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No.: ICC-01/04-02/06 A
Date: 9 September 2019

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

**Mr. Ntaganda's Notice of Appeal against the Judgment pursuant to Article 74 of
the Statute, ICC-01/04-02/06-2359**

Source: Defence Team of Mr. Bosco Ntaganda

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

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I. INTRODUCTION

1. On 8 July 2019, Trial Chamber VI rendered its Judgement under Article 74 of the Rome Statute (“Judgement” and “Statute”).¹ The Judgment found Mr. Ntaganda (“Appellant”) guilty of the eighteen charges against him, comprising the following crimes:

- a. Murder as a crime against humanity under Article 7(1)(a) of the Statute;
- b. Murder as a war crime under Article 8(2)(c)(i) of the Statute;
- c. Attacks against civilians as a war crime under Article 8(2)(e)(i);
- d. Rape as a crime against humanity under Article 7(1)(g) of the Statute;
- e. Rape as a war crime under Article 8(2)(e)(vi) of the Statute;
- f. Rape of child soldiers as a war crime under Article 8(2)(e)(vi) of the Statute;
- g. Sexual slavery as a crime against humanity under Article 7(1)(g) of the Statute;
- h. Sexual slavery as a war crime under Article 8(2)(e)(vi) of the Statute;
- i. Sexual slavery of child soldiers as a war crime under Article 8(2)(e)(vi) of the Statute;
- j. Persecution as a crime against humanity under Article 7(1)(h) of the Statute;
- k. Pillage as a war crime under Article 8(2)(e)(v) of the Statute;
- l. Forcible transfer of population as a crime against humanity under Article 7(1)(d) of the Statute;
- m. Displacement of civilian population as a war crime under Article 8(2)(e)(viii) of the Statute;
- n. Conscripting, enlisting and use of children under the age of 15 years into an armed group as war crimes under Article 8(2)(e)(vii) of the Statute;

¹ ICC-01/04-02/06-2359.

- o. Attacks against protected objects as a war crimes under Article 8(2)(e)(iv) of the Statute; and
 - p. Destruction of the adversary's property as a war crime under Article 8(2)(xiii) of the Statute.
2. Article 81(1)(b) of the Statute provides that a decision under Article 74 may be appealed in accordance with the Rules of Procedure and Evidence ("Rules"), and that the convicted person "may make an appeal on any of the following grounds: (i) Procedural error, (ii) Error of fact, (iii) Error of law, or (iv) Any other ground that affects the fairness or reliability of the proceedings or decision."
 3. Rule 150 of the Rules provides that an appeal against a decision of conviction or acquittal under Article 74 of the Statute may be filed not later than 30 days from the date on which the party filing the appeal is notified of the decision.
 4. Regulation 75 of the Regulations of the Court ("RoC") provides that for the purposes of Rule 150, "the appellant shall file a notice of appeal which shall state:
 - (a) The name and number of the case;
 - (b) The title and date of the decision of conviction or acquittal, sentence or reparation order appealed against;
 - (c) Whether the appeal is directed against the whole decision or part thereof;
 - (d) The specific provision of the Statute pursuant to which the appeal is filed;
 - (e) The grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision;
 - (f) The relief sought."

5. On 19 July 2019, the Appeals Chamber rendered its *Decision on Mr. Ntaganda's and the Prosecutor's requests for extensions of time*,² in which it varied the time limit for the submission of Mr. Ntaganda's Notice of Appeal under Rule 150(2) until 9 September 2019.³ Pursuant to that decision, Mr. Ntaganda files the present Notice of Appeal.

II. NOTICE OF APPEAL

6. Pursuant to Article 81(1)(b), Rule 150(1) and Regulation 57 RoC, the Appellant, in the *Situation in the Democratic Republic of the Congo* in the case of *The Prosecutor v. Bosco Ntaganda*, hereby gives notice of appeal against the Judgment pursuant to Article 74 of the Statute, being the decision of conviction, rendered on 8 July 2019, ICC-01/04-02/06-2359.
7. The appeal is directed against the whole decision.
8. The grounds on which Mr. Ntaganda is appealing the Judgment have been organized into Parts A - H. As set out below, each error of law materially affects and invalidates the conviction. Each error of fact alleged gives rise to a miscarriage of justice, given that no reasonable trier of fact could have rendered the particular finding of fact beyond reasonable doubt. The procedural errors raised each materially affect the conviction, meaning that in the absence of the procedural error, the Judgment would have been substantially different from the one rendered.
9. The violations of Mr. Ntaganda's fair trial rights alleged in Part A invalidate the Judgment in its entirety. The error in convicting him for criminal acts for which he was not charged, as set out in Part B, invalidates those convictions.

² ICC-01/04-02/06-2364

³ ICC-01/04-02/06-2364, para. 6.

The Trial Chamber's errors in finding that the contextual elements of crimes against humanity had been established, as addressed in Part C, invalidate each of the convictions for crimes against humanity, namely those under Counts 1, 4, 7, 10, and 12. The error in convicting Mr. Ntaganda for ordering displacement of civilians as a war crime, as set out in Part D, invalidates the conviction under Count 13. The Trial Chamber's errors in its assessment of the evidence, as set out in Part E, occasioned a miscarriage of justice and invalidate the convictions on all 18 Counts. The errors committed by the Trial Chamber in finding that the UPC/FPLC and Hema civilians committed (*actus reus*) crimes during the First Operation, as set out in Part F, invalidate the convictions on Counts 1-5, 10-13, 17-18 in respect of the First Operation. As for the errors committed by the Trial Chamber in its findings on child soldiers, as alleged in Part G, invalidate the convictions under Counts 14-16, as well as Counts 6 and 9 insofar as they relate to the rape and sexual slavery of those soldiers. Lastly, the errors committed by the Trial Chamber in finding Mr. Ntaganda liable as an indirect co-perpetrator, set out in Part H, invalidate each of the convictions under this mode of responsibility, namely under Counts 1-18.

10. The grounds of appeal, specifying the alleged errors and how they affect the appealed decision, are as follows:

PART A: FAIRNESS

THE TRIAL CHAMBER VIOLATED THE RIGHTS OF THE ACCUSED

GROUND 1. The Trial Chamber erred in rendering a Judgment with the participation of a Judge who did not satisfy the requirements of Article 40 of the Statute, and who was not, as required by Article 74(1) of the Statute, “present at each stage of the trial and throughout [its] deliberations”.

GROUND 2. Mr. Ntaganda’s right to a fair trial was violated by manifest procedural irregularities in the conduct of the trial proceedings against him, including:

- The Prosecution’s inappropriate access to all of Mr. Ntaganda’s non-privileged telephone conversations from the Court’s Detention Centre without any vetting process, through which it obtained confidential defence information without the Defence being informed, and its subsequent use of this confidential information, including in submissions to the Trial Chamber;
- The volume of unjustified *ex parte* submissions and material entertained by the Trial Chamber, including its *ex parte* hearing of P-0055,⁴ and *ex parte* reports from the Victims’ and Witness’ Unit in relation to all witnesses in the case as well as to the security situation in Ituri;
- The Trial Chamber’s failure to order the disclosure of material relevant to the credibility of Prosecution witnesses and/or material to the preparation of the defence, including *inter alia*: payments and other benefits given to witnesses; confidential material from the *Lubanga* case; redacted information in witness statements and exhibits previously authorised by other chambers; and redactions inappropriately applied *proprio motu* by the Prosecution;

⁴ ICC-01/04-02/06-T-41, 11:21-18:20; ICC-01/04-02/06-T-42.

- The Trial Chamber's failure to ensure a public hearing;⁵ and
- The Trial Chamber's failure to suspend the proceedings⁶ prior to the Judgment on Mr. Ntaganda's appeal of the *Decision on Defence request for leave to file a 'no case to answer' motion*, resulting in Mr. Ntaganda testifying without notice of the case he had to meet.

PART B: SCOPE OF THE CHARGES:

MR. NTAGANDA WAS CONVICTED OF CRIMES FOR WHICH HE WAS NOT CHARGED

GROUND 3. The Trial Chamber erred in law in convicting Mr. Ntaganda of individual criminal acts for which he was not charged, and/or of criminal acts for which the facts and circumstances were not adequately plead.⁷

PART C: CRIMES AGAINST HUMANITY

THE CONTEXTUAL ELEMENTS HAVE NOT BEEN ESTABLISHED

GROUND 4. The Trial Chamber committed mixed errors of law and fact, finding that the contextual elements of crimes against humanity had been established beyond a reasonable doubt. In particular, the Trial Chamber erred in finding that the attack was carried out **pursuant to an organisational policy** "to attack and chase away the Lendu civilians as well as those who were perceived as non-Iturians",⁸ including by:

- Failing to exclude all other reasonable inferences consistent with innocence, or in reaching a finding of the existence of an organizational policy, which no

⁵ See e.g. ICC-01/04-02/06-T-265-ENG-ET, 7:9-11.

⁶ ICC-01/04-02/06-T-209-Conf-ENG WT, 8:16-11:20, 14:16-15:18, 24:15-28:2.

⁷ See e.g. Judgment, paras. 587; 864-870; 936-938; 966-969; 1110-1113; 1153-1154.

⁸ Judgment, para. 689.

reasonable trier of fact could have made, on the basis of manifestly insufficient circumstantial evidence, or both;⁹ and

- Erroneously circumventing corroborated evidence consistent with innocence by finding that UPC/FPLC pursued “parallel” goals of “promoting peace” **and** “attacking civilians”,¹⁰ which was insufficiently reasoned and/or so manifestly unreasonable as to constitute a finding, which no reasonable trier of fact could have reached.

GROUND 5. The Chamber erred in fact and in law in finding the existence of **an attack directed against any civilian population**, which no reasonable trier of fact could have found, including by:

- Reaching the manifestly unreasonable conclusion that the First and Second Operations were part of one in the same course of conduct¹¹ through, *inter alia*, giving insufficient weight to the lawful military purpose of the Operations;
- Relying on non-Article 7(1) crimes in its determination of the existence of an “attack”;¹² and
- Failing to find that the civilian population was the primary, as opposed to incidental, object of the attack;¹³ failing to address its own inconsistent findings on this issue;¹⁴ or failing to issue a reasoned decision in support of its omission to reach such a finding.

⁹ See *e.g.* Judgment, paras. 682-689.

¹⁰ Judgment, para. 686.

¹¹ Judgment, paras. 664-666.

¹² See *e.g.* Judgment, paras. 663, 671, 688.

¹³ Judgment, paras. 670-672.

¹⁴ See *e.g.* Judgment, paras. 437-442, 492, 793, 796.

PART D: WAR CRIMES

THE TRIAL CHAMBER ERRED IN LAW AND/OR IN FACT IN FINDING THAT ORDERING DISPLACEMENT AS A WAR CRIME WAS COMMITTED

GROUND 6. The Trial Chamber erred in law and in fact in entering a conviction for ordering displacement as a war crime.¹⁵

PART E: ASSESSMENT OF EVIDENCE:

THE TRIAL CHAMBER ASSESSED EVIDENCE IN A MANNER INCONSISTENT WITH THE BURDEN OF PROOF AND THE STANDARD OF BEYOND REASONABLE DOUBT

GROUND 7. The Trial Chamber committed mixed errors of law and fact in assessing the evidence, thereby failing to adjudicate and provide a reasoned opinion, impermissibly shifting the burden of proof to the accused and misapplying the standard of proof beyond a reasonable doubt, by *inter alia*:

- Relying on the evidence of insider witnesses it erroneously found to be credible, fully credible, and/or reliable;¹⁶
- Relying on its preliminary and partial conclusions that Prosecution witnesses were credible, fully credible or reliable, as a basis for then disregarding contradictory evidence consistent with innocence;¹⁷
- Failing to state expressly whether Prosecution witnesses had lied on core elements of their testimony where the Trial Chamber found those elements to

¹⁵ Judgment, paras. 1080-1100.

¹⁶ **P-0017**: para. 117, *see inter alia* para. 508; **P-0055**: para. 126, *see inter alia* para. 638; **P-0768**: para. 173, *see inter alia* para. 533; **P-0898**: para. 208, *see inter alia* paras. 206, 475; **P-0901**: para. 215, *see inter alia* para. 516; **P-0907**: para. 224, *see inter alia* paras. 461-466, 475, 493; **P-0963**: para. 249, *see inter alia* para. 488.

¹⁷ *See e.g.* Judgment, paras. 208, 215, 224, 415, fns. 1314, 1360.

be unreliable;¹⁸ compartmentalising negative credibility findings from other elements of the same witness's testimony¹⁹ by failing to give adequate weight to, or to explain how witnesses who provided false or evidence not worthy of belief on material and incriminating facts, could otherwise be relied upon; and/or in relying on their remaining testimony without any or sufficient caution;²⁰

- Failing to give sufficient weight to inconsistencies between dual status witnesses' victim application forms, statements and evidence under oath;²¹
- Declining to assess Defence arguments as to the credibility of witnesses on the basis that the Trial Chamber did not rely on the impugned aspects of the testimony for any findings, with no consideration of their overall impact on credibility;²²
- Relying unreservedly on the of Prosecution witnesses in relation to significant incriminating events, which had not previously been recorded and of which Mr. Ntaganda had no prior notice;²³

¹⁸ See, e.g. **P-0010**: paras. 94, 98; **P-0017**: para. 115; **P-0758**: para. 158; **P-0883**: para. 185; **P-0888**: para. 196.

¹⁹ See, e.g. **P-0010**: paras. 101-102; **P-0017**: para. 117; **P-0758**: para. 160; **P-0883**: paras. 179, 186-187; **P-0888**: para. 198.

²⁰ See e.g. **P-0010**: para. 359, fns. 993, 995; para. 392, fn. 1116; para. 394, fns. 1125-1125; para. 404, fn. 1150; para. 407, fns. 1157-1158; para. 412, fn. 1177; paras. 415-416, fns. 1185-1186; **P-0017**: para. 116, fns. 288-290; para. 333, fn. 900; para. 528, fns. 1578-1579; para. 564, fn. 1770; para. 579, fn. 1787; **P-0758**: para. 412, fn. 1177; para. 416, fn. 1194; para. 656, fn. 2092; **P-0883**: para. 407, fn. 1157; **P-0888**: para. 407, fn. 1156; para 415, fn. 1186; para. 454, fns. 1288-1292; para. 512, fn. 1511; para. 514, fn. 1521; para. 521, fn. 1546.

²¹ See e.g. Judgment, fns. 346, 419, 1533.

²² See, e.g. Judgment, fn. 1390.

²³ See, e.g. Judgment, para. 112, fn. 1495; para. 171, fn. 410; para. 373, fn. 1052; para. 391, fn. 1114; para. 456, fn. 1300; para. 461, fn. 1314; para. 475, fn. 1360; para. 493, fn. 1425; para. 508, fn. 1488; para. 523, fn. 1556; para. 524, fn. 1558; para. 528, fn. 1577; para. 532, fn. 1589; para. 534, fn. 1598; para. 548, fn. 1650; para. 579, fn. 1787; para. 624, fn. 1959; para. 626, fn. 1965; para. 655, fn. 2090.

- Failing to address or give reasons in relation to its dismissal of central Defence challenges to the credibility of key Prosecution witnesses;²⁴
- Systematically dismissing Mr. Ntaganda's evidence, including on the basis of uncorroborated Prosecution evidence,²⁵ in the absence of sufficient reasoning, or in a manner that shifted the burden of proof to the accused, or both;
- Placing unreasonable and undue weight on the uncorroborated testimony of Prosecution witnesses;²⁶
- Failing to decide contested issues in the case, by *inter alia*: (i) declining to resolve the question of the correct sequence of messages registered in the FPLC radio-communications logbook²⁷ considered to be authentic and reliable;²⁸ (ii) holding that it is not necessary to discuss how and when exactly Mr. Ntaganda

²⁴ See e.g. **P-0055**: ICC-01/04-02/06-2298-Conf-Anx1-Corr ("Defence Final Brief"), paras. 1084, 1096, 1116, 1124, 1126; **P-0010**: Defence Final Brief, paras. 1261-1282; **P-0017**: Defence Final Brief, paras. 299-329; **P-0768**: Defence Final Brief, paras. 249-298; **P-0907**: Defence Final Brief, paras. 356-377; **P-0963**: Defence Final Brief, paras. 330-355.

²⁵ See e.g. Judgment, para. 163, fns. 384-385; para. 373, fn. 1052; para. 452, fn. 1277; para. 493, fn. 1425, fn. 1430; para. 509, fn. 1505; para. 510, fn. 1507; para. 524, fn. 1558; para. 532, fn. 1589; para. 534, fn. 1598; para. 551, fn. 1672; para. 552, fn. 1679; para. 638, fn. 2035.

²⁶ See, e.g. Judgment, **P-0768**: para. 402, fn. 1143; para. 411, fn. 1175; para. 493, fns. 1424, 1427-1430; para. 509, fns. 1499-1500, 1502-1503; para. 510, fns. 1506-1507; para. 514, fn. 1522; para. 524, fns. 1558-1559; para. 532, fn. 1589; para. 533, fn. 1590; para. 534, fn. 1598; **P-0055**: para. 550, fn. 1669; para. 551, fn. 1670, 1674; para. 552, fns. 1675-1676, 1678-1682; para. 557, fn. 1693; para. 565, fn. 1720; para. 637, fns. 2026-2029; para. 638, fns. 2030-2033; **P-0898**: para. 388, fns. 1102, 1104; para. 391, fn. 1114; para. 416, fn. 1195; para. 432, fn. 1224; para. 512, fn. 1514; **P-0963**: para. 373, fn. 1052; para. 494, fn. 1433; para. 556, fn. 1692; para. 609, fns. 1894-1895; para. 620, fn. 1944; **P-0017**: para. 483, fn. 1384; para. 507, fns. 1485-1487; para. 508, fns. 1488-1492; para. 513, fns. 1517-1520; para. 522, fns. 1552-1553; para. 528, fns. 1577-1579; para. 548, fns. 1650-1652; para. 558, fns. 1695, 1698; para. 575, fns. 1773-1776; para. 576, fn. 1777; para. 579, fn. 1787; para. 626, fn. 1965; para. 628, fn. 1969; **P-0907**: para. 402, fn. 1145; para. 456, fns. 1301-1304; para. 457, fns. 1307-1309; para. 458, fn. 1310; paras. 461-466; para. 475, fn. 1357; paras. 523, 559; **P-0901**: para. 483, fn. 1383.

²⁷ DRC-OTP-0017-0003 (French translation DRC-OTP-2102-3828). The version of this logbook adduced by the Defence representing the same information in the correct chronological order, is DRC-D18-0001-5748.

²⁸ Judgment, para. 64.

found out about the Kobu massacre in light of the testimony of P-0055,²⁹ which were essential to the assessment of the evidence in this case; and

- Relying decisively on the statements of un-cross-examined witnesses for directly incriminating findings against the accused.³⁰

PART F: FIRST OPERATION:

THE TRIAL CHAMBER ERRED IN LAW AND IN FACT IN FINDING THAT THE UPC/FPLC AND HEMA CIVILIANS COMMITTED CRIMES DURING THE FIRST OPERATION

GROUND 8. The Trial Chamber erred in law and in fact when finding that the crimes charged in Counts 1–5,³¹ 10-13,³² and 17-18³³ were committed (*actus reus*) by UPC/FPLC forces and Hema civilians during the First Operation. The Trial Chamber failed to discharge its obligation to adjudicate and give reasons, impermissibly shifted the burden of proof to the accused, and/or made manifestly unreasonable findings that no reasonable trier of fact could have reached.

PART G: “CHILD SOLDIERS”:

THE TRIAL CHAMBER ERRED IN ITS ASSESSMENT OF EVIDENCE CONCERNING THE AGE OF UPC/FPLC MEMBERS

GROUND 9. The Trial Chamber’s finding that Mr. Ntaganda’s escort included child soldiers³⁴ was manifestly unreasonable, shifted the burden of proof to the Accused or misapplied the standard of proof beyond reasonable doubt.

²⁹ Judgment, para. 638, fn. 2035.

³⁰ See e.g. Judgment, **P-0016**: para. 319, fn. 840; para. 391, fn. 1113; **P-0022**: paras. 545-546; **P-0027**: para. 605, fn. 1875.

³¹ See e.g. Judgment, paras. 737-738, 743, 873-874, 906-907, 909-911, 940.

³² See e.g. Judgment, paras. 995, 1032, 1053, 1085-1087, 1092.

³³ See e.g. Judgment, paras. 1138, 1156.

³⁴ See e.g. Judgment, paras. 386-397.

GROUND 10. The Trial Chamber's findings that children under the age of fifteen years were used to participate actively in hostilities,³⁵ or that Mr. Ntaganda possessed the necessary *mens rea*,³⁶ were manifestly unreasonable, shifted the burden of proof to the Accused or misapplied the standard of proof beyond reasonable doubt.

GROUND 11. The Trial Chamber's findings that any child soldier was raped or sexually enslaved,³⁷ or that Mr. Ntaganda was aware of that,³⁸ were manifestly unreasonable, shifted the burden of proof to the Accused or misapplied the standard of proof beyond reasonable doubt.

GROUND 12. The Trial Chamber erred in law and in fact in finding that Mr. Ntaganda knew that anyone under the age of 15 was enlisted, conscripted or used to participate in hostilities.³⁹

PART H: LIABILITY:

THE TRIAL CHAMBER'S FINDINGS ON ESSENTIAL ELEMENTS OF INDIRECT CO-PERPETRATION ARE FLAWED

GROUND 13. The Trial Chamber erred in law and in fact in convicting Mr. Ntaganda as an indirect co-perpetrator, in the absence of the essential elements of this mode of liability having been proven beyond a reasonable doubt, including by:

- Finding Mr. Ntaganda liable on the basis of a common plan for which he was not charged;⁴⁰

³⁵ See e.g. Judgment, para. 458, fn. 1310; para. 511; para. 649, fn. 2073; para. 655.

³⁶ See e.g. Judgment, paras. 811, 1194.

³⁷ See e.g. Judgment, paras. 409-411, 986, 1196.

³⁸ See e.g. Judgment, paras. 1196-1198.

³⁹ See e.g. Judgment, paras. 1190-1194.

⁴⁰ ICC-01/04-02/06-458-AnxA, para. 1, Judgment, paras. 809.

- In the absence of any direct evidence of the existence of a common plan, failing to exclude all other reasonable inferences consistent with innocence, and/or in finding the existence of a common plan for the “destruction and disintegration of the Lendu community”⁴¹, which no reasonable trier of fact could have found, on the basis of manifestly insufficient circumstantial evidence;
- Finding that Mr. Ntaganda agreed to the “destruction and disintegration of the Lendu community”, and thus intended, beyond a reasonable doubt, the commission of each of the crimes charged in Counts 1-8, 11-13, and 17-18⁴², a finding no reasonable trier of fact could have reached, on the basis of manifestly insufficient circumstantial evidence, having failed to exclude all other reasonable inferences consistent with innocence;
- Reaching the manifestly unreasonable conclusion that the co-perpetrators foresaw rape and sexual slavery as a virtual certain consequence of the implementation of the common plan,⁴³ based on a failure to make essential findings, a reversal of the burden of proof, and inappropriately applying the standard of proof beyond a reasonable doubt; and
- Finding that Hema civilians were under the control of the UPC/FPLC soldiers, that they engaged in crimes “in the context of the general coercive circumstances” and that their “will became irrelevant”,⁴⁴ a finding no reasonable trier of fact could have reached, without an evidential basis, and having accepted evidence to the contrary.⁴⁵

⁴¹ Judgment, paras. 809-810.

⁴² Judgment, paras. 809-810.

⁴³ Judgment, paras. 792, 811.

⁴⁴ See, e.g. Judgment, paras. 822-825.

⁴⁵ See, e.g. Judgment, para. 512.

GROUND 14. The Trial Chamber erred in fact and in law in finding that Mr. Ntaganda possessed the required *mens rea* for the crimes it found to have been committed by FPLC/UPC soldiers and Hema civilians during the First Operation,⁴⁶ By relying on manifestly unreasonable findings, which no reasonable trier of fact could have reached, in respect of the conduct of the First Operation and Mr. Ntaganda's involvement therein.⁴⁷

GROUND 15. The Trial Chamber erred in fact and in law in finding that Mr. Ntaganda possessed the required *mens rea* for the crimes it found to have been committed by FPLC/UPC forces and Hema civilians in the Second Operation,⁴⁸ by reaching manifestly unreasonable findings, which no reasonable trier of fact could have made, including *inter alia*:

- Inferring that the *mens rea* for specific crimes committed during the Second Operation, including unprecedented killing events at Kobu, could be imputed to Mr. Ntaganda on the basis of evidence concerning his actions during the First Operation;⁴⁹
- Finding that Mr. Ntaganda already knew about – and expressed tacit or express approval of⁵⁰ – the killings in Kobu on the eve of the FPLC's military defeat and dispersion by Ugandan forces;⁵¹ and
- Finding that Mr. Ntaganda “was monitoring the unfolding of”⁵² and “exercised oversight over”⁵³ the Second Operation, so as to justify imputing to him knowledge of any and all crimes committed during the Second Operation.⁵⁴

⁴⁶ Judgment, paras. 1188-1189.

⁴⁷ See, e.g. Judgment, paras. 1177-1189.

⁴⁸ See, e.g. Judgment, paras. 1185-1189.

⁴⁹ See, e.g. Judgment, paras. 793, 802-804, 1187-1189.

⁵⁰ See, e.g. Judgment, paras. 638, 1185.

⁵¹ See, e.g. Judgment, paras. 637-639.

11. In light of the foregoing and as a result of the Trial Chamber's errors of law and fact described in this Notice of Appeal, the overall relief sought by the Defence is the reversal of the guilty findings entered for each Count, and the acquittal of the Appellant.

12. Mr. Ntaganda reserves the right to amend, vary or supplement this Notice of Appeal following his receipt of the Judgment in a language he fully understands and speaks.

RESPECTFULLY SUBMITTED THIS 9TH DAY OF SEPTEMBER 2019



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⁵² See, e.g. Judgment, paras. 564-565.

⁵³ See, e.g. Judgment, paras. 803-807, 846

⁵⁴ See, e.g. Judgment, paras. 846, 1179, 1186-1189.