

**Cour
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**International
Criminal
Court**

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Date: 18 August 2021

THE APPEALS CHAMBER

Before: Judge Marc Pierre 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 Document

**Response of the Common Legal Representative of the Former Child Soldiers
to Mr Ntaganda's Request to be granted leave to file a reply to the LRVs'
Responses in the Appeals against the Reparations Order (ICC-01/04-02/06-2703)**

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The Office of the Prosecutor

Mr Karim A. A. Khan
Ms Helen Brady

Counsel for the Defence

Mr Stéphane Bourgon
Me Mélissa Beaulieu Lussier
Ms Camille Divet

Legal Representatives of the Victims

Ms Sarah Pellet
Ms Caroline Walter

Legal Representatives of the Applicants

Mr Dmytro Suprun
Ms Anne Grabowski
Ms Nadia Galinier

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

Detention Section

Victims and Witnesses Unit

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

Others

I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers (the “Legal Representative”) hereby submits her Response to the Defence’s Request on behalf on Mr Ntaganda seeking leave to reply to LRV1 and LRV2 Responses (“the Request”).¹

2. The Legal Representative submits that the issues raised in the Request for leave to Reply in relation to her Response do not constitute new issues which the Defence could not have reasonably anticipated and thus the Appeals Chamber would not be assisted in receiving further submissions on the matter.

II. PROCEDURAL BACKGROUND

3. On 8 July 2019, Trial Chamber VI (the “Chamber”) convicted Mr Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes.² This conviction was fully confirmed by the Appeals Chamber on 30 March 2021.³

4. On 7 November 2019, the Chamber issued the Sentencing Judgment, imposing individual sentences for each of the counts for which Mr Ntaganda had been convicted and a joint sentence of 30 years.⁴ This was also entirely confirmed by the Appeals Chamber on 30 March 2021.⁵

¹ See the “Request on behalf on Mr Ntaganda seeking leave to reply to LRV1 and LRV2 Responses”, [No. ICC-01/04-02/06-2703](#), 13 August 2021 (the “Defence Request”).

² See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019 (the “Judgment”).

³ 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 with [AnxA](#) and [AnxB](#); as well as the “Separate opinion of Judge Howard Morrison and Judge Piotr Hofmański on the Prosecutor’s appeal”, [No. ICC-01/04-02/06-2666-Anx1 A A2](#); the “Separate opinion of Judge Howard Morrison on Mr Ntaganda’s appeal”, [No. ICC-01/04-02/06-2666-Anx2 A A2](#); the “Separate opinion of Judge Luz Del Carmen Ibáñez Carranza on Mr Ntaganda’s appeal”, [No. ICC-01/04-02/06-2666-Anx3 A A2](#); the “Separate opinion of Judge Solomy Balungi Bossa on the Prosecutor’s appeal”, [No. ICC-01/04-02/06-2666-Anx4 A A2](#); and the “Corrected version of partly concurring opinion of Judge Chile Eboe-Osuji”, [No. ICC-01/04-02/06-2666-Anx5-Corr A A2](#), all dated from the same day.

⁴ See the “Sentencing judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2442](#), 7 November 2019.

⁵ See the “Public redacted version of Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled ‘Sentencing judgment’” (Appeals Chamber), [No. ICC-01/04-02/06-2667-Red A3](#), 30 March 2021.

5. On 8 March 2021, the Chamber issued the “Reparations Order”, notably acknowledging the harm suffered by the victims and the corresponding needs in terms of reparations modalities.⁶ The Chamber thereby established Mr Ntaganda’s liability, the principles on reparations, and the procedure for the preparation of the implementation plans by the Trust Fund for Victims (the “TFV”).⁷

6. On 8 April 2021, the Legal Representative of the Victims of the Attacks and the Defence filed their respective Notice of Appeal against the Reparations Order.⁸

7. On 9 April 2021, the Appeals Chamber appointed Judge Perrin de Brichambaut to preside over the appeals against the Reparations Order.⁹

8. On 7 June 2021, the Legal Representative of the Victims of the Attacks and the Defence filed their respective documents in support of the appeal against the Reparations Order.¹⁰

9. On 9 June 2021, the TFV submitted its Report on its Preparation for an Initial Draft Implementation Plan with focus on Priority Victims (the “IDIP”),¹¹ to which the parties and the Registry were directed to file any observation they may have by 23 June 2021.¹²

⁶ See the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021 (the “Reparations Order”).

⁷ *Idem*.

⁸ 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 March 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 March 2021.

⁹ See the “Decision on the Presiding Judge of the Appeals Chamber in the appeals against the decision of Trial Chamber VI entitled ‘Reparations Order’” (Appeals Chamber), [No. ICC-01/04-02/06-2670 A4 A5](#), 9 April 2021.

¹⁰ See the “Defence Appellant Brief against the 8 March Reparations Order”, [No. ICC-01/04-02/06-2675 A5](#), 7 June 2021; and 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.

¹¹ See the “Report on Trust Fund’s Preparation for Draft Implementation Plan With Annex A to Initial Draft Implementation Plan with focus on Priority Victims”, [No. ICC-01/04-02/06-2676-Conf](#) and [No. ICC-01/04-02/06-2676-Conf-AnxA](#), 9 June 2021. On 14 June, the TFV submitted a *Corrigendum* to said Annex A, [No. ICC-01/04-02/06-2676-Conf-AnxA-Corr](#) and [No. ICC-01/04-02/06-2676-Conf-AnxA-Corr-Anx](#). See also [No. ICC-01/04-02/06-2676-Red](#) and [No. ICC-01/04-02/06-2676-AnxA-Corr-Red2](#).

¹² See the “Order for the submission of observations on the initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2677](#), 10 June 2021. See also the “Registry

10. On 11 June 2021, the Appeals Chamber issued an Order setting a time limit for responses to the Defence request for suspensive effect contained in its Appeal Brief against the Reparations Order.¹³ On 22 and 25 June 2021 respectively, the TFV and both LRVs submitted their respective responses.¹⁴

11. On 28 June 2021, the TFV submitted additional observations regarding its IDIP.¹⁵

12. On 2 July 2021, the Appeals Chamber rejected the Defence's request for suspensive effect of the Reparations Order.¹⁶ The Appeals Chamber found that it has not been demonstrated that, unless the Impugned Decision were suspended, its implementation would create an irreversible situation, lead to consequences that would be very difficult to correct or potentially defeat the purpose of the appeals.¹⁷

Observations on the Trust Fund for Victims' Initial Draft Implementation Plan", [No. ICC-01/04-02/06-2683](#), 23 June 2021; the "Defence Observations on the TFV initial draft implementation plan", [No. ICC-01/04-02/06-2682-Conf](#), 23 June 2021; the "Response of the Common Legal Representative of the Former Child Soldiers to the TFV Initial Draft Implementation Plan with focus on Priority Victims", [No. ICC-01/04-02/06-2681](#), 23 June 2021; and the "Public Redacted Version of the 'Observations of the Common Legal Representative of the Victims of the Attacks on the Trust Fund for Victims' Draft Initial Implementation Plan' (ICC-01/04-02/06-2680-Conf)", [No. ICC-01/04-02/06-2680-Red](#), 28 June 2021 (the original confidential version thereof was filed on 23 June 2021).

¹³ See the "Order setting a time limit for responses to the request for suspensive effect and invitation to the Trust Fund for Victims to submit observations on that request" (Appeals Chamber), [No. ICC-01/04-02/06-2678 A4 A5](#), 11 June 2021.

¹⁴ See the "Observations on the Defence Request for Suspensive Effect and Request under rule 103 of the Rules of Procedure and Evidence", [No. ICC-01/04-02/06-2679 A4 A5](#), 22 June 2021; the "Response of the Common Legal Representative of the Former Child Soldiers to Mr Ntaganda Request for suspensive effect of the Reparations Order", [No. ICC-01/04-02/06-2685 A4 A5](#), 25 June 2021; and the "Public Redacted Version of the 'Response of the Common Legal Representative of the Victims of the Attacks to the Defence Request for Suspensive Effect of the Reparations Order, to the TFV's Observations on the Defence Request for Suspensive Effect, and to the TFV's Request under rule 103 of the Rules' (ICC-01/04-02/06-2684-Conf)", [No. ICC-01/04-02/06-2684-Red A4 A5](#), 25 June 2021. See also the "Response on behalf of Mr Ntaganda to the Trust Fund for Victims' Observations and Request", [No. ICC-01/04-02/06-2686 A4 A5](#), 25 June 2021.

¹⁵ See the "Public redacted version of 'Observations on the responses and observations submitted on the Initial Draft Implementation Plan', submitted on 28 June 2021", [No. ICC-01/04-02/06-2687-Red](#), 28 June 2021.

¹⁶ See the "Decision on the Defence request for suspensive effect" (Appeals Chamber), [No. ICC-01/04-02/06-2691 A4 A5](#), 2 July 2021.

¹⁷ *Ibid.*

13. The same day, the Defence requested the disqualification of Judge Lordkipanidze for the appeals against the Reparations Order.¹⁸ On 8 July 2021, the Presidency set a calendar to receive any observations by the LRV and by Judge Lordkipanidze on said request, before convening a plenary session to address the request.¹⁹

14. On 16 July 2021, the TFV submitted a request to postpone the submission of its Draft Implementation Plan (the “DIP”) by 17 December 2021.²⁰ The TFV highlighted the difficulties posed by the public health situation and the security situation both in the Democratic Republic of the Congo and in Uganda.²¹ On 22 July, the LRVs and the Defence filed their response in support of the Request.²²

15. On 23 July 2021, the Chamber issued its Decision on the TFV’s IDIP, approving the latter, subject to amendments and additional information to be provided by the TFV when submitting its next report.²³

16. On the same day, the Chamber granted the TFV’s extension of time to submit its DIP.²⁴ The Chamber however directed the TFV to find all possible alternatives to finalise it as efficiently and expeditiously as possible, taking into account the fact that

¹⁸ See the “Request seeking Judge Lordkipanidze to recuse himself or be disqualified to adjudicate the appeals against the Reparations Order issued by Trial Chamber VI on 8 March 2021”, [No. ICC-01/04-02/06-2690 A4 A5](#), 2 July 2021.

¹⁹ See the “Order concerning the ‘Request seeking Judge Lordkipanidze to recuse himself or be disqualified to adjudicate the appeals against the Reparations Order issued by Trial Chamber VI on 8 March 2021’ dated 2 July 2021 (ICC-01/04-02/06-2690)” (Presidency), [No. ICC-01/04-02/06-2692 A4 A5](#), 8 July 2021.

²⁰ See the “Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan”, [No. ICC-01/04-02/06-2693](#), 16 July 2021.

²¹ *Ibid.*

²² See the “Observations on Behalf of Mr Ntaganda on the ‘Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan’”, [No. ICC-01/04-02/06-2695](#), 22 July 2021; the “Joint Response of the Common Legal Representatives of Victims to the ‘Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan’”, [No. ICC-01/04-02/06-2694](#), 22 July 2021.

²³ See the “Decision on the TFV’s initial draft implementation plan with focus on priority victims” (Trial Chamber II), [No. ICC-01/04-02/06-2696](#), 23 July 2021.

²⁴ See the “Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan” (Trial Chamber II), [No. ICC-01/04-02/06-2697](#), 23 July 2021.

the time-limit cannot be extended indefinitely without infringing on the rights of victims to prompt reparations.²⁵

17. On 2 August 2021, the Defence submitted its “Application on behalf of Mr Bosco Ntaganda seeking leave to appeal Decision on the TFV’s initial draft implementation plan with focus on priority victims”,²⁶ to which the LRVs responded jointly on 6th of August.²⁷

18. On 9 August 2021, both LRVs and the Defences submitted their respective Response to the Appeals against the Reparation Order.²⁸

19. On 13 August 2021, the Defence submitted its Request.²⁹

III. SUBMISSIONS

20. Contrary to what the Defence alleges in paragraph 3 of its Request, the arguments put forward by the Legal Representative illustrate a position that was already known by the Defence, and which, in addition, is anchored in the jurisprudence of this Court.³⁰ Therefore, it is incorrect for the Defence to submit that it could not have

²⁵ *Ibid.*

²⁶ See the “Application on behalf of Mr Bosco Ntaganda seeking leave to appeal Decision on the TFV’s initial draft implementation plan with focus on priority victims”, [No. ICC-01/04-02/06-2698](#), 2 August 2021.

²⁷ See the “Joint Response of the Common Legal Representatives of Victims to Mr Ntaganda’s Request for Leave to Appeal the Decision on the TFV’s IDIP (ICC-01/04-02/06-2698)”, [No. ICC-01/04-02/06-2699](#), 6 August 2021.

²⁸ 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; 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; and 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.

²⁹ See the Defence Request, *supra* note 1.

³⁰ As demonstrated in 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)”, *supra* note 28. See also, *inter alia*, the “Closing brief on behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2276-Corr-Red](#), 7 November 2018; the “Joint Response of the Legal Representatives of Victims to the Registry’s Observations on Reparations”, [No. ICC-01/04-02/06-2430](#), 3 October 2019; and the “Submissions on Reparations on behalf of the Former Child Soldiers”, [No. ICC-01/04-02/06-2474](#), 28 February 2020.

anticipated the Legal Representative's position. Indeed, according to the jurisprudence of the Appeals Chamber, *"a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated". Thus, the Appeals Chamber would consider granting a request for leave to reply if these conditions are met, unless it considers that a reply would otherwise be necessary for the adjudication of the appeal"*.³¹

21. Moreover, the Legal Representative submits that the Defence merely points to issues arising from the Legal Representative's response without demonstrating why said issues are new and could not reasonably have been anticipated.³² The Defence equally fails to demonstrate that a reply to said issues is otherwise necessary for the adjudication of the appeal.³³

22. Moreover, it stems from the Defence's Request itself that the latter is only looking for yet another opportunity to repeat its previous submissions, already extensively known by the Appeals Chamber.³⁴ Indeed, a leave to reply must generally be limited to circumstances where new issues arise out of the opposing party's brief and thus a reply is not a vehicle for an appellant to simply reiterate or refine the arguments made in the appeal.³⁵

23. Moreover, contrary to this Court's legal framework and jurisprudence³⁶, the Defence used its request to *de facto* reply prior to leave been granted by the Appeals

³¹ See the "Decision on Mr Ntaganda's request for leave to reply (Appeals Chamber)", [No. ICC-01/04-02/06-1994 OA6](#), 17 July 2017, para. 9.

³² *Idem*, para. 13.

³³ See the "Decision on Mr Ntaganda's request for leave to reply (Appeals Chamber)", [No. ICC-01/04-02/06-1813 OA5](#), 3 March 2017, para. 12.

³⁴ See the Defence Request, *supra* note 1, in particular paras. 5-8.

³⁵ See the "Decision on the Application of the Defence for Germain Katanga to file a reply (regulation 24 of the Regulations of the Court)" (Trial Chamber II), [No. ICC-01/04-01/07-1004-tENG](#), 14 July 2009, para. 3. See also STL, *Amicus Curiae Prosecutor vs. New TV S.A.L. and Karma Mohamed Tahsin Al Khayat*, "Decision on Urgent Request for Suspensive Effect of the Appeal, Request for Leave to Reply and Request for Appeal Hearing (The Appeals Panel)", [No. STL-14-05/PT/AP/AR126.1](#), 22 August 2014, para. 11.

³⁶ See the "Decision on requests for leave to reply to the Prosecutor's consolidated response to the documents in support of the appeal" (Appeals Chamber), [No. ICC-01/05-01/13-2197 A3 A4 A5](#), 18 August 2017, para. 17 and the "Decision on Mr Bemba's request for leave to reply to the 'Prosecution's Response to Bemba's 'Request for Additional Evidence on Appeal'" (Appeals Chamber), [No. ICC-01/05-01/13-2214 A4](#), 4 September 2017, para. 5.

Chamber.³⁷ This practice is censured by the Appeals Chamber.³⁸ Indeed, a party must obtain leave before filing a reply and putting forward further substantive arguments on the record without waiting for such leave is an impermissible circumvention of the relevant procedural rules and clearly defeat the purpose of regulation 24(5) of the Regulations of the Court.³⁹

24. The Legal Representative further submits that the Appeals Chamber has already the benefit of all the parties' relevant submissions before it.⁴⁰ Thus, the issues raised in the Request do not constitute new issues which the Defence could not have reasonably anticipated and thus the Appeals Chamber would not be assisted in receiving further submissions on the matter.⁴¹

25. As a result, and, as per the requirements of Regulation 60(1) of the Regulations of the Court, the Legal Representative submits that a further Reply from the Defence will not only constitute a disservice to the proceedings but will also clearly not be in the interests of justice.⁴² In fact, allowing the Defence to further delay the reparations proceedings by using all possible procedural avenues to only keep repeating the same arguments and pointing to mere disagreements with the Trial Chamber and the Legal Representative run against the best interests of the victims in the present case. The Legal Representative respectfully ask the Appeals Chamber not to condoned such a scheme.

³⁷ See the Defence Request, *supra* note 1, paras. 19-41.

³⁸ See the "Decision on requests for leave to reply" (Appeals Chamber), [No. ICC-01/04-01/06-3412 A7 A8](#), 26 July 2018, para. 11.

³⁹ See, *inter alia*, the "Decision on Urgent Request for Suspensive Effect of the Appeal, Request for Leave to Reply and Request for Appeal Hearing", *supra* note 35, para. 11. See also the "Decision on the Defence's request for leave to appeal the 'Decision on legal representation of victims and related matters'" (Pre-Trial Chamber II, Single Judge), [No. ICC-01/14-01/21-136](#), 4 August 2021, para. 22.

⁴⁰ See, *inter alia*, the submissions referred to in the Procedural Background, *supra* paras. 3-18.

⁴¹ See the "Decision on request for leave to reply" (Appeals Chamber), [No. ICC-01/04-02/06-2530 A3](#), 15 May 2020, paras. 13, 15, 22, 24, 26, and 28. See also the "Decision on request for leave to reply" (Appeals Chamber), [No. ICC-01/04-02/06-2522 A](#), 4 May 2020, paras. 14, 20, 22, and 26.

⁴² See also the jurisprudence cited by the Defence at paragraph 16 of the Request. See the Defence Request, *supra* note 1, para. 16.

IV. CONCLUSION

26. For the foregoing reasons, the Legal Representative respectfully requests the Appeals Chamber to dismiss the Defence's Request for Leave to Reply to the CLR1's Response.



Sarah Pellet

Common Legal Representative of the
Former Child Soldiers

Dated this 18th day of August 2021

At The Hague, The Netherlands