

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **7 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

General notice of the issues the Defence intends to raise during the Appeals oral hearing

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

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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**

Further to the Directions on the conduct of the hearing,¹ Counsel for Mr Ntaganda (“Mr Ntaganda” or “Defence”) hereby submit this:

**General notice of the issues the Defence intends to raise
during the Appeals oral hearing**

1. On 8 July 2019, Trial Chamber VI (“Trial Chamber”) convicted Mr Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes.²
2. On 9 September 2019, the Prosecution³ and the Defence⁴ submitted their respective notices of appeal.
3. On 7 October 2019, the Prosecution submitted its Prosecution Appeal Brief.⁵
4. On 7 November 2019, Trial Chamber sentenced Mr Ntaganda to 30 years of imprisonment.⁶
5. The Defence submitted its Defence Appeal Brief – Part I on 11 November 2019⁷ and its Defence Appeal Brief – Part II on 31 January 2020.⁸
6. On 10 February 2020, the Defence submitted its Sentencing Appeal Brief.⁹
7. On 20 August 2020, the Appeals Chamber scheduled an oral hearing from 12 to 14 October 2020.¹⁰
8. On 14 September 2020, the Appeals Chamber issued the Directions on the conduct of the hearing, inviting the Defence and the Prosecutor to provide, by Wednesday, 7 October 2020, a general notice of the issues which they intend to raise in their submissions on the appeals, including an indication of the grounds of appeal to which they relate.¹¹

¹ Directions on the conduct of the hearing, 14 September 2020, [ICC-01/04-02/06-2580](#) (“Directions”).

² Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#).

³ Prosecution notice of appeal, 9 September 2019, [ICC-01/04-02/06-2395](#).

⁴ Mr. Ntaganda’s Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/04-02/06-2359, 9 September 2019, [ICC-01/04-02/06-2396](#).

⁵ Prosecution Appeal Brief, 7 October 2019, [ICC-01/04-02/06-2432](#).

⁶ Sentencing Judgment, 11 November 2020, [ICC-01/04-02/06-2442](#).

⁷ Defence Appeal Brief – Part I, 11 November 2019, [ICC-01/04-02/06-2443](#).

⁸ Defence Appeal Brief – Part II, 31 January 2020, [ICC-01/04-02/06-2465-Conf-Corr.](#)

⁹ Sentencing Appeal Brief, 10 February 2020, [ICC-01/04-02/06-2468-Conf.](#)

¹⁰ Second order scheduling a hearing, 20 August 2020, [ICC-01/04-02/06-2568](#).

¹¹ [Directions](#), para.5.

GENERAL NOTICE OF ISSUES

9. The Defence intends to raise the following issues during their oral submissions, which relate to the grounds of appeal as set out below:

Appeal from Judgment

- (i) Judge Ozaki lost the appearance of **independence** required under article 40, and a re-trial or permanent stay is required (Ground 1);
- (ii) Manifest procedural irregularities undermined Mr Ntaganda's right to a fair trial (Ground 2), including:
 - a. The Chamber's excessive resort to ***ex parte* material**;
 - b. The Prosecution's failure to disclose Mr Ntaganda's **non-privileged conversations**; and
 - c. The Trial Chamber's error in failing to suspend the proceedings prior to the resolution of the "**no case to answer**" appeal.
- (iii) The Trial Chamber erred in finding that Mr Ntaganda was liable as an **indirect co-perpetrator** (Ground 13);
- (iv) The Trial Chamber erred in finding that the **contextual elements** of the crimes charged pursuant to article 7 of the Statute had been proved beyond a reasonable doubt (Grounds 4 and 5);
- (v) The Trial Chamber erred in its **assessment of the evidence**, in particular as regards its treatment of Mr Ntaganda's evidence and the contradictory evidence of Prosecution and Defence witnesses (Grounds 7 and 8);
- (vi) The Trial Chamber's errors of law and fact, which impact factual findings underpinning convictions arising from the **First Operation** (Ground 8);
- (vii) The Trial Chamber erred in finding that Mr Ntaganda had the requisite ***mens rea*** for Counts 6, 9, 14, 15 and 16 (Grounds 9-12);
- (viii) The Trial Chamber erred in finding Mr Ntaganda had the requisite ***mens rea*** for the **First Operation** crimes (Ground 14); and

- (ix) The Trial Chamber erred in finding Mr Ntaganda had the requisite *mens rea* for the **Second Operation** crimes (Ground 15).

Sentence Appeal

- (i) The Trial Chamber erred in failing to concretely assess Mr Ntaganda's **degree of participation** in the **Second Operation** (Ground 1);
- (ii) The Trial Chamber erred by "**double-counting**" certain factors, in particular Mr Ntaganda's discriminatory intent (Ground 6);
- (iii) The Trial Chamber erred in fact, law and procedure by failing to accord weight in mitigation to: Mr Ntaganda's contribution to **reconciliation** with the Lendu community; and facilitation of the **demobilisation** of UPC/FPLC members (Ground 10);
- (iv) The Trial Chamber erred in fact, law and procedure by failing to accord weight in mitigation to Mr Ntaganda having **saved the lives of 63 enemy soldiers** (Ground 7);
- (v) The Trial Chamber erred in fact, law and procedure by failing to accord weight in mitigation to: Mr Ntaganda **having protected Lendu civilians at Mandro**; and **having punished crimes committed against civilians** (Ground 9); and
- (vi) The Trial Chamber erred by failing to accord weight in mitigation to Mr Ntaganda's **substantial efforts to protect an individual from harm** (Ground 12).

10. With respect to grounds of appeal on which the Defence does not intend to make specific submissions, Mr Ntaganda stands by its written pleadings in his Defence Appeal Brief – Part I, Defence Appeal Brief – Part II, Defence Sentencing Appeal Brief and other related submissions. The Defence will of course be ready to answer any questions in relation to these grounds.

RESPECTFULLY SUBMITTED ON THIS 7th DAY OF OCTOBER 2020

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

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

The Hague, The Netherlands