

Annex A

PROCEDURAL OVERVIEW

A. GENERAL INFORMATION

1. *Numbers.* This case involves one accused, a total of 101 witnesses, 86 of whom appeared in person before the Chamber, 2129 victims authorised to participate,¹ 1791 items of evidence,² and 264 transcripts of hearings. In addition to hearings for the presentation of evidence, status conferences were held at the pre-trial stage, as well as in preparation and during the course of the trial.
2. *Composition of the Defence team.* At the pre-trial stage, Mr Ntaganda was represented by Mr Marc Desalliers, who was subsequently authorised to withdraw from the case.³ On 15 August 2014, Mr Stéphane Bourgon was appointed as the new lead counsel,⁴ and on 27 October 2014, Mr Luc Boutin was appointed as Associate Counsel.⁵ Mr Luc Boutin was later replaced by Mr Christopher Gosnell, whose appointment as Associate Counsel was formalised by the Registry on 15 July 2015.⁶
3. *Review of detention.* On 18 November 2013,⁷ 17 March 2014,⁸ and 17 July 2014,⁹ the Single Judge of Pre-Trial Chamber II reviewed Mr Ntaganda's detention, deciding, on each occasion, that Mr Ntaganda shall continue to be detained. On

¹ See Thirteenth Periodic Report on Victims in the Case and their General Situation, 6 June 2019, ICC-01/04-02/06-2353.

² See List of admitted evidence, ICC-01/04-02/06-2311-Anx-Corr.

³ Decision on the "Requête de Me Marc Desalliers afin d'être autorisé à se retirer du dossier en qualité de Conseil principal de M. Bosco Ntaganda", 17 July 2014, ICC-01/04-02/06-333.

⁴ Registration in the record of the case of the appointment of Mr. Stéphane Bourgon as Lead Counsel of Mr. Bosco Ntaganda, ICC-01/04-02/06-353.

⁵ See Registration in the record of the case of the appointment of Mr. Luc Boutin as Associate Counsel to the Defence team of Mr. Bosco Ntaganda, and of the solemn undertakings executed pursuant to the Code of professional conduct for counsel, ICC-01/04-02/06-388.

⁶ See Registration in the record of the case of the appointment of Mr. Christopher Gosnell as Associate Counsel of Mr. Bosco Ntaganda, ICC-01/04-02/06-726.

⁷ ICC-01/04-02/06-147, upheld by the Appeals Chamber, Judgment on the appeal of Mr Bosco Ntaganda against the decision of Pre-Trial Chamber II of 18 November 2013 entitled "Decision on the Defence's Application for Interim Release", 5 March 2014, ICC-01/04-02/06-271-Red, OA (with dissenting opinions of Judges Ušacka and Van den Wyngaert).

⁸ ICC-01/04-02/06-284.

⁹ ICC-01/04-02/06-335.

31 October 2014¹⁰ and 26 February 2015,¹¹ Mr Ntaganda's detention was reviewed by the Chamber, which also ordered his continued detention on both occasions.

B. PRE-TRIAL PROCEEDINGS

1. Surrender and initial appearance

4. On 22 August 2006, a warrant of arrest was issued against Mr Ntaganda for crimes relating to the enlistment, conscription, and use of child soldiers under the age of 15.¹² The charges were amended to include additional crimes, and a second warrant of arrest was issued, on 13 July 2012.¹³
5. On 22 March 2013, Mr Ntaganda surrendered to the Court,¹⁴ and on 26 March 2013, he made his first appearance before the Pre-Trial Chamber.¹⁵

2. Charges and confirmation of charges

6. On 10 January 2014, the Prosecution filed its Document Containing the Charges ('DCC'),¹⁶ together with a list of evidence,¹⁷ and on 17 January 2014, it filed a consolidated in-depth analysis chart.¹⁸
7. On 24 January 2014, the Defence filed its list of evidence,¹⁹ and in-depth analysis chart,²⁰ followed by an amended version thereof on 7 February 2014.²¹
8. From 10 to 14 February 2014, the Pre-Trial Chamber held the confirmation of charges hearing.²² On 9 June 2014, it issued its Confirmation Decision, finding

¹⁰ ICC-01/04-02/06-391.

¹¹ Fifth decision on Mr Ntaganda's interim release, ICC-01/04-02/06-477.

¹² ICC-01/04-02/06-1.

¹³ ICC-01/04-02/06-2.

¹⁴ ICC-01/04-02/06-41, para. 7.

¹⁵ T-2.

¹⁶ ICC-01/04-02/06-203-AnxA.

¹⁷ ICC-01/04-02/06-203-AnxB.

¹⁸ ICC-01/04-02/06-217-Conf-AnxC.

¹⁹ ICC-01/04-02/06-227-AnxA.

²⁰ ICC-01/04-02/06-227-AnxB.

²¹ ICC-01/04-02/06-253.

²² T-7; T-7bis; T-8; T-8bis; T-9; T-10; and T-11.

that, on the basis of the evidence presented, there existed substantial grounds to believe that Mr Ntaganda is criminally responsible for certain crimes as specified below:

Count 1: Murder and attempted murder of civilians, a crime against humanity, punishable pursuant to Articles 7(1)(a), as well as 25(3)(a) - direct perpetration and/or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), 25(3)(f), or 28(a) in Banyali-Kilo *collectivité*, in or around Mongbwalu, Pluto, Nzebi, Sayo, and Kilo, and in the Walendu-Djatsi *collectivité* in or around Kobu, Sangi, Bambu, Lipri, Tsili, Ngongo, and Jitchu.

Count 2: Murder and attempted murder of civilians, a war crime, punishable pursuant to Article 8(2)(c)(i), as well as 25(3)(a) - direct perpetration and/or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), 25(3)(f), or 28(a) in Banyali-Kilo *collectivité*, in or around Mongbwalu, Pluto, Nzebi, Sayo, and Kilo, and in the Walendu-Djatsi *collectivité*, in or around Kobu, Sangi, Bambu, Lipri, Tsili, Ngongo, and Jitchu.

Count 3: Attacks against a civilian population, a war crime, punishable pursuant to Article 8(2)(e)(i), as well as 25(3)(a) - direct perpetration and/or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in Banyali-Kilo *collectivité*, in or around Mongbwalu and Sayo, and in the Walendu-Djatsi *collectivité*, in or around Bambu, Kobu, Lipri, Jitchu, Camp P.M., Buli, Djuba, Sangi, Tsili, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali, and Ngabuli.

Count 4: Rape of civilians, a crime against humanity, punishable pursuant to Article 7(1)(g), as well as 25(3)(a) - indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in Banyali-Kilo *collectivité*, in or around Mongbwalu, Kilo, and Sayo, and in the Walendu-Djatsi *collectivité*, in or around Lipri, Kobu, Bambu, Sangi, and Buli.

Count 5: Rape of civilians, a war crime, punishable pursuant to Article 8(2)(e)(vi), as well as 25(3)(a) - indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in Banyali-Kilo *collectivité*, in or around Mongbwalu, Kilo, and Sayo, and in the Walendu-Djatsi *collectivité*, in or around Lipri, Kobu, Bambu, Sangi, and Buli.

Count 6: Rape of UPC/FPLC child soldiers, a war crime, punishable pursuant to Article 8(2)(e)(vi), as well as 25(3)(a) - indirect co-perpetration, 25(3)(d)(i) or (ii) or 28(a).

Count 7: Sexual slavery of civilians, a crime against humanity, punishable pursuant to Article 7(1)(g), as well as 25(3)(a) - indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in Walendu-Djatsi *collectivité*, in or around Kobu, Sangi, Buli, Jitchu, and Ngabuli.

Count 8: Sexual slavery of civilians, a war crime, punishable pursuant to Article 8(2)(e)(vi), as well as 25(3)(a) - indirect co-perpetration, 25(3)(b),

25(3)(d)(i) or (ii), or 28(a) in Walendu-Djatsi *collectivité*, in or around Kobu, Sangi, Buli, Jitchu, and Ngabuli.

Count 9: Sexual slavery of UPC/FPLC [child] soldiers, a war crime, punishable pursuant to Article 8(2)(e)(vi), as well as 25(3)(a) - indirect co-perpetration, 25(3)(d)(i) or (ii), or 28(a).

Count 10: Persecution on ethnic grounds, a crime against humanity, punishable pursuant to Article 7(1)(h), as well as 25(3)(a) - direct perpetration and/or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in Banyali-Kilo *collectivité*, in or around Mongbwalu, Pluto, Nzebi, Sayo, and Kilo, and in the Walendu-Djatsi *collectivité*, in or around Kobu, Sangi, Bambu, Lipri, Tsili, Ngongo, Jitchu, Buli, Nyangaray, Gutsi, Camp P.M., Djuba, Katho, Gola, Mpetsi/Petsi, Avetso, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali, and Ngabuli.

Count 11: Pillaging, a war crime, punishable pursuant to Article 8(2)(e)(v), as well as 25(3)(a) - direct perpetration and/or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a), in Mongbwalu and in the Banyali-Kilo *collectivité*, in or around Mongbwalu and Sayo. Pillaging, a war crime, punishable pursuant to Article 8(2)(e)(v), as well as 25(3)(a) - indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in the Walendu-Djatsi *collectivité*, in or around Bambu, Kobu, Lipri, and Jitchu.

Count 12: Forcible transfer of population, a crime against humanity, punishable pursuant to Articles 7(1)(d), as well as 25(3)(a) - indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in Mongbwalu and in the Banyali-Kilo *collectivité*, in or around Mongbwalu and Nzebi. Forcible transfer of population, a crime against humanity, punishable pursuant to Articles 7(1)(d), as well as 25(3)(a) - indirect co-perpetration, 25(3)(d)(i) or (ii), or 28(a) in the Walendu-Djatsi *collectivité*, in or around Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu, and Gutsi.

Count 13: Displacement of civilians, a war crime, punishable pursuant to Articles 8(2)(e)(viii), as well as 25(3)(a) - indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in Mongbwalu and the Banyali-Kilo *collectivité*, in or around Mongbwalu and Nzebi. Displacement of civilians, a war crime, punishable pursuant to Articles 8(2)(e)(viii), as well as 25(3)(a) - indirect co-perpetration, 25(3)(d)(i) or (ii), or 28(a) in the Walendu-Djatsi *collectivité*, in or around Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu, and Gutsi.

Count 14: Conscripting of children under the age of 15, a war crime, punishable pursuant to Article 8(2)(e)(vii), as well as 25(3)(a) - indirect co-perpetration, 25(3)(d)(i) or (ii), or 28(a).

Count 15: Enlistment of children under the age of 15, a war crime, punishable pursuant to Article 8(2)(e)(vii), 25(3)(a) - direct perpetration and/or indirect co-perpetration, 25(3)(d)(i) or (ii), or 28(a).

Count 16: Use of children under the age of 15 to participate actively in hostilities, a war crime, punishable pursuant to Article 8(2)(e)(vii), as well as

25(3)(a) - direct perpetration and/or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

Count 17: Attacks against protected objects, a war crime, punishable pursuant to Article 8(2)(e)(iv), as well as 25(3)(a) - direct perpetration and/or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a) in Mongbwalu and the Banyali-Kilo *collectivité*, in or around Mongbwalu and Sayo. Attacks against protected objects, a war crime, punishable pursuant to Article 8(2)(e)(iv), as well as 25(3)(d)(i) or (ii), or 28(a) in the Walendu-Djatsi *collectivité*, in or around Bambu.

Count 18: Destruction of property, a war crime, punishable pursuant to Article 8(2)(e)(xii), as well as 25(3)(a) - indirect co-perpetration 25(3)(d)(i) or (ii), or 28(a) in Banyali-Kilo *collectivité*, in or around Mongbwalu and Sayo and in the Walendu-Djatsi *collectivité*, in or around Kobu, Lipri, Bambu, Camp P.M., Buli, Jitchu, Djuba, Sangi, Tsili, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali, and Ngabuli.²³

9. The Pre-Trial Chamber also satisfied itself that the case continued to fall within the jurisdiction of the Court and was admissible.²⁴

C. TRIAL PROCEEDINGS

1. Constitution and composition of the Trial Chamber

10. On 18 July 2014, the Presidency constituted Trial Chamber VI ('Chamber'), composed of Judge Kuniko Ozaki, Judge Robert Fremr, and Judge Geoffrey Henderson, and referred the *Ntaganda* case to it.²⁵ On 21 July 2014, the judges of the Chamber elected Judge Robert Fremr as Presiding Judge.²⁶
11. On 18 March 2015, the Presidency re-composed the Chamber to be comprised of Judge Kuniko Ozaki, Judge Robert Fremr, and Judge Chang-ho Chung.²⁷ On 19 March 2015, pursuant to Regulation 13(2) of the Regulations of the Court, the

²³ T-23, pages 5 to 9, summarising the findings of the Pre-Trial Chamber in Confirmation Decision, para. 36.

²⁴ Confirmation Decision, para. 7. This Chamber considers that this meets the requirements under Article 19(1) that '[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it' for the purpose of this Judgment.

²⁵ ICC-01/04-02/06-337.

²⁶ Decision Notifying the Election of the Presiding Judge, 21 July 2014, ICC-01/04-02/06-338.

²⁷ Decision replacing a judge in Trial Chamber VI, ICC-01/04-02/06-521. A corrigendum was filed on 19 March 2015, ICC-01/04-02/06-521-Corr.

judges of Trial Chamber VI, in its new composition, elected Judge Robert Fremr as the Presiding Judge.²⁸

2. Document containing the charges and Pre-Trial Brief

12. On 16 February 2015, in accordance with the Chamber's direction,²⁹ the Prosecution filed its Updated Document Containing the Charges ('UDCC'),³⁰ and, on 9 March 2015, its Pre-Trial Brief.³¹

3. Commencement and organisation of the trial proceedings

13. The trial commenced with opening statements from the parties and participants on 2 and 3 September 2015.³² Mr Ntaganda pleaded 'not guilty' in relation to all of the counts he was charged with.³³ The Prosecution called its first witness on 15 September 2015,³⁴ and closed its case on 29 March 2017,³⁵ after having called a total of 71 witnesses. On 1 and 2 March 2017,³⁶ five victims, who were authorised by the Chamber to present their views and concerns in person,³⁷ appeared before the Chamber via video-link, and from 10 to 12 April 2017,³⁸ CLR2, further to leave having been granted by the majority of the Chamber,³⁹ called three victims to present evidence. The Defence called its first witness on 29 May 2017, and closed its presentation of evidence on 23 February 2018, after having called a total of 12

²⁸ ICC-01/04-02/06-525.

²⁹ ICC-01/04-02/06-450, paras 83 to 89.

³⁰ ICC-01/04-02/06-458-AnxA.

³¹ ICC-01/04-02/06-503-Conf-AnxA.

³² T-23; and T-24.

³³ T-23, page 9, line 23 to page 10, line 1.

³⁴ T-26.

³⁵ ICC-01/04-02/06-1839.

³⁶ T-198; and T-199.

³⁷ Decision 1780, para. 59.

³⁸ T-201; T-202; and T-203.

³⁹ Decision 1780, para. 59.

witnesses, including Mr Ntaganda himself who testified for a total of 30 court days.⁴⁰

14. As other trial proceedings were taking place before the Court at the same time, the Chamber organised the presentation of evidence into a total of 14 evidentiary blocks.

4. Victim participation

15. On 6 February 2015, the Chamber issued its 'Decision on victims' participation in trial proceedings',⁴¹ in which it, *inter alia*, set out the criteria to be fulfilled by applicants in order to be authorised to participate as victims in the trial proceedings, and established a streamlined procedure for the application process. According to this procedure, the Registry was to carry out an assessment of the applications, to be ratified by the Chamber 'barring a clear and material error'.⁴²

16. On 16 June 2015, the Chamber decided, by majority, to maintain the representation system adopted at the pre-trial stage during the trial proceedings, pursuant to which two counsel from the OPCV were appointed as common legal representatives of two distinct groups of victims: (i) child soldiers; and (ii) victims of UPC/FPLC attacks.⁴³

17. In accordance with this representation system, victims were authorised to: (i) have access to the public and confidential case record;⁴⁴ (ii) attend all hearings, unless otherwise decided by the Chamber;⁴⁵ (iii) question witnesses subject to a

⁴⁰ T-209; T-211 to T-235; and T-236 to T-243. The Chamber recalls that as a result of the summer recess, a 37-day break occurred between the seventh day of the cross-examination by the Prosecution and the remainder of the cross-examination.

⁴¹ Decision 449.

⁴² Decision 449, para. 24(vii).

⁴³ ICC-01/04-02/06-650, paras 28 to 31. Judge Ozaki partly dissented from the Majority's decision with regard to the system of legal representation and would have appointed counsel from the DRC who had greater proximity to the victims.

⁴⁴ Decision 449, para. 55. If the parties submitting filings/material were of the view that the LRVs ought not to access them, they were to indicate the factual and legal basis for the chosen classification.

⁴⁵ Decision 619, para. 63.

motivated request to be decided upon in advance by the Chamber;⁴⁶ and (iv) file requests for leave to present evidence, including leave for witnesses to be called.⁴⁷

18. On 10 February 2017, at the request of CLR2,⁴⁸ the Chamber authorised six victims to present their views and concerns in person and, by majority, three victims to present evidence.⁴⁹

5. Protocols

19. In line with the practice of other trial chambers, and in consultation with the parties and participants, the Chamber adopted a number of protocols to facilitate the efficient management of the trial proceedings, including: a protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or participant,⁵⁰ a protocol establishing a redaction regime,⁵¹ a protocol on witness familiarisation,⁵² a protocol on witness preparation,⁵³ a protocol on dual-status witnesses,⁵⁴ and a protocol on vulnerable witnesses.⁵⁵

6. Protective measures

20. The Chamber ordered measures to protect the identities of 69 of the witnesses who testified in person in this case, due to the existence of an objectively justifiable risk to their safety and/or that of their families. Accordingly, most witnesses are referred to in this Judgment by their witness number, rather than by

⁴⁶ Decision 619, paras 64 to 68.

⁴⁷ Decision 619, paras 69 to 70.

⁴⁸ ICC-01/04-02/06-1739-Red2.

⁴⁹ Decision 1780. Judge Ozaki partly dissented from this decision in that she would not have authorised Victims a/30365/15 and a/00256/13 to present evidence. Five of the six victims authorised to present their views and concerns appeared before the Chamber via video-link on 1 and 2 March 2017. *See* T-198; and T-199. One of the victims initially authorised to present views and concerns in person subsequently became unavailable to do so. The three victims authorised to present evidence testified from 10 to 12 April 2017. *See* T-20; T-202; and T-203.

⁵⁰ ICC-01/04-02/06-412 and Annex A.

⁵¹ ICC-01/04-02/06-411 and Annex A.

⁵² ICC-01/04-02/06-656 and Annex A.

⁵³ ICC-01/04-02/06-652 and Annex.

⁵⁴ ICC-01/04-02/06-430-Anx1, adopted on 18 February 2015 in ICC-01/04-02/06-464.

⁵⁵ ICC-01/04-02/06-445-Anx1, adopted on 18 February 2015 in ICC-01/04-02/06-464.

name, and certain details that may reveal their identities have been omitted. It is to be emphasised that whenever the Chamber ordered protective measures for a witness, the parties and participants were aware of the witness's identity.

21. To ensure the effectiveness of the protective measures ordered by the Chamber, oral testimony was partly heard in private session, during which the public was unable to follow proceedings. To the extent necessary, and pursuant to Articles 64(7) and 67(1) of the Statute, the Chamber has instructed the parties and the participants to undertake a comprehensive review of the transcripts of these sessions, and ordered⁵⁶ the reclassification as public of any portions that do not contain information which may create a security risk. This process has been completed by the parties and participants, and lesser redacted versions of the transcripts referred to in the present Judgment are available or will be made available in due course.

7. Agreed Facts

22. On 22 June 2015, on the basis of a joint submission by the Prosecution and the Defence, the Chamber took note of 82 facts upon which the parties had reached an agreement.⁵⁷ On 9 October 2017, after the testimony of Mr Ntaganda in relation to an issue initially covered by one of the agreed facts and a consequent change of the Defence's position in this respect, the Chamber allowed the Prosecution to file a request to adduce additional evidence in relation to the issue at stake.⁵⁸ On 17 January 2018, the Chamber partly granted the Prosecution's request to that effect, and admitted three items tendered by the Prosecution, together with one item tendered by the Defence in response to the Prosecution's request.⁵⁹

⁵⁶ Decision 619, para. 61; ICC-01/04-02/06-1342, paras 13 and 23; and ICC-01/04-02/06-1887, paras 7 to 12.

⁵⁷ ICC-01/04-02/06-662.

⁵⁸ ICC-01/04-02/06-2058.

⁵⁹ ICC-01/04-02/06-2184.

8. Restrictions of contact

23. On 8 August 2014, on the basis of alleged incidents of interference with Prosecution witnesses and their family members by individuals close to Mr Ntaganda, and the dissemination of confidential information from the *Ntaganda* case, the Prosecution requested restrictive measures pursuant to Regulation 101(2) to be imposed on Mr Ntaganda's contacts.⁶⁰
24. On 8 December 2014, the Chamber ordered the *post factum* review of Mr Ntaganda's telephone conversations and imposed certain restrictions on his non-privileged contacts, pending receipt of further submissions by the parties.⁶¹ On 13 March 2015, after having reviewed, on a preliminary basis, a first Registry report on the *post factum* review of Mr Ntaganda's telephone communications, the Chamber instructed the Registry to actively monitor Mr Ntaganda's phone calls.⁶²
25. On 29 June 2015, the Chamber directed the Registry to, *inter alia*, immediately restrict all telephone calls by any individual at the Detention Centre with certain persons, on the basis that they had been implicated in allegations of witness interference in the *Ntaganda* case, including dissemination of confidential information, and deferred its consideration of such restrictions with respect to Mr Ntaganda.⁶³
26. On 18 August 2015, the Chamber issued a decision ordering, *inter alia*, certain ongoing restrictions to be placed on Mr Ntaganda's contacts.⁶⁴ Further to the Chamber's indication that it would periodically review the restrictions in question,⁶⁵ the restrictions were reviewed on four occasions.⁶⁶ In addition, certain

⁶⁰ ICC-01/04-02/06-349-Red3.

⁶¹ ICC-01/04-02/06-410.

⁶² ICC-01/04-02/06-508.

⁶³ ICC-01/04-02/06-683.

⁶⁴ ICC-01/04-02/06-785-Red.

⁶⁵ ICC-01/04-02/06-785-Red, para. 70.

⁶⁶ ICC-01/04-02/06-1494, upheld by the Appeals Chamber in ICC-01/04-02/06-1817; and ICC-01/04-02/06-1913.

restrictions were modified on a temporary basis for compelling reasons of a personal and humanitarian nature.⁶⁷

27. On 19 February 2018, the Chamber ordered the lifting of all restrictions imposed by the Chamber on Mr Ntaganda's contacts and communications.⁶⁸

9. Detention Centre communications, Article 70 proceedings, and Defence request for stay of proceedings

28. On 28 April 2017, the Chamber rejected a Defence request for stay of proceedings, which was premised on the assertion that the acquisition by the Prosecution of non-privileged conversations of Mr Ntaganda from the Detention Centre for the purpose of investigations into alleged offences against the administration of justice under Article 70,⁶⁹ given their relevance to defence strategy and Mr Ntaganda's knowledge of the case, amounts to an abuse of the Court's process.⁷⁰ In this context, the Chamber further decided that 'the Prosecution shall not be allowed to use the material obtained in the context of the Article 70 proceedings during the Defence's presentation of evidence unless specifically authorised by the Chamber as necessary for the determination of the truth pursuant to its duty under Article 69(3) of the Statute, upon receipt of a substantiated request to be filed sufficiently in advance of the intended use'.⁷¹

29. On 23 May 2017, being seized of a Defence request to prevent the Prosecution from using Mr Ntaganda's non-privileged telephone conversations from the Detention Centre 'at any point with witnesses during the Defence case',⁷² the Chamber determined that this issue 'should be assessed on a case-by-case basis,

⁶⁷ See ICC-01/04-02/06-1328.

⁶⁸ ICC-01/04-02/06-2236.

⁶⁹ The Prosecution had obtained access to the Detention Centre non-privileged contact and visitor logs and the recordings of non-privileged telephone conversations of Mr Ntaganda and Mr Thomas Lubanga for the purpose of Article 70 investigations from 22 March 2013 onwards. See ICC-01/04-729-Conf.

⁷⁰ ICC-01/04-02/06-1883. Leave to appeal this decision was rejected by majority (Judge Fremr dissenting) on 13 June 2017 in ICC-01/04-02/06-1955.

⁷¹ ICC-01/04-02/06-1883, para. 61.

⁷² ICC-01/04-02/06-1878, page 18.

in light of the material intended to be used and the specific scope and purpose of the intended use'.⁷³

30. In line with this regime and during the course of the Defence case, the Chamber authorised the Prosecution to use a total of 22 Detention Centre communications for its cross-examination of Mr Ntaganda.⁷⁴ Further requests to use Detention Centre communications with other witnesses were either rejected,⁷⁵ or declared moot on the basis that the relevant witnesses were withdrawn from the Defence's list of witnesses.⁷⁶

10. Jurisdictional challenge

31. On 9 October 2015, the Chamber rejected the 1 September 2015 Defence challenge to the jurisdiction of the Court in respect of Counts 6 and 9, on the basis that it was a matter to be addressed at trial.⁷⁷

32. On 19 October 2015, the Defence appealed the Chamber's decision,⁷⁸ following which the Appeals Chamber held on 22 March 2016 that 'the question of whether there are restrictions on the categories of persons who may be victims of the war crimes of rape and sexual slavery is an essential legal issue which is jurisdictional in nature', and remanded the matter to the Chamber to determine in accordance with Article 19 of the Statute.⁷⁹

33. On 4 January 2017, the Chamber decided on the remanded request, rejected the Defence challenge to the jurisdiction of the Court in relation to Count 6 – rape of UPC/FPLC child soldiers, a war crime, punishable pursuant to Article 8(2)(e)(vi) – and Count 9 – sexual slavery of UPC/FPLC child soldiers, a war crime,

⁷³ ICC-01/04-02/06-1918, para. 26.

⁷⁴ T-209, pages 21 to 23. A Prosecution request for reconsideration of, or, in the alternative, leave to appeal, this decision was rejected in ICC-01/04-02/06-1973.

⁷⁵ T-232, pages 55 to 57.

⁷⁶ T-249, pages 5 to 7, and pages 30 to 31; and T-261, page 3.

⁷⁷ ICC-01/04-02/06-892.

⁷⁸ Appeal on behalf of Mr Ntaganda against Trial Chamber VI's "*Decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9*", ICC-01/04-02/06-892', ICC-01/04-02/06-909.

⁷⁹ ICC-01/04-02/06-1225, para. 40.

punishable pursuant to Article 8(2)(e)(vi).⁸⁰ This decision was confirmed by the Appeals Chamber on 15 June 2017.⁸¹

11. No case to answer motion

34. On 29 May 2017, the Chamber rejected the Defence request seeking leave to file a ‘no case to answer’ motion,⁸² which was confirmed by the Appeals Chamber on 5 September 2017.⁸³

12. Evidence

35. During the trial, evidence was introduced in oral, written, and audio-visual form. This included the *viva voce* testimony of 86 witnesses, including 11 expert witnesses, who appeared before the Chamber, either at the seat of the Court, or via video-link. The prior recorded testimony of 15 further witnesses was admitted into evidence pursuant to Rule 68(2)(b) or (c) of the Rules.⁸⁴ The Chamber also admitted a large number of items of non-testimonial evidence, including, *inter alia*, documents relating to the UPC/FPLC and other groups, documents originating from the UN or NGOs, audio/video recordings, sketches drawn by witnesses, maps, medical certificates, and photographs. Such documentary evidence was introduced during the oral evidence of witnesses or by written application. The Chamber authorised confidential treatment of, or redactions to, certain documents, in order to protect various categories of sensitive information, but ordered the parties and participants to review the case record with a view to identifying documents and information that can be reclassified as public, and

⁸⁰ ICC-01/04-02/06-1707.

⁸¹ ICC-01/04-02/06-1962.

⁸² T-206, page 5, lines 1 to 4; and ICC-01/04-02/06-1931.

⁸³ ICC-01/04-02/06-2026. Leave to appeal was granted by the Chamber on 14 June 2017 in T-209. A Defence request for suspensive effect was denied by the Appeals Chamber on 19 June 2017 in ICC-01/04-02/06-1968.

⁸⁴ See ICC-01/04-02/06-2242; ICC-01/04-02/06-2141; ICC-01/04-02/06-1802; ICC-01/04-02/06-1731; ICC-01/04-02/06-1730; ICC-01/04-02/06-1715; ICC-01/04-02/06-1666-Conf; ICC-01/04-02/06-1653; ICC-01/04-02/06-1205; ICC-01/04-02/06-1029.

decided on the reclassification of a number of items as public, with or without redactions.⁸⁵

13. Closure of the case

36. On 16 March 2018, the Chamber declared the presentation of evidence closed pursuant to Rule 141(1) of the Rules.⁸⁶
37. On 20 April 2018, in line with the timeline set by the Chamber,⁸⁷ the Prosecution and the LRVs filed their respective closing briefs, and the Defence Closing Brief was filed on 2 July 2018. On 17 July 2018, the Prosecution and the LRVs filed their respective response briefs and on 1 August 2018, the Defence filed its reply brief.
38. The Prosecution, the Defence, and the LRVs made their closing statements on 28, 29 and 30 August 2018.

⁸⁵ See e.g. ICC-01/04-02/06-1100; ICC-01/04-02/06-2176; and ICC-01/04-02/06-2273.

⁸⁶ ICC-01/04-02/06-2259.

⁸⁷ ICC-01/04-02/06-2166; and ICC-01/04-02/06-2272.