

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06  
Date: 17 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  
With Confidential Annex**

**Joint Response of the Common Legal Representatives for Victims to the Defence  
Request for leave to reply to the Joint Response of the Common Legal  
Representatives**

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

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Ms Nicole Samson  
Ms Helen Brady

**Counsel for the Defence**

Mr Stéphane Bourgon  
Mr Christopher Gosnell  
Ms Kate Gibson

**Legal Representatives of the Victims**

Mr Dmytro Suprun  
Ms Anne Grabowski

**Legal Representatives of the Applicants**

Ms Sarah Pellet  
Mr Alejandro Kiss  
Ms Anna Bonini

**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**

**Other**

## I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks and the Common Legal Representative of the Former Child Soldiers (jointly the “Legal Representatives”), in accordance with Regulation 24(2) of the Regulations of the Court (the “Regulations”), hereby file their response to the Defence’s “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”.<sup>1</sup>

2. The Legal Representatives oppose the Defence Request in full and further provide clarification as to their previous statement that they were “*not heard on the matter*”.<sup>2</sup>

3. The Legal Representatives oppose the Defence’s intended subjects of reply as the Defence fails to demonstrate that these issues could not have been foreseen and, furthermore, takes the Legal Representatives’ submissions out of context. As regards the proposed third issue, the Legal Representatives oppose it as it is entirely unfounded. The Defence is aware of the fact that the Appeals Chamber indicated to the Legal Representatives at the relevant time that it would not receive their response and that a decision had already been taken. The Legal Representatives clearly stated in their Joint Response that they would have opposed *any delay in the appeals proceedings*, which included the Prosecution’s request for an extension of time. The Legal Representatives therefore submit that the proposed issue is moot.

---

<sup>1</sup> See the “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”, [No. ICC-01/04-02/06-2406](#), 16 September 2019, (the “Defence Request”).

<sup>2</sup> See the “Joint Response of the Common Legal Representatives for Victims to the Defence ‘Request for extension of page limit and time to file appeal brief’, [No. ICC-01/04-02/06- 2400](#) (the “Joint Response”), para. 11.

### III. PROCEDURAL BACKGROUND

4. On 8 July 2019, Trial Chamber VI issued its Judgment pursuant to Article 74 of the Statute.<sup>3</sup>

5. On 17 July 2019, the Defence requested an extension of time for the filing of its notice of appeal of 60 days.<sup>4</sup>

6. On 18 July 2019, the Prosecution filed its response, indicating that it did not oppose the request, subject to being granted a similar extension. It also contended that it would not be opposed to a likely further request for an extension of time in relation to the Appeal Brief.<sup>5</sup>

7. On 19 July 2019, the Legal Representatives informed the Legal Adviser of the Appeals Division that they intended to file a response opposing the request at the latest on 22 July, but in any event within the applicable time limit.<sup>6</sup> The same day, the Legal Representatives were informed that *“the decision on this request has already been made and [was] going to be filed soon”*.<sup>7</sup>

8. On 19 July 2019, the Appeals Chamber partially granted the Defence request by extending the filing deadline for the parties’ notices of appeal by 30 days.<sup>8</sup> It rejected the remainder of the requests.<sup>9</sup>

---

<sup>3</sup> See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

<sup>4</sup> See the Defence Request, *supra* note 1, paras. 2 and 24.

<sup>5</sup> See the “Prosecution’s response to request for extension of time to file notice of appeal”, [No. ICC-01/04-02/06-2362](#), 18 July 2019 (the “Prosecution Response”), paras. 1 and 4.

<sup>6</sup> See the Email Communication from the Legal Representative of the Former Child Soldiers to the Legal Adviser to the Appeals Division of 19 July 2019 at 13:04 annexed confidentially to the present filing.

<sup>7</sup> See the Email Communication from a Legal Officer to the Legal Representatives, the Prosecution, and the Defence of 19 July 2019 at 14:43. See also Annex A to this filing.

<sup>8</sup> See the “Decision on Mr Bosco Ntaganda’s and the Prosecutor’s requests for time extension for the notice of appeal and appeal brief”, [No. ICC-01/04-02/06-2364](#), 19 July 2019 (“July Decision on Extension of Time”), p. 3.

<sup>9</sup> *Idem*.

9. On 9 September 2019, the parties filed their respective notices of appeal.<sup>10</sup> The Prosecution notified its intention to raise two grounds of appeal comprising one legal and one alleged factual error.<sup>11</sup> The Defence submitted notice of 15 grounds of appeal, involving legal, factual, and procedural challenges to the entire trial judgment.<sup>12</sup>

10. On 12 September 2019, the Legal Representatives filed the “Joint Response of the Common Legal Representatives for Victims to the Defence ‘Request for extension of page limit and time to file appeal brief’” (the “Joint Response”), opposing the Defence request for extensions of time and page limit.<sup>13</sup>

11. On 13 September 2019, the Appeals Chamber issued the “Order in relation to Mr Bosco Ntaganda’s request for page and time extension for the appeal brief”, whereby it, *inter alia*, directed the Prosecution to file a consolidated response, if any, to the Defence request for extensions of time and page limit and the Joint Response.<sup>14</sup>

12. On 16 September 2019, the Defence filed the Request.<sup>15</sup>

### III. SUBMISSIONS

13. The Legal Representatives submit that the Defence fails to demonstrate that the matters it wishes to address in a reply could not be reasonably anticipated within the meaning of regulation 24(5) of the Regulations.

---

<sup>10</sup> See the “Prosecution notice of appeal”, [No. ICC-01/04-02/06-2395](#), 9 September 2019, and “Mr Ntaganda’s Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/04-02/06-2359”, [No. ICC-01/04-02/06-2396](#), 9 September 2019.

<sup>11</sup> See the “Prosecution notice of appeal”, *supra* note 10, para. 3.

<sup>12</sup> See “Mr Ntaganda’s Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/04-02/06-2359”, *supra* note 10, paras 7-9.

<sup>13</sup> See the Joint Response, *supra* note 2.

<sup>14</sup> See the “Order in relation to Mr Bosco Ntaganda’s request for page and time extension for the appeal brief”, [No. ICC-01/04-02/06-2401](#), 13 September 2019, p. 3.

<sup>15</sup> See the Defence Request, *supra* note 1.

14. As regards the first proposed issue, namely *“whether the reparations proceedings will be affected in any way by the Defence’s request for an extension of time to submit its appeal brief”*,<sup>16</sup> the Legal Representatives posit that this is a matter that could clearly and easily have been anticipated to be raised by the Legal Representatives for Victims. As is clear from various statements of chambers of this Court,<sup>17</sup> victims are only entitled to *“compensation for harm suffered as a result of crimes when the person standing trial for his or her participation in those crimes has been found guilty”*.<sup>18</sup> Thus, only a final conviction provides certainty as to entitlements to reparations as well as to the extent of such reparations. Any delay in appeals proceedings negatively impact reparations in that a first instance conviction remains uncertain until the finalisation of appeals proceedings. There is nothing novel in this argument and any reply thereto is accordingly unjustified.

15. As regards the second issue identified by the Defence, namely *“whether [the victims’] interests or rights will be in any other way negatively affected”*,<sup>19</sup> the Legal Representatives contend that the Defence takes the specific point made in the Joint Response out of context. The Legal Representatives submitted that, given the statutory right to reparations, victims are also entitled to fair trial guarantees – in this instance the expeditiousness of the reparations proceedings. In the circumstances, they submitted that the interest of expeditious proceedings, which is an integral part of the concept of fair trial and integrity of proceedings, must prevail over unjustified extensions simply because they are agreed upon by the parties.<sup>20</sup> Notably, the statement according to which such interest should *“prevail over the specific interest of the parties”*,<sup>21</sup> was made in the same paragraph in which the Legal Representatives

---

<sup>16</sup> See the Defence Request, *supra* note 1, para. 1.

<sup>17</sup> See e.g. the “Order for Reparations pursuant to Article 75 of the Rome Statute” (Trial Chamber II), [No. ICC-01/04-01/07-3728-tENG](#), 24 March 2017, paras. 16-18. See also “Decision on the Requests regarding Reparations” (Trial Chamber V(A)), [No. 01/09-01/11-2038](#), 1 July 2016, para. 7.

<sup>18</sup> See the “Final decision on the reparations proceedings” (Trial Chamber III), [No. ICC-01/05-01/08-3653](#), 3 August 2019, para. 3.

<sup>19</sup> See the Defence Request, *supra* note 1, para. 1.

<sup>20</sup> See the See the Joint Response, *supra* note 2, fn. 11.

<sup>21</sup> See the Joint Response, *supra* note 2, para. 11.

stated that, had their response been received by the Appeals Chamber, they would have opposed *any* delay. Said statement clearly and unequivocally referred to both the Defence request for an extension of time to file the notice of appeal, the agreement of the Prosecution, and the Prosecution's related indication that it would not oppose a related request for an extension of time in relation to the parties' appeal briefs. Furthermore, it is worth noting that the Legal Representatives previously made a similar argument regarding the scope of requirements of fair trial and integrity of proceedings in the context of the legal framework of the Court, with the same sources referred to in support.<sup>22</sup> Accordingly, the issue is not new to the Defence and could have been anticipated to be raised by the Legal Representatives.

16. With respect to the third issue, namely "*whether the LRVs 'were not previously heard on the matter'*",<sup>23</sup> the Defence erroneously submits that the Legal Representatives "*failed to oppose the Prosecution's very similar request*".<sup>24</sup> Had the Appeals Chamber received the Legal Representatives' joint response in relation to the Defence request for an extension of time regarding the filing of notices of appeal, the Legal Representatives would have in fact submitted a consolidated response and opposed all requests and indications of not being opposed to further extensions, including the Prosecution's statement to that effect. They would have set out the same grounds for their opposition they now set out in their Joint Response.

17. Moreover, the Legal Representatives were not obliged to notify the Appeals Chamber of its forthcoming response, as it would have been filed within the

---

<sup>22</sup> See the "Victims' observations in response to the 'Urgent request on behalf of Mr NTAGANDA seeking to postpone the presentation of the Prosecution's Case until 2 November 2015 at the earliest'", [No. ICC-01/04-02/06-556](#), 14 April 2015, para. 26 and the "Public redacted version of 'Joint observations on the 'Public redacted version of 'Corrected version of 'Urgent motion on behalf of Mr Ntaganda seeking immediate adjournment of the proceedings until the necessary condition are in place to ensure a fair trial', 26 June 2015, ICC-01/04-02/06-677-Conf-Exp''", [No. ICC-01/04-02/06-690-Red](#), 30 June 2015, para. 22.

<sup>23</sup> See the Defence Request, *supra* note 1, para. 1.

<sup>24</sup> *Idem*.

applicable deadline, but did so out of an abundance of caution, given the swift response by the Prosecution to the Defence's request at the time.

18. The third issue is therefore based on the erroneous assumption that the Legal Representatives failed to set out their position. It is accordingly moot and should therefore be dismissed as such, as all the arguments pertaining thereto are entirely speculative.

19. In any event, the Defence ignores the fact that the Prosecution did not as such make a 'request' for an extension of time but rather submitted that it "*would not oppose an extension of 90 days for the filing of the appeal brief [...] tak[ing] this position conditional on the grant of similar extension for any appeal brief which it might file*".<sup>25</sup> Accordingly, the Legal Representatives could not have filed a request for leave to reply as contended by the Defence in its Request. Since the Appeals Chamber addressed this point of the Prosecution response and settled the matter, no further submissions of the Legal Representatives were either warranted or necessary with regard to the Prosecution's submissions on potential requests for extensions of time in relation to the appeal briefs.

#### IV. CONFIDENTIALTY

20. Pursuant to regulation 23*bis* (1) and (2) of the Regulations, the Legal Representatives classify as confidential the Annex containing the email correspondence between the Legal Representatives and the Appeals Chamber, as it includes the contact information of Chambers staff, the parties, and participants.

---

<sup>25</sup> See the "Prosecution's response to request for extension of time to file notice of appeal", *supra* note 5, paras. 4-5.



**FOR THE FOREGOING REASONS** the Legal Representatives respectfully request that the Appeals Chamber reject the Defence Request in its entirety.



Dmytro Suprun  
Common Legal Representative of the  
Victims of the Attacks



Sarah Pellet  
Common Legal Representative of the  
Child soldiers

Dated this 17<sup>th</sup> Day of September 2019

At The Hague, The Netherlands