



Original: English

**No. ICC-01/04-02/06 A
Date: 11 March 2020**

THE APPEALS CHAMBER

Before:

**Judge Howard Morrison, Presiding
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 document

Decision on request for leave to reply

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Ms Helen Brady

Counsel for the Defence

Mr Stéphane Bourgon

Ms Kate Gibson

Legal Representatives of Victims

Ms Sarah Pellet

Mr Dmytro Suprun

Registrar

Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Bosco Ntaganda against the ‘Judgment’ of Trial Chamber VI of 8 July 2019 (ICC-01/04-02/06-2359),

Having before it the ‘Defence request for leave to file a reply to the “Prosecution Response to ‘Defence Appeal Brief – Part I’” of 3 February 2020 (ICC-01/04-02/06-2466),

Pursuant to regulation 60(1) of the Regulations of the Court,

Renders unanimously the following

DECISION

1. Mr Bosco Ntaganda’s request for leave to reply to the Prosecutor’s response to the ‘Defence Appeal Brief – Part I’ is granted.
2. The reply may be delivered orally at the hearing to be held between 29 June 2020 and 1 July 2020.
3. Further directions on the schedule of the hearing and timing for these submissions will be issued in due course.

REASONS

I. PROCEDURAL HISTORY

1. On 11 November 2019, Mr Ntaganda filed the ‘Defence Appeal Brief – Part I’ (the ‘Appeal Brief’).¹
2. On 27 January 2020, the Prosecutor filed her response to the Appeal Brief (the ‘Response to the Appeal Brief’).²
3. On 3 February 2020, Mr Ntaganda filed his request for leave to file a reply to the Response to the Appeal Brief (the ‘Request’).³

¹ [Defence Appeal Brief – Part I](#), ICC-01/04-02/06-2443.

² [Prosecution Response to “Defence Appeal Brief – Part I”](#), ICC-01/04-02/06-2464.

4. On 6 February 2020, the Prosecutor filed her response to the Request (the ‘Prosecutor’s Response’).⁴

5. On 9 March 2020, the Appeals Chamber scheduled a hearing from 29 June 2020 to 1 July 2020.⁵

II. MERITS

6. Mr Ntaganda requests leave to reply to three issues in relation to the first ground of appeal and three issues in relation to the third ground of appeal addressed in the Response to the Appeal Brief.⁶ Mr Ntaganda submits that the ‘six issues are relevant to the proper adjudication of the appeal, in the interests of justice and may assist the Appeals Chamber’s determination of the appeal’.⁷

6. The Prosecutor objects to the Request, arguing that a ‘reply is not an opportunity for an appellant to address shortcomings in their appeal’ as this would disregard the established page limits.⁸ She further submits that regulation 60(1) of the Regulations of the Court (‘Regulations’) ‘is intended to confine replies to circumstances where the Appeals Chamber considers that a reply would be in the interests of justice’.⁹ Regarding the three issues relevant to the first ground of appeal and the third issue relevant to the third ground of appeal, the Prosecutor argues that the requested reply is repetitive of arguments made in the Appeal Brief and that the issues are neither new nor unforeseeable.¹⁰ Regarding the first and second issues identified relevant to the third ground of appeal, the Prosecutor argues that Mr ‘Ntaganda seeks to utilise a reply to correct his decision not to address issues comprehensively in his appeal’.¹¹ Nevertheless, ‘given the paucity of submissions

³ [Defence request for leave to file a reply to the “Prosecution Response to ‘Defence Appeal Brief – Part I’”](#), ICC-01/04-02/06-2466.

⁴ [Prosecution Response to the Defence Request for Leave to File a Reply to the “Prosecution Response to ‘Defence Appeal Brief – Part I’”](#), ICC-01/04-02/06-2467.

⁵ [Scheduling Order for a hearing before the Appeals Chamber](#), ICC-01/04-02/06-2486.

⁶ [Request](#), para. 10.

⁷ [Request](#), para. 10.

⁸ [Prosecutor’s Response](#), para. 2.

⁹ [Prosecutor’s Response](#), para. 2.

¹⁰ [Prosecutor’s Response](#), paras 4, 6.


¹¹ [Prosecutor’s Response](#), para. 8.

from Ntaganda in relation to [these two issues]', the Prosecutor acknowledges that the Appeals Chamber may be assisted by further submissions in this regard.¹²

7. The Appeals Chamber recalls that, pursuant to regulation 60(1) of the Regulations, it 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.¹³

8. In the circumstances of the present appeal, the Appeals Chamber considers it necessary in the interests of justice to allow Mr Ntaganda to reply to the specific issues identified in the Request. The reply shall not repeat submissions already made in the Appeal Brief. In order to streamline the proceedings, the Appeals Chamber requires the reply to be delivered orally at the hearing scheduled between 29 June 2020 and 1 July 2020. Further directions on the schedule of the hearing and timing for these submissions will be issued in due course.

Done in both English and French, the English version being authoritative.



Judge Howard Morrison
Presiding

Dated this 11th day of March 2020

At The Hague, The Netherlands

¹² [Prosecutor's Response](#), para. 9.

¹³ *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, '[Decision on requests for leave to reply to the Prosecutor's consolidated response to the appeal briefs](#)', 24 January 2018, ICC-01/05-01/13-2259, para. 9, referring to *Prosecutor v. Jean-Pierre Bemba Gombo*, '[Decision on Mr Bemba's request for leave to reply to the Prosecutor's Response to the Document in Support of the Appeal](#)', 7 December 2016, ICC-01/05-01/08-3480 (A), para. 8.