



Original: **English**

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

Date: **12 July 2017**

THE APPEALS CHAMBER

Before:

**Judge Sanji Mmasenono Monageng
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

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””

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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(Participation / Reparation)**

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States' Representatives

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Detention Section

**Victims Participation and Reparations
Section**

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””¹

1. Leave is sought to reply to the LRVs Joint Response and the Prosecution Response in respect of the following submissions:

- (i) “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”;²
- (ii) “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”;³
- (iii) “the Pre-Trial Chamber (and a single judge of the Pre-Trial Chamber) has broad powers under the Statute to oversee the legality of the Prosecution’s investigation and to protect the suspect’s rights during an investigation”;⁴ and,
- (iv) “any significant deviation at trial from the evidence relied on by the Prosecution during the confirmation of charges proceedings [...] may inform the Chamber’s exercise of discretion on whether or not

¹ Joint Responses of the Common Legal Representatives of Victims to the Defence “Appeal from decision denying leave to file a ‘no case to answer motion””, ICC-01/04-02/06-1983, 10 July 2017 (“LRVs Joint Response”); Response to Bosco Ntaganda’s appeal against the decision denying leave to file a “no case to answer motion”, ICC-01/04-02/06-1982, 10 July 2017 (“Prosecution Response”). See also Decision on Defence request to file a ‘no case to answer’ motion, ICC-01/04-02/06-1931, 1 June 2017, (“Impugned Decision”) and Appeal from decision denying leave to file a ‘no case to answer motion’, ICC-01/04-02/06-1975 and Anx OA6, 27 June 2017.

² LRVs Joint Response, para. 20.

³ LRVs Joint Response, para. 26.

⁴ Prosecution Response, para. 11.

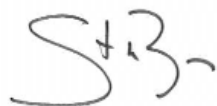
to entertain a ‘no case to answer’ motion before hearing the evidence of the Defence”.⁵

2. A reply is justified in respect of submissions (i) and (iii) as they constitute propositions whose specificity could not have been reasonably addressed in the Defence Appeal, and in respect of which the Appeals Chamber would benefit from further analysis. Arguments (ii) and (iv) misconceive the nature of the discretion exercised in the Impugned Decision in a manner that could not have been reasonably foreseen or responded to in advance.
3. The recent amendment of Regulation 24(5) of the Regulations of the Court (“RoC”) does not alter the criteria for determining that a reply is warranted, although it does create a presumption that any such reply is to be limited to “new issues” unless “otherwise permitted by the Chamber.” The respondents’ submissions, for which leave to reply is sought are “new issues” and it would be in the interests of justice for the Chamber to hear additional submissions on each of these issues.
4. Even if these issues are not deemed to be “new,” leave to reply is nonetheless justified. The interests of justice favour permitting the Defence to address and refute the arguments that: a Chamber may decline to hear submissions in the context of any procedure that is not expressly provided for under the Court’s statutory instruments (issue (i)); that a Pre-Trial Chamber “has broad powers under the Statute to oversee the legality” of Prosecution investigations (issue (iii)); and that the Chamber had assessed whether the case was “riddled with substantive flaws” or whether there had been a “significant deviation” from the evidence foreseen in the confirmation proceedings (issues (ii) and (iv)). Even assuming that these are not new “issues,” they are arguments of such

⁵ Prosecution Response, para. 14.

specificity that they could not reasonably have been anticipated or addressed in the appeal submissions.

RESPECTFULLY SUBMITTED ON THIS 12TH DAY OF JULY 2017

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

Me Stéphane Bourgon, Counsel for Bosco Ntaganda

The Hague, The Netherlands