

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Sentencing Hearing - Courtroom 1
7 Thursday, 7 November 2019
8 (The hearing starts in open session at 10.03 a.m.)
9 THE COURT USHER: [10:03:43] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [10:04:35] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [10:04:40] Thank you, Mr President, your Honours.
15 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
16 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 For the record, we are in open session.
18 PRESIDING JUDGE FREMR: [10:04:57] Thank you, court officer.
19 First of all, I would like to welcome back the parties, the participants and
20 Mr Ntaganda, the accused, and I also welcome those who are watching this hearing
21 from the public gallery and via the internet.
22 Before we go into purpose of this hearing, please state the appearances for the record
23 and the public starting with Prosecution, please.
24 MS SAMSON: [10:05:30] Good morning, Mr President. Good morning, your
25 Honours. For the Prosecution today are Ms Julieta Solano, Ms Marion Rabanit,

1 Mr Rens van der Werf, Ms Selam Yirgou and myself Nicole Samson.

2 PRESIDING JUDGE FREMR: [10:05:46] Thank you, Ms Samson.

3 Defence, please.

4 MR BOURGON: [10:05:50] *Bonjour, Monsieur le Président, bonjour, honorables juges.*

5 *Représentant Bosco Ntaganda, qui est présent dans la salle d'audience ce matin, Mme Océane*

6 *Mlanao, Mme Clémence Volle-Marvaldi, Mme Amanda Martinez, Mme Margaux Portier,*

7 *Maître Mélissa Beaulieu-Lussier, Maître Christopher Gosnell, et moi-même,*

8 *Stéphane Bourgon. Merci, Monsieur le Président.*

9 PRESIDING JUDGE FREMR: [10:06:23] *Merci beaucoup, Mr Bourgon.*

10 Now Legal Representatives for Victims, please.

11 MS PELLET: [10:06:29] *Merci, Monsieur le Président. Les anciens enfants soldats sont*

12 *représentés par Alejandro Kiss, Anna Bonini, et moi-même, Sarah Pellet, conseil au*

13 *Bureau du conseil public pour les victimes.*

14 MS GRABOWSKI: [10:06:44] Good morning, Mr President. Good morning, your

15 Honours. For the victims of the attacks, Anne Grabowski.

16 PRESIDING JUDGE FREMR: [10:06:50] Thank you, Ms Pellet.

17 Thank you, Ms Grabowski.

18 And Registry.

19 MR LEWIS: [10:06:58] Good morning, Mr President. Good morning, your Honours.

20 I introduce Bibiana Becerra and myself Peter Lewis on behalf of the Registry.

21 PRESIDING JUDGE FREMR: [10:07:07] Thank you, Mr Lewis.

22 To make appearance complete, the Chamber is composed of Judge Kuniko Ozaki on

23 my right, Judge Chang-ho Chung on my left and myself Judge Robert Fremr.

24 The Chamber is today assisted by legal officers, from the left, legal intern

25 Ms Dainyah Mason, then our visiting professional Ms Barbora Hola, then legal officer

1 Nicole Fitzsimons, legal officer Mr Rogier Bartels and legal officer Ms Raluca Racasan
2 just on the right.

3 Today, the Chamber is going to render its sentencing judgment pursuant to Article 76
4 of the Rome Statute in the case of the Prosecutor versus Bosco Ntaganda.

5 The sentencing judgment is 117 pages and has one annex. I will now read out just a
6 summary of the sentencing judgment which is meant to convey those findings that
7 we considered most relevant to the accused and the public and the sentence
8 determined by the Chamber. The full written sentencing judgment will be made
9 available as soon as this hearing has concluded, and it's a fully public document.

10 I will start with a brief procedural overview.

11 On 8 July 2019, the Chamber convicted Mr Bosco Ntaganda of various crimes against
12 humanity and war crimes. This case concerns the conduct of Mr Ntaganda, as a
13 member of the *Union des Patriotes Congolais*, which I will refer to as the UPC, and its
14 military wing, the *Forces Patriotiques pour la Libération du Congo*, which I will refer to as
15 the FPLC, in relation to events that took place in the Ituri district of the Democratic
16 Republic of Congo in 2002 and 2003.

17 On or about 20 November 2002, the UPC/FPLC launched an assault on Mongbwalu,
18 which is in the Banyali-Kilo *collectivité*. After it took over Mongbwalu, the
19 UPC/FPLC also captured Sayo, Kilo and Nzebi. In February 2003, the UPC/FPLC
20 launched a coordinated series of assaults on several villages in the Walendu-Djatsi
21 *collectivité*, and took control over the villages of Lipri, Tsili, Kobu, Bambu, Buli, Gola,
22 Jitchu, and Nyangarai, as well as some surrounding places. The majority of the
23 crimes that Mr Ntaganda was convicted of were committed during these two
24 operations.

25 In addition, Mr Ntaganda was convicted for the conscription and enlistment of

1 children under the age of 15, and their active use in hostilities, as well as for the rape
2 and sexual slavery of some of these children.

3 The Chamber convicted Mr Ntaganda as a direct perpetrator pursuant to Article
4 25(3)(a) of the Statute for one murder as a crime against humanity and as a war crime,
5 and for persecution as a crime against humanity. He was convicted as an indirect
6 co-perpetrator pursuant to the same provision for the other murders and acts of
7 persecution, as well as for all of the other crimes.

8 On the same day as it delivered the judgment, the Chamber ordered the Prosecution,
9 the Defence and the Legal Representatives of Victims to file any requests to submit
10 further evidence or to call witnesses in relation to sentencing by 29 July 2019.

11 Following requests from the parties, the Chamber authorised three witnesses to
12 testify before the Chamber in person, and admitted into evidence the prior recorded
13 testimony of five more witnesses, as well as several documents and videos.

14 On 17, 18 and 20 September 2019, the Chamber held a public hearing on sentencing,
15 during which it heard the aforementioned three witnesses and oral submissions of the
16 parties and the Legal Representatives of Victims on the sentences to be pronounced.

17 On 30 September 2019, the parties and Legal Representatives filed their written
18 submissions on the sentencing, and responded to each other on 8 October 2019.

19 I will now briefly set out the legal framework that the Chamber has applied for this
20 judgment.

21 The Court's statutory framework establishes a comprehensive scheme for the
22 determination of a sentence. Although Articles 77 and 78 of the Statute do not
23 specify the purpose of punishment for crimes under the Statute, the preamble
24 establishes retribution and deterrence as the primary objectives of punishment at the
25 Court. Retribution must not be understood as fulfilling a desire for revenge,

1 however, it rather is an expression of the international community's condemnation of
2 the crimes. By imposing a proportionate sentence, the harm caused to the victims is
3 also acknowledged. A sentence should further be adequate to discourage
4 reoffending and to deter those who may consider committing similar crimes from
5 doing so.

6 The Court's legal framework does not contain mandatory minimum or maximum
7 sentences, or sentence ranges, for specific crimes. Article 78(3) does, however,
8 provide that any joint sentence of imprisonment may not exceed 30 years, unless the
9 extreme gravity of the crime and the individual circumstances of the convicted person
10 warrant a term of life imprisonment. The Chamber enjoys broad discretion in
11 determining the sentence, but the totality of the sentence must be proportionate and
12 reflect the culpability of the convicted person.

13 Basing itself primarily on its findings in the judgment, the Chamber considered the
14 gravity of the crimes first generally, *in abstracto*, by assessing the constitutive elements
15 of each crime in general terms, and then *in concreto*, by assessing the particular
16 circumstances of the case, looking at the degree of harm caused by each crime and
17 Mr Ntaganda's culpability in relation thereto. The sentence must also reflect the
18 individual circumstances of the convicted person, including any aggravating and
19 mitigating factors. In the case of aggravating factors, the Chamber did not rely on
20 the same factor more than once, and any factors it assessed in relation to the gravity of
21 the crimes were not considered as aggravating circumstances and vice versa.

22 I will now turn to the main findings on the crimes Mr Ntaganda was convicted of. I
23 will start with our findings on his culpability.

24 At the outset, the Chamber recalls that Mr Ntaganda was found guilty as an indirect
25 co-perpetrator for the crimes charged with the first and second operation. Those

1 crimes were charged under Counts 1 to 5, 7 to 8, 10 to 13 and 17 to 18, with the
2 exception of sexual slavery as charged under Counts 7 and 8, and attacking a
3 protected object under Count 17. These crimes were committed during both the first
4 operation and the second one.

5 The Chamber found that Mr Ntaganda and his fellow indirect co-perpetrators agreed
6 to drive out the Lendu from the attacked localities. They therefore meant for
7 civilians to be attacked and killed, for their property to be appropriated and
8 destroyed, for civilians to be raped and subjected to sexual slavery, for civilians to be
9 forcibly displaced, for protected objects to be intentionally attacked, and for the
10 aforementioned conduct to be targeted towards the Lendu civilian population as such,
11 which thereby amounted to persecution.

12 While Mr Ntaganda's degree of participation in the first and second operation varied,
13 as I will explain later, his degree of intent in relation to the crimes committed during
14 both operations was the same.

15 As far as Mr Ntaganda's degree of participation in the crimes committed during the
16 first operation and the second operation is concerned, the Chamber considered his
17 participation as part of its assessment of the *in concreto* gravity of his culpable conduct.

18 In this respect, the Chamber recalls that it found in the judgment that the first and
19 second operation were part of one and the same plan to drive out all the Lendu from
20 the localities targeted during the course of the UPC/FPLC military campaign against
21 the RCD-K/ML.

22 The UPC/FPLC soldiers' acts during these two successive operations form part of the
23 same course of conduct. As a tool in the hands of the co-perpetrators, the conduct of
24 the individual UPC/FPLC soldiers in the execution of the crimes was attributed to the
25 co-perpetrators as their own.

1 The Chamber further recalls that Mr Ntaganda gave orders to commit crimes and
2 personally engaged in violent conduct towards the enemy. The Chamber only
3 found this in relation to the first operation, but this was just one of the ways through
4 which Mr Ntaganda contributed to the common plan.

5 The Chamber considered his culpability for the crimes committed during both the
6 first operation and the second operation to be high, irrespective of whether he was in
7 close physical proximity to the locations where the crimes were physically committed,
8 and also in instances where he did not have previous contemporaneous or
9 subsequent knowledge of the specifics of the crimes committed.

10 Mr Ntaganda's culpability in relation to crimes found to have been committed during
11 the second operation is therefore not less or diminished, as compared to his general
12 culpability for the crimes that were committed during the first operation. Rather, the
13 fact that during the first operation he gave orders to commit crimes and personally
14 engaged in violent conduct towards the enemy, as set out in the judgment, is a factor
15 which, in the view of the Chamber, further increases his culpability.

16 The Defence argued that all of Mr Ntaganda's contributions to the second operation
17 were directed towards a lawful military purpose of the second operation. However,
18 the Chamber recalls that the first and second operation were part of the same military
19 campaign and constituted a logical succession of events. The success of the
20 UPC/FPLC's assault on Mongbwalu, which was coordinated by Mr Ntaganda,
21 allowed it to continue with the commission of crimes against the targeted groups
22 during both operations.

23 Now I will first discuss the crimes against life that Mr Ntaganda was convicted of.
24 As regards murder as a crime against humanity and as a war crime, Mr Ntaganda
25 was found to be responsible as a direct perpetrator for the murder of

1 Abbé Bwanalunga in Mongbwalu during the first operation. The Chamber also
2 found Mr Ntaganda responsible as an indirect co-perpetrator for murders committed
3 by UPC/FPLC soldiers, and in one location also by Hema civilians, during the course
4 of the first and second operation.

5 In determining the appropriate sentence, the Chamber took into account the fact that
6 the same conduct underlies Mr Ntaganda's convictions for both murder as a crime
7 against humanity, charged under Count 1 and murder as a war crime, which was
8 charged under Count 2.

9 Murder is inherently one of the most serious crimes. The Chamber convicted
10 Mr Ntaganda of the murder of at least 74 individuals and the attempted murder of
11 five more, in addition to making broader findings of murders of unquantified
12 numbers of persons. This means that murder was committed on a large scale.

13 As to the harm caused by these murders, the Chamber received evidence from a
14 witness who knew Abbé Bwanalunga personally. This person indicated that Abbé's
15 death became notorious among the clergy and the population. To this day, the three
16 nuns who were abducted together with Abbé refuse to speak about what they
17 witnessed.

18 In addition to the direct victims, the murders irreversibly impacted also those who
19 witnessed them, the witness's family members and other relatives left behind. Some
20 individuals who survived or witnessed the murders and attempted murders still bear
21 permanent scars, both physical and psychological, including long-term memory loss,
22 neurological disturbances and extensive physical scarring.

23 Mr Ntaganda's degree of culpability is substantial in relation to the murders and
24 attempted murders committed during both operations, and his degree of
25 participation was even higher during the first operation due to his proximity to and

1 intensity of his involvement in the murders committed during this operation.

2 The Chamber further identified the following factors in aggravation: The particular
3 cruelty of a number of incidents; the particular defencelessness of some of the victims;
4 and in relation to the murder of Abbé Boniface Bwanalonga, the fact that
5 Mr Ntaganda as a high-ranking official committed the murder in the presence of his
6 subordinates. As regards Abbé's murder, the Chamber also considered
7 Mr Ntaganda's discriminatory intent.

8 The Chamber further found Mr Ntaganda responsible as an indirect co-perpetrator
9 for intentionally directing attacks against civilians in Mongbwalu and Sayo in the
10 context of the first operation, and in Bambu, Jitchu and Buli in the context of the
11 second operation.

12 The crime of intentionally attacking civilians is a serious violation of one of the
13 fundamental principles of international humanitarian law. And as a crime which
14 does not require an actual harm to occur for the elements of the crime to be
15 established, the Chamber considered it to be less serious than those crimes against life
16 that require the actual occurrence of that harm, such as murder.

17 Civilians were intentionally attacked in five locations during both the first and the
18 second operation. The crime was therefore committed on a relatively large scale.

19 The Chamber considered Mr Ntaganda's degree of culpability to have been
20 substantial in relation to the aforementioned attacks. Part of the attacks took place
21 during the assaults in Mongbwalu and Sayo, which were overseen by Mr Ntaganda,
22 and on one occasion, Mr Ntaganda directly ordered a soldier to fire at a group of
23 fleeing persons. The Chamber therefore considered his degree of participation
24 during the first operation to be even higher. While the crime of intentionally
25 attacking civilians is committed by the mere launching of an attack, the Chamber

1 identified that in some instances, as a result of the attacks launched, civilians were in
2 fact killed or injured. This was treated as an aggravating circumstance.

3 I now turn to sexual violence crimes. The Chamber found Mr Ntaganda responsible
4 for sexual violence crimes committed against two distinct types of victims: Namely,
5 members of the civilian population, this was charged under Counts 4, 5, 7 and 8; and
6 second, against female UPC/FPLC members under the age of 15. This was charged
7 under Counts 6 and 9. Noting the different factual considerations relevant to the
8 two types of victims, the Chamber analysed the two types of victims separately and
9 pronounces a separate sentence for rape and sexual slavery as war crimes for the
10 civilian victims and for the UPC/FPLC victims.

11 In relation to the crimes committed against members of the civilian population, the
12 Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for rapes by
13 UPC/FPLC soldiers of women, girls and men during and in the aftermath of the
14 UPC/FPLC assaults on Mongbwalu and in Kilo in the context of the first operation,
15 and in Kobu, Sangi, and in Buli in the context of the second operation. The overall
16 number of specific rape victims was 21, but the Chamber also made broader findings
17 on rapes of unquantified numbers of persons. In addition, the Chamber found
18 Mr Ntaganda responsible as an indirect co-perpetrator for the sexual slavery of a
19 woman and of an 11-year-old girl in the context of the second operation.

20 In relation to the crimes committed against female UPC/FPLC members under the age
21 of 15, the Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for
22 the rape of an approximately nine-year-old girl and the rape and sexual slavery of
23 two girls under 15 years of age.

24 For the purpose of its analysis, the Chamber took into account the fact that for the
25 sexual violence crimes committed against members of the civilian population, the

1 same conduct underlies Mr Ntaganda's convictions for both rape as a crime against
2 humanity and rape as a war crime. This is also the case for the convictions for sexual
3 slavery as a crime against humanity and sexual slavery as a war crime.

4 The Chamber also took into account that its findings in the judgment on the second
5 legal element of sexual slavery, namely, that the victims were made to engage in one
6 or more acts of a sexual nature, were based on the rapes committed against them.

7 This part of the conduct underlying the convictions for rape and sexual slavery is
8 therefore the same. The Chamber's assessment of sexual slavery for both the civilian
9 and female members of the UPC/FPLC under the age of 15 therefore encompasses
10 only the additional element of the exercise of power of ownership.

11 The Court's legal framework accords a special status to sexual violence crimes, crimes
12 against children and the victims thereof. During the drafting process of the Rome
13 Statute, the especially grave nature and consequences of sexual violence crimes, in
14 particular against children, were recognised. The rape and sexual slavery of
15 civilians and of the UPC/FPLC members under the age of 15 in the case are indeed
16 very serious crimes.

17 The number of civilian victims of rape in particular is substantial. While the number
18 of female UPC/FPLC victims under the age of 15 is lower, their rapes were systematic
19 and, for the UPC/FPLC victims subjected to sexual slavery, their deprivation of liberty
20 lasted longer than for the civilian victims.

21 Victims suffered physical, psychological, psychiatric, and social consequences, such
22 as ostracisation, stigmatisation and social rejection, both in the immediate and longer
23 term. For example, a 13-year-old victim of rape from Mongbwalu suffered injuries
24 which took several months to heal and required surgery years later. She incurred a
25 long-lasting fear which caused her to drop out of school. A psychological expert

1 who testified before the Chamber assessed two civilian victims of rape and one
2 civilian victim of rape and sexual slavery. She found that they suffer from
3 post-traumatic stress disorder, experience issues with sexuality and distortions of
4 self-image.

5 Children under the age of 15 who were subjected to sexual violence when they were
6 members of the UPC/FPLC similarly suffered physical and psychological
7 consequences, including sexually transmitted diseases and unwanted pregnancies.

8 Mr Ntaganda's level of intent and participation was substantial as far as the sexual
9 crimes against civilians are concerned. While his degree of intent in relation to the
10 commission of the sexual crimes against child soldiers was lower than for the sexual
11 crimes against civilians, his degree of participation in their commission was

12 significant. The Chamber further identified the following factors in aggravation for
13 the civilian victims: The particular defencelessness of the civilian victims of rape
14 and sexual slavery, and specifically as to rape, the repeated victimisation of some of
15 the victims, as well as the particular cruelty of commission in a number of incidents.

16 For the female UPC/FPLC victims under the age of 15, the Chamber considered the
17 particular defencelessness of the victims and the repeated nature of the victimisation
18 as aggravating factors.

19 In determining the sentence for sexual slavery of both the civilian and female
20 UPC/FPLC soldier victims under the age of 15, the Chamber considered only the
21 additional element of exercise of a power of ownership, because the sexual violence
22 they suffered was already considered and reflected in the sentence for rape.

23 Now I turn to crimes against property and civilian objects.

24 As regards pillage, the Chamber found Mr Ntaganda responsible as an indirect
25 co-perpetrator for the appropriation of items during the first operation in Mongbwalu

1 and Sayo by UPC/FPLC soldiers, and in Mongbwalu also by Hema civilians. He was
2 further convicted for the pillaging by UPC/FPLC soldiers in Kobu, Lipri, Bambu, and
3 Jitchu, and the context of the second operation -- in the context of the second
4 operation. Many civilians were affected by the looting and they were sometimes left
5 without anything.

6 The Chamber further found Mr Ntaganda responsible as an indirect co-perpetrator
7 for intentionally directing an attack against a protected object, namely the health
8 centre in Sayo, in the context of the first operation. Especially in times of armed
9 conflict and during ongoing hostilities, when as a result of the fighting more persons
10 become injured or wounded, the protection of medical facilities must be respected.
11 Attacking such structures disrupts the ability of medical personnel to care for the sick
12 and wounded. Indeed, when the Sayo health centre was attacked, five patients, who
13 were unable to leave by themselves, were left without medical care. This was
14 considered to be an aggravating factor by the Chamber.

15 Mr Ntaganda was also convicted as an indirect co-perpetrator for destroying by
16 shelling or burning of houses and buildings in or around eight towns and villages.
17 This crime was therefore committed on a significant scale and with a considerable
18 geographical spread of the criminal conduct. Destroying one's house deprives the
19 victim of a private place, a shelter, and a sense of security.

20 Now I turn to the next crimes.

21 The Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for
22 forcible transfer of population in Mongbwalu in the context of the first operation, and
23 in Lipri, Tsili, Kobu, and Bambu in the context of the second operation. It also found
24 Mr Ntaganda responsible as an indirect co-perpetrator for ordering the displacement
25 of the civilian population in these same locations.

1 Forcible transfer of population as a crime against humanity is *in abstracto* more serious
2 than ordering the displacement of the civilian population as a war crime as the latter
3 is committed by ordering alone.

4 In the circumstances of the present case, the coercive acts which caused the transfer of
5 the population in the course of the first and second operation are the same acts on the
6 basis of which Mr Ntaganda was convicted for the crimes charged under Counts 1 to
7 5, 7, 8, 11, and 17 to 18. In determining the sentence for the crime against humanity
8 charged under Count 12, the Chamber therefore only considered the additional
9 element of forcible transfer of one or more persons from the area in which they were
10 lawfully present without grounds permitted under international law.

11 The number of persons affected by forcible transfer was significant and part of those
12 who fled into the bush had to endure harsh living conditions. Moreover, a great
13 number of those who fled Mongbwalu during the first operation arrived in localities
14 from which individuals were later again forcibly transferred.

15 Mr Ntaganda's degree of culpability was substantial in relation to the aforementioned
16 crimes committed during both the first and second operation while, in the view of the
17 Chamber, his degree of participation was even higher during the first operation due
18 to his presence in the field and his direct order to displace.

19 Having considered all other crimes committed against the Lendu, I now turn to the
20 remaining crime that specifically targeted the Lendu as a group, which is persecution
21 as a crime against humanity.

22 The Chamber found Mr Ntaganda responsible for persecution as a direct perpetrator
23 by killing Abbé Bwanalanga in Mongbwalu in the context of the first operation. It
24 also found him responsible for this crime as an indirect co-perpetrator during the first
25 and second operation in, respectively, four and nine towns and villages.

1 Persecution is one of the most serious crimes against humanity as it amounts to denial
2 of fundamental rights of one or more persons by virtue of the fact that they belong to
3 a particular group or collectivity.

4 In the circumstances of the present case, while acknowledging the gravity of the crime,
5 the Chamber notes that the same conduct underlies Mr Ntaganda's conviction for
6 persecution and his conviction for the crimes committed against the Lendu in the
7 context of the first and second operation, that is Counts 1 to 5, 7 to 8, 11 to 13, and
8 17 to 18. What differentiates the aforementioned crimes from persecution is the
9 additional legal element of discriminatory intent, required to be proven for
10 persecution. However, in this respect, as far as commission as an indirect
11 co-perpetrator is concerned, the conduct of the underlying crimes was pursuant to a
12 common plan and organisational policy that also contained a discriminatory element
13 against the Lendu. As far as commission as a direct perpetrator is concerned, the
14 Chamber already took into account that Mr Ntaganda's murder of the Abbé had a
15 discriminatory dimension.

16 In these circumstances, the Chamber considers that the sentence imposed on
17 Mr Ntaganda for the crime of persecution, both as direct perpetrator and as an
18 indirect co-perpetrator, should not be higher than the highest sentence imposed on
19 him for the underlying crimes amounting to persecution.

20 Having addressed the crimes committed against the Lendu, I now turn to the
21 remaining crimes, those committed against children under the age of 15 who were
22 recruited into the UPC/FPLC.

23 I recall that I already addressed the sexual violence crimes committed against some of
24 the children in this armed group.

25 The Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for

1 conscripting and enlisting children under the age of 15 years into the UPC/FPLC
2 between on or about 6 August 2002 and 31 December 2003, and for using children to
3 participate actively in hostilities between on or about 6 August 2002 and 30 May 2003.
4 Children under 15 were used in the first operation and in the May 2003 assault on
5 Bunia as bodyguards for UPC/FPLC soldiers and commanders, including for
6 Mr Ntaganda himself and for UPC President Thomas Lubanga, and to gather
7 information about the opposing forces and MONUC personnel.
8 Enlistment, conscription, and use of children under 15 to participate actively in
9 hostilities are quite serious crimes, association with an armed group can have a
10 significant impact on children. The living conditions for the child recruits in the
11 training camps was harsh. They were subjected to threats, including to their life,
12 monitoring of movement, and severe punishments, including beatings and executions,
13 sometimes without apparent reason. A former child soldier testified that her future
14 had been compromised and her life had been ruined by the fact that her studies were
15 interrupted. Furthermore, using them in hostilities places them at additional risk.
16 Some of those who engaged in combat were made to kill people and some got shot at,
17 were injured, or died on the battlefield.
18 While Mr Ntaganda's degree of intent in relation to the commission of these crimes
19 were lower than in relation to the commission of crimes against the Lendu, his degree
20 of participation in their commission was significant. Among other things,
21 Mr Ntaganda was, throughout the relevant period, personally and actively involved
22 in the UPC/FPLC's recruitment and training process. The training fell under his
23 responsibility, and he regularly paid visits to the various training camps. Also,
24 Mr Ntaganda's personal escort also included at least three individuals under the age
25 of 15 who, for example, guarded his residence and compound, and participated in

1 combat operations with him.

2 The Chamber further identified the particularly harsh treatment of the recruits and
3 the fact that some of the victims were particularly defenceless as aggravating factors.

4 That completes the summary of the Chamber's considerations about the gravity of the
5 crimes Mr Ntaganda was convicted of and his culpability therefor.

6 I now turn to Mr Ntaganda's individual circumstances.

7 The Chamber considered a number of potentially mitigating circumstances in this
8 case. The Defence submitted that there were very powerful mitigating factors,

9 whereas the Prosecution and Legal Representatives of Victims submitted that there
10 were none warranting any reduction in sentence. In fact, some of the factors

11 submitted by the Defence were actually referred to by the Prosecution and one of the
12 Legal Representatives of Victims as factors that heighten the need for a high sentence.

13 The Prosecution referred in this regard to Mr Ntaganda's age, his position and
14 experience, and his history with the Rwandan genocide. The Legal Representative
15 of the Victims of the attacks similarly submitted that Mr Ntaganda's intelligence and
16 military education should be considered as an aggravating factor.

17 First, the Chamber considered Mr Ntaganda's age, position and military training and
18 experience. It rejected the Defence suggestion that Mr Ntaganda was very young in
19 assuming his responsibilities within the UPC/FPLC. It considered his age at the
20 relevant time to be neither an aggravating nor mitigating factor. Other matters in
21 relation to Mr Ntaganda's position at the time and military training and experience
22 were considered by the Chamber in assessing his culpability.

23 Second, the Chamber considered Mr Ntaganda's personal experience during the
24 Rwanda genocide. Although the Chamber does not doubt the traumatic impact on
25 Mr Ntaganda of having lived through the Rwandan genocide, and indeed

1 acknowledged that in its judgment it considered that the alleged protection of one
2 group through acts aimed at the destruction and disintegration of another could not,
3 under any circumstance, constitute a matter of mitigation. It therefore decided not
4 to give this factor any weight.

5 Third, the Chamber considered measures allegedly taken by Mr Ntaganda to save the
6 lives of enemy combatants and protect civilians. However, the Chamber did not
7 consider the alleged instances of Mr Ntaganda's conduct in this regard to be
8 established on a balance of probabilities and therefore did not give this matter any
9 weight in mitigation.

10 Fourth, the Chamber considered Mr Ntaganda's alleged contribution to peace,
11 reconciliation and security in 2004 in Ituri, and after examining all the relevant
12 material, including evidence led during the sentencing hearing, the Chamber did not
13 find a genuine and concrete contribution to peace and reconciliation, or
14 demobilisation and disarmament to be established on the part of Mr Ntaganda, on a
15 balance of probabilities. It therefore did not give this matter weight in mitigation.

16 Fifth, the Chamber considered matters related to Mr Ntaganda's behaviour towards
17 and cooperation with the Court. These were Mr Ntaganda's voluntary surrender,
18 his behaviour during trial, and behaviour in detention. However, the Chamber
19 noted the significant delay of five years of Mr Ntaganda's surrender, which, for the
20 Chamber, reduced the value of its mitigating impact, and noted that the behaviour
21 during trial was not exceptional. Neither factor was therefore afforded weight in
22 mitigation. Weighing the conduct in detention with the overall gravity of the crimes
23 and aggravating circumstances established of the crimes, the Chamber considered the
24 weight accorded to be too limited to impact on the individual and overall sentences.

25 Sixth, the Chamber considered Mr Ntaganda's actions and statements in relation to

1 the victims. While noting with appreciation the expressions of compassion made by
2 Mr Ntaganda on two occasions during the trial, the Chamber considered them to be
3 very general, directed at the victims of all ethnic groups who suffered during the
4 conflict in the DRC between 2002 and 2003 and continuing, rather than specifically
5 directed at the victims of his own crimes. Overall, the Chamber concluded that the
6 expressions of compassion were not sufficient to constitute a mitigating circumstance.
7 Finally, the Chamber considered Mr Ntaganda's family circumstances and the
8 conditions of his detention. The Chamber took account of the Defence submissions
9 on the impact of restrictions on Mr Ntaganda's contacts on him and his family,
10 compounded by the remoteness of his place of detention. However, the Chamber
11 also noted that the restrictions were imposed on Mr Ntaganda because of his own
12 actions, and that the restrictions were being periodically reviewed including as to
13 their continuing proportionality to and impact on Mr Ntaganda's family and private
14 life. These matters were therefore not given weight in mitigation by the Chamber.
15 In addition to Mr Ntaganda's individual circumstances that were analysed as
16 potential mitigating factors, the Chamber also considered those personal
17 circumstances that according to the Prosecution and Legal Representatives of Victims
18 must be seen as general aggravating factors.
19 According to the Prosecution, Mr Ntaganda engaged in misconduct at the ICC
20 Detention Centre. The Prosecution submitted that his attempts to obstruct the
21 investigation and/or prosecution of the charges in this case are aggravating factors
22 that warrant a higher sentence. The Legal Representatives of the former child
23 soldiers similarly argued that the Chamber ought to take the alleged witness
24 interference into account for the purpose of sentencing.
25 During the trial proceedings, the Chamber imposed restrictions on Mr Ntaganda's

1 communication because there were reasonable grounds to believe that he engaged in
2 conduct that warranted their imposition pursuant to Regulation 101(2) of the
3 Regulations of the Court, including reasonable grounds to believe that Mr Ntaganda
4 intended or attempted to engage in witness interference. However, since it did so,
5 the Chamber was not presented with further information that would warrant making
6 such findings to a different standard. This is relevant, as any aggravating
7 circumstances have to be proven beyond reasonable doubt.

8 According to the Prosecution, the Chamber should now enter specific findings
9 beyond reasonable doubt regarding Mr Ntaganda's alleged witness interference.

10 However, given that the information on which the Prosecution requested the
11 Chamber to make such findings is neither in evidence nor tested through the regular
12 process applicable to trial proceedings, the Chamber could not make findings to this
13 standard. Consequently, the allegations about witness interference were not taken
14 into account as aggravating circumstances.

15 Now I reach the pronouncement of the actual sentences.

16 In addition to imprisonment, the Chamber may impose a fine or forfeiture of
17 proceeds. In the circumstances of the case, taking into consideration the nature and
18 gravity of the crimes, as well as Mr Ntaganda's insolvency, the Chamber does not
19 consider it appropriate to do so.

20 On the basis of its overall assessment, including of Mr Ntaganda's individual
21 circumstances, as I referred to earlier, the Chamber considers the following sentences
22 to appropriately reflect the gravity of the crimes, Mr Ntaganda's culpability and any
23 aggravating circumstances the Chamber found for the specific crimes. I will read
24 these out in order of severity of the sentence of imprisonment.

25 Mr Ntaganda, please rise.

- 1 So those sentences are following:
- 2 For ordering the displacement of the civilian population as a war crime, 8 years;
- 3 For forcible transfer of the civilian population as a crime against humanity, 10 years;
- 4 For intentionally directing attacks against protected objects as a war crime, 10 years;
- 5 For pillage as a war crime, 12 years;
- 6 For sexual slavery of civilians as a crime against humanity and as a war crime,
- 7 12 years;
- 8 For sexual slavery of children under the age of 15 incorporated into the UPC/FPLC,
- 9 14 years;
- 10 For intentionally directing attacks against civilians as a war crime, 14 years;
- 11 For destroying the adversary's property as a war crime, 15 years;
- 12 For rape of children under the age of 15 incorporated into the UPC/FPLC as a war
- 13 crime, 17 years;
- 14 For conscripting and enlisting children under the age of 15 years into an armed group
- 15 and using them to participate actively in hostilities as a war crime, 18 years;
- 16 For rape of civilians as a crime against humanity and as a war crime, 28 years;
- 17 For murder and attempted murder as a crime against humanity and as a war crime,
- 18 30 years;
- 19 For persecution as a crime against humanity, 30 years of imprisonment.
- 20 Mr Ntaganda, you may sit down for now.
- 21 And after these individual sentences, the Chamber must also pronounce a joint
- 22 sentence specifying the total period of imprisonment.
- 23 Article 78(3) of the Statute specifies that the total period of imprisonment shall be no
- 24 less than the highest individual sentence pronounced. Furthermore, in conformity
- 25 with Article 77, unless a sentence of life imprisonment is imposed, the total period of

1 imprisonment shall not exceed 30 years of imprisonment.

2 As I mentioned earlier, the sentence for the crime against humanity of persecution

3 combines Mr Ntaganda's culpability and the aggravating circumstances for the

4 underlying crimes committed against the Lendu. However, in order to properly

5 account for the multiplicity of crimes and his overall culpability, the total sentence to

6 be imposed on Mr Ntaganda must also reflect his conviction for the additional crimes

7 committed vis-à-vis children under the age of 15 who were recruited into the

8 UPC/FPLC. As the Chamber determined the highest individual sentence to be

9 30 years of imprisonment, and since the maximum imprisonment for a specified

10 number of years is also 30 years, the Chamber can only impose 30 years or life

11 imprisonment as the overall joint sentence.

12 Life imprisonment is permissible as a penalty under the Statute when justified by the

13 extreme gravity of the crime and the individual circumstances of the convicted person.

14 The Chamber has taken note of the wish of the victims represented by the Legal

15 Representatives of Victims of the attacks for a joint sentence of life imprisonment to

16 be imposed. However, having regard to its conclusion per crime, noting the overlap

17 in conduct between part of these crimes, and on the basis of all other considerations

18 relevant to this case, notwithstanding the fact that there are no mitigating

19 circumstances to be afforded any weight, the Chamber found that the crimes for

20 which Mr Ntaganda has been convicted, despite their gravity and his degree of

21 culpability, nevertheless do not warrant a sentence of life imprisonment.

22 Accordingly, and now, Mr Ntaganda, please rise again.

23 Mr Ntaganda, in the particular circumstances of this case, as a result of the highest

24 individual sentence and the statutorily mandated maximum specified term of

25 imprisonment for the joint sentence being the same, no further discretion is given to

1 the Chamber in the determination of the overall joint sentence. The overall sentence
2 imposed on you shall therefore be 30 years of imprisonment.
3 You may sit down now.

4 Pursuant to Article 78(2) of the Statute, the time you have spent, Mr Ntaganda, in
5 detention in accordance with an order of this Court, namely, since 22 March 2013,
6 following your surrender to the Court, shall be deducted from your sentence.

7 The Chamber has already issued an order in relation to reparations and received
8 submissions and observations from the relevant actors. Further matters related to
9 the reparations procedure will be addressed by the Chamber in due course.

10 The full sentencing judgment will be notified upon the closing of this hearing.

11 And also I would like to guide you, Mr Ntaganda, that you are entitled to appeal our
12 decision on your sentence within 30 days.

13 This concludes the hearing.

14 The Court stands adjourned.

15 THE COURT USHER: [11:02:38] All rise.

16 (The hearing ends in open session at 11.02 a.m.)