

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/04-02/06
Date: 24 January 2020

TRIAL CHAMBER VI

Before: Judge Chang-ho Chung , Presiding Judge
Judge Robert Fremr
Judge Olga Herrera Carbuccion

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public

Public Redacted Version of the “Sentencing Submissions of the Common Legal Representative of the Victims of the Attacks”

Source: Office of Public Counsel for Victims (CLR2)

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Ms Nicole Samson

Counsel for the Defence

Mr Stéphane Bourgon
Mr Christopher Gosnell
Ms Kate Gibson

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Alejandro Kiss
Ms Anna Bonini

Legal Representatives of the Applicants

Mr Dmytro Suprun
Ms Cherine Luzaisu
Ms Anne Grabowski

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) hereby provides submissions on behalf of the victims he represents in relation to Mr Ntaganda’s sentence. Mr Ntaganda has been found guilty as direct perpetrator and indirect co-perpetrator on 18 counts, namely five counts of crimes against humanity and thirteen counts of war crimes, including murder, rape, sexual slavery, persecution and forcible transfer of population. The present case is unprecedented in the history of the Court and falls with instances of extreme gravity as dealt with by the international criminal *ad hoc* tribunals, in particular the International Criminal Tribunal for the former Yugoslavia (the “ICTY”) and the International Criminal Tribunal for Rwanda (the “ICTR”).

2. The Legal Representative respectfully requests that Mr Ntaganda be sentenced to life imprisonment in accordance with Articles 77(1)(b), 78(1) and (3) of the Rome Statute (the “Statute”) and Rule 145 of the Rules of Procedure and Evidence (the “Rules”). The life imprisonment is justified by the extreme gravity of the crimes given their large scale and diversity and their systematic, repetitive and continuous nature, as well as the sheer brutality in which they were carried out, and evidenced by several aggravating circumstances. The aggravating circumstances include: the large extent of the victimisation caused in terms of the number of victims and the great scale of their suffering as well as long-term consequences of the crimes affecting entire communities throughout the Ituri region and entailing trans-generational harm; the special vulnerability of victims including their young age; Mr Ntaganda’s abuse of his role of hierarchical superior in a criminal fashion which resulted in grave abuses against the victims of the crimes; and Mr Ntaganda’s behaviour in detention, in particular his interference with the administration of justice. There exist no mitigating factors to be given any significant weight in the determination of the appropriate sentence.

II. CONFIDENTIALITY

3. Pursuant to regulations 23*bis*(1) and (2) of the Regulations of the Court, these submissions are classified as confidential as they make reference to confidential information and documents classified as confidential. A public redacted version will be prepared in due course.

III. PROCEDURAL HISTORY

4. On 8 July 2019, Trial Chamber VI (the “Chamber”) rendered its judgment,¹ whereby it found Mr Ntaganda guilty on 18 counts, namely five counts of crimes against humanity and thirteen counts of war crimes, and issued an order in relation to the sentencing procedure, setting various deadlines relating to the presentation of further evidence.²

5. On 29 July 2019, the Prosecution and the Defence notified the Chamber of their respective intention to present evidence in relation to sentencing,³ and requested, *inter alia*, to be permitted to call one witness and to admit the statements of four additional witnesses into evidence pursuant to Rule 68(2)(b) of the Rules.⁴ The Defence requested authorisation to present the testimony of eight witnesses and 21 documents as further evidence for the purpose of the sentencing procedure.⁵ Both

¹ See the “Judgment” (Trial Chamber VI), No. ICC-01/04-02/06-2359, 8 July 2019 (the “Trial Judgment”).

² See the “Order on the sentencing procedure” (Trial Chamber VI), No. ICC-01/04-02/06-2360, 8 July 2019.

³ See the “Prosecution’s request to submit additional evidence on sentencing”, No. ICC-01/04-02/06-2368-Conf, 29 July 2019; “Defence request for admission of sentencing evidence”, No. ICC-01/04-02/06-2369-Conf-Exp (with confidential ex parte Annexes A, B, and C only available to the Chamber and the Registry and confidential Annex D), 29 July 2019. Confidential redacted versions were notified the same day.

⁴ See the “Prosecution’s request to submit additional evidence on sentencing”, No. ICC-01/04-02/06-2368-Conf, 29 July 2019, para. 7.

⁵ See the “Confidential redacted version of ‘Defence request for admission of sentencing evidence’”, No. ICC-01/04-02/06-2369-Conf-Red, para. 1.

teams of Common Legal Representatives for Victims notified that they would not file requests.⁶

6. On 20 August 2019, the Chamber, *inter alia*, (i) rejected to hear the testimony of the proposed Expert Witness; and (ii) granted the request to hear the testimony of Witnesses D-0047, D-0305 and D-0306 *viva voce*.⁷

7. On 23 August 2019, the Chamber (i) rejected the Prosecution's and Defence's requests for admission of additional evidence in relation to two proposed Prosecution witnesses and one Defence witness; (ii) granted the request in relation to two Prosecution and three Defence witnesses; (iii) granted the request for protective measures in the form of pseudonym for the two Prosecution witnesses; (iv) admitted four items into evidence; (v) instructed the Prosecution and Defence to submit the prior recorded testimony of the First Proposed Prosecution Witness; and (vi) set a deadline for requests for admission of documentary evidence other than through witnesses for 30 August 2019.⁸

8. On 30 August 2019, the Defence informed that Mr Ntaganda wished to make an unsworn statement during the sentencing hearing,⁹ and submitted a request for the admission of documentary evidence in relation to sentencing, whereby it sought the admission of 17 items of video and documentary evidence.¹⁰ The Prosecution also filed a request for the admission of additional documentary evidence,¹¹ seeking the

⁶ See the Email communications from the Common Legal Representative for the Former Child Soldiers of 29 July 2019 at 15:19 and that of the Common Legal Representative for the Victims of the Attacks of 29 July 2019 at 16:45.

⁷ See the "Decision on requests to call witnesses in relation to sentencing and for increased monitoring of Mr Ntaganda's contacts and scheduling the sentencing hearing", No. ICC-01/04-02/06-2384-Conf, 20 August 2019, p. 24.

⁸ See the "Preliminary ruling on prior recorded testimony pursuant to Rule 68(2)(b) in relation to sentencing", No. ICC-01/04-02/06-2385-Conf, 23 August 2019.

⁹ See the Email Communication from the Defence to the Trial Chamber, parties and participants of 30 August 2019 at 11:21.

¹⁰ See the "Defence request for the admission of supplementary sentencing evidence", No. ICC-01/04-02/06-2388-Conf, 30 August 2019, para. 1.

¹¹ See the "Prosecution's request for the admission of additional documentary evidence on sentencing", No. ICC-01/04-02/06-2389, 30 August 2019.

admission of 26 documents for the purposes of sentencing.¹² The Registry filed the Addendum to 'Registry's Report on Mr Bosco Ntaganda's Solvency and Conduct While in Detention' (ICC-01/04-02/06-2367-Conf)', which was notified to the Legal Representative in confidential redacted form.¹³

9. On 6 September 2019, in line with the deadline set by the Chamber,¹⁴ the Defence submitted its response in relation to the Prosecution's request for additional documentary evidence, arguing that it should be rejected.¹⁵ The Prosecution opposed the Defence request for additional documentary evidence,¹⁶ but requested that in the event the Chamber were to grant the Defence request, it should allow the admission of additional documents to put the material into context.¹⁷

10. On 9 September 2019, the Defence submitted its "Notice of submissions of prior recorded testimony pursuant to Rule 68(2)(b) and the Trial Chamber's order of 23 August 2019"¹⁸ to which it annexed three prior statements for admission into evidence.

11. On 12 September 2019, the Chamber indicated that it would reject admission of video excerpts via the bar table,¹⁹ and that instead the Defence was allowed additional 15 minutes for its direct examination.²⁰

¹² *Idem*, para. 1.

¹³ See the "Confidential redacted version of 'Addendum to 'Registry's Report on Mr Bosco Ntaganda's Solvency and Conduct While in Detention' (ICC-01/04-02/06-2367-Conf)', 30 August 2019", No. ICC-01/04-02/06-2390-Conf-Red, 30 August 2019.

¹⁴ See the Email Communication from the Chamber to the parties and participants of 2 September 2019 at 11:02.

¹⁵ See the "Defence response to 'Prosecution's request for the admission of additional documentary evidence in sentencing'", No. ICC-01/04-02/06-2392, 6 September 2019.

¹⁶ See the "Prosecution's response to the 'Defence request for the admission of supplementary sentencing evidence', ICC-01/04-02/06-2388-Conf, 30 August 2019.

¹⁷ *Idem*, para. 1.

¹⁸ See the "Notice of submission of prior recorded testimony pursuant to Rule 68(2)(b) and the Trial Chamber's order of 23 August 2019, No. ICC-01/04-02/06-2397, 9 September 2019.

¹⁹ See the Email communication from the Chamber to the parties and participants of 12 September 2019 at 10:33.

²⁰ *Idem*.

12. On 16 September 2019, the Prosecution sought reconsideration of the Chamber's decision denying admission of DRC-OTP-0151-0305²¹ and submitted a request for disclosure of a prior statement of D-0305.²²

13. On the same day, the Defence submitted its "Urgent second request for authorization and admission of additional sentencing evidence, and for additional time to examine Witness D-0047".²³

14. On 17 September 2019, the Defence opposed the request for disclosure of D-0305's prior statement²⁴ and the Prosecution opposed the Defence urgent request filed the previous day.²⁵

15. The Chamber held three days of sentencing related hearings during which it rendered several oral decisions, and in particular it (i) admitted into evidence the Rule 68(2)(b) statements of P-0824 and P-1000, the Rule 68(2)(b) statement of D-0020 and associated exhibit, and the Rule 68(2)(b) statements of D0302 and D-0303;²⁶ and (ii) rejected the Prosecution's request for reconsideration of 17 September 2019.²⁷ It also formally set the deadline for the sentencing written submissions for 30 September 2019, and for responses thereto for 8 October 2019.²⁸

²¹ See the "Prosecution's request for reconsideration of a discrete portion of the Chamber's 'Decision on requests for admission of evidence related to sentencing from the bar table', ICC-01/04-02/06-2402, 13 September 2019", No. ICC-01/04-02/06-2404, 16 September 2019.

²² See the Email Communication from the Prosecution to the Chamber, Defence and Participants of 16 September 2019 at 19:48.

²³ See the "Urgent second request for authorization and admission of additional sentencing evidence, and for additional time to examine Witness D-0047", No. ICC-01/04-02/06-2403-Conf, 16 September 2019.

²⁴ See Email Communication from the Defence to the Chamber, Prosecution, and Participants on 17 September 2019 at 10:01.

²⁵ See the Email Communication from the Prosecution to the Chamber, Prosecution, and Participants on 17 September 2019 at 11:16.

²⁶ See the transcript of the hearing of 17 September 2019, No. ICC-01/04-02/06-T-266-CONF-ENG ET, p. 5, lines 6-11.

²⁷ *Idem*, p. 40, line 19 to p. 42, line 17.

²⁸ *Ibid.*, p. 5, lines 20-22.

16. On 20 September 2019, the Chamber heard the parties' and participants' oral sentencing submissions as well as a short unsworn statement from Mr Ntaganda.²⁹

IV. SUBMISSIONS

17. Pursuant to Article 21(1) of the Statute, when passing sentence the Chamber shall apply Articles 23, 76, 77, 78 and 81(2)(a) of the Statute and Rules 143, 145 and 146 of the Rules.³⁰

18. In accordance with Article 76(1) of the Statute, the Chamber is to take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

19. With regard to Rule 145(1)(c) and the requirement that the Chamber "*shall [...] give consideration, inter alia, to the extent of the damage caused, in particular to the harm caused to the victims and their families [...]*"³¹, the Legal Representative submits that this mandatory consideration should be given substantial weight in this case, as the extent of the damage and harm caused is extremely vast and profound. In particular, the Legal Representative submits that the evidence that was elicited from several victims and witnesses during the course of the trial in terms of the harm suffered and the impact of the crimes on their lives and on their family, squarely falls within the definition of 'relevant evidence' under Article 76(1) of the Statute and 'harm caused' of Rule 145(1)(c) of the Rules.

20. The victims' accounts of suffering and relevant relating evidence, such as the evidence of several expert witnesses heard during the trial, have been comprehensively set out in a separate and self-contained section of the Legal

²⁹ See the transcript of the hearing of 20 September 2019, No. ICC-01/04-02/06-268-ENG-ET.

³⁰ See the "Decision on Sentence pursuant to Article 76 of the Statute" (Trial Chamber I), No. ICC-01/04-01/06-2901, 10 July 2012, para. 17.

³¹ See Rule 145(1)(c) of the Rules.

Representative's final trial brief as well as in his oral closing statements.³² The Legal Representative thus submits that a detailed illustration of the harm caused and short and long-term impact of the various offences upon victims have been set out in a manner that now allows the Chamber to take it into account when carrying out the determination of Mr Ntaganda's sentence. The Legal Representative therefore respectfully requests that the entire section entitled "*The victims suffered on account of the crimes committed by the accused and his subordinates*"³³ of his final trial brief as well as his oral closing statements be taken into account by the Chamber at this stage.

21. The Legal Representative further respectfully requests that the Chamber favourably receive the submissions of the Common Legal Representative of the Former Child Soldiers with respect to the extent of the victimisation caused by the crimes of which Mr Ntaganda has been found guilty. Relevant submissions on the suffering of victims and indirect victims of crimes committed against former child soldiers pursuant to articles 8(2)(e)(vi), 8(2)(e)(vii), and 25(3)(a) of the Statute must be given due regard as part of the overall assessment of the seriousness of all of the offences for which Mr Ntaganda has been found guilty and thus reflected in his overall sentence.

i. Purpose of sentencing

22. As recently emphasised by Trial Chamber VIII in the *Al Mahdi* case, the Preamble of the Statute establishes that retribution and deterrence are primary objectives of punishment at the Court,³⁴ this approach being in line with the international jurisprudence³⁵ according to which "*the sentence serves as condemnation*

³² See the transcript of the hearing of 29 August 2018, No. ICC-01/04-02/06-T-263-CONF-ENG CT, pp. 16-39.

³³ See the "CORRECTED VERSION of Closing Brief of the Common Legal Representative of the Victims of the Attacks (ICC-01/04-02/06-2275-Conf), No. ICC-01/04-02/06-Conf-Corr, 18 September 2018 (the "CLR2 Final Trial Brief"), pp. 129-150.

³⁴ See the "Judgment and Sentence" (Trial Chamber VIII), No. ICC-01/12-01/15-171, 27 September 2016 (the "*Al Mahdi* Judgment"), para. 66.

³⁵ See ICTY, *The Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T, Judgment Vol II, 27 March 2013 (the "*Stanišić and Župljanin* Trial Judgment (Vol II)"), para. 889. See also ICTY, *The*

by the international community of the crimes committed and should not be misunderstood as a means of expressing revenge or vengeance.”³⁶ Deterrence as a sentencing purpose encompasses two forms: individual and general.³⁷ It must be given sufficient value such as to dissuade the wrongdoer from repeating the offences in the future and to discourage others from committing similar offences.³⁸

23. Chambers have an overriding obligation to tailor the penalty to the gravity of the crime and the individual circumstances of the accused. Due regard is to be had to the entirety of the case.³⁹

ii. Gravity of the Crimes

24. The gravity of the offences is the most dominant factor to be taken into consideration when a sentence is being determined, as expressed in the fact that it features first in the factors listed in Article 78(1) of the Statute and in the fact that extreme gravity may warrant a term of life imprisonment.⁴⁰ It is not necessarily one single underlying act that makes a crime particularly grave. In fact, not every individual act underlying a particular crime against humanity has to be of a gravity corresponding to other crimes of humanity; underlying acts can be considered together.⁴¹

25. The Legal Representative submits that the gravity of the crimes for which Mr Ntaganda has been found guilty is evidenced by the scale and diversity of the crimes as well as by the sheer brutality with which the crimes were carried out.

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgment, 22 March 2006, para. 402; *The Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgment, 24 March 2000, para. 185.

³⁶ See ICTY, the *Stanišić and Župljanin* Trial Judgment (Vol II), *supra* note 35, para. 890.

³⁷ *Idem*, para. 891. See also the *Al Mahdi* Judgment, *supra* note 34, para. 67.

³⁸ See the *Stanišić and Župljanin* Trial Judgment (Vol II), *supra* note 35, para. 891.

³⁹ See ICTY, *The Prosecution v. Nikola Šajnović et al.*, IT-05-87-A, Judgment, 23 January 2014, para. 1837.

⁴⁰ See Article 77(1)(b) of the Statute.

⁴¹ See ICTY, *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgment, 30 January 2015, para 766, referring to ICTR, *The Prosecutor v. Férdinand Nahimana et al.*, Case No. ICTR-99-52-A, Judgment, 28 November 2007, para. 987.

26. Indeed, the crimes were committed in a systematic, repetitive and continuous manner between November 2002 and February 2003 in the context of two major attacks and assaults on 13 villages throughout the Ituri region, village by village. The crimes involved multiple incidents of murder, rape, sexual slavery, and also mass crimes targeting entire villages and communities such as persecution, forcible transfer and displacement of civilians. The crimes were not isolated instances, but rather, they were part of a widespread and systematic campaign of violence with a predetermined aim “to drive out all the Lendu from the localities targeted”⁴² and to prevent their return.⁴³

27. It is submitted in this regard that “[a] prohibited act committed as part of a crime against humanity, that is with an awareness that the act formed part of a widespread or systematic attack on a civilian population, [...] [are] seen as a crime against more than just the victims themselves but against humanity as a whole.”⁴⁴

28. The crimes were carried out with sheer brutality by both Mr Ntaganda personally and his subordinates. Indeed, Mr Ntaganda personally killed Abbé Boniface Bwanalanga after beating him with a piece of wood during interrogation,⁴⁵ and his subordinates were told to simply throw the body into the bush, showing particular disdain for his person.⁴⁶ He also personally ordered artillery fire on a column of civilians.⁴⁷ The UPC/FPLC troops attacked the villages with heavy weapons,⁴⁸ killing civilians regardless their gender and age with weapons, knives, sticks and machete and culminating with a massacre of extreme cruelty of at least 49 civilians in Kobu,⁴⁹ including babies being cut out of their mother’s wombs,

⁴² See the Trial Judgment, *supra* note 1, para. 1177.

⁴³ *Idem*, para. 803.

⁴⁴ See ICTY, *The Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Sentencing Judgment, 14 July 1997, para. 73.

⁴⁵ See the Trial Judgment, *supra* note 1, paras. 532-533.

⁴⁶ *Idem*, para. 533.

⁴⁷ *Ibid.*, paras. 508 and 848.

⁴⁸ *Ibid.*, para. 743.

⁴⁹ *Ibid.*, paras. 873-874.

decapitated and disembowelled victims.⁵⁰ The bodies of those killed were often thrown into mass graves.⁵¹ Acts of sexual violence, like the acts of killings and other acts of physical violence, were used by UPC/FPLC soldiers and commanders to achieve their objective to destroy the Lendu community and those raped were treated as “*non-human elements to be exterminated*”.⁵² Rapes were committed with the use of sticks, and UPC/FPLC soldiers forced detained victims to sexually assault each other.⁵³

29. In all previous cases dealt with by the Court, the extent of the victimization was analyzed within the gravity of the crime, and not as an independent factor for sentencing. This is evidenced in the judgments handed down against *Thomas Lubanga Dyilo*⁵⁴, *Germain Katanga*⁵⁵, *Ahmad Al Faqi Al Mahdi*⁵⁶ and *Jean-Pierre Bemba Gombo*.⁵⁷

30. However, in several cases before the ICTY, in particular in the *Blaškić*⁵⁸ and *Brdjanin*⁵⁹ cases, suffering and trauma of the victims were considered as aggravating

⁵⁰ *Ibid.*, para. 633.

⁵¹ *Ibid.*, para. 998.

⁵² *Ibid.*, para. 805.

⁵³ *Ibid.*, para. 806.

⁵⁴ See the “Decision on sentence pursuant to Article 76 of the Statute” (Trial Chamber I), No. ICC-01/04-01/06-2901, 10 July 2012, para. 44: “*the Chamber has considered the gravity of these crimes in the circumstances of this case, with regard, inter alia, to the extent of the damage caused, and in particular ‘the harm caused to the victims and their families’.*”

⁵⁵ See the “Decision on Sentence pursuant to Article 76 of the Statute” (Trial Chamber II), No. ICC-01/04-01/07-3436-tENG, 23 May 2014, para. 71: “*in examining the gravity of the crimes, the Chamber has already taken into account the cruelty in the commission of the crimes against the inhabitants of Bogoro, including against vulnerable people such as children, and noted the discriminatory nature of the attack.*”

⁵⁶ See the *Al Mahdi* Judgment, *supra* note 34, para. 76: “*In addressing the gravity of the crime committed, the Chamber considered, in particular, the extent of damage caused, the nature of the unlawful behaviour and, to a certain extent, the circumstances of the time, place and manner.*”

⁵⁷ See the “Decision on Sentence pursuant to Article 76 of the Statute” (Trial Chamber III), No. ICC-01/05-01/08-3399, 21 June 2016, paras. 36, 40 and 50-51.

⁵⁸ See ICTY, *The Prosecutor v. Tihomir Blaškić*, Judgement, Case No. IT-95-14-T, 3 March 2000, para. 787: “*The physical and mental effects of the bodily harm meted out to the victims were also seen as aggravating circumstances. The criterion is thus characterised by its subjectiveness. In the Tadic, Celebici and Furundcija cases, the Trial Chambers observed that the offences had been committed in circumstances which could only aggravate the crimes and the victims’ suffering. Those cases where bodily injury led to death have also been noted. Consequently, victims’ suffering is one factor to be taken into account when determining the sentence. The Trial Chamber here points not only to the suffering inflicted upon the victims while the crimes were being committed through the use of indiscriminate, disproportionate and terrifying combat means and methods, such as “baby bombs”, flamethrowers, grenades and a booby-trapped lorry, but also the manifest physical and mental suffering endured by the survivors of these brutal events. Thus, along with the physical or emotional scars borne*

circumstances rather than factors determining the gravity of the crime. In the *Bralo*⁶⁰ and *Blagojevic*⁶¹ cases, the number of victims was also considered as an aggravating circumstance. In the same vein, in several cases before the ICTR, and in particular in the *Gatete*⁶² and *Kambanda*⁶³ cases, the number of victims was similarly considered as an aggravating circumstance rather than a factor determining the gravity of the crime.

31. Indeed, the Legal Representative submits that in the present case, and in light of the international jurisprudence as referred to *supra*, the extent of the victimization should be considered as aggravating circumstances. Submissions in relation to aggravating circumstances will be dealt with *infra*.

iii. The individual circumstances of Mr Ntaganda

32. Bosco Ntaganda was born in Ruhengeri prefecture, Rwanda, on 5 November 1973.⁶⁴ He holds Congolese nationality⁶⁵ and belongs to the Tutsi ethnic

by the victims, their suffering at the loss of loved ones and the fact that most of them are still unable to return to their homes to this day must also be mentioned."

⁵⁹ See ICTY, *The Prosecutor v. Radoslav Brđjanin*, Case No. IT-99-36-T, Judgement, 1 September 2004, para. 1105: "*The extent of the long-term physical, psychological, and emotional suffering of the survivors can be an aggravating factor. The Appeals Chamber has held that even if the mental suffering of the survivors constitutes an element of, for example, the crime of inhumane acts, a Trial Chamber is entitled to take the long term effect of the trauma into account as an aggravating factor.*"

⁶⁰ See ICTY, *The Prosecutor v. Miroslav Bralo*, Case No. IT-95-17, Sentencing Judgment, 7 December 2005, para. 30: "*The scale of the attack and the number of victims who were persecuted by Bralo in its course serve to further aggravate the seriousness of his criminal conduct, which is a factor taken into account by the Trial Chamber in its determination of sentence.*"

⁶¹ See ICTY *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Judgment, 15 January 2005, para. 841: "*The Prosecution submits that, in accordance with the Blaškić Trial Chamber, this Trial Chamber should consider the vast number of victims an aggravating circumstance. While agreeing that the number of victims of the crimes of both Vidoje Blagojević and Dragan Jokić is, indeed, very large, the Trial Chamber finds that the scale of the crimes committed is reflected in the crimes for which each accused has been convicted, specifically complicity in genocide and extermination, respectively.*"

⁶² See ICTR, *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-T, Judgment, 31 March 2011, para. 678: "*The Chamber further finds that the number of victims of the attacks in Rwankuba sector, and at the Kiziguro and Mukarange parishes, for which Gatete is individually responsible, is an aggravating factor.*"

⁶³ See ICTR, *The Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence, 4 September 1998, para. 42: "*The magnitude of the crimes involving the killing of an estimated 500,000 civilians in Rwanda, in a short span of 100 days constitutes an aggravating fact.*"

⁶⁴ See the transcript of the hearing of 14 June 2017, No. ICC-01/04-02/06-T-209-Red-ENG WT, p. 35.

⁶⁵ See Agreed Fact 72.

group.⁶⁶ He was raised in Massisi in the North Kivus in the Democratic Republic of the Congo.⁶⁷ Between February 1991 and 1996, Mr Ntaganda was in military formations in Rwanda.⁶⁸ When he joined the first armed group in 1991, he received four-months of basic training,⁶⁹ and was then sent for leadership training so as to become a teacher and instructor.⁷⁰ The Chamber found that Mr Ntaganda's "*skills and experience were determinative in increasing the group's strength and capacity to carry out its objectives*".⁷¹

33. Mr Ntaganda is married since 2002 and has seven children,⁷² [REDACTED].⁷³

iv. The sentencing practice of the Court

34. The scale and diversity of crimes for which Mr Ntaganda has been found guilty as well as the extent of the victimisation are unprecedented before this Court. Thus, the few convictions rendered before this Court that would be capable of providing guidance are not readily applicable to the present case.

35. In the case of *Al Mahdi*, a case involving offences against property rather than people, can only serve as limited guidance in relation to counts 11 (pillage) and 17 (attacks on protected objects). The sentence of nine years imposed on Mr Al Mahdi⁷⁴ can only be of limited guidance because Mr Al Mahdi – unlike Mr Ntaganda – pleaded guilty,⁷⁵ cooperated with the Court,⁷⁶ and expressed genuine remorse for his

⁶⁶ See Agreed Fact 73.

⁶⁷ See the transcript of the hearing of 14 June 2017, No. ICC-01/04-02/06-T-209-Red-ENG WT, pp 36-37.

⁶⁸ *Idem*, p. 47.

⁶⁹ *Ibid.*, p. 49.

⁷⁰ *Ibid.*, p. 50.

⁷¹ See the Trial Judgment, *supra* note 1, para. 852.

⁷² See the transcript of the hearing of 14 June 2017, No. ICC-01/04-02/06-T-209-Red-ENG WT, p. 42.

⁷³ [REDACTED].

⁷⁴ See the *Al Mahdi* Judgment, *supra* note 34, para. 109.

⁷⁵ *Idem*, para. 98.

⁷⁶ *Ibid.*, para. 102.

acts.⁷⁷ For his guilty plea alone he was entitled to a substantial reduction in sentence.⁷⁸

36. Mr Katanga was found guilty as an *accessory* pursuant to article 25(3)(d) of the Statute⁷⁹ for the crimes of murder both as a war crime and as a crime against humanity, as well as the war crimes of attacking civilians, destruction of enemy property, and pillaging, and was imposed with a joint sentence of 12 years of imprisonment.⁸⁰ As such, the degree of Mr Katanga's role and responsibility is substantially different from the forms of 25(3)(a) responsibility in Mr Ntaganda's case, namely direct perpetration and indirect co-perpetration. Furthermore the relevant attack in the *Katanga* case was carried during one day and concerned a single village and the number and scale of victimisation was considerably different in that case.

37. Mr Lubanga was sentenced to a joint sentence of 14 years of imprisonment for having committed jointly with other persons the crimes of conscripting, enlisting, and using children under the age of 15 to participate actively in hostilities.⁸¹ In contrast, Mr Ntaganda was convicted on 18 counts in total, reflecting large-scale victimisation stemming, further to conscription and use of child soldiers, from, *inter alia*, murder, rape, sexual slavery, persecution, forcible transfer and pillage.

38. It is therefore submitted that, given the unprecedented scale and diversity of crimes for which Mr Ntaganda has been found guilty as well as the extent of the victimisation, the sentences passed in previous cases cannot be compared to the present case. Rather, the present case falls with instances of extreme gravity like cases

⁷⁷ *Ibid.*, para. 103.

⁷⁸ *Ibid.*, para. 100.

⁷⁹ See the "Judgment pursuant to article 74 of the Statute" (Trial Chamber II), No. ICC-01/04-01/07-3436-tENG, 7 March 2014, pp. 658-659.

⁸⁰ See the "Decision on Sentence pursuant to article 76 of the Statute" (Trial Chamber II), No. ICC-01/04-01/07-3484, 23 May 2014, para. 147.

⁸¹ See the "Decision on Sentence pursuant to Article 76 of the Statute" (Trial Chamber I), No. ICC-01/04-02/06-2901, 10 July 2012, paras. 98-99.

dealt with by the *ad hoc* tribunals, such as *Lukić and Lukić*,⁸² insofar requiring highest sentence.

v. Aggravating Circumstances

39. Pursuant to Rule 145 of the Rules, the Legal Representative respectfully requests that the Chamber, when determining on the sentence to be imposed on Mr Ntaganda, take into account the following aggravating circumstances.

40. The Legal Representative submits that in light of the relevant international jurisprudence as referred to *supra*, the large extent of the victimisation in the present case, given the number of victims, their suffering and the long-term consequences of crimes causing harm at individual, family and community level, affecting entity communities throughout the Ituri region and entailing trans-generational harm, should be considered as aggravating circumstances rather than factors determining the gravity of the crimes. As regards the extent of the victimisation in the present case, he refers to his previous submissions.⁸³ While the total number of the victims affected to various extents by the crimes has yet to be identified, the Legal Representative notes that among the participating victims 1083 suffered from murder of their relatives, 1202 from pillage, 910 from destruction of their property, 41 are direct or indirect victims of sexual violence, and 1404 suffered from persecution.

41. The second aggravating circumstance is the special vulnerability of the victims including their young age.⁸⁴ In relation to the murder victims the Chamber has found that they included small children of three and six years of age, detained persons, a pregnant woman in detention, hospital patients who had been left unattended and were too weak to flee, women who were raped prior to their execution, and detained

⁸² See ICTY, *The Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Judgement, 20 July 2009.

⁸³ See the CLR2 Final Trial Brief, *supra* note 33, pp. 129-150. See also the transcript of the hearing of 29 August 2018, No. ICC-01/04-02/06-T-263-CONF-ENG CT, pp. 16-39.

⁸⁴ See ICTY, *The Prosecutor v. Kunarac et al.*, Case No. IT-96-23-T and IT-96-23/1-T, Trial Judgement, 22 February 2001, para. 864. See also ICTY, *The Prosecutor v. Oric*, Case No. IT-03-68-T, Trial Judgement, 30 June 2006, para. 733.

men who were raped.⁸⁵ All of these were particularly vulnerable victims. Furthermore, Mr Ntaganda personally killed *Abbé Boniface Bwanalunga*, a man of advanced age serving as a Catholic priest who had been detained at the *Appartements*.⁸⁶

42. The crimes of rape and sexual slavery were committed against civilians, including children, and against the most vulnerable, namely child soldiers forcibly enlisted into the ranks of the FPLC.⁸⁷ This must be found to be an aggravating circumstance. In *Gacumbitsi*⁸⁸ for instance, the ICTR Trial Chamber stated that particularly atrocious rapes that some victims suffered constituted aggravating circumstances.

43. Persecution and forcible transfer of the population were committed against whole communities, including pregnant women, elderly, sick and handicapped persons. These victims had to leave their homes. There were children of all ages who together with their parents had to seek refuge in the bush where they had been staying in harsh conditions living with limited shelter and food for a prolonged period of time.⁸⁹

44. The third aggravating circumstance is Mr Ntaganda's role and abuse of power.⁹⁰ It has been found by the Chamber that Mr Ntaganda had a unique and

⁸⁵ See the Trial Judgment, *supra* note 1, paras 873-874, and 896-897.

⁸⁶ *Idem*, para. 850.

⁸⁷ *Ibid.*, paras. 940, 954 and 974.

⁸⁸ See ICTR, *The Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-01-64-T, Trial Judgment, 17 June 2004, para. 345.

⁸⁹ See the Trial Judgment, *supra* note 1, para. 1002.

⁹⁰ See ICTY, *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgment, 2 August 2001, paras. 708-709. In this case, it was found that a high-rank position of command may be invoked as an aggravating factor. It was found that although a high rank in the military field does not, in itself, lead to a harsher sentence, but that a person who abuses or wrongly exercises power deserves a harsher sentence than an individual acting on his or her own. The consequences of a person's acts are necessarily more serious if he is at the apex of a military or political hierarchy and uses his position to commit crimes. See also ICTY, *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgment, 9 May 2007, para. 324: "What matters is not the position of authority taken alone, but that position coupled with the manner in which the authority was exercised; abuse of superior position may be considered an aggravating factor".

central role in the setting up of the UPC/FPLC,⁹¹ was among the key leaders of the UPC/FPLC,⁹² and his role was determinative in setting up an efficient military group.⁹³ Mr Ntaganda was in charge of the troops' deployment and operations, his orders were obeyed and he inspired fear over the troops as well as the population.⁹⁴ The UPC/FPLC military campaign was largely dependent upon Mr Ntaganda's personal involvement and commitment as one of the group's highest ranking military figures.⁹⁵ Mr Ntaganda took part in planning military operations, addressed to the troops in order to boost their morale, distributed weapons, gave orders to attack villages, and led military operations.⁹⁶ Being in a high rank position, Mr Ntaganda gave orders to target, to kill and to loot civilians, endorsed criminal conduct of his soldiers by way of his personal conduct, and with his own personal violent conduct towards civilians showed his troops how the orders were to be implemented.⁹⁷ Mr Ntaganda, who retained overall command, later on positively approved of the way his subordinates killed civilians in Kobu and congratulated his subordinate commander on a job well done.⁹⁸ Mr Ntaganda's subordinates, who were taught military skills and discipline, were trained to obey orders and therefore naturally proceeded with the commission of the crimes during the First and Second Operation as requested.⁹⁹

45. As such, Mr Ntaganda abused his role of hierarchical superior in a criminal fashion which resulted in grave abuses against the victims of the crimes.

46. Furthermore, Mr Ntaganda's intelligence and military education should also be considered as an aggravating circumstance¹⁰⁰ because they enabled him having

⁹¹ See the Trial Chamber, *supra* note 1, para. 852.

⁹² *Idem*, para. 827.

⁹³ *Ibid.*, para. 833.

⁹⁴ *Ibid.*, para. 828.

⁹⁵ *Ibid.*, para. 853.

⁹⁶ *Ibid.*, paras. 837, 839-840 and 842.

⁹⁷ *Ibid.*, paras. 849-851 and 855.

⁹⁸ See the Trial Judgment, *supra* note 1, para. 638.

⁹⁹ *Idem*, para. 855.

¹⁰⁰ The ICTY Appeals Chamber held that "intelligence and good education may be considered as possible aggravating circumstances." See ICTY, *The Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-

full insight into the context in which the crimes were committed as well as a thorough understanding of the nature of the criminal acts.

47. The Legal Representative further submits that Mr Ntaganda's behaviour in detention should also constitute an aggravating factor, especially as regards the intimidation of witnesses.¹⁰¹ While in detention, Mr Ntaganda seriously interfered with the administration of justice, threatened witnesses, shared confidential information and gave instructions with a view to intimidating Prosecution witnesses.¹⁰² In addition, Mr Ntaganda refused to attend court hearings because of restrictions imposed on his family visits,¹⁰³ which was a sign of disrespect to both justice and the victims, especially when knowing that many of them had been deprived of ever meeting their loved ones again because they had been killed by the UPC/FPLC soldiers.

vi. Mitigating Factors

48. The Legal Representative submits that none of the mitigating factors invoked by the Defence should be given any significant weight in the determination of the appropriate sentence. It is indeed submitted that in considering mitigating circumstances, the Chamber should be mindful of the fact that beyond his initial surrender to the Court, Mr Ntaganda has in no relevant way cooperated with the Prosecutor. The significant lapse of time between the issuance of the warrants of

08-91-A, Appeal Judgment, 30 June 2016, para. 1123 referring to *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Appeal Judgment, para. 328.

¹⁰¹ See ICTY, *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Appeal Judgement, 20 February 2001, para. 789.

¹⁰² See the "Public redacted version of Decision on Prosecution requests to impose restrictions on Mr Ntaganda's contacts", No. ICC-01/04-02/06-785-Red, 18 August 2015, para. 6. After review, the measures were largely maintained by virtue of the "Public redacted version of 'Decision reviewing the restrictions placed on Mr Ntaganda's contacts'" (Trial Chamber VI), No. ICC-01/04-02/06-1494-Red3, 7 September 2016. The restrictions were only lifted after the conclusion of hearing evidence in the case. See the "Public redacted version of 'Decision on the present restrictions on Mr Ntaganda's contacts'", No. ICC-01/04-02/06-2236-Red, 19 February 2018.

¹⁰³ See Oral Decisions of Trial Chamber VI of 8 Sept 2016, ICC-01/04-02/06-T-126-ENG ET WT, pp. 9-10; ICC-01/04-02/06-T-135-Red-ENG ET, 20 September 2016, pp. 26, 27, ICC-01/04-02/06-T-136-Red-ENG WT.

arrest¹⁰⁴ and his surrender on 22 March 2013¹⁰⁵ should also be taken into consideration when weighing this factor. Moreover, his surrender was merely the fulfilment of a legal obligation.

49. The age of Mr Ntaganda's children, and the fact that he is married should not be given disproportionate weight in terms of mitigation when balanced against the grave and weighty aggravating circumstances set out *supra*.

vii. Good character evidence

a. Efforts at pacification

50. The Defence's submission of additional evidence in an effort to demonstrate Mr Ntaganda's alleged dedication to pacification efforts in Ituri is futile in various respects. It has been found by the Chamber that despite the statements by UPC/FPLC officials including Mr Ntaganda ostensibly promoting peace, security and reconciliation for all civilians without discrimination, their real goal was "*to actively chase away [...] those who were perceived as non-Iturians*",¹⁰⁶ but also the Lendu,¹⁰⁷ and that UPC/FPLC commanders were instructed to target Lendu civilians and their property specifically.¹⁰⁸ The Chamber also found beyond reasonable doubt that Mr Ntaganda "*agreed and worked with others to achieve their plan to drive out all the Lendu from the localities targeted during the course of the First and Second Operation*"¹⁰⁹ and that he intentionally targeted a civilian on ethnic grounds, i.e. by reason of his identity as a Lendu.¹¹⁰ The Chamber also found not credible Mr Ntaganda's similar statements made during his testimony.¹¹¹ It should also be recalled that the Sangi meeting had

¹⁰⁴ The first warrant of arrest for Bosco Ntaganda was issued on 22 August 2006 (No. ICC-01/04-02/06-1); the second warrant was issued on 13 July 2012 (No. ICC-01/04-02/06-2).

¹⁰⁵ See the "Urgent Decision on Setting the Date for the Initial Appearance and Related Issues", No. ICC-01/04-02/06-41, 22 March 2013, para. 7.

¹⁰⁶ See the Trial Judgment, *supra* note 1, para. 686.

¹⁰⁷ *Idem*, paras. 687 and 1022.

¹⁰⁸ *Ibid.*, para. 807.

¹⁰⁹ *Ibid.*, para. 1177.

¹¹⁰ *Ibid.*, para. 749.

¹¹¹ *Ibid.*, para. 261.

been arranged with the pretext of discussing pacification and reconciliation and ultimately resulted in the heinous massacre of civilians.

51. The evidence adduced by the Defence at sentencing stage, first relates to alleged efforts that post-date the relevant temporal scope of the commission of the offences and secondly, is incapable of constituting mitigating circumstances. For instance, according to D-0020, Mr Ntaganda gathered officers around mid-2004 to convey to them that the time of military confrontations was *over*,¹¹² and that the time for disarmament and integration into the national army had come. If anything, this statement shows that Mr Ntaganda regarded as accomplished his aim of attacking and chasing out the Lendu population. That he would have engaged in ‘pacification’ efforts *thereafter* is entirely incapable of mitigating his sentence.

52. D-0306’s evidence, if anything, demonstrates merely that the UPC/FPLC undertook strategic efforts to appease two armed groups, namely the FPLC and FNI in order to lift disadvantageous trade and free movement restrictions in Ituri.¹¹³ The fact that this ‘pacification’ concerned nothing but a strategic military alliance is further illustrated by the fact that FNI officials were invited to a military occasion, namely a ‘rank conferring ceremony’¹¹⁴ and ensuing get together of the leaders of both movements. As such, the pacification between two armed groups cannot credibly constitute evidence of genuine pacification efforts between the Hema and Lendu ethnic groups as such. Indeed, during the trial the Chamber also heard evidence on the ever-changing alliances between various armed groups, including the fate of the APC from being founded by Ntaganda to becoming the UPC/FPLC’s enemy.¹¹⁵ Mr Ntaganda only travelled to meetings held in Hema villages and had

¹¹² See No. ICC-01/04-02/06-2397-AnxA, para. 15: “Vers le milieu de l’année 2004, Bosco Ntaganda a réuni tous les officiers pour leur dire que ce n’était plus le moment des hostilités et qu’il fallait dorénavant nous tourner vers le désarmement, la démobilisation ou l’intégration dans l’armée nationale (“FARDC”).”

¹¹³ See the transcript of the hearing of 18 September 2019, No. ICC-01/04-02/06-T-267-CONF-ENG-ET, pp. 16, 20, 22 and 25.

¹¹⁴ *Idem*, p. 21. See also DRC-OTP-0018-0002, 19:30-20:14.

¹¹⁵ Mr Ntaganda testified that he was not only the founder but also the head of the APC prior to co-founding the Chui Mobile Force. See No. ICC-01/04-02/06-T-212-CONF-ENG-ET, 16 June 2017, pp. 24, 38-39. See also evidence about clashes between APC and UPC/FPLC: DRC-OTP-0074-0422, pp. 0074-

never visited any village affected by the events, such as Mongbwalu, Lipri or Kobu. The Defence has neither established genuine efforts of pacification, nor Mr Ntaganda's role in said efforts.

53. Lastly, D-0047's evidence should be wholly discarded when it comes to pacification efforts. The account given was nothing more than a summary of UPC propaganda and baseless accusations against MONUC staff.¹¹⁶ Contrary to his assertions, documentary evidence originating from MONUC demonstrates that MONUC deplored Mr Ntaganda's obstructiveness and his abandoning of pacification efforts in 2004.¹¹⁷

b. Re-integration of UPC/FPLC elements into the national armed forces

54. No credit in mitigation can be attached to Mr Ntaganda's alleged role in the re-integration of UPC/FPLC elements into the national Congolese army. His own witnesses to that effect stated that (i) re-integration was conducted on a voluntary basis;¹¹⁸ (ii) it was Mr Ntaganda's secretary Peter who was in charge of it;¹¹⁹ and (iii) when the UPC became a political party on 2 July 2004, it was required to comply with the law that forbade political parties to have armed wings and required the re-integration of its FPLC elements into the national army.¹²⁰

c. General character evidence

55. Mr Ntaganda's attempts of portraying his good character are entirely fruitless in light of the overwhelming evidence to the contrary. Indeed, the Chamber's

0468 to 0074-0470; DRC-OTP-2082-2127; DRC-OTP-0065-0148, p. 2, DRC-OTP-2102-3966 (middle message). See also P-0017, T-58-Red-ENG-CT-WT, 28 January 2016, pp. 18-19; P-0907, T-91-Red-ENG-WT, 28 April 2016, pp. 29-30; P-0109, T-96-Red-ENG-WT, 6 June 2016, pp. 46-47; P-0790, T-56-Red-ENG-WT, 21 January 2016, pp. 31-32; P-0010, T-46-Red-ENG-WT, pp. 29-30; P-0792, T-150-CONF-ENG-ET, 10 October 2016, p. 44; P-0190, T-97-CONF-ENG-CT, 7 June 2016, p. 11.

¹¹⁶ See the transcript of the hearing of 18 September 2019, No. ICC-01/04-02/06-T-267-CONF-ENG-ET, pp. 70, 72, 81, 82-84, 95, 99-100 and 111-112.

¹¹⁷ See DRC-OTP-0142-0042.

¹¹⁸ See No. ICC-01/04-02/06-2397-AnxA, para. 16.

¹¹⁹ *Idem*, para. 19.

¹²⁰ See the transcript of the hearing of 18 September 2019, No. ICC-01/04-02/06-T-267-CONF-ENG-ET, pp. 55-56.

findings on Mr Ntaganda's approving the offences committed, actively praising the commission of offenses,¹²¹ and personally committing grave offences such as the murder of priest Bwanalunga,¹²² and ordering artillery fire on a column of civilians¹²³ stand in stark contrast with his attempts to save his reputation at this stage of the proceedings.

56. Moreover, D-0047, who himself was the object of MONUC complaints in relation to his obstructive behaviour and treatment of civilians,¹²⁴ cannot credibly attest to Mr Ntaganda's good character.

57. Evidence of Mr Ntaganda's discipline and the discipline he enforced in his unit¹²⁵ is equally incapable of portraying a positive image of Mr Ntaganda. Discipline as such and without more is incapable of demonstrating good character. More importantly, when it is established by evidence – as in the present case – that the 'discipline' was used to a criminal end, namely to ensure the almost automatic compliance with criminal orders,¹²⁶ discipline in the troops cannot be invoked as evidence of Mr Ntaganda's good character through leadership.

58. D-0305's evidence as to Mr Ntaganda's respectful treatment of women and general character evidence should also be rejected. D-0305, [REDACTED] cannot credibly testify to Mr Ntaganda's behaviour towards non-Hema civilians not sharing the ideology of the movement.

59. D-0302 who made bold statements as to Mr Ntaganda's noble character, portrayed him as a role model and "better [REDACTED]", when in fact it is abundantly clear that he could not have had any real, actual knowledge of Mr Ntaganda's character and behaviour by the simple fact that he was stationed and

¹²¹ See the Trial Judgment, *supra* note 1, para. 1185.

¹²² *Idem*, paras. 533 and 850.

¹²³ *Ibid.*, paras. 508 and 848.

¹²⁴ See DRC-OTP-0151-0306.

¹²⁵ See e.g. No. ICC-01/04-02/06-2397-AnxA, paras. 21-22.

¹²⁶ See the Trial Judgment, *supra* note 1, paras. 852-853 and 855.

carrying out his functions [REDACTED] at another location¹²⁷ and only ‘met’ Ntaganda once – the remainder of his assessment being based on anonymous hearsay and his own opinions and conclusions on the state of the FPLC rather than actual familiarity with Mr Ntaganda as a person.

60. In this regard, it should be emphasised that Mr Ntaganda has at all times denied his guilt, has never shown any remorse for crimes committed by the UPC/FPLC, and has failed to cooperate with the Court in any significant way. He has never shown any compassion to the victims. His unsworn statement to the effect that he felt sorry for all the victims of the conflict is too little, too late and too unspecific¹²⁸ to even come close to anything resembling remorse for the specific victims recognised in this case.

d. Conduct while in detention

61. As regards the Registry’s general submissions on Mr Ntaganda conduct while in detention,¹²⁹ and in particular Mr Ntaganda’s ‘exemplary’ behaviour whilst in the ICC Detention Centre, this assessment should not be taken in isolation and overshadow the pertinent aggravating circumstances listed above. Good behaviour while in detention should be the norm, not a special achievement.

62. As regards the specific information about Mr Ntaganda’s conduct and behaviour [REDACTED] the Legal Representative does not dispute that Mr Ntaganda’s positive involvement deserves consideration in mitigation. Yet, this does, as such, not off-set any of the serious considerations in aggravation. Overall, whilst deserving of due recognition, this factor can only be given limited weight.

¹²⁷ See No. ICC-01/04-02/06-2397-Conf-AnxB, para. 26 : “[...] *Je suis resté là-bas au moins un an, mais Bosco NTAGANDA est parti pour Goma presque tout de suite. [...]*”.

¹²⁸ See the transcript of the hearing of 20 September 2019, No. ICC-01/04-02/06-T-268-CONF-FRA ET, pp. 60-61.

¹²⁹ See the “Confidential Annex to the Registry’s Report on Mr Ntaganda’s Solvency and Conduct While in Detention”, No. ICC-01/04-02/06-2367-Conf-Anx, 27 July 2019.

V. CONSULTATIONS WITH VICTIMS

63. Following consultations with the victims, the majority of them expressed their wish for a joint sentence of life imprisonment to be imposed upon Mr Ntaganda. Only a minority of the victims expressed a view that a sentence of 30 years to be sufficient for the crimes committed. As regards individual sentences, in the victims' view the minimum sentence should not be less than 20 years, and a sentence for crimes of murder, rape and sexual slavery should not be less than 30 years.

VI. CONCLUSION

64. For the above reasons, the Legal Representative respectfully requests that Mr Ntaganda be sentenced to life imprisonment.

RESPECTFULLY SUBMITTED



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 24th Day of January 2020

At The Hague, The Netherlands