



Original: **English**

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

Date: **7 October 2020**

THE 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

**Prosecution notice of the issues it intends to raise in its submissions on the
appeals**

Source: Office of the Prosecutor

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 the Applicants

Unrepresented Victims

Unrepresented Applicants

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States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Notice

1. Pursuant to the directions of the Appeals Chamber dated 14 September 2020,¹ the Prosecution hereby provides its general notice of the issues it intends to raise in its submissions before the Appeals Chamber at the hearing on 12 to 14 October 2020.
2. The Prosecution presently intends to make submissions with respect to the issues set out below. However bearing in mind that it is also the *respondent* in the conviction and sentence appeals, the Prosecution may address other issues or grounds depending on Mr Ntaganda's submissions as appellant.
3. In relation to the **Prosecution's appeal** against Mr Ntaganda's acquittals under count 17 for intentionally directing attacks against: the church at Sayo (Ground 1); and the hospital at Mongbwalu (Ground 2):
 - a. The Trial Chamber erred in failing to recognise that the established framework of international law requires a special meaning for the term "attack" in article 8(2)(e)(iv), which for all of the listed objects prohibits conduct substantially similar to any "act of hostility" in the sense of article 53 of Additional Protocol I and article 16 of Additional Protocol II, and the 1954 Hague Convention, and not merely an "attack" in the sense of article 49(1) of Additional Protocol I and article 13 of Additional Protocol II.
 - b. The Trial Chamber erred in failing to recognise that neither the legal definition of "attack" nor "act of hostility" prescribes the manner in which the required "violence" is inflicted, which is a question of fact, provided it meets the necessary threshold.
4. The Prosecution will, in this context, address selected aspects of the submissions of the *amici curiae*, to which it has not had an opportunity to respond in writing.

¹ ICC-01/04-02/06-2580 ("Directions"), para. 5.

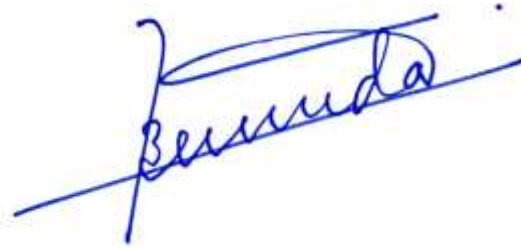
5. In response to **Mr Ntaganda's conviction appeal**:

- a. The fifteen “criminal acts” that Mr Ntaganda challenges fall within the parameters of the charges. The charges in this case are sufficiently specific and conform with the Court’s legal framework (Ground 3).
- b. The Trial Chamber correctly found that the UPC/FPLC conducted an attack directed against a civilian population pursuant to a policy to attack and chase away the Lendu civilians as well as those who were perceived as non-Iturians (Grounds 4 and 5).
- c. The Trial Chamber correctly assessed the evidence including Mr Ntaganda’s testimony and made proper factual findings (Ground 7 but also relevant to the appeal generally).
- d. The Trial Chamber correctly assessed witness credibility and reliability, and adopted the correct approach with respect to corroboration (Ground 8 but also relevant to the appeal generally such as grounds 9-11, and 14-15).
- e. The Trial Chamber correctly found Mr Ntaganda participated in a common criminal plan that did not exceed the scope of the plan charged (Ground 13).
- f. Mr Ntaganda essentially contributed to the crimes of the two operations, and had the required *mens rea* under article 25(3)(a). He was correctly convicted of all the crimes (Grounds 12, 14-15).

6. In response to **Mr Ntaganda's sentence appeal**:

- a. The Trial Chamber correctly assessed Mr Ntaganda’s degree of participation (Grounds 1-4).

- b. The Trial Chamber correctly assessed the gravity of the material conduct when calculating Mr Ntaganda's individual sentence for persecution; it did not double count (Ground 6).
- c. The Trial Chamber did not err in not considering any mitigating factor (Grounds 7-12).



Fatou Bensouda, Prosecutor

Dated this 7th day of October 2020

At The Hague, The Netherlands