

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06  
Date: 16 September 2019

**TRIAL CHAMBER VI**

**Before:** Judge Robert Fremr, Presiding Judge  
Judge Kuniko Ozaki  
Judge Chang-Ho Chung

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF  
*THE PROSECUTOR v. BOSCO NTAGANDA***

**Public redacted version of ICC-01/04-02/06-2374-Conf**

**Joint Response of the Common Legal Representatives of Victims to the  
“Prosecution’s request to submit additional evidence on sentencing”  
(ICC-01/04-02/06-2368-Conf) and the “Confidential redacted version of Defence  
request for admission of sentencing evidence” (ICC-01/04-02/06-2369-Conf-Red)**

**Source:** Office of Public Counsel for Victims

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

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(Participation/Reparation)**

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**The Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

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**REGISTRY**

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Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks and the Common Legal Representative of the Former Child Soldiers (jointly the “Legal Representatives”) hereby submit a joint response to the “Prosecution Request to submit additional evidence on sentencing” (the “Prosecution Sentencing Request”)<sup>1</sup> and the “Defence Request for admission of sentencing evidence” (the “Defence Sentencing Request”).<sup>2</sup>

2. The Legal Representatives support the Prosecution Sentencing Request and join the Prosecution’s arguments in their entirety. The evidence of the five witnesses proposed by the Prosecution is not duplicative of the evidence admitted in the case record and will assist the Chamber in assessing the extent of the harm caused to victims and their families, a key consideration in determining the appropriate sentence.

3. The Legal Representatives oppose the Defence Sentencing Request in its entirety. The testimonial and documentary evidence proposed by the Defence is cumulative in nature and pertains to matters already litigated at length and adjudicated upon by the Chamber. The proposed evidence is not of a nature to fall within the scope of mitigating circumstances and will thus not assist the Chamber for the purposes of the sentencing proceedings. In addition, the credibility of proposed witnesses D-0047 and D-0020, and hence the probative value of any evidence they could potentially provide, is very limited. This, coupled with the fact that said individuals were already listed as witnesses for the Defence at trial, and ultimately withdrawn, constitutes additional grounds based on which the request to present their respective testimonies and associated materials should be rejected.

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<sup>1</sup> See the “Prosecution’s request to submit additional evidence on sentencing”, [No. ICC-01/04-02/06-2368-Conf](#), 29 July 2019 (the “Prosecution Sentencing Request”).

<sup>2</sup> See the “Confidential redacted version of “Defence request for admission of sentencing evidence”, 29 July 2019 with Confidential redacted Annexes A and B and Confidential Annex D”, [No. ICC-01/04-02/06-2369-Conf-Red](#), 29 July 2019 (the “Defence Sentencing Request”).

## II. PROCEDURAL BACKGROUND

4. On 8 July 2019, Trial Chamber VI (the “Chamber”) found Mr Bosco Ntaganda (“Mr Ntaganda”) guilty of 18 counts of war crimes and crimes against humanity.<sup>3</sup>

5. On the same day, the Chamber issued the “Order on the sentencing procedure” (the “Sentencing Order”),<sup>4</sup> directing the parties and legal representatives of victims to file, by 29 July 2019, any requests to submit additional evidence or to call witnesses.<sup>5</sup> It further ordered that any responses to the sentencing requests shall be filed by 5 August 2019.<sup>6</sup>

6. On 29 July 2019, the Prosecutor filed the Prosecution Sentencing Request,<sup>7</sup> proposing to call one witness and admit the statements of four additional witnesses under rule 68(2)(b) of the Rules of Procedure and Evidence (the “Rules”). The Defence filed the Defence Sentencing Request,<sup>8</sup> requesting the Chamber to receive the testimony of eight witnesses and 21 documents.

7. On the same day, the Legal Representatives notified the Chamber by way of electronic correspondence that they did not intend to seek leave to present evidence for the purposes of the sentencing proceedings.<sup>9</sup>

8. On 30 July 2019, the Prosecution filed the “Request for access to the identity of Defence witness D-0308 and associated submissions and materials”, seeking access to information and materials filed *ex parte* concerning proposed witness D-0308 and

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<sup>3</sup> See the “Judgment” (Trial Chamber VI), [No. ICC-01/04-02/06-2359](#), 8 July 2019.

<sup>4</sup> See the “Order on the sentencing procedure” (Trial Chamber VI), [No. ICC-01/04-02/06-2360](#), 8 July 2019.

<sup>5</sup> *Idem*, pp. 3-4.

<sup>6</sup> *Ibid.*, p. 4.

<sup>7</sup> See the Prosecution Sentencing Request, *supra* note 1.

<sup>8</sup> See the Defence Sentencing Request, *supra* note 2.

<sup>9</sup> See the email communication from CLR1 to Trial Chamber VI, 29 July 2019, 15:19; and the email communication from CLR2 to Trial Chamber VI, 29 July 2019, 16:45.

reserving its right to respond to the Defence in that respect seven days after it has been provided with said information.<sup>10</sup>

9. On 31 July 2019, the Legal Representatives filed the “Joint Response of the Common Legal Representatives of Victims to the Prosecution’s request for access to the identity of Defence witness D-0308 and associated submissions and materials”,<sup>11</sup> joining the Prosecution’s arguments in their entirety and seeking access to the relevant information. The Legal Representatives also reserved their right to respond to the Defence Sentencing Request, as far as witness D-0308 and the associated materials are concerned, seven days after having been provided with said information.

10. In accordance with the Sentencing Order, the Legal Representatives submit their joint consolidated response to the Prosecution Sentencing Request and the Defence Sentencing Request.

### III. CONFIDENTIALITY

11. Pursuant to regulations 23bis(1) and (2) of the Regulations of the Court, the present response is classified as “confidential” given the original classification of the Prosecution Sentencing Request<sup>12</sup> and the Defence Sentencing Request.<sup>13</sup>

### IV. SUBMISSIONS

#### 1. The Legal Representatives Support the Prosecution Sentencing Request

12. The Legal Representatives support the Prosecution Sentencing Request and join the Prosecution’s arguments in their entirety. The evidence of the five witnesses

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<sup>10</sup> See the “Prosecution’s request for access to the identity of Defence witness D-0308 and associated submissions and materials”, [No. ICC-01/04-02-06-2370-Conf](#), 30 July 2019.

<sup>11</sup> See the “Joint Response of the Common Legal Representatives of Victims to the “Prosecution’s request for access to the identity of Defence witness D-0308 and associated submissions and materials” (ICC-01/04-02/06-2370-Conf)”, [No. ICC-01/04-02/06-2371-Conf](#), 31 July 2019.

<sup>12</sup> See the Prosecution Sentencing Request, *supra* note 1, para. 3.

<sup>13</sup> See the Defence Sentencing Request, *supra* note 2, para. 36.

proposed by the Prosecution is strictly relevant to the determination of the appropriate sentence pursuant to article 78 of the Rome Statute (the “Statute”) and will assist the Chamber in assessing “*the extent of the damage caused, in particular the harm caused to victims and their families*” as required by rule 145(1)(c) of the Rules.

13. The Legal Representatives welcome, in particular, that the proposed witnesses will shed light on the long-term and intergenerational impact of crimes such as rape and sexual slavery (counts 4 to 9), as well as the enlistment, conscription and use of children under the age of 15 to participate actively in hostilities (counts 14, 15 and 16).

14. The Legal Representatives note that the impact of Mr Ntaganda’s crimes on their clients goes well beyond the immediate physical, psychological and material harm suffered. Transgenerational harm suffered by the victims is a relevant consideration in the assessment of the appropriate sentence,<sup>14</sup> as well as in the context of reparation proceedings.<sup>15</sup>

15. In particular, the Legal Representatives highlight the multiple, chronic and multidimensional impacts of rape on a victim, and on her or his family and community. Alongside physical and psychological consequences,<sup>16</sup> victims suffer

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<sup>14</sup> See e.g. the “Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing” (Trial Chamber III), [No. ICC-01/05-01/08-3384](#), 4 May 2016, para. 12.

<sup>15</sup> See e.g. the “Observations sur le Projet de mise en œuvre des réparations déposé par le Fonds au profit des victimes le 3 novembre 2015”, [No. ICC-01/04-01/06-3193](#), 1 February 2016; the “Submissions relevant to reparations”, [No. ICC-01/05-01/08-3455](#), 31 October 2016; the “Submissions on the Evidence Admitted in the Proceedings for the Determination of Thomas Lubanga Dyilo’s Liability for Reparations”, [No. ICC-01/04-01/06-3360-tEng](#), 8 September 2017; the “Soumissions conjointes des Représentants légaux des victimes d’éléments d’informations supplémentaires en vue de l’Ordonnance en réparation”, [No. ICC-01/05-01/08-3581](#), 1 December 2017; and the “OPCV Further Submissions in the appeals proceedings concerning the “Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable”, [No. ICC-01/04-01/06-3437](#), 31 January 2019.

<sup>16</sup> These include *inter alia* undesired pregnancies, miscarriages, children born out of rape, HIV/AIDS and other STDs, infections, fistulas’ and other injuries, sexual dysfunctions, stigmatisation, shame, guilt, anger, powerlessness, purposelessness, self-hate, suicidal thoughts and related attempts, revenge thoughts and related actions.

severely on the social and economic level,<sup>17</sup> and at the inter-generational level, with pecuniary and non-pecuniary consequences, loss of family structure and support, loss of sense of security and love, transmitted guilt and shame, as well as transmitted diseases.

16. Similarly, the full impact of Mr Ntaganda's enlistment, conscription and use of children under the age of 15 to participate actively in hostilities can only be assessed taking into account the fact that, given the nature of these crimes, the harm caused extends to the victims' families, including the parents who lost their children or lost any possibility to have a relationship with their children in the future. Children born as a result of the sexual violence suffered by girls who were recruited, as well as children otherwise conceived by both male and female child soldiers in this context, are also deeply affected by said crimes, with transgenerational effects that can cripple individuals and families even into next generations.

17. The Legal Representatives also concur with the Prosecution's assessment that the evidence to be provided by the five proposed witnesses goes beyond that already in the trial records, which only includes specific accounts of harm from individual witnesses.

18. The Legal Representatives equally support the Prosecution's request for protective measure for three of the proposed witnesses,<sup>18</sup> and its request for increased monitoring of Mr Ntaganda's contacts until the sentencing phase of the case is completed.<sup>19</sup>

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<sup>17</sup> For instance through loss of educational and professional opportunities, rejection and lack of support, disintegration of couples and families, exclusion, humiliation, mockeries, forced isolation, misery and poverty, lack of appropriate treatment.

<sup>18</sup> See the Prosecution Sentencing Request, *supra* note 1, paras. 40-61.

<sup>19</sup> *Idem*, paras. 62-64.

## 2. The Legal Representatives Oppose the Defence Sentencing Request

### a) *The proposed evidence is cumulative in nature and pertains to matters already litigated and adjudicated upon by the Chamber*

19. The testimony and documents proposed by the Defence pertain to matters that have been extensively litigated at trial. There is ample evidence in the record concerning these matters and, as recalled in the Sentencing Order, “pursuant to Article 76(1) of the Statute, all evidence before the Chamber for the purposes of its Judgment remains before the Chamber for sentencing”.<sup>20</sup>

20. Based on the Defence Sentencing Request,<sup>21</sup> the proposed evidence appears to focus on four broad topics: (i) Mr Ntaganda’s alleged efforts to bring about peace and ethnic reconciliation,<sup>22</sup> (ii) his attitude towards women,<sup>23</sup> (iii) his alleged contribution to demobilisation<sup>24</sup> and (iv) his reputation and conduct after the crimes for which he was convicted.<sup>25</sup>

21. As regards Mr Ntaganda’s alleged efforts to bring about peace and ethnic reconciliation in Ituri, this argument featured prominently at trial and was raised throughout the Defence case.<sup>26</sup> The Defence Closing Brief confirms that “Mr NTAGANDA testified at length concerning the FPLC ideology and *raison d’être*, and his own: to protect the population, and to bring peace in Ituri. The evidence of Mr NTAGANDA’s speeches admitted in this case demonstrate the same”.<sup>27</sup> This line of argument was dismissed in the Judgment based on the significant evidence to the contrary admitted into the case record. The Chamber found that despite the statements by UPC/FPLC officials including Mr Ntaganda ostensibly promoting

<sup>20</sup> See the Sentencing Order, *supra* note 4, para. 2(iv).

<sup>21</sup> See the Defence Sentencing Request, *supra* note 2, and the annexes thereto.

<sup>22</sup> See in particular proposed witnesses D-0020, D-0047, D-0302, D-0303, D-0304, D-0305 and D-0306 and Documents 4-17 and 19.

<sup>23</sup> See in particular proposed witnesses D-0305 and D-0303 and Documents 1-3

<sup>24</sup> See in particular proposed witnesses D-0047 and D-0020 and Documents 20 and 21.

<sup>25</sup> See in particular proposed witnesses D-0302, D-0304 and D-0306.

<sup>26</sup> See e.g. the “Corrigendum Annex 1 to filing ICC-01/04-02/06-2298-Conf”, [No. ICC-01/04-02/06-2298-Conf-Anx1-Corr](#), 9 July 2018 (the “Defence Closing Brief”), Part III, Chapter I.

<sup>27</sup> *Idem*, para. 161, citing DRC-OTP-2058-0251; DRC-D18-0001-0463 (Transl. DRC-OTP-2101-2810, DRC-D18-0001-6710); DRC-OTP-0127-0064, 44:32-57:28 (Transl. DRC-OTP-0165-0349, 0375:588-0378:684); DRC-OTP-0159-0477, 02:35:34-02:38:06 (Transl. DRC-OTP-2085-0468, 0506:1280-0507:1340).



peace, security and reconciliation for all civilians without discrimination, their real goal was “to actively chase away [...] those who were perceived as non-Iturians”,<sup>28</sup> but also the Lendu,<sup>29</sup> and that UPC/FPLC commanders were instructed to target Lendu civilians and their property specifically.<sup>30</sup> The Chamber also found beyond reasonable doubt that Mr Ntaganda “agreed and worked with others to achieve their plan to drive out all the Lendu from the localities targeted during the course of the First and Second Operation”<sup>31</sup> and that he intentionally targeted a civilian on ethnic grounds, i.e. by reason of his identity as a Lendu.<sup>32</sup>

22. Concerning Mr Ntaganda’s attitude towards women, the Defence already presented evidence at trial as to the treatment of women within the UPC/FPLC<sup>33</sup> and Mr Ntaganda testified that he was mindful of the need to punish instances of rape.<sup>34</sup> The Chamber, however, rejected these arguments and concluded that “rapes and murders were committed in the Appartements, which was [Mr Ntaganda’s] base during the First Operation. He was personally involved in some of them”,<sup>35</sup> that he “willingly sent his troops [...] to engage in sexual violence against [Lendu civilians]”<sup>36</sup> and that “sexual violence against PMFs, including by members of Mr Ntaganda’s escort, was left largely unpunished”.<sup>37</sup>

23. As for Mr Ntaganda’s alleged contribution towards demobilisation, the Chamber received extensive testimonial and documentary evidence on demobilisation programs devised by international organisations, on implementing measures ostensibly adopted by UPC/FPLC commanders,<sup>38</sup> and even on Mr Ntaganda’s meetings with MONUC staff on the issue, which the Defence strenuously

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<sup>28</sup> See the Judgment, *supra* note 3, para. 686.

<sup>29</sup> *Idem*, paras. 687 and 1022.

<sup>30</sup> *Ibid.*, para. 807.

<sup>31</sup> *Ibid.*, para. 1177.

<sup>32</sup> *Ibid.*, para. 749.

<sup>33</sup> See e.g. the Defence Closing Brief, *supra* note 26, para. 1556, citing D-0251: T-260, 33:25-34:4; D0251: T-260, 40:8-18; D-0017: T-252, 69:4-5; D-0211: T248, 34:24-35: [sic].

<sup>34</sup> *Idem*, para. 1560; citing D-0300: T-238, 78:10-25.

<sup>35</sup> See the Judgment, *supra* note 3, para. 1186.

<sup>36</sup> *Idem*, para. 1187.

<sup>37</sup> *Ibid.*, para. 412.

<sup>38</sup> *Ibid.*, paras. 417-432.

disputed during trial.<sup>39</sup> The Chamber concluded, on the strength of the Prosecution evidence, that “the UPC/FPLC did not effectively engage in any systematic demobilisation process”<sup>40</sup> and that “among the individuals that were demobilised, some were rearmed or were threatened into reintegrating into the UPC forces”.<sup>41</sup>

24. As regards the proposed evidence related to Mr Ntaganda’s reputation and his conduct after the crimes for which he was convicted, the Chamber has similarly heard sufficient evidence at trial,<sup>42</sup> including in relation to his ability to maintain military discipline among his troops.<sup>43</sup> The Chamber also benefits from the Registry’s report on his conduct while in detention<sup>44</sup> and – crucially – from the evidence emerged as part of the extensive litigation concerning witness interference and Mr Ntaganda’s abuse of his right to communication.<sup>45</sup>

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<sup>39</sup> See e.g. the Defence Closing Brief, *supra* note 20, para. 1532, discussing DRC-OTP-2067-1914, p. 1916, para. 10. Further, during his testimony, Mr Ntaganda (D-0030) denied his personal involvement in demobilisation programs in 2002-2003 and his attendance to meetings with MONUC on this topic, see the transcripts of the hearing held on 7 September 2017, [No. ICC-01/04-02/06-T-239-CONF-ENG ET](#), p. 15, line 2 *et seq.*; p. 20, line 2 *et seq.* and p. 21, line 13 to p. 23, line 3. The Defence now requests to call witness D-0047 to testify about the various meetings organised between Mr Ntaganda and MONUC and the fact that he became “a full fledged and appreciated MONUC partner”.

<sup>40</sup> See the Judgment, *supra* note 3, para. 430.

<sup>41</sup> *Idem*, para. 432.

<sup>42</sup> See e.g. *ibid.*, para. 322 (finding that “Mr Ntaganda inspired fear amongst the troops and the population”, was a “highly respected person in the army and within the civilian community” and that “anybody who broke the law was in fear of [him]”).

<sup>43</sup> See e.g. *ibid.*, paras. 828, 852-857 and 1179.

<sup>44</sup> See the “Registry’s Report on Mr Bosco Ntaganda’s Solvency and Conduct While in Detention”, [No. ICC-01/04-02/06-2367-Conf](#), 26 July 2019.

<sup>45</sup> See e.g. [REDACTED]; [REDACTED]; the “Order instructing the Registry to put in place additional temporary restrictions on contact” (Trial Chamber VI), No. ICC-01/04-02/06-508-Conf-Exp, 13 March 2015, referenced in the “Observations on behalf of Mr Ntaganda on the post-factum review of the phone conversations made by Mr Ntaganda”, [No. ICC-01/04-02/06-533-Red2](#), 24 March 2015, para. 9; [REDACTED]; [REDACTED]; the “Decision on reclassification of the second Registry’s report on post-factum review” (Trial Chamber VI), No. ICC-01/04-02/06-710-Conf-Exp, 10 July 2015, referenced in the “Prosecution’s request for public redacted versions of filings and decisions on allegations of witness interference”, [No. ICC-01/04-02/06-725-Red](#), 15 July 2015, para. 32; [REDACTED]; the “Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts” (Trial Chamber VI), [No. ICC-01/04-02/06-785-Red](#), 18 August 2015; [REDACTED]; [REDACTED]; the “Decision reviewing the restrictions placed on Mr Ntaganda’s contacts, 7 September 2016, ICC-01/04-02/06-1494-Conf-Exp” (Trial Chamber VI), [No. ICC-01/04-02/06-1494-Red4](#), 21 November 2016; [REDACTED], and the related submissions.

25. The evidence proposed by the Defence is therefore duplicative of that already presented at trial, as well as internally repetitive.<sup>46</sup> Since the Defence has failed to articulate how the proposed evidence goes beyond the evidence already before the Chamber, its presentation will not assist the Chamber for the purposes of the sentencing proceedings but instead would only cause undue prejudice to the interests of the participating victims by unnecessarily prolonging the proceedings.

26. Further, to the extent the proposed evidence is intended to call into question findings reached by the Chamber in the Judgment, the Court has consistently stated that the parties shall not, at the sentencing phase, re-litigate matters pertaining to the merits and on which the Chamber has already decided.<sup>47</sup> Nor are sentencing hearings an opportunity for the parties to supplement the evidential records and fill strategic gaps in anticipation of an appeal on the merits. On the contrary, at the sentencing phase, the parties and participants may only submit evidence relevant to the factors and circumstances listed in article 78 of the Statute and rule 145 of the Rules.<sup>48</sup>

27. Accordingly, the Legal Representatives submit that the Chamber should follow the approach adopted by other Trial Chambers and reject the Defence Sentencing Request in its entirety in so far as seeks to present cumulative evidence and re-litigate matters already adjudicated upon in the Judgment.<sup>49</sup>

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<sup>46</sup> For instance, the proposed testimony of D-0305 and D-0306 overlaps in many respects. The same applies to the proposed documentary evidence insofar as, by the Defence's own admission, it is aimed to "*corroborate and contextualise*" the testimony of the proposed witnesses. See the Defence Sentencing Request, *supra* note 2, para. 5.

<sup>47</sup> See *e.g.* the "Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing", *supra* note 14, paras. 21 and 45; the "Decision on Sentencing Witnesses and Setting an Article 76(2) Hearing" (Trial Chamber VII), [No. ICC-01/05-01/13-2025](#), 11 November 2016, para. 18; and the transcripts of the hearing held in the *Lubanga* case on 13 June 2012, [No. ICC-01/04-01/06-T-360-Red2-ENG CT](#), p. 24, lines 20 *et seq.* and p. 27, lines 12 *et seq.*

<sup>48</sup> See *e.g.* the "Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing", *supra* note 14, para. 46.

<sup>49</sup> *Idem*, para. 21.

***b) Proposed Witnesses D-0047 and D-0020 lack credibility and the Defence should have called them at trial, if at all***

28. In addition, the Legal Representatives note that the credibility of two witnesses put forward by the Defence appears very questionable in light of evidence presented at trial.

29. D-0047 was extensively and directly involved in serious allegations of witness interference litigated at length before the Chamber. In fact, [REDACTED].<sup>50</sup>

30. [REDACTED],<sup>51</sup> stated that D-0047 repeatedly contacted him and his family to pressure him not to testify against Mr Ntaganda.<sup>52</sup> [REDACTED] [REDACTED], [REDACTED],<sup>53</sup> stated that D-0047 threatened him, both directly and through a family member, to discourage him from testifying.<sup>54</sup> The phone records and recordings of conversations gathered by the Prosecution confirm that D-0047 was directly involved in efforts to silence prosecution witnesses and was in close contact with other associates of Mr Ntaganda for this purpose.<sup>55</sup> The Legal Representatives also note that, [REDACTED].<sup>56</sup>

31. The credibility of D-0020 appears similarly questionable. For instance, D-0020 was initially contacted on behalf of [REDACTED], who was also present at his subsequent meeting with the lawyers.<sup>57</sup> The Legal Representatives note that [REDACTED] is Mr Ntaganda's former resource person and that the Chamber has previously received evidence that "*NTAGANDA caused a group of individuals to be brought together by then-resource person [REDACTED] and arranged for them to tell the 'same' story to his lawyers[REDACTED]*".<sup>58</sup> The Chamber "*noted with concern that certain post-factum reviews appeared to show that Mr NTAGANDA had been coaching his*

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<sup>50</sup> [REDACTED].

<sup>51</sup> [REDACTED].

<sup>52</sup> [REDACTED].

<sup>53</sup> [REDACTED].

<sup>54</sup> [REDACTED].

<sup>55</sup> [REDACTED].

<sup>56</sup> [REDACTED].

<sup>57</sup> [REDACTED].

<sup>58</sup> [REDACTED].

counterpart on certain factual matters pertaining to the case” and that “despite this statement by the Chamber and the submissions on coaching in the Prosecution Final Observations, the Defence has not addressed the allegations of coaching of witnesses in its final submissions”.<sup>59</sup>

32. The credibility of D-0047 and D-0020 being highly questionable, the probative value of any evidence they could potentially provide is very low, if any. As a result, its presentation would unduly delay the proceedings, contravening the fair trial requirements. As noted by Trial Chamber V(a):

*“Article 69(4) of the Statute provides that in ruling on the relevance or admissibility of evidence the Chamber may take into account, inter alia, ‘the probative value of the evidence and any prejudice that such evidence may cause to a fair trial’. In the Chamber’s view, the concept of a fair trial must include the principle of expeditiousness of proceedings: not only for the accused, but also for the prosecution, the victims and the public — all of whom have an interest in bringing the litigation to an end”.*<sup>60</sup>

33. The Legal Representatives also note that D-0047 and D-0020’s names appeared, with somewhat different spelling, in the Defence’s final list of witnesses for trial,<sup>61</sup> but their testimony was not ultimately presented.<sup>62</sup> Against this background, and given that their proposed testimony pertains to issues on the merits that have already been litigated and indeed decided upon by the Chamber, the Legal Representatives submit that the Defence should have called D-0047 and D-0020 to testify at trial, if at all, and recall that the sentencing hearing cannot be used by the Defence to fill strategic gaps in anticipation of an appeal on the merits.<sup>63</sup>

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<sup>59</sup> See the “Decision on Prosecution requests to impose restrictions on Mr Ntaganda’s contacts” (Trial Chamber VI), *supra* note 45, para. 56.

<sup>60</sup> See the “Decision on Defence Request for Disclosure of Material related to Witness 613” (Trial Chamber V(a)), [No. ICC-01/09-01/11-1776-Red](#), 12 January 2015, para. 19.

<sup>61</sup> See the “Annex A to the Defence Final Lists of Witnesses and Evidence”, [No. ICC-01/04-02/06-1881-Conf-AnxA](#), 26 April 2017, listing D-0047 as “[REDACTED]” and D-0020 as “[REDACTED]”, both marked as “definitive” witnesses.

<sup>62</sup> See the “Annex A to the Request for revised deadline for tendering documentary evidence”, [No. ICC-01/04-02/06-2060-Conf-AnxA](#), 12 October 2017, where the names of proposed witnesses D-0047 and D-0020 do not appear.

<sup>63</sup> See *supra* paras. 19-27.

34. Given in addition that the credibility of said witnesses appears seriously questionable in light of the evidence presented at trial, the Legal Representatives submit that for the sake of the fair and expeditious conduct of proceedings and pursuant to article 64(2) of the Statute, the Defence should not be authorised to present the proposed evidence.

*c) Reservation of Right to Respond*

35. As detailed in their earlier submissions,<sup>64</sup> the Legal Representatives are unable to submit a meaningful and informed response to the Defence Sentencing Request to the extent it relates to witness D-0308, whose identity and associated materials have not been disclosed. They therefore reserved their right to respond, as far as witness D-0308 is concerned, seven days after having been provided with the relevant information and materials.<sup>65</sup>

36. The Legal Representatives also note that for some of the audio/video materials referenced in the Defence Sentencing Request, a full translation of the excerpts the defence seeks to present in one of the official languages of the Court does not appear to have been provided.<sup>66</sup> The Legal Representatives therefore reserve their right to respond, as far as said documents are concerned, seven days after receiving the full translation of the proposed excerpts.

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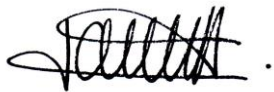
<sup>64</sup> See the "Joint Response of the Common Legal Representatives of Victims to the 'Prosecution's request for access to the identity of Defence witness D-0308 and associated submissions and materials' (ICC-01/04-02/06-2370-Conf)", *supra* note 9.

<sup>65</sup> *Idem*, para. 12.

<sup>66</sup> See in particular Annex B to defence request, referring to Document 9 [REDACTED], which includes four video excerpts, only two of which appear to be covered by the translation at Document 11 [REDACTED] and the transcription at Document 10 [REDACTED], as well as Document 7 [REDACTED], which includes two video excerpts, only one of which appears to be covered by the transcription at Document 8 [REDACTED]

**FOR THE FOREGOING REASONS** the Legal Representatives

- **SUPPORT** the Prosecution Sentencing Request;
- **OPPOSE** the Defence Sentencing Request; and
- **RESERVE** their right to respond to the Defence Sentencing Request in relation to specific proposed items, in accordance with paragraphs 35 and 36 above.



Sarah Pellet  
Common Legal Representative of the  
Former Child soldiers



Dmytro Suprun  
Common Legal Representative of the  
Victims of the Attacks

Dated this 16<sup>th</sup> Day of September 2019

At The Hague, The Netherlands