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TRIAL CHAMBER VI

Before: **Judge Robert Fremr, Presiding Judge**
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR v. BOSCO NTAGANDA

Public
with one public annex

Sentencing judgment

Judgment to be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

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I. BACKGROUND

1. On 8 July 2019, the Chamber convicted Mr Ntaganda of various crimes against humanity and war crimes.[1] That same day, the Chamber ordered the Prosecution, the Defence and the LRVs to file any requests to submit further evidence or to call witnesses in relation to sentencing by 29 July 2019, with any responses to follow by 5 August 2019 ('Order on Sentencing Procedure').[2]

2. On 9 July 2019, the Chamber notified the Defence of the relevant parts of the Judgment that would be translated for Mr Ntaganda.[3] On 21 August 2019, the Kinyarwanda translation of these parts was provided to the Defence.[4]

3. On 26 July 2019,[5] the Registry filed its report concerning Mr Ntaganda's solvency and conduct while in detention ('Registry Report').[6] Pursuant to an order by the Chamber,[7] an *addendum* to the report was filed on 30 August 2019, providing further information on one particular matter arising from Mr Ntaganda's time in detention ('Addendum to the Registry Report').[8]

4. On 29 July 2019, the parties filed their respective requests pursuant to the Chamber's Order on Sentencing Procedure[9] and on 5 August 2019, the parties and participants filed their respective responses.[10]

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[1] Judgment, ICC-01/04-02/06-2359 (with Annexes A, B and C). The Chamber incorporates into the present Sentencing Judgment the list of short forms and acronyms and the list of authorities from the Judgment (ICC-01/04-02/06-2359-AnxB and ICC-01/04-02/06-2359-AnxC, respectively).
[2] Order on sentencing procedure, ICC-01/04-02/06-2360.
[3] Email from the Chamber to the Defence, copying the Language Services Section on 9 July 2019, at 09:38.
[4] Email from the Chamber to the Defence on 21 August 2019, at 11:28.
[5] The Chamber instructed the Registry to file this report on 11 July 2019, *see* email from the Chamber to the Registry on 11 July 2019, at 16:29.
[6] Registry's Report on Mr Bosco Ntaganda's Solvency and Conduct While in Detention, ICC-01/04-02/06-2367-Conf (with confidential Annex).
[7] Order in relation to D-0308, 14 August 2019, ICC-01/04-02/06-2382-Conf.
[8] Addendum to 'Registry's Report on Mr Bosco Ntaganda's Solvency and Conduct While in Detention' (ICC-01/04-02/06-2367-Conf), ICC-01/04-02/06-2390-Conf-Exp (with confidential Annex I and confidential *ex parte* Annex II only available to the Registrar and the Defence; a confidential redacted version was notified on the same day, ICC-01/04-02/06-2390-Conf-Red).
[9] Prosecution's request to submit additional evidence on sentencing, ICC-01/04-02/06-2368-Conf (a public redacted version was notified on 18 September 2019, ICC-01/04-02/06-2368-Red); Defence request for admission of sentencing evidence, ICC-01/04-02/06-2369-Conf-Exp (with confidential *ex parte* Annexes A, B

5. On 20 August 2019, the Chamber issued a decision, *inter alia*, authorising three witnesses to testify before the Chamber *viva voce* and setting the dates for a public hearing on sentencing.[11] On 23 August 2019, the Chamber issued a decision, *inter alia*, granting the Prosecution's and Defence's requests to admit the prior recorded testimony of respectively two and three witnesses in relation to sentencing, subject to the fulfilment of the necessary formal requirements of Rule 68(2)(b) of the Rules.[12] On 13 September 2019, the Chamber issued its decision on the parties' respective requests[13] for admission of various items of documentary evidence from the bar table.[14]

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and C only available to the Registry and confidential Annex D; confidential redacted versions were notified the same day, ICC-01/04-02/06-2369-Conf-Red, ICC-01/04-02/06-2369-Conf-AnxA-Red and ICC-01/04-02/06-2369-Conf-AnxB-Red, respectively; a further confidential redacted version was notified on 10 September 2019, ICC-01/04-02/06-2369-Conf-Red2). The LRVs both informed the Chamber that they did not intend to request leave to submit further evidence or to call witnesses for the purposes of the sentencing proceedings, *see* email from the Common Legal Representative for the Former Child Soldiers to the Chamber on 29 July 2019, at 15:19; and email from the Common Legal Representative for the Victims of the Attacks to the Chamber on 29 July 2019, at 16:45.

[10] Respectively, Prosecution's response to the "Defence request for admission of sentencing evidence", ICC-01/04-02/06-2369-Conf-Red, 29 July 2019, ICC-01/04-02/06-2375-Conf (a corrected version with a confidential annex was notified on 8 August 2019, ICC-01/04-02/06-2375-Conf-Corr; a public redacted version was notified on 18 September 2019, ICC-01/04-02/06-2375-Corr-Red); Defence response to "Prosecution's request to submit additional evidence on sentencing", ICC-01/04-02/06-2373-Conf; Joint Response of the Common Legal Representatives of Victims to the "Prosecution's request to submit additional evidence on sentencing" (ICC-01/04-02/06-2368-Conf) and the "Confidential redacted version of Defence request for admission of sentencing evidence" (ICC-01/04-02/06-2369-Conf-Red), ICC-01/04-02/06-2374-Conf (a public redacted version was notified on 16 September 2019, ICC-01/04-02/06-2374-Red).

[11] Decision on requests to call witnesses in relation to sentencing and for increased monitoring of Mr Ntaganda's contacts and scheduling the sentencing hearing, ICC-01/04-02/06-2384-Conf (a public redacted version was notified the next day, ICC-01/04-02/06-2384-Red).

[12] Preliminary ruling on prior recorded testimony pursuant to Rule 68(2)(b) in relation to sentencing, ICC-01/04-02/06-2385-Conf (a public redacted version was notified the same day, ICC-01/04-02/06-2385-Red).

[13] *See* Defence request for the admission of supplementary sentencing evidence, 30 August 2019, ICC-01/04-02/06-2388-Conf (with confidential *ex parte* annex only available to the Registry; a confidential redacted version of the annex was filed the same day); Prosecution's request for the admission of additional documentary evidence on sentencing, 30 August 2019, ICC-01/04-02/06-2389 (with confidential Annex A); Defence response to "Prosecution's request for the admission of additional documentary evidence on sentencing", 6 September 2019, ICC-01/04-02/06-2392; Prosecution's response to the "Defence request for the admission of supplementary sentencing evidence", ICC-01/04-02/06-2388-Conf, 30 August 2019, 6 September 2019, ICC-01/04-02/06-2393-Conf; Response to Prosecution's request for admission of additional evidence contained in "Prosecution's response to the 'Defence request for the admission of Supplementary sentencing evidence', ICC-01/04-02/06-2388-Conf, 30 August 2019", 11 September 2019, ICC-01/04-02/06-2399-Conf.

[14] Decision on requests for admission of evidence related to sentencing from the bar table, ICC-01/04-02/06-2402. *See also* Order placing on the record the parties' submissions and email decision of 17 September 2019 on the request by the Prosecution for disclosure of a statement of Witness D-0305, 6 November 2019, ICC-01/04-02/06-2441 (with Annexes A, B and C).

6. On 17, 18 and 20 September 2019, the Chamber held the public hearing on sentencing[15] during which it, *inter alia*, heard the *viva voce* testimony of the aforementioned three witnesses, formally admitted into evidence the prior recorded testimony of the aforementioned five witnesses under Rule 68(2)(b) of the Rules,[16] and heard the parties' and participants' preliminary oral submissions on sentencing.

7. On 30 September 2019,[17] the parties and participants filed their written submissions on sentencing[18] and, on 8 October 2019, filed their responses thereto.[19]

[15] T-266, T-267 and T-268.

[16] *See* Prosecution's submission of the prior recorded testimony of two witnesses pursuant to rule 68(2)(b) as sentencing evidence, 9 September 2019, ICC-01/04-02/06-2394 (with confidential Annexes A and B); Notice of submission of prior recorded testimony pursuant to Rule 68(2)(b) and Trial Chamber's order of 23 August 2019, 9 September 2019, ICC-01/04-02/06-2397 (with confidential Annexes A, B and C).

[17] The Chamber notified the parties and participants of the deadlines informally via email on 12 September 2019, at 10:33. The deadline was formally notified during the hearing on 20 September 2019, T-268, page 53.

[18] Submissions on Sentence, ICC-01/04-02/06-2425-Conf (with public Annex A) ('Prosecution Submissions'); Submissions on sentence on behalf of Mr. Ntaganda, ICC-01/04-02/06-2424-Conf (with confidential Annex A) ('Defence Submissions'); Observations on Sentencing on behalf of the Former Child Soldiers, ICC-01/04-02/06-2423-Conf ('CLR1 Submissions'); and Sentencing Submissions of the Common Legal Representative of the Victims of the Attacks, ICC-01/04-02/06-2422-Conf ('CLR2 Submissions').

[19] Response to "Submissions on sentence on behalf of Mr Ntaganda" (ICC-01/04-02/06-2424-Conf), ICC-01/04-02/06-2437-Conf (with public Annex A) ('Prosecution Response'); Response on behalf of Mr. Ntaganda to Prosecution and CLR1/CLR2 submissions on sentence, ICC-01/04-02/06-2438-Conf (with confidential Annex A) ('Defence Response'); Response of the Common Legal Representatives of Former Child Soldiers to the "Submissions on sentence on behalf of Mr. Ntaganda" (ICC-01/04-02/06-2424-Conf), ICC-01/04-02/06-2435-Conf ('CLR1 Response'); and Response of the Common Legal Representative of the Victims of the Attacks to the "Submissions on sentence on behalf of Mr. Ntaganda" (ICC-01/04-02/06-2424-Conf), ICC-01/04-02/06-2436-Conf ('CLR2 Response').

II. LEGAL FRAMEWORK APPLICABLE TO SENTENCING

8. The legal provisions applicable to sentencing are primarily Articles 76, 77 and 78 of the Statute and Rules 145 to 147 of the Rules. The Appeals Chamber has found that these provisions, when read together with the underlying objectives stated in the Preamble to the Statute, establish a comprehensive scheme for the determination of a sentence.[20]

A. Purposes of sentencing

9. Although Articles 77 and 78 of the Statute do not specify the purpose of punishment for crimes under the Statute, the Preamble of the Statute provides that 'the most serious crimes of concern to the international community as a whole must not go unpunished'.[21] Furthermore, in establishing the Court, the States Parties were '[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes'.[22] Accordingly, the Chamber considers that the Preamble establishes retribution and deterrence as the primary objectives of punishment at the Court.[23]

10. Retribution must not to be understood as fulfilling a desire for revenge, but rather as an expression of the international community's condemnation of the crimes. Furthermore, by imposing a proportionate sentence, the harm caused to the victims is also acknowledged.[24] With regard to deterrence, a sentence should be adequate to discourage a convicted person from recidivism (individual deterrence), as well as to ensure that those who may consider committing similar

[20] *Lubanga* Sentencing Appeal Judgment, paras 32-35. *See also Bemba* Sentencing Judgment, para. 12; and *Al Mahdi* Judgment, para. 68.
[21] Preamble of the Statute, para. 4.
[22] Preamble of the Statute, para. 5.
[23] *Katanga* Sentencing Judgment, para. 38; *Bemba* Sentencing Judgment, para. 10; *Al Mahdi* Judgment, para. 66; *Bemba et al*. Sentencing Judgment, para. 19; and *Bemba et al*. Re-sentencing Judgment, para. 18(i).
[24] *Katanga* Sentencing Judgment, para. 38; *Bemba* Sentencing Judgment, para. 11; and *Al Mahdi* Judgment, para. 67.

crimes are dissuaded from doing so (general deterrence).[25] Although rehabilitation is also a relevant purpose of sentencing, it should not be given undue weight in the context of the crimes adjudicated by the Court.[26]

B. Sentencing principles and factors

11. The Court's legal framework does not contain mandatory minimum or maximum sentences, or sentence ranges, for specific crimes, and the Chamber enjoys broad discretion in determining the sentence.[27] Yet, under Article 78(1),[28] and given the importance of retribution as one the primary objectives of sentencing, the totality of the sentence must be proportionate and reflect the culpability of the convicted person.[29] The penalties must therefore be tailored to fit the gravity of the crimes.[30] As discussed further below, the gravity is generally measured *in abstracto,* by assessing the constitutive elements of the crime and the mode of liability in general terms, and *in concreto*, by assessing the particular circumstances of the case looking at the degree of harm caused by the crime and the culpability of the perpetrator.[31] The Chamber bases itself primarily in this regard on the findings in the Judgment.[32]

12. After having determined the *in abstracto* gravity of the relevant crimes, the Chamber is obliged to individualise the penalty to the concrete gravity of the

[25] *Bemba* Sentencing Judgment, para. 11; *Al Mahdi* Judgment, para. 67; and *Bemba et al*. Sentencing Judgment, para. 19.
[26] *Katanga* Sentencing Judgment, para. 38; *Bemba* Sentencing Judgment, para. 11; and *Al Mahdi* Judgment, para. 67. *See also Bemba et al*. Sentencing Appeal Judgment, para. 205.
[27] *Lubanga* Sentencing Appeal Judgment, para. 40; *Bemba* Sentencing Judgment, para. 12; *Al Mahdi* Judgment, para. 68; *Bemba et al*. Sentencing Judgment, para. 36; and *Bemba et al*. Sentencing Appeal Judgment, para. 283.
[28] *See also* Articles 81(2)(a) and 83(3) of the Statute.
[29] Rule 145(1)(a) of the Rules. *See also Lubanga* Sentencing Appeal Judgment, paras 34, 39-40. *See also Lubanga* Sentencing Judgment, para. 26; *Bemba* Sentencing Judgment, para. 11; *Bemba et al*. Sentencing Judgment, para. 36; and *Bemba et al*. Sentencing Appeal Judgment, para. 113.
[30] Article 78(1) of the Statute. *See also Katanga* Sentencing Judgment, para. 39.
[31] *Lubanga* Sentencing Appeal Judgment, paras 40 and 62.
[32] The Chamber notes that the Defence, at various instances appears to challenge the Chamber's findings in the Judgment (*see*, e.g., Defence Submissions, paras 48 and 61). The Chamber emphasises that any such challenges are to be made before the Appeals Chamber and not as part of the sentencing submissions, before the present chamber.

crime.[33] Considering also the purposes of specific deterrence and rehabilitation, the appropriate sentence should also reflect the individual circumstances of the convicted person, including any aggravating and mitigating factors. The weight given to an individual factor and the balancing of all relevant factors in arriving at the sentence is at the core of a trial chamber's exercise of discretion.[34]

13. Certain factors may reasonably be considered under more than one category.[35] The category in which a certain factor is placed is therefore of limited relevance. It is more for the Chamber to identify all relevant factors, and to attach appropriate weight to them in its determination of the sentence.[36] Naturally, the Chamber will not rely on the same factor more than once,[37] and any factors assessed in relation to the gravity of the crime will not be considered as aggravating circumstances, and *vice versa*.[38]

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[33] *Lubanga* Sentencing Appeal Judgment, paras 76-77; *Bemba* Sentencing Judgment, para. 92; and *Bemba et al*. Sentencing Judgment, para. 35.

[34] *Lubanga* Sentencing Appeal Judgment, para. 3.

[35] *Bemba et al*. Sentencing Appeal Judgment, para. 112, where the Appeals Chamber explained that 'the "extent of the damage caused", the "degree of participation of the convicted person" mentioned in rule 145 (1) (c) of the Rules and the aggravating circumstances listed in rule 145 (2) (b) of the Rules are not neatly distinguishable and mutually exclusive categories'. *See also Lubanga* Sentencing Appeal Judgment, para. 85; and *Katanga* Sentencing Judgment, para. 71.

[36] *Bemba et al*. Sentencing Appeal Judgment, para. 112. *See also Lubanga* Sentencing Appeal Judgment, paras 61-66, discussing potential alternative interpretations of the interplay between the factors in Article 78(1) of the Statute and those in Rule 145(1)(c) of the Rules, but not considering it necessary to determine which approach is correct. *See also Lubanga* Sentencing Judgment, para. 44 and *Katanga* Sentencing Judgment, paras 44-69, in which the Trial Chambers I and II respectively considered the Rule 145(1)(c) factors as relevant to their assessment of the Article 78(1) factors; and *Bemba* Sentencing Judgment, para. 13, *Bemba et al.* Sentencing Judgment, para. 22 and *Al Mahdi* Judgment, para. 69, in which Trial Chambers III, VII and VIII respectively considered that some of the Rule 145(1)(c) factors may be relevant to the assessment of the existence of aggravating and mitigating circumstances.

[37] *Bemba et al*. Sentencing Appeal Judgment, para. 112; and *Bemba et al*. Re-sentencing Judgment, para. 18(iii).

[38] *See Lubanga* Sentencing Judgment, para. 35; *Katanga* Sentencing Judgment, para. 35; *Bemba* Sentencing Judgment, para. 14; *Al Mahdi* Judgment, para. 70; and *Bemba et al.* Sentencing Judgment, para. 23. The Chamber notes the Defence's submission that the Prosecution's submissions in relation to sentence contain references to aggravating circumstances in the context of the discussion of gravity and that the same facts are referred to by it both in relation to gravity and aggravating circumstances, which enhances the risk of double counting (Defence Response, para. 13). The Chamber emphasises that any factors considered by it in relation to gravity have not been considered as aggravating circumstances and *vice versa*.

C. Gravity

14. Pursuant to Article 78(1) of the Statute, the Chamber must take into account, *inter alia*, the gravity of the crime. Gravity is a principal consideration in the imposition of a sentence.[39] Despite being the most serious crimes of concern to the international community,[40] *in abstracto* not all crimes under the Statute are necessarily of equivalent gravity and the Chamber must weigh each of them, distinguishing, for example, between crimes against persons and crimes targeting property.[41] Even if inherently grave, and mindful of the severe impact crimes against property may have on victims, such crimes are generally of lesser gravity than crimes against persons.[42]

15. The Statute does not pre-establish any *in abstracto* hierarchy among individual modes of liability for the purposes of sentencing. The ultimate assessment of the level of culpability of the convicted person and its impact on the sentence always depends on an *in concreto* assessment of the degree of participation and the degree of intent in the particular circumstances of the case.[43] The Chamber considers that the commission of a crime through any of the modes of liability set out in Article 25(3)(a) of the Statute amounts to principal perpetration, and that direct perpetration is therefore not inherently more grave than co-perpetration or indirect co-perpetration for the purposes of sentencing.[44]

16. Beyond these considerations of gravity *in abstracto*, the Chamber's determination of the gravity of the acts must be made *in concreto*, in light of the particular circumstances of the case.[45] This assessment is to be done from both a

[39] *Lubanga* Sentencing Judgment, para. 36; and *Bemba* Sentencing Judgment, para. 15.
[40] Preamble of the Statute, para. 4.
[41] *Katanga* Sentencing Judgment, para. 43; and *Al Mahdi* Judgment, para. 72.
[42] *Al Mahdi* Judgment, para. 77; and *Katanga* Sentencing Judgment, para. 43. *See also* submissions in Prosecution Submissions, para. 13.
[43] *Bemba et al.*, Sentencing Appeal, para. 60. *See also Katanga* Sentencing Judgment, para. 61.
[44] ICTY, *Stakić* Appeals Judgment, para. 380. *See also Bemba et al.*, Sentencing Appeal, paras 1 and 59. *See also* CLR1 Response, para. 20.
[45] *Katanga* Sentencing Judgment, para. 61; and *Bemba* Sentencing Judgment, para. 16.

quantitative and a qualitative standpoint.[46] This assessment must take into account: (i) the gravity of the crimes, i.e. the particular circumstances of the acts constituting the elements of the offence; as well as (ii) the gravity of the culpable conduct, i.e. the particular circumstances of the conduct constituting elements of the mode of liability. As long as they relate to the elements of the offence and mode(s) of liability, the factors stipulated in Rule 145(1)(c) will be considered in the evaluation of gravity, including the extent of the damage caused, the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime, and/or the circumstances of manner, time and location, as well as the nature and degree of participation of the convicted person in the commission of the crime and his or her degree of intent.[47] Beyond such elements, the Chamber has a degree of discretion to consider other relevant factors for the purpose of the determination of the gravity of the crime or as aggravating circumstances.

D. Aggravating circumstances

17. For factors not considered as part of the gravity assessment, but taken into account separately as aggravating circumstances, the Chamber must be convinced of their existence beyond reasonable doubt. The list of aggravating circumstances in Rule 145(2)(b) of the Rules is not exhaustive, rather, as indicated by Rule 145(1)(b)(vi), circumstances other than those explicitly provided in Rule 145(2)(b) (i) to (v) of the Rules may be considered if they are similar to them by virtue of their nature.[48] Rule 145(2)(b)(vi) of the Rules does not set forth a lower threshold for seriousness.[49]

[46] *Katanga* Sentencing Judgment, para. 43.
[47] For a discussion of the potential interaction among the factors listed in Article 78 of the Statute and those of Rule 145(1)(c), *see Lubanga* Sentencing Appeal Judgment, paras 61-66.
[48] *Bemba et al*. Sentencing Appeal Judgment, para. 156.
[49] *Bemba et al*. Sentencing Appeal Judgment, para. 157.

18. Aggravating circumstances must relate to the crimes of which a person was convicted or to the convicted person him- or herself.[50] For a factor to be considered as aggravating, there must be a sufficiently proximate link between the factor and the crime or crimes that form the basis of the conviction.[51] In relation to 'uncharged offences' or 'uncharged allegations', the Appeals Chamber has stressed that '[t]he convicted person is sentenced for the crime or offence for which he or she was convicted, not for other crimes or offences that that person may have also committed, but in relation to which no conviction was entered'.[52] It emphasised that '[t]his applies even when, based on the factual findings entered by the Trial Chamber, it may be concluded that these other crimes or offences were actually established at trial'.[53]

19. The Appeals Chamber considered that, in limited circumstances, criminal conduct that occurred *after* the offence for which a person is convicted may amount to an aggravating circumstance, provided that a sufficiently proximate link is established with the crimes for which the accused is convicted.[54]

20. A legal element of the crime or mode of liability cannot be considered as an aggravating circumstance.[55] For the purpose of the present case, this means, for example, that for the war crimes of conscription and enlistment of children under the age of 15 and using them to actively participate in hostilities (Article 8(2)(e)(vii) of the Statute) for which Mr Ntaganda was convicted, the fact that the victims were under 15 cannot, as such, be considered an aggravating circumstance. Similarly, as to the conviction for the war crime of intentionally

[50] *Bemba* Sentencing Judgment, para. 18; and *Al Mahdi* Judgment, para. 73.
[51] *Bemba et al*. Sentencing Appeal Judgment, paras 115 and 151; and *Bemba et al*. Re-sentencing Judgment, para. 18(iv).
[52] *Bemba et al*. Sentencing Appeal Judgment, para. 113.
[53] *Bemba et al*. Sentencing Appeal Judgment, para. 113.
[54] *Bemba et al*. Sentencing Appeal Judgment, paras 115-116. The Appeals Chamber did note, however, that this is not necessarily in line with the case law of the ICTY and ICTR, which is not entirely consistent on this point: *Bemba et al*. Sentencing Appeal Judgment, para. 114.
[55] *Bemba* Sentencing Judgment, para. 14; *Al Mahdi* Judgment, para. 70; *Bemba et al*. Sentencing Judgment, para. 25; and *Bemba et al*. Sentencing Appeal Judgment, para. 129.

having directed an attack against the health centre in Sayo pursuant to Article 8(2)(e)(iv) of the Statute, the fact the health centre is a protected object cannot constitute an aggravating circumstance.

21. The absence of a mitigating circumstance does not constitute an aggravating circumstance.[56]

E. Mitigating circumstances

22. Bearing in mind the different circumstances of each case, the Chamber has a considerable degree of discretion in determining what constitutes a mitigating circumstance in addition to those explicitly set out in Rule 145(2)(a) of the Rules, and the weight, if any, to be afforded to it.[57] Examples include the convicted person's behaviour in detention, which may in exceptional circumstances be considered as mitigating,[58] and voluntary surrender upon, or soon after, the issuance of an arrest warrant.[59]

23. The existence of mitigating circumstances that relate to the convicted person does not lessen the gravity of the offence.[60] In light of the purposes of sentencing, such circumstances are relevant considerations in determining whether the length of the sentence that would be appropriate on the basis of the gravity of the crime ought to be reduced.

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[56] *Bemba* Sentencing Judgment, para. 18; *Al Mahdi* Judgment, para. 73; *Bemba et al*. Sentencing Judgment, para. 25; and *Bemba et al*. Re-sentencing Judgment, para. 18(iii).

[57] *Lubanga* Sentencing Appeal Judgment, paras 43 and 111; *Bemba* Sentencing Judgment, para. 19; *Al Mahdi* Judgment, para. 74; and *Bemba et al*. Sentencing Appeal Judgment, para. 187.

[58] E.g., *Bemba* Sentencing Judgment, para. 81.

[59] E.g., ICTR, *Seromba* Appeal Judgment, para. 236; ICTR, *Rutaganira* Trial Judgment, para. 145; ICTY, *Kvočka et al*. Appeal Judgment, para. 710; and ICTY, *Popović et al.* Trial Judgment, paras 2202 and 2207. The *Mrkšić et al*. trial chamber considered that surrendering only several years after an indictment had been issued could not be taken into account as a mitigating circumstance: ICTY *Mrkšić et al*. Trial Judgment, para. 698.

[60] *See Katanga* Sentencing Judgment, para. 77; and *Bemba et al*. Sentencing Judgment, para. 24.

24. Whether mitigating circumstances exist is considered on a balance of probabilities.[61] Although mitigating circumstances must relate directly to the convicted person,[62] they need not directly relate to the crimes that the person is convicted of. Moreover, they are not limited by the scope of the confirmed charges, or the Chamber's findings in the Judgment.[63]

F. Determination of the appropriate sentence

25. On the basis of its assessment, the Chamber must pronounce a sentence for each crime, followed by a joint sentence specifying the total period of imprisonment.[64] The highest individual sentence constitutes the minimum possible joint sentence,[65] but the Court's legal framework does not prescribe by how much, and in what circumstances, the joint sentence may exceed the highest individual sentence.[66] Article 78(3) of the Statute does, however, provide that any joint sentence of imprisonment may not exceed 30 years, unless the extreme gravity of the crime and the individual circumstances of the convicted person warrant a term of life imprisonment. In addition to a prison sentence, the Chamber may order a fine and/or the forfeiture of proceeds, property and assets derived directly or indirectly from the crime(s), pursuant to Article 77(2) of the Statute.[67]

26. The Chamber recalls that, while having found that cumulative convictions are permissible, it found Mr Ntaganda guilty of the commission of certain crimes

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[61] *Lubanga* Sentencing Judgment, para. 34; *Katanga* Sentencing Judgment, para. 34; *Bemba* Sentencing Judgment, para. 19; *Al Mahdi* Judgment, para. 74; and *Bemba et al*. Sentencing Judgment, para. 24.

[62] *Bemba* Sentencing Judgment, para. 19; *Al Mahdi* Judgment, para. 74; and *Bemba et al*. Sentencing Judgment, para. 24.

[63] *Lubanga* Sentencing Judgment, para. 34; *Katanga* Sentencing Judgment, para. 32; *Bemba* Sentencing Judgment, para. 19; *Al Mahdi* Judgment, para. 74; and *Bemba et al*. Sentencing Judgment, para. 24.

[64] Article 78(3) of the Statute. *See also Bemba et al*. Re-sentencing Judgment, para. 18(ii).

[65] Article 78(3) of the Statute. *See also Bemba* Sentencing Judgment, para. 12; *Bemba et al*. Sentencing Appeal Judgment, para. 57; and *Bemba et al*. Re-sentencing Judgment, para. 18(ii).

[66] By contrast, *see*, e.g., paragraph 43 of the Czech Criminal Code (Law no. 40/2009); Section 54 of the German Criminal Code; and Article 57(2) of the Dutch Criminal Code.

[67] The Appeals Chamber has held that the powers of a trial chamber at sentencing are limited to the identification of the appropriate penalty among the ones listed in the Statute and a determination of its *quantum*: *Bemba et al*. Sentencing Appeal Judgment, para. 77.

that are wholly or in part based on the same conduct and has already indicated that it would take this into account for sentencing.[68]

27. Once the Chamber has imposed the total sentence, the time Mr Ntaganda has spent in detention in accordance with an order of the Court must be deducted therefrom.[69]

28. In the following, the Chamber first sets out its analysis of the gravity and aggravating circumstances, if any, of each crime that Mr Ntaganda has been convicted of, before turning to Mr Ntaganda's individual circumstances and then determining the final sentence.

[68] Judgment, paras 1202-1206.
[69] Article 78(2) of the Statute. *See also Lubanga* Sentencing Appeal Judgment, para. 35; *Bemba* Sentencing Judgment, para. 12; *Al Mahdi* Judgment, para. 68; and *Bemba et al*. Re-sentencing Judgment, para. 18(v).

III. ANALYSIS PER CRIME

29. At the outset, the Chamber notes that the Prosecution requested that the Chamber impose a total sentence of 30 years for the crimes for which Mr Ntaganda was convicted.[70] The Defence submits that a sentence of no more than 23 years would reflect and be proportional to Mr Ntaganda's culpability.[71] The Legal Representative of the Former Child Soldiers submits that the sentences for Counts 14, 15 and 16 should be 18, 18 and 20 years respectively and that the sentences for Counts 6 and 9 should be 30 years each.[72] The Legal Representative of the Victims of the Attacks submits that the overall joint sentence to be imposed should be life imprisonment.[73]

30. In this part, after considering a preliminary issue relevant to the assessment of Mr Ntaganda's culpability, the Chamber lays out its reasoning and conclusions informing its determination of the sentences for the crimes for which Mr Ntaganda was convicted. Insofar as the considerations are related or overlap, the Chamber addresses several crimes jointly, such as when they relate to similar protected interests. The order in which the crimes are addressed is as follows: (i) crimes against life (Counts 1-3); (ii) sexual violence, i.e. rape and sexual slavery (Counts 4-9); (iii) crimes against property or civilian objects (Counts 11, 17-18); (iv) forcible transfer and ordering displacement (Counts 12-13); (v) persecution (Count 10); and (vi) recruitment of children under the age of 15 into the UPC/FPLC and their use in hostilities (Counts 14-16).

31. As noted above, for the purpose of its assessment of the appropriate sentence, the Chamber has taken into account that although the convictions for murder (Counts 1 and 2), rape (Counts 4 and 5) and sexual slavery (Counts 7 and 8), as

[70] Prosecution Submissions, para. 113.
[71] Defence Submissions, para. 159.
[72] CLR1 Submissions, paras 61-62.
[73] CLR2 Submissions, paras 63-64. The Legal Representative of the Victims of the Attacks further submits that none of the individual sentences should be less than 20 years and that the sentences for the crimes of murder, rape and sexual slavery should not be less than 30 years (CLR2 Submissions, para. 63).

crimes against humanity and as war crimes, respectively, are each premised on the existence of distinct contextual elements, Mr Ntaganda's convictions for these crimes are based on the same underlying conduct. For the sentence to be fair, this must be taken into account. Therefore, in order to determine a fair and proportionate sentence, the Chamber discusses the crimes against humanity and war crimes of respectively murder, rape and sexual slavery together. In addition, the Chamber has taken into account the fact that some of the conduct underlying the convictions for different crimes is also the same.[74]

A. Preliminary issue relevant to the assessment of Mr Ntaganda's culpability

32. The Defence argues that it is necessary for the Chamber to draw a distinction between Mr Ntaganda's 'degree of participation' and 'degree of intent' during the First Operation and the Second Operation on the basis of a 'concrete evaluation of culpability'.[75] It submits that Mr Ntaganda's degree of participation and intent, and therefore his concrete role, in relation to the Second Operation was substantially lower as compared to the First Operation, despite the Chamber's finding that the mode of liability was the same for both.[76] In particular, the Defence emphasises the fact that Mr Ntaganda was not physically present during the Second Operation[77] and had no 'advance or contemporaneous awareness' of the occurrence of certain specific events.[78] It also avers that all of Mr Ntaganda's contributions in the Second Operation 'appear' to have been directed towards its 'lawful purpose', that is the opening of the 'Main Road' between Mongbwalu and Bunia.[79]

[74] *See*, e.g., paras 94, 159 and 176 below.
[75] Defence Submissions, paras 36 and 99.
[76] Defence Submissions, paras 37-40, 91 and 99.
[77] Defence Submissions, paras 38, 57, 67 and 92.
[78] E.g., the Kobu massacre and killings at the Bambu hospital. *See* Defence Submissions, paras 39-40, 47, 57 and 92.
[79] Defence Submissions, para. 41.

33. The Prosecution and the Legal Representative of the Victims of the Attacks argue that there is no distinction in Mr Ntaganda's degree of culpability or intent in relation to the First and Second Operation, as both formed part of the same common plan and Mr Ntaganda meant for all the crimes against the Lendu population for which he was convicted to occur.[80]

34. At the outset, the Chamber recalls that Mr Ntaganda was found guilty as an indirect co-perpetrator for the crimes charged under Counts 1 to 5, 7 to 8, 10 to 13 and 17 to 18.[81] With the exception of sexual slavery as charged under Counts 7 and 8, and attacking a protected object under Count 17, these crimes were committed during both the First Operation and the Second Operation.[82] The Chamber found that the indirect co-perpetrators, including Mr Ntaganda, by virtue of their agreement to drive out all the Lendu from the attacked localities, meant: (i) for civilians to be attacked and killed; (ii) for their property to be appropriated and destroyed; (iii) for civilians to be raped and subjected to sexual slavery; (iv) for civilians to be forcibly displaced; (v) for protected objects to be intentionally attacked; and (vi) for the aforementioned conduct to be targeted towards the Lendu civilian population as such,[83] the latter thereby amounting to persecution. The Chamber thus considers that, while his degree of participation therein may have varied, as detailed below, Mr Ntaganda's degree of intent in relation to the crimes committed during both the First and the Second Operation was the same.

35. As far as Mr Ntaganda's 'degree of participation' in the crimes committed during the First Operation and the Second Operation is concerned, the Chamber will consider his participation as part of its assessment of the *in concreto* gravity of his

[80] Prosecution Submissions, paras 57-60; and CLR2 Response, paras 11 and 14. *See also* Prosecution Response, paras 3-5, 19 and 21-22.
[81] Judgment, para. 1199. For the crimes of murder (Counts 1 and 2) and persecution (Count 10) in relation to the killing of *Abbé* Bwanalonga, Mr Ntaganda was also convicted as a direct perpetrator.
[82] Judgment, paras 900-901, 929, 947-948, 962-963, 1025, 1043, 1074, 1101, 1148 and 1168.
[83] Judgment, para. 810.

culpable conduct.[84] In this respect, the Chamber recalls its finding that 'the First and Second Operation are part of one and the same plan' to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC military campaign against the RCD-K/ML[85] and that the acts performed by the UPC/FPLC troops during these two successive operations formed part of the same course of conduct.[86] It further recalls its finding that '[t]he UPC/FPLC as a whole functioned as a tool in the hands of the co-perpetrators, through which they were able to realise […] the crimes against the Lendu'[87] and that the conduct of the individual UPC/FPLC soldiers in the execution of the crimes was thus to be attributed to the co-perpetrators as their own.[88] Against this background, the Chamber found Mr Ntaganda guilty as an indirect co-perpetrator of the crimes underlying Counts 1 to 5, 10 to 13 and 18, committed during both the First and Second Operation, for the crime underlying Count 17 committed during the First Operation and the crimes underlying Counts 7 and 8, committed during the Second Operation,[89] on the basis of his various essential contributions to the common plan.[90]

36. The Chamber further recalls that Mr Ntaganda's giving of orders to commit crimes and personal engagement in violent conduct towards the enemy[91] – which the Chamber only found to have been established in relation to the First Operation – was just one of the ways through which he contributed to the common plan.[92] The Chamber thus considers Mr Ntaganda's culpability for the crimes committed during both the First Operation and the Second Operation to

[84] *See* para. 16 above.
[85] Judgment, paras 808 and 838.
[86] Judgment, para. 793.
[87] Judgment, para. 819.
[88] Judgment, para. 819.
[89] Judgment, para.1199.
[90] Judgment, paras 826-857.
[91] Judgment, paras 847-851.
[92] The Chamber also found that Mr Ntaganda's role was determinative in setting up a strong military group capable of driving out from certain areas all Lendu civilians (*see* Judgment, section V.C.3.c.1) and that Mr Ntaganda devised the military tactic which allowed for the success of the UPC/FPLC taking over of Mongbwalu and the related First and Second Operation (*see* Judgment, section V.C.3.c.2).

be high, irrespective of whether he was in close physical proximity to the locations where the crimes were physically carried out, and even in instances where he did not have previous, contemporaneous, or subsequent knowledge of the specifics of the crimes committed. Mr Ntaganda's culpability in relation to crimes found to have been committed during the Second Operation is therefore not less or diminished, as compared to his general culpability for the crimes that were committed during the First Operation. Rather, the fact that during the First Operation he gave orders to commit crimes and personally engaged in violent conduct towards the enemy, as set out in the Judgment[93] and further discussed below, is a factor which, in the view of the Chamber, may further increase his culpability.

37. As for the Defence's argument that all of Mr Ntaganda's contributions 'appear' to have been directed towards the 'lawful purpose' of the Second Operation 'to open the Main Road between Mongbwalu and Bunia',[94] the Chamber recalls that the First and Second Operation were part of the same military campaign and constituted a logical succession of events,[95] and that it was the success of the UPC/FPLC's assault on Mongbwalu which allowed it to continue, pursuant to the common plan, the commission of crimes against the targeted groups during both the First and Second Operation.[96] The Defence's argument therefore finds no support in the Chamber's conclusions made in the Judgment, or the evidence, as assessed by the Chamber, on which these conclusions are based.

38. Against this background, the Chamber has analysed the nature and degree of Mr Ntaganda's participation and intent in the commission of the crimes underlying Counts 1 to 5, 7 to 8, 10 to 13 and 17 to 18.

[93] Judgment, paras 847-851.
[94] Defence Submissions, para. 41.
[95] Judgment, para. 793. *See also* submissions in Prosecution Submissions, para. 57.
[96] Judgment, para. 838.

B. Murder, attempted murder and intentionally attacking civilians (Counts 1, 2 and 3)

39. The Chamber found Mr Ntaganda responsible as a direct perpetrator for the murder of *Abbé* Bwanalonga in Mongbwalu during the First Operation.[97]

40. The Chamber also found Mr Ntaganda responsible as an indirect co-perpetrator for murders committed by UPC/FPLC soldiers, and, in one location, also by Hema civilians, during the course of the First and Second Operation, specifically the murder of the following victims: (i) a woman in front of the health centre in Sayo;[98] (ii) people in Mongbwalu[99] and Sayo[100] during *ratissage* operations, including a Lendu woman accused of being a 'chieftain' of the Lendu 'combatants'[101] and persons killed at the *Appartements* camp following interrogation, including two persons previously detained there;[102] (iii) two Lendu persons in Nzebi;[103] (iv) Lendu persons,[104] a Ngiti man and a pregnant Lendu woman who had previously been detained in a pit,[105] and a Nyali man[106] in Kilo after the takeover of the village; (v) at least two young children in Kobu during the assault on the village[107] and at least two detained persons during the *ratissage* operation[108] that followed; (vi) nine hospital patients in Bambu;[109] (vii) a woman who was raped and who tried to defend herself[110] and P-0018's sister-in-law[111] in

[97] Judgment, paras 532 to 533, 737 and 1199.
[98] Judgment, paras 506 and 1199.
[99] Judgment, paras 512 and 1199.
[100] Judgment, paras 526 and 1199.
[101] Judgment, paras 513 and 1199.
[102] Judgment, paras 528 and 1199.
[103] Judgment, paras 510 and 1199.
[104] Judgment, paras 543 and 1199.
[105] Judgment, paras 546 and 1199.
[106] Judgment, paras 547 and 1199.
[107] Judgment, paras 573 and 1199.
[108] Judgment, paras 577 and 1199.
[109] Judgment, paras 587 and 1199.
[110] Judgment, paras 600 and 1199.
[111] Judgment, paras 600 and 1199.

Sangi; (viii) some men who were raped by UPC/FPLC soldiers in Kobu;[112] and (ix) at least 49 persons in a banana field near the Paradiso building in Kobu.[113]

41. The Chamber also found Mr Ntaganda responsible for the attempted murder by UPC/FPLC soldiers of P-0018,[114] P-0019,[115] P-0022,[116] P-0108[117] and a patient of Bambu hospital,[118] in the context of the First and Second Operation.

42. As noted above, in determining the appropriate sentence the Chamber has taken into account the fact that the same conduct underlies Mr Ntaganda's convictions for both murder as a crime against humanity (Count 1) and murder as a war crime (Count 2).

43. As to Count 3, the Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for intentionally directing attacks against civilians in Mongbwalu[119] and Sayo,[120] in the context of the First Operation, and in Bambu,[121] Jitchu,[122] and Buli,[123] in the context of the Second Operation.

1. Gravity

a) Gravity of the crimes Mr Ntaganda has been convicted of

i. Murder and attempted murder (Counts 1 and 2)

44. Those murdered are deprived of their lives, which constitutes the ultimate harm. Furthermore, relatives and dependants left behind are deprived of a family member, and thereby of love and care, and, depending on the situation, of

[112] Judgment, paras 623 and 1199.
[113] Judgment, paras 628, 633 and 1199.
[114] Judgment, paras 601 and 1199.
[115] Judgment, paras 622, 632 and 1199.
[116] Judgment, paras 546 and 1199.
[117] Judgment, paras 628 and 1199.
[118] Judgment, paras 587 and 1199.
[119] Judgment, paras 906-907, 918 and 922-923.
[120] Judgment, paras 908, 918 and 922-923.
[121] Judgment, paras 911, 918 and 926.
[122] Judgment, paras 914, 918 and 927.
[123] Judgment, paras 914-915, 918 and 927.

support, be it financial, physical, emotional, psychological, moral, or otherwise.[124] Murder is inherently one of the most serious crimes. Bearing in mind these general considerations, the Chamber turns to the concrete circumstances of the case.

45. The Chamber found that *Abbé* Boniface Bwanalonga, a Lendu man who was serving as a Catholic priest at the Mongbwalu parish, was captured by the UPC/FPLC and interrogated at the *Appartements* camp during the First Operation.[125] After the interrogation, Mr Ntaganda ordered his bodyguards to take *Abbé* Bwanalonga behind the *Appartements*, where Mr Ntaganda shot and killed him.[126]

46. The Chamber received evidence on the impact of *Abbé* Bwanalonga's death from P-0824 who knew him personally.[127] Having served as a priest for 40 years, *Abbé* Bwanalonga was a well-known person in Ituri.[128] After *his* murder, the *Abbé*'s death became notorious among the clergy and the population.[129] P-0824 was approached by many people, who expressed their regrets about the murder.[130] P-0824 further testified that the nuns who were abducted by the UPC/FPLC together with *Abbé* Bwanalonga still refuse to speak about what they witnessed.[131] Even now, many years after the event, some Lendu reportedly still refer to the murder of the *Abbé*.[132]

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[124] *See* similarly *Bemba* Trial Judgment, para. 29.
[125] Judgment, paras 529-530 and 532.
[126] Judgment, para. 533.
[127] The Chamber considers P-0824's evidence on this point to be credible and reliable, noting his basis of knowledge and that his evidence on this point is supported in part by contemporaneous sources (*see* footnote 130 below). However, on other points where the witness's basis of knowledge is unclear, the Chamber has not relied on his evidence (*see* footnote 132 below).
[128] **P-0824**: DRC-OTP-2109-4426, at 4431, para. 26.
[129] **P-0824**: DRC-OTP-2109-4426, at 4432, para. 28.
[130] **P-0824**: DRC-OTP-2109-4426, at 4429, para. 18,at 4432, para. 26. *See also* the 2002-2003 MONUC report to the UN Security Council: DRC-OTP-0074-0422, at 0457, para. 124, describing that the disappearance of *Abbé* Boniface Bwanalonga was very badly received by the Lendu/Ngiti community, who held the *Abbé* in high esteem.
[131] **P-0824**: DRC-OTP-2109-4426, at 4432, para. 28.
[132] **P-0824**: DRC-OTP-2109-4426, at 4431, para. 32. The Chamber notes the Prosecution's submissions, relying on P-0824 (and P-1000), that the murder of the *Abbé* resulted in traumatisation, divided the clergy along ethnic

47. Turning to the murders and attempted murders committed during the First and Second Operation, the Chamber established that UPC/FPLC soldiers, and, in certain instances, Hema civilians, acting under the control of the co-perpetrators, including Mr Ntaganda, murdered at least 73 individuals,[133] and attempted to murder five others,[134] in addition to making broader findings of murders of unquantified numbers of persons.[135] The Chamber therefore considers the scale of the crime of murder to be large.[136]

48. The Chamber notes that the murders occurred regularly and repeatedly during the course of the First and Second Operation, each operation lasting for over a week, in several different locations. Some incidents were committed during the assaults on particular villages,[137] some in their aftermath. In particular, members of the UPC/FPLC and Hema civilians searched from house to house, killing people during the *ratissage* operations in Mongbwalu[138] and Sayo.[139] Following the assault on Kilo, the population was called out to return from the bush, while the UPC/FPLC began to go after the Lendu in the village, including at night in their homes, killing some of them.[140] In Mongbwalu,[141] Nzebi,[142] Kobu[143] and

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lines, aggravated the ethnic conflict among the population, furthering the feelings of revenge and cycle of other crimes (Prosecution Submissions, paras 30-31). However, the Chamber considers that these witnesses, who were not called as experts nor qualify as such on this matter, cannot be relied on to make findings on these alleged psychological or social consequences. *See also* submissions in Defence Response, paras 60-62.

[133] *See* para. 40 above.

[134] *See* para. 41 above.

[135] On the murders of unquantified numbers of persons *see*, e.g., Judgment, paras 512, 526, 889 and 1199, referring to people killed in Mongbwalu and Sayo during *ratissage* operations; Judgment paras 528, 891 and 1199, referring to the killing of persons at the *Appartements* camp following interrogation; and Judgment paras 543, 893 and 1199, referring to the killing of Lendu persons in Kilo after the takeover of the village.

[136] The Prosecution and the Legal Representative of the Victims of the Attacks argue that 'the extent of victimization' (CLR2 Submissions, paras 31 and 40) and 'the massive scale' (Prosecution Submissions, para. 14) of crimes Mr Ntaganda was convicted of, including murder, should be treated as an aggravating circumstance. In its discretion, the Chamber has considered the scale of the crimes and the number of victims under its gravity assessment both for the present type of crimes, as well as the other types discussed below.

[137] Judgment, paras 506 (killing of a Lendu woman in front of the health center in Sayo), 573 (killing of at least two young children as they attempted to flee the assault in Kobu) and 587 (killing of nine patients at the hospital in Bambu).

[138] Judgment, para. 512.

[139] Judgment, para. 526.

[140] Judgment, para. 543. Furthermore, a Ngiti man and a pregnant Lendu woman were detained in a pit together with other individuals and subsequently killed (Judgment, paras 545-546), a UPC/FPLC soldier cut P-0022's neck and left her for dead in a pit (Judgment, para. 546), and a Nyali man was shot and killed by a member of the UPC/FPLC while fetching water for singing an anti-Hema song (Judgment, para. 547).

Sangi[144] victims were captured and, in some instances, detained at various locations prior to their murder or attempted murder.

49. As discussed next, some individuals who survived or witnessed these crimes still bear permanent scars. The Chamber received testimony from these persons themselves, as well as from experts, on their traumatisation resulting from the crimes committed against them or those close to them, and/or from the crimes which they personally witnessed.[145]

50. For instance, P-0108 was struck on the head with a machete by a UPC/FPLC soldier as he tried to flee the Kobu massacre.[146] He was later found by his family members, who took him home.[147] P-0108's injuries had long-term, serious consequences. According to Ms Sophie Gromb-Monnoyeur, an expert in forensic medicine and clinical examination, P-0108's skull was significantly deformed as a result of his injury and he exhibited long-term memory loss, vertigo and neurological disturbance.[148] P-0018 was shot through her cheek and mouth after being raped.[149] Psychological expert Dr Maeve Lewis found that P-0018's self-

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[141] Judgment, paras 513 (killing of a Lendu woman accused of being a chieftain of the Lendu 'combatants' after being detained and interrogated at 'Salumu's camp') and 528 (killing of persons after being questioned at the *Appartements* camp).
[142] Judgment, para. 510 (killing of two Lendu persons who had been captured pursuant to Mr Ntaganda's order).
[143] Judgment, paras 577 (killing of at least two persons captured during the *ratissage* operation), 620-621, 628, 633 (killing of at least 49 persons in a banana field near the Paradiso building, some of whom had been previously captured in Sangi, Gola, Buli and the surrounding bush and were detained in a number of different houses in Kobu), 632 and 822 (P-0019's attempted killing).
[144] Judgment, paras 600 (killing of a woman who was raped and tried to defend herself and of P-0018's sister-in-law), 601 and 880 (P-0018's attempted killing).
[145] *See also* submissions in Prosecution Submissions, para. 29. The Prosecution and the Legal Representative of the Victims of the Attacks argue that extensive damage and long-term harm are an aggravating factor (*see* Prosecution Submissions, paras 4 and 28-32; and CLR2 Submissions, para. 40). However, in its discretion the Chamber has considered the harm and the impact of the crimes under its gravity assessment, for the present type of crimes, as well as the other types discussed below. The Chamber further emphasises that in order to analyse the gravity of the crimes of which Mr Ntaganda was convicted for the purposes of sentencing, it takes into account only the damage and harm that in its assessment: (i) has been proven beyond reasonable doubt; and (ii) can be directly linked to the crimes and culpable behaviour of Mr Ntaganda.
[146] Judgment, para. 628.
[147] Judgment, para. 635.
[148] **P-0939**: DRC-OTP-2059-0146-R02, at 0152 and 0153; and Judgment, footnote 1975.
[149] Judgment, para. 601.

image has been distorted and she is embarrassed by the extensive scarring on her face.[150]

51. Following the murders in the banana field in Kobu, people who went to the location to see what had happened discovered the often mutilated bodies of those killed,[151] including bodies of those they had known[152] and of their family members.[153]

52. The murders, therefore, irreversibly impacted not only the direct victims but also those who witnessed them, and the direct victims' family members and relatives left behind.

ii. Intentionally attacking civilians (Count 3)

53. The war crime of intentionally targeting civilians violates the principle of distinction, which is at the core of international humanitarian law.[154] The prohibition of attacks directed against civilians aims to protect lives and to avoid the unnecessary suffering of individuals not taking a direct part in hostilities during an armed conflict. Article 8(2)(e)(i) of the Statute does not require any actual harm to civilians to ensue from the attack and the crime can be committed by the its mere launching.[155] The Chamber therefore considers the crime of intentionally attacking civilians to be *in abstracto* less serious compared to murder, which requires the actual infliction of harm on the victim. In this light,

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[150] DRC-OTP-2059-0058-R02, at 0062. As noted in the Judgment, expert Ms Gromb-Monnoyeur concluded that P-0018's wound was consistent with her account (**P-0939**: T-143, pages 15-17; and DRC-OTP-2059-0231-R01, from 0240 to 0241), and the Chamber noted that the wound can be seen in photographs DRC-OTP-0096-0133 to DRC-OTP-0096-0136, DRC-OTP-0096-0138 to DRC-OTP-0096-0142, DRC-OTP-0096-0144, DRC-OTP-0096-0145, DRC-OTP-2052-0207 as well as in DRC-OTP-2059-0231-R01, at 0238, *see* Judgment, footnote 1867.

[151] Judgment, para. 633.

[152] Judgment, para. 634.

[153] Judgment, footnote 2020 (P-0100 testified to having to bury his wife and young son). The Chamber recalls that it found the witnesses' narratives of what they felt when they came to the banana field to be personal and unique, *see* Judgment, para. 275 and footnote 688, referring to **P-0100**: T-131, page 67; **P-0105**: T-135, pages 42-43; and T-134, page 21; **P-0121**: T-173, page 17; **P-0790**: T-54, page 16; **P-0792**: T-150, page 68; **P-0805**: T-26, pages 8 and 31-32; and **P-0857**: T-193, pages 79-80.

[154] Articles 51 and 57 of Additional Protocol I and Article 13 of Additional Protocol II, *See also* ICTY, *Galić* Trial Judgment, para. 27.

[155] Elements of Crimes, Article 8(2)(e)(i); and Judgment, para. 904.

the Chamber has assessed the gravity of the crime in the circumstances of the present case.

54. The Chamber found that, following Mr Ntaganda's order in this respect, the UPC/FPLC attacked Mongbwalu on or about 20 November 2002.[156] The attack lasted approximately three to four days and Mongbwalu was, in line with the devised strategy, attacked from two sides by the infantry, supported by heavy weapons.[157] The UPC/FPLC soldiers fired at everyone in Mongbwalu, including at members of the civilian population.[158]

55. With respect to the Second Operation, the Chamber considered the following incidents to constitute the crime of intentionally attacking civilians: (i) the use of heavy weapons in Bambu;[159] and (ii) the pursuing of and shooting at fleeing persons in Jitchu and Buli and in the nearby bush.[160]

56. Accordingly, Mr Ntaganda was convicted of intentionally attacking civilians in five locations, committed during both the First and the Second Operation. The Chamber therefore considers the scale of the crime to be relatively large.

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[156] Judgment, para. 486.
[157] Judgment, para. 486.
[158] Judgment, para. 494. The UPC/FPLC soldiers had been instructed to shoot 'at everybody', 'at anything that moved' (Judgment para. 488). The Defence argues that the attacks for which Mr Ntaganda was convicted should be given lesser weight in terms of assessing gravity due to the difficulty for the attackers to distinguish between fighters and civilians, because the former did not wear uniforms, and the existence of resistance in both Mongbwalu and Sayo meant that some civilians may have been actively engaged in hostilities (*see* Defence Submissions, para. 55; *see also* Prosecution Response, para. 13). It further avers that the order to target civilians was meant 'to prevent counter-attacks'(*see also* submissions in Defence Submissions, para. 55). In this regard, the Chamber recalls that it carefully assessed all of the evidence underlying its findings made in the Judgment in relation to the crime under Article 8(2)(e)(i) of the Statute. Any difficulties the UPC/FPLC may have faced in telling fighters and civilians apart have already been taken into account as part of the Chamber's findings regarding Mr Ntaganda's conviction for this war crime (*see also* submissions in Prosecution Response, para. 13). Indeed, as regards some charged incidents, the Chamber concluded that it could not be established that the UPC/FPLC had intentionally directed an attack at the civilian population as such or at individual civilians not taking direct part in hostilities (*see* Judgment, paras 925 and 928). However, in those instances where the Chamber found the crime to have been committed, the established facts leave no doubt as to the intention to target civilians, for example, when Mr Ntaganda ordered one of his subordinates to fire at a group of persons wearing civilian clothing who were fleeing from Sayo (Judgment, para. 508). In this instance, the UPC/FPLC was no longer faced with any armed resistance and the fleeing persons were not involved in any hostile action. As there was sufficient time to observe the targeted persons, no reasonable person could have believed that the targeted persons were directly participating in hostilities and were therefore targetable.
[159] Judgment, paras 583, 585 and 1199.
[160] Judgment, paras 926-927 and 1199.

57. Regarding the impact of the crime of intentionally attacking civilians, the Chamber discusses the fact that the evidence shows that some civilians were killed as a consequence of the attacks under aggravating circumstances below.

b) Mr Ntaganda's degree of participation and intent

i. Murder and attempted murder (Counts 1 and 2)

58. As noted above, Mr Ntaganda was convicted as a direct perpetrator for the murder of *Abbé* Bwanalonga.

59. In relation to the other murders and attempted murders committed during the First and Second Operation, Mr Ntaganda was convicted as an indirect co-perpetrator. Together with his co-perpetrators, he conceived a plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC's military campaign.[161] By virtue of this agreement, Mr Ntaganda and his co-perpetrators meant, *inter alia*, for civilians to be killed.[162]

60. Mr Ntaganda was the Deputy Chief of Staff in charge of Operations and Organisation, controlling the military planning and operations.[163] In this position, he made an essential contribution towards the achievement of the co-perpetrators' common plan.[164] As established by the Chamber, Mr Ntaganda had a unique and central role in the setting up of the UPC/FPLC as an efficient armed group, most notably at the early stages of the group's activities, when his skills, experience and initiatives were determinative in increasing the group's strength and capacity to carry out its objectives.[165] Furthermore, he had an

[161] Judgment, para. 808.
[162] Judgment, paras 810 and 1188.
[163] Judgment, paras 321-322.
[164] Judgment, section V.C.3.c) Contribution of Mr Ntaganda. The Chamber recalls that Mr Ntaganda had the power to frustrate the commission of the crimes (Judgment, paras 852-856), including the murders and attempted murders committed during the First and Second Operation.
[165] Judgment, paras 833 and 852. In addition to the fact that he occupied a high-ranking position and had previously undergone officer training in Uganda, the Chamber also found that Mr Ntaganda's orders were obeyed and that he inspired fear over the troops (Judgment, paras 312, 321 and 828).

essential role in the planning, organisation and carrying out of the UPC/FPLC's operations during which crimes against the Lendu were committed.[166]

61. Specifically in relation to the First Operation, in addition to his overall participation and commanding role in the take-over of Mongbwalu and Sayo, as described below with respect to Count 3,[167] the Chamber found that, in a number of instances, Mr Ntaganda gave direct orders to kill civilians and endorsed the criminal conduct of his soldiers by way of his personal conduct.[168] Furthermore, it found that Mr Ntaganda's direct orders to kill civilians and loot, his active role as an operational commander and his proximity to the commanders and soldiers deployed resulted in the commission of crimes.[169]

62. Notably in relation to the First Operation, Mr Ntaganda showed his troops – through his own actions – how the orders were to be implemented with regard to treatment of the Lendu civilians.[170] During his stay of at least a week in Mongbwalu,[171] Mr Ntaganda was based at the *Appartements* camp,[172] where, *inter alia*, individuals, including Lendu, were detained and some were killed, including one instance where two individuals were killed pursuant to an order from Mr Ntaganda.[173] Finally, sometime between the assault on Nzebi and Mr Ntaganda's return to Bunia, Mr Ntaganda's bodyguards, upon his orders, shot and killed two Lendu persons in Nzebi.[174] The intensity of his involvement and his proximity to the murders committed in Mongbwalu, Sayo and Nzebi are factors which the Chamber considers to increase Mr Ntaganda's culpability.

[166] Judgment, paras 827, 834-846 and 852-854.
[167] *See* paras 70-72 and 74-77 below.
[168] Judgment, paras 510, 528 and 851.
[169] Judgment, para. 855.
[170] Judgment, paras 851, 855 and 1180.
[171] Judgment, para. 489.
[172] Judgment, para. 527.
[173] Judgment, para. 528.
[174] Judgment, para. 510.

63. The Chamber notes the Defence's submission that the testimony on which the Chamber's conviction in relation to the murder of four individuals, two in Mongbwalu and two in Nzebi, respectively, carried out pursuant to Mr Ntaganda's order is based 'provides very little detail about Mr. Ntaganda's motivations or emotional state when he participated in these murders'[175] and that, in light of the available evidence, 'the personal conduct of Mr. Ntaganda does not reflect zeal, premeditation or brutality', while in relation to the murder of *Abbé* Bwanalonga, there is 'considerable doubt and ambiguity […] as to whether Mr. Ntaganda may have acted out of some momentary anger that should reduce his culpability'.[176]

64. In this regard, the Chamber notes that, on the basis of the evidence on the record, it has not been in a position to make any findings that can be considered for the purposes of sentencing in relation to Mr Ntaganda's emotional state at the time of his involvement in the aforementioned murders. Specifically regarding the murder of the *Abbé*, the Chamber considers the Defence's argument that Mr Ntaganda may have acted out of 'momentary anger' to be speculative. P-0768 testified that he was 'angered' about documents found in the *Abbé*'s room and Mr Ntaganda questioned the *Abbé* about these documents, but his evidence does not indicate that at the time of the commission of the murder, Mr Ntaganda's judgment was clouded by anger to such an extent that this ought to reduce his culpability. In this regard, the Chamber also notes that between the questioning and the murder, Mr Ntaganda ordered his troops to take the *Abbé* behind a building.[177] In relation to Mr Ntaganda's ordering of the execution of the four persons in Mongbwalu and Nzebi, the Chamber considers that the evidence similarly does not support Defence's contention. In this regard, the Chamber recalls that: (i) the two individuals in Nzebi had been previously captured

[175] Defence Submissions, para. 43.
[176] Defence Submissions, paras 42-46 and 93.
[177] Judgment, paras 530 and 532-533; and **P-0768**: T-33, pages 55-56.

pursuant to Mr Ntaganda's order[178] and their murder was ordered following the realisation that they were Lendu;[179] and (ii) the two individuals murdered at the *Appartements* camp were first tied up pursuant to Mr Ntaganda's order,[180] and that one of the persons executing the order had understood that Mr Ntaganda's intention in relation to the two persons was that they were to be killed.[181]

65. With regard to the Second Operation, during which the largest number of murders found to have been established in the case were committed,[182] the Chamber found that Mr Ntaganda took part in the relevant planning.[183] During the operation itself, the Chamber found that Mr Ntaganda remained in contact with the commanders in the field and monitored its unfolding via the UPC/FPLC radio communications systems.[184] He also exercised oversight over the unfolding and ensured that the deployed forces were carrying out the project as planned.[185]

66. The Chamber notes that, as opposed to the First Operation, Mr Ntaganda was not found to have committed himself, or given any direct orders to commit, murders during the course of the Second Operation. However, the Chamber notes that, after the conclusion of the Second Operation, Mr Ntaganda indicated his approval of the behaviour of Salumu Mulenda's troops in relation to killings in Kobu.[186] In this regard, the Chamber recalls that Mulenda was not disciplined, including not by Mr Ntaganda, for the killings which occurred in Kobu during the Second Operation.[187]

67. All the above considered, the Chamber considers Mr Ntaganda's degree of participation and intent regarding the murders and attempted murders

[178] Judgment, para. 510.
[179] **P-0768**: T-33, pages 54-55. *See also* submissions in Prosecution Response, para. 28.
[180] Judgment, para. 528.
[181] **P-0017**: T-59, pages 23-24. *See also* submissions in Prosecution Response, para. 29.
[182] *See* para. 40 above.
[183] Judgment, para. 837.
[184] Judgment, paras 554 and 565.
[185] Judgment, para. 846.
[186] Judgment, paras 638 and 1185. *See also* submissions in CLR2 Submissions, para. 44.
[187] Judgment, para. 639.

committed during both the First and the Second Operation to be substantial. In assessing Mr Ntaganda's culpability for the purposes of sentencing, the Chamber has also taken into account that his degree of participation during this operation was higher compared to the Second Operation, given the intensity of his involvement in and his proximity to the some of the murders committed during the First Operation. The fact that Mr Ntaganda, as one of the highest ranking military officials of the UPC/FPLC, personally committed the murder of *Abbé* Bwanalonga in the presence of his subordinates is further discussed below under aggravating circumstances.

ii. Intentionally attacking civilians (Count 3)

68. The Chamber recalls that Mr Ntaganda was convicted as an indirect co-perpetrator for the crime of intentionally attacking civilians. The crime was committed pursuant to the common plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC's military campaign, conceived of by Mr Ntaganda and his co-perpetrators.[188] By virtue of this agreement, Mr Ntaganda and his co-perpetrators meant, *inter alia*, for civilians to be attacked.[189]

69. As elaborated above with respect to Counts 1 and 2 , the Chamber further recalls Mr Ntaganda's essential contribution towards the achievement of the co-perpetrators' plan and his role in the planning, organisation and carrying out of the UPC/FPLC's operations during which crimes against the Lendu, including the crime of intentionally attacking civilians, were committed.[190]

70. In relation to the First Operation, the Chamber found that Mr Ntaganda devised the tactic to approach the enemy[191] and played an important role in the

[188] Judgment, para. 808.
[189] Judgment, paras 810 and 1188.
[190] Judgment, paras 827-828, 834-846 and 852-854.
[191] Judgment, para. 478.

preparation of the operation.[192] In this context, he provided a briefing to the troops who would participate in the operation, informing them about the planned two-side strategy,[193] distributed weapons and ammunition – which were subsequently used in the operation[194] – and tested the support weapons which he had brought with him in front of the troops.[195]

71. The Chamber found that, pursuant to an order from Mr Ntaganda, the UPC/FPLC soldiers committed crimes against the Lendu during the course of the assault on Mongbwalu.[196] Mr Ntaganda also gave the final order for the troops to advance towards Mongbwalu[197] and was the overall commander of the assault on the town: he gave orders to the UPC/FPLC troops who participated in the assault, including an order for the troops to attack 'the Lendu'[198] and these troops reported directly to him.[199] Mr Ntaganda was one of two persons who ordered the heavy weapons to be fired and decided on the targets to be fired at.[200]

72. During the attack on Sayo, although not initially present in the village, Mr Ntaganda oversaw the assault, received reports from the commanders at the front line, and communicated orders to them.[201]

73. The Chamber also takes into consideration that, after joining the troops in Sayo, as the operation was nearing its end, Mr Ntaganda ordered a soldier to fire with a grenade launcher at a group of men and women, who the Chamber found to

[192] Judgment, paras 479-483.
[193] Judgment, para. 482.
[194] Judgment, paras 480, 482-483 and 486.
[195] Judgment, para. 482.
[196] Judgment, para 484 and 841.
[197] Judgment, paras 485 and 840.
[198] Judgment, para. 493.
[199] Judgment, para. 491.
[200] Judgment, para. 491.
[201] Judgment, para. 500.

not have been directly participating in hostilities.[202] This order was executed, albeit without resulting in any casualties.[203]

74. In addition to his direct orders to target civilians, Mr Ntaganda also explicitly endorsed the criminal conduct of his soldiers by way of his actions.[204] For example, once Mongbwalu was taken over, Mr Ntaganda met with the commanders who had been involved in the assault to carry out an evaluation of the operations and congratulated them for the assault that had been carried out.[205] This, in the view of the Chamber, increases Mr Ntaganda's culpability.

75. With regard to the Second Operation, the Chamber found that Mr Ntaganda took part in the relevant planning and preparation.[206] In one of the preparatory meetings, Mr Ntaganda gave, together with Floribert Kisembo, instructions to Salongo Ndekezi and Nduru Tchaligonza to handle the Lipri road.[207] The assault on Lipri formed part of the Second Operation.[208] Ammunition which was subsequently used in the operation was brought to the troops in Bambu pursuant to an order from Mr Ntaganda.[209] Later, in accordance with what was decided at the preparatory meetings, the Second Operation was further organised by Floribert Kisembo from Mongbwalu.[210]

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[202] Judgment, paras 508 and 922.

[203] Judgment, para. 508. *See also* submissions in CLR2 Submissions, para. 28; and Defence Submissions, paras 55 and 95. In relation to the Defence's arguments that the Chamber did not reject P-0017's testimony that Mr Ntaganda uttered the words 'this should discourage them, that they would not have the strength to reorganise or to launch a counterattack', implying that the purpose of the order was to prevent a counterattack and that Mr Ntaganda did not order any further targeting of the group of civilians once they had scattered, apparently unhurt (Defence Submissions, para. 55), the Chamber considers that neither of the two aforementioned factors could have legitimised the firing at civilians who were not directly participating in hostilities, and therefore cannot diminish Mr Ntaganda's degree of culpability, in particular in relation to having personally ordered the soldiers operating the artillery to fire at a group of fleeing persons.

[204] Judgment, para. 851. *See also* submissions in Prosecution Submissions, para. 51; and CLR2 Submissions, para. 44.

[205] Judgment, para. 499.

[206] Judgment, paras 550-552 and 837.

[207] Judgment, para. 552.

[208] Judgment, para. 550 and section IV.B.8.c)(2) Assault on Lipri and surrounding villages.

[209] Judgment, paras 552 and 557.

[210] Judgment, paras 552-553.

76. During the operation itself, Mr Ntaganda remained in contact with the commanders in the field and monitored its unfolding *via* the UPC/FPLC radio communications systems.[211] He also exercised oversight over the unfolding and made sure that the forces deployed were carrying out the project as planned.[212]

77. All the above considered, the Chamber assesses Mr Ntaganda's degree of culpability for the crime of intentionally attacking civilians during both operations to be substantial. The intensity of his involvement and his proximity to the attacks against civilians committed in Mongbwalu and Sayo are factors, which, the Chamber considers, further increase his culpability for the crime committed during the First Operation.

2. Aggravating circumstances

a) Murder and attempted murder (Counts 1 and 2)

78. The Chamber considers that some of the murders and attempted murders that took place during both the First and the Second Operation were committed with particular cruelty.[213]

79. For instance, as concerns the attempted murder of P-0022, the Chamber found that following the attack on Kilo during the First Operation, UPC/FPLC soldiers detained her and seven other individuals, in a pit in the ground.[214] The detainees, including P-0022, were repeatedly beaten with fists and wooden truncheons, and the male detainees were ordered by the soldiers to have sex with the female

[211] Judgment, paras 554 and 565.
[212] Judgment, para. 846.
[213] *See also* submissions in Prosecution Submissions, para. 19. Regarding the Defence's submissions that 'none of the crimes cited by the Prosecution as crimes having been committed with particular cruelty involved the direct participation or contemporaneous knowledge of Mr Ntaganda' (Defence Response, para. 68), the Chamber considers that 'particular cruelty' is an aggravating circumstance, which refers to the factual findings regarding the manner in which a crime is executed. As such, it can relate to, for example, the means employed or 'the circumstances of manner, time and location', while direct participation or contemporaneous knowledge are factors relevant for assessment of degree of participation and intent for the purposes of sentencing. The mode of liability pursuant to which an accused is convicted for a certain crime has no impact on the cruelty of the crime itself.
[214] Judgment, para. 545.

detainees, which the male detainees tried but failed to do while some of the soldiers were watching and made fun of them.[215] One of the male detainees inserted his hand twice into P-0022's vagina and stopped when she began to struggle.[216] The following day, a UPC/FPLC soldier attempted to kill P-0022 by cutting her neck and throwing her into another pit, where she woke up a few hours later.[217]

80. Similarly, the Chamber recalls the brutality of the murder of at least 49 persons in the banana field in Kobu during the Second Operation:

> [Following the departure of the UPC/FPLC] people came to Kobu-Wadza to see what had happened. Bodies of those killed were discovered in the banana field. […] Some bodies were naked. Some sticks and pounders were lying amongst the corpses, but no other weapons. Some bodies, but not all, had been tied up. Some looked like they had been beaten to death. Some bodies had slit throats, and some had been decapitated. Some had other knife cuts. Some looked like they had been killed by machete. Some had been disembowelled. Some were missing their genitals and some looked like their genitals had been perforated with sticks. The body of at least one woman looked like she had had a baby cut out of her. At least one corpse had bullet wounds around the mouth. The heads of some bodies had been crushed.[218]

81. The Chamber considers the particular cruelty of these murders, and of other murders and attempted murders discussed above and in its Judgment, which were preceded by beatings,[219] sexual and other assaults or rapes,[220] as an aggravating circumstance. These particularly cruel acts caused additional

[215] Judgment, para. 545.
[216] Judgment, para. 545.
[217] Judgment, paras 546 and 878.
[218] Judgment, para. 633 (footnotes omitted).
[219] *See*, e.g., Judgment paras 528 and 532.
[220] *See*, e.g., Judgment, paras 513, 545, 600 and 601. In this respect the Chamber notes the Prosecution's argument that, as some victims were victimised by multiple crimes, Mr Ntaganda's 'sentence should reflect this […] multi-layered victimization imposed on individual victims' (Prosecution Submissions, para. 15). In this respect, the Chamber considers the fact that some of the victims, such as P-0018, P-0019, P-0022 and P 0018's sister-in-law, were subjected to rape prior to their murders or attempted murders as an aggravating circumstance for the purposes of sentencing. Regarding specific individual victims for whom the Chamber established were subjected to multi-layered victimisation, these are addressed further below when discussing the other types of crimes (*see* paras 124 and 194 below). The Chamber has also been conscious not to count the multi-layered victimisation of some of the victims more than once.

physical and psychological suffering to those who were subjected to them before being killed and to those who survived the injuries inflicted.

82. In addition, the Chamber considers the fact that many of the victims were particularly defenceless, such as individuals who had been previously captured or detained,[221] a pregnant woman,[222] babies[223] and very young children[224] and sick and disabled persons unable to flee[225] to be a further aggravating circumstance.[226]

83. With respect to the murder of *Abbé* Bwanalonga, the Chamber notes the fact that Mr Ntaganda, as a person in a position of authority and as one of the highest-ranking military officials of the UPC/FPLC,[227] personally committed the crime in the presence of his subordinates, his bodyguards.[228] By doing so, he sent a clear message that violence and the commission of crimes against Lendu civilians were tolerated and even encouraged by the UPC/FPLC military leadership,[229] which, in the opinion of the Chamber, warrants an aggravation of the sentence.

84. Finally, the Chamber recalls that the murders were committed with a discriminatory intent, pursuant to the common plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC's military campaign against the RCD-K/ML.[230] Since the discriminatory element has been considered by the Chamber as part of the common plan and thus the mode of

[221] Judgment, paras 510, 513, 528-529, 577, 600-601 and 620-621.
[222] Judgment, para. 546.
[223] Judgment, para. 633.
[224] Judgment, para. 573.
[225] Judgment, para. 587.
[226] *See also* submissions in Prosecution Submissions, paras 21 and 24; and CLR2 Submissions, para. 41.
[227] Judgment, paras 321, 827 and 1179.
[228] Judgment, paras 532-533.
[229] The Chamber notes that with respect to the crimes Mr Ntaganda was convicted as an indirect co-perpetrator, his position of authority and the exercise thereof have been taken into account when assessing his degree of culpability and will therefore not also be considered in aggravation of his sentence. *See also* submissions in Defence Response, paras 51-58. *Contra* Prosecution Submissions, paras 65-75; and CLR2 Submissions, para. 44.
[230] Judgment, paras 808-810. *See also* Judgment, para. 528,

liability, and as such in Mr Ntaganda's degree of participation and intent,[231] the Chamber has not considered it separately as an aggravating circumstance. However, regarding the murder of the *Abbé*, the Chamber considers the fact that Mr Ntaganda intentionally targeted the victim on ethnic grounds, namely by reason of his identity as a Lendu,[232] to constitute an aggravating circumstance.

b) Intentionally attacking civilians (Count 3)

85. The Chamber notes that in some instances persons who did not constitute legitimate targets at the time of the attack were killed as a result of attacks that the UPC/FPLC intentionally launched at civilians.[233] The Chamber considers these death to constitute an aggravating circumstance.

3. Conclusion

a) Murder and attempted murder (Counts 1 and 2)

86. Murder is inherently one of the most serious crimes. In the present case, the Chamber convicted Mr Ntaganda of the murder of at least 74 individuals and the attempted murder of five more. Mr Ntaganda's degree of culpability is substantial in relation to the murders and attempted murders committed during both the First and Second Operation and, in the Chamber's view, his degree of participation was even higher during the First Operation due to his proximity to and the intensity of his involvement in some of the murders committed during this operation. The Chamber further identified the following factors in aggravation: particular cruelty of commission in a number of incidents, particular defencelessness of some of the victims and, in relation to the murder of *Abbé* Boniface Bwanalonga, the fact that Mr Ntaganda as a high-ranking official

[231] *See* para. 34 above.
[232] Judgment, para. 749.
[233] Judgment, paras 586 (six people, amongst them two children, were killed in Bambu when a shell hit a civilian compound located in Bambu-Yalala) and 605 (in Buli at least one person was killed by a member of the UPC/FPLC while being chased into the surrounding bush).

committed the murder in the presence of his subordinates and the discriminatory motive/intent of Mr Ntaganda in relation to this murder.

87. Based on the above, and mindful of its findings below in relation to Mr Ntaganda's individual circumstances,[234] the Chamber considers a sentence of 30 years to appropriately reflect the gravity of the murders and attempted murders, Mr Ntaganda's culpability and the aggravating circumstances with respect to Counts 1 and 2.

b) Intentionally attacking civilians (Count 3)

88. The crime of intentionally attacking civilians is a serious violation of one of the fundamental principles of international humanitarian law. As a crime which does not require an actual harm to occur for the elements of the crime to be established, the Chamber considers it to be less serious than crimes against life that require the actual occurrence of harm, such as murder. As further detailed above, the Chamber convicted Mr Ntaganda of intentionally attacking civilians in five locations, committed during both the First and the Second Operation, which evidences the relatively large scale of the crime. The Chamber further considers Mr Ntaganda's degree of culpability to have been substantial in relation to the aforementioned attacks and recalls that it considered his degree of participation during the First Operation to be even higher given his proximity to and the intensity of his participation in the attacks. The Chamber further identified the fact that in some instances persons were in killed as a result of the attacks as an aggravating circumstance in relation to Count 3.

89. Based on the above, and mindful of its findings below in relation to Mr Ntaganda's individual circumstances,[235] the Chamber considers a sentence of 14 years to appropriately reflect the gravity of the intentional attacks against

[234] *See* section IV below.
[235] *See* section IV below.

civilians, Mr Ntaganda's culpability and the aggravating circumstance with respect to Count 3.

C. Rape and sexual slavery (Counts 4, 5, 6, 7, 8, and 9)

90. The Chamber found Mr Ntaganda responsible for sexual violence crimes committed against two distinct types of victims, namely members of the civilian population (Counts 4, 5, 7 and 8) and female UPC/FPLC members under the age of 15 (Counts 6 and 9). Noting the different factual considerations relevant to the two types of victims, the Chamber analyses the two types of victims separately and pronounces a separate sentence for rape and sexual slavery as war crimes for the civilian victims and UPC/FPLC victims.

91. In relation to the crimes committed against members of the civilian population, the Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for rapes by UPC/FPLC soldiers of women and girls during and in the aftermath of the UPC/FPLC assault on Mongbwalu[236] and of girls in Kilo,[237] in the context of the First Operation, and of men, women and girls in Kobu,[238] Sangi,[239] and Buli[240] in the context of the Second Operation.

92. The Chamber also found Mr Ntaganda responsible as an indirect co-perpetrator for the sexual slavery of P-0113 and of an 11-year-old girl in Kobu and Buli in the context of the Second Operation.[241]

93. In relation to the crimes committed against female UPC/FPLC members under the age of 15, the Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for the rape of Nadège, an approximately nine-year-old girl, at

[236] Judgment, paras 518-523, 535 and 1199.
[237] Judgment, paras 545, 548 and 1199.
[238] Judgment, paras 579, 622-623, 629 and 1199.
[239] Judgment, paras 599-601 and 1199.
[240] Judgment, paras 607 and 1199.
[241] Judgment, paras 579, 606-608, 627, 629, 631 and 1199.

Camp Lingo,[242] and the rape and sexual slavery of P-0883, a girl under 15 years of age, at Camp Bule[243] and of Mave, a girl under the age of 15 assigned as a bodyguard to Floribert Kisembo.[244]

94. As noted above, for the purpose of its analysis, the Chamber has taken into account the fact that some of the conduct underlying the convictions for rape and sexual slavery is the same.[245] Its assessment of sexual slavery for both the civilian victims and the female members of the UPC/FPLC under the age of 15 therefore encompasses only the additional element of the exercise of a power of ownership. The Chamber has also taken into account the fact that for the sexual violence crimes committed against members of the civilian population, the same conduct underlies Mr Ntaganda's convictions for both rape as a crime against humanity (Count 4) and rape as a war crime (Count 5) and for both sexual slavery as a crime against humanity (Count 7) and sexual slavery as a war crime (Count 8).

1. Gravity

a) Gravity of the crimes Mr Ntaganda has been convicted of

95. The Statute and the Rules accord a special status to sexual violence crimes, crimes against children, and the victims thereof.[246] During the drafting process of the Rome Statute, the especially grave nature and consequences of sexual violence crimes, in particular against children, were recognised.[247]

[242] Judgment, paras 410 and 1199.
[243] Judgment, paras 409 and 1199.
[244] Judgment, paras 411 and 1199.
[245] *See* paras 26 and 31 above. The Chamber recalls in this respect that its findings on the second legal element of sexual slavery, both as a crime against humanity and as a war crime, are based on its findings that the victims had been subjected to rape by members of the UPC/FPLC (Judgment, paras 955 and 975).
[246] *See Bemba* Sentencing Judgment, para. 35, referring to Articles 36(8)(b), 42(9), 43(6), 54(1)(b) and 68(1) and (2) of the Statute; and Rules 16(1)(d), 17(2)(a)(iv), 17(2)(b)(iii), 17(3), 19(f), 63(4), 70, 72(1), 86, 88(1), 88(5) and 112(4) of the Rules.
[247] *Bemba* Sentencing Judgment, para. 35.

96. The inherent gravity of sexual violence crimes has been acknowledged in the jurisprudence of the *ad hoc* tribunals.[248] The ICTY trial chamber in *Kunarac et al.*, for example, noted that 'rape is one of the worst sufferings a human being can inflict upon another'.[249] In *Mucić et al.* the trial chamber considered '[t]he rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity'.[250] The Chamber agrees with these observations,[251] and against this background has considered the gravity of the crimes of rape and sexual slavery as crimes against humanity and as war crimes in the circumstances of the present case.

i. Sexual violence crimes committed against members of the civilian population (Counts 4, 5, 7, and 8)

97. In relation to rape (Counts 4 and 5), the Chamber recalls its finding that the underlying acts of rape were committed during and in the immediate aftermath of the UPC/FPLC's assault on Mongbwalu[252] and in Kilo during the First Operation,[253] and throughout the temporal scope of the Second Operation, specifically in Kobu, Sangi and Buli.[254]

98. While the precise number of rape victims was not established by the Chamber, the Chamber made findings on at least 21 specific victims of rape, in addition to making broader findings of rapes of unquantified numbers of persons.[255] The Chamber therefore considers the scale of the crime of rape to be significant.

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[248] *See also* submissions in CLR1 Submissions, paras 37-38.
[249] ICTY, *Kunarac et al.* Trial Judgment, para. 655.
[250] ICTY, *Mucić et al.* Trial Judgment, para. 495.
[251] As part of the present case, the Appeals Chamber agreed with the finding of this Chamber that 'there is never a justification to engage in sexual violence against any person; irrespective of whether or not this person may be liable to be targeted and killed under international humanitarian law': ICC-01/04-02/06-1962, para. 65.
[252] Judgment, paras 518-523 and 535.
[253] Judgment, paras 545 and 548.
[254] Judgment, paras 579, 599-601, 622-623 and 629.
[255] Judgment paras 940-941, 946-948 and 1199. The Chamber notes that: (i) in relation to Mongbwalu, it made specific mention of seven victims (Judgment, paras 518-523), and found more broadly that soldiers and commanders raped an unquantified number of women at the *Apartments* camp (Judgment, para. 535).; (ii) in relation to Kilo, it made specific mention of one victim (Judgment, para. 545), and found more broadly that UPC/FPLC soldiers and commanders used their influence on girls in Kilo to have sexual intercourse with

99. The Chamber further recalls that, in many instances, it found that the acts of rape were accompanied by physical violence against the victims or other individuals present, both before and during the invasion of the victims' bodies.[256] For example, one girl was violently undressed and had a cloth put over her mouth to muffle her screams as a UPC/FPLC soldier was raping her.[257] P-0022 was hit on the back of her head with a rifle butt and thrown in a makeshift underground prison before UPC/FPLC soldiers forced another detainee to insert his hand into her vagina.[258] Other rape victims were also captured, physically restrained and/or hurt by their perpetrators.[259]

100. Perpetrators also used explicit and implicit threats of force, including the showing of their weapons to the victims,[260] and some told victims that they would be killed if they cried out or refused to cooperate.[261] Victims who were taken to the bush to be raped after the 'pacification meeting' had at least two individuals killed in front of them.[262]

101. In relation to the crimes of sexual slavery (Counts 7 and 8), the Chamber notes that the number of victims is two, an 11-year-old girl and P-0113. In relation to

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them (Judgment, para. 548); (iii) in relation to Sangi, it made findings on the rapes women captured together with P-0019 (Judgment, para. 599), and made specific mention of the rapes of P-0018 and six other women (Judgment, paras 600-601); (iii) in relation to Buli, it made specific mention of P-0113's rape (Judgment, para. 607); and (iv) in relation to Kobu, it made specific mention of the rapes of P-0113 (already counted under Buli), P-0019, other women and girls including an 11-year-old girl and at least three men (Judgment, paras 579, 622-623 and 629). In relation to the Defence's assertion that the Chamber did not expressly state that it found beyond reasonable doubt that any women who were brought back to the *Appartements* camp were actually raped (Defence Submissions, paras 35 and 48-50), the Chamber refers to its factual findings in paragraph 535 of the Judgment and the legal findings in paragraphs 940-948 and 1184 which make clear that the Chamber reached a beyond reasonable doubt finding that rapes occurred at, *inter alia*, the *Apartments* camp. Insofar as the Defence challenges the Chamber's findings in relation to the occurrence of rape at the *Appartements* camp, the Chamber further considers that the present sentencing proceedings do not constitute the adequate forum for the making of such arguments. *See also* submissions in Prosecution Response, para. 8.

[256] Judgment, para. 943. The Chamber notes that this conduct could also qualify as cruel behaviour towards the victims and as such could be considered as an aggravating circumstance, but as the Chamber relied on the existence of this conduct to establish the second legal element of rape, namely that the invasion was committed by force, threat of force, or in an coercive environment, the Chamber only discusses these threats of and uses of force under the concrete gravity of the crime.

[257] Judgment, para. 519.

[258] Judgment, para. 545.

[259] Judgment, paras 522, 599-601, 607 and 622.

[260] Judgment, paras 523, 535, 601 and 944.

[261] Judgment, paras 600-601, 607 and 944.

[262] Judgment, paras 600 and 944.

the element of the exercise of a power of ownership, the Chamber recalls that it found that both victims were captured during the Second Operation,[263] and were subjected to deprivations of liberty lasting several days or even weeks.[264] The Chamber also recalls that it heard evidence that the 11-year-old girl was forced to have 'sexual relationships' with her captor to save her life[265] and that P-0113, after having witnessed many Lendu being killed during the Kobu massacre, obeyed one of her rapist's commands to go with him to Bunia, because she feared for her life.[266]

102. As illustrated below, the evidence before the Chamber establishes that the victims of rape and sexual slavery (Counts 4, 5, 7 and 8) in this case suffered physical, psychological, psychiatric and social consequences (ostracisation, stigmatisation and social rejection), both in the immediate and longer term. Some of the effects were also experienced by the victims' family members and communities.

103. In terms of physical consequences, after she was raped by two UPC/FPLC soldiers in Mongbwalu, for example, the Chamber found that a 13-year-old girl was bleeding profusely, had difficulty walking, and was unable to speak for a day.[267] She suffered external and internal wounds to her vagina which took several months to heal and required surgery years later.[268] Another victim, approximately 14 years old at the time, suffered swelling in parts of her body.[269] P-0018 fought back as a soldier raped her and as a result injured her arm and

[263] Judgment, paras 579 and 606.
[264] Judgment, paras 579, 606-608, 627, 629 and 631.
[265] Judgment, para. 579.
[266] Judgment, paras 628 and 631.
[267] Judgment, paras 519-520.
[268] Judgment, para. 520; and **P-0912**: T-148, pages 67-68.
[269] Judgment, para. 521.

back.[270] The Chamber also found that, following their rape, male victims of rape 'suffered a great deal' before their deaths.[271]

104. The Chamber also established that the aforementioned 13-year-old victim incurred a long-lasting fear, which caused her to drop out of school.[272] Following her rape, the girl would remove herself from her family's company because she found it difficult to stay around other people.[273] She also no longer wanted to help with her family's business.[274] The Chamber heard:

> […] [H]er life changed. She became very ashamed and she could no longer play with her friends and her school results suffered […] as a result of what she had experienced. On occasion she would go to school, then she would leave class whilst other children continued to study. She was virtually isolated from what went on at school.[275]

105. Furthermore, in terms of psychological, psychiatric and social consequences, the Chamber heard evidence from psychological expert Dr Lewis, who testified about common and universal consequences suffered by victims of sexual violence and who conducted clinical assessments of three rape victims in this case (namely, P-0018,[276] P-0019[277] and P-0113[278]), to determine whether they suffered any psychological harm as a result of their experiences. On the basis of their subjective reports of symptoms, Dr Lewis concluded that P-0018,[279] P-0019[280]

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[270] Judgment, para. 601.
[271] Judgment, para. 623.
[272] Judgment, para. 520.
[273] **P-0892**: T-85, pages 30-31.
[274] **P-0892**: T-85, page 31.
[275] **P-0892**: T-85, page 30.
[276] DRC-OTP-2059-0058-R02.
[277] DRC-OTP-2059-0080-R03.
[278] DRC-OTP-2059-0069-R04. The Chamber notes that P-0113 was also sexually enslaved, in addition to being raped.
[279] DRC-OTP-2059-0058-R02, from 0063 to 0064. A detailed account of P-0018's symptoms can be found in DRC-OTP-2059-0058-R02, from 0062 to 0064. *See also* **P-0938**: T-114, pages 6-8. *See also* submissions in Prosecution Submissions, para. 34.
[280] DRC-OTP-2059-0080-R03, at 0085. A detailed account of P-0019's symptoms can be found in DRC-OTP-2059-0080-R03, from 0084 to 0085. *See also* **P-0938**: T-114, pages 8 to 9, although acknowledging that some symptoms have recently decreased (DRC-OTP-2059-0080-R03, from 0084 to 0085). *See also* submissions in Prosecution Submissions, para. 34.

and P-0113[281] suffered clear psychological harm dating from 'the events in Ituri in 2003', and found that all three victims meet the criteria for a diagnosis of Post-Traumatic Stress Disorder ('PTSD'). Dr Lewis further explained that the universal, core and perhaps most pervasive experience of sexual violence for women who have been raped or sexually assaulted is that of shame.[282] The Chamber notes that these symptoms were reported by P-0018,[283] P-0019[284] and P-0113.[285]

106. Dr Lewis also referred to other universal reactions to experiencing sexual violence such as issues with sexuality, for example engaging in marital relations with a spouse, which she found present in the clinical examination of P-0018,[286] and distortion of self-image, which she noted in the case of P-0113.[287]

107. The Chamber also heard testimony to the effect that rape would result in stigma and ostracisation for the victims.[288] P-0113 fears exposure in her community[289] and P-0019 feared being ostracised because of her rape.[290]

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[281] DRC-OTP-2059-0069-R04, at 0074. *See also* **P-0938**: T-114, page 12. A detailed account of P-0113's symptoms can be found in DRC-OTP-2059-0069-R04, from 0073 to 0074. *See also* **P-0938**: T-114, page 10. *See also* **P-0113**: T-118, pages 65 and 67. *See also* submissions in Prosecution Submissions, para. 34.

[282] **P-0938**: T-113, page 54. In this regard, she explained that typically individuals who have been sexually violated, feel 'contaminated, dirty, unclean', because of the nature of the 'very private' violation they have experienced: **P 0938**: T-114, page 8.

[283] P-0018 described feeling 'ashamed and dirty', DRC-OTP-2059-0058-R02 at 0062.

[284] P-0019 described intense shame regarding her rape, DRC-OTP-2059-0080-R03, at 0085.

[285] P-0113 described feeling very ashamed of herself about the rapes, DRC-OTP-2059-0069-R04, at 0073.

[286] **P-0938**: T-114, page 7.

[287] **P-0938**: T-114, pages 10-12.

[288] P-0365 explained that it was very difficult for female victims of sexual violence to be reintegrated into their family and communities and that the stigmatisation associated with rape for women existed in all communities without distinction (**P-0365**: T-147, pages 34-35). The witness also explained how young girls would be less respected in their family and would not be able to find a husband because 'no man would like to marry them because any man looking for a wife would not want to be identified in the society as one who has taken a raped girl for a wife' (**P-0365**: T-147, page 36). She testified that throughout communities, a raped person would be considered to be 'of lesser status' and that victims would hide their rape in order to avoid social consequences (**P-0365**: T-147, pages 36-37). P-0014 corroborated these observations, testifying that, 'You may also want to understand that in our culture, […] if my wife is raped, I no longer feel like a man and I can no longer stand tall in front of anybody because I am covered in shame. That is the feeling I would have if my wife is raped. So that also amounts to having been vanquished somehow. That is why it becomes impossible for me then to stand and to demonstrate that I am the defender and the protector of my wife' (**P-0014**: T-138, pages 100-101).

[289] **P-0938**: T-114, pages 10-12.

Moreover, P-0018 believed that her husband would abandon her if he were to find out, and was terrified of the response of her community if she disclosed that she had been raped.[291]

ii. Sexual violence crimes committed against female members of the UPC/FPLC under the age of 15 (Counts 6 and 9)

108. The Chamber recalls at the outset that, notwithstanding its findings that female members of the UPC/FPLC were regularly raped and subjected to sexual violence during their service and that this was a common practice generally known and discussed within the UPC/FPLC,[292] as a result of the manner in which the relevant charges were framed by the Prosecution (and confirmed by Pre-Trial Chamber II), the Chamber only considered for the purposes of these crimes those victims who were under 15 years of age at the relevant time. In this respect, the Chamber was able to make findings on, and enter convictions in relation to three individuals for the purposes of rape (P-0883, Mave and Nadège), and two for the purposes of sexual slavery (P-0883 and Mave).[293] It is therefore in relation to these three individuals that the Chamber has assessed the gravity of Mr Ntaganda's crimes under these counts, notwithstanding that the Chamber recognises that this is not representative of the number of female UPC/FPLC victims who were subjected to rape and sexual violence, given the Chamber's finding that such conduct against female members was a common practice in the UPC/FPLC during this time period.[294]

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[290] P-0019 delayed reporting her experiences, because she felt that men would fear her if they knew she had been raped, **P-0019**: T-115, page 56; **P-0938**: T-114, page 10; and DRC-OTP-2059-0080-R03, from 0083 to 0084.

[291] **P-0938**: T-114, page 8; DRC-OTP-2059-0058-R02, at 0062 and 0064; and generally **P-0938**: T-113, pages 49-50, 55-56, 62 and 66-67; and T-114, pages 3-4. *See also* **P-0365**: T-147, pages 34-36, describing how victims of sexual violence faced rejection by their husbands or even if not rejected, there would be pain and suffering within the household.

[292] Judgment, paras 407 and 1196.

[293] The Chamber recalls that in addition to the three specific examples discussed, the Chamber also heard other evidence about the rape of PMFs under the age of 15 by UPC/FPLC soldiers or commanders, *see* Judgment, footnote 1161.

[294] *Contra* the approach suggested by the Legal Representative of the Former Child Soldiers which is that the number of victims for the convictions under Counts 6 and 9 should be assessed for the purpose of sentencing

109. The Chamber recalls that the rapes and acts of sexual slavery of the aforementioned girls took place during training at UPC/FPLC camps (for P-0883[295] and Nadège[296]), or during the assignment as an escort to a UPC/FPLC commander (for Mave[297]), during a period in which the UPC/FPLC was actively engaged in military operations and fought opposing armed actors.[298] The Chamber found that this practice of sexual violence could occur due to the circumstances in which these vulnerable young girls were kept, notably not being able to leave.[299]

110. The Chamber recalls in particular the findings it made in relation to the coercive environment[300] in which the crimes of rape and sexual slavery of these victims took place: (i) P-0883 was brought to Camp Bule for training, where she stayed for several months,[301] was threatened to be killed in case she tried to flee,[302] was forced to engage in sexual intercourse with UPC/FPLC soldiers through the use of threats, being told that she would be shot if she did not accept,[303] and was kept captive in a state of extreme vulnerability;[304] (ii) living conditions in the UPC/FPLC training camps at the time were harsh,[305] recruits were told that they

on the basis of a large geographical area and long period of time, i.e. rape and sexual slavery against children under the age of 15 incorporated into the UPC/FPLC between on or about 6 August 2002 and 31 December 2003 in Ituri, and that the number of victims for these crimes should be considered as an aggravating factor (CLR1 Submissions, paras 51-53; and submissions in Prosecution Response para. 15, arguing that the scale of the crimes against children who were sexually enslaved is large; *see also* submissions in Defence Response, paras 70-71 and 77-79).

[295] Judgment, para. 409.

[296] Judgment, para. 410.

[297] Judgment, para. 411.

[298] Judgment, para. 984.

[299] Judgment, para. 792.

[300] The Chamber notes that the Legal Representative of the Former Child Soldiers raises facts establishing the existence of a coercive environment as aggravating factors, or in the alternative, as matters going to gravity (CLR1 Submissions, paras 49-50). Noting that the existence of a coercive environment is an element of the crime, the Chamber has considered these matters under gravity.

[301] Judgment, para. 409.

[302] Judgment, para. 409.

[303] Judgment, para. 409. The Chamber notes that the Legal Representative of the Former Child Soldiers raises this matter as an aggravating factor (CLR1 Submissions, para. 56). In its discretion, the Chamber has considered this matter under gravity.

[304] Judgment, paras 977-978.

[305] Judgment, para. 375.

would be killed if they tried to flee[306] and if recruits did not obey orders, they were beaten, sometimes very severely;[307] and (iii) although Mave was not necessarily physically confined, she was unable to leave her position as Floribert Kisembo's escort,[308] and Kisembo allowed her rapes to happen, and as such placed her at the disposal of those who raped her.[309]

111. In relation to the extent of the damage in respect of the rape and sexual slavery of P-0883 and Mave, and the rape of Nadège, the Chamber incorporates its general findings above about the general consequences of sexual violence crimes.[310] It specifically notes that the victims suffered physical consequences,[311] and contracted sexually transmitted diseases, as a result of the treatment that they were subjected to.[312]

112. The Chamber also notes the particular psychological and social consequences suffered by the victims[313] and takes into account that the two victims of sexual slavery had no choice but to stay in close vicinity of their abusers, in the coercive environment of the UPC/FPLC training camps or as escorts.[314] In

[306] Judgment, para. 376.
[307] Judgment, para. 377.
[308] Judgment, para. 980.
[309] Judgment, para. 980.
[310] *See* paras 102-107 above.
[311] Judgment, para. 411; and **P-0907**: T-89, pages 52, 55-57 and 63-64. *See also* submissions in Prosecution Submissions, para. 38; and CLR1 Submissions, para. 40.
[312] In addition to the findings made on P-0883's suffering in the Judgment, the Chamber notes the further specification provided in her testimony before the Chamber: **P-0883**: T-168, page 34. *See also* submissions in Prosecution Submissions, para. 38; and CLR1 Submissions, para. 40.
[313] P-0365, who worked with victims of gender-based and sexual violence in Ituri during the temporal period of the conviction described the particular impact on girls who were associated with armed groups as a result of the sexual violence they suffered as follows, '[C]hildren don't belong in military camps, first of all; and secondly, those women could not complete their schooling. They did not have the opportunity to […] be brought up by their family and taught by their families, to have the affection of their family; rather, they had to jump immediately to an adult stage of their life whereas they were not adults. Their lives, if you like, had been […] ruptured, if you like, there was a break and they had sexual and other experiences which were not suitable for their age' (**P-0365**: T-147, page 41).
[314] Judgment, para. 792.

relation to Mave, the Chamber further recalls that only after she developed health problems, soldiers were instructed not to 'touch' her anymore.[315]

113. Particular difficulties were faced by female children under the age of 15 who had been associated with an armed group in returning to their families and communities where they returned with a child and where the communities assumed that these young women had undergone sexual abuses; in this respect, the Chamber recalls its finding that, after having been raped multiple times at Bule camp, P-0883 found out that she was pregnant, without knowing 'who was responsible for that pregnancy'.[316] Children born as a result of sexual violence, as well as their mothers, faced rejection from their communities.[317]

b) Mr Ntaganda's degree of participation and intent

i. Sexual violence crimes committed against members of the civilian population (Counts 4, 5, 7, and 8)

114. As noted above, Mr Ntaganda was convicted as an indirect co-perpetrator for rape as a crime against humanity and as a war crime in a number of locations in the course of the First and Second Operation, and for sexual slavery as a crime against humanity and as a war crime in the course of the Second Operation. Together with his co-perpetrators, Mr Ntaganda conceived a common plan by virtue of which he and his co-perpetrators meant, *inter alia*, for civilians to be raped and subjected to sexual slavery.[318]

[315] Judgment, para. 411. The Chamber further recalls P-0887's observations that Mave 'looked like someone who had been traumatised' (Judgment, para. 411).
[316] Judgment, para. 409. The Chamber further notes its finding that a number of these female members of the UPC/FPLC became pregnant during their time in the UPC/FPLC, *see* Judgment, para. 407.
[317] **P-0883**: T-167, page 96; T-168, pages 61 and 64-65; and **P-0365**: T-147, pages 41-42. *See also* submissions in Prosecution Submissions, para. 38; and CLR1 Submissions, para. 16. In addition to this issue, the Chamber notes that the LRVs both raise the general issue of inter- or transgenerational harm resulting from sexual crimes (CLR1 Submission paras 16 and 43; and CLR2 Submission, para. 40). Noting, however, the complex questions of causation involved in determining this type of harm to a beyond reasonable doubt standard and the very general nature in which this type of harm has been referred to by the LRVs, the Chamber does not consider this further issue here for the purposes of sentencing.
[318] Judgment, paras 808, 810 and 1188.

115. In addition to his contribution in relation to the commission of these crimes, as described above,[319] the Chamber also recalls that some of the rapes which took place during the First Operation occurred at Mr Ntaganda's base, the *Appartements* camp,[320] and that Mr Ntaganda himself was present and aware that civilian women were brought to the *Appartements* camp by UPC/FPLC soldiers and commanders, and even brought women there himself.[321] While not relying directly or indirectly, on the proposition that Mr Ntaganda personally committed rapes of civilian women at the *Appartements* for the purpose of the present assessment, when assessing Mr Ntaganda's degree of participation in relation the rapes committed during the First Operation, the Chamber has taken into account his presence at the camp, his awareness that women were brought there, and the fact that he brought women there himself.[322]

116. The Chamber has also considered its findings that, within the scope of the common plan, acts of sexual violence against the Lendu were, 'like the acts of killings and other acts of physical violence, a tool used by UPC/FPLC soldiers and commanders alike to achieve their objective to destroy the Lendu community in the localities under assault'[323] and that the intent to destroy and disintegrate the Lendu community 'inherently involved the targeting of civilian individuals by way of acts of killing and raping'.[324]

117. In light of the above, the Chamber considers Mr Ntaganda's degree of culpability to have been substantial in relation to rape as a crime against humanity and as a war crime committed against members of the civilian

[319] *See* paras 32-38, 60, 65, 71-73 and 75-77 above.
[320] Judgment, paras 527 and 535.
[321] Judgment, para. 535.
[322] Considering its findings on Mr Ntaganda's role as a co-perpetrator as set out in the present section, as well as its considerations as set out in paras 32-38 above the Chamber does not consider it necessary to address the Defence's arguments as to the alleged lack of advance or contemporaneous knowledge of Mr Ntaganda of rapes or sexual slavery of civilian victims (Defence Submissions, paras 47-53 and 94; *see also* submissions in Prosecution Response, paras 22 and 24; and Prosecution Submissions para. 59).
[323] Judgment, para. 805.
[324] Judgment, para. 809.

population during both the First and Second Operation and in relation to sexual slavery as a crime against humanity and as a war crime committed during the Second Operation. The intensity of his involvement in, and his proximity to, the rapes of civilians committed at the *Appartements* camp are factors which, the Chamber considers, further increase his culpability for these rapes.

ii. Sexual violence crimes committed against female members of the UPC/FPLC under the age of 15 (Counts 6 and 9)

118. The Chamber recalls that Mr Ntaganda was convicted as an indirect co-perpetrator of rape as a war crime and sexual slavery as a war crime committed against female members of the UPC/FPLC who were under the age of 15. The Chamber found that Mr Ntaganda was aware that, in the ordinary course of events, and during the relevant period, the implementation of the UPC/FPLC's common plan would lead to, *inter alia*, the rape and sexual slavery of children under the age of 15 within UPC/FPLC ranks.[325] This is a lower degree of intent than for the sexual crimes against civilians.[326]

119. However, the Chamber also recalls Mr Ntaganda's participation in the recruitment and enlistment of individuals under the age of 15 and the UPC/FPLC's training camps system.[327] The Chamber considers that Mr Ntaganda thereby played an important role in creating the conditions that led to the sexual abuse of the children under 15 who the Chamber found to have been subjected to rape or sexual slavery. Furthermore, he exercised control over the crimes committed by the UPC/FPLC against children under the age of 15 who were, *inter alia*, raped and sexually enslaved during the course of the UPC/FPLC's military campaign.[328] In reaching the aforementioned findings, the Chamber considered that the only reasonable conclusion was that Mr Ntaganda

[325] Judgment, paras 808, 811 and 1198.
[326] *See also* submissions in Defence Submissions, para. 86.
[327] *See* paras 186-192 below.
[328] Judgment, para. 857.

knew that rapes and sexual violence were occurring within the UPC/FPLC ranks, and that female recruits and soldiers under the age of 15 were not excluded from this practice.[329] It noted in this regard, *inter alia*, that the fact that female members of the UPC/FPLC were regularly raped and subjected to sexual violence during their service was generally known and discussed within the UPC/FPLC,[330] as well as that Mr Ntaganda himself, and his chief escort, were among those who inflicted rape on his female bodyguards.[331] In addition, sexual violence crimes against female members of the UPC/FPLC, including those under the age of 15, was left largely unpunished, notably within Mr Ntaganda's escort.[332] The Chamber thus found that UPC/FPLC military leaders, which included Mr Ntaganda, did not ensure a safe environment for the female members of the UPC/FPLC, in which they would not be sexually abused by other members of the group.[333]

120. In light of the above, the Chamber considers that Mr Ntaganda's degree of intent in relation to the commission of rape and sexual slavery against child soldiers was lower than for the commission of the rape and sexual slavery of civilians.[334] However, his degree of involvement and participation in their commission was significant.

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[329] Judgment, para. 1197. *See also* submissions in CLR1 Submissions, para. 45. *Contra* submissions in Defence Submissions, para. 85.
[330] Judgment, para. 407.
[331] Judgment, para. 407. *See also* submissions in CLR1 Submissions, para. 47. The Chamber notes that it has not entered a conviction for such conduct, which was not charged, but has however considered it in assessing Mr Ntaganda's *mens rea* in relation to the crimes underlying Counts 6 and 9 (*see* Judgment, paras 1196-1198). Accordingly, the Chamber does also not further consider the Prosecution's argument that the fact that Mr Ntaganda abused his position of authority by raping persons in his own escort should be considered in aggravation (Prosecution Submissions, para. 69).
[332] Judgment, paras 411-412, 792 and 1196. The Chamber notes that the Prosecution raises Mr Ntaganda's failure to prevent and punish the commission of, *inter alia*, sexual crimes, despite being in the position to do so as being an aggravating factor of abuse of authority (Prosecution Submissions, para. 71). The Legal Representative of the Former Child Soldiers also argues that the hierarchical relationship between the victims and perpetrators is a factor leading to aggravation of rape and sexual slavery on the basis of abuse of authority (CLR1 Submissions, para. 54). In its discretion, the Chamber has considered these factors here under degree of participation and intent.
[333] Judgment, para. 792.
[334] *See also* submissions in Defence Submissions, paras 86-87.

2. Aggravating circumstances

a) Sexual violence crimes committed against members of the civilian population (Counts 4, 5, 7, and 8)

121. With respect to Counts 4 and 5[335] and Counts 7 and 8,[336] the Chamber considers the fact that some victims were very young, and therefore particularly defenceless, to be an aggravating circumstance.

122. Furthermore, the repeated victimisation of some of the victims, namely the fact that some victims were raped more than once by the same perpetrator,[337] or were raped by different perpetrators,[338] is also considered to be an aggravating circumstance with respect to Counts 4 and 5.

123. The particular cruelty of some of the rapes is also considered in aggravation of the sentence with respect to Counts 4 and 5; specifically UPC/FPLC soldiers used pieces of wood to penetrate the genital openings of some women and the anal openings of some men captured after the 'pacification meeting'[339] and some rapes were committed in the presence of other persons, thereby heightening the victims' humiliation.[340]

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[335] The victims of rape in Mongbwalu included a 13-year-old girl (Judgment, para. 519) and an approximately 14-year-old girl (Judgment, para. 521). In relation to the 13-year-old girl, the Chamber notes that, although in addressing the Defence's challenges associated with this finding the Chamber noted that the victim's precise age at the time of the rape was not a material issue at hand (*see* Judgment, footnote 1533), the Chamber is nonetheless satisfied that the girl was of a young age at the relevant time. One of the victims of rape in Kobu was aged 11 (Judgment, para. 579). *See also* submissions in Prosecution Submissions, para. 21.

[336] The aforementioned 11-year-old victim of rape in Kobu was also one of the two victims of sexual slavery (Judgment, paras 579 and 1199). Noting the impact of being kept in a state of deprivation of liberty on a girl of such a young age, the victim's age is considered by the Chamber to also constitute an aggravating circumstance for the purpose of Counts 7 and 8.

[337] For example, the 13-year-old girl in Mongbwalu was penetrated by the fingers and the penis of the perpetrator (Judgment, para. 519) and P-0019 was both vaginally and anally penetrated by the perpetrator (Judgment, para. 622).

[338] For example, the 13-year-old girl in Mongbwalu was raped successively by two UPC/FPLC soldiers (Judgment, para. 519), a 14 year old was also raped by two soldiers in Mongbwalu (Judgment, para. 521), and P-0113was raped by a UPC/FPLC soldier and a UPC/FPLC commander (Judgment, paras 607 and 629).

[339] Judgment, para. 623. *See also* submissions in Prosecution Submissions, para. 18.

[340] Judgment, paras 519, 521, 545 and 623.

124. The Chamber also notes that, in a number of instances, rapes coincided with the commission of other crimes, in particular, sexual violence culminated in murder or attempted murder, such as the rapes of P-0018, her sister-in-law, P-0019 and P-0022.[341] However, noting that the Chamber already considered, in its assessment of the appropriate sentence for murder and attempted murder the fact that several victims of those crimes had been subjected to sexual violence immediately prior to their murders or attempted murders as an aggravating circumstance,[342] the Chamber does not again take this into account here as an aggravating circumstance.

125. Finally, the Chamber recalls that the crimes of rape and sexual slavery were committed with a discriminatory intent, pursuant to the common plan to drive out all the Lendu from the localities targeted during the UPC/FPLC's military campaign.[343] Since the discriminatory intent has been considered by the Chamber as part of the common plan and thus the mode of liability,[344] the Chamber has not considered it separately as an aggravating circumstance.

b) Sexual violence crimes committed against female members of the UPC/FPLC under the age of 15 (Counts 6 and 9)

126. The Chamber recalls the very young age of all of the victims[345] and considers that, given their youth, the victims were particularly defenceless. In this respect, the Chamber notes that the requirement that the victims be under the age of 15 is an element of the charges in the present case[346] rather than a constituent element of the crimes of rape and sexual slavery under Article 8(2)(e)(vi) of the

[341] Judgment paras 545-546, 600-601, 622, 632, 805, 878, 880, 882 and 943-944. *See also* submissions in Prosecution Submissions, para. 18.
[342] *See* para. 81 and footnote 220 above.
[343] Judgment, paras 808-810 and 1020
[344] *See* Judgment, paras 808-810. *See also* para. 34 above.
[345] P-0883, 12 years old (Judgment, paras 174 and 179); Mave, under 15 years old (Judgment, para. 411); and Nadège, approximately nine years old (Judgment, para. 410). S*ee also* submissions in Prosecution Submissions, paras 22-23; and CLR1 Submissions, para. 48.
[346] Which were, as discussed below, arbitrarily limited by the Prosecution to persons under the age of 15.

Statute. The Chamber has therefore considered the young age of each victim and their particular defencelessness resulting therefrom as an aggravating factor with respect to Counts 6 and 9.

127. With respect to Count 6 the Chamber further considers the repeated victimisation of P-0883 and Mave to be an aggravating circumstance. Both were raped multiple times by multiple soldiers over the period of their sexual enslavement. Specifically, the Chamber found that Mave was raped by many different soldiers on a regular basis[347] and that P-0883 was raped by many soldiers, who would come and take her and other girls 'whenever they wanted'.[348]

128. The Prosecution argues that the rape and sexual slavery of female and male UPC/FPLC soldiers who were over 15, or whose age could not be established beyond reasonable doubt as under 15, should be considered in aggravation because these acts are sufficiently linked to the crimes for which Mr Ntaganda was convicted.[349] In this regard, the Chamber recalls that there was no legal reason warranting a restriction of the charges to members of the UPC/FLPC *under* the age of 15, as rape and sexual slavery are prohibited against any person and constitute war crimes if the armed conflict nexus is established.[350] The Prosecution nevertheless made the conscious choice to only charge rape and sexual slavery of persons under the age of 15, and did not seek to amend or modify the charges after the Chamber's and Appeals Chamber's rulings on the jurisdictional question, thus making it impossible for these alleged crimes to be considered on their own.

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[347] Judgment, para. 411.
[348] Judgment, para. 409. *See also* submissions in Prosecution Submissions, para. 17; and CLR1 Submissions, para. 55.
[349] Prosecution Submissions, paras 25-27. *See also* Prosecution Response, paras 9-10.
[350] ICC-01/04-02/06-1707, paras 52-53, as confirmed by the Appeals Chamber: ICC-01/04-02/06-1962, paras 48, 49, 51, 63 and 64.

129. The Prosecution now attempts to bring this uncharged conduct in by having it considered as an aggravating circumstance. However, as this conduct would have qualified as crimes on their own but fell outside the scope of the charges because of prosecutorial choices, such conduct has a direct link to these uncharged alleged crimes. However, it cannot be considered as having a sufficient link to the crimes for which Mr Ntaganda was convicted, for the purposes of aggravation.[351] The fact that crimes were committed against persons within an organisation does not mean that their suffering can be an aggravating circumstance in relation to crimes committed against different victims within that same organisation. The Chamber therefore agrees with the Defence's submissions in this respect[352] and declines to aggravate Mr Ntaganda's sentence in relation to Counts 6 and 9 based on this uncharged conduct. The Chamber considers that the requirement of the existence of a 'sufficient link' between the uncharged conduct and the crimes for which Mr Ntaganda was convicted should be construed restrictively in order to avoid sentencing an individual for uncharged crimes.[353]

3. Conclusion

130. As established by the Chamber above, the rape and sexual slavery of civilians and of female UPC/FPLC members under the age of 15 in this case are very serious crimes. The victims of these crimes suffered physical, psychological, psychiatric, and social consequences (ostracisation, stigmatisation and social rejection), both in the immediate and longer term. The number of civilian victims of rape in particular is substantial. While the number of female UPC/FPLC victims under the age of 15 is lower, their rapes were systematic[354]

[351] As noted above, the Chamber considered this conduct in assessing Mr Ntaganda's *mens rea* in relation to the crimes underlying Counts 6 and 9 (*see* Judgment, paras 1196-1198).
[352] Defence Response, paras 17-38.
[353] *See also* para. 18 above.
[354] *See* para. 127 above.

and, for the victims subjected to sexual slavery, their deprivations of liberty lasted longer than those of the civilian victims.[355] Mr Ntaganda's level of intent and participation was substantial as far as these sexual crimes against civilians are concerned. While his degree of intent in relation to the commission of the sexual crimes against the UPC/FPLC victims was lower than for the sexual crimes against civilians, his degree of participation in their commission was significant. The Chamber further identified the following factors in aggravation for the civilian victims: for the purpose of Counts 4, 5, 7 and 8, the particular defencelessness of victims, and for the purpose of Counts 4 and 5, the repeated victimisation of some of the victims and the particular cruelty of commission in a number of incidents. For the female UPC/FPLC victims under the age of 15, the Chamber identified the following factors in aggravation: for the purpose of both Counts 6 and 9, the particular defencelessness of the victims, and for the purpose of Count 6, the repeated nature of the victimisation.

131. In determining the sentences for sexual slavery of both the civilian and female UPC/FPLC victims under the age of 15, as noted above, because the sexual violence the victims suffered forms the basis of the rape convictions and is therefore reflected in the sentences for rape, the Chamber considered only the additional element of exercise of a power of ownership.

132. Based on the above, and mindful of its findings below in relation to Mr Ntaganda's individual circumstances,[356] the Chamber considers: a sentence of 28 years to appropriately reflect the gravity of the rapes of civilian victims, Mr Ntaganda's culpability and the aggravating circumstances with respect to

[355] As noted above in para. 101, whereas the Chamber found that two civilian victims of sexual slavery were subjected to deprivations of liberty lasting several days or even weeks, it found that P-0883 was systematically raped in Camp Bule where she stayed for several months (*see* para. 110 above and the references contained therein). Although making no finding on the length of time that Mave was deprived of her liberty, the Chamber noted that she suffered repeated acts of sexual violence, and that an intervention to stop them only occurred after she had developed serious health problems as a result of the repeated rapes (*see* para. 112 above and the references contained therein).

[356] *See* section IV below.

Counts 4 and 5; a sentence of 12 years to appropriately reflect the gravity of the sexual slavery of civilian victims, Mr Ntaganda's culpability and the aggravating circumstance with respect to Counts 7 and 8; a sentence of 17 years to appropriately reflect the gravity of the rape of female members of the UPC/FPLC under the age of 15, Mr Ntaganda's culpability and the aggravating circumstances with respect to Count 6; and a sentence of 14 years to appropriately reflect the gravity of the sexual slavery of female members of the UPC/FPLC under the age of 15, Mr Ntaganda's culpability and the aggravating circumstance with respect to Count 9.

D. Pillage, attacking protected objects, and destroying the adversary's property (Counts 11, 17, and 18)

133. The Chamber convicted Mr Ntaganda for three types of war crimes that concern unlawful conduct directed against property and/or (civilian) objects. As regards pillage (Count 11), the Chamber recalls that it found Mr Ntaganda responsible as an indirect co-perpetrator for the appropriation of items in Mongbwalu and Sayo by UPC/FPLC soldiers and in the case of Mongbwalu – also by Hema civilians – in the context of the First Operation,[357] and pillage by UPC/FPLC soldiers in Kobu,[358] Lipri,[359] Bambu,[360] and Jitchu,[361] in the context of the Second Operation.

134. The Chamber further found Mr Ntaganda responsible as an indirect co-perpetrator for intentionally directing an attack against a protected object,

[357] Judgment, paras 512, 514-517, 526, 1041 and 1199.
[358] Judgment, paras 578, 1041 and 1199.
[359] Judgment, paras 569 and 1199.
[360] Judgment, paras 589 and 1199.
[361] Judgment, paras 617 and 1199.

namely the health centre in Sayo, in the context of the First Operation (Count 17).[362]

135. As to the destruction of the adversary's property (Count 18), the Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for destroying houses in Mongbwalu[363] and Sayo,[364] in the context of the First Operation, and in Lipri and Tsili,[365] Kobu, [366] Jitchu,[367] Buli,[368] and Sangi,[369] in the context of the Second Operation.

1. Gravity

a) Gravity of the crimes Mr Ntaganda has been convicted of

136. As noted above, not all crimes included in the Statute are necessarily of equivalent gravity and the Chamber must distinguish, for example, those against persons from those crimes that target only property.[370] Even if inherently grave, and having the potential to cause severe consequences for the victims,[371] crimes against property are generally of lesser gravity than crimes against the life and/or bodily integrity of persons.[372]

137. As far as destroying the adversary's property is concerned, when destruction of property concerns houses, the perpetrators do not merely destroy structures, but they also destroy people's homes – a place where the victims ought to have been able to feel shielded and safe. Destruction of houses may therefore be a

[362] Judgment, paras 506 and 1199.
[363] Judgment, paras 496 and 1199.
[364] Judgment, paras 503 and 1199.
[365] Judgment, paras 569 and 1199.
[366] Judgment, paras 578 and 1199.
[367] Judgment, paras 619 and 1199.
[368] Judgment, paras 609 and 1199.
[369] Judgment, paras 602 and 1199.
[370] *Katanga* Sentencing Judgment, para. 43. *See also* para. 14 above.
[371] For example, if virtually all property of civilians, who had to flee in a hurry, is taken, the pillage may have severe consequences for the victims and negatively affect their chance of survival.
[372] *See* similarly, *Al Mahdi* Judgment, para. 77. *See also* para. 14 above.

crime against property, but it does not merely impact that property; the crime also deprives civilians of a private place, a shelter and a sense of security.

138. As regards the directing of an attack against protected objects,[373] the Chamber observes that this crime is based on the IHL principle of distinction and the general prohibition against attacking civilian objects. The objects listed in Article 8(2)(e)(iv) are protected by virtue of being civilian, and so long as they do not lose their civilian protection and qualify as military objectives, they are immune from attack. However, they also deserve special protection because of the role these objects, such as medical facilities and schools, play in the daily life and welfare of the civilian population. The fact that such objects play a special role (e.g. for the treatment of wounded persons), or portray a special value, both during peace time and during an armed conflict, makes the crime as such more grave than the directing of an attack against objects that are protected as regular civilian objects. Especially in times of armed conflict and during ongoing hostilities, when as a result of the fighting more persons become injured or wounded, the protection of medical facilities must be respected. Attacking such structures disrupts the ability of medical personnel to care for the sick and wounded. Directing hostile action at such a building is therefore of significant gravity.

i. Pillage (Count 11)

139. The Chamber found that the UPC/FPLC pillaged, *inter alia*, furniture, mattresses, radio and television sets, clothing, livestock, corrugated roofing sheets and gold.[374] The Chamber found that although there was 'some disparity in the value of the looted items […] these items represented the bulk of the victims' possessions, played an important role in the victims' day-to-day lives

[373] Protected for the purposes of Article 8(2)(e)(iv) of the Statute. The Chamber recalls that under international humanitarian law all civilian objects are, in principle, protected.
[374] *See*, e.g., Judgment, paras 514, 526 and 569.

and/or their business'.[375] In addition, the pillage of harvest affected the victims' 'livelihood and availability of food until new crops would had grown and could be harvested'.[376] Many civilians were affected by the looting and were sometimes left without anything. In Mongbwalu, for example, many inhabitants returned to their houses to find that nothing was left, as everything had been taken.[377] The pillaging was of a large scale and in some cases lasted for a considerable period. The looting in Mongbwalu, for example, lasted for about a week.[378]

140. The Chamber notes the Defence's submission that the scale of the pillage cannot be precisely determined.[379] While, on the basis of the evidence on the record, the Chamber was indeed not able to make findings on the precise amount of pillaged items, it is evident from the aforementioned recalling of findings made in the Judgment that pillage was committed on a significant scale. During the *ratissage* operations in Mongbwalu and Sayo, for example, 'house-to-house' searches were conducted for items to loot,[380] and in certain instances amounted to all belongings of the victims.[381]

141. The pillage was not merely done by the soldiers *in lieu* of a salary.[382] The Chamber found that looted items which were considered of high quality or value were usually given to the commanders, under threat of punishment, while the soldiers could keep other goods.[383]

142. The Chamber notes that the Defence appears to challenge the Chamber's findings on pillage, *inter alia*, submitting that the Chamber made incorrect

[375] Judgment, para. 1044.
[376] Judgment, para. 1044.
[377] Judgment, para. 517.
[378] Judgment, para. 517.
[379] Defence Submissions, paras 60-61 and 65. *See* in response the submissions in Prosecution Response, para. 12
[380] Judgment, paras 512 and 526.
[381] *See* the findings recalled in the previous paragraph.
[382] On the lack of payment of members of the UPC/FPLC, *see* Judgment, paras 324 and 706.
[383] Judgment, para. 515.

inferences based on the evidence,[384] and that 'the Chamber must exclude from the scale of such pillaging any goods where there is reasonable doubt as to whether they were intended for military, as opposed to personal, use'.[385] In this respect, the Chamber notes that the sentencing stage before it is not the appropriate forum to challenge the Chamber's findings made in the Judgment. Moreover, in reaching its findings, the Chamber took into account that certain items 'could potentially serve a military purpose' and therefore excluded them from its conclusions on the conviction for the war crime of pillage.[386] All items the Chamber found to have been pillaged are therefore taken into account.

143. Based on the foregoing, the Chamber considers the crime of pillage for which Mr Ntaganda has been convicted to be of serious gravity.

ii. Attack on the Sayo health centre (Count 17)

144. The protected object found to have been attacked by the UPC/FPLC in Sayo was a health centre. Injured persons were present in the health centre at the time,[387] as could have been expected in times of ongoing hostilities. By launching an attack against the health centre, a facility that cares for patients, the perpetrators accepted the consequential severe impact on the welfare and/or lives of any patients present at the centre at the relevant time. Furthermore, by attacking the health centre, the UPC/FPLC disrupted the medical care for persons in need.[388] Notwithstanding that the Chamber only found that one protected object was attacked, the crime Mr Ntaganda has been convicted of is of serious gravity.

[384] Defence Submissions, para. 61.
[385] Defence Submissions, para. 62 and, similarly, para. 65.
[386] Judgment, para. 1041.
[387] Judgment, para. 506.
[388] The Chamber found that as a result of the attack on the health centre, '[t]hree seriously injured men, as well as a Lendu woman and her child – who was approximately two years old and whom the woman had brought to the health centre for treatment – were left behind at the centre' (Judgment, para. 506).

iii. Destruction of houses and buildings (Count 18)

145. As to the destruction of property of the adversary, the Chamber notes the Defence's submissions that the scale of the destruction of houses was hard to assess.[389] However, the Chamber recalls that the UPC/FPLC destroyed houses and buildings in or around eight different towns and villages by shelling or burning.[390] The Chamber considers that this crime was therefore committed on a significant scale, with a considerable geographical spread of the criminal conduct.

146. In addition, the Chamber notes that the lives of the civilians living in these places were severely impacted by these acts. The Defence submits that only thatched-roof houses were burned down and that this type of houses could be re-built 'in a day'.[391] The Chamber considers that the Defence improperly attempts to downplay the impact of the destruction. The monetary value of a structure is not what is protected by the underlying rules of IHL; rather what is protected is the fact that these structures belong to the civilians who live in them. When someone's dwelling is burned down, the allegedly low value of rebuilding the structure does not change the fact that someone's home was destroyed, and that the lives of those living in the dwelling were significantly disrupted.

b) Mr Ntaganda's degree of participation and intent

147. The Chamber recalls that, as noted above, it found Mr Ntaganda responsible as an indirect co-perpetrator for pillage as a war crime, intentionally directing an attack against a protected object as a war crime and destroying the adversary's property as a war crime in a number of locations in the course of the First and Second Operation. Together with his co-perpetrators,

[389] Defence Submissions, para. 63.
[390] Judgment, paras 496, 503, 569, 578, 602, 609 and 619.
[391] Defence Submissions, para. 64.

Mr Ntaganda conceived a plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC's military campaign.[392] By virtue of this agreement, Mr Ntaganda and his co-perpetrators meant, *inter alia*, for their property to be appropriated and destroyed and for protected objects to be attacked.[393]

148. In addition to his contribution in relation to the commission of these crimes, as described above,[394] the Chamber also recalls that Mr Ntaganda ordered UPC/FPLC troops who were getting ready to deploy for the First Operation to attack using the term '*kupiga na kuchaji*'.[395] This term was understood by UPC/FPLC soldiers to mean attacking all the Lendu, including civilians, *and* looting their property.[396] The Chamber also recalls that some of the goods looted during the First Operation were taken to Mr Ntaganda's residence in Bunia[397] and that during the assault on Mongbwalu, Mr Ntaganda and Salumu Mulenda gave orders to fire the heavy weapons and decided which specific objects were to be shot at.[398]

149. In light of the above, the Chamber considers Mr Ntaganda's degree of culpability to have been substantial in relation to the crimes of pillage and destroying the adversary's property during both the First and Second Operation, and in relation to the crime of intentionally directing an attack against a protected object committed during the First Operation. Mr Ntaganda's more direct involvement with regards to the crimes under consideration during the First Operation has been considered by the Chamber as a factor which further increases his culpability.

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[392] Judgment, para. 808.
[393] Judgment, paras 810 and 1188.
[394] *See* paras 32-38, 60, 65, 71-73 and 75-77 above.
[395] Judgment, para. 484.
[396] Judgment, paras 415, 688 and 801.
[397] Judgment, para. 516.
[398] Judgment, para. 491.

150. In relation to the Defence's arguments concerning a Land Rover vehicle which would have been seen at Mr Ntaganda's house,[399] the Chamber recalls that it did not conclude that the appropriation of, *inter alia*, vehicles, was intended for private and personal use.[400] It did therefore not consider such appropriation in reaching its conclusions under Count 11,[401] and consequently also not in its assessment of the appropriate sentence.

2. Aggravating circumstances

151. The Chamber found that the pillage, destruction of houses and the attack on a protected object, took place in villages and towns predominately inhabited by Lendu.[402] However, the Chamber recalls that the discriminatory intent to commit these crimes has already been taken into account in the mode of liability.[403] It is therefore not separately considered here as an aggravating circumstance for these specific crimes.

152. Neither the Prosecution nor the Legal Representative for the Victims of the Attacks identified any specific aggravating circumstances as regards the war crimes of pillage and destruction of the adversary's property, and the Chamber has not found any.

153. With regards to the attack on the Sayo health centre, while the Chamber recalls that it found that more than one projectile was fired at the health centre,[404] and that the centre was intentionally made the object of the attack, it is not clear on the basis of the evidence whether the weapon used destroyed the health centre in full or merely damaged it. It is therefore not clear whether the

[399] Defence Submissions, para. 66.
[400] Judgment, para. 1041.
[401] Judgment, para. 1041.
[402] Judgment, paras 1014-1015, 1018 and 1161.
[403] *See* Judgment, paras 808-810. *See also* para. 34 above.
[404] Judgment, para. 506.

centre was damaged as a result of the crime, and this matter is not considered in aggravation.

154. The Chamber found that 'two persons present at the health centre fled because they felt that they were in danger', leaving behind at the centre '[t]hree seriously injured men, as well as a Lendu woman and her child'.[405] These persons who were unable to leave by themselves, and were thus left without medical care, were, as such, particularly defenceless. This is considered by the Chamber to be an aggravating factor.

3. Conclusion

155. Based on the above, and mindful of its findings below in relation to Mr Ntaganda's individual circumstances,[406] the Chamber considers that a sentence of 12 years to appropriately reflect the gravity of the crime of pillage, and Mr Ntaganda's culpability in relation thereto. Noting the serious gravity of the crime of destruction of the adversary's property, and Mr Ntaganda's culpability in relation thereto the Chamber finds that a sentence of 15 years is appropriate.

156. As regards the crime of attacking protected objects, the Chamber recalls that Mr Ntaganda has been convicted for the intentional attack directed at one protected object. However, in light of the serious gravity of the crime as discussed above, and noting the aggravating circumstance that the patients present in the centre were left without medical care as a result of the attack, the Chamber considers a sentence of 10 years of imprisonment to appropriately reflect the gravity of the crime and Mr Ntaganda's culpability in relation

[405] Judgment, para. 506.
[406] *See* section IV below.

thereto, also mindful of its findings below in relation to Mr Ntaganda's individual circumstances.[407]

E. Forcible transfer of population and ordering the displacement of the civilian population (Counts 12 and 13)

157. The Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for forcible transfer of population in Mongbwalu in the context of the First Operation,[408] and in Lipri, Tsili, Kobu, and Bambu in the context of the Second Operation.[409] It also found Mr Ntaganda responsible as an indirect co-perpetrator for ordering the displacement of the civilian population in the same locations, in the context of the First Operation[410] and the Second Operation.[411]

1. Gravity

a) Gravity of the crimes Mr Ntaganda has been convicted of

i. Forcible transfer of population (Count 12)

158. The prohibition of forcible transfer of population is intended to protect the right of individuals to remain in their homes or communities and not to be deprived of their property by being forcibly displaced to another location.[412] The crime under Article 7(1)(d) of the Statute thus constitutes a serious crime in view of the fact that people are illegally moved against their will or without having a genuine choice in the matter from the area in which they are lawfully

[407] *See* section IV below.
[408] Judgment, paras 497, 1050, 1052-1053, 1057-1061, 1070-1071, 1073-1074 and 1199.
[409] Judgment, paras 1051, 1054-1055, 1062-1067, 1072-1074 and 1199.
[410] Judgment, paras 1079, 1084-1088, 1095-1096, 1099, 1101 and 1199.
[411] Judgment, paras 1079, 1089-1094, 1097, 1100-1101 and 1199.
[412] *See* Commentary to Additional Protocol II, Article 17, para. 4847. *See also Stakić* Appeal Judgment, para. 277; *Popović et al.* Trial Judgment, para. 900; and *Simić* Trial Judgment, para. 130.

present, leading to their exclusion from the economic and social life of their communities.

159. Turning to the circumstances of the present case, the Chamber recalls that the coercive acts which caused the transfer of the population during the First and Second Operation are the same acts on the basis of which Mr Ntaganda was convicted for the crimes underlying Counts 1 to 5, 7 to 8, 11, and 17 to 18.[413] The Chamber has taken this into account in its assessment of the appropriate sentence for the crime underlying Count 12, in that, in assessing the gravity of the crime, the Chamber has only considered the additional element of forcible transfer of one or more persons from the area in which they are lawfully present without grounds permitted under international law.

160. While the number of forcibly transferred individuals was not established,[414] the Chamber recalls that Lendu individuals were forcibly transferred from a total of five localities, which the Chamber found to have been in the majority Lendu.[415] The number of persons affected by forcible transfer was therefore significant.

161. The Chamber further recalls that individuals were forcibly transferred from the affected localities for some time, in some cases for a prolonged period,[416] and that a great number of those who fled Mongbwalu during the First Operation

[413] Judgment, paras 1057-1067, section V.C.4.a) Murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2), section V.C.4.b) Intentionally attacking civilians as a war crime (Count 3), section V.C.4.c) Rape as a crime against humanity and as a war crime (Counts 4 and 5), section V.C.4.d) Sexual slavery as a crime against humanity and as a war crime (Counts 7 and 8), section V.C.4.g) Pillage as a war crime (Count 11) and section V.C.4.l) Destroying the adversary's property as a war crime (Count 18). *See also* submissions in Defence Submissions, para. 90. The Chamber notes that, contrary to the Defence's assertion (Defence Submissions, para. 90), the same consideration does not apply to ordering displacement as a war crime, which does not require the occurrence of 'coercive acts' leading to displacement, but rather an order to displace, *see* para. 163 below; and Judgment, para. 1080. It further notes that, similarly as in the case of persecution, the multi-layered victimisation of some of the victims (*see* Prosecution Submissions, para. 15) has already been accounted for by the Chamber when imposing the sentences for the underlying crimes which the Chamber found to have also constituted coercive acts leading to the transfer of population.

[414] *See also* submissions in Defence Submissions, para. 90.

[415] Judgment, paras 470 and 549.

[416] Judgment, paras 536, 585 and 722. *See also* **P-0824**: DRC-OTP-2109-4426, at 4434, para. 36 and at 38.

arrived in the Walendu-Djatsi *collectivé* and concentrated in Lipri, Kobu, and Bambu,[417] localities from which individuals were subsequently again forcibly transferred.[418]

162. The Chamber also recalls that some of those who fled Mongbwalu, Lipri, Tsili, Kobu, and Bambu and went into the bush had to endure harsh living conditions; they did not have adequate shelter and had insufficient food and water.[419] Even taking into account the Defence's assertion that the conditions endured by those forcibly transferred must be measured against the general conditions of deprivation prevailing at the time which were unrelated to the commission of the crimes,[420] the Chamber considers that the effect of individuals having to leave their homes against their will put them in a worse situation than they were in to begin with, and therefore caused them harm.

ii. Ordering the displacement of a civilian population (Count 13)

163. The crime of ordering the displacement of a civilian population as a war crime is, in the opinion of the Chamber, similarly as the crime under Article 7(1)(d) of the Statute, intended to protect the right of civilians to remain in their homes and communities and not to be displaced without justification during a non-international armed conflict. However, noting that ordering displacement does not require for displacement as such to actually occur, the Chamber considers the crime under Article 8(2)(e)(viii) of the Statute to be *in abstracto* less serious compared to forcible transfer of population, which requires the actual infliction of harm on the victims. The Chamber further recalls that, for the crime to be established, the order to displace needs to refer to a certain number of individuals.[421]

[417] Judgment, para. 549.
[418] *See* Judgment, section V.C.4.h) Forcible transfer of population as a crime against humanity (Count 12).
[419] Judgment, paras 497, 568, 585, 612, 616; and **P-0824**: DRC-OTP-2109-4426, at 4434-4435, paras 37-39.
[420] Defence Response, para. 66.
[421] Judgment, para. 1083.

164. Turning to the circumstances of the present case, the Chamber recalls that, with respect to the First Operation, it considered the following acts to amount to ordering the displacement of the civilian population: (i) Mr Ntaganda telling the troops who were going to attack Mongbwalu to fight against the Lendu and ordering them to attack using the term '*kupiga na kuchaji*', which was repeated down the chain of command by Salumu Mulenda;[422] and (ii) Mr Ntaganda's order to the UPC/FPLC troops to attack 'the Lendu' who were in Mongbwalu, without making a difference between 'Lendu civilians' and the militia.[423] The Chamber also recalls that Mongbwalu was in the majority inhabited by the Lendu.[424]

165. With respect to the Second Operation, the Chamber considered the following acts to amount to ordering the displacement of the civilian population: (i) Salumu Mulenda explaining to UPC/FPLC troops prior to the operation that its objective was to 'destroy th[e] triangle which was a pocket of resistance to the UPC', which was understood by one of his subordinates to entail the destruction of the 'enemy' – which included the Lendu generally, regardless of sex and age – in the attacked places;[425] (ii) Floribert Kisembo telling the troops going to Kobu that they were to, *inter alia*, drive out all the Lendu, which was understood by one of his subordinates to mean that Lendu civilians were to either leave or be killed;[426] and (iii) Salumu Mulenda ordering the troops before the assault on Kobu to *'kupiga na kuchaji'*.[427] The Chamber also recalls that Lipri, Tsili, Kobu and Bambu were predominantly Lendu.[428]

[422] Judgment, paras 484, 488, 1085-1086 and 1088.
[423] Judgment, paras 493, 1085 and 1088.
[424] Judgment, para. 470.
[425] Judgment, paras 558, 1089 and 1094.
[426] Judgment, paras 560, 1090 and 1094.
[427] Judgment, paras 561, 1091 and 1094.
[428] Judgment, para. 549.

b) Mr Ntaganda's degree of participation and intent

166. The Chamber recalls that, as noted above, it found Mr Ntaganda responsible as an indirect co-perpetrator for the crimes of forcible transfer of population as a crime against humanity and ordering the displacement of the civilian population as a war crime in a number of locations committed in the course of the First and Second Operation. Together with his co-perpetrators, Mr Ntaganda conceived a plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC's military campaign.[429] By virtue of this agreement, Mr Ntaganda and his co-perpetrators meant, *inter alia*, for civilians to be forcibly displaced.[430]

167. In addition to his contribution in relation to the commission of these crimes, as described above,[431] the Chamber also recalls that, specifically in relation to the assault on Mongbwalu, Mr Ntaganda was present during part of the assault[432] and issued an order to displace.[433]

168. The above considered, the Chamber considers Mr Ntaganda's culpability to have been substantial in relation to the crimes of forcible transfer of population and ordering the displacement of the civilian population committed during both the First and the Second Operation, while his presence in Mongbwalu and his direct order to displace given before the assault on this town are factors which the Chamber considers to further increase his culpability for the commission of the crimes during the First Operation.

[429] Judgment, para. 808.
[430] Judgment, paras 810 and 1188.
[431] *See* paras 32-38, 60, 65, 71-73 and 75-77 above.
[432] Judgment, para. 489.
[433] *See* Judgment, paras 484, 1085 and 1088, and generally Judgment, section V.C.4.i) Ordering the displacement of the civilian population as a war crime (Count 13).

2. Aggravating circumstances

a) Forcible transfer of population (Count 12)

169. The Chamber recalls that the forcible transfer of population was committed with a discriminatory intent, pursuant to the common plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC's military campaign against the RCD-K/ML.[434] Since the discriminatory intent has been considered by the Chamber as part of the common plan and thus the mode of liability, the Chamber has not considered it separately as an aggravating circumstance.

b) Ordering the displacement of the civilian population (Count 13)

170. The Chamber notes that not only were orders to displace given, in the circumstances of the case, the displacement of civilians actually occurred.[435] While such a factor can, in principle, be taken into account in aggravation in light of the fact that displacement is not itself an element of the crime, the Chamber is nonetheless mindful that this consequence has already been considered above under the analysis of the conviction for Count 12. It has therefore not considered this in aggravation of the crime underlying Count 13.

171. In relation to the fact that ordering the displacement of the civilian population was committed with a discriminatory intent, pursuant to the common plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC's military campaign against the RCD-K/ML,[436] the Chamber integrates its considerations set out in paragraph 169 above and does not consider this to constitute a separate aggravating circumstance.

[434] Judgment, paras 808-810 and 1013-1022.
[435] Judgment, paras 487, 568, 573 and 585.
[436] Judgment, paras 808-810 and 1013-1022.

3. Conclusion

172. Forcible transfer of population as a crime against humanity and ordering the displacement of the civilian population as a war crime are serious crimes, the former being *in abstracto* more serious than the latter. In the present case, the Chamber convicted Mr Ntaganda of the two aforementioned crimes in relation to five localities. However, as noted above, in determining the sentence for Count 12, the Chamber considered only the additional element of forcible transfer of one or more persons from the area in which they are lawfully present without grounds permitted under international law. As for Mr Ntaganda's degree of culpability, the Chamber considers that it is substantial in relation to the aforementioned crimes committed during both the First and Second Operation while, in the view of the Chamber, his degree of participation was even higher during the First Operation due to his presence in the field and his direct order to displace. Lastly, for the reasons set out above, the Chamber has not considered any factors in aggravation of the sentence for the crimes underlying Counts 12 and 13.

173. Based on the above, and mindful of its findings below in relation to Mr Ntaganda's individual circumstances,[437] the Chamber considers a sentence of 10 years to appropriately reflect the aforementioned with respect to Count 12 and a sentence of 8 years for Count 13.

F. Persecution (Count 10)

174. The Chamber found Mr Ntaganda responsible for persecution as a direct perpetrator for killing *Abbé* Bwanalonga in Mongbwalu in the context of the First Operation.[438] It also found him responsible for persecution as an indirect co-perpetrator in Mongbwalu, Nzebi, Sayo, and Kilo in the context of the First

[437] *See* section IV below.
[438] Judgment, paras 746-752 and 1199.

Operation, and in Nyangaray, Lipri, Tsili, Kobu, Bambu, Sangi, Gola, Jitchu, and Buli in the context of the Second Operation.[439]

1. Gravity

175. The prohibition of persecution as laid down in Article 7(1)(h) of the Statute is intended to protect the right of all individuals not to be discriminated against on the basis of political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law.[440] In the view of the Chamber, persecution therefore constitutes, in and of itself, one of the most serious crimes against humanity, as it amounts to a denial of fundamental rights of one or more persons by virtue of their belonging to a particular group or collectivity.[441]

176. Turning to the circumstances of the present case, the Chamber recalls that the conduct which underlies Mr Ntaganda's conviction for persecution and his conviction for the crimes underlying Counts 1 to 5, 7 to 8, 11 to 13, and 17 to 18 is the same.[442] What differentiates the crimes underlying Counts 1 to 5, 7 to 8, 11 to 13, and 17 to 18 from persecution is the discriminatory dimension of the latter.[443] In this respect, the Chamber further notes that, as far as commission as an indirect co-perpetrator is concerned, the conduct amounting to the crimes underlying Counts 1 to 5, 7 to 8, 11 to 13, and 17 to 18 took place pursuant to a common plan and organisational policy that also contained a discriminatory

[439] Judgment, paras 995-1008, 1012-1022, 1024-1025 and 1199.
[440] Elements of Crimes, Article 7(1)(h).
[441] *See also* ICTY, *Kupreškić et al.* Trial Judgment, para. 751, stating that: 'Persecution is one of the most vicious crimes against humanity. It nourishes its roots in the negation of the principle of the equality of human beings. Persecution is grounded in discrimination. It is based upon the notion that people who share ethnic, racial, or religious bonds different to those of a dominant group are to be treated as inferior to the latter.'
[442] Judgment, paras 995-1008 and the references contained therein, as well as para. 1206. For this reason, the multi-layered victimisation of some of the victims (*see also* submissions in Prosecution Submissions, para. 15) has already been accounted for by the Chamber when imposing the sentences for the underlying crimes which the Chamber found to have, jointly, amounted to persecution. With respect to direct perpetration, the underlying conduct amounting to persecution is that underlying Counts 1 and 2 only.
[443] Judgment, paras 1013-1022. *See also* Elements of Crimes, Article 7(1)(h); and Defence Submissions, para. 89.

element.[444] Under these circumstances, the Chamber considers that any factors taken into account by the Chamber in its assessment of the gravity of the crimes underlying Counts 1 to 5, 7 to 8, 11 to 13, and 17 to 18, including Mr Ntaganda's degree of culpability in relation thereto, as well as any aggravating circumstances for these crimes, should not be counted again when assessing the gravity of the crime of persecution and the existence of any aggravating circumstances in relation to this crime.[445] As far as commission as a direct perpetrator is concerned, the Chamber notes that it has already taken into account that the crimes underlying Counts 1 and 2 committed by Mr Ntaganda as a direct perpetrator had a discriminatory dimension.[446] The Chamber thus notes that there are no additional elements to be considered in relation to persecution committed by Mr Ntaganda both as a direct perpetrator and as an indirect co-perpetrator.

2. Conclusion

177. The Chamber acknowledges the gravity of the crime of persecution, as set out above, as well as the fact that persecution generally involves a multiplicity of acts or crimes. However, the Chamber considers that, in the circumstances of the present case, where every underlying act was charged as a separate crime of which Mr Ntaganda was convicted, the sentence imposed on him for the crime of persecution, both as a direct perpetrator and as an indirect co-perpetrator, should not be higher than the highest sentence imposed for any of the underlying crimes amounting to persecution, which is 30 years of imprisonment.

[444] Judgment, paras 808-810 and 1206.
[445] *See also* submissions in Defence Submissions, para. 89.
[446] *See* para. 84 above.

G. Conscripting and enlisting children under the age of 15 years into armed forces or groups and using them to participate actively in hostilities (Counts 14, 15, and 16)

178. The Chamber found Mr Ntaganda responsible as an indirect co-perpetrator for conscripting and enlisting children under the age of 15 years into the UPC/FPLC between on or about 6 August 2002 and 31 December 2003[447] and for using children under the age of 15 to participate actively in hostilities between on or about 6 August 2002 and 30 May 2003; in the First Operation and in the UPC/FPLC assault on Bunia in May 2003,[448] as bodyguards for UPC/FPLC soldiers and commanders, including for Mr Ntaganda himself, and for UPC President Thomas Lubanga,[449] and to gather information about the opposing forces and MONUC personnel.[450]

1. Gravity

a) Gravity of the crimes Mr Ntaganda has been convicted of

179. Conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities is undoubtedly very serious; it subjects them to combat and the associated risks to the children's life and well-being entailed therein, including being wounded or killed.[451] The vulnerability of children means that they need to be afforded particular protection, going beyond that which applies to the general population.[452]

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[447] Judgment, paras 1116-1124, 1133 and 1199.
[448] Judgment, paras 1125, 1128, 1133 and 1199.
[449] Judgment, paras 1126, 1129, 1133 and 1199.
[450] Judgment, paras 1127, 1130, 1133 and 1199.
[451] *Lubanga* Sentencing Judgment, para. 37; and Judgment, para. 1108. *See also* submissions in CLR1 Submissions, para. 8.
[452] *Lubanga* Sentencing Judgment, para. 37 and the references contained therein. *See also* submissions in CLR1 Submissions, para. 8. Considering this stated purpose of the prohibition of recruitment and use of individuals under the age of 15, the Chamber does not agree with the Defence's assertion that the gravity of the crimes underlying Counts 14, 15 and 16 ought to be evaluated in the context of the absence of reliable documentation of age, 'different cultural attitudes towards age' and instances of recruits lying about their age to be accepted

180. As far as conscription and enlistment are concerned, the Chamber recalls that some form of coercion or compulsion distinguishes the former from the latter.[453] However, the Chamber also recalls that it may be difficult to distinguish between voluntary and forced recruitment in the case of children under the age of 15, since such individuals may be unable to give genuine and informed consent when enlisting into an armed force or group.[454]

181. Turning to the particular circumstances of the case, the Chamber recalls that, in some instances, the UPC/FPLC imposed an obligation on families to provide one or several 'children' for military service, including by threatening them.[455] Furthermore, during their active participation in hostilities, *kadogos*, including individuals under the age of 15, used their weapons, sometimes killing people, and some got shot at, were injured, or died on the battlefield.[456] In relation to their participation in hostilities, the Chamber recalls that they had difficulties in fleeing when they were defeated, because of the uniforms and the weapons they were carrying.[457]

182. In relation to the scale of the crime, the Chamber has taken note of the Legal Representative of the Former Child Soldiers' argument that the number of victims on which the Chamber made specific findings does not reflect the full extent of the UPC/FPLC's recruitment and use of child soldiers, since many victims continue to be reluctant to report crimes which they were subjected to.[458]

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for training (Defence Submissions, para. 74). The fact that children under the age of 15 might not see or act in their best interest and that in certain cultural contexts birthdays might be less important does not detract from the fact that the prohibition of recruitment and use of individuals under the age of 15 – which the DRC adhered to – has been established precisely in the interest of and for the protection of such persons who, specifically when finding themselves in difficult social and economic situations, may not act in their best interest.

[453] Judgment, paras 1105-1106. *See also Lubanga* Sentencing Judgment, para. 37.

[454] Judgment, para. 1107.

[455] Judgment, para. 349.

[456] Judgment, para. 416. The Chamber notes that the Legal Representative of the Former Child Soldiers raises the activities which the children participated in as an aggravating factor (CLR1 Submissions, para. 27). Noting that these factors were considered by the Chamber in its assessment of the elements of the crime, the Chamber has considered these matters under gravity.

[457] Judgment, para. 416.

[458] CLR1 Submissions, para. 33.

This notwithstanding, in establishing the appropriate sentence, the Chamber can only rely on findings which it has made beyond reasonable doubt, on the basis of the evidence before it. The Chamber thus cannot consider estimates made by the Trust Fund for Victims in reparations proceedings in the *Lubanga* case, put forward by the Legal Representative of the Former Child Soldiers.[459]

183. The Chamber further recalls that it did not make any findings and is not, on the basis of the evidence received, in a position to make a finding as to the precise number or proportion of recruits within the UPC/FPLC who were under 15 years of age at the relevant time.[460] In determining the adequate sentence, the Chamber has thus taken into consideration: (i) the fact that the involvement of children under the age of 15 in the UPC/FPLC occurred over a period of approximately 17 months, throughout Ituri;[461] (ii) that, in addition to Mr Ntaganda, Thomas Lubanga and at least eight other UPC/FPLC soldiers and commanders had escorts under the age of 15[462] and that Mr Ntaganda's personal escort comprised at least three individuals under the age of 15;[463] (iii) that, among the witnesses who testified in the case, P-0883[464] and P-0898[465] were

[459] *See also* submissions in Defence Submissions, para. 73.
[460] *See* Defence Submissions, paras 69, 83.
[461] The Chamber found that, from at least June 2002, the UPC/FPLC extensively recruited individuals of all ages, in particular 'young people', and including individuals under the age of 15, in various locations throughout Ituri (Judgment, section IV.A.3.a Recruitment) and that at least between May 2002 and February 2003, individuals under the age of 15 were trained along with other UPC/FPLC recruits at the various UPC/FPLC training camps (Judgment, paras 314 and 1124, and section IV.A.3.b Training). Noting the temporal scope of the charges in the present case, the Chamber only considered the conduct occurring as of August 2002 for the purpose of its conclusions in relation to Counts 14 and 15 (Judgment, footnote 3096). It is also only this conduct that the Chamber has considered in its assessment of the appropriate sentence for the crimes underlying the aforementioned counts. In relation to the Defence's arguments at paragraphs 69 to 70 and 98 of the Defence Submissions, the Chamber notes that it found that the recruitment of *individuals* into the UPC/FPLC was extensive, and that this included the recruitment of individuals under the age of 15 (Judgment, para. 347; *see also* submissions in Prosecution Response, para. 15). However, contrary to the submissions of the Legal Representative of the Former Child Soldiers, on the basis of the evidence on the record, the Chamber did not find that the recruitment of those under the age of 15 was extensive and/or widespread (*contra* CLR1 Submissions, paras 31, 33; and CLR1 Response, para. 23). The Chamber further notes that the Legal Representative of the Former Child Soldiers raises the number of victims as an aggravating factor (CLR1 Submissions, para. 30). In its discretion, the Chamber has considered this under gravity.
[462] Judgment, paras 386-391, 398-399, 401 and 1129.
[463] Judgment, paras 387-388 and 1129.
[464] Judgment, para. 179.
[465] Judgment, para. 202.

found by the Chamber to have been under the age of 15 at the time of the relevant events; and (iv) that an unspecified number of individuals under the age of 15 participated in the First Operation, that at least one individual under 15 participated in the UPC/FPLC assault on Bunia and that an unspecified number of individuals under the age of 15 were sent on reconnaissance missions.[466]

184. The Chamber further considers that the fact of having been associated with an armed group as a child under 15 had a significant impact on victims. In this respect, for example P-0883 described that if she found a partner, this partner would abandon her when finding out that she was 'in the militia', and described how this happened in practice.[467] She testified that she felt as though her 'future is compromised'.[468] She stated:

> My life is still massively affected by it. I stopped my studies, I didn't study anymore. These days, what can somebody do if they haven't got any studies? My life was ruined. My life was ruined. I caught illnesses, diseases. This violence that I suffered makes me suffer enormously. It's very difficult, very difficult for me.[469]

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[466] Judgment, paras 404, 511, 655, 1128 and 1130.

[467] **P-0883**: T-168, pages 13 and 35-36. The Chamber recalls that while it did not rely on P-0883's testimony about her abduction and the period immediately after (Judgment, paras 180-185), it found her testimony about her health and the birth of her child born shortly after her time in the UPC/FPLC to be credible (Judgment, para. 187). As it was not necessary for the purposes of the Judgment to reflect on P-0883's experiences after the temporal scope of the charges, the Chamber did not make findings in this regard in the Judgment. However, the Chamber notes that it considers P-0883's testimony on this matter credible and will rely on it in this sentencing judgment. *See also* submissions in Prosecution Submissions, para. 42.

[468] **P-0883**: T-168, pages 64-65. *See also* **P-0824**: DRC-OTP-2109-4426, at 4436, para. 44; and **P-1000**: DRC-OTP-2109-4363, at 4370, para. 36. The Chamber notes that it received other evidence from P-0824 concerning his observations of children under the age of 15 who were allegedly part of the UPC/FPLC and who passed through a transit and orientation centre managed by the witness (*see* **P-0824**: DRC-OTP-2109-4426, at 4436-4437, paras 46-47). However, the Chamber notes that the witness is not expert on psychology or sociology and that his observations are based solely on conversations with unnamed individuals which he had in 2004, the age of and whose affiliation with the UPC/FPLC are uncertain (*see also* submissions in Defence Response, para. 63). In these circumstances, the Chamber has relied on the witness's evidence in this respect only when corroborated by other first-hand evidence. The Chamber notes that similar considerations apply to P-1000's observations in relation to children allegedly under the age of 15 whom she encountered at a transit and orientation centre in 2004, only some of which are alleged to have been former members of the UPC/FPLC and the exact age of whom is uncertain (**P-1000**: DRC-OTP-2109-4363, at 4369-4370, paras 32-38; *see also* submissions in Defence Response, paras 63-65). The Chamber has thus also only relied on P-1000's observations in this respect when corroborated by direct evidence.

[469] **P-0883**: T-168, page 13. The Chamber notes that the Legal Representative of the Former Child Soldiers, who did not request the admission of any evidence during the sentencing stage, in its submission in relation to the

185. As for the Defence's argument that the impact of having been a child soldier must be assessed 'not against the backdrop of a hypothetical happy and peaceful childhood, but against the trauma-inducing conditions of the time, including the real and constant threat of Lendu combatants killing family members, and of extermination more generally',[470] the Chamber considers that, even in circumstances of on-going conflict and/or general hardship, the removal of children from their families – sometimes forcibly – for the purpose of undergoing military training and for actively participating in hostilities undoubtedly caused such children harm and put them in a worse position than they would have been to begin with. Therefore, the Chamber considers that the general conditions prevailing at the time do not diminish the gravity of having been conscripted or enlisted into an armed group and/or used to actively participate in hostilities.

b) Mr Ntaganda's degree of participation and intent

186. The Chamber found that Mr Ntaganda was aware that, in the ordinary course of events, and during the relevant period, the implementation of the UPC/FPLC's plan to drive out all the Lendu from the localities targeted during the course of their military campaign against the RCD-K/ML would lead to, *inter alia*, the recruitment and active use in hostilities of children under the age of 15 within the UPC/FPLC.[471] Furthermore, Mr Ntaganda exercised control over the crimes committed by the UPC/FPLC against children under the age of 15 who were, *inter alia*, enrolled and/or used to participate in hostilities during

gravity of the crimes underlying Counts 14, 15 and 16, referred to findings of Trial Chamber I made in the *Lubanga* case on the basis of expert testimony received in that case (CLR1 Submissions, para. 15). The Chamber notes that, in its assessment of the appropriate sentence for the crimes that Mr Ntaganda has been convicted of, it can only rely on the evidence before it, and not on findings made by other trial chambers that are not part of the case record in the present case (*see also* submissions in Defence Response, para. 76).

[470] Defence Response, para. 67.

[471] Judgment, paras 808, 811 and 1198.

the course of the UPC/FPLC's military campaign against the RCD-K/ML and the Lendu.[472]

187. Further, the Chamber also found that Mr Ntaganda was, throughout the relevant period, personally and actively involved in the UPC/FPLC's recruitment process.[473] On at least three occasions, he made calls for young people to join the UPC/FPLC ranks and follow military training, including by stating that parents and families should give their children to the group.[474] Also, he personally asked community leaders to assist in UPC/FPLC recruitment.[475]

188. The Chamber also found that the training of recruits was under the responsibility of Mr Ntaganda, who regularly paid visits to the various training camps in order to inspect the training process.[476] It was through the training centres, in Mandro and elsewhere, that children under the age of 15 became incorporated into the organisation.[477] Furthermore, the training camp at Mandro – where the emerging UPC/FPLC began training military recruits[478] – was made operational by Mr Ntaganda.[479] Mr Ntaganda regularly visited this training

[472] Judgment, para. 857.
[473] *See* generally Judgment, section V.C.3.c.1 Mr Ntaganda's role was determinative in setting up a strong military group capable of driving out from certain areas all Lendu civilians.
[474] Judgment, paras 356-359. In relation to the Defence's argument that Mr Ntaganda's speeches encouraging recruitment must be viewed in light of the lack of any criminal prohibition of conscription of those 15 years of age or older (Defence Submissions, para. 80), the Chamber notes that, since such speeches were directed at encouraging the recruitment of young people, and since such recruitment led to the enlistment and conscription of individuals under the age of 15, which, the Chamber found, was a consequence of the implementation of the common plan that Mr Ntaganda was aware of (Judgment, para. 1198), the Chamber finds that it may consider Mr Ntaganda's aforementioned contribution to the UPC/FPLC's recruitment process in its assessment of the appropriate sentence. The fact that many young people may have been 'highly motivated' to obtain military training (Defence Submissions, para. 81) does also not detract from the fact that Mr Ntaganda actively contributed to the promotion of such recruitment, which included the recruitment of individuals under the age of 15.
[475] Judgment, para. 355. Contrary to the Defence's argument in this respect (*see* Defence Submissions, paras 75 and 116-119) the Chamber did not find that Mr Ntaganda applied any screening procedures to screen out the youngest recruits. Instead, the Chamber established that the screening was exclusively based on physical abilities as opposed to age (*see* Judgment, para. 361 and footnote 998). The Chamber therefore does not consider this as a factor in mitigation, contrary to the Defence's argument.
[476] Judgment, paras 360, 368-370 and 394.
[477] Judgment, para. 831.
[478] Judgment, para. 314.
[479] Judgment, para. 365.

camp,[480] set up the structure for the training and determined the topics for instruction at the camp,[481] and personally taught recruits, as well as attended *kitamaduni* sessions.[482] He also attended graduation ceremonies at Mandro and Lingo.[483] In addition, two individuals under the age of 15 were among five soldiers trained as radio operators at Mr Ntaganda's residence in Bunia.[484]

189. The Chamber also recalls that Mr Ntaganda's personal escort also included at least three individuals under the age of 15,[485] who guarded his residence and compound,[486] accompanied him on his travels[487] and during his visits to training camps[488] and participated in combat operations with him.[489] The Chamber further found that Mr Ntaganda knew that some of his escorts were below the age of 15 years and that, during the relevant period, they were active members of the UPC/FPLC, ensuring his protection and participating in various military activities.[490]

190. Mr Ntaganda was also the person who decided on the deployment of soldiers following their training,[491] including the deployment of those under the age

[480] Judgment, para. 365.
[481] Judgment, para. 371.
[482] Judgment, para. 372.
[483] Judgment, para. 378.
[484] Judgment, para. 371.
[485] Judgment, paras 387-388 and 1129. *See also* submissions in CLR1 Submissions, paras 18 and 22. Contrary to the Defence's argument (Defence Submissions, paras 75, 118), the Chamber did find that two individuals who had worked as escorts for Mr Ntaganda were manifestly under the age of 15 around February 2003 (Judgment, para. 387; *see also* submissions in CRL1 Response, para. 12). It also found that he was accompanied by these two individuals during a 12 February 2003 visit to the Rwampara training camp, meaning that these two individuals were therefore, at least on this occasion, in his close proximity (Judgment, paras 387 and 394; *see also* CRL1 Response, para. 12).
[486] Judgment, para. 393.
[487] Judgment, para. 393.
[488] Judgment, para. 394.
[489] Judgment, para. 396. The Chamber recalls that, although the extent of Mr Ntaganda's involvement in the setting up of a guard unit for himself was demonstrated by the evidence at trial, the Chamber considered that indirect co-perpetration was the most appropriate mode of liability under which to consider Mr Ntaganda's precise role and individual criminal responsibility in relation to the crimes underlying Counts 15 and 16 (Judgment, paras 758-759; *see also* submissions in CLR1 Submissions, para. 18). However, the Chamber has taken Mr Ntaganda's aforementioned direct involvement into account in its assessment of the appropriate sentence.
[490] Judgment, para. 1192.
[491] Judgment, para. 378.

of 15.[492] Specifically in relation to the participation of persons under the age of 15 in the First Operation,[493] the Chamber found that the assault on Mongbwalu was launched as conceived by Mr Ntaganda,[494] who was also present on the ground during part of the assault.[495]

191. In relation to the Defence's argument that enlistment, conscription into an armed group and the use of children under the age of 15 in hostilities was codified as an international crime only as of 1 July 2002[496] and that the novelty of this criminalisation should be taken into account in the Chamber's assessment of gravity and/or Mr Ntaganda's degree of intent,[497] the Chamber observes that the Defence does not contest that the conduct in question was criminalised at the relevant time.[498] The Chamber considers that any novelty of the criminalisation does not diminish the gravity of the crimes as committed between August 2002 and December 2003, which Mr Ntaganda has been convicted of, or his intent in relation thereto,[499] as established by the Chamber in its Judgment.

192. In light of the above, the Chamber considers that Mr Ntaganda's degree of intent in relation to the commission of the conscription, enlistment of children under the age of 15, and their use in hostilities was lower than for the

[492] Judgment, para. 832.
[493] Judgment, para. 511.
[494] Judgment, para. 854.
[495] Judgment, para. 489. As for the Defence's argument in relation to the use of at least one individual under the age of 15 in the UPC/FPLC assault on Bunia in May 2003 that 'Mr. Ntaganda had no role and no influence over the forces that Kisembo gathered for the assault' (Defence Submissions, para. 84), the Chamber notes that, for this specific instance of use of children under the age of 15, it has not considered any specific involvement of Mr Ntaganda therein, and that his degree of participation and intent in relation thereto are those set out in paragraphs 186 to 189.
[496] The Chamber notes that the codification in the Statute in fact took place in 1998, when the Statute was adopted and opened for signature and ratification.
[497] Defence Submissions, paras 76 and 98.
[498] In this regard, the Chamber recalls that it previously noted that '[i]f certain conduct [that] was […] criminalised under the Statute, was committed after the entry into force of the Statute, in a State Party, and by a national of that State, the *nullum crimen sine lege* principle, as incorporated in [Article 22(1) of the Statute], would be satisfied'. *See* ICC-01/04-02/06-1707, footnote 74. *See also* submissions in Prosecution Response, para. 16.
[499] To the extent that the Defence intends to argue that the mental element was negated as a result of a mistake of law, this argument ought to have been raised at an earlier stage of the trial.

commission of crimes against the Lendu pursuant to the common plan, but his degree of participation was significant.

2. Aggravating circumstances

193. The Chamber considers that the treatment to which some of the children incorporated into the UPC/FPLC were subjected must be considered as an aggravating factor for the determination of the sentence. In this respect, the Chamber recalls that life at the UPC/FPLC training camps, where recruits, including those under the age of 15, were trained for several weeks and to up to two months[500] included harsh living conditions,[501] and being subjected to threats, including to their life, monitoring of movement, and severe punishments, including beatings and executions, sometimes without apparent reason.[502] Furthermore, the functioning of the camps was such that the recruits knew that violent acts were being performed on their peers.[503] No particular protection was given by the UPC/FPLC to its youngest members; from the moment of enrolment, notably during their training and their participation in hostilities, children under 15 years of age did not receive special treatment and

[500] Judgment, para. 378.

[501] Judgment, paras 374-375. As for the Defence's arguments in relation to the 'general conditions of hardship at the time' (Defence Submissions, para. 77), the Chamber notes that, in support of its argument, the Defence refers to P-0046's testimony concerning the conditions at transit centres. According to the witness, the conditions 'were not […] particularly good', the food ration at transit centres did not vary much from what was available to the general population and the humanitarian situation 'at large' was not good (**P-0046**: T-102, page 101). In this respect, the Chamber considers that, even if insufficient food was available generally at the time, the fact that UPC/FPLC recruits, which included individuals under the age of 15, received rotten or inedible food or had food spooned directly into their hands or clothes, can still be considered by the Chamber in its assessment of the appropriate sentence for the crimes underlying Counts 14 to 16. Similarly, in relation to the Defence's argument that military training and discipline is severe by nature, especially in a context where recruits have lived through inter-ethnic conflict (Defence Submissions, para. 77), while not disagreeing with the fact that military training is severe by nature, the Chamber considers that parts of the treatment imposed on UPC/FPLC soldiers, including those under the age of 15 – which comprised severe beatings, including without any apparent reason, threats to life, executions, and food deprivation – went beyond was is required for maintaining discipline within a military context (*see also* submissions in Prosecution Response, para. 17; and CLR1 Submissions, para. 26).

[502] Judgment, paras 376-377, 409 and 790. As for the Defence's argument in relation to the Chamber's finding that, in at least one instance at Mandro, a person was executed for losing his weapon, based on the evidence of P-0888 (Defence Submissions, para. 78), the Chamber recalls its explicit finding that it considered the witness's evidence on this point to be credible (Judgment, footnote 1069 and para. 44).

[503] Judgment, para. 376.

were threatened and punished in the same way as other recruits and soldiers.[504] The fact that, as pointed out by the Defence,[505] any treatment, and particularly any harsh treatment, including punishment by killing, was not specifically targeted at individuals under the age of 15 does not affect the fact that all UPC/FPLC recruits – and therefore including those under the age of 15 – were treated harshly at the UPC/FPLC training camps.[506] Moreover, the aforementioned conditions are particularly serious when it concerns children under the age of 15. Indeed, having established that recruits under 15 years of age were undoubtedly vulnerable,[507] the Chamber further found that, once recruited, these already vulnerable soldiers were subjected to conditions which could only have the impact of increasing their vulnerability.[508]

194. In relation to three of the victims – P-0883, Mave and Nadège – the Chamber considers that their cumulative victimisation can, in principle, constitute an aggravating circumstance.[509] Specifically, the Chamber recalls that, in addition to being recruited into the UPC/FPLC, Nadège was also raped, P-0883 was raped and sexually enslaved and Mave, who was used as Floribert Kisembo's bodyguard, was also raped and sexually enslaved.[510] The Chamber is nonetheless mindful that these instances of rape and sexual slavery have already separately been considered above under the analysis of the convictions for Counts 6 and 9. As a consequence, the Chamber has not considered this in aggravation of the sentence in relation to Counts 14, 15 and 16.

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[504] Judgment, paras 362, 376-377, 392, 406, 414 and 1195.
[505] Defence Submissions, paras 77-78.
[506] *See also* submissions in Prosecution Response, para. 17; and CLR1 Response, para. 28.
[507] *See* para. 179 above. *See also* Judgment, para. 818.
[508] Judgment, para. 818. *See also* CLR1 Submissions, para. 35, where the Legal Representative of the Former Child Soldiers argues that the Chamber should consider as an additional aggravating circumstance the fact that the harsh conditions and treatment made the victims particularly defenceless. In order to avoid double-counting, however, the Chamber considers the impact of conditions on the child soldiers here and does not treat this as a separate aggravating factor.
[509] *See also* submissions in Prosecution Submissions, para. 15; CLR1 Submissions, paras 29 and 48; and CLR2 Submissions, para. 42.
[510] *See* Judgment, para. 1199.

195. Finally, considering that a legal element of the crime cannot be considered as an aggravating circumstance, the fact that the victims were children as such does not constitute an aggravating factor in relation to the enlistment and conscription of *children under the age of 15 years* and their use in hostilities. However, the Chamber has considered the fact that at least of the victims was very young,[511] and therefore particularly defenceless, as an aggravating circumstance.

196. As for the Legal Representative of the Former Child Soldiers' argument that child soldiers within the UPC/FPLC ranks were made to consume drugs and alcohol to make them docile,[512] the Chamber notes that, while having received evidence that a former UPC/FPLC member indicated that '[things] such as drinking, smoking and taking drugs' were authorised in the UPC/FPLC 'in order [for recruits] to become courageous',[513] the evidence does not establish that any of the aforementioned activities were imposed upon UPC/FPLC members, including those under the age of 15.

3. Conclusion

197. As established by the Chamber above, enlistment, conscription and use of individuals under the age of 15 to participate actively in the hostilities is of serious gravity. While Mr Ntaganda's degree of intent in relation to their commission was lower than in relation to the commission of the crimes underlying Counts 1 to 5, 7 to 8, 10 to 13, and 17 to 18, his degree of participation in their commission was significant. The Chamber further identified the following factors in aggravation: the particularly harsh treatment

[511] The Chamber recalls its finding that one girl present at Lingo camp was as young as nine years old (Judgment, para. 410). *See also* **P-0010**: T-47, page 6; and T-48, page 15, also referring to DRC-OTP-0120-0293, at 00:37:25.
[512] T-268, page 20. *See also* submissions in Defence Submissions, para. 79.
[513] **P-0877**: T-109, page 50.

of some of the victims and the fact that at least one of the victims was very young.

198. Based on the above, and mindful of its findings below in relation to Mr Ntaganda's individual circumstances,[514] the Chamber considers a sentence of 18 years to appropriately reflect the gravity of conscripting and enlisting children under the age of 15 into an armed group and using them to participate actively in hostilities, Mr Ntaganda's culpability and the aggravating circumstances in relation thereto.

[514] *See* section IV below.

IV. MR NTAGANDA'S INDIVIDUAL CIRCUMSTANCES

199. The Defence submits that Mr Ntaganda's personal circumstances as well as what it refers to as 'very powerful' mitigating factors must be taken into account in determining the appropriate sentence.[515] The Prosecution submits that there are no significant mitigating circumstances which would warrant any reduction in sentence.[516] The LRVs submit respectively that there are no mitigating circumstances whatsoever which apply to Mr Ntaganda[517] and that none of the mitigating factors invoked by the Defence should be given any significant weight.[518]

200. Furthermore, the Prosecution argues that Mr Ntaganda's individual circumstances heighten the need for a high sentence, referring to his age, his position and experience[519] and his history with the Rwandan genocide.[520] The Legal Representative of the Victims of the Attacks similarly submits that Mr Ntaganda's intelligence and military education should be considered as an aggravating factor.[521] The Prosecution further avers that Mr Ntaganda's 'misconduct at the Detention Centre and his attempts to obstruct the investigation and/or prosecution of the charges in this case are aggravating factors warranting a higher sentence'.[522] While not referring to it as an aggravating circumstance, the Legal Representative of the Former Child Soldiers similarly argues that the Chamber ought to take the alleged witness interference into account for the purposes of sentencing.[523]

[515] Defence Submissions, paras 10-14.
[516] Prosecution Submissions, para. 87.
[517] CLR1 Submissions, para. 57; and CLR1 Response, para. 30.
[518] CLR2 Submissions, paras 2 and 48; and CLR2 Response, para. 26.
[519] Prosecution Submissions, para. 61.
[520] Prosecution Submissions, paras 62-64.
[521] CLR2 Submissions, para. 46.
[522] Prosecution Submissions, para. 76.
[523] CLR1 Submissions, para. 57.

201. The Chamber first considers the issue of the alleged witness interference and Mr Ntaganda's position at the time and military training and experience before turning to the mitigating factors put forward by the Defence.

A. Aggravating circumstances

1. Alleged witness interference

202. The Chamber recalls that during the trial proceedings it imposed restrictions on Mr Ntaganda's communication because it found that there were reasonable grounds to believe that Mr Ntaganda had engaged in conduct that warranted their imposition pursuant to Regulation 101(2) of the Regulations of the Court, including reasonable grounds to believe that he intended or attempted to engage in witness interference.[524] However, the Chamber further recalls that since its initial aforementioned findings, it was not presented with further information that would warrant making such findings to a different standard of proof.

203. According to the Prosecution, 'the Chamber should now enter specific findings beyond reasonable doubt regarding Bosco Ntaganda's misconduct at the Detention Centre and attempts to interfere with the investigation and prosecution of the conduct that ultimately resulted in his conviction'.[525] The Chamber recalls that the Prosecution obtained Mr Ntaganda's phone conversations from the ICC Detention Centre pursuant to a decision of Pre-Trial Chamber I for the purpose of an investigation into alleged offences under Article 70 of the Statute.[526] Given that there is no information, publicly available or otherwise, before the Chamber on the outcome of this investigation, the

[524] ICC-01/04-02/06-1494-Red3, para. 22. *See also* submissions in Defence Response, paras 40-43.
[525] Prosecution Submissions, para. 77.
[526] ICC-01/04-02/06-2180-Conf-Exp, para. 6, referring to Pre-Trial Chamber I, Decision on the Prosecutor's 'Request for judicial assistance to obtain evidence for investigation under Article 70', 18 September 2015, ICC-01/04-729-Conf.

Prosecution appears to have concluded that it was not warranted to proceed with any charges pursuant to Article 70. Mindful of the presumption of innocence,[527] the Chamber observes that, to date, there appear not to have been developments in proceedings before Pre-Trial Chamber I which led to the issuing of an arrest warrant for such alleged conduct.[528] For the Prosecution to ask the Chamber in these circumstances to make findings beyond reasonable doubt on matters about which the Defence has not been given the opportunity to make submissions or to lead evidence,[529] is inapposite.

204. The Chamber has made findings on the facts of this case on the basis of the evidence before it, after having allowed the parties and participants to test this evidence and make submissions on it. Clearly then, the Chamber will not, as invited to by the Prosecution, make findings beyond reasonable doubt on the basis of information that is neither in evidence nor tested through the regular process applicable to trial proceedings. In this regard, the Chamber notes that the reason that much of the information on which the Prosecution relies for its submissions is not in evidence due to the Prosecution's own conduct, including the circumvention of an order by the Chamber, which the Chamber found to have caused prejudice to Mr Ntaganda.[530]

205. The Chamber therefore concludes that there is no evidence before it on the basis of which it can conclude beyond reasonable doubt that Mr Ntaganda

[527] Article 66 of the Statute.

[528] Article 58 of the Statute. It must therefore be presumed that Mr Ntaganda is not suspected of any offences against the administration of justice, let alone that he has been found beyond reasonable doubt to have committed any such offences.

[529] The Chamber notes in this regard that the Prosecution submits that there are 'facts that are not in dispute because [Mr Ntaganda] admitted them' (Prosecution Submissions, para. 81), but that the Defence responded to this submission that these facts are, in fact, in dispute (Defence Response, paras 41 and 44-45). The Prosecution refers, for example, to Mr Ntaganda's testimony before the Chamber. In this regard, the Chamber considers that from the statements made by Mr Ntaganda during his testimony (*see*, e.g., Prosecution Submissions, para. 85), on which the parties did not previously make submissions, it cannot be inferred that he indeed intentionally interfered beyond reasonable doubt with the administration of justice.

[530] *See* ICC-01/04-02/06-1883.

interfered with witnesses. Allegations to this extent can therefore not be taken into account as aggravating circumstances.

206. As to the Prosecution's allegations that Mr Ntaganda breached the internal rules and regulations of the Detention Centre, the Chamber considers that this is a matter for the Registry. There is no information before the Chamber as to whether the Chief Custody Officer took any action in this regard during Mr Ntaganda's detention and the Chamber does not consider it necessary to *proprio motu* request such information, as the alleged breaches of internal detention regulations do not *prima facie* have a sufficient link to the crimes Mr Ntaganda has been convicted of, in order for the alleged breaches in themselves to be taken into account as an aggravating circumstance.[531]

2. Mr Ntaganda's position and military training and experience

207. Matters in relation to Mr Ntaganda's position at the relevant time and his military training and experience have been discussed by the Chamber above and are not discussed here as aggravating factors.

B. Mitigating circumstances

1. Mr Ntaganda's age

208. In relation to Mr Ntaganda's age, the Chamber notes that Mr Ntaganda was an adult of 28 to 30 years old at the time of the commission of the crimes for which he was convicted[532] and had already been in the military for some 11 years by the time those crimes took place.[533] The Chamber therefore rejects the

[531] Although potential poor behaviour in detention could impact on the Chamber's overall assessment of Mr Ntaganda's behaviour in detention, and thus be a relevant consideration when assessing whether alleged good behaviour in detention should be taken into account as a mitigating circumstance, the Chamber considers that the aspect of Mr Ntaganda's conduct in detention that has been analysed below (*see* paras 231-234 below), as part of the consideration of mitigating circumstances, to be of such a specific nature that it is unaffected by the remainder of Mr Ntaganda's behaviour while in detention.
[532] Mr Ntaganda was born on 5 November 1973 (Judgment, para. 1).
[533] Mr Ntaganda joined the armed wing of the RPF at the age of 17 (Judgment, para. 5).

Defence's suggestion that Mr Ntaganda was 'very young in assuming [his] responsibilities' within the UPC/FPLC.[534] The Chamber considers that Mr Ntaganda's age at the relevant time is not a mitigating circumstance.

2. Mr Ntaganda's personal experience during the Rwandan genocide

209. The Defence submits that Mr Ntaganda's personal circumstances and motivations connected to his experience of the Rwandan genocide should be considered in substantial mitigation of his sentence.[535] After recounting Mr Ntaganda's experiences of the genocide and highlighting the persecution of the Hema which took place in the DRC in the period before the temporal scope of the crimes for which he was convicted, the Defence concludes that while '[n]one of this excuses or justifies even a single crime of which Mr. Ntaganda has been convicted […] these are not venal or vicious motives'.[536] Mr Ntaganda's 'actions were a reaction to what he saw as the continuation of the genocide that he had already lived through, and that had required force of arms to stop'.[537] In addition, 'the impact that the genocide must have had on Mr. Ntaganda – and of the measures that might be necessary to stop a genocide – should not be under-estimated'.[538]

210. The Chamber does not doubt the traumatic impact on Mr Ntaganda of having lived through the Rwandan genocide, including the loss of his close family members.[539] However, the Chamber recalls that while it found his testimony regarding his suffering during the Rwandan genocide credible, as well as his experience of the discrimination against the Tutsi during his youth, notably in the region of Eastern Congo,[540] it did not find Mr Ntaganda credible when he

[534] T-268, page 42. *See also* submissions in Prosecution Submissions, paras 61 and 64.
[535] Defence Submissions, paras 103-110; and Defence Response, para. 75.
[536] Defence Submissions, para. 109.
[537] Defence Submissions, para. 110.
[538] Defence Submissions, para. 109.
[539] **D-0300**: T-211, pages 5-7.
[540] Judgment, para. 259.

affirmed that he always fought and acted, including in 2002 and 2003, for the liberation and freedom of the civilian population in general in Ituri and that this revolutionary ideology was governing the functioning of the UPC/FPLC.[541] Rather, the Chamber found beyond reasonable doubt that Mr Ntaganda agreed to a common plan to drive out all the Lendu from the localities targeted during the UPC/FPLC's military campaign against the RCD-K/ML and, by way of this agreement, meant the *destruction and disintegration* of the Lendu community, which inherently involved the targeting of civilian individuals by way of acts of killing, rape, and the targeting of their public and private property.[542] In the Chamber's view, the alleged protection of one group through acts aimed at the destruction and disintegration of another cannot under any circumstance constitute a matter of mitigation.[543] The Chamber thus gives this matter no weight in mitigation.

3. Measures allegedly taken by Mr Ntaganda to save the lives of enemy combatants and to protect civilians

211. The Defence raises two instances of Mr Ntaganda allegedly saving the lives of enemy combatants in Mongbwalu in 2002 and 2003,[544] which its submits must be accorded substantial weight in mitigation.[545] In the first instance, according to P-0016, Mr Ntaganda intervened to prevent Floribert Kisembo from killing him and 63 other former APC soldiers.[546] In the second, according to D-0251, Mr Ntaganda ordered his troops not to kill some prisoners captured during an operation in Mongbwalu.[547]

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[541] Judgment, para. 261.
[542] Judgment, paras 808-809.
[543] *See also* submissions in Prosecution Submissions, paras 61-64; Prosecution Response, para. 30; CLR1 Response, paras 31-34; and CLR2 Response, paras 20 and 25.
[544] Defence Submissions, paras 111-114.
[545] Defence Submissions, para. 114.
[546] **P-0016**: DRC-OTP-0126-0422-R03, para. 47.
[547] **D-0251**: T-260, page 31.

212. The Chamber notes that, according to P-0016, Mr Ntaganda preferred to integrate and train him and the aforementioned 63 soldiers into the UPC/FPLC because at that time the armed group did not have any trained soldiers of its own.[548] Given that Mr Ntaganda's actions appear to have been aimed at using the soldiers for the benefit of the common plan, the Chamber does not consider this to be a mitigating factor, and accords it no weight.[549] In relation to the evidence of D-0251, the Chamber recalls that it had reservations about D-0251's credibility,[550] and notes the scarcity of details in the witness' testimony on this subject, including on the number or identity of the prisoners in question. Considering these factors together, the Chamber does not consider this matter to be established, even on a balance of probabilities. The Chamber thus accords it no weight in mitigation.

213. The Defence further raises an instance of Mr Ntaganda allegedly welcoming and protecting Lendu civilians in Mandro in June 2002, which it submits constitutes 'substantial mitigation'.[551] It also submits that measures taken by Mr Ntaganda, once in control of an area, to protect civilians against attacks and punish crimes against them should be credited in mitigation.[552]

214. As regards the first issue, the Chamber notes that the witness relied on by the Defence, D-0054, refers to Chief Kawha having given shelter in Mandro to some Lendu civilians who fled an attack by a group of Lendu 'combatants' in June 2002.[553] While D-0054 mentions 'Bosco' as being part of the delegation sent by Chief Kawha to collect the Lendu civilians,[554] the witness provides no other

[548] **P-0016**: DRC-OTP-0126-0422-R03, para. 47.
[549] *See also* submissions in Prosecution Response, paras 31-33; and CLR2 Response, para. 23. The Chamber distinguishes in this respect the facts of the *Popović* case cited by the Defence from the facts of the present case, *see* Defence Submissions para. 114 and footnote 215, and the arguments of the Prosecution in this respect in Prosecution Response, para. 34.
[550] Judgment, para. 103, and footnotes 213 and 1157.
[551] Defence Submissions, para. 115.
[552] Defence Submissions, paras 120-123.
[553] **D-0054**: T-243, page 71; and T-244, pages 6-22.
[554] **D-0054**: T-244, pages 16-17.

details on this person's role in the events.[555] The Chamber also recalls its finding beyond reasonable doubt that, shortly after the timing of this incident, Mr Ntaganda agreed to a common plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC's military campaign and meant the destruction and disintegration of the Lendu community.[556] Considering this, as well as the limited concrete evidence on his actual role in the event described by D-0054, if any, the Chamber does not consider this matter to be established on a balance of probabilities and gives it no weight in mitigation.

215. As regards the second issue, the Defence refers to seven instances of Mr Ntaganda 'tr[ying] to protect the civilian population against attacks' after coming into control of an area.[557] The Chamber notes that the testimony referred to in support thereof is Mr Ntaganda's only.[558] In considering this evidence in mitigation, the Chamber recalls, as noted above, that it did not find Mr Ntaganda credible when he testified that he fought and acted in 2002 and 2003 for the liberation and freedom of the civilian population in general in Ituri.[559] It also recalls its findings that the Lendu did not return to Mongbwalu after the UPC/FPLC's takeover of the town while the UPC/FPLC was still there because of the risk of being killed,[560] that the UPC/FPLC's conduct in the aftermath of the assault was clearly aimed at creating conditions to hamper the return of the Lendu for at least a considerable period,[561] and that its conduct in the aftermath of the assaults on Lipri, Tsili, Kobu, and Bambu also deterred the population from returning.[562] In light of all of the above, the Chamber does not

[555] *See also* submissions in Prosecution Response, paras 31-32.
[556] Judgment, paras 808-809.
[557] Defence Submissions, para. 120.
[558] Defence Submissions, para. 121 and the references contained therein.
[559] Judgment, para. 261.
[560] Judgment, para. 536.
[561] Judgment, para. 1061.
[562] Judgment, para. 1067.

consider it to be established on a balance of probabilities that Mr Ntaganda genuinely tried to protect the civilian population – at least not the Lendu civilian population - from attacks once areas had been secured. It therefore gives this factor no weight in mitigation.

216. As regards Mr Ntaganda's efforts to punish crimes against civilians, the Chamber notes that it did not find that his efforts to punish crimes against Lendu were 'insufficient', as submitted by the Defence.[563] Rather, the Chamber found that rape, murder and pillage committed against the Lendu were not considered punishable offences.[564] In addition, for most of the instances of punishment raised by the Defence,[565] the Chamber recalls that it found them to be, *inter alia*, isolated in nature,[566] not established due to a lack of credibility in the relevant testimony of Mr Ntaganda,[567] or directed towards crimes against civilians of ethnicities other than Lendu.[568] In this context, the Chamber considers that the acts of punishment referred to by the Defence cannot be properly qualified as efforts to reduce the scale or mitigate the impact of crimes against the Lendu, or to prevent others from committing criminal acts against the Lendu. The Chamber accordingly gives them no weight in mitigation.

4. Mr Ntaganda's alleged contribution to peace, reconciliation, and security in 2004 in Ituri

217. The Defence submits that Mr Ntaganda's contribution to peace, reconciliation, and security in 2004 in Ituri was 'phenomenal', and should be accorded substantial weight.[569] It refers to his alleged contribution to reconciliation with

[563] Defence Submissions, para. 122.
[564] Judgment, para. 332.
[565] Defence Submissions, para. 122.
[566] Judgment, footnote 893, referring to the burning of looted goods by Mr Ntaganda, an execution in Ndromo and the detention of Abelanga, Pigwa, and Thomas Kasangaki for stealing.
[567] Judgment, footnote 893, referring to the execution of a UPC/FPLC soldier named Liripa after the First Operation.
[568] Judgment, para. 332 and footnotes 885-886. *See also* submissions in Prosecution Response, paras 39-41.
[569] Defence Submissions, paras 124-134. *See also* Defence Response, paras 86-90.

the Lendu community and the FNI and FRPI in 2004,[570] and to his alleged contribution to the demobilisation of UPC/FPLC soldiers and their integration into the FARDC in 2004.[571] It further submits that Mr Ntaganda displayed a 'complete shift in attitude' which began as early as the UPC/FPLC's operations in Mongbwalu in June 2003, and that the 'shift in attitude' is most significant, deserving of due consideration, and constitutes an indication that in 2003-2004, rehabilitation was already underway.[572] It also submits that any negative view held by MONUC of Mr Ntaganda's actions on this subject does not detract from the credit that should be given.[573] Conversely, the Prosecution and the Legal Representative of the Victim of the Attacks submit that Mr Ntaganda's alleged contribution to peace and security is not established.[574]

218. The Chamber considers that promotion of peace and reconciliation may only constitute a mitigating circumstance if it is genuine and concrete.[575]

219. The Chamber notes the evidence before it on the alleged reconciliation between ethnic communities in 2004 which indicates that: (i) in 2004, the FNI had an initiative to conduct an awareness raising campaign among Lendu and – particularly – Hema about the need for peace, unity and free movement of people and goods;[576] (ii) as part of this initiative, pacification meetings were held in various Hema villages;[577] (iii) one of these meetings, held in March 2004 in Bule, was attended by a delegation sent by Mr Ntaganda;[578] (iv) Mr Ntaganda

[570] Defence Submissions, paras 124-134.
[571] Defence Submissions, paras 135-136. *See also* Defence Response, paras 91-93.
[572] Defence Submissions, paras 12-14. *See also* Defence Response, para. 85.
[573] Defence Submissions, paras 137-141. *See also* Defence Response, paras 87-89.
[574] Prosecution Submissions, paras 107-112; Prosecution Response paras 42-48; and CLR2 Submissions, paras 50-54.
[575] *Bemba* Sentencing Judgment, para. 72; *Katanga* Sentencing Judgment, para. 91; and *Lubanga* Sentencing Judgment, para. 87.
[576] **D-0306**: T-267, pages 12-15, also referring to DRC-D18-0001-6754.
[577] **D-0306**: T-267, pages 12-15 and 18-19. The witness indicates that meetings were held in, *inter alia*, Bule, Iga Barrière, Katoto, Lopa, and Muhito.
[578] **D-0306**: T-267, page 15.

encouraged the initiative;[579] (iv) Mr Ntaganda had a role in ensuring the security of FNI representatives while they were travelling to the locations where such meetings were held;[580] (v) Mr Ntaganda spoke about peace in Sali,[581] and at events in Largu,[582] Mabanga,[583] and Lopa;[584] (vi) Mr Ntaganda invited Lendu to a pacification meeting in Lopa;[585] (vii) a 'rank giving ceremony' was held in Largu in July 2004 followed by a celebration in Drodro which was attended by members of the UPC (including Mr Ntaganda), members of the FNI (including its President Floribert Ndjabu), and members of the territorial administration of Djugu, including its Head, Tchachu Lylo, and its Deputy Head, Kiza Mateso.[586] Mr Ntaganda was involved in the organisation of this event.[587]

220. The Chamber first considers the nature of the activities established by the evidence to suggest a strategic alliance between the UPC/FPLC and the FNI, as opposed to broader reconciliation and peace between the Lendu and Hema communities.[588] In this regard, the Chamber observes that the evidence suggests that an alliance between the UPC/FPLC and the FNI was being considered in order to secure a high position at the national level,[589] and that the July 2004 event held in Largu was a military occasion, namely a 'rank giving ceremony', where all soldiers receiving ranks were UPC/FPLC officers.[590] Contrary to the Defence's submission that the rank giving ceremony was not just a private affair

[579] **D-0306**: T-267, pages 15-16.
[580] **D-0306**: T-267, page 13.
[581] **D-0306**: T-267, page 20.
[582] **D-0302**: DRC-D18-0002-0023, at 0026, para. 22; and **D-0303**: DRC-D18-0002-0001, at 0007, paras 37-40.
[583] **D-0305:** T-266, pages 35-36.
[584] **D-0302**: DRC-D18-0002-0023, at 0026, para. 20.
[585] **D-0302**: DRC-D18-0002-0023, at 0026, para. 20.
[586] **D-0047**: T-267, page 56-57, also referring to DRC-D18-0001-0436, from 01:06:07 to 01:06:17; **D-0305**: T-266, pages 27-28, 32 and 34, also referring to DRC-OTP-0118-0002 at 00:55:42 and 00:59:55 to 00:59:59; and **D-0306**: T-267, pages 21-26, also referring to DRC-OTP-0118-0002, from 00:19:30 to 00:20:14, 00:42:17 to 00:42:43 and 00:48:52-00:49:31
[587] **D-0047**: T-267, page 52.
[588] *See also* submissions in Prosecution Submissions, para. 107; CLR2 Submissions, para. 52; and Prosecution Response, paras 43-44.
[589] DRC-OTP-0009-0146-R01, from 0147 to 0148, paras 2(c) and (d).
[590] **D-0306**: T-267, pages 27-28. D-0047 also testified that this was a 'military activity', *see* T-267, page 52.

between the FNI and the UPC/FPLC,[591] pointing in support to the presence of the head and deputy head of the Djugu territorial administration, the former who is Lendu, the Chamber observes that, according to the evidence, the Lendu Djugu territory administrator Tchachu Lylo was also a former UPC and FNI official.[592] Further, evidence before the Chamber suggests that the majority of the Lendu community was reportedly dismissive in early 2004 of the FNI leader Floribert Njabu's 'rapprochement' with Mr Ntaganda.[593] In addition, as noted by the Legal Representative of the Victims of the Attacks, there is no evidence that Mr Ntaganda personally visited any villages affected by the events which are the subject of his conviction, such as Mongbwalu, Lipri, or Kobu.[594]

221. Second, contrary to the Defence's submission that Mr Ntaganda's contribution to the peace process was substantial, the evidence before the Chamber indicates only a limited involvement. While there is evidence that Mr Ntaganda encouraged the aforementioned awareness raising initiative and facilitated the security of FNI representatives in moving through Hema locations, the evidence indicates that the pacification campaign was in fact an FNI initiative.[595] Witness D-0306 specifically rejected the suggestion that the FNI collaborated with Mr Ntaganda in the awareness raising mission.[596] Evidence that Mr Ntaganda made speeches about peace in Sali, Lopa and Largu[597] and invited Lendu to a meeting in Lopa[598] also suggests to the Chamber some, but

[591] Defence Submissions, para. 130.
[592] **D-0047**: T-267, pages 32 and 57; and **D-0306**: T-267, pages 23-24. *See also* **D-0047**: T-267, page 52, where D-0047 noted that it was mainly 'officials of various sorts' who were present at the rank giving ceremony. *See also* submissions in Prosecution Response, para. 43.
[593] DRC-OTP-0009-0146-R01, from 0147 to 0148, para. 2(d).
[594] *See* CLR2 Submissions, para. 52. D-0047 testified that the UPC went to Kobu in January/February 2004, but the Chamber notes that, according to the witness, Mr Ntaganda was not present and that there is no concrete evidence of his role in relation to this event, apart from D-0047 stating that he received a report of the visit (**D-0047**: T-267, page 49; *see also* T-267-FRA, pages 45-46).
[595] **D-0306**: T-267, pages 12 and 15-17, also referring to DRC-D18-0001-6754.
[596] **D-0306**: T-267, pages 40-41.
[597] **D-0302**: DRC-D18-0002-0023, at 0026, paras 21-22; **D-0303**: DRC-D18-0002-0001, at 0007, paras 37-40; and **D-0306**: T-267, page 20.
[598] **D-0302**: DRC-D18-0002-0023, at 0026, para. 20.

limited, involvement of Mr Ntaganda in the pacification campaign. Furthermore, the genuine nature of Mr Ntaganda's actions is placed in doubt by other evidence.[599] While D-0303 testified that following a meeting in Largu, it was agreed that the Hema could access Lendu markets in three villages,[600] and D-0306 testified that the process initiated by the FNI contributed to freedom of movement,[601] the latter also confirmed that, throughout 2004, the UPC continued to harass the civilian population in Ituri,[602] which is corroborated by other sources.[603]

222. On the issue of demobilisation and integration into the FARDC of UPC/FPLC soldiers, the Chamber notes that the evidence on Mr Ntaganda's concrete role in

[599] *Contra* Defence Submissions, para. 127 and Defence Response, paras 86 and 87. In this respect, the Chamber has not accorded much weight to D-0305's evidence on the outcome of the reconciliation activities or Mr Ntaganda's role therein. The witness testified that people in Ituri 'be it the Lendu people, the Hema people or Ngiti people […] liked [Mr Ntaganda] a lot because of the peace and security that he brought to the region' (**D-0305**: T-266, page 36). The Chamber considers the credibility of the witness's evidence on this subject, and her general evidence on Mr Ntaganda's character, to be low, noting that she is an acquaintance of Mr Ntaganda's (**D-0305**: T-266, page 38), her indication that the reason for her testimony was to counter untrue things that have been said about Mr Ntaganda, in relation to whom she could not believe that he was someone who would have committed violent crimes (**D-0305**: T-266, pages 38-39), a matter clearly contradicted by the Chamber's findings in this case, and further noting that she was evasive on the issue of her alleged membership in the FPLC (**D-0305**: T-266, pages 44-46 and 58-62).

[600] **D-0303**: DRC-D18-0002-0001, at 0007, para. 40.

[601] **D-0306**: T-267, pages 20-21. The Chamber notes blanket statements from D-0302 that following pacification meetings in Largu and Lopa, there were no more problems between the Hema and the Lendu, and that thanks to Mr Ntaganda's speeches, peace and reconciliation was restored between the two groups (**D-0302**: DRC-D18-0002-0023, at 0026, paras 23-24). In assessing D-0302's evidence, the Chamber notes other categorical statements from him such as that when Mr Ntaganda became Chief of Staff at the end of 2003, he emphasised the importance of protecting civilians (**D-0302**: DRC-D18-0002-0023, at 0025 to 0026, para. 19), that it was his policy that soldiers should not commit crimes (**D-0302**: DRC-D18-0002-0023, at 0027, para. 27), that he did not tolerate threats or crimes against Hema or Lendu (**D-0302**: DRC-D18-0002-0023, at 0027, para. 28), and that Mr Ntaganda was deserving of a Nobel Prize and protected the civilian population and soldiers (**D-0302**: DRC-D18-0002-0023, at 0027, para. 30). The Chamber notes that these statements are contradicted by its findings in the Judgment, and notes that this alleged 'complete shift in attitude' come just months after the occurrence of violent crimes against the Lendu civilian population for which the Chamber found Mr Ntaganda guilty. Without further explanation for the motivation of this alleged sudden 'complete shift in attitude', the Chamber gives very little weight to the testimony of this witness in this regard and to the aforementioned blanket statements. For these reasons, the Chamber also dismisses the Defence's arguments regarding Mr Ntaganda's alleged shift in attitude, *see* Defence Submissions, paras 124-134; *see also* Defence Response, para. 86.

[602] **D-0306**: T-267, page 36.

[603] *See* DRC-OTP-0185-0843, from 0844 to 0845, para. 2(e), referring to 'rising harassment against the civilian population' by Thomas Lubanga's 'faction of the militia', with Mr Ntaganda ('BOSCO') as his military appointee; and DRC-OTP-2057-0099, at 0099.

this process is fairly limited.[604] At its most significant, D-0020 testified that Mr Ntaganda appointed an officer to oversee the demobilisation of 500 soldiers.[605] Against this, the Chamber notes indications from MONUC that it considered Mr Ntaganda a potential obstacle to the disarmament process in early 2004,[606] that disarmament and reintegration was, in any event, a legal requirement,[607] and that Mr Ntaganda himself declined to integrate into the FARDC for a number of years.[608]

223. As to the Prosecution's submission that MONUC and the international community had 'serious concerns' about Mr Ntaganda and his group's 'ongoing criminal conduct',[609] the Chamber considers much of the material relied on in support thereof to be of relatively low probative value in terms of the actual conduct of Mr Ntaganda.[610] However, there are nevertheless clear

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[604] The Chamber does not consider any of the documents referred to by the Defence in paragraph 135 of its submissions or paragraph 91 of its response to add anything in this regard, noting that none of them speak to Mr Ntaganda's concrete role in the events depicted therein. The same applies to the December 2003 *Acte d'engagement* cited by the Defence in paragraph 130 of its submissions, noting evidence from D-0047 that Mr Ntaganda was not at the meeting where the document was created because of his fear of arrest by MONUC (**D-0047**: T-267, pages 49, 64 and 68-69, also referring to DRC-OTP-0018-0108). D-0020 testified that in mid-2004 Mr Ntaganda met with officers and informed them that they must disarm, demobilise or integrate in the FARDC (**D-0020**: ICC-01/04-02/06-2397-Conf-AnxA, page 3, para. 15), and attended a demobilisation ceremony with MONUC representatives (**D-0020**: ICC-01/04-02/06-2397-Conf-AnxA, pages 3-4, para. 17). D-0047 testified that Mr Ntaganda worked with a government committee responsible for demobilisation and was responsible for preparing lists of those who wanted to either demobilise or integrate (**D-0047**: T-267, pages 62-63). However, in assessing D-0047's evidence, the Chamber notes that D-0020 testified that in fact it was Mr Ntaganda's secretary who was in charge of compiling the lists for reintegration (**D-0020**: ICC-01/04-02/06-2397-Conf-AnxA, page 4, para. 19), and information in a report from the *Comité International d'Accompagnement de la Transition*, the oversight body working with institutions set up to assist in disarmament, that later – in 2005 – Mr Ntaganda, Thomas Lubanga, and the UPC were not cooperating with authorities in respect of the demobilisation program and raised allegations of assassinations and tortures on the orders of the UPC hierarchy, in particular Mr Ntaganda, *vis-à-vis* combatants who chose to hand in their weapons (**D-0047**: T-267, pages 85-86 and 88-90; and DRC-OTP-2103-1205, at 1267, second paragraph).

[605] **D-0020**: ICC-01/04-02/06-2397-Conf-AnxA, page 4, para. 18.

[606] *See* DRC-OTP-0009-0146-R01, at 0155, para 12, stating that 'MONUC made it clear to the armed groups that the Disarmament and Community Reintegration process would not be derailed by the provocations of Bosco's group and that the program would continue as planned'.

[607] DRC-D18-0002-0063. *See also* **D-0047**: T-267, pages 60-61.

[608] DRC-OTP-0086-0036 and **D-0047**: T-267, page 62, indicating that Mr Ntaganda was conferred the rank of brigadier general in December 2004; and **D-0300**: T-223, page 18, indicating that he joined the national army in 2009.

[609] Prosecution Submissions, paras 107-109; and Prosecution Response, paras 42 and 47.

[610] For many of the documents cited by the Prosecution, the Chamber notes that the sources of relevant information are, according to the documents themselves, unconfirmed or require further corroboration, (*see*, e.g., DRC-OTP-2066-0380, at 0380, para. 1(b); DRC-OTP-0007-0314, at 0316, para. 4(d); DRC-OTP-0004-

indications that the UPC/FPLC, with Mr Ntaganda as its Deputy Chief of Staff, was uncooperative with MONUC and other key institutions working for pacification in Ituri at that time,[611] and that according to MONUC, Mr Ntaganda was a threat to peace and security during this period.[612] This, in the Chamber's view, undermines the Defence's narrative of Mr Ntaganda's 'exceptional' contribution to peace, security and reconciliation.

224. Taking into account all of the above, the Chamber does not consider a genuine and concrete contribution to peace and reconciliation, or demobilisation and disarmament on the part of Mr Ntaganda to be established overall, on a balance of probabilities. It therefore does not take this into account in mitigation.

5. Mr Ntaganda's behaviour towards and cooperation with the Court

225. The Defence identifies several matters related to Mr Ntaganda's behaviour towards and cooperation with the Court which it avers should be credited in mitigation: (i) his voluntary surrender to the Court;[613] (ii) his lengthy testimony, admission of potentially incriminating facts and respectful demeanour and conduct in court;[614] and (iii) his good conduct in detention and, in particular, specific actions taken by him in the Detention Centre.[615]

0372, at 0373, para. 1; and DRC-OTP-1029-0465, at 0467, para. 8(d)). For others, Mr Ntaganda's actual role in the events therein described is unclear (*see*, e.g., DRC-OTP-0185-0843, from 0844 to 0845, para. 2(e)). *See also* in this regard the arguments of the Defence in paragraph 88 of its response. The Chamber also takes into account that Mr Ntaganda's poor reputation with MONUC may have been connected to its alleged siding with Floribert Kisembo following the split within the UPC/FPLC, *see* Defence Response, para. 89.

[611] On 7 November 2003, the UPC/FPLC, with Mr Ntaganda as the Deputy Chief of Staff, formally withdrew all cooperation with MONUC and all participation in the institutions established by the Ituri Pacification Commission, *see* **D-0047**: T-267, pages 70 and 80-81. *See also* DRC-OTP-0009-0146-R01, at 0155, para. 12; and Prosecution Submissions, para. 108.

[612] DRC-OTP-1029-0591, at 0603, paras 27-28; DRC-OTP-0142-0038; DRC-OTP-0142-0042; DRC-OTP-2057-0099, from 0101 to 0103; and DRC-OTP-0154-0648, at 0648.

[613] Defence Submissions, paras 142-143.

[614] Defence Submissions, paras 144-147; and Defence Response, para. 83.

[615] Defence Submissions, paras 148-150; and Defence Response, paras 81-82.

226. The Prosecution submits that Mr Ntaganda's surrender is not mitigating,[616] that he has not cooperated with the Court in any appreciable manner[617] and that he should not be given any credit for his alleged good conduct in detention.[618] The Legal Representative of the Victims of the Attacks submits that Mr Ntaganda has in no relevant way cooperated with the Court beyond his initial surrender, which should be weighed having regard to its delay,[619] and that, while deserving of due recognition, Mr Ntaganda's specific conduct while in detention highlighted by the Defence can only be given limited weight.[620]

a) Voluntary surrender

227. Mr Ntaganda surrendered voluntarily to the Court in March 2013.[621] While mindful of the considerable benefits for international courts and tribunals of voluntary surrender,[622] and noting that a suspect voluntarily surrendering him- or herself to the Court upon learning of the existence of an arrest warrant against him or her could be a factor to take into account for substantial mitigation,[623] the Chamber must consider the particular circumstances of Mr Ntaganda's surrender in the present case.

228. In this respect, the Chamber notes the significant lapse of time between Mr Ntaganda's surrender and the unsealing of the first arrest warrant against him in 2008.[624] Compared to the delay of five months in the case of *Blaškić* cited

[616] Prosecution Submissions, para. 99; and Prosecution Response, paras 49-50.
[617] Prosecution Submissions, paras 98-101; and Prosecution Response, paras 51-52.
[618] Prosecution Submissions, paras 88-93; and Prosecution Response, para. 52.
[619] CLR2 Submissions, para. 48.
[620] CLR2 Submissions, paras 61-62.
[621] ICC-01/04-02/06-44-Conf-Exp. *See also* ICC-01/04-02/06-41, para. 7; and submissions in Defence Submissions, para. 142. The Chamber notes that Mr Ntaganda arrived at the ICC Detention Centre on 22 March 2013, ICC-01/04-02/06-41, para. 7.
[622] *See*, e.g., ICTY, *Martinović & Naletilić* Appeal Judgment, para. 600.
[623] *See*, e.g., ICTY *Milošević* Trial Judgment, para. 1003; ICTY, *Lukić and Lukić* Trial Judgment, para. 1093; and ICTR, *Rutaganira* Trial Judgment, para. 145.
[624] The first warrant of arrest for Mr Ntaganda was issued on 22 August 2006 and unsealed on 28 April 2008, *see* ICC-01/04-02/06-18. The second warrant was issued on 13 July 2012, ICC-01/04-02/06-36-Red.

by the Defence,[625] the Chamber regards the delay of five years in this case as substantial.[626] Indeed, the Single Judge of Pre-Trial Chamber II reflected that 'it should not be forgotten that Mr Ntaganda had been at large for many years since the issuance of the first warrant of arrest' and that 'Mr Ntaganda did not choose to face justice, but instead managed to avoid apprehension during this period, in total disregard of the serious accusations brought against him'.[627] The Chamber considers that the delay associated with Mr Ntaganda's surrender reduces the value of its mitigating impact, and accordingly affords this factor no weight in mitigation.

b) Conduct during the trial

229. The Chamber notes that good behaviour and compliance with the law are expected of any accused or convicted person and are not normally taken into account in mitigation unless exceptional.[628] The Chamber recalls with appreciation that, with the exception of his hunger strike, Mr Ntaganda was consistently respectful and cooperative during court proceedings, including notably consenting to absenting himself from the courtroom to facilitate the testimony of certain witnesses.[629]

230. As to Mr Ntaganda testifying in his own defence, which the Defence submits deserves significant credit,[630] the Chamber notes at the outset, that an accused

[625] Defence Submissions, para. 143, footnote 294.
[626] The Chamber notes in this respect the jurisprudence of the *ad hoc* tribunals where trial chambers refused to take voluntary surrender into account or ascribe it any weight in mitigation for a number of reasons, for example in case of belated surrender only several years after the indictment, *see*, e.g., ICTY, *Mrkšić et al.* Trial Judgment, para. 698; ICTY, *Milutinović et al.* Trial Judgment (Vol. 3), paras 1184, 1189, 1194 and 1204; and ICTY, *Popović et al*. Trial Judgment, para. 2224.
[627] ICC-01/04-02/06-147, para. 41, upheld by the Appeals Chamber, ICC-01/04-02/06-271-Red. In addition, the Chamber notes that the motivations for Mr Ntaganda's voluntary surrender are not clear. It observes that the Single Judge of Pre-Trial Chamber II noted that the material before her suggested that the surrender may have been prompted by a risk to be killed or by other external pressures, *see* ICC-01/04-02/06-147, paras 43-47.
[628] *Bemba* Sentencing Judgment, para. 81. *See also Katanga* Sentencing Judgment, paras 127-129.
[629] *See*, e.g., T-46, page 54. *See also* submissions in Defence Submissions, para. 147.
[630] Defence Submissions, para. 145.

has the right to remain silent.[631] The Chamber emphasises that there is no expectation that an accused will testify and that the choice to testify as a witness in one's own case is one that is to be made by an accused, in consultation with his or her defence team. The Chamber therefore considers that an accused's choice not to remain silent does not, in and of itself, qualify as a mitigating circumstance. Whether or not testifying will be considered as a mitigating circumstance depends on the circumstances and content of the testimony. In the present case, the Chamber notes that Mr Ntaganda gave lengthy and detailed testimony and generally answered all questions put to him.[632] On the other hand, it notes that, while testifying about his involvement in the planning and unfolding of the First Operation, the Chamber did not find Mr Ntaganda credible on important aspects related to crimes committed therein for which he was convicted[633] and otherwise stated not to have been involved in the Second Operation; he also denied that children under 15 years of age were recruited into and later on formed part of the UPC/FPLC troops, or were subjected to sexual violence.[634] The Chamber also notes that Mr Ntaganda made no sincere demonstrations of remorse towards his victims.[635] All of the above considered, while noting with appreciation Mr Ntaganda's respectful and positive behaviour during trial, the Chamber does not consider his behaviour exceptional so as to constitute a mitigating circumstance. The Chamber therefore affords this factor no weight in mitigation.

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[631] Article 67(1)(g) of the Statute.
[632] Judgment, paras 256-258.
[633] *See*, e.g., Judgment, footnote 1431 (where the Chamber considered Mr Ntaganda not credible in relation to his testimony that by the time he arrived in Mongbwalu, the entirety of the town had already been taken over), para. 498 and footnotes 1434 and 1477 (where the Chamber considered Mr Ntaganda not credible in relation to his testimony that, when the UPC/FPLC entered Mongbwalu, the population had already fled and that he only saw one body in Sayo and was not an eyewitness to any other killings), footnote 1507 (where the Chamber considered Mr Ntaganda not credible in relation to his denial of ordering killings in Nzebi), para. 528 and footnote 1574 (where the Chamber considered Mr Ntaganda not credible in relation to his testimonu that only one person was taken 'prisoner' during the First Operation and that this person was subsequently released) and para. 533 (where the Chamber considered Mr Ntaganda not credible on his denial of having killed *Abbé* Boniface Bwanalonga).
[634] Judgment, para. 256.
[635] *See* paras 236-239 below.

c) Conduct in detention

231. The Chamber notes that the Prosecution's position in relation to Mr Ntaganda's conduct while in detention is based, in part, on it contesting the information relied upon by the Defence, namely the Registry Report on Mr Ntaganda's behaviour while being detained at the Detention Centre.[636] The Chamber addresses the Prosecution's challenges on this point before turning to the substance of the issue.

232. The Chamber recalls that further to the Chamber's instruction,[637] the Registry filed the Registry Report on 29 July 2019. Although it did not respond to, or otherwise comment on, the report prior to making its written submissions on sentencing, the Prosecution avers in the Prosecution Submissions that the Registry Report is 'incomplete and inaccurate' and that as a result of its alleged 'shortcomings', the Chamber cannot rely on it.[638]

233. The Chamber considers the Prosecution's critique inapposite. Any concerns about the accuracy of the Registry Report should have been raised earlier, in accordance with the regular procedure and timelines, and not at a stage at which the Registry could no longer respond to the critique. In view of the Chamber, the Prosecution's contentions do not raise doubt as to accuracy of the Registry Report. The Chamber therefore dismisses the Prosecution's criticism of the Registry Report, and sees no reason why it should not rely on the information on Mr Ntaganda's behaviour in detention provided by a neutral organ of the Court.

234. Turning to the substance of the issue, the Registry Report indicates that Mr Ntaganda's behaviour in detention has been, according to the Chief Custody Officer, 'exemplary', that he has always been respectful towards the Detention

[636] Prosecution Submissions, paras 89-90.
[637] Email from the Chamber to the Registry, copied to the parties and participants on 11 July 2019, at 16:29.
[638] Prosecution Submissions, paras 89-90.

Centre staff, has good to excellent relationships with other detainees, and 'played a constructive role and intervened appropriately with the management of the ICC DC on behalf of other detainees, when those other detainees could be described as struggling with being in custody'.[639] The Addendum to the Registry Report details two specific examples of the latter type of behaviour[640] noting that, on two occasions, Mr Ntaganda's actions assisted Detention Centre staff in executing their duty of care.[641]

235. The Chamber considers that Mr Ntaganda's specific actions in detention as detailed in the Addendum to the Registry Report to be commendable. Notwithstanding, considering this against the overall gravity and aggravating circumstances established above for the crimes of which he has been convicted, the Chamber considers the weight accorded to be too limited to impact on the individual and overall sentences.

6. Actions and statements in relation to the victims

236. The Chamber notes that a sincere statement of remorse may be taken into account as a mitigating circumstance, and that expressions of sympathy or genuine compassion for the victims, while also relevant for the determination of the sentence, may be accorded less weight.[642] Efforts to compensate victims may also be considered as a mitigating circumstance.[643]

237. In his unsworn statements at the end of closing arguments and at the end of the sentencing hearing, Mr Ntaganda stated respectively that he feels 'great compassion as a result of all the suffering and harm visited upon the civilian

[639] ICC-01/04-02/06-2367-Conf-Anx, page 2.
[640] ICC-01/04-02/06-2390-Conf-AnxI, paras 10-16.
[641] ICC-01/04-02/06-2390-Conf-AnxI, para. 11. The Chamber also notes in this regard the matter and potential consequences as explained in paragraphs 14-15.
[642] *See Katanga* Sentencing Judgment, para. 117 and the cases cited therein; and *Al Mahdi* Judgment, paras 103-105.
[643] Rule 145(2)(a)(ii) of the Rules.

populations of all the ethnic groups',[644] and that he wished to also express his 'deep compassion for all the victims from all the ethnic groups who suffered during the conflicts that have devastated the Congo during this period of time, namely 2002 and 2003, conflicts which still continue'.[645]

238. While noting with appreciation these statements of compassion from Mr Ntaganda, the Chamber observes that they are very general, aimed at the victims of *all* ethnic groups who suffered during the conflict in the DRC between 2002 and 2003 and continuing, rather than specifically aimed at the victims of his *own* crimes. The Chamber also considers that these statements of compassion must be viewed in light of the other parts of his latter unsworn statement, wherein he stated that that he stands by his testimony, including key aspects on which the Chamber found him to be not credible, namely his denial of the commission of charged crimes,[646] his statement that he is not a criminal, his claim that a number of witnesses who testified against him told 'falsehoods', and that his aim has always been 'to set in place the conditions that would allow all the people of the Congo, without distinction, to live in peace and harmony'.[647] There is also no evidence that Mr Ntaganda has acted in any way in assistance of the victims of the crimes for which he was convicted.[648]

239. In this context, the Chamber does not consider that Mr Ntaganda has made any sincere demonstrations of remorse, nor that his abovementioned expressions of compassion are sufficient to constitute a mitigating circumstance.[649]

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[644] T-264, page 67.
[645] T-268, page 52. *See also* submissions in Defence Submissions, para. 155.
[646] *See also* para. 230 above.
[647] T-268, pages 51-52.
[648] *See also* submissions in Prosecution Submissions, para. 106; and CLR1 Submissions, para. 58.
[649] *See also* submissions in Prosecution Submissions, paras 102-106; CLR1 Submissions, para. 58; and CLR2 Submissions, para. 60.

7. Mr Ntaganda's family circumstances and the conditions of his detention

240. The Chamber notes that Mr Ntaganda is married and has seven children, six of whom are minors.[650] It also notes that he has been declared indigent for the purposes of this trial, and that, according to the Registry, as at July 2019, it had neither received nor uncovered any information which could confirm Mr Ntaganda's ownership of any assets.[651]

241. The Defence makes several related submissions in respect of Mr Ntaganda's family circumstances and conditions of detention.[652] It firstly avers that the six years and three months spent by Mr Ntaganda in pre-conviction detention should be taken into account in mitigation of his sentence.[653] Second, it submits that the mitigation warranted therefrom should be increased by the conditions arising from Mr Ntaganda's detention in The Hague, which it argues has had a heavy impact on him and his family.[654] These are namely that he has received only six family visits during his period of detention due to his limited financial resources,[655] that due to logistical difficulties and insufficiency of funds in the Registry Trust Fund for Family Visits, he has not seen his three youngest children since March 2013,[656] and that the burden of these limited family visits was substantially increased during the period of strict monitoring of his telephone communications[657] and compounded by the remoteness of his place of detention from his family.[658] The Defence further submits that Mr Ntaganda is a loving and solicitous husband and father,[659] and that an extremely long

[650] T-209, pages 42-43.
[651] ICC-01/04-02/06-2367-Conf, para. 3.
[652] Defence Submissions, paras 6-7, 151-154 and 156.
[653] Defence Submissions, para. 151.
[654] Defence Submissions, paras 152-154 and 156.
[655] Defence Submissions, para. 152.
[656] Defence Submissions, paras 6 and 152.
[657] Defence Submissions, para. 153.
[658] Defence Submissions, para. 156.
[659] Defence Submissions, para. 156.

period of further detention, whether at a great distance from his family or closer, will have a major impact on Mr Ntaganda and his family.[660]

242. In relation to the period of Mr Ntaganda's pre-conviction detention, which is six years and three and a half months, the Chamber notes that a periodic review of Mr Ntaganda's sentence was conducted by this and the pre-trial chamber[661] and that any time previously spent in detention will be deducted from the sentence to be imposed on Mr Ntaganda in accordance with Article 78(2) of the Statute.[662] The Chamber does therefore not consider this issue further.[663]

243. As to the other matters raised by the Defence in relation to the conditions arising from Mr Ntaganda's detention, the Chamber recalls that the restrictions on Mr Ntaganda's contacts were imposed on him because of his own actions.[664] In imposing those restrictions, the Chamber was mindful of Mr Ntaganda's right to family life and took into account the need for the restrictions imposed to be necessary and proportionate in this regard.[665] The Chamber further recalls that these restrictions have been periodically reviewed,[666] including as to their continuing proportionality to and impact on Mr Ntaganda's family and private life, including on his wife and children.[667] The Appeals Chamber held in respect of the Chamber's first review that Mr Ntaganda's 'right to privacy and family life was being appropriately balanced with the objectives of the stated aim of

[660] Defence Submissions, para. 156.
[661] Mr Ntaganda's detention has been reviewed six times since his surrender to the Court and on each occasion it was decided that his detention should be continued. *See* ICC-01/04-02/06-147, upheld by the Appeals Chamber, ICC-01/04-02/06-271-Red, OA; ICC-01/04-02/06-284; ICC-01/04-02/06-335; ICC-01/04-02/06-391; ICC-01/04-02/06-477; and ICC-01/04-02/06-670-Conf.
[662] *See also* submissions in CLR2 Response para. 24.
[663] The Chamber further notes that in the *Blaškić* case cited by the Defence, the eight year period of detention pending the final outcome of the case was considered as a factor in mitigation in light of the fact that the tribunal had been 'hampered by the complexity' of the proceedings (ICTY, *Blaškić* Appeal Judgment, para. 728; *see also* Defence Submissions, para. 151). The Chamber does not consider this issue to apply in the present case, *see also* submissions in Prosecution Response, para. 53; and CLR2 Response para. 24.
[664] *See* para. 202 above. *See also* submissions in Prosecution Response, para. 54.
[665] ICC-01/04-02/06-785-Conf-Exp, para. 62.
[666] ICC-01/04-02/06-785-Red, para. 70.
[667] ICC-01/04-02/06-1494-Conf-Exp, paras 35-41; ICC-01/04-02/06-1913-Conf-Exp, paras 27 and 32; and ICC-01/04-02/06-2236-Conf, para. 27.

the restrictions'.[668] In relation to the Defence's submission that the impact of the restrictions on Mr Ntaganda's contacts was compounded by factors 'outside the Chamber's control',[669] the Chamber recalls further that during its continuing review of the restrictions, it expressly took account of such factors, including the limited number of family visits received since Mr Ntaganda's arrival at the Detention Centre,[670] the practical limitations of the Registry in relation to which the Chamber had no direct oversight[671] and the length of time that the restrictions had been in place.[672] It therefore considers that the matters raised by the Defence were already appropriately taken into account by the Chamber in imposing and reviewing the restrictions.

244. For all of these reasons, the Chamber does not consider Mr Ntaganda's family circumstances, and the related matters of his detention, to constitute mitigating circumstances in this case.

245. The Defence raises the matter of Mr Ntaganda's limited financial resources and the Registry's declaration of indigence in the context of its submissions above.[673] The Chamber does not consider Mr Ntaganda's financial position to be of further separate relevance in the context of the present discussion on mitigating circumstances.[674]

[668] ICC-01/04-02/06-1817-Conf, para. 101.
[669] Defence Submissions, paras 7 and 154, referring in particular to three 'negative consequences' outside the Chamber's control: (i) the resource constraints that limited Mr Ntaganda's communications so severely; (ii) Mr Ntaganda's distance from his family, which made alternative forms of communication impossible; and (iii) the long duration of the proceedings, which caused the restrictions to continue for a long period.
[670] ICC-01/04-02/06-1913-Red2, para. 27.
[671] ICC-01/04-02/06-2236-Red, para. 26.
[672] ICC-01/04-02/06-1913-Red2, para. 27; and ICC-01/04-02/06-2236-Red, para. 26.
[673] Defence Submissions, para. 6. *See also* T-268, page 42.
[674] *See also* submissions in Prosecution Submissions, paras 95-97.

V. DETERMINATION OF THE OVERALL SENTENCE

246. As set out above, the Chamber determines the following sentences in respect of the crimes for which Mr Ntaganda has been convicted, in the order the crimes were charged:

- murder and attempted murder as a crime against humanity and as a war crime (Counts 1 and 2): 30 years of imprisonment;
- intentionally directing attacks against civilians as a war crime (Count 3): 14 years of imprisonment;
- rape of civilians as a crime against humanity and as a war crime (Counts 4 and 5): 28 years of imprisonment;
- rape of children under the age of 15 incorporated into the UPC/FPLC as a war crime (Count 6): 17 years of imprisonment;
- sexual slavery of civilians as a crime against humanity and as a war crime (Counts 7 and 8): 12 years of imprisonment;
- sexual slavery of children under the age of 15 incorporated into the UPC/FPLC as a war crime (Count 9): 14 years of imprisonment;
- persecution as a crime against humanity (Count 10): 30 years of imprisonment;
- pillage as a war crime (Count 11): 12 years of imprisonment;
- forcible transfer of the civilian population as a crime against humanity (Count 12): 10 years of imprisonment;
- ordering the displacement of the civilian population as a war crime (Count 13): 8 years of imprisonment;
- conscripting and enlisting children under the age of 15 years into an armed group and using them to participate actively in hostilities as a war crime (Counts 14, 15, and 16): 18 years of imprisonment;
- intentionally directing attacks against protected objects as a war crime (Count 17): 10 years of imprisonment; and

- destroying the adversary's property as a war crime (Count 18): 15 years of imprisonment.

247. In the circumstances of the case, taking into consideration the nature and gravity of the crimes, as well as Mr Ntaganda's solvency, the Chamber does not consider it appropriate to also impose a fine or forfeiture of proceeds.[675] The Chamber will therefore only impose imprisonment.[676]

248. The Chamber now proceeds to the determination of the joint sentence specifying the total period of imprisonment pursuant to Article 78(3) of the Statute. Under that provision, the total period of imprisonment shall be no less than the highest individual sentence pronounced, i.e. in this case 30 years of imprisonment. Furthermore, in conformity with Article 77(1) of the Statute, the total period of imprisonment shall not exceed 30 years of imprisonment or a sentence of life imprisonment.

249. As set out above, the sentence determined for the crime against humanity of persecution combines Mr Ntaganda's culpability and the aggravating circumstances for the underlying crimes (i.e. the crimes that Mr Ntaganda was convicted for under Counts 1 to 5, 7 to 8, 11 to 13 and 17 to 18). The overlap in conduct that underlies the various crimes has therefore been taken into account. However, the total sentence to be imposed on Mr Ntaganda must further reflect Mr Ntaganda's conviction of the additional crimes committed vis-à-vis children under the age of 15 who were recruited into the UPC/FPLC (i.e. the crimes he was convicted for under Counts 6, 9 and 14 to 16) so as to properly account for the multiplicity of crimes and his overall culpability. As the highest individual sentence is 30 years of imprisonment, and the maximum imprisonment for a

[675] *See* Article 77(2) of the Statute and Rules 146 and 147 of the Rules.
[676] The Chamber notes in this regard that none of the parties or participants suggested the imposition of a fine or forfeiture of proceeds.

specified number of years is also 30 years, the Chamber can only impose 30 years or life imprisonment as the overall joint sentence.

250. Life imprisonment is permissible as a penalty under the Statute when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.[677] The Legal Representative of Victims of the Attacks communicated the wish of the victims represented by him for a joint sentence of life imprisonment to be imposed.[678] The Chamber has taken note of this wish. However, having regard to its conclusions per crime, noting the overlap in conduct between part of these crimes, and on the basis of all further considerations relevant to this case, notwithstanding the fact that there are no mitigating circumstances to be afforded any weight, the Chamber finds that the crimes for which Mr Ntaganda has been convicted, despite their gravity and his degree of culpability, nevertheless do not warrant a sentence of life imprisonment.

251. Accordingly, in the particular circumstances of this case, as a result of the highest individual sentence and the statutorily mandated maximum term of imprisonment for the joint sentence being the same, no further discretion is given to the Chamber in the determination of the overall joint sentence, which shall therefore be 30 years of imprisonment.

252. Pursuant to Article 78(2) of the Statute, Mr Ntaganda is entitled to credit against this sentence for the time he has spent in detention in accordance with an order of this Court, namely since 22 March 2013, following his surrender to the Court and arrival at the ICC Detention Centre, and pursuant to the two arrest warrants issued for him on 22 August 2006 and 13 July 2012, respectively.

[677] Article 77(1)(b) of the Statute.
[678] CLR2 Submissions, para. 63.

VI. DISPOSITION

For the foregoing reasons and pursuant to Articles 76 and 78 of the Statute, the Chamber:

SENTENCES Mr Ntaganda to a joint sentence of thirty (30) years of imprisonment;

RECALLS that the time Mr Ntaganda has spent in detention pursuant to an order of this Court, from 22 March 2013 onwards, shall be deducted from his sentence; and

INFORMS the parties and participants that reparations to victims pursuant to Article 75 of the Statute shall be addressed in due course.

Done in English. A French translation will be prepared, but the English version remains authoritative.

Judge Robert Fremr, Presiding Judge

Judge Kuniko Ozaki **Judge Chang-ho Chung**

Dated 7 November 2019

At The Hague, The Netherlands