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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 with Public Annex A

Defence response to “Observations of the Common Legal Representative of the Former Child Soldiers on Part I of Mr Ntaganda’s Appeal against the Judgment pursuant to Article 74 of the Rome Statute”, 27 February 2020, ICC-01/04-02/06-2473

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

Ms. Fatou Bensouda
Mr. James Stewart
Ms. Helen Brady

Counsel for the Defence

Me Stéphane Bourgon, *Ad.E.*
Ms. Kate Gibson

Legal Representatives of Victims

Ms. Sarah Pellet
Mr. Dmytro Suprun

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**

Pursuant to the Appeals Chamber Decision on Victim participation,¹ Counsel for Mr. Ntaganda (“Defence” or “Mr. Ntaganda”) hereby respond to “Observations of the Common Legal Representative of the Former Child Soldiers on Part I of Mr. Ntaganda’s Appeal against the Judgment pursuant to Article 74 of the Rome Statute” submitted on 27 February 2020.

INTRODUCTION

1. In addition to providing observations on the arguments raised by the Defence in support of Grounds 1 and 3 in its Appeal Brief – Part I, the Common Legal Representative of the former child soldiers (“CLR1”) *invites* the Appeals Chamber to consider “[...] whether Mr Ntaganda’s submissions in the context of the present appeal meet the applicable requirements under the Court’s core texts.”² The CLR1’s observations on this point are without merit and should be disregarded *in limine*.

2. *First*, these observations are not the object of any relief sought.³ *Second*, the CLR1’s criticism concerning Mr. Ntaganda Notice of Appeal against the Judgment pursuant to Article 74 of the Statute (“Mr. Ntaganda’s Notice of Appeal”) comes surprisingly late, *i.e.* no less than five months and a half after its filing. The CLR1’s concerns should have been voiced much earlier. *Third*, the CLR1’s silence on these concerns following the submission of Mr. Ntaganda’s Appeal Brief Part I on 11 November 2019 and Part II on 31 January 2020 is also noteworthy. *Fourth*, neither the Prosecution nor the CLR2 voiced similar concerns. *Lastly*, the concerns expressed did not preclude the CLR1 from submitting detailed observations in relation to Mr. Ntaganda’s arguments in support his first and third grounds of appeal, to which the Defence responds herein.

¹ [Decision-2439](#), p.4, para.7.

² [CLR1 Observations](#), para.1.

³ [CLR1 Observations](#), paras.1-3.

GROUND 1. JUDGE OZAKI LOST THE APPEARANCE OF INDEPENDENCE AND WAS DISQUALIFIED THEREBY VIOLATING MR. NTAGANDA'S RIGHT TO A FAIR TRIAL

3. The consequence of the CLR1 position is that a party has: (i) no right to question the judicial independence of a Judge at trial; (ii) no right to be heard on the issue once it has arisen; and (iii) no right of appeal in respect of a determination about a Judge's judicial independence. This cannot be the case.

4. The right of an accused "to be tried before an independent tribunal is an integral component of his right to a fair trial".⁴ Fairness and independence of the judiciary necessarily go hand in hand, as demonstrated by the multitude of international and domestic jurisprudence making this link.⁵ Regardless, the CLR1 submits that Mr. Ntaganda has no right to raise this issue on appeal because only issues of "impartiality" under article 41 can be advanced and adjudicated, but issues of "independence" under article 40 are sealed off from appellate review.

5. In support, the CLR1 refers to footnote 1165 of the *Čelebići* Appeal Judgement, where the ICTY Appeals Chamber confirmed that it has "not dealt with this matter as an appeal from the decision of the Bureau."⁶ The CLR1 claims that this means that the International Criminal Court Appeals Chamber ("ICC Appeals Chamber") is blocked from entertaining the issue. The CLR1 neglects to mention, however, that footnote 1165 goes on to state: "[t]he question whether a judge should have been disqualified from hearing a case is relevant to the fairness of the trial [...] and it is therefore a valid ground of appeal from a conviction."⁷ The *Čelebići* Appeals Chamber then went on to squarely consider the issue of Judge Odio Benito's

⁴ [ICTR-Nahimana-AJ](#), para.28.

⁵ [Lubanga-Decision-3040](#), para.58; [ICTR-Ngirabatware-Order](#), para.11; [ICTR-Nahimana-AJ](#), para.28; [ICTY-Furundžija-AJ](#), para.177; [ICTY-Galić-AJ](#), para.37; [ICTY-Mladić-Decision](#), p.3; [STL-Ayyash-Decision](#), para.35; [Beaumartin](#); [Rosa Espinoza](#), para.8.8; [Gonzales del Rio](#), para.5.1; See also [R. v. N.S.; Ebner](#), para.116.

⁶ [CLR1 Observations](#), para.8.

⁷ [ICTY-Mucić-AJ](#), fn.1165.

independence, again reviewing at length on appeal the implications of the overlap between her position as an ICTY Trial Judge and her election as the Vice-President of Costa Rica,⁸ concluding not only that no reasonable apprehension of bias was established, but that “[t]he challenge to her independence also accordingly fails.”⁹ The Bureau’s prior decision on Judge Odio Benito’s independence was no impediment to that ground of appeal. Accordingly, the *Čelebići* Appeal Judgement does not stand for the principle that an Appeals Chamber is not permitted to adjudicate issues of independence when raised again on appeal: it stands for the opposite proposition.

6. This accords with the authorities cited by the Defence, which the CLR1 does not address.¹⁰ The CLR1 position would mean that the ICC Appeals Chamber’s jurisdiction to decide issues linked to the fairness of the trial is more limited than other international or domestic courts; a proposition for which there is no support. The Appeals Chamber is well within its authority to decide the question, and provide a remedy. All parties have briefed the issue, with both the Prosecution and CLR1 making submissions in response as they have seen fit.¹¹ Nor does the CLR1’s emphasis on the “administrative” nature of article 40 assist; appellate divisions of international courts have consistently found themselves competent “to review matters affecting the rights of persons in proceedings before it” and with “the power to make determinations concerning such matters where necessary to give full effect to statutory rights,”¹² even when the underlying impugned decision is an administrative one.¹³

⁸ [ICTY-Mucić-AJ](#), paras.685-692.

⁹ [ICTY-Mucić-AJ](#), para.692.

¹⁰ [Defence Appeal Brief – Part I](#), fn.2.

¹¹ [ICTY-Šainović-AJ](#), para.84.

¹² [ICTY-Karadžić-Decision-Review](#), pp.4-5.

¹³ See, e.g., [ICTY-Karadžić-Appeal-Decision](#), para.25; [ICTR-Ntagerura-Decision](#), para.12.

7. Notably, the CLR1 calls the circumstances in the *Ntaganda* and *Čelebići* cases “virtually identical”.¹⁴ They are, with one notable difference. Judge Odio Benito went to great lengths to demonstrate, and ensure, that she was not, and could not be perceived as, exercising any executive powers until after the issuance of the *Čelebići* trial judgment,¹⁵ operating with complete transparency. Judge Ozaki deliberately concealed her motivation for seeking to become a part-time Judge¹⁶ and assumed her functions and presumably accepted her salary as an official of the Japanese government in Estonia prior to the issuance of the *Ntaganda* judgment. None of these differences suggest that the ICC Appeals Chamber should not consider the challenge to her independence in precisely the same manner as the ICTY Appeals Chamber considered the question in *Čelebići*, despite it not being considered an appeal from the decision of the Bureau/Plenary. This is particularly so, given that the Defence (unlike in *Čelebići* where the Defence was heard by the Bureau at first instance) was not heard at first instance on the question of Judge Ozaki’s independence.

8. The Afghanistan oral decision is limited to the procedural question of whether the victims of a situation have standing to appeal against a decision of a Pre-Trial Chamber rejecting the authorization of an investigation.¹⁷ It does not stand for any broader position, nor does it circumscribe the right of a convicted accused to challenge the fairness of the proceedings against him.

9. The CLR1 then spends section (b), criticizing the Defence submissions on the basis that they fail to meet the applicable standard under article 41, which Mr. Ntaganda has not raised on appeal. What is significant, however, is the failure of the CLR1 to engage on any of the salient facts at the heart of Ground 1, namely, Judge Ozaki’s independence and whether it was compromised. For the reasons set out fully

¹⁴ [CLR1 Observations](#), para.14.

¹⁵ [ICTY-Mucić-Decision](#), p.10.

¹⁶ [Defence Appeal Brief – Part I](#), para.15.

¹⁷ [CLR1 Observations](#), para.7.

in Ground 1, it was; thereby violating Mr. Ntaganda's fundamental right to a fair trial.

GROUND 3: THE CONVICTIONS EXCEEDS THE SCOPE OF THE CHARGES

10. The CLR1's argument that "[t]he Challenged Acts concerning the crimes against child soldiers fall squarely within the scope of [the] [...] charges"¹⁸ should be dismissed.

I. The charges were not framed by reference to broad geographical and temporal parameters alone

11. The CLR1's broad opening challenge to Ground 3 of Mr. Ntaganda's appeal fails to get off the starting blocks. The argument that "the charges concerning crimes against child soldiers have been pleaded and confirmed by reference to confined [geographical and temporal] parameters"¹⁹ alone is not supported by a plain reading of the charges in this case, as defined in the Confirmation Decision.²⁰ Rather, the Pre-Trial Chamber expressly directed that the broad geographical and temporal parameters of Counts 6, 9, 14, 15 and 16 stated in paragraph 74 of the Confirmation Decision were to be "more specifically supported by the facts presented in each subsection related to counts 6, 9, 14, 15 and 16."²¹

12. In addition to being factually incorrect, the CLR1's argument that charges can be formulated on such a broad and unspecific basis is not consistent with the Court's

¹⁸ [CLR1 Observations](#), para.22. For ease of reference, the Defence adopts and will use in this response the term "Challenged Acts", as such term is defined in the Observations, para.15.

¹⁹ [CLR1 Observations](#), para.16. *Also* para.22. The CLR1 states that the parameters for the crimes of enlistment, conscription, rape and sexual slavery of child soldiers are "Ituri between on or about 6 August 2002 and 31 December 2003" and for the crime of using child soldiers to participate actively in hostilities are "Ituri between on or about 6 August 2002 and 30 May 2003" ([CLR1 Observations](#), para.16). These are the geographic and temporal parameters stated at [Confirmation-Decision-309](#), para.74.

²⁰ [Lubanga-AJ-3121](#), para.124.

²¹ [Confirmation-Decision-309](#), para.75.

jurisprudence.²² As the Appeals Chamber held in *Bemba*, “[s]imply listing the categories of crimes with which a person is to be charged or stating, in broad general terms, the temporal and geographical parameters of the charge is not sufficient to comply with the requirements of regulation 52(b) of the Regulations of the Court and does not allow for a meaningful application of article 74(2) of the Statute.”²³

13. Therefore, in the present case, it was only by reference to the additional and, it is submitted, exhaustive,²⁴ factual detail provided in paragraphs 81 to 96 of the Confirmation Decision that the charges could be properly and meaningfully constituted by the Pre-Trial Chamber. In essence, the confirmed charges concerning child soldiers comprise both the factual and legal elements set out in paragraphs 74 to 96 of the Confirmation Decision and not simply by paragraph 74 alone.

14. In so far as the CLR1 seeks to adopt the approach taken by the Prosecution to argue that formulating the charges concerning child soldiers by reference simply to Ituri and two time frames (6 August 2002 and 31 December 2003 for Counts 6, 9, 14 and 15 and 6 August 2002 and 30 May 2003 for Count 16) was also consistent with the jurisprudence of other tribunals,²⁵ then this approach is misconceived.

15. Any question regarding the scope of the charges under article 74(2) of the Statute “pertains to the procedural architecture of the International Criminal Court”.²⁶ In this regard, this Court’s “system is [...] different from the system of the *ad hoc* tribunals where no Pre-Trial Chamber exists and where the Trial Chamber can decide about amendments to the charges in the course of the trial.”²⁷ Moreover,

²² [CLR1 Observations](#), para.16.

²³ [Bemba-AJ-3636](#), para.110. See also [Lubanga-Decision-2205](#), fn.163 (the facts described in the charges are “the factual allegations which support each of the legal elements of the crime charged”); [Lubanga-AJ-3121](#), para.123 (“the underlying criminal acts form an integral part of the charges against the accused [...]”).

²⁴ Cf. [Prosecution-Response-2464](#), para.28.

²⁵ [CLR1 Observations](#), para.16 citing to [Prosecution-Response-2464](#), paras.40-41.

²⁶ [Bemba-Separate-Opinion-3636](#), para.19.

²⁷ [Bemba-Separate-Opinion-3636](#), para.19.

“[t]here is no equivalent to Regulation 55 of the Regulations of the Court at the *ad hoc* tribunals, since there it is the sole responsibility of the Prosecutor to formulate the indictment and he or she can ask the Trial Chamber to amend the indictment during the course of the trial.”²⁸ Given these fundamental differences between the two systems, the jurisprudence of the *ad hoc* tribunals on the scope of the charges has no role at all to play in the present ground of appeal.

16. Set against the foregoing proper factual and legal analysis of the charges in this case, a review of the “factual allegations”²⁹ presented in paragraphs 81 to 96 of the Confirmation Decision establishes that the Challenged Acts concerning crimes against child soldiers are not referred to therein.³⁰ Accordingly, they fall outside “the facts and circumstances described in the charges”³¹ and should not have formed any part of Mr. Ntaganda’s conviction.

II. The CLR1’s “additional considerations” are without merit

17. The two “additional considerations” raised by the CLR1 to challenge Ground 3 of Mr. Ntaganda’s appeal are similarly without merit.³²

18. *First*, even assuming, *arguendo*, that the charges of rape and sexual slavery against child soldiers were framed by reference to the broad geographical and temporal parameters referred to by the CLR1,³³ identifying the victims of those charges as being “UPC/FPLC child soldiers under the age of 15” still does not

²⁸ [Bemba-Separate-Opinion-3636](#), para.19.

²⁹ [Lubanga-Decision-2205](#), fn.163.

³⁰ The Challenged Acts concerning crimes against child soldiers are set out in the [Defence Appeal Brief – Part I](#), para.22 (xii) (the rape and sexual slavery of child soldiers in relation to P-0883 at Camp Bule, and Mave, assigned to Floribert KISEMBO [...]) and (xiv) (using children under the age of 15 to participate actively in hostilities in the First Operation in so far as this finding relies on evidence relating to Sayo).

³¹ [Statute](#), article 74(2).

³² [CLR1 Observations](#), para.17.

³³ [CLR1 Observations](#), para.16.

provide the necessary specificity and precision required to comply with regulation 55 RoC and permit a meaningful application of article 74(2) of the Statute.³⁴

19. This is a category of victim containing an unknown and unspecified number of individuals. In the context of Counts 6 and 9, it would clearly be too broad to state that all child soldiers were victims of rape and/or sexual slavery. Yet this would be the effect of the CLR1's argument which would be incorrect.

20. Further, the CLR1's reliance on the jurisprudence of the *ad hocs* to support her argument is misconceived.³⁵ As argued above, the fundamental differences between the charging regimes at this Court and at the *ad hoc* tribunals mean that the jurisprudence of the *ad hoc* tribunals is not directly relevant in determining this ground of appeal.

21. *Second*, contrary to the CLR1's assertion, Mr. Ntaganda does not argue "that a higher degree of specificity applies to the charges of rape and sexual slavery of child soldiers than to those of conscription and enlistment".³⁶ Rather, Mr. Ntaganda's position is that the specificity required depends on the way in which the Prosecutor has pled those charges during the confirmation process.³⁷

22. In relation to Counts 6 and 9, "the Prosecutor...formulated the charges at a level of detail sufficient for the purposes of" article 74(2) of the Statute "only in respect of the [underlying, individual] criminal acts".³⁸ This is evident from paragraphs 81 to 82 of the Confirmation Decision which show that the Prosecutor pled the crimes of rape and sexual slavery by reference to specific incidents concerning the repeated rapes of particular child soldiers at particular locations

³⁴ [CLR1 Observations](#), para.18. Note the CLR1 limits the argument to Counts 6 and 9.

³⁵ [CLR1 Observations](#), para.18.

³⁶ [CLR1 Observations](#), para.19.

³⁷ Note [Confirmation-Decision-309](#), para.83. In relation to Counts 14 to 16, the Pre-Trial Chamber held that, due to the continuous nature of the child soldier crimes, the Prosecutor does not need to identify specific locations and dates of enlistment, conscription or use. No similar comments are made in the context of the discussion of Counts 6 and 9.

³⁸ [Bemba-AJ-3636](#), para.115.

during specific time periods. Crucially, none of those incidents concern the rape and sexual slavery of either P-0883 at Camp Bule or Mave, who was assigned to Floribert Kisembo.

23. In advancing its second additional consideration, the CLR1 also erroneously argues that “Mr Ntaganda may regard the ‘*continuing nature*’ of the relevant crime as the single yardstick determining whether the relevant charges need to be pleaded at the level of individual acts or not.”³⁹ Again, this is not Mr. Ntaganda’s position. As stated in the Chamber’s Practice Manual, “the required specificity of the charges depends on the nature of the case” and “no threshold of specificity of the charges can be established *in abstracto*”.⁴⁰ However, in the present case, the fact that the crimes of rape and sexual slavery were pled by reference to specific underlying acts is common sense. These are crimes committed by relatively discrete events, *e.g.*, an act of rape which, if repeated, can, in certain circumstances, constitute sexual slavery. Therefore, while sexual slavery is a crime of a continuous nature, the building blocks of the crime are the discrete underlying acts of rape. On this basis, when read in the proper context, Mr. Ntaganda’s position is neither cryptic nor contradictory.⁴¹

24. As regards the CLR1’s assertion that “a more holistic approach to the assessment of the required degree of specificity of the charges”⁴² is merited in the present case, this should be dismissed as irrelevant. The plain fact is that the Prosecutor was able to formulate the child soldier charges with precision. The precise details of “the facts and circumstances described in the charges”⁴³ are set out in paragraphs 74 to 96 of the Confirmation Decision. These paragraphs make no reference to the Challenged Acts concerning child soldiers. Mr. Ntaganda’s argument is no more complicated than that. The simplicity of the argument is based on the

³⁹ [CLR1 Observations](#), para.19.

⁴⁰ [Chamber’s Practice Manual](#), para.38.

⁴¹ [CLR1 Observations](#), para.19.

⁴² [CLR1 Observations](#), para.20.

⁴³ [Statute](#), article 74(2).

straightforward premise that, by confirmation, the Prosecution is supposed to be “trial-ready”. Therefore, the Defence approach simply requires the Prosecution to plead the charges in detail and on the basis of evidence it should have in its possession already by the point of confirmation.

25. Indeed, given that the Prosecution should be “trial ready” by confirmation and have largely completed its investigations, there are no factors which “militate in favour of the application of the less stringent standard developed for the recruitment of child soldiers to the charges of *both* sexual slavery *and* rape against said children.”⁴⁴

26. In the context of the present case, the CLR1’s arguments for a “less stringent standard” ignore the “the way in which the Prosecutor has pleaded the charges in the case at hand” which was at the level of individual criminal acts.⁴⁵ In addition, the fact that Mr. Ntaganda was not charged as a direct perpetrator for Counts 6 and 9 is irrelevant.⁴⁶ The Defence adopts the reasoning of Judge Van den Wyngaert and Judge Morrison in the *Bemba* appeal in this regard which bears repeating in full:

the fact that the link between the conduct of the accused and that of the physical perpetrators is more indirect does not mean that it should not be equally strong. To the contrary, if it were permissible to convict someone for an unspecified series of crimes, there would be a real risk that the accused might be held responsible for crimes he or she had no sufficient connection with. [...] Second, the accused should be in a position to challenge the veracity of this link. Since the Rome Statute eschews all forms of strict criminal responsibility, it must be established which role the accused played in bringing about each of the crimes that were allegedly committed by his subordinates. This is only possible if the criminal acts in question are identified, both in terms of time and space and in terms of the identity of the physical perpetrators, if not by name or function, then at least by the unit to which they belong.⁴⁷

⁴⁴ [CLR1 Observations](#), para.21 (emphasis in original).

⁴⁵ [Bemba-AJ-3636](#), para.115.

⁴⁶ [CLR1 Observations](#), para.21.

⁴⁷ [Bemba-Separate-Opinion-3636](#), para.27.

27. In considering the Observations, it is of concern that the CLR1 appears to endorse “conviction ‘by sample’”⁴⁸ because “[t]he charges described a pattern of ongoing criminality against UPC/FPLC child soldiers”.⁴⁹ In this regard, the CLR1 notes the Chamber’s finding that the incidents concerning P-0883 and Mave were “not representative of the number of female UPC/FPLC victims who were subjected to rape and sexual violence, given the Chamber’s finding that such conduct against female members was a common practice in the UPC/FPLC during this time period.”⁵⁰ Again, relying on the reasoning of Judge Van den Wyngaert and Judge Morrison in *Bemba*, the Defence has already argued in the Defence Appeal Brief – Part I that such an approach should be rejected.⁵¹

III. Unconfirmed incidents of sexual and gender-based violence cannot form part of any conviction

28. Finally, in footnote 66 of her Observations, the CLR1 draws the Appeals Chamber’s attention to “the adverse impact that a general requirement that all crimes must be pleaded and confirmed at the level of individual criminal acts would entail on cases involving sexual violence crimes, and particularly those against children.” However laudable or well-meaning this concern, it is misconceived for the following reasons.

29. *First*, it is not the Defence’s position that “all crimes must be pleaded and confirmed at the level of individual criminal acts”.⁵² Nowhere is such an argument advanced by the Defence. As argued above, the specificity of the charges depends on the nature of the case and the way in which the Prosecutor has pled the charges.

30. *Second*, the CLR1’s argument has no basis in law. Where charges are pled and confirmed at the level of individual act and an incident “of sexual or gender-based

⁴⁸ [Bemba-Separate-Opinion-3636](#), para.23.

⁴⁹ [CLR1 Observations](#), para.21.

⁵⁰ [CLR1 Observations](#), para.21 citing to [SJ](#), para.108.

⁵¹ [Defence Appeal Brief – Part 1](#), para.20.

⁵² [CLR1 Observations](#), fn.66.

violence not specifically confirmed by the pre-trial chamber”⁵³ is elicited at trial, then there can be no conviction for that act, not even where the accused has received advance notice of this evidence. This is because a Chamber has no power to amend the factual parameters of the case. Changes to the confirmed charges can only be made in limited circumstances. Before the start of trial, amendments can be made with the permission of the Pre-Trial Chamber pursuant to article 61(9) of the Statute. Once trial has commenced, the only changes which are permitted are to the legal characterisation of the charges under regulation 55 of the RoC⁵⁴ or a withdrawal of the charges by the Prosecutor under article 61(9) of the Statute.

31. The fact that “defining the parameters of the trial lies solely in the hands of the PTC”⁵⁵ is underlined by the terms of article 61(11) of the Statute. While the Chamber “may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings”, its powers are not unlimited and are expressly stated to be “subject to paragraph 9”.⁵⁶ Thus, the power to amend the charges in the period prior to the start of trial remains with the Pre-Trial Chamber and is not transferred to the Chamber. If this power does not transfer prior to trial, it cannot reasonably be said to transfer after the start of trial, else the requirement of certainty would be rendered nugatory.

32. More fundamentally, if new “factual allegations which [are to be used to] support [...] the legal elements of the crime charged”⁵⁷ can be added after confirmation without the permission of the Pre-Trial Chamber, such a process “would [...] render useless the months of work devoted by the Pre-Trial Chamber to preparing the case for trial and, to a large extent, would make it pointless even to

⁵³ [CLR1 Observations](#), fn.66.

⁵⁴ [Regulation 55\(1\)](#) expressly states that the factual parameters of the case cannot be changed through its operation (“[...] the Chamber may change the legal characterisation of facts [...] without exceeding the facts and circumstances described in the charges and any amendments to the charges”).

⁵⁵ [Triffterer](#), p.1549.

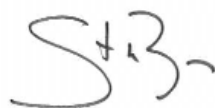
⁵⁶ [Statute](#), article 61(11).

⁵⁷ [Lubanga-Decision-2205](#), fn.163.

hold a confirmation hearing where evidence is presented, and at the close of which the trial is supposed to commence.”⁵⁸

33. The above reasoning equally applies to any erroneous reliance by the CLR1⁵⁹ (and, indeed, the Prosecution)⁶⁰ on “notice” as being a basis for arguing that additional criminal acts including acts of sexual violence against child soldiers could be added by advance disclosure.

RESPECTFULLY SUBMITTED ON THIS 16TH DAY OF MARCH 2020



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

The Hague, The Netherlands

⁵⁸ [Katanga-Decision-1547](#), para.23.

⁵⁹ [CLR1 Observations](#), fn.66.

⁶⁰ [Prosecution-Response-2464](#), paras.44 *et seq.*