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Date: **10 March 2026**

THE APPEALS CHAMBER

Before: Judge Erdenebalsuren Damdin, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Keebong Paek

SITUATION IN DARFUR, SUDAN

IN THE CASE OF

***THE PROSECUTOR V. ALI MUHAMMAD ALI ABD-AL-RAHMAN
("ALI KUSHAYB")***

Public with public Annex A

Prosecution Appeal Brief (Sentencing)

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INTRODUCTION

1. On 6 October 2025, Trial Chamber I convicted Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”) of 27 counts of crimes against humanity and war crimes committed between August 2003 and March 2004 in Darfur, Sudan.¹ The Chamber found him guilty of ordering or committing a wide range of grave crimes carried out in three distinct operations, which caused profound and long-lasting harm to victims, their families and the affected communities.² Yet for these crimes, the Chamber ultimately imposed a joint sentence of only 20 years’ imprisonment,³ which was the legal minimum that it could impose based on the individual sentences.

2. This sentence was manifestly inadequate and disproportionate to the crimes whose gravity the Chamber recognised in detailed, unassailable findings throughout its judgments. It does not give meaningful effect to the principal sentencing goals of retribution and deterrence under the Rome Statute.⁴ It fails to acknowledge the magnitude of harm suffered by Mr Abd-Al-Rahman’s countless victims in the three operations,⁵ whose suffering was laid bare in the Trial and Sentencing Judgments.⁶

3. The first operation occurred at Kodoom and Bindisi. Mr Abd-Al-Rahman, leader of the *Janjaweed* in the Mukjar and Wadi Salih localities, ordered the *Janjaweed* to carry out an attack against the civilian population of Kodoom and Bindisi.⁷ Under Mr Abd-Al-Rahman’s leadership and according to his orders and instructions, the *Janjaweed* carried out this sustained attack over two days,⁸ murdering at least 46 people. They shot some people as they tried to flee, whilst burning others to death in their homes.⁹ The *Janjaweed* destroyed houses,¹⁰ pillaged civilian property,¹¹ and forcibly transferred many of the inhabitants, including children.¹²

¹ [Trial Judgment](#), pp. 352-354.

² See e.g. [Sentencing Judgment](#), paras. 126-136, 164, 170, 199, 207, 241, 246, 256, 264-265, 272, 277.

³ [Sentencing Judgment](#), para. 294, p. 90.

⁴ [Al Hassan Sentencing Judgment](#), para. 16; [Ntaganda Sentencing Judgment](#), para. 9; [Al Mahdi Trial Judgment](#), para. 66.

⁵ See [Ntaganda Sentencing Judgment](#), para. 10 (“[B]y imposing a proportionate sentence, the harm caused to the victims is also acknowledged”); [Al Mahdi Trial Judgment](#), para. 67.

⁶ See e.g. [Trial Judgment](#), paras. 885, 894-896, 898; [Sentencing Judgment](#), paras. 126-136, 172, 198-199, 253, 264.

⁷ [Sentencing Judgment](#), paras. 141, 152; [Trial Judgment](#), paras. 1002-1012.

⁸ [Sentencing Judgment](#), para. 152; [Trial Judgment](#), paras. 396, 1003.

⁹ [Sentencing Judgment](#), paras. 145, 172; [Trial Judgment](#), paras. 408, 423-424, 927.

¹⁰ [Sentencing Judgment](#), para. 182 (fn. 464); [Trial Judgment](#), paras. 411, 422, 428.

¹¹ [Sentencing Judgment](#), para. 176; [Trial Judgment](#), paras. 410, 427.

¹² [Sentencing Judgment](#), para. 206; [Trial Judgment](#), paras. 409, 426.

4. The *Janjaweed* raped no fewer than 16 women and girls, including an elderly woman and children aged as young as 13 and 15 years.¹³ They stripped women of their clothing and raped them in public, in front of others. Women and children were forced to watch others being raped. Some were raped by several men at the same time or consecutively. The *Janjaweed* carried out the rapes with a high degree of violence, threats and derogatory insults. They killed some women after raping them. Those who survived had no access to medical care. The social stigma attached to rape left many isolated and excluded from society due to shame.¹⁴

5. The second operation, at Mukjar, occurred approximately six months later,¹⁵ according to a deliberate plan agreed between Mr Abd-Al-Rahman and other members of the *Janjaweed* as well as Government Forces (“GoS Forces”).¹⁶ As an integral part of this plan, the *Janjaweed* and GoS Forces arrested and detained at least 100 predominantly Fur men and boys in Mukjar, and tortured, humiliated and degraded them. Three men died from their brutal mistreatment in detention. The *Janjaweed* and GoS Forces then took no fewer than 50 men and shot them to death in a series of mass executions outside Mukjar, in a single day. Only two survived.¹⁷ Mr Abd-Al-Rahman personally tortured, abused and humiliated detainees, ordered and supervised their transport to execution sites, and, at those sites, ordered their execution.¹⁸

6. The third operation, at Deleig, occurred about one week later.¹⁹ While sharing similar features with the operation at Mukjar, it was distinct and marked yet another escalation in Mr Abd-Al-Rahman’s criminal conduct.²⁰ Once again, in furtherance of a plan agreed between Mr Abd-Al-Rahman and others,²¹ the *Janjaweed* and GoS Forces arrested and detained at least 100 predominantly Fur men and boys in Deleig, and tortured, humiliated and degraded them. They then murdered no fewer than 114 men and boys, including 3 children aged between 12 and 14 years. Mr Abd-Al-Rahman killed two of these men with an axe. The rest were taken out and shot to death in a series of mass executions outside Deleig, most in a single day. Only two men survived.²² Mr Abd-Al-Rahman personally tortured and humiliated detainees, instructed and

¹³ [Sentencing Judgment](#), para. 145; [Trial Judgment](#), paras. 431, 867, 870, 895.

¹⁴ [Sentencing Judgment](#), paras. 155, 198-199; [Trial Judgment](#), paras. 429-435, 652.

¹⁵ [Trial Judgment](#), paras. 396, 482.

¹⁶ [Sentencing Judgment](#), para. 221; [Trial Judgment](#), paras. 960-971.

¹⁷ [Sentencing Judgment](#), paras. 146, 253; [Trial Judgment](#), paras. 483-496, 502-503, 506-507, 510-515, 520-536, 538-570, 927.

¹⁸ [Sentencing Judgment](#), paras. 222, 254; [Trial Judgment](#), paras. 520-525, 530, 540-549, 554, 563, 957, 985.

¹⁹ [Trial Judgment](#), paras. 482, 575.

²⁰ See below paras. 125-127.

²¹ [Sentencing Judgment](#), para. 221; [Trial Judgment](#), paras. 972-981.

²² [Sentencing Judgment](#), paras. 146, 261; [Trial Judgment](#), paras. 592-593, 596-599, 602, 604-605, 608-612, 617-634, 642-646, 927. The three children were Abu Bakar Suleiman Abakar (no more than 12-13 years old), the son of Issa Harun (about 13-14 years old) and Zakaria Abdelmawla Abakar (no more than 12-13 years old).

supervised the loading of vehicles and the transport of detainees to execution sites, and, at one site, personally ordered detainees to be taken off the vehicles and executed.²³

7. All of the crimes of which Mr Abd-Al-Rahman was convicted were committed for discriminatory motives.²⁴ All were committed against a significant number of victims.²⁵ All the crimes against persons were committed against particularly vulnerable and defenceless victims.²⁶ Many of the crimes were committed with particular cruelty.²⁷ The intersectional nature of the persecution compounded the harm.²⁸ Every crime was committed with a high degree of planning and premeditation.²⁹ In the view of the Chamber, Mr Abd-Al-Rahman's degree of participation in every crime was "*very high*"³⁰ and his degree of intent either "*high*" or "*very high*".³¹

8. Against this backdrop, both a significant number of the individual sentences, and the joint sentence of 20 years' imprisonment ultimately imposed by the Chamber, were patently inadequate. They fell well outside the range of sentences reasonably available to the Chamber in this case. In particular, the joint sentence was the *minimum* that the Chamber could lawfully impose under article 78(3) as it was equal to the highest individual sentence relating to just *one* of the three operations alone. As such, the penalty imposed by the Chamber failed to reflect the totality of Mr Abd-Al-Rahman's culpability for all crimes committed across the *three* separate operations. The three operations displayed "an escalation in the gravity of the crimes"³²—yet in determining the sentence the Chamber failed to reflect the factually distinct features of these operations. These disproportionately low sentences cannot be explained by the mitigating factors found by the Chamber, which it only took into account for the joint sentence and which it stated only merited "limited weight".³³

9. Whilst sentencing is not a purely mathematical exercise, the numbers in this case further suggest the gross inadequacy of the joint sentence imposed by the Chamber. The joint sentence

²³ [Sentencing Judgment](#), paras. 222, 245, 262; [Trial Judgment](#), paras. 610, 617, 621, 624, 643.

²⁴ [Sentencing Judgment](#), paras. 157-158, 232. The crime of persecution (counts 11, 21 and 31) by definition includes a discriminatory dimension.

²⁵ [Sentencing Judgment](#), para. 147.

²⁶ [Sentencing Judgment](#), paras. 172-173, 192-193, 198, 210, 216, 229.

²⁷ [Sentencing Judgment](#), paras. 172-173, 190, 193, 198, 202, 216.

²⁸ [Sentencing Judgment](#), paras. 213, 270, 276.

²⁹ [Sentencing Judgment](#), paras. 142, 154-156, 228.

³⁰ [Sentencing Judgment](#), paras. 142, 152, 221-223, 240 (finding his degree of participation in the crimes at Mukjar to be "particularly high"), 245 (finding his degree of participation in the crimes at Deleig to be "particularly high"), 254, 262 (emphasis added).

³¹ [Sentencing Judgment](#), paras. 153, 169, 177, 224-227, 255, 263 (emphasis added).

³² [Sentencing Judgment](#), para. 220.

³³ See below paras. 129-133.

equates to only about 34 days for each murder—without even factoring in the victims of all the other crimes (such as rape and torture) of which Mr Abd-Al-Rahman was convicted.³⁴ If the total sentence were to be divided by the three distinct operations, Mr Abd-Al-Rahman would in effect be required to serve only *about six and a half years*’ imprisonment for each one. The sentence cannot be said to achieve justice in this case.

10. Pursuant to article 81(2)(a) of the Statute and regulation 58 of the Regulations of the Court, the Prosecution appeals certain individual sentences and the joint sentence imposed by the Chamber which were disproportionate to the crimes of which Mr Abd-Al-Rahman was convicted and his individual circumstances.³⁵ This appeal will demonstrate that:

- a. the Chamber erred in law³⁶ and/or fact,³⁷ and/or abused its discretion,³⁸ and/or provided inadequate reasoning³⁹ in imposing certain individual sentences, which were disproportionately low, namely those for: murder, other inhumane acts, outrages upon personal dignity, rape, and persecution at Kodoom and Bindisi (counts 2-3, 6-9, 11); for

³⁴ 20 years (of 365 days) divided by 213 victims of murder.

³⁵ See [Lubanga Sentencing Appeal Judgment](#), paras. 39, 45.

³⁶ Concerning errors of law, the 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. See e.g. [Ongwen Sentencing Appeal Judgment](#), para. 33; [Ongwen Appeal Judgment](#), para. 76; [Ntaganda Sentencing Appeal Judgment](#), para. 25; [Ntaganda Appeal Judgment](#), para. 36; [Gbagbo Appeal Judgment](#), para. 62; [Bemba et al. Appeal Judgment](#), para. 90; [Bemba Appeal Judgment](#), para. 36; [Ngudjolo Appeal Judgment](#), para. 20; [Lubanga Appeal Judgment](#), paras. 17-18.

³⁷ Concerning errors of fact, the Appeals Chamber will defer to the Trial Chamber’s factual findings to the extent required by the Statute, bearing in mind factors such as the Trial Chamber’s primary responsibility for evaluating and weighing the evidence received at trial. It will not disturb a Trial Chamber’s factual finding only because it would have come to a different conclusion, but only where a factual finding was unreasonable in the circumstances of the case, based on a holistic evaluation of the evidence and having regard to the applicable standard of proof beyond reasonable doubt. See e.g. [Ongwen Appeal Judgment](#), paras. 77-83; [Ntaganda Sentencing Appeal Judgment](#), paras. 27-30; [Ntaganda Appeal Judgment](#), paras. 37-42; [Gbagbo Appeal Judgment](#), paras. 66-71. See also [Bemba et al. Appeal Judgment](#), paras. 91-98; [Ngudjolo Appeal Judgment](#), paras. 22-26; [Lubanga Appeal Judgment](#), paras. 21-27 (reciting similar principles, and requiring a showing of “clear error”).

³⁸ Concerning abuses of discretion, the Appeals Chamber will defer to the Trial Chamber and will only intervene if the Trial Chamber’s exercise of discretion is based on an erroneous interpretation of the law, an incorrect conclusion of fact, or, as a result of the Trial Chamber’s weighing and balancing of the relevant factors, the imposed sentence is so unreasonable as to constitute an abuse of discretion. Thus, even if an error of law or fact has not been identified, an abuse of discretion will occur when the decision is so unfair or unreasonable as to force the conclusion that the Trial Chamber failed to exercise its discretion judiciously. See e.g. [Ongwen Sentencing Appeal Judgment](#), para. 35; [Ntaganda Sentencing Appeal Judgment](#), para. 31; [Bemba et al. Sentencing Appeal Judgment](#), paras. 21-24; [Lubanga Sentencing Appeal Judgment](#), paras. 41-44.

³⁹ Concerning the requirement to provide adequate reasoning, the extent of the reasoning will depend on the circumstances of the case and that the obligation to provide reasons will not necessarily require reciting each and every factor that was before the relevant chamber to be individually set out, but requires the chamber to identify which facts it found to be relevant in coming to its conclusion: [Interim Release Appeal Judgment](#), para. 42. The relevant chamber must indicate with sufficient clarity the basis of the decision, since it is only on the basis of a reasoned decision that proper appellate review will be possible: [Lubanga Redactions Appeal Judgment](#), para. 20.

murder and persecution at Mukjar (counts 17-18, 21); and for murder and persecution at Deleig (counts 27-28, 31);⁴⁰ and

- b. the Chamber erred in law and/or fact, and/or abused its discretion, and/or provided inadequate reasoning in imposing the minimum possible joint sentence, which was disproportionately low.⁴¹

11. Had the Chamber not so erred, it would have imposed a joint sentence significantly exceeding 20 years' imprisonment. The Prosecution recalls that at first instance it recommended to the Chamber that a joint sentence of life imprisonment is justified by the extreme gravity of the crimes and the individual circumstances of the convicted person.⁴²

12. In this context, the Prosecution respectfully requests the Appeals Chamber to exercise its powers under article 83(3) of the Statute to vary the sentences imposed by the Chamber by: determining appropriate increases to the individual sentences imposed for certain crimes committed during the operations at Kodoom and Bindisi, Mukjar and Deleig, namely murder (counts 2-3, 17-18, 27-28), other inhumane acts (count 6), outrages upon personal dignity (count 7), rape (counts 8-9), and persecution (counts 11, 21, 31); and/or determining an appropriate increase to the joint sentence significantly exceeding 20 years' imprisonment, including potentially of life imprisonment.

SUBMISSIONS

I. FIRST GROUND OF APPEAL: THE CHAMBER ERRED IN IMPOSING MANIFESTLY INADEQUATE AND DISPROPORTIONATE INDIVIDUAL SENTENCES FOR CERTAIN CRIMES AT KODOOM AND BINDISI (COUNTS 2-3, 6-9, 11), MUKJAR (COUNTS 17-18, 21) AND DELEIG (COUNTS 27-28, 31)

13. The Chamber abused its discretion, and/or erred in law and/or fact, and/or failed to provide adequate reasoning by entering individual sentences for certain crimes that were manifestly inadequate and disproportionately low.⁴³ The manifest inadequacy of these sentences was not due to the presence of mitigating circumstances, which the Chamber only took into account in imposing the joint sentence.⁴⁴ The following sentences fell outside the

⁴⁰ [Notice of Appeal](#), paras. 2, 5, 7.

⁴¹ [Notice of Appeal](#), paras. 2, 10, 13.

⁴² [Prosecution Sentencing Submissions](#), paras. 1, 9, 166-168.

⁴³ See [Ongwen Sentencing Appeal Judgment](#), para. 30; [Ntaganda Sentencing Appeal Judgment](#), para. 20; [Bemba et al. Sentencing Appeal Judgment](#), para. 21; [Lubanga Sentencing Appeal Judgment](#), paras. 34, 39. See also [Statute](#), art. 81(2)(a) ("A sentence may be appealed by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence").

⁴⁴ [Sentencing Judgment](#), paras. 53, 80, 293-294. See also below paras. 129-133.

range of those that were reasonably available to the Chamber in light of its own findings on the gravity of the crimes and the multiple aggravating circumstances:

Kodoom and Bindisi:

- Counts 2-3 (murder as a crime against humanity and as a war crime): the Chamber imposed sentences of 15 years (the Prosecution had recommended 30 years);⁴⁵
- Count 6 (other inhumane acts as a crime against humanity): the Chamber imposed a sentence of 12 years (the Prosecution had recommended 20 years);⁴⁶
- Count 7 (outrages upon personal dignity as a war crime): the Chamber imposed a sentence of 12 years (the Prosecution had recommended 20 years);⁴⁷
- Counts 8-9 (rape as a crime against humanity and as a war crime): the Chamber imposed sentences of 15 years (the Prosecution had recommended 27 years);⁴⁸
- Count 11 (persecution as a crime against humanity): the Chamber imposed a sentence of 17 years (the Prosecution had recommended 30 years);⁴⁹

Mukjar:

- Counts 17-18 (murder as a crime against humanity and as a war crime): the Chamber imposed sentences of 20 years (the Prosecution had recommended 30 years);⁵⁰ and
- Count 21 (persecution as a crime against humanity): the Chamber imposed a sentence of 18 years (the Prosecution had recommended 30 years);⁵¹

Deleig:

- Counts 27-28 (murder as a crime against humanity and as a war crime): the Chamber imposed sentences of 20 years (the Prosecution had recommended 30 years);⁵² and

⁴⁵ [Sentencing Judgment](#), paras. 167, 173.

⁴⁶ [Sentencing Judgment](#), paras. 186, 193.

⁴⁷ [Sentencing Judgment](#), paras. 186, 193.

⁴⁸ [Sentencing Judgment](#), paras. 196, 202.

⁴⁹ [Sentencing Judgment](#), paras. 210, 217.

⁵⁰ [Sentencing Judgment](#), paras. 250, 258.

⁵¹ [Sentencing Judgment](#), paras. 268, 274.

⁵² [Sentencing Judgment](#), paras. 250, 267.

- Count 31 (persecution as a crime against humanity): the Chamber imposed a sentence of 18 years (the Prosecution had recommended 30 years).⁵³

14. As shown below, the Chamber:

- abused its discretion by entering manifestly inadequate individual sentences which did not reflect the gravity of the crimes and Mr Abd-Al-Rahman's culpability, as demonstrated by reference to the Chamber's findings for each operation and crime;
- erred in law and/or fact, and/or abused its discretion, and/or provided inadequate reasoning in entering identical individual sentences for murder and persecution at Mukjar (counts 17-18, 21) and Deleig (counts 27-28, 31) despite having made findings demonstrating that these two crimes committed at Deleig were *graver* than those committed at Mukjar;
- erred in law and/or fact, and/or abused its discretion, and/or provided inadequate reasoning in entering individual sentences for persecution in Mukjar (count 21) and Deleig (count 31) that were *lower* than the individual sentences for some underlying crimes committed in those operations, such as murder, and in contradiction with its sentence for persecution at Kodoom and Bindisi (count 11) which was *higher* than the individual sentence for any underlying crime.

I.A. The Chamber erred by entering manifestly inadequate individual sentences for certain crimes

I.A.1. A sentence must accord with the gravity of the crimes and the convicted person's culpability

15. While the Chamber referred to the relevant legal principles for determining individual sentences, it failed to apply them correctly and abused its discretion by imposing manifestly inadequate sentences.

16. As the Chamber acknowledged, pursuant to article 78(3) and rule 145(1)(b), it was required to "first identify and consider the circumstances both of the convicted person and of the crime" and then "balance all the relevant factors and circumstances and ultimately

⁵³ [Sentencing Judgment](#), paras. 268, 279. The Prosecution recommended the same individual sentence of 30 years for several of these counts (counts 2-3, 11, 17-18, 21, 27-28, 31) not because the gravity of the crimes and other relevant circumstances were identical, but because this represented the legal maximum (short of a life sentence). *See further below* para. 82.

pronounce an individual sentence for each crime.”⁵⁴ Further, it was required to ensure that the individual sentences took into account “*all* the circumstances relevant to a particular crime.”⁵⁵

17. In other words, as held by the Appeals Chamber, the Trial Chamber was required to impose an individual sentence that “fully reflect[ed] that convicted person’s culpability for that particular crime”.⁵⁶ Indeed, “if the circumstances relevant to more than one individual sentence were to be excluded from the calculation of any of those individual sentences, the true culpability of a convicted person for a particular crime would be unclear”.⁵⁷

18. Trial Chambers are afforded wide discretion in their determination of the appropriate sentence.⁵⁸ However, while recognising that sentencing is “not a natural science”, it is incumbent on a trial chamber to determine what makes a *fair* penalty.⁵⁹ By far the most important consideration in this regard is *gravity*—the litmus test for the appropriate sentence.⁶⁰

19. Thus, as the Appeals Chamber has recalled, “while its review of a trial chamber’s exercise of its discretion in determining the sentence must be deferential, it will intervene if, *inter alia*, ‘as a result of the Trial Chamber’s weighing and balancing of the relevant factors, the imposed sentence is so unreasonable as to constitute an abuse of discretion’.” This “requires the Appeals Chamber to measure the *reasonableness* of the sentence as pronounced by a trial chamber” with a view to determining whether it is “so manifestly low and inadequate *per se*” that it must be erroneous.⁶¹

20. Likewise, in the *ad hoc* tribunals where the Appeals Chamber intervened to impose higher sentences, it did so when satisfied of a “discernible error” in its assessment of gravity.⁶²

⁵⁴ [Sentencing Judgment](#), para. 26. See also [Ongwen Sentencing Judgment](#), para. 59.

⁵⁵ [Sentencing Judgment](#), para. 26 (emphasis added). See also [Ntaganda Sentencing Appeal Judgment](#), para. 129; [Al Hassan Sentencing Judgment](#), para. 30; [Ongwen Sentencing Judgment](#), paras. 59, 136.

⁵⁶ [Ntaganda Sentencing Appeal Judgment](#), para. 129. See also [Ongwen Sentencing Judgment](#), para. 136.

⁵⁷ [Ntaganda Sentencing Appeal Judgment](#), para. 130. See also [Ongwen Sentencing Judgment](#), para. 136.

⁵⁸ [Al Hassan Sentencing Judgment](#), para. 17; [Ongwen Sentencing Appeal Judgment](#), para. 31; [Ntaganda Sentencing Appeal Judgment](#), para. 21; [Bemba et al. Sentencing Appeal Judgment](#), para. 22.

⁵⁹ [Bemba et al. Re-Sentencing Decision](#), para. 137.

⁶⁰ [Čelebići Appeal Judgment](#), para. 731. See also [Aleksovski Appeal Judgment](#), para. 182; [Kupreškić et al. Trial Judgment](#), para. 852; [Kanyarukiga Appeal Judgment](#), para. 280; [Akayesu Appeal Judgment](#), para. 413; [Kambanda Appeal Judgment](#), para. 125. See [Statute](#), art. 78(1). See also [Al Hassan Sentencing Judgment](#), para. 17.

⁶¹ [Bemba et al. Sentencing Appeal Judgment](#), para. 90. See also [Lubanga Sentencing Appeal Judgment](#), para. 44.

⁶² See e.g. [Karadžić Appeal Judgment](#), para. 774 (“the Trial Chamber committed a discernible error and abused its discretion in imposing a sentence of only 40 years imprisonment”); [Dordević Appeal Judgment](#), para. 968 (“a discernible error may be found with respect to a trial chamber’s determination of the sentence even where the factual findings of a case are left undisturbed”); [Galić Appeal Judgment](#), para. 455 (“the Trial Chamber committed a discernible error in assessing the factors in relation to the gravity of the crime, the role and participation of Galić, the aggravating circumstances of abuse of Galić’s position of authority, and the single mitigating circumstance regarding his behaviour throughout the proceedings. Although the Trial Chamber did not err in its factual findings and correctly noted the principles governing sentencing, it committed an error in finding that the sentence imposed adequately reflects the level of gravity of the crimes committed by Galić and his degree of participation”).

Such error could arise even when there may have been no discernible error in the Trial Chamber's factual findings, but rather when the sentences imposed were so unreasonable that it led to the inference that the Chamber must have failed to exercise its discretion properly.⁶³

21. In *Galić*, the Appeals Chamber increased the sentence of 20 years imposed by the Trial Chamber to life imprisonment.⁶⁴ It found that even though the Trial Chamber did not err in its factual findings and correctly noted the sentencing principles, it erred in finding that the sentence imposed adequately reflected the degree of gravity of the crimes and the convicted person's participation. As such, the sentence imposed "was taken from the wrong shelf", in the sense that it fell "outside the range of sentences available to it" in the circumstances of that case. The Appeals Chamber concluded that the sentence "was so unreasonable and plainly unjust, in that it underestimated the gravity of Galić's criminal conduct, that it is able to infer that the Trial Chamber failed to exercise its discretion properly."⁶⁵

22. Similarly, in *Karadžić*, the Appeals Chamber found that the sentence imposed by the Trial Chamber was "so unreasonable and plainly unjust that the Appeals Chamber can only infer that the Trial Chamber failed to properly exercise its discretion."⁶⁶ The Appeals Chamber set aside the sentence of 40 years imposed by the Trial Chamber and entered a sentence of life imprisonment.⁶⁷

23. In *Gacumbitsi*, the Appeals Chamber confirmed that the Trial Chamber's discretion is not unlimited, and that the Appeals Chamber has the prerogative to substitute a new sentence when the one imposed by the Trial Chamber cannot be reconciled with the governing sentencing principles. In that case, the Appeals Chamber found that in light of the "massive nature of the crimes and the Appellant's leading role in them, as well as the relative insignificance of the purported mitigating factors, the Trial Chamber ventured outside its scope of discretion by imposing a sentence of only thirty years' imprisonment".⁶⁸

24. Likewise, in the *Duch* case at the ECCC, the Supreme Court Chamber found that the 35-year sentence was "arbitrary" and "manifestly inadequate", and did not appropriately reflect

⁶³ [Mrkšić & Šljivančanin Appeal Judgment](#), para. 413.

⁶⁴ [Galić Appeal Judgment](#), paras. 395-456 and p. 185. Galić was convicted of one war crime and multiple crimes against humanity. See para. 4.

⁶⁵ [Galić Appeal Judgment](#), para. 455.

⁶⁶ [Karadžić Appeal Judgment](#), para. 773 ("the sentence of 40 years imposed on Karadžić by the Trial Chamber underestimates the extraordinary gravity of Karadžić's responsibility and his integral participation in 'the most egregious of crimes' that were committed").

⁶⁷ [Karadžić Appeal Judgment](#), paras. 776-777.

⁶⁸ [Gacumbitsi Appeal Judgment](#), para. 205.

the gravity of the crimes and the individual circumstances of the case.⁶⁹ The Chamber found that it was “under a duty to substitute a new penalty where, such as in the present case, ‘the one given by the Trial Chamber simply cannot be reconciled with the principles governing sentencing,’ duly considering the gravity of the crimes and particular circumstances of the case”.⁷⁰

25. The sentences imposed by the Trial Chamber in this case similarly failed to reflect the gravity of the crimes and thus are manifestly inadequate, as shown below.

I.A.2. The individual sentences do not reflect the gravity of the crimes and Mr Abd-Al-Rahman’s culpability

26. The Chamber’s gravity assessment highlighted the very serious and harmful nature of Mr Abd-Al-Rahman’s crimes.

27. The Chamber first considered the gravity factors that were common to all operations. It noted Mr Abd-Al-Rahman’s position of authority and access to key figures in the Sudanese government, which enabled him to secure compliance with his orders and instructions to commit crimes in Kodoom and Bindisi, and to contribute to the common plans which resulted in the commission of crimes at Mukjar and Deleig.⁷¹ It also noted the degree of planning involved in committing the crimes, which involved multiple actors from the Sudanese authorities and the *Janjaweed*, and the breadth of actions taken to delineate and implement the plan to commit the crimes. These included the recruitment, training, arming and funding of the *Janjaweed*, in which Mr Abd-Al-Rahman had a key role.⁷²

28. The Chamber then assessed the factors specific to the gravity of each operation and the crimes committed as part of them.

I.A.2.a. Kodoom and Bindisi Operation

29. In assessing the gravity of all crimes committed during the Kodoom and Bindisi operation,⁷³ the Chamber found that Mr Abd-Al-Rahman had a *very high* degree of participation and a *high* degree of intent.⁷⁴ It found that the crimes were committed with a *high* degree of

⁶⁹ [Case 001 Appeal Judgment](#), para. 383.

⁷⁰ [Case 001 Appeal Judgment](#), para. 379.

⁷¹ [Sentencing Judgment](#), para. 141.

⁷² [Sentencing Judgment](#), para. 142.

⁷³ Counts 1-11.

⁷⁴ [Sentencing Judgment](#), paras. 152-153 (noting *inter alia* that he participated in meetings attended by senior and mid-level Government officials and *Janjaweed*; led the *Janjaweed* in this operation and issued orders and was present throughout; and, due to features of his personal background, had a higher degree of understanding of the

violence, and a *high* degree of planning and premeditation.⁷⁵ It also found that multiple aggravating factors (between two and four) applied to each of the crimes committed during the operation.⁷⁶

Counts 2-3 (murder as a crime against humanity and as a war crime)

30. The Chamber convicted Mr Abd-Al-Rahman for the killing of at least 46 persons,⁷⁷ including elderly persons and one child (a little girl).⁷⁸ The Chamber found that the murders were committed against particularly vulnerable and defenceless individuals and in a manner which went beyond the cruelty inherent in the crime of murder.⁷⁹ In particular, one victim was struck while trying to flee the attack, some victims were humiliated, captured or restrained, and then beaten before being killed, while others were raped before being killed.⁸⁰ Some victims were burned to death in their homes—“a way of killing that involves protracted pain and agony”.⁸¹ Family members, friends and neighbours were unable to properly mourn many of the victims due to the circumstances of the murders.⁸²

31. The damage caused by the perpetrators was long-lasting. The Chamber found that one victim, P-0015, suffers long-lasting psychological harm as a result of witnessing people being shot and killed (including her own father, who was shot in the head whilst fleeing).⁸³ Further, many persons, including children, were deprived of their families by the murders.⁸⁴

32. The Chamber also found that Mr Abd-Al-Rahman’s culpable intent (which it already found to be high in relation to the whole operation⁸⁵) was further raised by the fact that, rather

criminal nature of his conduct and the pernicious or, at the very least, very harmful consequences of it, and, despite being aware of the effect of such attacks, was determined in pursuing a course of conduct resulting in the commission of grave crimes).

⁷⁵ [Sentencing Judgment](#), paras. 154-156 (noting *inter alia* that Kodoom and Bindisi were attacked following reassurances to the local population that they would not be harmed to ensure that they would not flee the forthcoming attack, and at a time when the police had withdrawn from the area; and thousands of *Janjaweed*, led by Mr Abd-Al-Rahman, armed with various types of weapons participated in the operation).

⁷⁶ [Sentencing Judgment](#), paras. 147, 157-158, 172-173, 192-193, 198, 210, 216-217.

⁷⁷ See [Trial Judgment](#), paras. 914, 917-919, 927 (legal findings on the crime of murder), 361, 372, 376, 408, 423-425 (related factual findings); [Sentencing Judgment](#), para. 145.

⁷⁸ [Sentencing Judgment](#), para. 172; [Trial Judgment](#), para. 425. Two young men about 17 or 19 years were also killed.

⁷⁹ [Sentencing Judgment](#), para. 172.

⁸⁰ [Sentencing Judgment](#), para. 172.

⁸¹ [Sentencing Judgment](#), para. 172. See also [Lukić & Lukić Trial Judgment](#), paras. 1061-1062 (noting the “viciousness”, “sheer callousness and cruelty”, and “the degree of pain and suffering” inherent in burning people alive, also precluding victims’ families from “identify[ing] or bury[ing] their loved ones”).

⁸² [Sentencing Judgment](#), para. 172.

⁸³ [Sentencing Judgment](#), para. 170; [Trial Judgment](#), paras. 423-424.

⁸⁴ [Sentencing Judgment](#), para. 170.

⁸⁵ [Sentencing Judgment](#), para. 153.

than use his authority to stop the killings, he said, “I will kill whoever I want and leave whoever I want to live”.⁸⁶

33. Overall, the Chamber found the crime of murder to be of “*serious gravity*” in the particular circumstances of this case.⁸⁷ It found that the extent of the damage caused,⁸⁸ and Mr Abd-Al-Rahman’s degree of intent⁸⁹ raised the gravity of the crime concretely. Further, the Chamber found four aggravating factors to be present, namely, that the crime was committed against a significant number of victims,⁹⁰ who were particularly vulnerable and defenceless,⁹¹ for a discriminatory motive,⁹² and with particular cruelty.⁹³

34. Despite these findings, the Chamber imposed a manifestly inadequate sentence of 15 years for this crime,⁹⁴ constituting an abuse of discretion.

Counts 6-7 (other inhumane acts as a crime against humanity; outrages upon personal dignity as a war crime)

35. Mr Abd-Al-Rahman’s conviction for the crime of other inhumane acts concerned the broad range of conduct by which persons at Kodoom and Bindisi were victimised, in a manner not captured holistically by any other crime.⁹⁵ This included beating several persons (such as an elderly woman who had just been raped), including with objects such as rifle stocks and whips, which resulted in two victims suffering physical injuries to their backs. Victims were killed or raped within sight or earshot of others, and some women were forced to watch other women being raped. Several victims of rape suffered immediate injuries or long-lasting physical and psychological effects. One infant was snatched from a woman and thrown in the air, causing the infant to fall to the ground and stop breathing for some time. Women were stripped of their clothing (in at least one instance, with a knife) before being raped in public view and in front of others.⁹⁶

⁸⁶ [Sentencing Judgment](#), para. 169.

⁸⁷ [Sentencing Judgment](#), para. 171 (emphasis added).

⁸⁸ [Sentencing Judgment](#), paras. 170, 173.

⁸⁹ [Sentencing Judgment](#), paras. 169-173.

⁹⁰ [Sentencing Judgment](#), para. 147.

⁹¹ [Sentencing Judgment](#), paras. 172-173.

⁹² [Sentencing Judgment](#), paras. 157-158. The discriminatory dimension is the same as for the crime of persecution at Kodoom and Bindisi (count 11). *See* para. 158.

⁹³ [Sentencing Judgment](#), paras. 172-173.

⁹⁴ [Sentencing Judgment](#), para. 173.

⁹⁵ *See* [Trial Judgment](#), paras. 883, 885-888 (legal findings on other inhumane acts), 429-430, 433-434 (related factual findings), 891, 894-901, 913 (legal findings on outrages upon personal dignity), 423-424, 429-435, 652, 870 (related factual findings).

⁹⁶ [Trial Judgment](#), para. 885.

36. Similarly, the Chamber found that the crime of outrages upon personal dignity concerned a range of conduct. This included separating men and women, forcing some of the men to kneel, tying their hands behind their backs, assaulting them with rifle stocks, and then killing them in front of other detainees. Women of all ages were whipped and beaten, causing physical injuries. One woman was struck with a sword. Some women were stripped of their clothing. One infant, as mentioned above, was snatched from its mother, thrown into the air and allowed to fall to the ground.⁹⁷

37. Further, the Chamber reiterated that the *Janjaweed* raped no fewer than 16 women and girls, including an elderly woman. These rapes formed an intrinsic part of the course of inhumane conduct, which must be fully reflected in the individual sentence for counts 6-7 even though other charges (such as counts 8-9) also relate to this conduct.⁹⁸ One woman was whipped at least 10 times and beaten, before being raped by two men in view of other women—she was left bleeding heavily. In addition, the *Janjaweed*, one after the other, got on top of an elderly woman and raped her in front of a witness.⁹⁹

38. The Chamber found that the *Janjaweed* raped most women jointly, multiple times and often in front of other women and children who were forced to watch at gunpoint. They undressed, stripped, threatened and held down women and girls while raping them in view of others. They used weapons to exert violence—such as using a knife to tear off a woman’s clothing, and holding a sword to another woman’s neck to keep her quiet—and threatened some women with guns to force them to watch the *Janjaweed* rape other women in front of them. They silenced some women by stuffing their mouths with cloths torn from their clothing, and killed some women after raping them.¹⁰⁰

39. The Chamber also found that the *Janjaweed* used derogatory expressions during the perpetration of sexual violence. This included threats of death and accusations of being *tora bora*, restraining a rape victim by the neck while asking her if she knew where the *tora bora* were, exclaiming “we don’t want these people to stay alive” while raping them, thanking President Al-Bashir for giving them this “opportunity” and praising God for taking “[t]ora

⁹⁷ [Trial Judgment](#), para. 894.

⁹⁸ *See above* para. 17. Overlaps between the conduct addressed in individual sentences are to be resolved in the calculation of the joint sentence.

⁹⁹ [Trial Judgment](#), para. 895.

¹⁰⁰ [Trial Judgment](#), para. 896.

[b]ora's wives". Some members of the *Janjaweed* fired their weapons in the air while exclaiming, "I have found a virgin woman".¹⁰¹

40. In addition, the Chamber recognised the severity of the humiliation perpetrated by the *Janjaweed*. Women were raped in public, suffered physical pain and sustained scars, and have suffered long term effects, including psychological and social consequences. Child victims were vulnerable due to their young age (at least one victim was only 13 years old and another only 15), one woman suffered the permanent physical damage of a split in her vagina that worsened after childbirth, victims were further mistreated or attacked by multiple perpetrators if they resisted, and the social stigma surrounding rape prevented many women from seeking help.¹⁰²

41. The Chamber highlighted the following factors which raised the gravity of both the crimes of other inhumane acts and outrages upon personal dignity: the high degree of violence; the repeated victimisation of some persons; the long-lasting physical and psychological effects on victims; the perpetration of the crimes in public, which increased the social stigmatisation and humiliation; that the *Janjaweed* did not wear condoms when raping the victims; and that at least on one occasion a member of the *Janjaweed* ejaculated inside the victim.¹⁰³ In relation to outrages upon personal dignity, the Chamber further emphasised, in relation to the violence employed, the use of derogatory language against victims, and the perpetration by multiple individuals simultaneously or consecutively.¹⁰⁴

42. Overall, the Chamber found both crimes to be of "serious gravity" in this particular case.¹⁰⁵ It found that the nature of the unlawful behaviour, the means employed, and the particular cruelty raised the gravity of the crimes concretely.¹⁰⁶ Further, the Chamber found three aggravating factors to be present, namely, that the crimes were committed against a significant number of victims,¹⁰⁷ who were particularly vulnerable and defenceless,¹⁰⁸ and for a discriminatory motive.¹⁰⁹

¹⁰¹ [Trial Judgment](#), para. 897. As found by the Chamber, the term "*tora bora*" in the context of the conflict in Darfur was used to signify (and meant) the rebels: [Trial Judgment](#), fn. 1251.

¹⁰² [Trial Judgment](#), para. 898.

¹⁰³ [Sentencing Judgment](#), para. 190.

¹⁰⁴ [Sentencing Judgment](#), para. 190.

¹⁰⁵ [Sentencing Judgment](#), para. 191.

¹⁰⁶ [Sentencing Judgment](#), paras. 190, 193. The Chamber included the particular cruelty of the conduct as a factor raising the gravity of the crimes, rather than as an aggravating factor.

¹⁰⁷ [Sentencing Judgment](#), para. 147.

¹⁰⁸ [Sentencing Judgment](#), paras. 192-193.

¹⁰⁹ [Sentencing Judgment](#), paras. 157-158. The discriminatory dimension is the same as for the crime of persecution at Kodoom and Bindisi (count 11). See para. 158.

43. Despite the gravity of these crimes, the Chamber imposed manifestly inadequate sentences of 12 years for each crime,¹¹⁰ constituting an abuse of discretion.

Counts 8-9 (rape as a crime against humanity and as a war crime)

44. The Chamber convicted Mr Abd-Al-Rahman for the rape of 16 women and girls,¹¹¹ including two children of only 13 and 15 years of age.¹¹² The Chamber found that several factors evidenced the *high* degree of violence (which it already considered to be *high* for the entire operation),¹¹³ including the use of derogatory language, threats, physical force and restrictions to subdue women. Further, rapes were committed out in the open and in front of others, increasing the level of humiliation, and by several men at the same time or consecutively. Some women were raped multiple times. The *Janjaweed* did not wear condoms when raping the women, and on at least one occasion a member of the *Janjaweed* ejaculated inside the victim.¹¹⁴

45. The harms caused by the perpetrators were severe. The Chamber found that victims sustained physical and psychological injuries, some long-lasting. Some women were bleeding heavily after the rapes and could not stand up or walk. Some women reported long-lasting effects, such as pain and injuries to the ribs, legs or genital area, or scarring. The harm caused by the rapes was compounded by the social stigma attached to rape, which left many victims isolated and excluded from society due to shame. Victims also had no access to medical care.¹¹⁵

46. The Chamber found this crime to be of “*very serious* gravity” in this particular case.¹¹⁶ It found that the nature of the unlawful behaviour, the means employed, the particular cruelty, and the damage caused raised the gravity of the crime concretely.¹¹⁷ Further, the Chamber found three aggravating factors to be present, namely, that the crime was committed against a significant number of victims,¹¹⁸ who were particularly vulnerable and defenceless,¹¹⁹ and for a discriminatory motive.¹²⁰

¹¹⁰ [Sentencing Judgment](#), para. 193.

¹¹¹ See [Trial Judgment](#), paras. 866-870 (legal findings on the crime of rape), 431, 407, 422, 432-433, 602, 867-868 (related factual findings); [Sentencing Judgment](#), para. 145.

¹¹² [Trial Judgment](#), para. 898.

¹¹³ [Sentencing Judgment](#), paras. 155-156.

¹¹⁴ [Sentencing Judgment](#), para. 198.

¹¹⁵ [Sentencing Judgment](#), para. 199.

¹¹⁶ [Sentencing Judgment](#), para. 200.

¹¹⁷ [Sentencing Judgment](#), paras. 198-199, 202. The Chamber included the particular cruelty of the conduct as a factor raising the gravity of the crimes, rather than as an aggravating factor.

¹¹⁸ [Sentencing Judgment](#), para. 147.

¹¹⁹ [Sentencing Judgment](#), paras. 198, 210.

¹²⁰ [Sentencing Judgment](#), paras. 157-158. The discriminatory dimension is the same as for the crime of persecution at Kodoom and Bindisi (count 11). See para. 158.

47. Despite the very serious gravity of this crime, the Chamber imposed a manifestly inadequate sentence of 15 years,¹²¹ constituting an abuse of discretion.

Count 11 (persecution as a crime against humanity)

48. This crime encompasses the conduct underlying *all* of the other crimes of which Mr Abd-Al-Rahman was convicted in relation to the Kodoom and Bindisi operation (counts 1-10), reflecting various distinct harms.¹²² The underlying acts for the crime of persecution therefore include the conduct underpinning the attack against the civilian population as such,¹²³ the murder of no fewer than 46 persons,¹²⁴ the rape of 16 women and girls,¹²⁵ the conduct underpinning the crimes of other inhumane acts and outrages upon personal dignity,¹²⁶ the burning down of many houses across Kodoom and Bindisi and a mosque with its collection of Islamic books,¹²⁷ the pillage of civilian property, including livestock and money,¹²⁸ and the forcible transfer of many inhabitants of Kodoom and Bindisi—including children.¹²⁹

49. Overall, the Chamber found this crime to be of “*serious gravity*” in this particular case.¹³⁰ It found that the nature of the unlawful behaviour and the means employed raised the gravity of the crime concretely.¹³¹ Specifically, the Chamber found that the multiplicity and nature of the fundamental rights violated, and the intersection of ethnic and political discriminatory grounds, increased the gravity of the crime.¹³²

50. Further, the Chamber found that the same aggravating factors applied to the crime of persecution as to the underlying crimes (with the exception of discriminatory motive), namely, that the crime was committed against a significant number of victims,¹³³ who were particularly vulnerable and defenceless,¹³⁴ and with particular cruelty.¹³⁵

¹²¹ [Sentencing Judgment](#), para. 202.

¹²² [Sentencing Judgment](#), para. 158; [Trial Judgment](#), para. 928.

¹²³ [Trial Judgment](#), paras. 396, 407, 421-422, 843-847; [Sentencing Judgment](#), paras. 160-166.

¹²⁴ *See above* paras. 30-32.

¹²⁵ *See above* paras. 44-45.

¹²⁶ *See above* paras. 35-41.

¹²⁷ [Trial Judgment](#), paras. 411, 421-422, 428, 853-859; [Sentencing Judgment](#), paras. 180-184.

¹²⁸ [Trial Judgment](#), paras. 410, 427, 848-852; [Sentencing Judgment](#), paras. 174-179.

¹²⁹ [Trial Judgment](#), paras. 409, 426, 653, 860-865.

¹³⁰ [Sentencing Judgment](#), para. 215 (emphasis added).

¹³¹ [Sentencing Judgment](#), paras. 213, 217.

¹³² [Sentencing Judgment](#), para. 271.

¹³³ [Sentencing Judgment](#), para. 147.

¹³⁴ [Sentencing Judgment](#), para. 216 (regarding murder, other inhumane acts, outrages upon personal dignity and rape).

¹³⁵ [Sentencing Judgment](#), para. 216 (regarding murder). For the crimes of other inhumane acts, outrages upon personal dignity and rape, while the Chamber characterised the commission of these crimes with particular cruelty as relevant to gravity rather than as an aggravating factor, the gravity of those crimes is nonetheless relevant to assessing the gravity of the umbrella crime of persecution. *See* paras. 190, 193, 202. *See also below* paras. 85-89.

51. Notwithstanding these findings, the Chamber imposed a manifestly inadequate sentence of 17 years for this crime,¹³⁶ constituting an abuse of discretion.

I.A.2.b. Mukjar Operation

52. The Chamber noted that the crimes committed during the Mukjar operation displayed an escalation in gravity from those at Kodoom and Bindisi.¹³⁷ It found that Mr Abd-Al-Rahman had a *very high* degree of participation and a *very high* degree of intent.¹³⁸ Further, it found that the crimes were committed with an *even higher* degree of planning and premeditation than at Kodoom and Bindisi.¹³⁹ It also found that multiple aggravating factors (between two and three) applied to each one of the crimes.¹⁴⁰

Counts 17-18 (murder as a crime against humanity and as a war crime)

53. Mr Abd-Al-Rahman was convicted for the killing of at least 53 victims, including elderly persons and three men who died from their brutal treatment in detention.¹⁴¹ The Chamber found that victims were subjected to multiple forms of verbal and physical abuse before being killed, and in some instances shots continued to be fired when many were already dead, evidencing a high degree of violence and particular cruelty. Further, mass killings were perpetrated at multiple sites over a short period of time with virtually no survivors, demonstrating a high degree of planning.¹⁴²

54. The Chamber found that several factors increased Mr Abd-Al-Rahman's degree of participation, which it already found to be *very high* for the operation as a whole.¹⁴³ These included that he: gave orders in relation to the transfer of detainees; personally took detainees out of their cells and loaded them onto vehicles, and ordered members of the *Janjaweed* and GoS Forces to do the same; supervised the transport of detainees to execution sites; and, at execution sites, ordered members of the *Janjaweed* and GoS Forces to execute the detainees.¹⁴⁴

¹³⁶ [Sentencing Judgment](#), para. 217.

¹³⁷ [Sentencing Judgment](#), para. 220.

¹³⁸ [Sentencing Judgment](#), paras. 221-227 (noting *inter alia* that Mr Abd-Al-Rahman participated in public speeches encouraging the commission of crimes that formed part of the operation, in preparatory meetings, and in distribution of weapons to fighters; and given features of his personal background, Mr Abd-Al-Rahman had a higher degree of understanding of the criminal character of his conduct, he continued to issue orders to commit crimes in spite of being questioned or challenged not to do so, and participated in the operation having seen the results of the operation at Kodoom and Bindisi).

¹³⁹ [Sentencing Judgment](#), para. 228.

¹⁴⁰ [Sentencing Judgment](#), paras. 147, 229, 233.

¹⁴¹ See [Trial Judgment](#), paras. 915, 920, 922, 924-927 (legal findings on the crime of murder at Mukjar), 536, 546, 555, 560, 567 (related factual findings); [Sentencing Judgment](#), paras. 146, 229.

¹⁴² [Sentencing Judgment](#), para. 253.

¹⁴³ [Sentencing Judgment](#), paras. 221-223.

¹⁴⁴ [Sentencing Judgment](#), para. 254.

55. The Chamber also found that several factors increased Mr Abd-Al-Rahman's degree of intent, which it already found to be *very high* for the operation as a whole.¹⁴⁵ These included the multiple statements he made, callously embracing the commission of crimes, including at one execution site: "Shoot again. Shoot again. Maybe one of them did not get shot, so shoot again".¹⁴⁶

56. The Chamber also found that the extent of the damage caused included psychological harm to persons who later found bodies at execution sites. Further, the Fur community suffered harm from the murder of three community leaders (whom the Chamber identified as *sheikhs* and *umdahs*), given their symbolic and substantive role and importance.¹⁴⁷

57. Overall, the Chamber found this crime to be of "*very serious gravity*" in this particular case.¹⁴⁸ It found that the nature of the unlawful behaviour, the means employed, the damage caused, and Mr Abd-Al-Rahman's degree of participation and intent raised the gravity of the crime concretely.¹⁴⁹ Further, the Chamber found three aggravating factors to be present, namely, that the crime was committed against a significant number of victims,¹⁵⁰ who were particularly vulnerable and defenceless,¹⁵¹ and for a discriminatory motive.¹⁵²

58. Despite these findings, the Chamber imposed a manifestly inadequate sentence of 20 years for this crime,¹⁵³ constituting an abuse of discretion.

Count 21 (persecution as a crime against humanity)

59. This crime concerns the conduct underlying *all* of the other crimes for which Mr Abd-Al-Rahman was convicted in relation to the Mukjar operation (counts 12-13, 16-21).¹⁵⁴ The underlying acts for the crime of persecution therefore include the murder of no fewer than 53 persons,¹⁵⁵ the attempted murder of two persons,¹⁵⁶ and the torture, humiliation and degradation of at least 100 persons.¹⁵⁷

¹⁴⁵ [Sentencing Judgment](#), paras. 224-227.

¹⁴⁶ [Sentencing Judgment](#), para. 255.

¹⁴⁷ [Sentencing Judgment](#), para. 256; [Trial Judgment](#), paras. 560, 574.

¹⁴⁸ [Sentencing Judgment](#), para. 257 (emphasis added).

¹⁴⁹ [Sentencing Judgment](#), paras. 253-256, 258.

¹⁵⁰ [Sentencing Judgment](#), para. 147.

¹⁵¹ [Sentencing Judgment](#), para. 229.

¹⁵² [Sentencing Judgment](#), para. 233. The discriminatory dimension is the same as for the crime of persecution at Mukjar (count 21). *See* para. 232.

¹⁵³ [Sentencing Judgment](#), para. 258.

¹⁵⁴ [Sentencing Judgment](#), para. 272.

¹⁵⁵ *See above* paras. 53-56.

¹⁵⁶ [Trial Judgment](#), paras. 916, 923-927; [Sentencing Judgment](#), paras. 249-258.

¹⁵⁷ [Trial Judgment](#), paras. 502, 512-515, 520, 526-527, 530, 536, 542, 871, 873, 875-881; [Sentencing Judgment](#), paras. 234-243.

60. Overall, the Chamber found this crime to be of “*very serious gravity*” in this particular case.¹⁵⁸ It found that the nature of the unlawful behaviour, the means employed, and damage caused raised the gravity of the crime concretely.¹⁵⁹ Again, the Chamber found that the multiplicity and nature of the fundamental rights violated, and the intersection of ethnic, political and gender discriminatory grounds, increased the gravity of the crime of persecution.¹⁶⁰

61. Further, the Chamber found two aggravating factors to be present, namely, that the crime was committed against a significant number of victims,¹⁶¹ who were particularly vulnerable and defenceless.¹⁶²

62. The Chamber imposed a manifestly inadequate sentence of 18 years for this crime,¹⁶³ constituting an abuse of discretion.

I.A.2.c. Deleig Operation

63. In assessing the gravity of all crimes committed during the Deleig operation, the Chamber found that Mr Abd-Al-Rahman had a *very high* degree of participation and a *very high* degree of intent.¹⁶⁴ This reflected the further escalation of his crimes since the Mukjar operation, with the criminality at Deleig now of notably greater extent. Further, with regard to the circumstances of manner, time and location, the Chamber found that the crimes were committed with an *even higher* degree of planning and premeditation than at Kodoom and Bindisi.¹⁶⁵ The Chamber found that multiple aggravating factors (between two and three) applied to each of the crimes.¹⁶⁶

Counts 27-28 (murder as a crime against humanity and as a war crime)

64. Mr Abd-Al-Rahman was convicted for the killing of no fewer than 114 victims¹⁶⁷—more than twice the number at Mukjar¹⁶⁸—including elderly persons and 3 children between

¹⁵⁸ [Sentencing Judgment](#), para. 273 (emphasis added).

¹⁵⁹ [Sentencing Judgment](#), paras. 271-272, 274.

¹⁶⁰ [Sentencing Judgment](#), para. 271.

¹⁶¹ [Sentencing Judgment](#), para. 147.

¹⁶² [Sentencing Judgment](#), para. 229.

¹⁶³ [Sentencing Judgment](#), para. 274.

¹⁶⁴ [Sentencing Judgment](#), paras. 221-227 (noting *inter alia* that Mr Abd-Al-Rahman organised the deployment of forces in charge of the operation and organised and participated in the arrest of victims; and that he carried out the Deleig operation less than a week after the Mukjar operation).

¹⁶⁵ [Sentencing Judgment](#), para. 228.

¹⁶⁶ [Sentencing Judgment](#), paras. 147, 229, 233.

¹⁶⁷ See [Trial Judgment](#), paras. 916, 921-927 (legal findings on the crime of murder at Deleig), 623-625, 643, 646 (related factual findings); [Sentencing Judgment](#), para. 146.

¹⁶⁸ See *above* para. 53.

the ages of 12 and 14.¹⁶⁹ The Chamber found that several factors evidenced a high degree of violence and particular cruelty. These included that victims were subjected to multiple forms of physical abuse prior to being killed, multiple shots were fired (including the use of automatic weapons such as Kalashnikovs and a Goryunov machine gun) to kill detainees at execution sites, and one victim, Jenif, was struck multiple times with an axe (by Mr Abd-Al-Rahman).¹⁷⁰ Further, the mass killings were perpetrated in a short space of time with virtually no survivors, demonstrating a high degree of planning.¹⁷¹

65. The Chamber also found that several factors increased Mr Abd-Al-Rahman's degree of participation, which it already found to be *very high* for the operation as a whole.¹⁷² These included that he instructed and supervised the loading of detainees onto vehicles, supervised the transport of detainees to execution sites, and, at one site, ordered members of the *Janjaweed* and GoS Forces to take the detainees off the vehicles and execute them.¹⁷³ Further, his acts and conduct in the exercise of his position of authority while at the Deleig police station (most notably, his murder of two detainees with an axe) sent a clear message to those present that violence and the commission of crimes against detainees was tolerated and even encouraged by him.¹⁷⁴

66. The Chamber also found that Mr Abd-Al-Rahman's degree of intent (which it already found to be *very high* for the operation as a whole)¹⁷⁵ was increased by his refusal of a father's demands to have his son (a boy of 13-14 years old) released, instead telling the boy's father to board the same vehicle—both were later taken to an execution site and killed.¹⁷⁶ Further, at one execution site, members of the *Janjaweed* and GoS Forces checked that detainees were dead and shot those that were not.¹⁷⁷

67. The harm caused by the crimes was widespread and long-lasting. Quite apart from the immediate victimisation, the Chamber found that long-lasting psychological harm was also caused to the families of the victims killed (some of whom were unable to obtain a death

¹⁶⁹ [Sentencing Judgment](#), para. 229; [Trial Judgment](#), paras. 618, 634 (Abu Bakar Suleiman Abakar (no more than 12-13 years old), the son of Issa Harun (about 13-14 years old) and Zakaria Abdelmawla Abakar (no more than 12-13 years old)).

¹⁷⁰ [Sentencing Judgment](#), para. 261; [Trial Judgment](#), para. 611.

¹⁷¹ [Sentencing Judgment](#), para. 261.

¹⁷² [Sentencing Judgment](#), paras. 221-223.

¹⁷³ [Sentencing Judgment](#), para. 262.

¹⁷⁴ [Sentencing Judgment](#), para. 262, citing to [Trial Judgment](#), paras. 611-612 (concerning the killing of victims Jenif and Sheikh Motor by Mr Abd-Al-Rahman with an axe).

¹⁷⁵ [Sentencing Judgment](#), paras. 224-227.

¹⁷⁶ [Sentencing Judgment](#), para. 263.

¹⁷⁷ [Sentencing Judgment](#), para. 263.

certificate, find the victim's body, or hold a burial), and to those who found bodies at execution sites.¹⁷⁸ The Chamber also recognised the impact on the Fur community, including on religious education, resulting from the killing of *faqihs* (persons who had memorised the *Qu'ran*) and five community leaders (*sheikhs* and *umdahts*).¹⁷⁹

68. Overall, the Chamber found this crime to be of “*very serious gravity*” in this particular case.¹⁸⁰ It found that the nature of the unlawful behaviour, the means employed, the damage caused, and Mr Abd-Al-Rahman's degree of participation and intent raised the gravity of the crime concretely.¹⁸¹ Further, the Chamber found three aggravating factors to be present, namely, that the crime was committed against a significant number of victims,¹⁸² who were particularly vulnerable and defenceless,¹⁸³ and for a discriminatory motive.¹⁸⁴

69. Notwithstanding these findings, the Chamber imposed a manifestly inadequate sentence of 20 years for this crime,¹⁸⁵ constituting an abuse of discretion. This is particularly clear when compared to the individual sentences for murder at Mukjar—where the victimisation was half that at Deleig—but for which the Chamber imposed the same individual sentences.¹⁸⁶

Count 31 (persecution as a crime against humanity)

70. The crime concerns the conduct underlying *all* of the other crimes for which Mr Abd-Al-Rahman was convicted in relation to the Deleig operation (counts 22-23, 26-31).¹⁸⁷ The underlying acts for the crime of persecution therefore include the murder of no fewer than 114 persons,¹⁸⁸ the attempted murder of two persons,¹⁸⁹ and the torture, humiliation and degradation of at least 100 persons.¹⁹⁰

71. Overall, the Chamber found this crime to be of “*very serious gravity*” in this particular case.¹⁹¹ It found that the nature of the unlawful behaviour, the means employed, and the damage

¹⁷⁸ [Sentencing Judgment](#), para. 264.

¹⁷⁹ [Sentencing Judgment](#), para. 265. *See also* [Agreed Glossary](#), p. 16 (for the meaning of *faqih*).

¹⁸⁰ [Sentencing Judgment](#), para. 266 (emphasis added).

¹⁸¹ [Sentencing Judgment](#), paras. 261-265, 267.

¹⁸² [Sentencing Judgment](#), para. 147.

¹⁸³ [Sentencing Judgment](#), para. 229.

¹⁸⁴ [Sentencing Judgment](#), para. 233. The discriminatory dimension is the same as for the crime of persecution at Deleig (count 31). *See* para. 232.

¹⁸⁵ [Sentencing Judgment](#), para. 267.

¹⁸⁶ *See below* paras. 78-83.

¹⁸⁷ [Sentencing Judgment](#), para. 232.

¹⁸⁸ *See above* paras. 64-67.

¹⁸⁹ [Trial Judgment](#), paras. 916, 923-927; [Sentencing Judgment](#), paras. 249-251, 260-267.

¹⁹⁰ [Trial Judgment](#), paras. 598, 604-605, 609, 635, 637-638, 652, 872, 874-881; [Sentencing Judgment](#), paras. 234-235, 244-248.

¹⁹¹ [Sentencing Judgment](#), para. 278 (emphasis added).

caused raised the gravity of the crime concretely.¹⁹² Again, the Chamber found that the multiplicity and nature of the fundamental rights violated, and the intersection of ethnic, political and gender discriminatory grounds, increased the gravity of the crime of persecution.¹⁹³ Further, the Chamber found two aggravating factors to be present, namely, that the crime was committed against a significant number of victims,¹⁹⁴ who were particularly vulnerable and defenceless.¹⁹⁵

72. Despite these findings, the Chamber imposed a manifestly inadequate sentence of 18 years for this crime,¹⁹⁶ constituting an abuse of discretion.

I.A.3. The Chamber was inconsistent in categorising the gravity of certain crimes, and in the sentences imposed for certain crimes

73. The manifest inadequacy of the individual sentences imposed by the Chamber is further demonstrated by its apparent inconsistency in categorising the gravity of relevant conduct. For example, the Chamber found that:

- the crimes of other inhumane acts and outrages upon personal dignity at Kodoom and Bindisi were only of “serious gravity”,¹⁹⁷ despite the large amount of factual overlap between those crimes and rape,¹⁹⁸ which it found was of “very serious gravity”;¹⁹⁹
- the crime of persecution at Kodoom and Bindisi was only of “serious gravity”, despite finding that one of the underlying crimes (rape) was of “very serious gravity”;²⁰⁰ and
- the crimes of murder at Kodoom and Bindisi were of “serious gravity”,²⁰¹ despite concerning only seven fewer victims (at least 46) than at Mukjar (at least 53),²⁰² which it found were of “very serious gravity”.²⁰³

¹⁹² [Sentencing Judgment](#), paras. 276-277, 279.

¹⁹³ [Sentencing Judgment](#), para. 276.

¹⁹⁴ [Sentencing Judgment](#), para. 147.

¹⁹⁵ [Sentencing Judgment](#), para. 229.

¹⁹⁶ [Sentencing Judgment](#), para. 279.

¹⁹⁷ [Sentencing Judgment](#), paras. 191 (other inhumane acts and outrages upon personal dignity), 215 (persecution).

¹⁹⁸ See especially [Trial Judgment](#), paras. 885, 894-897.

¹⁹⁹ [Sentencing Judgment](#), para. 200 (emphasis added).

²⁰⁰ [Sentencing Judgment](#), paras. 215 (persecution), 200 (rape) (emphasis added).

²⁰¹ [Sentencing Judgment](#), para. 171.

²⁰² [Sentencing Judgment](#), paras. 145 (Kodoom and Bindisi), 146 (Mukjar).

²⁰³ [Sentencing Judgment](#), para. 257. While, based on the Chamber’s findings, the crime of murder at Mukjar was graver than at Kodoom and Bindisi, those same findings, coupled with the inherent gravity of the crime, demonstrate that the crime of murder at Kodoom and Bindisi was in fact of “very serious gravity” in the particular circumstances of this case. See *above* paras. 30-33, 53-57.

74. Further, the individual sentences imposed by the Chamber do not consistently reflect the Chamber's categorisation of the gravity of the crime. For example, at Kodoom and Bindisi, despite finding rape to be of "very serious gravity" in this particular case,²⁰⁴ the Chamber imposed sentences for rape that were the same (in relation to murder and forcible transfer) or lower (in relation to persecution)²⁰⁵ than for crimes it found to be "serious gravity".²⁰⁶

75. These inconsistencies reveal the Chamber's failure to synchronise its gravity assessments of all crimes and operations and ensure that its assessment was conducted through the same lens throughout. This was an error of fact. No reasonable trial chamber could have reached these same inconsistent findings.

76. Alternatively, if the Chamber deliberately applied inconsistent gravity categorisations and respective sentences, this was arbitrary, and thus an abuse of its discretion.

77. Moreover, due to the absence of any explanation by the Chamber as to why it applied inconsistent gravity categorisations and imposed the sentences that it did, the Chamber failed to provide any or adequate reasons. Simply put, the Appeals Chamber is not in a position to discern why the Chamber drew (or failed to draw) relevant distinctions in imposing certain individual sentences.

I.B. The Chamber also erred by imposing identical individual sentences for murder and persecution for the factually distinct operations at Mukjar (counts 17-18, 21) and Deleig (counts 27-28, 31)

78. The Chamber erred in law and/or fact, and/or abused its discretion, and/or provided inadequate reasoning by imposing *identical* individual sentences for murder and persecution committed in the factually distinct operations at Mukjar and Deleig.²⁰⁷ In doing so, the Chamber failed to take account of its own findings and all the relevant circumstances showing that the crimes of murder and persecution at Deleig (counts 27-28, 31) were even graver than those at Mukjar (counts 17-18, 21).

79. In particular, the Chamber found that "the level of Abd-Al-Rahman's participation and intent was identical for both the Mukjar and Deleig Operations. Therefore, the sentences passed

²⁰⁴ [Sentencing Judgment](#), paras. 200, 202 (emphasis added).

²⁰⁵ [Sentencing Judgment](#), paras. 173, 202, 209, 217 (the Chamber imposed individual sentences of 15 years for rape, murder and forcible transfer, and 17 years for persecution).

²⁰⁶ [Sentencing Judgment](#), paras. 171 (murder), 208 (persecution).

²⁰⁷ [Sentencing Judgment](#), paras. 258, 267, 274, 279.

for the crimes committed during these operations are the same.”²⁰⁸ This was wrong in law and/or fact.

80. The sentencing principles stipulate that the “calculation of an individual sentence necessarily entails an assessment of all the circumstances relevant to that particular crime”, as the Chamber itself acknowledged.²⁰⁹ As such, the level of a convicted person’s participation and intent is not the only relevant circumstance to be considered when determining an individual sentence. The Chamber must also consider a range of other relevant circumstances, including, most notably in this case, the scale of the crimes (including the number of affected victims).²¹⁰ Mr Abd-Al-Rahman’s level of participation and intent would only be determinative with respect to the individual sentences for the Mukjar and Deleig operations if all other relevant circumstances were equal. This was not the case. The Chamber therefore failed to assess *all* relevant circumstances in determining a proportionate sentence, in violation of the sentencing principles applicable in the Court, amounting to an error of law.

81. The Chamber’s findings also demonstrate its error of fact. The number of victims of murder and persecution in the respective operations show that the crimes of murder and persecution were graver at Deleig than at Mukjar.²¹¹ The Chamber convicted Mr Abd-Al-Rahman for the murder of more than twice the number of persons at Deleig (at least 114 persons) than at Mukjar (at least 53 persons).²¹² Also, at least three of the people murdered at Deleig were children (between about 12 and 14 years old).²¹³ Since murder formed part of the underlying crimes for the respective counts of persecution,²¹⁴ this crime was also graver at Deleig than at Mukjar.²¹⁵

²⁰⁸ [Sentencing Judgment](#), para. 226.

²⁰⁹ [Sentencing Judgment](#), para. 26. See [Statute](#), art. 78(1); [Rules of Procedure and Evidence](#), rule 145(b) and (c); [Ntaganda Sentencing Appeal Judgment](#), para. 129.

²¹⁰ See e.g. [Ntaganda Sentencing Appeal Judgment](#), para. 124 (where the Chamber gave the degree of participation and intent as just one example of the relevant factors to be taken into account in determining an individual sentence); [Al Hassan Sentencing Judgment](#), para. 63 (noting the relatively high number of victims (49) of the crime of the passing of sentences and the carrying out of executions without previous judgment as a factor contributing to the gravity of the crime); [Ongwen Sentencing Judgment](#), paras. 188, 226, 262 (finding the number of victims of murder (at least 52, at least 48 and at least 28, respectively) to be particularly relevant in raising the gravity of the crime of murder to “very high”).

²¹¹ The numbers of victims is comparable for the other crimes of which Mr Abd-Al-Rahman was convicted in relation to the Mukjar and Deleig operations. See [Sentencing Judgment](#), paras. 146, 253, 261 (at least 100 persons in relation to both torture and outrages upon personal dignity with respect to each operation and two persons in relation to attempted murder with respect to each operation).

²¹² [Sentencing Judgment](#), para. 146.

²¹³ [Trial Judgment](#), paras. 618, 634 (Abu Bakar Suleiman Abakar (no more than 12-13 years old), the son of Issa Harun (about 13-14 years old) and Zakaria Abdelmawla Abakar (no more than 12-13 years old)). The Chamber did not find that any children were murdered at Mukjar.

²¹⁴ [Trial Judgment](#), paras. 929-931.

²¹⁵ See *below* paras. 85-89.

82. While the Prosecution recommended individual sentences of 30 years for each of the crimes of murder and persecution at Mukjar and Deleig,²¹⁶ these recommended sentences were only the same because they represented the legal maximum that could be imposed (short of a life sentence).²¹⁷ The Prosecution maintains that individual sentences of 30 years are appropriate in this case. Falling short of this, however, the individual sentences imposed should reflect the increased gravity of the crimes of murder and persecution at Deleig *vis-à-vis* Mukjar.

83. In this context, by giving undue weight to Mr Abd-Al-Rahman's equal degree of participation and intent in both operations, and failing to give adequate weight to the other factors relevant to gravity that differ between the two operations (such as the scale of the crimes), the Chamber factually erred and/or abused its discretion. No reasonable trial chamber could have imposed identical sentences for murder and persecution in Mukjar and Deleig given the significant difference in scale of the crimes, and Mr Abd-Al-Rahman's distinct acts of participation in the two operations.²¹⁸ The Chamber moreover failed to provide any or adequate reasoning in support of its conclusion.

I.C. The Chamber also erred by entering individual sentences for persecution which were lower than the individual sentences for some underlying crimes committed in the factually distinct operations at Mukjar and Deleig

84. The Chamber erred in law and provided inadequate reasoning by entering individual sentences for persecution (18 years) in the distinct operations at Mukjar and Deleig (counts 21, 31),²¹⁹ which were lower than the individual sentences imposed for the underlying crimes of murder (20 years) and attempted murder (20 years) (counts 17-20, 27-30).²²⁰

85. As set out below, consistent with the Court's jurisprudence,²²¹ the individual sentence for persecution should reflect the totality of the conduct—including its discriminatory dimension—underlying that crime. Otherwise, the true culpability of the convicted person for the crime of persecution in the particular circumstances of the case would not be reflected in the individual sentence. Where the underlying acts of persecution are crimes of which the

²¹⁶ [Prosecution Sentencing Submissions](#), paras. 132, 140.

²¹⁷ [Statute](#), art. 77(1)(a).

²¹⁸ See e.g. [Trial Judgment](#), paras. 611-612 (in relation to Mr Abd-Al-Rahman's direct perpetration of murder concerning the killing of two victims with an axe).

²¹⁹ [Sentencing Judgment](#), paras. 274, 279.

²²⁰ [Sentencing Judgment](#), paras. 258, 267.

²²¹ See below paras. 86-88. There is no jurisprudence on this issue from the *ad hoc* tribunals given their practice of global sentencing, which does not entail the imposition of individual sentences.

accused has also been convicted, the individual sentence for persecution should therefore be at least as high as the highest individual sentence for any underlying crime.

86. This is consistent with the Appeals Chamber's findings in *Ntaganda*.²²² In that case, the Trial Chamber imposed a sentence of 30 years for the crime of persecution, which was the same as the sentence for murder—the highest individual sentence for any underlying crime.²²³ The Appeals Chamber held that the Trial Chamber was correct (and did not double-count) by taking into account the same underlying conduct and its discriminatory nature when setting the individual sentences for both the crime of persecution and the underlying crimes.²²⁴

87. The Appeals Chamber held that the “calculation of an individual sentence necessarily entails an assessment of all the circumstances relevant to a particular crime.”²²⁵ Further, since persecution is “not a stand-alone crime but one requiring a connection with any act constituting a crime against humanity or any crime within the jurisdiction of the Court”, the underlying factual conduct and its discriminatory nature are relevant to determining sentence for both any underlying crimes and the crime of persecution.²²⁶ If such relevant circumstances were excluded from the calculation of any one of those individual sentences, “the true culpability of a convicted person for a particular crime would be unclear.”²²⁷

88. This approach was followed by the Trial Chamber in *Ongwen*.²²⁸ It imposed sentences of 20 years for each count of persecution, which were the same as for murder—the highest individual sentences for the crimes underlying the respective counts of persecution.²²⁹ This approach was also followed by the Trial Chamber in *Al Hassan*, which imposed a higher sentence for persecution than the highest individual sentence for any of the underlying crimes²³⁰—reflecting that the crime of persecution was only *partly* based on conduct characterised as other crimes in that case.²³¹

²²² [Ntaganda Sentencing Appeal Judgment](#), paras. 128-130.

²²³ [Ntaganda Sentencing Judgment](#), paras. 176-177.

²²⁴ [Ntaganda Sentencing Appeal Judgment](#), para. 130.

²²⁵ [Ntaganda Sentencing Appeal Judgment](#), para. 129. In that case, the individual sentence imposed for the crime of murder reflected that it was aggravated by the discriminatory intent (which is not an element of the crime, unlike for persecution).

²²⁶ [Ntaganda Sentencing Appeal Judgment](#), para. 130. See also [Statute](#), art. 7(1)(h).

²²⁷ [Ntaganda Sentencing Appeal Judgment](#), para. 130.

²²⁸ [Ongwen Sentencing Judgment](#), paras. 145, 175, 182, 213, 220, 248, 255, 281.

²²⁹ [Ongwen Sentencing Judgment](#), pp. 133-136.

²³⁰ [Al Hassan Sentencing Judgment](#), para. 131 (the Trial Chamber imposed 10 years for persecution compared with 9 years for torture, which was the highest individual sentence for any underlying crime).

²³¹ [Al Hassan Sentencing Judgment](#), para. 133.

89. More recently, in *Yekatom and Ngaïssona*, the Trial Chamber imposed a lower sentence for persecution than for any of the underlying crimes.²³² The Prosecution assesses that the Trial Chamber thereby committed the same error as in this case.

90. The Chamber erred by failing to provide any or adequate reasoning for imposing sentences for the crime of persecution that were lower than for the underlying crimes. The Chamber also failed to provide any or adequate reasoning for the disparity in its approach regarding the different operations. For Kodoom and Bindisi, in contradiction to its approach at Mukjar and Deleig, the Chamber imposed a *higher* individual sentence for persecution (17 years) than the individual sentences for any underlying crime (15 years).²³³ The Sentencing Judgment does not acknowledge nor explain this disparity.

91. Apart from the lower sentences for persecution in Mukjar and Deleig, there is no indication that the Chamber imposed a lower sentence for the crime of persecution than for the underlying crimes based on the absence of the aggravating factor of discriminatory motive. The Chamber correctly acknowledged that it could not consider discriminatory motive as aggravating for persecution given that this aspect is a material element of the crime.²³⁴ The Chamber nonetheless emphasised the importance of discriminatory intent in assessing the objective gravity of the crime of persecution.²³⁵ As noted, it also imposed a *higher* sentence for persecution at Kodoom and Bindisi than for the underlying crimes, which were aggravated by the same discriminatory motive.²³⁶

92. Were the Chamber to have imposed a lower sentence for persecution than for the underlying crimes based on the absence of the aggravating factor of discriminatory motive, this would also amount to an error of law. As held by the Appeals Chamber, the discriminatory dimension of persecution must still be considered in the calculation of the individual sentence,

²³² [Yekatom and Ngaïssona Trial Judgment](#), paras. 4516, 4549-4550, 4600, 4603-4604, 4641, 4644-4645, 4718, 4731-4732, 4752, 4786-4787, 4802, 4804-4805, 4819, 4821-4822 (the Chamber imposed 10 years for each count of persecution, compared to 11 and 14 years, respectively, for the counts of murder, which were the highest individual sentences for any underlying crime).

²³³ [Sentencing Judgment](#), para. 217. *Compare e.g.* paras. 166, 173, 179, 184, 193, 202, 209 (individual sentences for directing an unlawful attack against a civilian population as such, murder, pillaging, destruction of property, other inhumane acts, outrages upon personal dignity, rape, and forcible transfer). The Prosecution notes that the applicable mode of criminal responsibility under article 25 differed for Mr Abd-Al-Rahman's conduct, respectively, at Kodoom and Bindisi and at Mukjar and Deleig, but does not understand this to resolve the apparent contradiction in the individual sentences for persecution.

²³⁴ [Sentencing Judgment](#), para. 233.

²³⁵ [Sentencing Judgment](#), para. 212 ("The blameworthiness of the crime lies in the deprivation of the fundamental rights underlying it, and crucially, in the discriminatory intent by the perpetrator in selecting the target(s)"), 213-214 (finding that the gravity of the crime was increased by the intersection of multiple discriminatory grounds).

²³⁶ See above para. 90. See also [Sentencing Judgment](#), para. 158.

even though it cannot be considered aggravating.²³⁷ The discriminatory dimension should not be attributed less weight when determining individual sentences solely based on its legal characterisation (as either a material element or an aggravating factor). In both *Ntaganda* and *Ongwen*, for example, the crime of persecution received the same sentence as the crime of murder committed with a discriminatory motive.²³⁸

93. By contrast, in entering sentences for persecution at Mukjar and Deleig that were lower than the individual sentences for murder and attempted murder, the Chamber legally erred in failing to reflect the totality of the conduct underlying the crime of persecution. Moreover, it failed to provide any or adequate reasoning in support of its conclusion.

I.D. The Chamber's errors under Ground 1 materially affected the Sentencing Judgment

94. The Chamber's errors in entering individual sentences for certain crimes, individually and/or cumulatively, materially affected the Sentencing Judgment.²³⁹ Had the Chamber not so erred, it would have entered higher individual sentences than it did for counts 2-3, 6-9, 11 (Kodoom and Bindisi), counts 17-18, 21 (Mukjar), and counts 27-28, 31 (Deleig).²⁴⁰

95. Furthermore, these manifestly inadequate individual sentences contributed to the imposition of a joint sentence which was disproportionately low for the numerous and serious crimes of which Mr Abd-Al-Rahman was convicted.²⁴¹ This also materially affected the Chamber's conclusion under article 77(1)(b) regarding imposition of a life sentence.²⁴² The Appeals Chamber has held that “*any* error in the determination of an individual sentence—even if not the highest one—may, in principle, have an impact on the determination of the joint sentence.”²⁴³

96. In this case, the Chamber imposed manifestly inadequate individual sentences for 13 of the 27 counts, including four counts for which the highest individual sentence of 20 years was

²³⁷ [Ntaganda Sentencing Appeal Judgment](#), para. 130. See also [Yekatom and Ngaïssona Trial Judgment](#), paras. 4424-4425; [Al Hassan Sentencing Judgment](#), para. 25; [Ongwen Sentencing Judgment](#), para. 145.

²³⁸ [Ntaganda Sentencing Appeal Judgment](#), para. 133; [Ongwen Sentencing Judgment](#), paras. 145, 175, 182, 213, 220, 248, 255, 281 and pp. 133-136.

²³⁹ See e.g. [Gbagbo Jurisdiction Appeal Judgment](#), para. 44, citing [DRC Arrest Warrant Appeal Judgment](#), para. 84 (“A decision is materially affected by an error of law if the Pre-Trial Chamber or Trial Chamber would have rendered a decision that is substantially different from the decision that was affected by the error, if it had not made the error”); [Ngudjolo Appeal Judgment](#), para. 20; [Lubanga Appeal Judgment](#), para. 31.

²⁴⁰ See above para. 13.

²⁴¹ [Sentencing Judgment](#), para. 294.

²⁴² [Sentencing Judgment](#), para. 296.

²⁴³ [Bemba et al. Sentencing Appeal Judgment](#), para. 57 (emphasis added).

imposed.²⁴⁴ Since the Chamber imposed a joint sentence which equated to the highest individual sentence—the legal minimum under the Court’s framework²⁴⁵—any increase to the highest individual sentence would necessarily increase the joint sentence.

II. SECOND GROUND OF APPEAL: THE CHAMBER ERRED IN IMPOSING THE MINIMUM POSSIBLE JOINT SENTENCE

II.A. The Chamber erred by imposing the minimum possible joint sentence, which was manifestly inadequate

97. The Chamber erred in law and/or fact, and/or abused its discretion, and/or failed to provide adequate reasoning when imposing the minimum possible joint sentence under article 78(3) of the Statute. This sentence was, again, “so manifestly low and inadequate” that it constituted an abuse of direction.²⁴⁶ It cannot be adequately explained by the mitigating factors identified by the Chamber, which it considered to merit only “limited” weight.²⁴⁷ Rather, as shown below, the Chamber misapplied the principle that the presence or absence of factual overlap between individual sentences must be taken into account in determining the joint sentence, and failed to consider all the relevant factors.

II.A.1. The joint sentence must fully reflect the distinct conduct and consequences underlying the individual sentences

98. In accordance with article 81(2)(a) and rule 145(1)(a), a trial chamber must ensure that the totality of the sentence is proportionate and reflects the culpability of the convicted person, as the Chamber correctly stated in this case.²⁴⁸ Further, the Chamber must pronounce a joint sentence “in line with the Court’s primary purposes of punishment—retribution and deterrence”,²⁴⁹ which should recognise “the international community’s condemnation of the

²⁴⁴ See above para. 13.

²⁴⁵ [Statute](#), art. 78(3).

²⁴⁶ See above paras. 18-24.

²⁴⁷ See below paras. 129-133.

²⁴⁸ [Sentencing Judgment](#), para. 15. See also [Statute](#), art. 83(3); [Bemba et al. Sentencing Appeal Judgment](#), paras. 57, 113; [Lubanga Sentencing Appeal Judgment](#), paras. 33-34, 39-40; [Yekatom and Ngaïssona Trial Judgment](#), paras. 4399, 4823; [Al Hassan Sentencing Judgment](#), para. 17; [Ongwen Sentencing Judgment](#), paras. 51, 57, 375, 382, fn. 691 (where the Trial Chamber stated that excluding altogether the individual sentence for any crime having a factual basis even partially overlapping with that of any other crime is obviously not allowed under the Statute, which requires that the ultimate joint sentence reflect the total culpability of the convicted person); [Ntaganda Sentencing Judgment](#), para. 11.

²⁴⁹ [Sentencing Judgment](#), paras. 13, 288. See also [Yekatom and Ngaïssona Trial Judgment](#), para. 4649; [Al Hassan Sentencing Judgment](#), para. 16; [Ongwen Sentencing Judgment](#), paras. 60, 389, 396; [Ntaganda Sentencing Judgment](#), para. 9.

grave crimes found to have been committed.”²⁵⁰ In addition, pursuant to article 78(3), the joint sentence must be no less than the highest individual sentence pronounced, and shall not exceed 30 years or life imprisonment, in conformity with article 77(1)(b).²⁵¹

99. Consistent with the jurisprudence of the Court, the Chamber stated that “any relevant factual overlap must be duly taken into account when determining the joint sentence, so that the convicted person is not punished beyond their real culpability.”²⁵² Although not stated expressly, the corollary is also true: a trial chamber must consider not only instances of relevant factual overlap but also the *absence* thereof—otherwise the joint sentence will not reflect the true culpability of the convicted person.²⁵³ This is also reflected in the *Ongwen* Trial Chamber’s observation that it must examine “to what extent the criminal conduct underlying each of the crimes—and corresponding blameworthiness as expressed in the related individual sentences—overlap in the concrete circumstances, or must be (separately) reflected in the joint sentence.”²⁵⁴

100. Indeed, in *Ongwen*, the Trial Chamber had entered individual sentences ranging from 8 to 20 years²⁵⁵ for crimes arising out of attacks on four Internally Displaced Person (“IDP”) camps, multiple sexual and gender based crimes, and the conscription and use of children in hostilities.²⁵⁶ When it came to the joint sentence, the Trial Chamber considered that Mr Ongwen “was convicted for a large number of crimes which he committed by way of a number of distinguishable criminal conducts (including several for which the highest individual sentence of 20 years of imprisonment is pronounced), each carrying its own distinct blameworthiness not otherwise absorbed within any other crime and corresponding individual sentence(s).”²⁵⁷ It also observed that a large number of crimes of which Mr Ongwen was convicted “are each largely designed to safeguard wholly distinct protected interests, [and] cannot be said to be in

²⁵⁰ [Sentencing Judgment](#), paras. 14, 288. See also [Yekatom and Ngaïssona Trial Judgment](#), para. 4649; [Al Hassan Sentencing Judgment](#), para. 16; [Ongwen Sentencing Judgment](#), paras. 389, 396; [Ntaganda Sentencing Judgment](#), para. 10.

²⁵¹ [Sentencing Judgment](#), para. 280.

²⁵² [Sentencing Judgment](#), para. 28. See [Yekatom and Ngaïssona Trial Judgment](#), para. 4414; [Al Hassan Sentencing Judgment](#), paras. 40, 133; [Ongwen Sentencing Judgment](#), paras. 59, 136, 145-146; [Ntaganda Sentencing Judgment](#), para. 249.

²⁵³ [Ongwen Sentencing Judgment](#), paras. 380-382; [Ntaganda Sentencing Judgment](#), para. 249; [Yekatom and Ngaïssona Trial Judgment](#), paras. 4657-4658, 4834-4835. See also below paras. 99-105.

²⁵⁴ [Ongwen Sentencing Judgment](#), para. 375.

²⁵⁵ [Ongwen Sentencing Judgment](#), pp. 133-138.

²⁵⁶ [Ongwen Sentencing Judgment](#), para. 137. The Trial Chamber grouped its written reasoning by convictions which were partly based on the same facts: crimes committed in the context of attacks on four IDP camps (counts 1-5, 8-17, 20-30, 33-43, 46-49); sexual and gender based crimes directly perpetrated by Mr Ongwen (counts 50-60) and those not directly perpetrated by Mr Ongwen (counts 61-68); and the crime of conscription of children under the age of 15 and their use to participate actively in the hostilities (counts 69-70).

²⁵⁷ [Ongwen Sentencing Judgment](#), para. 381.

any relation of absorption, consumption or—even partial—overlap in terms of relevant conduct.”²⁵⁸

101. Accordingly, the *Ongwen* Trial Chamber took into account the “extreme gravity” of Mr Ongwen’s numerous crimes, the existence of several aggravating circumstances for most crimes, the very large extent of cumulative victimisation, the limited, partial overlap in the factual basis of the conduct and/or consequences of the crimes, the large number of “serious and diverse crimes” he committed over a relatively short period of time which “offended distinct protected interests of great importance”, his degree of intent and participation (including that his own involvement in certain crimes was “striking”), and that his crimes were “part of an even larger pattern of violence of which he was, wilfully, an essential part and which he significantly sustained and contributed to perpetuating.”²⁵⁹

102. On this basis, the *Ongwen* Trial Chamber found that “a joint sentence corresponding to the highest individual sentence pronounced [...], is manifestly incapable of reflecting Dominic Ongwen’s total culpability for all the numerous crimes that he committed.”²⁶⁰ The majority of the Trial Chamber imposed a joint sentence of 25 years.²⁶¹ While the Trial Chamber unanimously found that a joint sentence of life was justified,²⁶² it refrained from imposing it only because of Mr Ongwen’s unique and significant mitigating circumstances.²⁶³

103. In *Ntaganda*, the Trial Chamber entered individual sentences ranging from 8 to 30 years for crimes arising out of two military operations and additional crimes committed against children under the age of 15 who were recruited into the UPC/FPLC.²⁶⁴ In determining the joint sentence, the Trial Chamber took account of the overlap in conduct underlying the crimes committed during the military operations, but also recognised that the joint sentence must further reflect Mr Ntaganda’s conviction for the additional crimes against children “so as to

²⁵⁸ [Ongwen Sentencing Judgment](#), para. 380.

²⁵⁹ [Ongwen Sentencing Judgment](#), paras. 384-385, 393.

²⁶⁰ [Ongwen Sentencing Judgment](#), para. 382.

²⁶¹ [Ongwen Sentencing Judgment](#), para. 396. Judge Pangalangan, partly dissenting, would have imposed a joint sentence of 30 years: [Ongwen Sentencing Judgment, Partly Dissenting Opinion of Judge Pangalangan](#), paras. 13, 19.

²⁶² [Ongwen Sentencing Judgment](#), paras. 383-386.

²⁶³ [Ongwen Sentencing Judgment](#), paras. 387-391 (“The fact that Dominic Ongwen did not, at first, choose to be part of the LRA, but was abducted and integrated into it when he was still a child, whose education was thus abruptly interrupted and replaced by socialisation in the extremely violent environment of the LRA, in no way justifies or rationalises the heinous crimes he willfully chose to commit as a fully responsible adult; however, these circumstances, in the view of the Chamber, make the prospective of committing him to spend the rest of his life in prison [...] excessive”).

²⁶⁴ [Ntaganda Sentencing Judgment](#), paras. 34-35 (counts 1-5, 7-8, 10-13, 17-18 were committed during the first and second military operations), 90, 246, 249 (counts 6, 9, 14-16 were committed against female UPC/FPLC members under the age of 15).

properly account for the multiplicity of crimes and his overall culpability”.²⁶⁵ It imposed a joint sentence of 30 years,²⁶⁶ given that this was the maximum penalty it could impose short of life imprisonment—which it did not consider warranted in that case.²⁶⁷

104. In *Yekatom and Ngaïssona*, the Trial Chamber entered individual sentences ranging from 8 to 14 years for Mr Yekatom, and from 8 to 11 years for Mr Ngaïssona.²⁶⁸ The Trial Chamber took account of, *inter alia*, the large number of crimes, that the crimes were committed in the context of multiple separate incidents, in different geographical areas, and that, apart from the acknowledged factual overlaps, the crimes were distinct and violated an array of fundamental interests.²⁶⁹ The Trial Chamber also considered the extent to which the convicted persons’ responsibility for the crimes was based on the same contributions.²⁷⁰ Accordingly, the Trial Chamber held, for each of the convicted persons, that “a joint sentence corresponding to the highest individual sentence is incapable of reflecting [his] total culpability.”²⁷¹ For each, the Trial Chamber thus imposed a joint sentence slightly higher than the highest individual sentence: 15 years for Mr Yekatom and 12 years for Mr Ngaïssona.²⁷²

105. The above cases provide a clear and consistent line of jurisprudence to guide chambers in the determination of the joint sentence. They show that the assessment must focus on the concrete conduct underlying the crimes and their consequences to identify any factual overlap, but *also* to ensure that any factually *distinct* aspects are fully reflected in the joint sentence. Moreover, the joint sentence must reflect the different protected interests that were violated by the convicted person’s conduct. Only in these circumstances can a joint sentence be said to have sufficient retributive and deterrent value. As explained in the following paragraphs, in the present case, the Chamber did not fully adhere to these principles.

II.A.2. The Chamber failed to properly account for the distinct conduct and consequences of Mr Abd-Al-Rahman’s crimes

106. The Chamber’s determination of the joint sentence shows that while it identified the partial factual overlap between Mr Abd-Al-Rahman’s crimes, it failed to take into account the

²⁶⁵ [Ntaganda Sentencing Judgment](#), para. 249.

²⁶⁶ [Ntaganda Sentencing Judgment](#), para. 251.

²⁶⁷ [Ntaganda Sentencing Judgment](#), paras. 250-251.

²⁶⁸ [Yekatom and Ngaïssona Trial Judgment](#), paras. 4506, 4516, 4536, 4546, 4550, 4574, 4586, 4595, 4600, 4604, 4631, 4641, 4645 (Mr Yekatom), 4715, 4718, 4723, 4729, 4732, 4744, 4751, 4752, 4757, 4773, 4783, 4787, 4796, 4798, 4800, 4802, 4805, 4816, 4819, 4822 (Mr Ngaïssona).

²⁶⁹ [Yekatom and Ngaïssona Trial Judgment](#), paras. 4657-4658 (Mr Yekatom), 4834-4835 (Mr Ngaïssona).

²⁷⁰ [Yekatom and Ngaïssona Trial Judgment](#), para. 4827 (Mr Ngaïssona).

²⁷¹ [Yekatom and Ngaïssona Trial Judgment](#), paras. 4659 (Mr Yekatom), 4836 (Mr Ngaïssona).

²⁷² [Yekatom and Ngaïssona Trial Judgment](#), paras. 4659, 4662 (Mr Yekatom), 4836, 4841 (Mr Ngaïssona).

factually distinct aspects of the 27 counts of which he was convicted—which were committed during three separate operations: at Kodoom and Bindisi, Mukjar, and Deleig.²⁷³

107. These 27 counts concerned 15 distinct crimes (including analogous war crimes and crimes against humanity): persecution, murder, attempted murder, rape, torture, forcible transfer, other inhumane acts, outrages upon personal dignity, pillaging, destruction of property, and attack against a civilian population as such.²⁷⁴ These crimes violated a range of protected interests, such as: the right to life; the right not to be subjected to cruel, inhumane or degrading treatment; the right to bodily integrity; the right to personal liberty and security of person; the right to private property; the right not to be discriminated against on the basis of political, ethnic and gender grounds, and; the right of individuals to remain in their homes and communities.²⁷⁵

108. The Chamber found that 17 of the 27 counts were of “very serious gravity” in this particular case,²⁷⁶ while 10 counts were of “serious gravity”.²⁷⁷ Of the 27 individual sentences imposed by the Chamber, ranging from 8 to 20 years,²⁷⁸ no fewer than 8 sentences were for 20 years.²⁷⁹

109. In this context, the minimum possible joint sentence of 20 years imposed by the Chamber manifestly fell outside the range of sentences reasonably available in light of the Chamber’s own findings and all the relevant circumstances.²⁸⁰

110. First, the joint sentence failed to reflect the multiplicity and diversity of serious crimes of which Mr Abd-Al-Rahman was convicted, and the different protected interests violated by those crimes. In fact, the Chamber did not state at all in the Sentencing Judgment whether it

²⁷³ [Trial Judgment](#), para. 1013.

²⁷⁴ [Trial Judgment](#), para. 1013 (attack against a civilian population as such as a war crime, murder as a crime against humanity and as a war crime, pillaging as a war crime, destruction of property as a war crime, other inhumane acts as a crime against humanity, outrages upon personal dignity as a war crime, rape as a crime against humanity and as a war crime, forcible transfer as a crime against humanity, persecution as a crime against humanity, torture as a crime against humanity and as a war crime, and attempted murder as a crime against humanity and as a war crime).

²⁷⁵ See [Sentencing Judgment](#), paras. 161-162, 205, 212-213, 271, 276.

²⁷⁶ [Sentencing Judgment](#), paras. 200 (counts 8-9: rape at Kodoom/Bindisi), 242 (counts 12-13: torture at Mukjar), 247 (counts 22-23: torture at Deleig; count 26: outrages upon personal dignity at Deleig), 257 (counts 17-18: murder at Mukjar; counts 19-20: attempted murder at Mukjar), 266 (counts 27-28: murder at Deleig; counts 29-30: attempted murder at Deleig), 273 (persecution at Mukjar), 278 (persecution at Deleig).

²⁷⁷ [Sentencing Judgment](#), paras. 165 (count 1: attack against a civilian population as such), 171 (counts 2-3: murder at Kodoom and Bindisi), 177 (count 4: pillaging), 183 (count 5: destruction of property), 191 (counts 6-7: other inhumane acts and outrages upon personal dignity at Kodoom and Bindisi), 208 (count 10: forcible transfer), 215 (count 11: persecution at Kodoom and Bindisi), 242 (count 16: outrages upon personal dignity at Mukjar).

²⁷⁸ [Sentencing Judgment](#), paras. 166, 173, 179, 184, 193, 202, 209, 217 (Kodoom and Bindisi), 243, 248, 258, 267, 274, 279 (Mukjar and Deleig).

²⁷⁹ [Sentencing Judgment](#), paras. 258, 267 (counts 17-20, 27-30: murder and attempted murder as crimes against humanity and as war crimes at Mukjar and Deleig).

²⁸⁰ [Sentencing Judgment](#), para. 294.

considered these factors in imposing the joint sentence.²⁸¹ The conclusion must be that it did not.

111. Second, the joint sentence also failed to reflect the overall gravity of the crimes, the existence of multiple aggravating factors, and, as further detailed in the following sections, the different factual bases underpinning Mr Abd-Al-Rahman's crimes, in which he participated through distinct conduct.²⁸²

112. Third, the imposition of the minimum joint sentence in this case also marked a clear and unexplained departure from the consistent prior sentencing practice of this Court, as outlined above.²⁸³ Until now, in all cases where a person was convicted of multiple article 5 crimes based on *distinct* conduct, the Trial Chamber has never failed to impose an uplift from the minimum joint sentence under article 78(3),²⁸⁴ or at least stated its intention to do so but for the statutory limit imposed by article 77(1).²⁸⁵ As noted, in *Ongwen*, the Trial Chamber entered individual sentences ranging from 8 to 20 years and the majority imposed a joint sentence of 25 years.²⁸⁶ In *Ntaganda*, the Trial Chamber entered individual sentences ranging from 8 to 30 years and imposed a joint sentence of 30 years (as the maximum penalty it could impose short of life imprisonment).²⁸⁷ In *Yekatom and Ngaïssona*, the Trial Chamber entered individual sentences ranging from 8 to 14 years for Mr Yekatom, and from 8 to 11 years for Mr Ngaïssona, and imposed joint sentences of 15 years for Mr Yekatom and 12 years for Mr Ngaïssona.²⁸⁸

113. In this case, the Chamber erred in law and/or fact and/or abused its discretion by failing to consider factors such as the distinct factual conduct and consequences of the crimes, and their different protected interests, in determining the joint sentence. Moreover, it failed to provide any or adequate reasoning for departing from prior chambers' consistent, and correct, application of the law on calculating the joint sentence. The Chamber also failed to provide adequate reasoning for imposing a joint sentence that effectively punished Mr Abd-Al-Rahman

²⁸¹ See e.g. [Sentencing Judgment](#), paras. 280-296 (the section on determining the joint sentence contains no such statement).

²⁸² See *below* paras. 114-118, 119-123, 124-128.

²⁸³ See *above* paras. 99-105.

²⁸⁴ See [Ongwen Sentencing Judgment](#), paras. 374-397; [Yekatom and Ngaïssona Trial Judgment](#), paras. 4646-4664, 4823-4843. In cases where trial chambers did not impose an uplift from the minimum joint sentence, this was because all crimes arose from the same course of conduct: see e.g. [Al Hassan Sentencing Judgment](#), paras. 132-134; [Katanga Sentencing Judgment](#), paras. 143-147 (sentencing Mr Katanga for the crimes committed in the attack on Bogoro); [Lubanga Sentencing Judgment](#), paras. 97-99 (sentencing Mr Lubanga for the crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities).

²⁸⁵ [Ntaganda Sentencing Judgment](#), paras. 246-251.

²⁸⁶ See *above* para. 102.

²⁸⁷ See *above* para. 103.

²⁸⁸ See *above* para. 104.

for only one crime committed in one operation, such as murder at Mukjar, rather than for his total culpability for the crimes he committed during all three operations.

II.B. The Chamber failed to take account of relevant factors showing that imposition of the minimum joint sentence was inadequate to reflect Mr Abd-Al-Rahman's total culpability

114. The Chamber's error in determining the joint sentence is further demonstrated by its failure to take account of relevant factors showing that imposition of the minimum joint sentence was patently inadequate to reflect Mr Abd-Al-Rahman's culpability in its entirety.

115. In particular, by determining a joint sentence of 20 years' imprisonment²⁸⁹—which was equal to *just one* (the highest) individual sentence relating to *just one* of the three operations (such as counts 17-18 concerning murder at Mukjar)²⁹⁰—the penalty imposed fails to reflect the *totality* of Mr Abd-Al-Rahman's culpability for his participation in the numerous and serious crimes committed in all three operations (at Kodoom and Bindisi, Mukjar, and Deleig). Effectively, the joint sentence fails to punish Mr Abd-Al-Rahman for the crimes committed in two of the three operations for which he was convicted—and arguably for all but one crime in a single operation.

116. In determining the joint sentence, the Chamber was correct to consider the degree of relevant factual overlap between individual sentences. For example:

- Generally, the Chamber found there was factual overlap between crimes which concurrently constitute both war crimes and crimes against humanity,²⁹¹ and between persecution and the crimes constituting its underlying acts.²⁹²
- Regarding the Kodoom and Bindisi operation, the Chamber found there was factual overlap between the underlying conduct for the crimes of attack against the civilian population as such murder, pillaging, destruction of property, other inhumane acts, outrages upon personal dignity, rape and forcible transfer.²⁹³
- Regarding the Mukjar and Deleig operations, the Chamber found there was factual overlap between the crimes of torture and outrages upon personal dignity in each

²⁸⁹ [Sentencing Judgment](#), para. 294.

²⁹⁰ See e.g. [Sentencing Judgment](#), para. 258. See also para. 267 (determining individual sentences of 20 years' imprisonment for counts 27-29 concerning murder at Deleig).

²⁹¹ [Sentencing Judgment](#), paras. 194, 249, 290.

²⁹² [Sentencing Judgment](#), paras. 214, 216, 233, 290.

²⁹³ [Sentencing Judgment](#), paras. 164 (including fn. 417: citing legal findings in the Trial Judgment for the relevant crimes, including outrages upon personal dignity), 182, 185, 190, 198, 206, 290, 291.

operation,²⁹⁴ between the crimes of murder and attempted murder in each operation,²⁹⁵ and between the crimes of torture and murder in relation to three detainees at Mukjar.²⁹⁶

117. However, while the Chamber was correct to *consider* these relevant areas of factual overlap, the Chamber failed—as detailed below in the following sub-sections—to take account of additional relevant factors showing that the crimes committed during the Mukjar and Deleig operations were distinct both from the crimes committed at Kodoom and Bindisi,²⁹⁷ and from one another.²⁹⁸ Notably, the operations took place at different times and in different locations, with different victims and associated harms, and with different conduct by Mr Abd-Al-Rahman.

118. The Chamber’s failures amounted to errors of law and/or fact and/or an abuse of discretion which, individually and/or cumulatively, resulted in a joint sentence that was manifestly inadequate and disproportionate to the crimes and the individual circumstances of Mr Abd-Al-Rahman. Further, the Chamber failed to provide adequate reasoning, since it is not possible to discern from the Sentencing Judgment how or to what extent the Chamber addressed factors which were essential to any proper determination of the joint sentence.

II.B.1. The Chamber did not account for the factual differences between the Kodoom and Bindisi operation and the operations at Mukjar and Deleig

119. The Chamber erred in law and/or fact, and/or abused its discretion, and/or provided inadequate reasoning by failing to account for the factual differences between the individual sentences relating to the Kodoom and Bindisi operation and the operations at Mukjar and Deleig in the joint sentence.²⁹⁹ This error, individually and/or cumulatively with the other errors relevant to determining the joint sentence, resulted in a joint sentence that failed to reflect Mr Abd-Al-Rahman’s true culpability for all of the crimes of which he was convicted.

120. After noting the Prosecution’s argument that there was no factual overlap between the three operations, the Chamber found that “whilst the operations in Mukjar and Deleig are charged separately, the gap of time is short, and the crimes show strikingly similar

²⁹⁴ [Sentencing Judgment](#), paras. 234, 291.

²⁹⁵ [Sentencing Judgment](#), para. 249, fn. 617.

²⁹⁶ [Sentencing Judgment](#), paras. 239 (fn. 586), 291 (fn. 719). While footnote 586 refers to the “Deleig Operation”, it appears from the context, based on the subject matter of paragraph 239 and the reference to the “Mukjar Operation” at paragraph 291, that this is a typographical error and the text should instead refer to the “Mukjar Operation”. See also [Trial Judgment](#), paras. 536, 920 (at least three detainees died as a result of their injuries at Mukjar).

²⁹⁷ See below paras. 119-123.

²⁹⁸ See below paras. 124-128.

²⁹⁹ [Sentencing Judgment](#), para. 294.

characteristics in nature and intent.”³⁰⁰ By only making this finding regarding the operations at Mukjar and Deleig, the Chamber accepted that there was no factual overlap with the Kodoom and Bindisi operation,³⁰¹ which is correct.

121. The Kodoom and Bindisi operation occurred approximately six months before the Mukjar and Deleig operations³⁰² in a different location,³⁰³ affecting distinct victims³⁰⁴ and causing distinct harms.³⁰⁵ The crimes at Kodoom and Bindisi were also committed by Mr Abd-Al-Rahman by way of different conduct.³⁰⁶

122. However, by imposing the minimum possible joint sentence, which equated to the highest individual sentence for just *one* of the crimes at Mukjar and Deleig (such as counts 17-18 relating to the crime of murder at Mukjar), the Chamber failed to reflect in any way in the joint sentence the fact that the Kodoom and Bindisi operation was entirely factually distinct. As a result, Mr Abd-Al-Rahman’s culpability for the multiple and serious crimes for which he was convicted at Kodoom and Bindisi had no discernible impact on the joint sentence. In effect, Mr Abd-Al-Rahman’s culpability for the crimes at Kodoom and Bindisi has been so subsumed that the joint sentence would theoretically be the same even if he had not been convicted of them. This was a legal and/or factual error and/or an abuse of discretion. No reasonable Trial Chamber would have ignored the factually distinct aspects of the Kodoom and Bindisi operation in determining the joint sentence.

123. Further, the Chamber failed to provide any or adequate reasoning for imposing a joint sentence that failed to reflect the distinct nature of the Kodoom and Bindisi operation.

³⁰⁰ [Sentencing Judgment](#), para. 292.

³⁰¹ This was consistent with the Chamber’s earlier finding that the “crimes committed during the Mukjar and Deleig Operations share a number of features, (which were not present in the Kodoom and Bindisi Operation, and display an escalation in the gravity of the crimes)”: [Sentencing Judgment](#), para. 220.

³⁰² [Trial Judgment](#), paras. 396 (the Kodoom and Bindisi operation occurred on 15 and 16 August 2003), 17 (the Mukjar operation occurred between the end of February 2004 and the beginning of March 2004), 18, 575 (the Deleig operation occurred between 5 and 7 March 2004).

³⁰³ [Trial Judgment](#), paras. 369, 442, 575. Bindisi was located approximately 19 kilometres west of Mukjar, which was approximately 59 kilometres south of Deleig. Kodoom was also located to the west of Mukjar. Bindisi, Kodoom and Deleig were in the Wadi Salih Locality, while Mukjar was in the Mukjar Locality.

³⁰⁴ See e.g. [Trial Judgment](#), paras. 408, 423-425, 917 (victims of murder at Kodoom and Bindisi), 429-430, 433-434, 885 (victims of other inhumane acts at Bindisi), 423-424, 429-430, 433, 894 (victims of outrages upon personal dignity at Bindisi), 536, 546, 559-560, 566-567, 920, 923 (victims of murder and attempted murder at Mukjar), 611-612, 623-625, 627-629, 634, 646, 921, 923 (victims of murder and attempted murder at Deleig).

³⁰⁵ [Sentencing Judgment](#), paras. 164, 170, 176, 182, 190, 199, 207 (harms specific to the Kodoom and Bindisi operation), 241, 256, 272 (harms specific to the Mukjar operation), 246, 264-265, 277 (harms specific to the Deleig operation). While the Chamber also grouped together certain harms and the impact of the crimes across the three operations, these had only partial overlap between the different operations. See paras. 126-136.

³⁰⁶ [Trial Judgment](#), paras. 1000-1012 (accessorial liability for ordering at Kodoom and Bindisi), 943-944, 951, 954, 985-986 (direct perpetration of certain crimes, and contributions to each of the Mukjar and Deleig common plans).

II.B.2. The Chamber did not account for the factual differences between the Mukjar and Deleig operations

124. The Chamber erred in law and/or fact, and/or abused its discretion, and/or provided inadequate reasoning by failing to take account of relevant factors when assessing any factual overlap between the operations at Mukjar and Deleig.³⁰⁷ Consequently, the Chamber failed to reflect the distinct nature of the Mukjar and Deleig operations in the joint sentence.³⁰⁸ This error compounded the Chamber's failure, as detailed above, to reflect the distinct nature of the Kodoom and Bindisi operation in the joint sentence.³⁰⁹ These errors, individually and/or cumulatively with the other errors alleged in this appeal, resulted in a joint sentence that failed to reflect Mr Abd-Al-Rahman's true culpability for all of the crimes of which he was convicted.

125. In determining the joint sentence, the Chamber considered the extent to which the Mukjar and Deleig operations were similar. The Chamber concluded that "whilst the operations in Mukjar and Deleig are charged separately, the gap of time is short, and the crimes show strikingly similar characteristics in nature and intent."³¹⁰ This accorded with its earlier finding that the crimes committed during the two operations "share a number of features, [...] particularly in respect of Abd-Al-Rahman's degree of participation and intent, the circumstances of manner, time and location, and, as aggravating factors, the commission of crimes against multiple, particularly vulnerable and defenceless victims."³¹¹

126. The Chamber's approach to determining the degree of factual overlap was fundamentally flawed. Whilst the Chamber was correct that the Mukjar and Deleig operations shared similar features, it erroneously limited its focus to an assessment of the factual circumstances in the abstract, rather than also focusing on their similarities/differences concretely. The Chamber's obligation to assess the degree of any relevant factual overlap between the crimes committed during the two operations³¹² also meant ensuring that the distinct features of each crime were reflected in the joint sentence, requiring an assessment of the concrete facts underlying each individual sentence. The Chamber failed to do so in this case. Multiple relevant factors, set out below, show that the crimes committed during the Mukjar and Deleig operations, while forming part of the same course of conduct, were in fact distinct.

³⁰⁷ [Sentencing Judgment](#), para. 292.

³⁰⁸ [Sentencing Judgment](#), para. 294.

³⁰⁹ *See above* paras. 119-123.

³¹⁰ [Sentencing Judgment](#), para. 292. The phrase "As already noted" used by the Chamber at paragraph 292, whilst not containing an explicit cross-reference, appears based on the content to refer to paragraph 220.

³¹¹ [Sentencing Judgment](#), para. 220.

³¹² *See above* paras. 99-105.

- First, while the operations occurred within approximately one week of each other, they were committed during distinct and non-overlapping time periods.³¹³
- Second, the operations occurred in different areas: the towns of Mukjar and Deleig were located approximately 59 kilometres from each other, in different localities.³¹⁴
- Third, the victims of the crimes in Mukjar and Deleig are distinct: there is no overlap between the direct victims at Mukjar and the direct victims at Deleig.³¹⁵
- Fourth, the harms suffered by the victims as a result of the crimes in each operation, while often of a similar nature, are also distinct. For example, the harms suffered at Deleig by persons tortured, humiliated or killed, or persons who suffered the loss of family members or local community leaders, or persons traumatised by surviving executions or discovering dead bodies, are personal to them and cannot be subsumed into the harms suffered by the victims at Mukjar.³¹⁶
- Fifth, Mr Abd-Al-Rahman's conduct in relation to each operation is distinct.³¹⁷ The multiple contributions Mr Abd-Al-Rahman made to the distinct common plans for Mukjar³¹⁸ and Deleig³¹⁹ are separate and do not overlap. These include his personal participation in each operation, including his direct perpetration of certain crimes, including two murders at Deleig.³²⁰ Similarly, the conduct of the other physical perpetrators satisfying the material elements of the crimes at Mukjar and Deleig is distinct.

127. The Chamber erred and/or abused its discretion in failing to take into account these distinct factual features of the two operations. Instead, it appeared to rely on the similarities in the *nature* of the facts. For example, the Chamber found that a number of the same aggravating

³¹³ [Trial Judgment](#), paras. 17 (the crimes were committed in Mukjar between the end of February 2004 and the beginning of March 2004), 560, 567, 570 (almost all of the murders at Mukjar occurred on or around 2 March 2004), 18, 575 (the crimes were committed in Deleig between 5 and 7 March 2004).

³¹⁴ See [Trial Judgment](#), paras. 442, 575. Mukjar was located in the Mukjar Locality while Deleig was located in the Wadi Salih Locality.

³¹⁵ See e.g. [Trial Judgment](#), paras. 523-524, 527-528, 531, 542, 560, 566-567, 569, 574 (identified victims at Mukjar), 596, 598-599, 602, 608-612, 618, 629, 631, 634, 636-638, 643, 646 (identified victims at Deleig).

³¹⁶ See e.g. [Sentencing Judgment](#), paras. 241, 256, 272 (damage caused at Mukjar), 246, 264-265, 277 (damage caused at Deleig).

³¹⁷ Compare [Yekatom and Ngaïssona Trial Judgment](#), para. 4827 (where the Chamber recognised that Mr Ngaïssona's responsibility for the crimes he was convicted of was largely based on the same contributions i.e. his funding and supporting of the Anti-Balaka prior to the relevant attacks).

³¹⁸ [Trial Judgment](#), para. 985.

³¹⁹ [Trial Judgment](#), para. 986.

³²⁰ See e.g. [Trial Judgment](#), paras. 942-957 (relating to Mr Abd-Al-Rahman's direct perpetration of certain crimes at Mukjar and Deleig).

factors applied to both operations.³²¹ While this is correct, it was not relevant to assessing the degree of overlap in the conduct underlying the crimes for the purpose of calculating the joint sentence. Similarly, it is also not determinative in this specific assessment that the same categories of crimes were committed in each operation (torture, outrages upon personal dignity, murder, attempted murder and persecution) or that they violated the same protected interests.³²²

128. Finally, the Chamber failed to provide any or adequate reasoning for imposing identical sentences for the crimes committed at Mukjar and Deleig, and for imposing a joint sentence that failed to reflect the distinct nature of the Mukjar and Deleig operations.

II.C. The Chamber also erred if it gave excessive weight to mitigating factors in the joint sentence

129. To any extent that the joint sentence imposed by the Chamber was substantially reduced on account of mitigating factors, the Chamber erred in fact and/or abused its discretion, and provided inadequate reasoning by giving excessive weight to these factors.³²³

130. When imposing the joint sentence, the Chamber stated that it “would have pronounced a higher sentence, had it not been for the accepted mitigating circumstances discussed above.”³²⁴ The three mitigating circumstances identified by the Chamber were Mr Abd-Al-Rahman’s age, his good conduct in detention and during trial, and his voluntary surrender to the Court.³²⁵ The Chamber stated that it would afford only *limited* weight to each of the three circumstances, as follows.

- In relation to Mr Abd-Al-Rahman’s age (76 years old),³²⁶ the Chamber noted that it was as a result of Mr Abd-Al-Rahman’s delayed surrender that the Chamber must consider his advanced age, and that the CLRV firmly opposed a significant reduction of sentence based on his age.³²⁷ The Chamber stated that it would take this factor into account “*to a limited extent*”.³²⁸

³²¹ [Sentencing Judgment](#), para. 220.

³²² [Trial Judgment](#), para. 1013. *See also above* para. 107.

³²³ [Sentencing Judgment](#), para. 294.

³²⁴ [Sentencing Judgment](#), para. 294.

³²⁵ [Sentencing Judgment](#), paras. 53, 75, 80, 293.

³²⁶ [Sentencing Judgment](#), para. 48.

³²⁷ [Sentencing Judgment](#), para. 53.

³²⁸ [Sentencing Judgment](#), para. 53 (emphasis added).

- In relation to good behaviour, the Chamber found that Mr Abd-Al-Rahman's conduct was "exceptional"³²⁹ on the basis that he was a "model detained person", "did not engage in conduct intended to disrupt the trial proceedings" and "played a part in the good collaboration among the parties and participants in this case, which promoted greater efficiency at trial".³³⁰ The Chamber stated that it would afford this factor "*limited weight*".³³¹
- In relation to Mr Abd-Al-Rahman's surrender, the Chamber found that the reasons for his surrender "were those of self-interest rather than remorse". The Chamber nonetheless stated that "voluntary surrender is the most decisive way a suspect can cooperate with the Court" and that "even if delayed, the presence of a suspect is preferable to no presence at all."³³² It stated that it would give this factor "*limited value*" in light of these particular circumstances.³³³

131. When it came to applying these mitigating factors to the joint sentence, the Chamber correctly stated that "[i]n determining the joint sentence, the Chamber is called to pronounce a sentence in line with the Court's primary purposes of punishment—retribution and deterrence."³³⁴ Recalling the Court's consistent jurisprudence,³³⁵ the Chamber correctly emphasised that the relevant mitigating circumstances "should not be given *undue weight*" but rather "*some weight*" in light of these primary purposes.³³⁶

³²⁹ The Chamber correctly stated the principle established by previous Appeals Chamber jurisprudence that "[g]ood behaviour and cooperation with the Court during a trial is expected of any accused person, and it cannot, in and of itself, constitute a factor in mitigation of a sentence" unless found to be "exceptional" in nature. See [Sentencing Judgment](#), para. 74 (fn. omitted), citing [Ntaganda Sentencing Appeal Judgment](#), paras. 6, 260.

³³⁰ [Sentencing Judgment](#), para. 74 (fn. omitted). The Chamber cited the Defence's submission that Mr Abd-Al-Rahman had allowed for this good collaboration by not giving "firm instructions from the outset not to engage with the Prosecution, not to reach agreement", by not "throw[ing] sickies on a regular basis" and then not waiving his right to be present, and by not pursuing a "*défense de rupture*, a sort of a defence strategy by which the focus is on a denial of the legitimacy of the institution by engaging on total non-cooperation, legal obstruction": see fn. 195 (citing [T-165](#), p. 46). The Defence itself conceded that any reduction to the sentence for this factor would be minimal: [T-165](#), p. 47:4-5 ("Again, I'm not suggesting that you should take off years, but it should be taken into account").

³³¹ [Sentencing Judgment](#), para. 75 (emphasis added).

³³² [Sentencing Judgment](#), para. 79 (fn. omitted).

³³³ [Sentencing Judgment](#), para. 80 (emphasis added).

³³⁴ [Sentencing Judgment](#), para. 288.

³³⁵ The Chamber cited to the [Yekatom and Ngaïssona Trial Judgment](#), para. 4398 ("At the outset, the Chamber recalls that the Statute and the Rules envisage a sentencing regime aimed primarily at retribution and deterrence. Rehabilitation of the sentenced person may also constitute a relevant consideration in this context, but should not be given undue weight in the context of cases of international criminal law") (fn. omitted) and references cited therein. The Chamber stated that it did not consider Mr Abd-Al-Rahman's prospects of rehabilitation in the determination of the sentence. See [Sentencing Judgment](#), paras. 63-70.

³³⁶ [Sentencing Judgment](#), para. 293 (emphasis added).

132. Since the Chamber did not specify the joint sentence it would have imposed had it not been for the mitigating factors (only noting that it would have been “higher”),³³⁷ it is not possible to ascertain from the Sentencing Judgment by how much the Chamber reduced the joint sentence based on the mitigating factors.

133. Nonetheless, given the manifest inadequacy of the joint sentence, the Chamber erred in law and/or fact and/or abused its discretion by either (i) failing to appropriately reflect the gravity of the crimes and the individual circumstances of Mr Abd-Al-Rahman in the joint sentence, and/or (ii) disproportionately reducing the joint sentence in light of its findings on the limited weight to be afforded to the three mitigating circumstances. The lack of reasoning in the Sentencing Judgment makes it impossible to ascertain which of these errors—or both—the Chamber committed. The Chamber thereby further erred by failing to provide any or adequate reasoning in support of its determination of the joint sentence, including its reduction based on mitigating factors.

II.D. The Chamber’s errors under Ground 2 materially affected the Sentencing Judgment

134. The Chamber’s errors in relation to determining the joint sentence, individually and/or cumulatively, materially affected the Sentencing Judgment. Had the Chamber not made these errors, it would not have entered a joint sentence which was disproportionately low for the numerous and serious crimes of which Mr Abd-Al-Rahman was convicted. Rather, it would have entered a joint sentence significantly exceeding 20 years’ imprisonment, including potentially of life imprisonment.

135. The Prosecution maintains that a joint sentence of life imprisonment is warranted in the circumstances of this case given the extreme gravity of Mr Abd-Al-Rahman’s crimes and the presence of multiple aggravating factors.³³⁸ Although the Chamber declined to make a finding of “extreme gravity” so as to justify the imposition of a life sentence in this case,³³⁹ this does not accord with the Chamber’s numerous findings on the seriousness of the gravity of each crime of which Mr Abd-Al-Rahman was convicted, as outlined above.

136. Any error impacting the joint sentence materially affects the Sentencing Judgment, given the joint sentence represents the *actual* penalty imposed on Mr Abd-Al-Rahman.³⁴⁰

³³⁷ [Sentencing Judgment](#), para. 294.

³³⁸ See [Statute](#), arts. 77(1)(b), 78(3).

³³⁹ [Sentencing Judgment](#), para. 296.

³⁴⁰ [Ntaganda Sentencing Appeal Judgment](#), para. 133.

RELIEF REQUESTED

137. Article 83(3) of the Statute empowers the Appeals Chamber to vary the sentence if it is disproportionate to the crimes. Although the Appeals Chamber of this Court is yet to exercise this power,³⁴¹ there have been several occasions on which appeals chambers in other international criminal tribunals have increased a sentence on appeal³⁴²—including to life imprisonment³⁴³—due to the manifest inadequacy of the sentence. In this case, the Appeals Chamber should exercise this power to amend the Sentencing Judgment itself. It should enter new individual sentences for the crimes identified in paragraph 13 above and, additionally or alternatively, enter a new joint sentence.

138. In doing so, the Appeals Chamber can rely upon the factual findings of the Trial Chamber in the Sentencing Judgment, as highlighted above. These findings show the extreme gravity of Mr Abd-Al-Rahman's crimes and demonstrate that a significant increase to the individual and joint sentences is warranted, including to life imprisonment. There is no impediment to the Appeals Chamber imposing a joint sentence of life imprisonment even if none of the underlying counts carry a life sentence.³⁴⁴ By imposing higher sentences, the Appeals Chamber will ensure that the sentencing goals, particularly of retribution and deterrence, are meaningfully addressed in this case.

139. Alternatively, the Appeals Chamber may remand the matter back to the Trial Chamber, with suitable directions, for re-sentencing.

CONCLUSION

140. For all the reasons above, the Prosecution requests the Appeals Chamber to exercise its powers under article 83(2)(a) and (3) of the Statute to:

³⁴¹ In the *Bemba et al.* case, the Prosecution appealed the sentence on a number of grounds including that it was manifestly inadequate and had been “taken from the wrong shelf”. Since the Appeals Chamber had already found that the Trial Chamber had committed other errors in imposing the sentences, it stated that it would reverse these errors and remand the matter to the Trial Chamber for a new determination, such that it was unnecessary to determine whether the sentences were so manifestly low as to constitute an abuse of discretion: [Bemba et al. Sentencing Appeal Judgment](#), para. 90.

³⁴² See e.g. [Semanza Appeal Judgment](#), paras. 388-389 (increasing the sentence from 15 to 25 years); [Aleksovski Appeal Judgment](#), paras. 186, 191 (increasing the sentence from 2.5 years to 7 years). See also [Čelebići Appeal Judgment](#), para. 851 (remitting the case to a reconstituted Trial Chamber to increase the sentence).

³⁴³ See e.g. [Karadžić Appeal Judgment](#), paras. 774, 776-777 (increasing the sentence from 40 years to life imprisonment); [Case 001 Appeal Judgment](#), para. 383 (increasing the sentence from 35 years to life imprisonment); [Galić Appeal Judgment](#), paras. 455-456 and p. 185 (increasing the sentence from 20 years to life imprisonment); [Gacumbitsi Appeal Judgment](#), paras. 3, 206 (increasing the sentence from 30 years to life imprisonment).

³⁴⁴ [Sentencing Judgment](#), para. 284; [Ongwen Sentencing Judgment](#), paras. 374, 383, 386; [Ntaganda Sentencing Judgment](#), paras. 25, 249-251.

- a. find that the Trial Chamber abused its discretion, and/or erred in law and/or fact, and/or failed to provide adequate reasoning in imposing individual sentences that were manifestly low for the crimes identified in paragraph 13 above, which occurred in the operations at Kodoom and Bindisi, Mukjar and Deleig, namely murder (counts 2-3, 17-18, 27-28), other inhumane acts (count 6), outrages upon personal dignity (count 7), rape (counts 8-9), and persecution (counts 11, 21, 31), and reverse the findings material to the error;
- b. determine an appropriate increase to each of these individual sentences that reflects the gravity of the crimes and of Mr Abd-Al-Rahman's conduct; and/or
- c. find that the Trial Chamber abused its discretion, and/or erred in law and/or fact, and/or failed to provide adequate reasoning in imposing a joint sentence of 20 years' imprisonment that was manifestly low and reverse the findings material to the error; and
- d. determine an appropriate increase to the joint sentence significantly exceeding 20 years' imprisonment, including potentially of life imprisonment.

141. In the alternative, under article 83(2), having confirmed the applicable law, and reversed the findings material to the errors identified, the Appeals Chamber should remand the matter to Trial Chamber I with suitable directions for it to: (i) determine an appropriate increase to the individual sentences for the crimes identified in paragraph 13 above, which occurred in the operations at Kodoom and Bindisi, Mukjar and Deleig, namely murder (counts 2-3, 17-18, 27-28), other inhumane acts (count 6), outrages upon personal dignity (count 7), rape (counts 8-9), persecution (counts 11, 21, 31); and in addition and/or in the alternative (ii) determine an appropriate increase to the joint sentence significantly exceeding 20 years' imprisonment, including potentially of life imprisonment.



Nazhat Shameem Khan, Deputy Prosecutor

Dated this 10th day of March 2026
At The Hague, the Netherlands