

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

**THE APPEALS CHAMBER**

**Before:** Judge Howard Morrison, Presiding Judge  
Judge Chile Eboe-Osuji  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

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

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

**Public**

**Prosecution notice of appeal**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

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**REGISTRY**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**   **Other**

## Notice of Appeal

1. The Prosecution gives notice of its appeal in part against the judgment of Trial Chamber VI in the case against *Prosecutor v. Bosco Ntaganda*, filing number ICC-01/04-02/06-2359, which was rendered on 8 July 2019 (“Judgment”).<sup>1</sup>
2. This appeal is brought under article 81(1)(a)(iii) of the Statute, and will demonstrate that the Trial Chamber erred in law with regard to two incidents, which led to the erroneous acquittal of Mr Ntaganda under article 8(2)(e)(iv) of the Statute (count 17) for intentionally directing attacks against (i) the church at Sayo and (ii) the hospital at Mongbwalu.
3. The Prosecution identified these discrete errors after careful study of the Judgment, with reference to the established standard of appellate review, notably:
  - With respect to errors of law: “[t]he Appeals Chamber will not defer to the Trial Chamber’s interpretation of the law” but rather “will arrive at its own conclusions as to the appropriate law and determine whether or not the Trial Chamber misinterpreted the law”;<sup>2</sup> and,
  - With respect to errors of fact: the Appeals Chamber “will not interfere with factual findings of the first-instance Chamber unless it is shown that the Chamber committed a clear error”, and that consequently—recognising that “the Appeals Chamber should give a margin of deference to factual findings of a Trial Chamber”—“the Appeals Chamber will determine whether a

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<sup>1</sup> Regulations of the Court, regulation 57; Rules, rule 150 (1). *See also* ICC-01/04-02/06-2364 (“Decision Extending Notice”), para. 6 (extending the time limit for the filing of Mr Ntaganda’s and the Prosecutor’s notice of appeal against the Judgment by 30 days).

<sup>2</sup> ICC-01/04-01/06-3121 A5 (“*Lubanga* AJ”), paras. 17-19; ICC-01/04-02/12-271 A (“*Ngudjolo* AJ”), para. 20; ICC-01/05-01/13-2275 A A2 A3 A4 A5 (“*Bemba et al* AJ”), para. 90; ICC-01/05-01/08-3636 A (“*Bemba* AJ”), para. 36. In the context of article 82, *see also e.g.* ICC-02/04-01/15-1562 OA4 (“*Ongwen* Defects Judgment”), para. 45; ICC-01/04-01/06-2466-Red A7 A8 (“*Lubanga* Reparations Judgment”), para. 28.

reasonable Trial Chamber could have been satisfied beyond reasonable doubt as to the finding in question.”<sup>3</sup>

4. In both cases, the Appeals Chamber will only intervene only if the Trial Chamber’s error “materially affected” the Judgment.<sup>4</sup>
5. Accordingly, the Prosecution has identified two discrete grounds of appeal, cumulatively or alternatively, raising points of law which are of general significance:

#### **GROUND ONE**

The Trial Chamber erred in law in paragraph 1136 of the Judgment by interpreting the term “attack” under article 8(2)(e)(iv)—insofar as the object of the attack was a “building[] dedicated to religion, education, art, science or charitable purposes” or a “historical monument[]”—such that the attack must nonetheless be committed during the conduct of hostilities, notwithstanding its reasoning in footnote 3147. This error materially affected the Judgment when, in paragraph 1142 concerning the church at Sayo, the Trial Chamber determined that, as a consequence “the first element of Article 8(2)(e)(iv) is not met”. It therefore terminated its legal analysis of this incident in paragraph 1144, which led to the erroneous acquittal of Mr Ntaganda of criminal responsibility for the attack on the church at Sayo.

#### **GROUND TWO**

The Trial Chamber erred in law in paragraph 1136 of the Judgment by interpreting the term “attack” under article 8(2)(e)(iv)—insofar as the object of the attack was a “hospital” or “place[] where the sick and wounded are collected”—such that the attack must be committed during the conduct of

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<sup>3</sup> *Lubanga* AJ, paras. 21-22, 27; *Ngudjolo* AJ, paras. 22-26; *Bemba et al* AJ, paras. 91-98. In the context of article 82, *see also e.g. Ongwen* Defects Judgment, para. 47; *Lubanga* Reparations Judgment, para. 30.

<sup>4</sup> *See e.g.* Statute, art. 83(2).

hostilities.<sup>5</sup> Further or alternatively, the Trial Chamber erred in law in paragraph 1141 in considering that the appropriation of medical and other essential property from such an object cannot fall within the definition of “attack” in article 8(2)(e)(iv).<sup>6</sup> These legal errors, cumulatively or alternatively, materially affected the Judgment when, in paragraph 1141, the Trial Chamber determined that “pillaging of protected objects, in particular in this case of the Mongbwalu hospital” does not “constitute an attack within the meaning of Article 8(2)(e)(iv)”. It therefore terminated its legal analysis of this incident in paragraph 1144, which led to the erroneous acquittal of Mr Ntaganda of criminal responsibility for the attack on the hospital at Mongbwalu.

6. The Prosecution requests the Appeals Chamber to confirm the applicable law, and to exercise its powers under article 83(2) of the Statute to: reverse the findings material to these errors; amend the decision by making any further findings which are necessary and entering additional convictions under article 8(2)(e)(iv) (count 17) for intentionally directing attacks against (i) the church at Sayo and (ii) the hospital at Mongbwalu; and, determine a new sentence accordingly.




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Fatou Bensouda, Prosecutor

Dated this 9<sup>th</sup> day of September 2019

At The Hague, The Netherlands

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<sup>5</sup> The Trial Chamber also applied this interpretation to the health centre in Sayo (paragraph 1140) and the hospital in Bambu (paragraph 1143). However, these incidents are not appealed under Ground Two because the erroneous legal interpretation cannot be shown to have materially affected the Judgment in these respects.

<sup>6</sup> In this respect, the Prosecution further notes the Trial Chamber’s observation at paragraph 1041, when it determined that the appropriation of medical equipment “could potentially serve a military purpose”, which led to the Trial Chamber’s conclusion that it could not determine that the appropriation “was intended for private and personal use”, as required for the crime of pillage under article 8(2)(e)(v) (count 11). While the Prosecution notes the distinct context in which this observation was made, and consequently does not seek to appeal this reasoning, it understands for the purpose of Ground Two that international humanitarian law does not permit the general and unqualified appropriation of civilian medical property.