> The Legal Representative recalls in this regard that the Appeals Chamber’s primary function is a corrective one, namely to review whether the relevant pre-trial or trial chamber erred, and if so, whether the identified error materially affects the impugned decision.<sup>17</sup> An appellant is obliged to present cogent arguments that set out the alleged error and explain how the relevant chamber erred. Furthermore, an appellant is required to

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<sup>11</sup> See the Defence’s Request for Leave to Reply, *supra* note 1, para. 18.

<sup>12</sup> The Legal Representative notes that although the Defence refers to four issues, an additional issue (LRV2 Ground 6, paragraphs 109-116) is raised under ‘Issues drawn from LRV1 Response’, on page 9 of the Defence’s Request for Leave to Reply.

<sup>13</sup> See the Defence’s Request for Leave to Reply, *supra* note 1, para. 17.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Idem*, para. 8.

<sup>16</sup> *Ibid.*

<sup>17</sup> See e.g. the “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), [No. ICC-01/04-01/06-3121-Red A5](#), 1 December 2014, para. 56.

demonstrate how the error materially affected the impugned decision.<sup>18</sup> It is submitted that the Defence failed to show in its Appeal Brief how the Trial Chamber erred in relation to the Defence's role in the present reparations proceedings given the collective nature of the reparations award. Instead, the Defence now seems to request that the Appeals Chamber "*pronounce on the role of the Defence in reparations proceedings*" in general terms, going far beyond the scope of appellate review. In any event, the Defence fails to demonstrate how the Appeals Chamber would be assisted by further submissions on the matter in light of the specific circumstances of the present case.

11. In this regard and more specifically, the Defence seeks leave to reply to the Legal Representative's submissions under Ground 1, paragraph 50, according to which the Defence's involvement in the screening of the eligibility of potential beneficiaries of reparations is neither foreseen nor warranted.<sup>19</sup> The Defence objects to the Legal Representative's reliance on the Appeals Chamber's decisions in the *Lubanga* case and argues that the Legal Representative's submission goes way further than Trial Chamber VI's holding in the Reparations Order.<sup>20</sup> In essence, the Defence seems to disagree with the relevance of the Court's established practice to the present proceedings and attempts to correct deficiencies in its Appeal Brief after being presented with the Legal Representative's counter-arguments. These issues were in fact already addressed in the Defence's Appeal Brief.<sup>21</sup> Further submissions would therefore not assist the Appeals Chamber in adjudicating the appeals on this matter.

12. As regards Ground 2, paragraph 58, the Defence seeks leave to reply to the Legal Representative's submissions on individual and collective reparations.<sup>22</sup> However, the Defence has already addressed the difference between individual and

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<sup>18</sup> See the "Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment'" (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A A2](#), 30 March 2021, para. 48.

<sup>19</sup> See the Defence's Request for Leave to Reply, *supra* note 1, para. 27.

<sup>20</sup> *Idem*, paras. 28-29.

<sup>21</sup> See the Defence's Appeal Brief, *supra* note 5, paras. 45-50.

<sup>22</sup> See the Defence's Request for Leave to Reply, *supra* note 1, paras. 31-32.

collective reparations extensively in its Appeal Brief,<sup>23</sup> and the Legal Representative has simply responded to the Defence's arguments. The issue identified by the Defence in its Request for Leave to Reply amounts to a mere disagreement with the Legal Representative's arguments. Besides generally stating that *"the difference between individual and collective reparations may be so important as to impact the role of the Defence in the reparations process"*,<sup>24</sup> the Defence does not demonstrate how further submissions would be of assistance to the Appeals Chamber.

13. As regards Ground 4, paragraph 89, relating to transgenerational harm, the Defence avers that the Legal Representative's arguments are based on an erroneous premise, and then provides substantive arguments on the establishment of a causal nexus for transgenerational harm.<sup>25</sup> Here, the Defence merely seeks to repeat and further develop the submissions it has already made on this issue in its Appeal Brief.<sup>26</sup> However, it is submitted that a reply pursuant to regulation 60(1) of the Regulations is not to be used by an appellant as a tool to address shortcomings in their appeal.

14. As regards Ground 4, paragraphs 105-107, according to the Defence, the Legal Representative misconstrued *"the Defence arguments related to the Sayo health center which are meant to address Trial Chamber VI's error by relying on unreliable evidence to meet the burden of proof, in the absence of probative evidence on the Trial record"*.<sup>27</sup> Here again, the Defence merely seeks to repeat and further develop the submissions it has already made on this issue in its Appeal Brief.<sup>28</sup> The Defence's arguments under this issue amount to nothing more than mere disagreements with the Legal Representative's arguments brought forth in his response to the Defence's Appeal Brief, and given their repetitive nature they will not be of assistance to the Appeals Chamber.

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<sup>23</sup> See the Defence's Appeal Brief, *supra* note 5, para. 74.

<sup>24</sup> See the Defence's Request for Leave to Reply, *supra* note 1, para. 32.

<sup>25</sup> *Idem*, paras. 34-36.

<sup>26</sup> See the Defence's Appeal Brief, *supra* note 5, paras. 131-133.

<sup>27</sup> See the Defence's Request for Leave to Reply, *supra* note 1, para. 39.

<sup>28</sup> See the Defence's Appeal Brief, *supra* note 5, paras. 134-139.

15. Finally, as regards Ground 6, paragraphs 109-116, the Defence contends that the Legal Representative erroneously argued in his Response that “[e]ven if a legal error was committed, the Defence fails to show how the Trial Chamber’s finding that children born out of rape are direct rather than indirect victims materially affects the Impugned Decision”.<sup>29</sup> It is submitted that the Defence is simply in disagreement with the Legal Representative’s arguments and seeks to utilise a reply to remedy its failure to address issues concerning the presumption of harm for indirect victims comprehensively in its Appeal Brief. Both the Legal Representative and the Defence have had the opportunity to address the issue of children born out of rape and further submissions would not assist the Appeals Chamber in its adjudication on the matter.

16. Considering the above, the Legal Representative submits that none of the issues identified by the Defence warrant further submissions. The Defence’s arguments have already been presented before the Appeals Chamber and/or amount to mere disagreements with the Legal Representative’s corresponding submissions. In essence, the Defence attempts to correct deficiencies in its Appeal Brief, which does not justify granting leave to reply. Granting the Defence’s Request for Leave to Reply would thus not serve the interests of justice, but would unnecessarily delay the proceedings instead.

#### IV. CONCLUSION

17. The Legal Representative respectfully requests that the Appeals Chamber reject the Defence’s Request for Leave to Reply to the CLR2’s Response.

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<sup>29</sup> See the Defence’s Request for Leave to Reply, *supra* note 1, para. 23.



**RESPECTFULLY SUBMITTED**

A handwritten signature in black ink, appearing to read 'Dmytro Suprun', with a long vertical stroke extending downwards from the bottom of the signature.

Dmytro Suprun  
Common Legal Representative of the Victims of the Attacks

Dated this 18<sup>th</sup> Day of August 2021

At The Hague, The Netherlands