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International Criminal Court

Original: **English**

No.**: ICC-01/04-02/06**
Date: **29 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

Public Redacted Version of "Defence reply to 'Response to the 'Defence request for admission of additional evidence on appeal' (No. ICC-01/04-02/06-2570-Conf) of 28 August 2020 on behalf of the Former Child Soldiers', 21 September 2020, ICC-01/04-02/06-2596-Conf

Source: **Defence Team of Mr Bosco Ntaganda**

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Further to the "Directions regarding the application for additional evidence on appeal",[1] issued by the Appeals Chamber, on 9 September 2020 and the Response to the "Defence request for admission of additional evidence on appeal" submitted by the Common Legal Representatives 1 ("CLR1"),[2] Counsel for Mr Ntaganda ("Mr Ntaganda" or "Defence") hereby submit this:

Defence reply to "Response to the 'Defence request for admission of additional evidence on appeal' (No. ICC-01/04-02/06-2570-Conf) of 28 August 2020 on behalf of the Former Child Soldiers"

INTRODUCTION

1. The CLR1 misunderstands the applicable test for the admission of additional evidence on appeal. *First*, the CLR1 proposes a test for "proving"[3] the exercise of due diligence, which far exceeds the standard set in the relevant jurisprudence. On this erroneous basis, the CLR1 wrongly asserts that the Defence provided "no details whatsoever"[4] of the exercise of due diligence. Indeed, the sworn affidavits provided by [REDACTED] demonstrate *inter alia* the steps taken to find [REDACTED].

2. *Second*, although CLR1 refers to the correct standard to determine whether the proposed additional evidence is reasonably capable of belief or reliance, *i.e. prima facie* reliable, she wrongly asserts that independent evidence is required for this purpose over and above the statement provided by [REDACTED], which is linked to events and persons [REDACTED] is familiar with, referred in the trial record.

3. More importantly, the CLR1 misunderstands the applicable standard to determine whether the proposed additional evidence, had it been presented at trial, could have led the Trial Chamber to enter a different verdict, in whole or in part. The moving party is not "required to prove" that the Trial Chamber would – or could – have opted for the evidence the party now proffers "instead of" the totality of the evidence that it relied on to reach its findings. The standard for additional evidence on appeal is not, and has never been, an

[1] Directions regarding the application for additional evidence on appeal, 9 September 2020, ICC-01/04-02/06-2574-Conf ("Directions").
[2] Response to the "Defence request for admission of additional evidence on appeal" (No. ICC-01/04-02/06-2570-Conf) of 28 August 2020 on behalf of the Former Child Soldiers, 16 September 2020, ICC-01/04-02/06-2583-Conf ("CLR1 Response").
[3] CLR1 Response, para.14.
[4] CLR1 Response, para.16.

"either/or" proposition that a moving party is required to "prove" in its favour. Rather, the Appeals Chamber is required to consider whether the evidence could have had an impact on the verdict, in the sense that, if the additional evidence had been available to the Trial Chamber and had the Trial Chamber considered in the context of the evidence presented at trial, it could show that the verdict was unsafe.

4. Evidently, [REDACTED] evidence does just that and the CLR1 ignores the watershed impact of the additional evidence on the very fabric of Mr Ntaganda's conviction(s).

CONFIDENTIALITY

5. The Reply is filed confidentially pursuant to regulation 23*bis*(2) Regulations of the Court, as it responds to a document bearing the same confidentiality level. The Defence undertakes to submit a public redacted version in due course.

PROCEDURAL BACKGROUND

6. On 8 July 2019, Trial Chamber VI (the "Chamber") convicted Mr Ntaganda of five counts of crimes against humanity and thirteen counts of war crimes, for which he was sentenced to 30 years of imprisonment.[5]

7. On 27 August 2020, the Defence submitted its request for admission of additional evidence on appeal ("Defence Request").[6]

8. On 31 August 2020, the CLR1 submitted a Request for higher-resolution version of the electoral card annexed to the Defence request for additional evidence.[7]

9. On 2 September 2020, the Defence filed an *Addendum* to the Defence request for additional evidence, including a better version of the electoral card of the potential new witness.[8]

10. On 9 September 2020, the Appeals Chamber issued Directions regarding the application for additional evidence on appeal directing the Prosecutor to address the issue of

[5] Judgment, 8 July 2020, ICC-01/04-02/06-2359 ("TJ").
[6] Defence request for admission of additional evidence on appeal, 27 August 2020, ICC-01/04-02/06-2570-Conf ("Defence Request").
[7] Request for a higher-resolution version of electoral card annexed to the "Defence request for admission of additional evidence on appeal" of 27 August 2020 (No. ICC-01/04-02/06-2570-Conf), 31 August 2020, ICC-01/04-02/06-2571-Conf.
[8] *Addendum* to "Defence request for admission of additional evidence on appeal", 27 August 2020, ICC-01/04-02/06-2570-Conf, 2 September 2020, ICC-01/04-02/06-2572-Conf.

the admissibility of the additional evidence by 16 September 2020, the CLRs to file their observations on 17 September 2020 and inviting Mr Bosco Ntaganda and the Prosecutor to submit a reply to the victims' observations by 16h00 on Monday, 21 September 2020.[9]

11. On 16 September 2020, the Prosecution submitted its Response to the Defence Request.[10]

12. On the same day, the CLR1 submitted their Response to the Defence Request.[11]

SUBMISSIONS

I. The Defence exercised due diligence in securing [REDACTED] evidence

13. The CLR1 argues in favour of a standard for "proving"[12] the exercise of due diligence, which far exceeds the standard set in the jurisprudence to which she cites, and which cannot be reconciled with the reality of either Prosecution or Defence investigations in the field.

14. The CLR1 asserts that the Defence was required to "provide details as to any efforts that were undertaken" to secure the evidence in question. In doing so, she cites to decisions in which request for additional evidence on appeal were denied on the basis that the moving party provided **no explanation** for why the evidence was not produced at trial, and had failed to alert the Trial Chamber **at any time** to its importance.[13] The Defence in this case provided the Appeals Chamber with an explanation, supported by sworn affidavits of the [REDACTED], having repeatedly informed the Chamber during the trial phase not only of the importance of [REDACTED] evidence, but of the obstacles being encountered in trying to present it.

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[9] Directions, p.3.
[10] Prosecution response to "Defence request for admission of additional evidence on appeal", 16 September 2020, ICC-01/04-02/06-2582-Conf.
[11] CLR1 Response.
[12] CLR1 Response, para.14.
[13] CLR1 Response, fn.15, citing: *Prosecutor v. Tadić*, Case No.IT-94-1, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 15 October 1998, para.53: "In the absence of any explanation as to why certain items now sought to be admitted were not available at trial, the Appeals Chamber finds that the Appellant has failed to discharge his burden of proof in respect of these items to its satisfaction" and *Clément Kayishema and Obed Ruzindana v. The Prosecutor*, Case No.ICTR-95-1-A, Decision on Appellants' Motions for Admission of Additional Evidence on Appeal, 26 September 2000, p.8, "the second Appellant has failed to put forward any explanation as to how he attempted to seek out this witness who was according to him so crucial, how he may have brought him to the attention of the Trial Chamber to alert it as to his importance".

15. The CLR1 is wrong to assert that the Defence provided "no details whatsoever"[14] of the exercise of due diligence. Two affidavits detail these attempts. [REDACTED], who spent a significant amount of time in [REDACTED] between [REDACTED] after the close of the evidentiary phase of the proceedings as the parties and participants were drafting their closing submissions. [REDACTED] affidavit details and demonstrates that having received instructions to find [REDACTED], [REDACTED] used the resources at [REDACTED] disposal attempting to do so. A second affidavit from the [REDACTED], [REDACTED] then provides further details of the consistent efforts of two local resource persons to find [REDACTED]. In reality, during this period, [REDACTED], who cut ties with the *Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo* ("UPC/FPLC") in March 2003, was living nearly 600 kilometres away in [REDACTED] since [REDACTED].[15] There was no indication that this was where the Defence should be concentrating its search.

16. It is difficult to see what further details the CLR1 thinks the Defence should have provided in support of its request. There is no indication in the wealth of decisions addressing the "due diligence" standard in the context of additional evidence on appeal, that the Defence is required to produce the details of every step of every attempt to find a witness; the phone numbers that were called, the messages sent, the emails written, to whom, why, when, and how many times. Nor is that level of detail compatible with the confidentiality of a party's investigations or the security of its sources.

17. It is unclear to the Defence why the CLR1 asserts that the Appeals Chamber would be required to "blindly rely" on sworn affidavits, without any suggestion as to why the evidence contained therein would not be reliable.[16] Regardless, the Defence submits that [REDACTED] and [REDACTED] are available to testify, should this be of assistance to the Appeals Chamber.

18. The parallel drawn by the CLR between the *Lubanga* Appeals Chamber's refusal to hear the evidence of members of Mr Lubanga's Presidential Guard and the present case, is misplaced.[17] In *Lubanga*, the Appeals Chamber held that as the UPC's former commander-in-chief, Mr Lubanga was well-placed to know or to identify two witnesses depicted on video

[14] CLR1 Response, para.16.
[15] Annex A to the Defence request for admission of additional evidence on appeal, 27 August 2020, ICC-01/04-02/06-2570-Conf-AnxA ("[REDACTED] statement"), para.11.
[16] CLR1 Response, para.16.
[17] CLR1 Response, para.21.

excerpts, given that they were part of his Presidential Guard, apparently during the time when this group was relatively small.[18] There is no question in the present case that Mr Ntaganda remembered [REDACTED] called [REDACTED] (or "[REDACTED]"), and that efforts were made at trial (and afterwards) to locate [REDACTED]. The problem was not that Mr Ntaganda could not identify [REDACTED], but that [REDACTED] was impossible to find.

19. Similarly irrelevant are CLR1's comparisons with cases in which it was open to parties to use mechanisms for protection or compulsion, and they failed to do so.[19] The unavailability of the evidence was not due to [REDACTED] unwillingness to testify or concerns for [REDACTED] security that could have been remedied through the mechanisms available at the International Criminal Court. Rather than seizing a Trial Chamber for assistance in facilitating the presentation of [REDACTED] evidence, [REDACTED] just needed to be found. Now, [REDACTED] has been.

II. [REDACTED] evidence is *prima facie* reliable and reasonably capable of belief or reliance

20. CLR1's submission that no independent evidence confirms that the witness is indeed [REDACTED] referred to as [REDACTED], is without merit.[20] The standard to which the Appeals Chamber must have regard at the present stage is whether the evidence sought to be admitted on appeal is *prima facie* reliable and credible. [REDACTED] statement meets that threshold.

21. Should the Appeals Chamber grant the Defence Request, and call [REDACTED] to give evidence, [REDACTED] will invariably be cross-examined by the Prosecution and potentially questioned by the Judges. The CLR1 herself may also seek and be granted leave to examine [REDACTED], and receive answers to the very questions she raises in her Response. The fact that Mr Ntaganda referred to [REDACTED] as "[REDACTED]" and testified based on his recollection that [REDACTED] "'[REDACTED]' at the time of the relevant events and that [REDACTED]"[21] are also matters that can be explored by the parties in cross-examination, affording [REDACTED] the same opportunity as that afforded to every other witness in the case.

[18] *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para.78.
[19] CLR1 Response, para.18.
[20] CLR1 Response, para.28.
[21] CLR1 Response, para.29 (emphasis in original).

22. The CLR1 is also wrong to claim that [REDACTED] proposed evidence conflicts with that of other Defence witnesses, given that her selective citations misrepresent the record.[22] While other witnesses confirmed that [REDACTED] was a member of Mr Ntaganda's escorts,[23] their testimony also has her joining the group of Mr Ntaganda's escorts after March 2003 when the Ugandans, the *Armée du Peuple Congolais* ("APC") and the Lendus combatants chased the UPC from Bunia, and at a time when [REDACTED] was no longer a member of UPC.[24] As such, [REDACTED] evidence that [REDACTED] does not know of an escort named [REDACTED] or [REDACTED] is corroborated by the very evidence that the CLR1 claims contradicts [REDACTED]. D-0017, for example, spoke of P-0010's presence during a further operation conducted by the UPC/FPLC in Mongbwalu in June 2003, well after the UPC/FPLC was chased from Bunia in March 2003 in June 2003.[25] He made no mention of [REDACTED] having been present.[26] Similarly, D-0251 did not put [REDACTED] as being present or involved in the UPC/FPLC June operation in Mongbwalu she testified on.[27] Mr Ntaganda also testified that he only saw [REDACTED] in July 2003,[28] well after [REDACTED] had left the UPC in March 2003. Simply put, [REDACTED] does not know of [REDACTED] because [REDACTED] at the same time.

23. The CLR1 then argues that [REDACTED] evidence as regards the [REDACTED] was not unavailable because [REDACTED] and P-0010's former boyfriend [REDACTED] were "ideally placed to testify as to this matter, appeared on the Defence's Witness List but were eventually not called to testify at trial."[29] *First*, [REDACTED] evidence in relation to the [REDACTED] is unique; [REDACTED] recognizes [REDACTED] in the [REDACTED], [REDACTED] and [REDACTED] to identify [REDACTED], thereby exposing P-0010's lie. *Second*, the choice of which witnesses to call on behalf of an accused is a complex one, taking into account a multitude of factors and considerations, very few of which would be known to a CLR. However, in the case of [REDACTED], the decision not to call [REDACTED] as a witness in this case took into account, *inter alia*, the Prosecution's disclosure of a record of

[22] CLR1 Response, para.34.
[23] CLR1 Response, fn.79 (referring to para.31).
[24] [REDACTED] statement, paras.60-65.
[25] This further operation in Mongbwalu is referred to by witnesses as the '48-hour operation', *See* **D-0017**:T-253,38:19-24; **D-0251**:T-260,25:10-12.
[26] **D-0017**:T-253,38:8-24; T-254,40:18-42:16; DRC-D18-0001-6291 (4, 5, 7 November 2017), para.229.
[27] **D-0251**:T-260, pp.68-69.
[28] **D-0300**:T-239,38:22-39:13.
[29] CLR1 Response, para.24.

conversation between [REDACTED] and Mr Ntaganda, and its [REDACTED].[30] CLR1 received notice of this decision not to call [REDACTED] by way of an email from the Defence to the Chamber on 6 October 2017, to which she was copied. As for P-0010's boyfriend, [REDACTED], he was not present in Rwampara and P-0010 acknowledged meeting him "[REDACTED] when the French chased us out [from] Bunia",[31] *i.e.* in June 2003.[32] Moreover, the fact that Mr Ntaganda,[33] D-0017,[34] and D-0038[35] each recognised [REDACTED] on the [REDACTED] cannot detract from [REDACTED] unique status of being [REDACTED]. As such, not only is [REDACTED], but can give direct evidence about the event itself. [REDACTED] testimony can be corroborated. It cannot be replicated by others who were not [REDACTED]. It is, moreover, devastating to P-0010's [REDACTED] cited by the CLR1.[36]

III. [REDACTED] evidence could have had an impact on the verdict

24. The standard as set out by the CLR1 for the admission of additional evidence on appeal, is that "the moving party is require to prove that the Trial Chamber would – or could – have opted for the evidence the party now proffers instead of the totality of the evidence that it chose to rely on to reach its findings".[37] In asserting this as the standard to which the Appeals Chamber must have regard, CLR1 cites only to a paragraph of a 2006 ICTR Appeals Chamber decision in the *Nahimana et al*. case.

25. The paragraph relied upon by the CLR1 addressed an argument submitted by Mr Barayagwiza, that two messages for which he sought admission on appeal (sent by U.S. Ambassador Mr David Rawson) **would** have led the Trial Chamber to conclude that Mr Barayagwiza was not a superior in the CDR political party, despite the totality of the evidence relied upon by the Trial Chamber showing that he had indeed succeeded to the position of President of the CRD at the national level in February 1994. These messages were available at trial. Mr Barayagwiza had not attempted to argue that they had not been.

[30] [REDACTED]. *See* also Email correspondence from the Defence to the Chamber, Prosecution and CLRs on 6 October 2017, at 15:19.
[31] **P-0010**:T-50,34:17-24.
[32] TJ, para.320.
[33] **D-0300**:T-220,40:23-41:16.
[34] **D-0017**:T-253,49:20-60:4.
[35] **D-0038**:T-250,7:9-8:11.
[36] CLR1 Response, para.21.
[37] CLR1 Response, para.32.

26. As such, the standard against which the evidence was being assessed in the *Nahimana at al.* case, was whether these messages **would** have led the Trial Chamber to arrive at a different conclusion. The Appeals Chamber found that it could not be satisfied that this was the case, in light of the wealth of evidence relied upon, including the testimony of 13 witnesses (including a Prosecution expert and one of the appellant's co-accused) and four exhibits, including a book written by the appellant himself.

27. This decision does not stand for the more general proposition as formulated by the CLR1. The CLR1 misunderstands the applicable test. The moving party is not "required to prove" that the Trial Chamber would – or could – have opted for the evidence the party now proffers "instead of" the totality of the evidence that it relied on to reach its findings. The standard for additional evidence on appeal is not, and has never been, an "either/or" proposition that a moving party is required to "prove" in its favour. Rather, the Appeals Chamber is required to consider whether the evidence could have had an impact on the verdict, in the sense that, if the additional evidence had been available to the Trial Chamber and had the Trial Chamber considered in the context of the evidence presented at trial, it could show that the verdict was unsafe. In other words, if the additional evidence had been available to the Trial Chamber and had the Trial Chamber considered this evidence along with the other evidence adduced, could the verdict have been different, in whole or in part. It is not a question of choice between the additional evidence and the evidence on the record. Evidently, [REDACTED] evidence does just that.

A. P-0010's credibility

28. That the CLR1 should dedicate so much her Response providing arguments in support of P-0010's (her client's) credibility[38] is unsurprising. A central aspect of the trial, and now a central theme of the appeal in this case, is whether a Trial Chamber could reasonably and safely rely on her client's testimony, when *inter alia,* she (i) lied about her age;[39](ii) lied about her interview with P-0046,[40] (iii) lied about having been abducted by the UPC/FPLC;[41] gave wildly unreliable testimony about her training in the UPC/FPLC, omitting the fact that she was previously a soldier in the APC, which the Chamber could not accept;[42] (iv) gave

[38] *Ibid*.
[39] TJ, para.94.
[40] **P-0046**:T-100,81:17-89:15; **P-0010**:T-49,71:24-25;T-50:12:12.
[41] TJ, paras.95-98.
[42] TJ, paras.95-98.

evidence about the First Operation that can in no way be reconciled with the Chamber's own findings;[43] and (v) was patently motivated to adduce incriminating evidence against Mr Ntaganda. Importantly, P-0010's willingness to lie about her age and her abduction by the UPC/FPLC leads to the irresistible inference that she did so to try to falsely inculpate the accused. Even the Prosecution did not believe P-0010 in respect of her age, and explicitly declined to rely on her evidence that she was under 15.[44]

29. The Chamber relied on P-0010's often uncorroborated evidence, without taking the necessary precautions in the presence of an accomplice witness having given false evidence,[45] to make findings on Mr Ntaganda's relationship with his escorts, in respect of his involvement in the First Operation[46] (for which the Defence maintains P-0010 was not even present),[47] and his intent for the crimes for which he was convicted.[48] P-0010's testimony that [REDACTED], was also accepted in the same conditions despite evidence to the contrary and the implausibility of her testimony.[49] [REDACTED] evidence does not only raise specific doubt as to whether or not any of this is true, it exposes P-0010's lies, which were already evident. Indeed, [REDACTED] is by no means the first witness to call into question the reasonableness of the Chamber's reliance on P-0010's evidence. But [REDACTED] presence and testimony at trial could very well have been enough to dissuade the Trial Chamber from even attempting to carve out P-0010's more obvious lies from her testimony and salvage the rest.

30. By way of one example: P-0010 testified that [REDACTED] and that [REDACTED]. [REDACTED] will now tell the Court that [REDACTED], and was [REDACTED]. Considered alone, or in combination with the numerous other factors, which raise doubt as to P-0010's evidence, the CLR1 certainly cannot assert that this evidence could not have

[43] Defence Appeal Brief – Part II, 31 January 2020, ICC-01/04-02/06-2465-Conf-Corr, paras.333-334 ("Defence Appeal Brief – Part II").
[44] Prosecution's Observations on 160 Applications for Victim Participation in the Pre-Trial Proceedings, 30 December 2013, ICC-01/04-02/06-195-Conf, para.29 ("The Prosecution is relying on this witness in the case against Bosco Ntaganda in regard to the events she experiences as a soldier in the UPC/FPLC […] **but is not relying upon her as a child soldier**") (emphasis added); Prosecution application under rule 68(3) to admit the prior recorded testimony of Witness P-0010, 7 October 2015, ICC-01/04-02/06-890-Conf, para.8.
[45] Defence Appeal Brief – Part II, Ground 7, paras.136-141, Ground 8, paras.172,226-230. *See also* Defence reply to "Prosecution response to 'Defence Appeal Brief – Part II'", 3 April 2020, ICC-01/04-02/06-2500, 19 May 2020, ICC-01/04-02/06-2534-Conf, paras.10-15.
[46] TJ, para.100.
[47] Defence Appeal Brief – Part II, paras.333-334.
[48] TJ, para.1196, fn.3238.
[49] TJ, para.102 and fn.1158. *See also* Defence Appeal Brief – Part II, paras.335-336.

impacted the verdict, particularly given the extent to which P-0010's uncorroborated evidence is relied on in support of the factual findings and conclusions therein.

B. Counts 6 and 9

31. In finding that Mr Ntaganda knew that female members of the UPC/FPLC were regularly raped and subjected to sexual violence,[50] the Chamber relied largely on Mr Ntaganda own conduct towards the female members of his escorts, which rests solely on the uncorroborated testimony of P-0010, which was contradicted by other witnesses.[51] By emphasizing that other witnesses testified that these acts occurred,[52] the CLR1 ignores that [REDACTED] testimony not only raises significant doubt concerning these events, such as to render entirely unsafe the Chamber's finding that Mr Ntaganda raped and had sexual relations [REDACTED], with an obvious knock-on effect.

32. The CLR1 is correct that the Chamber declined to rely on D-0251's evidence that she never heard anyone speak about rape in the UPC/FPLC. In fact, the Chamber went as far as declining to rely on D-0251's evidence – and that of D-0017 – that she herself **was not raped** by Mr Ntaganda – which, in and of itself, is highly surprising, preferring to rely on the uncorroborated evidence of P-0010.[53] What cannot now be known is whether having heard from [REDACTED] from among Mr Ntaganda's [REDACTED] that in fact the escorts were **not** subjected to rape or sexual violence, the Chamber could have reasonably found beyond reasonable doubt that they were. Particularly given that this evidence also corresponds with that given by Mr Ntaganda,[54] and D-0017.[55] Significantly, [REDACTED] evidence that [REDACTED] were not raped, given P-0010's categorical and sweeping statements that they were, could have led a reasonable Trial Chamber not only to decline to rely on P-0010's evidence, but find that this unreliable testimony was (again) adduced for the purpose of incriminating Mr Ntaganda, thereby further affecting P-0010's overall reliability as a witness.

33. Notably, the Chamber relied on P-0010's evidence on no less than 61 occasions in its Judgment. [REDACTED] evidence is devastating to the very fabric of Mr Ntaganda's conviction, which the CLR1 omits to consider.

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[50] TJ, fn.3238.
[51] TJ, para.407. **D-0300**:T-223,34:25-35; **D-0251**:T-260,33:19-34:4; **D-0017**:T-253,60:5-6.
[52] CLR1 Response, para.42.
[53] TJ, para.103.
[54] **D-0300**:T-223,34:2-35:2.
[55] **D-0017**:T-253,61:5-6.

C. Counts 14-16

34. The CLR1 spends three pages of her Response arguing that [REDACTED] evidence could not have changed Mr Ntaganda's convictions under Counts 14-16. As this proposition was never advanced, the Defence does not intend to respond.

CONCLUSION

35. Mr Ntaganda's convictions rely in significant part on the testimony of those who assert that they were near to him during the critical days and weeks in 2002 and 2003. [REDACTED]. [REDACTED] could not be found to testify at trial, despite diligent and consistent efforts that spanned several years. [REDACTED] is now available to do so. [REDACTED] is not simply a witness who can corroborate or refute the evidence already in the record. [REDACTED] can tell the Chamber definitively that a central witness in this case lied repeatedly in order to incriminate the accused, and that the lens through which the Chamber evaluated Mr Ntaganda's culpability – in terms of his treatment of [REDACTED] – was false. [REDACTED] unavailability to testify at trial should not be to Mr Ntaganda's detriment.

RESPECTFULLY SUBMITTED ON THIS 29th DAY OF OCTOBER 2020

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The Hague, The Netherlands