

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/04-02/06
Date: 29 October 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

Public Redacted Version of "Defence request for leave to reply to 'Prosecution Response to 'Defence request for admission of additional evidence on appeal'", 21 September 2020, ICC-01/04-02/06-2595-Conf

Source: Defence Team of Mr Bosco Ntaganda

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

The Office of the Prosecutor

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Legal Representatives of Victims

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Legal Representatives of Applicants

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**

Further to the submission of the “Prosecution Response to ‘Defence request for admission of additional evidence on appeal’” (“Defence Request” and “Prosecution Response”),¹ Counsel for Mr Ntaganda (“Defence” or “Mr. Ntaganda”) hereby submit this:

Defence request for leave to reply to “Prosecution response to ‘Defence request for admission of additional evidence on appeal’”

“Defence Request for Leave to Reply”

I. INTRODUCTION

1. Pursuant to regulation 60(1) of the Regulations of the Court (“RoC”), the Defence respectfully seeks leave to reply to the Prosecution Response.
2. The Request is filed confidentially pursuant to regulation 23*bis* (1) RoC, as it refers to confidential material. The Defence undertakes to submit a public redacted version in due course.

II. PROCEDURAL BACKGROUND

3. On 28 August 2020, the Defence Request dated 27 August 2020 was notified to the Prosecution and Participants.²
4. On 31 August 2020, the Common Legal Representative for the Former Child Soldiers (“CLR1”) filed a request for a higher-resolution version of the electoral card annexed to the Defence Request.³
5. On 2 September 2020, the Defence filed an *Addendum* to Defence Request, containing a better version of the electoral card of the potential new witness.⁴

¹ Prosecution Response to “Defence request for admission of additional evidence on appeal”, 16 September 2020, [ICC-01/04-02/06-2582-Conf](#).

² Defence request for admission of additional evidence on appeal, 27 August 2020, [ICC-01/04-02/06-2570-Conf](#), notified on 28 August 2020.

³ Request for a higher-resolution version of electoral card annexed to the “Defence request for admission of additional evidence on appeal” of 27 August 2020 (No. ICC-01/04-02/06-2570-Conf, 31 August 2020, [ICC-01/04-02/06-2571-Conf](#)).

6. On 9 September 2020, the Chamber gave further directions regarding the Defence Request, instructing the Prosecution and the CLR1 to file any observations on 16 and 17 September 2020 respectively, and the Prosecution and Defence to file a reply to the CLR1, if necessary, on 21 September 2020.⁵

7. On 16 September 2020, the Prosecution filed its response to the Defence Request, along with two annexes.⁶

8. On the same day, the CLR1 also submitted her observations to the Defence Request.⁷

III. APPLICABLE LAW

9. Pursuant to regulation 60(1) RoC, the Appeals Chamber may order the appellant to file a reply within a specified time-limit, should it “consider it necessary in the interests of justice”.

10. In *Lubanga*, the Appeals Chamber noted that “[a]lthough not specifically mentioned in regulation 60 of the Regulations of the Court, an appellant may request, and accordingly, trigger the powers of the Appeals Chamber to order the filing of a reply under said regulation.”⁸

11. The Appeals Chamber granted the appellants’ requests for leave to reply in *Lubanga* and *Bemba*, on the basis that, *inter alia*: a reply may assist the Appeals Chamber’s determination of the appeal; “the issues to which [the appellant] wishes

⁴ Addendum to “Defence request for admission of additional evidence on appeal”, 27 August 2020, ICC-01/04-02/06-2570-Conf, 2 September 2020, [ICC-01/04-02/06-2572-Conf](#).

⁵ Directions regarding the application for additional evidence on appeal, 9 September 2020, [ICC-01/04-02/06-2574-Conf](#).

⁶ [Prosecution Response](#).

⁷ Response to the “Defence request for admission of additional evidence on appeal” (No. ICC-01/04-02/06-2570-Conf) of 28 August 2020 on behalf of the Former Child Soldiers, 16 September 2020, [ICC-01/04-02/06-2583-Conf](#).

⁸ Order on the filing of a reply under regulation 60 of the Regulations of the Court, 21 February 2013, [ICC-01/04-01/06-2982](#), para.6 (footnote omitted) (“*Lubanga-Order-2982*”).

to reply are pertinent to the proper adjudication of the appeal”;⁹ and “[the appellant] wishes to correct alleged inaccuracies and provide additional submissions.”¹⁰

IV. SUBMISSIONS

12. The Defence Request for Leave to Reply is limited to one discrete issue.

13. On the basis of information received following an apparent [REDACTED],¹¹ the Prosecution submits that the witness who is the subject of the Defence Request is not part of the [REDACTED]. As a result, the Prosecution argues that [REDACTED].

¹²

14. The Defence requests leave to reply to the Prosecution’s submission that the witness in question is not a member of the [REDACTED], and present further evidence to demonstrate that this submission is incorrect. The interest of justice mitigate in favour of permitting the Defence to respond to the Prosecution’s submission, given that (i) the Prosecution Response contains new information communicated to the Appeals Chamber; and (ii) the Prosecution submission that the witness is not a member of the [REDACTED] goes to the heart of one of the criteria for the admission of new evidence on appeal – the credibility of the evidence in question. A reply would therefore assist the Appeals Chamber in its determination of the Defence Request.

V. RELIEF SOUGHT

15. For the foregoing reasons, the Defence respectfully requests the Appeals Chamber to:

GRANT the Defence Request for Leave to Reply

⁹ 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](#), para.8 (“Bemba-Decision-3480”).

¹⁰ [Lubanga-Order-2982](#), para.7.

¹¹ [Prosecution Response](#), Annex II.

¹² [Prosecution Response](#), para.4.

RESPECTFULLY SUBMITTED ON THIS 29th DAY OF OCTOBER 2020

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

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

The Hague, The Netherlands