

The Prosecutor v. Bosco Ntaganda

Update: 30 March 2021

ICC-01/04-02/06

Appeals Judgments in the Ntaganda case at the ICC 30 March 2021

WHAT DID THE APPEALS CHAMBER DECIDE REGARDING THE NTAGANDA APPEALS?

On 30 March 2021, the judges of the Appeals Chamber of the International Criminal Court (ICC) confirmed the guilty verdict and the 30-year imprisonment sentence against Bosco Ntaganda. These two decisions are therefore final and can no longer be appealed.

On 8 July 2019, Trial Chamber VI found Mr Bosco Ntaganda guilty, beyond reasonable doubt, of 18 counts of war crimes and crimes against humanity, committed in Ituri, Democratic Republic of the Congo (DRC), in 2002-2003, namely the following crimes against humanity: murder and attempted murder, rape, sexual slavery, persecution, forcible transfer and deportation ; and the following war crimes: murder and attempted murder, intentionally directing attacks against civilians, rape, sexual slavery, ordering the displacement of the civilian population, conscripting and enlisting children under the age of 15 years into an armed group and using them to participate actively in hostilities, intentionally directing attacks against protected objects, and destroying the adversary's property. The verdict is currently subject to appeals. On 7 November 2019, he was sentenced to a total of 30 years of imprisonment.

HOW AND WHY DID THE JUDGES MAKE THEIR DECISIONS?

Mr Ntaganda and the Prosecutor appealed the verdict and Mr Ntaganda appealed the sentencing judgment. The Chamber therefore considered each ground of appeal as well as the submissions of the parties and participants on these legal issues. From 12 to 14 October 2020, the Appeals Chamber also held hearings to hear the observations of parties and participants on the appeals in this case.

In its judgments of 30 March 2021, the Appeals Chamber found that Mr Ntaganda did not demonstrate that his right to a fair trial was violated and also determined that, in convicting Mr Ntaganda, the Trial Chamber did not exceed the facts and circumstances described in the charges. The Appeals Chamber also rejected his challenge to the Trial Chamber's finding that the crimes for which he was found to be criminally responsible were part of an attack directed against a civilian population pursuant to, or in furtherance of, an organisational policy. It further rejected Mr Ntaganda's challenge to the Trial Chamber's findings on indirect co-perpetration. The Appeals Chamber also found that the Trial Chamber provided a reasonable assessment of the evidence regarding Mr Ntaganda's knowledge and intent of the crimes of rape and sexual enslavement of individuals under the age of 15, the recruitment, conscription and use of individuals under the age of 15 in hostilities and in relation to the remaining crimes. The Appeals Chamber also rejected the Prosecutor's grounds of appeal on the interpretation of the term 'attack' in article 8(2)(e)(iv) of the Rome Statute.

In relation to the appeal against the sentence imposed, the Appeals Chamber rejected Mr Ntaganda's challenge to the Trial Chamber's assessment of his degree of participation in and knowledge of the crimes, including the crime of sexual enslavement and rape of civilians. Likewise, Mr Ntaganda's challenges to the Trial Chamber's assessment of alleged aggravating circumstances (related to the crime of intentionally directing attacks against civilians) and mitigating circumstances (including the suffering and discrimination that he had endured as a result of his experience in the Rwandan genocide) were also rejected. Notably, with regard to the latter, the Appeals Chamber found that Mr Ntaganda's personal experience in the Rwandan genocide could not diminish his culpability given his criminal conduct and the gravity of the crimes for which he was convicted.

HOW WILL THE SENTENCE IMPOSED ON MR. NTAGANDA BE IMPLEMENTED?

Prison sentences are served in a State designated by the Court from a list of States that have indicated their willingness to accept convicted persons. The country in which Mr Ntaganda will serve his sentence has not yet been determined, and it is up to the Presidency of the Court to manage this process. Until that point, Mr Ntaganda will remain in the detention center in The Hague.

WILL THE VICTIMS RECEIVE REPARATIONS IN THIS CASE?

Yes. On March 8, 2021, ICC Trial Chamber VI ordered collective reparations with individualised components against Mr Ntaganda. The Chamber recalled the large scope of the case and the potential large number of victims eligible to receive reparations. In light of the circumstances of the case, the Chamber set the total reparations award for which Mr Ntaganda is liable at USD 30,000,000. Because the convicted person was found indigent, the order against Mr Ntaganda is to be made through the Trust Fund for Victims. The Chamber ordered the Trust Fund to design an implementation plan on the basis of the identified modalities of reparations, in consultation with the victims.

In order to enable the identification of victims by the Trust Fund, the Chamber stressed that eligibility is determined by the territorial, temporal, and subject matter scope of the crimes for which Mr Ntaganda was convicted, including victims of attacks, victims of crimes against child soldiers, victims of rape and sexual slavery, and children born out of rape and sexual slavery. The Chamber noted that priority shall be given to individuals who require immediate medical and psychological care, victims with disabilities and the elderly, victims of sexual or gender-based violence, victims who are homeless or experiencing financial hardship, as well as children born out of rape and sexual slavery and former child soldiers.

WHO ARE THE JUDGES IN THIS CHAMBER?

The ICC Appeals Chamber is composed of 5 judges different from those who made the decisions on guilt and sentence. The Appeals Chamber in these appeals was composed of Presiding Judge Howard Morrison, Judge Piotr Hofmański, Judge Luz del Carmen Ibáñez Carranza, Judge Solomy Balungi Bossa and Judge Chile Eboe-Osuji. The ICC Judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity. The Judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights.

IN THESE JUDGMENTS, THE JUDGES APPENDED SEPARATE OPINIONS: WHAT DOES THIS MEAN AND WHAT IS THEIR IMPACT?

A separate opinion lays out the position of a judge who, while agreeing with the majority's conclusions, adopts a different and separate reasoning resulting in the same conclusion. This has no impact on the Chamber's finding confirming the verdict and sentence in this case.

WHY DO ICC TRIALS LAST LONGER THAN NATIONAL TRIALS?

Firstly, cases before the ICC are complex because of the nature of the crimes falling within its jurisdiction. Secondly, the Seat of the ICC is far removed from the scene of the crimes and the country of residence of the witnesses. This poses logistical challenges which lengthen the proceedings. Also, translation and interpretation are a constant feature of the ICC's work. The working languages of the ICC are English and French. But the proceedings must be held in a language that the accused person fully understands and the documents translated accordingly. During the trial, simultaneous interpretation into several languages is sometimes required depending on the language used by the witnesses and the accused. Finally, the ICC must ensure that trials are fair and impartial, and the judges guarantee that the procedure doesn't suffer from any unjustified delay.