

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Sentencing Hearing - Courtroom 3
8 Friday, 20 September 2019
9 (The hearing starts in open session at 9.00 a.m.)
10 THE COURT USHER: [9:00:21] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:00:54] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:00:59] Thank you, Mr President, your Honours.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor versus Bosco
17 Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: [9:01:16] Thank you, court officer.
20 Now, as usual, appearances. Prosecution, first, please.
21 MS SAMSON: [9:01:22] Good morning, Mr President, good morning, your Honours. Appearing for
22 the Prosecution today are Ms Julieta Solano, Ms Marion Rabanit, Mr Rens van der Werf,
23 Ms Selam Yirgou, and myself Nicole Samson.
24 PRESIDING JUDGE FREMR: [9:01:40] Thank you, Ms Samson.
25 Defence, please.

1 MR BOURGON: [9:01:43] (Interpretation) Good morning, Mr President. Representing Mr Ntaganda,
2 who is present in the courtroom today, we have Océane Mlanao, Clémence Volle-Marvaldi, Amanda
3 Martinez, Daria Mascetti, Mélissa Beaulieu-Lussier, Margaux Portier, Christopher Gosnell, and myself
4 Stéphane Bourgon. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [9:02:14] Thank you, Mr Bourgon.

6 And Legal Representatives for Victims, please.

7 MS PELLET: [9:02:20](Interpretation) Thank you, Mr President. The former child soldiers are
8 represented by Alejandro Kiss, Ann Bonini, and myself Sarah Pellet, counsel Office of Public Counsel
9 for Victims.

10 MR SUPRUN: [9:02:37](Interpretation) Good morning, your Honours. The victims of the attacks are
11 represented by Anne Grabowski, associate counsel; Cherine Luzaisu; and myself Dmytro Suprun,
12 counsel Office of Public Counsel for Victims.

13 PRESIDING JUDGE FREMR: [9:02:55] Thank you, Ms Pellet.

14 Thank you, Mr Suprun.

15 Today we are going to hold two sessions, the first one will be, or, all of them will be devoted to the
16 submissions on sentencing.

17 The first one will be devoted to submission presented by Prosecution, then two submissions from both
18 Legal Representatives of Victims will follow, and then after break we will listen to submission
19 presented by Defence, and the final statement or last word will be belonging to Ntaganda.

20 We have already announced time limits for parties. It's one hour for legal representatives, it is
21 30 minutes in maximum.

22 Now, Ms Samson, you have the floor.

23 MS SAMSON: [9:03:52] Thank you, Mr President. Thank you, your Honours.

24 The Prosecution recommends that Bosco Ntaganda be sentenced to 30 years imprisonment for the 18
25 counts for which he was convicted.

1 He stands convicted of intentionally directing attacks against civilians using military tactics that he
2 devised, attacks that forced civilians to run for their lives wherever they could, often into the bush or in
3 neighbouring villages, fearing the next attack. These unarmed men, women and children were left
4 highly vulnerable; they lacked protection, shelter, food. They were exposed and targeted.

5 He has been convicted of the rape and sexual slavery of these civilians, including of girls as young as
6 11. He stands convicted of their murder and attempted murder, of burning down their homes and
7 destroying or looting their property, of intentionally directing attacks against their scarce medical
8 facilities. He stands convicted of their persecution on ethnic grounds. He also stands convicted for
9 abducting and enlisting children under the age of 15 into his armed group, of using them to fight, to act
10 as bodyguards. He has been convicted of the rape and sexual slavery of girls as young as 9 in his
11 army.

12 These children were exploited, violated and forced to participate in atrocities.

13 The recommended sentence of 30 years' imprisonment is proportionate to the extreme gravity of these
14 18 crimes. It reflects the utter defencelessness of his multiple victims and the particular cruelty of the
15 multiple crimes against them. It takes into account the extensive individual, family, community and
16 transgenerational harm caused to thousands of victims.

17 The recommended sentence also takes into account Bosco Ntaganda's degree of culpability as a direct,
18 personal perpetrator of the crimes of murder and persecution, and as an indirect co-perpetrator who
19 intended to target civilians, in particular the Lendu.

20 The recommended sentence takes into consideration a number of aggravating circumstances and the
21 absence of any mitigating circumstances. It considers Bosco Ntaganda's abuse of power and his
22 absolute failure to protect the communities of Ituri, in particular the Lendu and Ngiti communities,
23 and his failure to protect the children who were recruited, used, raped and sexually enslaved while
24 part of his armed group. The recommended sentence reflects the numerous ways he flagrantly
25 breached the Detention Centre's rules and violated Court orders, for the purpose of undermining

1 the prosecution of his case.

2 The Chamber will bear in mind that Bosco Ntaganda knew exactly what he was doing. He is an
3 experienced and well-trained commander, taught by Ugandan and Rwandan military experts. He
4 said himself that he is a seasoned instructor. He knew the laws of war, he knew the prohibitions on
5 attacking civilians. He understood the importance of discipline but he never intended to discipline
6 anyone for committing crimes against the Lendu, because these crimes were part of his plan.

7 Bosco Ntaganda's own behaviours served as a model to his troops. A criminal model. As
8 your Honours found at paragraph 1180 of the judgment, and I quote:

9 "... Mr Ntaganda's presence, actions, and directives illustrate how he intended the troops to behave in
10 the field ..." End quote.

11 And he has shown no remorse. Not once has he even acknowledged the victims of his crimes, let
12 alone apologised to them or tried to compensate them in any way.

13 Bosco Ntaganda did not cooperate with this Court either.

14 As for his conduct after the attacks for which he stands convicted, Bosco Ntaganda acted as a threat to
15 the institutions set up to ensure peace in the region.

16 I will now develop each of these points, in turn.

17 First, I will address the gravity of the crimes. Then I will turn to Bosco Ntaganda's culpability.

18 Finally, I will address the relevant aggravating circumstances and the lack of mitigation.

19 Gravity: The gravity of these crimes is a primary consideration in determining the appropriate
20 sentence. To assess the gravity of the crimes, your Honours must consider factors including the
21 nature of the underlying criminal conduct, the means used to execute the crimes and the harm caused
22 to victims and their families.

23 The crimes for which Bosco Ntaganda has been convicted were carried out on a massive scale. They
24 include persecuting the inhabitants of 13 villages on an ethnic basis, intentionally directing attacks
25 against civilians in five of those villages and forcibly displacing the inhabitants, destroying civilian

1 property in eight villages, pillaging civilian property in six villages, and intentionally directing an
2 attack on a health centre. The crimes for which your Honours have found him guilty include the
3 murder or attempted murder of at least 72 civilians, the rape of more than 19 men, women and girls,
4 the sexual slavery of civilians, and of girls under the age of 15 in his armed group. His convicted
5 crimes include the recruitment and use of a number of children under the age of 15 for his army.
6 Bosco Ntaganda's victims were defenceless. In Mongbwalu, he personally murdered an elderly
7 Lendu priest, whom he shot after interrogating him. Prosecution Witness P-824 described how
8 Bosco Ntaganda's murder of Abbé Boniface Bwangelonga terrorised the population and aggravated
9 the ethnic conflict. This Lendu priest - targeted by Bosco Ntaganda because of his ethnicity - was
10 a beloved figure within the community who had been in his role for 40 years. The nuns who were
11 abducted by the UPC with Abbé Bwangelonga remain traumatised to this day. P-824 explained that
12 the priest's murder ignited fear and mistrust among the clergy, dividing them along ethnic lines.
13 Within the Lendu community, many perceived the murder of the priest as evidence of the UPC's will
14 to kill Lendu intellectuals, and this furthered the cycle of ethnically motivated crimes during the
15 conflict. Witness P-824 explained that, in the context of renewed violence in Djugu territory in 2017,
16 some Lendu still make reference to the murder of Abbé Bwangelonga in 2002.
17 And UPC troops, for which Bosco Ntaganda is also responsible, murdered other particularly
18 vulnerable civilians, among which was a pregnant Lendu woman, two young children aged 3 and 6,
19 and nine injured hospital patients in the Bambu hospital.
20 The means used to execute the crimes were particularly cruel. In the second operation, in the
21 Walendu-Djatsi collectivity, Lendu villages were attacked from different directions, their population
22 forced to flee, then hunted down in *ratissage* operations. The range of crimes committed by
23 Bosco Ntaganda and his troops during the two main attacks for which he has been convicted, their
24 geographical spread and the multiplicity of crimes, is exceptional.
25 Members of the population targeted by Bosco Ntaganda and his soldiers were often the victim of

1 several crimes during one attack. They were not only displaced, or raped, or had their houses
2 destroyed, or saw their relatives killed. Many, if not most of the victims suffered several of these
3 crimes simultaneously. As just one example, Witness P-18 was displaced from Bambu, raped,
4 sexually enslaved, she witnessed the murder of a family member, she was herself shot and left for dead,
5 leaving her gravely injured and marked for life. The sentence the Chamber will impose should reflect
6 this multiplicity of criminality.

7 As your Honours found, in Kobu, UPC soldiers perpetrated the massacre of over 50, mostly Lendu,
8 unarmed men, women and children who had been lured to discuss peace and reconciliation. Before
9 the massacre, some people were detained and subjected to physical and verbal abuse; they were called
10 beasts and animals. A group of men was raped with wooden sticks and died after, quote, "suffering
11 a great deal". End quote. And that's in paragraph 623 of your Honours' judgment.

12 At night, most of the other prisoners were executed with sticks and batons, knives and machetes. In
13 the morning, family members and neighbours came out of hiding to discover the mutilated bodies of
14 women, men and children - including babies - in a banana field. Some of the victims were naked,
15 some were tied up, some had been beaten to death, some had slit throats, and some, as your Honours
16 found, had been decapitated.

17 In the judgment, your Honours made specific reference to the particularly violent method used for the
18 rapes committed during the course of the first and second operations. As your Honours rightly found
19 at paragraph 806, and I quote:

20 "... by way of these acts, the UPC/FPLC intended at the same time to subject victims to these
21 consequences that would go beyond the sexual violence itself." End quote.

22 The Chamber also found in paragraph 805 that sexual violence crimes were, and I quote:

23 "... a tool used by UPC/FPLC soldiers and commanders alike to achieve their objective to destroy the
24 Lendu community in the localities under assault." End quote.

25 The means used to conscript children for the army were also brutal. Children under the age of 15,

1 some as young as 9, were removed from the protection of their families and taken to military training
2 camps, subjected to harsh daily routines and punishments. They were threatened to be killed if they
3 tried to flee.

4 Girls who were conscripted and enlisted into the UPC/FPLC were particularly vulnerable.

5 The Chamber found that female members of the UPC/FPLC were regularly raped and subjected to
6 sexual violence. Your Honours found that soldiers were allowed to take the girls, and I quote,
7 "whenever they wanted". End quote.

8 Bosco Ntaganda's crimes caused extensive and irreversible damage to people, to their property, and to
9 their way of life. Victims suffered physical harm and intense psychological harm, in the way they
10 viewed themselves and in their relationships with their partners, their families and their communities.
11 They also lost critical means to survive when UPC troops destroyed their houses and pillaged their
12 property. Bosco Ntaganda and his troops left the population without basic social support through the
13 destruction of the civilians' property and protected objects such as a health centre. The damage
14 caused by Mr Ntaganda's crime continue to this day.

15 Witness P-824 explained the extent of this damage to villages in and around Kobu. I will quote from
16 the witness in French: (Interpretation)

17 "The villages had been completely destructed during the UPC attacks which occurred early in the year.
18 Many people did not go back, they were afraid of attacks. The Lendus in this area are farmers, but
19 they no longer had any way to make a living because they were terrorised, they feared returning to the
20 fields and being attacked. The population had lost their houses, but also their livestock, the goats, the
21 pigs, the hens. They had lost all their belongings, the Hema militia had taken everything. There was
22 tremendous poverty and this poverty continued." (Speaks English) End quote.

23 For people who already had very little, the loss of their goods was devastating. Your Honours found
24 at paragraph 1044 of the judgment, and I quote:

25 "... there was no limit on what could be looted ... members of the UPC/FPLC took everything that they

1 wanted ... these items represented the bulk of the victims' possessions, played an important role in the
2 victims' day-to-day lives and/or their businesses." End quote.

3 Witness P-790 was seriously injured by UPC soldiers who ransacked his village and killed two of his
4 children. In 2016, this victim testified, and I quote:

5 "No, I have not been able to reconstruct my life to the level it was at before. My life is quite different ...
6 so far I have not received any help. I survive on my own financial resources to obtain medication.

7 When it comes to psychological help, there are people who surround me with words of encouragement,
8 but neither the government nor any other organisation has provided me with any assistance or help
9 whatsoever." End quote.

10 Along with the physical injury and psychological suffering, women and girls who were raped carry
11 great shame and could be viewed as damaged goods, unworthy of marriage or shunned by their
12 husbands.

13 One mother described the impact of her 13-year-old daughter's rape by the UPC/FPLC. She said, and
14 I quote:

15 "... her life changed. She became very ashamed and she could no longer play with her friends and her
16 school results suffered as a result of what she had experienced. On occasion she would go to school,
17 then she would leave class while other children continued to study. She was virtually isolated from
18 what went on at school." End quote.

19 This young girl also testified about the effect of her rape. She told the Court about the impact of the
20 crime, and I quote: "That abuse instilled a lot of fear in me. I could no longer go to school. I was
21 frightened. ... My mind was not at rest. Everybody knew or I thought everybody knew that I had
22 been raped, although I did not tell it to everyone. ... I was traumatised in my heart for a very long time.
23 I bore the pain in my body and in my heart." End quote.

24 As community leader P-790 explained to the Court, quote:

25 "... when, for example, a woman is raped, she can no longer live in peace. Where we come from, she

1 will be abandoned by her husband because the woman has had a bad experience." End quote.

2 When asked why she thought her marriage would be broken if she revealed that the UPC had raped
3 her, Witness P-18 simply responded, quote, "you know, it's shameful". End quote.

4 Prosecution expert witness Dr Maeve Lewis testified about the impact of sexual violence on victims.

5 She stated, and I quote:

6 "... perhaps the most pervasive experience for women who have been raped or sexually assaulted is
7 that of shame. It is absolutely the core experience of sexual violence regardless of whether it happens
8 in Western Europe or Africa or in any other part of the world. And that shame can pervade the
9 woman's whole life and it is compounded, of course, by social constructions of what is rape when the
10 blame is often ascribed to the woman who has been raped rather than to the assailant." End quote.

11 Many of the girl soldiers in the UPC/FPLC developed health problems due to repeated rapes, and they
12 carry emotional trauma for the rest of their lives. Many became pregnant, without knowing who was
13 responsible for the pregnancy.

14 As Witness P-883 told the Court, and I quote:

15 "... after military service, after I returned from the camp, I returned with a child, and to this day this
16 child always asks, 'Where is my father?' To this day, I continue to suffer violence in my body. There
17 is atrocious suffering. These things hurt me greatly and even speaking about it hurts me a great deal."
18 End quote.

19 The stigma of being a child soldier has a significant impact on victims. Witness P-883 further
20 explained that she was rejected by her family and that her child born from her rapes in the UPC, quote,
21 "is hated by other family members and we suffer from that". End quote.

22 She also told the Court that when her husband found out that she had been in the UPC, he abandoned
23 her because, and I quote:

24 "I knew how to use weapons. I could kill him. My husband was afraid and he abandoned me."

25 End quote.

1 Witness P-1000 described the situation of former UPC child soldiers she had observed at a transit
2 centre in Bunia in 2004. She said she saw children who did not respect anyone anymore, not even
3 their parents, and who suffered from mental illnesses after their experience and from drug addiction.
4 Witness P-824, who also observed former child soldiers in a transit centre, including from the
5 UPC/FPLC stated, and I will cite in French: (Interpretation)
6 "They had lost the sense of the sacred nature of human life." (Speaks English) End quote.
7 The child soldiers' education was interrupted by their conscription and enlistment.
8 P-883, who was abducted when she was 12 years old, explained to the Court the consequences of her
9 lack of schooling, and I will quote from her testimony:
10 "My future is compromised. Yesterday I was asked questions about my studies. I cried because I
11 realised that if I had been able to continue going to school, perhaps my life would be different. Even
12 to get a job as a bodyguard, you have to have a diploma" -- pardon me: "Even to get a job as a guard,
13 you have to have a diploma. And when someone asks me to read a document, I need to have
14 someone help me, and for the rest of my life it will be like that." End quote.
15 Witness P-1000 explained that the war had a particular and long-lasting impact on women and girls.
16 Because of militia attacks on villages, families were displaced to cities and men could no longer work
17 the fields for fear of being killed. Women became the sole breadwinners, while continuing to assume
18 family responsibilities. The endemic poverty caused by years of conflict prompted families to send
19 only boys to school while girls were sent to do trading or were married off very young. This, said
20 P-1000, rendered girls particularly vulnerable to abuse, including domestic abuse.
21 I turn now, your Honours, to Bosco Ntaganda's culpability.
22 The sentence your Honours will impose must reflect Bosco Ntaganda's degree of culpability for the
23 crimes for which he has been convicted.
24 He was the mastermind behind operations to attack a number of villages in Ituri. As your Honours
25 found at paragraph 833 and 852 of the judgment, he had, quote, "a unique and central role", end quote,

1 and was, quote, "determinative", end quote, in setting up the UPC/FPLC as an efficient armed group.

2 Your Honours also found at paragraph 834 that Bosco Ntaganda, quote, "devised the military tactic

3 which allowed for the success of the ... first and second operation". End quote.

4 At paragraph 835, this key role is further identified, quote: "... the UPC/FPLC military campaign ...

5 was largely dependent upon Mr Ntaganda's personal involvement and commitment as one of the

6 group's highest ranking military figures." End quote.

7 Bosco Ntaganda's direct role in ordering, encouraging and participating in the commission of crimes is

8 set out by the Chamber at paragraph 855 of the judgment, which I will quote in full:

9 "... it is Mr Ntaganda's direct orders to kill civilians and loot, his active role as an operational

10 commander, identifying targets, congratulating and supporting the troops in the field, as well as his

11 proximity to the commanders and soldiers deployed, which resulted in the commission of crimes.

12 Further, with his own personal violent conduct towards civilians, Mr Ntaganda showed his troops how

13 the orders were to be implemented. Mr Ntaganda's subordinates, who were taught military skills and

14 discipline, were trained to obey orders and therefore naturally proceeded with the commission of the

15 crimes during the course of the first and second operation, as requested." End quote.

16 Your Honours' sentence must reflect Bosco Ntaganda's pivotal role in the commission of crimes.

17 As to his level of intent, the Chamber held at paragraph 809 of the judgment that Bosco Ntaganda,

18 quote, "meant the destruction and disintegration of the Lendu community". End quote.

19 At paragraphs 1187 and 1188, your Honours found that Bosco Ntaganda, quote:

20 "... willingly sent his troops to attack and kill Lendu civilians, to engage in sexual violence against this

21 population, and to loot and destroy their belongings ... By way of these acts from Ntaganda also

22 intended for civilians to be chased out of the assaulted localities." End quote.

23 As for his individual circumstances, Bosco Ntaganda was a trained military superior with extensive

24 experience and with knowledge of the roles applicable to armed conflict and to the treatment of

25 civilian populations. He understood the difference between right and wrong. He said that he fought

1 the *génocidaires* in Rwanda because of the crimes they were committing against his own ethnic group,
2 yet he went on to do the same thing: To persecute civilians, in particular the Lendu, on the basis of
3 their ethnicity. He attacked and forcibly displaced them, murdered, raped, sexually enslaved them,
4 destroyed and looted their property and their medical facilities. He enlisted and conscripted children
5 into his army and used them as fighters.

6 The Chamber flatly rejected his testimony that he fought to secure peace during the period of the
7 charges, finding that his evidence, and I quote:

8 "... is clearly contradicted by the other available evidence on the record which shows that at least a part
9 of the civilian population in Ituri, in particular the Lendu, was actually the target of violent acts by the
10 UPC/FPLC in 2002 ..." End quote.

11 I will now turn to what the Prosecution submits are the aggregating factors the Chamber should
12 consider.

13 We submit that Bosco Ntaganda's abuse of authority and trust, as well as his failure to protect and
14 defend victims, should be aggravating factors for his sentence. As held by the Special Court for
15 Sierra Leone in the Charles Taylor case, quote:

16 "... breach of trust or authority, where the accused was in a position that carries with it a duty to protect
17 or defend the victims, such as in the case of a government official, police chief or commander, can be an
18 aggravating factor." End quote.

19 Through his role as deputy chief of staff of the UPC/FPLC, the Chamber found at paragraph 322 of the
20 judgment that Bosco Ntaganda held a position of authority with substantial influence over the
21 UPC/FPLC troops. He inspired fear amongst the troops and the population. Bosco Ntaganda
22 himself acknowledged that he was a highly respected person in the army and within the civilian
23 community, and that anybody who broke the law was in fear of him.

24 He abused his position of authority and trust, and he failed in his duty to protect the population.

25 First, he abused his position of authority by raping persons in his own escort, which he did by virtue of

1 his superior position over them.

2 Second, he abused his position of authority by taking the goods looted by his soldiers, in particular
3 during the first operation.

4 Third, he abused his position of authority through his direct orders to target and kill civilians and
5 through his endorsement of criminal conduct by way of his personal conduct.

6 The Chamber held, and I quote, that:

7 "... with his own actions, he illustrated for his troops how the orders were to be implemented with
8 regard to the treatment of the Lendu civilians." End quote.

9 After the Mongbwalu operation, Mr Ntaganda congratulated everyone present on the successful
10 operation. Instead of frustrating their commission, Mr Ntaganda personally engaged, in front of his
11 soldiers, in violent conduct towards the enemy.

12 Fourth, Bosco Ntaganda also failed in his duty to protect the population and the women and girls in
13 his army.

14 Far from protecting or defending them, the Chamber held at paragraphs 103 and 1188 that they were
15 the target of violent acts perpetrated by soldiers under Bosco Ntaganda's command.

16 Although your Honours declined to enter further findings on modes of liability other than

17 Article 25(3)(a), your Honours did make extensive findings on Mr Ntaganda's effective control over the
18 troops and the fact that he did not prevent the crimes or punish their commission.

19 His failure to punish his subordinates' crimes also demonstrates his failure to protect civilians and

20 should aggravate his sentence. For example, your Honours have found that it was not forbidden to

21 steal from the civilian population and that Bosco Ntaganda left rapes perpetrated during the first and
22 second attacks unpunished.

23 He failed to ensure protection of the population in the aftermath of the first and second attacks as well.

24 He took no measures to ensure the safe return of civilians forced to flee from their villages. Instead, as

25 your Honours found at paragraph 1059 of the judgment, quote:

1 "... any Lendu person would be killed if they tried to return ..." End quote.

2 And he failed to protect his own subordinates. As your Honours emphasised at paragraph 792 of the
3 judgment in relation to his own soldiers, and I quote:

4 "... the military leaders did not create the necessary conditions to ensure a safe environment ..." End
5 quote.

6 The Chamber found that the rape and sexual slavery in the UPC/FPLC were left largely unpunished
7 and no effective measures were taken by either Mr Ntaganda or Floribert Kisembo to restrain or
8 prevent this practice within their respective groups of escorts.

9 These findings on Bosco Ntaganda's abuses of authority and failures to protect should be used to
10 aggravate his sentence.

11 The Chamber should also take into account as an aggravating circumstance Bosco Ntaganda's flagrant
12 breaches of the Detention Centre rules and violations of the Court's orders.

13 The Chamber has repeatedly emphasised the gravity of his conduct and ultimately concluded that it
14 has had a significant impact on the proceedings in the Ntaganda case, has resulted in extensive
15 litigation, and has entailed the expenditure of significant resources.

16 Your Honours, Bosco Ntaganda's grave misconduct has indeed left a significant mark in this case and
17 should not be ignored.

18 In August 2015, the Chamber found that there were reasonable grounds to believe that he abused his
19 entitlement to communications by speaking to nonregistered interlocutors without prior approval of
20 the Registry; that he used coded language to disguise attempts to disclose confidential information or
21 to interfere with witnesses; that he disclosed the identity of Prosecution witnesses in circumstances
22 which the Chamber found to be of grave concern; that he intended to engage in a serious form of
23 witness interference; that he instructed his interlocutors to coach witnesses, or directly told his
24 interlocutors which story to tell, stressing the need to tell the story in the manner as described by him
25 and the necessity of synchronising the stories.

1 Bosco Ntaganda admitted that he spoke to nonregistered interlocutors, including an unindicted
2 co-perpetrator and potential Defence witnesses, without prior approval of the Registry. He admitted
3 that he gave the Registry false names for some of his registered interlocutors. He admitted that he
4 used coded language. He admitted that he spoke to potential Defence witnesses about the facts of his
5 case. For instance, the Chamber heard how Bosco Ntaganda told one of his witnesses to say that she
6 was recruited in the UPC at the age of 18 and instructed her to provide evidence discrediting
7 a Prosecution witness.

8 He also admitted disclosing the identity of two protected Prosecution witnesses to an unauthorised
9 third party. The Chamber should, in accordance with the Appeals Chamber's jurisprudence, consider
10 Bosco Ntaganda's breaches of the Detention Centre rules and violations of orders of this Court as an
11 aggravating factor in determining his sentence.

12 Your Honours, there are no mitigating circumstances in this case.

13 To date, despite making several unsworn statements and testifying for 30 court days, Bosco Ntaganda
14 has not apologised to victims or even acknowledged the suffering he caused.

15 To the absolute contrary, he went as far as to deny that there was an ethnic conflict in Ituri in 2002 and
16 2003, he denied that he and his troops ever committed any crimes in Ituri, he claimed that he lacked
17 knowledge of UPC/FPLC military operations or lacked the authority to issue orders, despite being the
18 deputy chief of staff in charge of operations. The Chamber found Bosco Ntaganda to lack credibility
19 on all of these denials.

20 As for any assistance to victims to be considered in mitigation, Bosco Ntaganda must have acted
21 immediately after the commission of the crime to alleviate the suffering of victims. There is no
22 evidence that he did so.

23 Nor has Bosco Ntaganda cooperated in any appreciable manner with the investigation or
24 the prosecution of the charged offences, or with the Court.

25 He didn't surrender to the Court until 2013, five years after the ICC arrest warrant against him was

1 made public. He then declined the Prosecution's request to meet with him and provide relevant
2 information on the factual circumstances relevant to the charges against him, twice, once in 2013 and
3 again in early 2015. Although he can assert his right to silence as a suspect and choose not to speak to
4 the Prosecution to assist it in its investigations, he should not at the same time assert that this is active
5 cooperation with the Court. It's not.

6 Bosco Ntaganda did choose to testify in his own defence during trial. But testifying is not a mitigating
7 circumstance. It's no more than part of a strategically run defence. He testified, as I have mentioned,
8 for 30 court days and, in the end, we counted at least 36 times the Chamber found his testimony to be
9 unreliable or not credible on key points relevant to the charges, in particular on the crimes and on his
10 role in them.

11 He flatly denied his involvement in any crimes for which he now stands convicted. He told
12 your Honours that Prosecution witnesses with against him were lying. That is not cooperation in any
13 legitimate sense.

14 And, as I have already mentioned, in the context of conduct that should be considered an aggravating
15 circumstance for sentence, his lack of cooperation with the Court is amply shown through his breaches
16 of Detention Centre rules and orders of the Chamber.

17 As for any efforts to secure peace in Ituri, Bosco Ntaganda continued to be a threat to the civilian
18 population of Ituri well after he committed the crimes he has been convicted of. MONUC documents
19 admitted in this case dating from late 2003 and 2004 show that the UPC/FPLC troops under
20 Bosco Ntaganda's command attacked United Nations peacekeepers, sought to take MONUC personnel
21 hostage and prevented humanitarian aid from being distributed to the civilian population.

22 MONUC considered Bosco Ntaganda to be, quote, "a source of threat", a "criminal", and a "notorious
23 killer", who was undermining MONUC's objective to help restore peace in the region, and it repeatedly
24 sought to arrest him at that time.

25 On 7 November 2003, the UPC - with Bosco Ntaganda as chief of staff - formally withdrew all

1 cooperation with MONUC and all participation in the institutions established by the Ituri Pacification
2 Commission. On 24 January 2004, the United Nations Special Representative of the Secretary-General,
3 Mr William Swing, wrote to President Kabila expressing his serious concern for the security of the Ituri
4 population and for the effective implementation of the pacification processes run by MONUC because
5 of the actions of the troops under Bosco Ntaganda. Mr Swing called for Bosco Ntaganda's immediate
6 arrest.

7 To conclude, your Honours, we ask that you impose an overall sentence of 30 years' imprisonment.

8 Many of Bosco Ntaganda's crimes merit on their own a sentence of 30 years. When all the relevant
9 circumstances are considered, a 30-year sentence is a fair and just result in the circumstances of this
10 case.

11 Thank you.

12 PRESIDING JUDGE FREMR: [9:52:07] Thank you, very much, Ms Samson.

13 So now I will hand over floor to the first representative of the former -- for the victims of the former
14 child soldiers, Ms Pellet.

15 Ms Pellet, are you ready? I see you are. So please, you have the floor.

16 MS PELLET: [9:52:34](Interpretation) Thank you, your Honour.

17 Your Honours, today, just like during the proceedings, the 283 former child soldiers that I am
18 representing have not subscribed to an ideology of vengeance and spite. They only desire but one
19 thing, the inflicted sentence -- the sentence handed down to Mr Ntaganda reflects the gravity of the
20 crimes for which he has been convicted on 8 July, but also the sufferances that they've endured and
21 continue to endure because of having committed these crimes.

22 They also like the adequacy of the sentence that you will hand down would not only discourage
23 Ntaganda from being a repeat offender, but also dissuade anyone from committing crimes similar to
24 the origin of their victimisation in the future so that the children and the future generations can be
25 protected from this scourge.

1 PRESIDING JUDGE FREMR: [9:53:54] Ms Pellet, could you kindly slow down, because we have some
2 problems with transcript. Thank you very much.

3 MS PELLET: [9:54:07](Interpretation) You must, you must, your Honours, you must, your Honours,
4 put a stop to the impunity by handing down a harsh sentence to Bosco Ntaganda, harsh but fair. You
5 will thus give full effect to the preamble of the Rome Statute whose end is to put an end to impunity
6 for the perpetrators of these crimes that affect the entire international community, and thus to
7 contribute to the prevention of such crimes.

8 Your Honours, this is not a hypothetical problem: The current reality is that the scourge is affecting
9 thousands of children all over the world, especially, according to the United Nations, between 2017
10 and 2018 not less than 2,171 children below the age of 15 have been recruited and used in the hostilities
11 in the Democratic Republic of Congo, including in Ituri; Ituri, your Honours, where my clients live in
12 the fear that their children would be recruited in the militia that is currently participating in the
13 escalation of inter-ethnic violence.

14 I am going to be brief, your Honours. In fact, detailed written observations on behalf of the former
15 child soldiers will be submitted on 30 September, in compliance with your decision.

16 Now, in the sentencing process, it is primordial for my clients, but also for the entire community that
17 has been affected that you impose distinct sentences for the crimes of recruitment of child soldiers,
18 counts 14 and 15; their active use in hostilities, count 16; and the rape and sexual slavery of child
19 soldiers, counts 6 and 9.

20 Now with regards to the recruitment of children, I would request you on behalf of my clients,
21 your Honours, to make no difference between enlistment and conscription. In fact, in the Statute, the
22 terms "conscription" and "enrolment" have been preferred over "recruitment" that is employed in the
23 additional protocol to the Geneva Convention and the Convention on the Rights of the Child. These
24 two terms in fact are two forms of recruitment and refer to the incorporation of a boy or a girl less than
25 15 years old in an armed group in force, that's called conscription, or on a voluntary basis, and we call

1 that enlisting. But in fact, the enlisting of a child below 15 has nothing voluntary to it.

2 Now, whether it's an orphan striving to survive or looking for a foster home, or a child of Hema origin

3 sent by the parents to the militia, no child less than 15 could have envisaged or even less accept a brutal

4 destiny to which he has been subjected to by joining the militia. Moreover, the extent and intensity of

5 the propaganda exercised on the Hema population have often left no choice to the former child soldiers

6 and their families.

7 The imposition of a similar sentence targeting enlisting and conscription, recognising the victimhood of

8 the ethnic group is a necessary step to try and ensure long-lasting peace and reconciliation within the

9 affected communities. And I have actually said it, it is even more important whilst the inter-ethnic

10 violences are ravaging the region for the past two years.

11 Your Honours, only a harsh sentence can allow, 16 years after the commission of crimes, we recognise

12 the status of victim of former child soldiers rather than them be considered as criminals whilst my

13 clients were between 7 and a half years old and 15 years old when they were forced to participate in an

14 inter-ethnic war that lasted between 2002 and 2003, with inhuman and degrading conditions. Only

15 a harsh sentence can actually enable my clients to try and rebuild themselves, even though this

16 reconstruction would only be a fallacy given the damage that they have suffered over 16 years in the

17 ranks of the UPC/FPLC.

18 I would now very briefly like to touch upon the gravity of these crimes of recruitment and active use of

19 child soldiers in hostilities.

20 Now, this gravity is rather significant because these crimes are actually targeting individuals that are

21 especially vulnerable, children who are below 15, very young children, your Honours, children who

22 are availing themselves of special protection through international treaties. These are very young

23 children who have been separated from their families, very young children who had to stop going to

24 school, very young children who lost their childhood to UPC/FPLC and whose lives were destroyed

25 and that of their families.

1 In fact, the commission of these crimes have led to serious and long-lasting damage not only on the
2 direct victims but also on their families and, more generally so, on the affected communities.

3 Mr Ntaganda's culpability in this respect is rather accentuated by the fact that he had a high ranking
4 post in the FPLC, his -- through the significant contribution to the commission of these crimes and the
5 fact that he was acting in a deliberate way and in full knowledge.

6 Your Honours, more so, the crimes of -- the crimes that Mr Ntaganda is guilty of towards children are
7 characterised by special cruelty and extreme brutality and that justify the imposition of a serious
8 sentence complied with the text: Inhuman living conditions in the camps; very cruel discipline; rapes,
9 sexual slavery, to which women child soldiers were subjected to incessantly when they were sent to the
10 battlefield.

11 These inhuman treatments could not have occurred without the blatant disregard and disrespect for
12 the well-being of these children. Moreover, their vulnerability was accentuated by this climate of
13 terror that was present in the camps and the fact that these children were made to consume drugs and
14 alcohol to make them docile.

15 Mr Ntaganda was directly involved in the recruitment of the children. He was at the inception of
16 these training camps where children, some who were less than eight years old, sometimes, had to
17 endure military training, supervised by himself, and then used in the first line, very often under the
18 influence of drugs and alcohol.

19 Mr Ntaganda had children less than 15 in his military escort. He himself has raped members of his
20 escort and did nothing to prevent his commanders and recruits of the UPC/FPLC from doing the same.

21 Moreover, moreover, the severity of these crimes for which Mr Ntaganda was convicted, including
22 their geographical and time scope, the number of victims involved and the repetitive continuous
23 nature of these crimes, must be taken into account to determine an appropriate sentence. The
24 recruitment of children less than 15 in the ranks of UPC/FPLC constitutes a crime that is continuous
25 and that has occurred throughout the 17 months covered by the charges, and that extended henceforth.

1 The regular feature of the recruitment of children less than 15 and the given time period would
2 definitely lead to several victims that must be taken into account as aggravating circumstances in this
3 case.

4 Now, with regards to the exact statistics on the children below 15 recruited in the ranks of UPC/FPLC
5 during the period covered by the charges, your Honours, it is difficult to put an exact figure:
6 283 victims had the courage to participate in the proceedings, but this figure is unfortunately not
7 representative of the entire phenomenon. In fact, hundreds have died on the battlefield, hundreds
8 have chosen to forget. And hundreds others, especially those belonging to the Hema community and
9 victims of rape and sexual slavery, cannot come out in the open for the fear of stigma and being
10 ostracised by their families and their communities.

11 Yet, the Trust Fund for Victims, within the framework of the reparation procedures in the Lubanga
12 case, whose time frame was less than the present case, estimated that about 3,000 victims were affected
13 by the crimes of recruitment and active participation in the hostilities of children below the age of 15.
14 The crimes of rape and sexual slavery perpetrated against children below 15 also are of a grave concern
15 *in abstracto* because in -- with regards to the specific facts of this case, and due to the damage caused to
16 the victims, their families and their communities and the degree of Mr Ntaganda's participation and
17 intention.

18 Rape and sexual slavery are heinous crimes of domination and intimate violence whose extreme
19 gravity was always recognised by international courts and tribunals, and even more so when they are
20 targeting children. As such, they justify the imposition of a significant sentence.

21 The victims of rape and sexual slavery have had the opportunity to say that several times before - and
22 you have actually heard that from the mouths of the survivors who testified in front of you - would
23 never be able to rebuild themselves from the rapes that they experienced continuously in the ranks of
24 the UPC/FPLC. Under the modest term of the spouses of commanders there is a terrible reality that has
25 victimised them both -- and scarred them both physically and psychologically. Many of them, in fact,

1 have been ostracised by their families and their communities because of the stigma attached to sexual
2 violence.

3 Here again, Mr Ntaganda is completely liable for these crimes. He could not have been unaware of
4 the existence because of the proximity and the daily interactions not only with the victims but also the
5 perpetrators of the rape. In spite of his control on the UPC/FPLC troops, he did nothing to protect the
6 female members of his troops.

7 But the contribution of Mr Ntaganda to the perpetration of rape and sexual violence committed by
8 UPC/FPLC against children go beyond that he himself has raped members of his escort.

9 Here again, your Honours, aggravating circumstances must be taken into account to determine the
10 appropriate sentence.

11 Over and above the intrinsic gravity of the crimes on which I won't be coming back to, the age of
12 victims must be taken into account. In fact, unlike the crimes of recruitment and active participation
13 in hostilities, age is not a constitutive element of crimes of rape and sexual slavery and the fact that the
14 victims were below 15, and sometimes even 9, should be considered to be an aggravating circumstance
15 in this case.

16 The rather special vulnerability of victims was even more accentuated by the fact that repeated rapes
17 that they endured took place in a coercive environment where they were subjected to a brutal form of
18 discipline, to death threats and also constant surveillance; the fact that rape and sexual slavery to
19 which the victims were subjected occurred during the entire duration of their captivity in the ranks of
20 the militia and only stopped when they were sent to the battlefield.

21 The fact that victims of these crimes were numerous should also be taken into account even though it's
22 impossible to basically provide an exact figure. The case contains several credible and reliable
23 evidences proving that violence and sexual -- rapes and sexual violence committed against children
24 were committed at a very large scale or, otherwise, at least systematically. These crimes that were
25 perpetrated against several victims, at numerous times against each victim by several perpetrators

1 justify the application of aggravating circumstances in compliance with the applicable texts.

2 As I previously said, the number of victims participating in the proceedings who have experienced

3 rape and who were victims of sexual slavery are unfortunately not representative of the extent of the

4 phenomenon. In fact, it's extremely difficult for them to come out in the open because they fear

5 stigmatisation and ostracisation by their community to which they belong to.

6 Lastly, your Honours, no mitigating circumstances, whatever they be, can be applied to Mr Ntaganda.

7 On the contrary, far from cooperating with the Court, Mr Ntaganda abused or in fact took due

8 advantage of the communication rights granted to him at the Detention Centre, and the fact that this

9 was not subject to legal proceedings does not prevent the Chamber from taking into account the

10 information that it has received concerning the pressure that was put on witnesses directly by

11 Mr Ntaganda or through his associates.

12 Similarly, Mr Ntaganda made no effort to compensate his victims and never recognised their sufferings

13 and never apologised for his acts. Even worse, Mr Ntaganda declared that there was no child below

14 18 in the ranks of UPC/FPLC and also put a very improbable interpretation of the term *kadogo* to

15 suggest they weren't child soldiers but soldiers with a smaller body frame. Moreover, Mr Ntaganda

16 declared that rape wasn't accepted within the militia and, according to his so-called instructions, male

17 recruits were not allowed to sleep with female recruits and this was followed to the letter by the militia

18 in his orders.

19 Your Honours, these far-fetched, if not absurd, claims that you have rejected is extremely -- as not

20 credible is a major problem and it's causing sufferings to the former child soldiers perpetrating to the

21 stigma.

22 No, your Honours, Mr Ntaganda does not deserve a Nobel Prize like some people would like to have

23 you believe, with total disregard for the victims, their families and the communities affected in Ituri.

24 For all these reasons, the victims that I am representing, taking into account the gravity of these crimes

25 committed, the extent of the damage caused, the degree of participation of Mr Ntaganda to the

1 aforesaid crimes and the -- and his degree of intention, the circumstances of time, place and manner,
2 the existence of aggravating circumstances for all the concerned crimes, and the absence of any
3 mitigating circumstances, the victims that I am representing submit that the appropriate sentence to be
4 handed down to Mr Ntaganda is:

5 Eighteen years for the crime of conscripting children below the age of 15; 18 years for enlisting children
6 below the age of 15; 20 years for the crime of active participation of children below 15 in hostilities;
7 30 years for the rape of children; and 30 years for having maintained them in sexual slavery.

8 This concludes, your Honours, the observations made in the name of former child soldiers.

9 Thank you so much for your kind attention.

10 PRESIDING JUDGE FREMR: [10:16:42] Thank you very much, Ms Pellet.

11 And now floor goes to legal representative for victims of the attacks, Mr Suprun.

12 Mr Suprun, you have the floor.

13 MR SUPRUN: [10:17:04](Interpretation) Thank you, your Honour.

14 Your Honours, Bosco Ntaganda has been found guilty on 18 counts; 13 war crimes and five crimes
15 against humanity, as a direct perpetrator and a co-perpetrator, including, for the first time in the
16 history of the International Criminal Court, crimes of rape and sexual slavery, but also mass crimes
17 against whole communities, such as persecution and forced transfer and displacement of the
18 population.

19 This case is without precedent before this Court, and given the seriousness of the crimes, the extent of
20 guilt and the scale of the victimisation, this case is one of extreme gravity as dealt with by international
21 ad hoc tribunals.

22 According to the Statute of the Court, the sentence given must be in proportion to guilt and must take
23 account of the seriousness of the crime and the personal situation of the guilty party, but also of
24 aggravating and mitigating factors.

25 The gravity of the crimes of which Bosco Ntaganda has been found guilty is justified by the nature and

1 circumstances of the crimes, and particularly in view of the way and the cruelty in which these crimes
2 were committed. The gravity is also justified by the systematic, repeated and continuous nature of the
3 crimes with the predetermined goal of driving out the population on the basis of ethnic grounds.
4 In particular, it has been established beyond reasonable doubt that Bosco Ntaganda himself killed
5 Abbé Bwangelonga, an elderly priest who was in detention, having first beaten him with a piece of
6 wood during his interrogation, and this for the simple reason that he was a Lendu. The true aim of
7 the troops of the UPC/FPLC, led and controlled by Bosco Ntaganda, was to drive out the Lendu from
8 Ituri to an extent that they could not return by attacking systematically their villages using often heavy
9 weaponry, and killing the population with no distinction of sex or age, and pillaging and destroying
10 their property.

11 Civilians were murdered with firearms, knives, bayonets and machetes, culminating in the extremely
12 cruel massacre of 49 civilians in the banana field near Kobu. The bodies of those killed were often just
13 thrown into mass graves.

14 Acts of sexual violence and other acts of physical violence were committed with the aim of destroying
15 the members of the Lendu community in the villages under attack, treating them like nonhumans who
16 should be exterminated. These acts of sexual violence were committed with a particular degree of
17 cruelty; for example, the use of baton, or forcing detainees to rape other detainees.

18 The crime of persecution took place in 13 villages and the crime of forced transfer in five villages across
19 Ituri, aiming at the populations on the basis of their ethnicity.

20 The crimes of which Bosco Ntaganda has been found guilty were committed not as isolated acts but as
21 part of a pre-planned campaign systematically, repeatedly and continuously, during a consecutive
22 period of two and a half months, village by village, with the predetermined aim of driving out or
23 destroying the Lendu community.

24 All these elements as such are evidence of the extreme gravity of the crimes of which Bosco Ntaganda
25 has been found guilty.

1 Under Rule 145 of the Rules of Procedure and Evidence, the victims of the attacks request most
2 respectfully the Chamber to take account of other circumstances in determining the sentence against
3 Bosco Ntaganda and request that these circumstances be considered not as constitutive elements of the
4 gravity of crime, but as separate aggravating factors in the light of international jurisprudence. And I
5 give you an example here of the decision of the TPIY in the case Lukić and Lukić of 20 July 2009.
6 The first aggravating factor is the unprecedented scale of the victimisation given the number of victims
7 and also the long-term consequences of these crimes involving harm caused to individuals, families,
8 transgenerations and communities.
9 To date, we do not know the exact number of victims. According to various estimates, at least 5,000
10 civilians were killed during the period under consideration and tens of thousands of civilians were
11 forced to leave their home locations. To give you an indication, among the victims of attacks who
12 participated in this procedure, 1,083 victims of murders of members of their families, 1,202 victims of
13 pillage, 910 victims of destruction of property, 41 direct and indirect victims of sexual violence, 423
14 victims of forced transfer, and 1,404 victims were persecuted.
15 The crimes of which Bosco Ntaganda has been found guilty have marked forever the victims not only
16 because they lost their loved ones, have been mistreated or persecuted, forced to abandon their homes
17 leaving behind all that they had and thus deprived of all means of subsistence, but also because they
18 lost any chance of giving their children an education and every opportunity of developing their lives
19 and building the futures in the way in which they dreamed before the war. These crimes have
20 marked whole families but also whole communities across all of Ituri.
21 Many victims found themselves dispossessed of all their belongings. Members of their families have
22 been killed. Women and girls were raped. Men and women had their throats cut. They were
23 chopped up by machete. Homes and entire villages were set on fire. Herds of animals were taken
24 away. Fields were destroyed. Businesses were ransacked and pillaged. Without counting the
25 destruction of public buildings or community buildings such as churches, schools, hospitals, markets

1 and health centres. It is difficult to truly establish the scale in human, social and psychological costs.
2 It is difficult to have an overview of the scope of the damage caused by these various attacks on
3 civilians. The social and human costs simply cannot be calculated. The disintegration of the social
4 and cultural organisation of the communities, the psychological traumas inflicted on the survivors, the
5 damage to infrastructure and the detrimental impact on generations are simply some of the long-term
6 consequences which will be felt for many years to come.

7 Sixteen years after these events, only very few of the victims have been able to rebuild their lives to
8 some degree. Left with no support, the victims during all this time have lived in extreme poverty and
9 are still submerged in their pain and suffering which never leaves them, despite the amount of time
10 that has passed. They live in a constant state of anxiety, stress and uncertainty. For several years
11 now, Ituri has been categorised by the United Nations in the category of regions in crisis or even
12 subject to humanitarian emergency.

13 The second aggravating factor is the particular vulnerability of the victims given their young age. It
14 has been established beyond all reasonable doubt that murders took place against at least two children
15 aged 3 and 6 in Kobu, a pregnant woman detained in Kilo, eight patients left powerless and without
16 help in the hospital in Bambu, including an amputee. The crime of rape was committed against girls,
17 at least one of which was only 13 years old. The crime of sexual slavery was committed against at
18 least one girl aged 11.

19 Persecution and forced transfer of population, this was committed against a number of -- whole
20 communities, implying that all the villagers, including pregnant women, the elderly, the sick and the
21 handicapped, had to leave their homes with children of all ages to take refuge in the bush, where for
22 some considerable time they were in extremely different conditions with neither shelter nor food.

23 And finally, we should not forget that children under the age of 15 were recruited into the forces of the
24 UPC/FPLC and were actively deployed in hostilities and girls who were enlisted were subject to sexual
25 violence. One of these girls was only 9 years old.

1 The third aggravating factor is the degree of participation of Bosco Ntaganda in the commission of
2 these crimes and the degree of his intention combined with his abuse of authority.

3 It has been established beyond all reasonable doubt that Bosco Ntaganda was one of the key leaders of
4 the UPC/FPLC and was the deputy chief in charge of military operations. He had a unique and
5 central role. His orders were carried out and he struck fear into his troops. His role was
6 determinative in establishing an effective armed group. He planned military operations, he spoke to
7 the troops in order to raise their morale, he handed out weapons, he gave orders to attack villages and
8 he led operations.

9 He gave orders to commit crimes, and approved or encouraged the crimes committed by his
10 subordinates through his own criminal conduct. The military campaign of the UPC/FPLC was largely
11 dependent on the personal involvement and commitment of Bosco Ntaganda. With his own violent
12 personal conduct with regard to civilians he showed the troops how his orders should be executed.

13 With regard to his central role within the forces of the UPC/FPLC and the control he had over the
14 troops, combined with his determination and commitment and his own criminal conduct which acted
15 as an example, it was easy for Bosco Ntaganda to impose his unrestricted authority and abuse of power
16 with a view to achieving the criminal aims of the ethnically-based campaign, and thus contributed
17 significantly and determinatively to these crimes being committed, on a wide scale and systematically,
18 by his subordinates who hounded the civilian population in conditions of almost impunity.

19 The fourth aggravating factor is the conduct of Bosco Ntaganda in the procedure before this Court.

20 Despite being in detention, Bosco Ntaganda interfered seriously with the administration of justice by
21 divulging confidential information to his allies in the field and by giving them instructions with a view
22 to intimidating Prosecution witnesses.

23 On another occasion, he refused to attend his trial because of restrictions being placed on his family
24 visits, and he even went on hunger strike, which displayed a lack of respect towards justice and a true
25 sign of contempt to his victims, knowing that many victims had been deprived forever of the

1 possibility of ever seeing again their loved ones because these had been killed by the soldiers of the
2 UPC/FPLC during these events.

3 The conduct of Bosco Ntaganda in detention which the Registry considers generally to be positive and
4 cooperate, including the event which I will not discuss in detail in an open sitting, can in no way
5 mitigate the seriousness of his interference with administration of justice, nor his guilt more generally.

6 With regard to other relevant circumstances, the victims of the attacks submit that none of these
7 circumstances could mitigate the guilt of Bosco Ntaganda and therefore could not act as a basis for
8 a reduction in sentence, in view of the heavy evidence of many aggravating factors.

9 With regard to the ostensible efforts of Bosco Ntaganda to bring peace and reconciliation, it has been
10 established beyond all reasonable doubt that despite statements made to this effect by leaders of the
11 UPC/FPLC including Bosco Ntaganda, the true intention and the true aim of the troops was to drive
12 out those not originally from Ituri, particularly the Lendu, and that Bosco Ntaganda had actively
13 participated in implementing the plan to drive out the Lendu from their homes during the first and
14 second operations.

15 The Chamber has also dismissed as not credible the declarations made to this effect by Bosco Ntaganda
16 during his testimony. Furthermore, it should be recalled that the meeting in Sangi had also been
17 arranged on the pretext of discussing pacification and reconciliation, but it turned into a heinous
18 massacre of many civilians. This hypocrisy on the part of the leaders of UPC/FPLC simply proves
19 that no value and no confidence can be placed in their statements. Why should one then believe in
20 sincerity of the speeches made by Bosco Ntaganda during these so-called pacification meetings in
21 Largu, Bule, Lopa and other villages, as the Defence would like to demonstrate?

22 These were, moreover, villages principally lived in by Hema. Why did Bosco Ntaganda not go to the
23 villages which had been more severely affected by the atrocities to make these reconciliation speeches,
24 for example, Mongbwalu, Kobu or Lipri?

25 And still on the subject of the sincerity of the intentions of Bosco Ntaganda, Bosco Ntaganda had the

1 opportunity to testify before this Court for several weeks, but during this testimony he did not speak
2 one single word of remorse, of regret or compassion towards the victims of the crimes committed in
3 Ituri in 2002-2003. In the same way, while declaring his commitment to peace and reconciliation, he
4 spoke not a single word in support of peace and reconciliation in Ituri today, which is torn apart by
5 violence and where various rebel militias continue to terrorise the civilian population. He had the
6 opportunity to speak on this subject, but he did not.

7 In the same way, it would be very difficult to attribute goodwill to Bosco Ntaganda in the interests of
8 justice with regard to his conduct when he surrendered voluntarily to the Court, because if he had been
9 guided by this goodwill he should have done so earlier and not only seven years after the arrest
10 warrant against him had been issued.

11 With regard to the character of Bosco Ntaganda after the war, and in particular his so-called positive
12 attitude towards women, as the Defence would like to portray to us, these sporadic events are not
13 enough to counter the conduct of Bosco Ntaganda towards women during the events as have been
14 proved beyond all reasonable doubt. Of course, it is not impossible that in the reality consisting of his
15 immediate entourage, Bosco Ntaganda may very well be seen as a good husband and a good father; he
16 may have done good things for his nearest and dearest. However, in another reality established
17 beyond all reasonable doubt, Bosco Ntaganda succeeded in gaining the reputation of a violent
18 terminator, cruel and without pity, who spread terror within the civilian population across Ituri, and
19 who struck fear into his subordinates within the UPC/FPLC. It is possible that one reality does not
20 exclude the other and that they exist in parallel. And further, the history of humanity shows that the
21 worst criminals were often said to have a good personality, to be good fathers and to be good
22 Christians by their immediate entourage without realising or without -- while refusing to recognise the
23 black and sordid side of somebody close to them.

24 Your Honours, the preamble of the Statute of Rome, as interpreted recently by Trial Chamber VIII in
25 the Al Mahdi case, stipulates that the primary objectives of all sentences to be handed down by the

1 International Criminal Court are punishment and deterrence. Punishment should not be guided by
2 a desire for revenge but should reflect the condemnation by the international community of the crimes
3 committed; should recognise the harm caused to victims and promote peace and reconciliation.
4 When it comes to deterrence, it means that the sentence should be sufficient to both discourage the
5 guilty person from re-offending and to ensure that anyone who might consider committing similar
6 crimes would be deterred from so doing.
7 The sentence to be handed down to Bosco Ntaganda should constitute not only a measure of
8 punishment which should be proportionate but should also be sufficient measure of deterrence.
9 The latter is particularly relevant today for hundreds of thousands of civilians in Ituri and North Kivu
10 today, who many years on are still suffering very seriously from the multiple crimes committed by
11 rebel military groups similar to those of the UPC/FPLC in conditions of complete impunity.
12 As has already been said, the extent of the condemnation of Bosco Ntaganda is without precedent
13 within the history of the International Criminal Court, and thus the sentence to be given to him should
14 also not be compared to that inflicted on people who have been sentenced by the Court previously:
15 Thomas Lubanga Dyilo was condemned to 14 years of prison simply for crimes of enlistment, and
16 conscription of children under the age of 15 and their active use in hostilities.
17 Germain Katanga was condemned as an accomplice to 12 years imprisonment for crimes of murder,
18 attack against a civilian population, destruction of property and pillage during one attack launched
19 against a single village and lasting only one day.
20 Ahmad Al Mahdi received a sentence of nine years in prison for the attack against protected buildings
21 and pillaging, while he had pleaded guilty, had cooperated actively with the Prosecution and
22 expressed remorse for his acts.
23 Your Honours, given the extreme gravity of the crimes of which Bosco Ntaganda has been found guilty
24 and his personal situation, demonstrated by the existence of several aggravating circumstances, given
25 the limited scope of any mitigating factor and with the aim of both punishing and dissuading, the

1 majority of the victims of the attacks request respectfully that the Chamber, in accordance with
2 Rule 145(3) of the Rules of Procedure and Evidence, sentence Bosco Ntaganda to imprisonment in
3 perpetuity.

4 With regard to the individual sentences for each crime, the victims of the attacks submit that the
5 minimum individual sentence should not be less than 20 years, and the individual sentence for crimes
6 of murder, rape and sexual slavery should in no case be less than 30 years.

7 With regard to the length of the sentence for other crimes, the victims leave that to the discretion of
8 the Chamber.

9 Thank you, your Honours.

10 And I would now -- we are unable to attend the second part of the sitting as I have to attend the
11 confirmation charges of the Yekatom, Ngaïssona case, and I do offer my apologies for being unable to
12 be here for the second part of this morning's proceedings.

13 PRESIDING JUDGE FREMR: [10:47:16] Thank you, Mr Suprun. Understood, and you are excused.

14 So now we take a break - we will - for 30 minutes. So it means that we will reconvene at quarter past
15 11.

16 THE COURT USHER: [10:47:34] All rise.

17 (Recess taken at 10.47 a.m.)

18 (Upon resuming in open session at 11.17 a.m.)

19 THE COURT USHER: [11:17:33] All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: [11:18:05] All right. Welcome back.

22 So we have heard in the previous session oral submissions on sentencing presented by Prosecution and
23 both legal representatives.

24 Now it's turn for Defence and it will be followed by final statement made by Ntaganda.

25 Mr Bourgon, you have the floor.

1 MR BOURGON: [11:18:29] Thank you, Mr President.

2 Good morning, Honourable Judges, good morning to everyone in the courtroom.

3 I have the honour today to present some submissions on the sentencing phase of the proceedings on

4 behalf of Mr Ntaganda.

5 Allow me to begin, Mr President, by simply recalling some of the applicable principles that must or

6 should guide the Trial Chamber's work or assessment of the evidence and findings in order to

7 determine the applicable sentence.

8 The sentencing appeals judgment in the Lubanga case, where the Appeals Chamber said that the

9 Trial Chamber's main task is to weigh relevant factors in order to determine a sentence that reflects the

10 culpability of the convicted persons.

11 In the sentencing judgment in Katanga, it was recalled that the sentence must be proportionate to the

12 offence committed and to the culpability. And of course, the degree of participation and intent must

13 be assessed *in concreto*, in concrete terms, and that it was not only determined by the form of liability.

14 When we look at the assessment of the gravity of the crime, it is important to recall that it rests on the

15 degree of participation and the degree of intent, and that it, therefore, it must be assessed on the basis

16 of the Chamber's factual and legal findings in the judgment.

17 Mr President, what we have heard this morning from the Prosecution and the legal representatives of

18 both child soldier and victims of attack, clearly departs from these governing principles.

19 And let me use a few examples before I move to my own submissions. If we look at the Prosecution,

20 the Prosecution would like you to believe that there are some aggravating circumstances or

21 aggravating factors. Well, we say there are none and I will cover that during my submissions.

22 One thing is sure, is that what the Prosecution refers to on the basis of its Witness P-824, being the

23 consequences of the crimes committed in Mongbwalu, clearly is out of touch with the reality. Why?

24 Because it clearly omits the evidence on the record -- which is not covered in any finding, about the fact

25 that the Mongbwalu community after the first operation continued living without any significant

1 problem.

2 It also ignores the fact that after the first operation, or the result of the first operation, also led to
3 putting an end to cannibalism that was happening in Mongbwalu. That stopped entirely and that
4 was one of the objectives for going to Mongbwalu, and that is in the evidence.

5 The Prosecution refers in its submission to many aspects of this case which we say do not rely or are
6 not covered by specific findings of the Chamber beyond a reasonable doubt. And we say,

7 Mr President, that the Trial Chamber must look to its own findings beyond a reasonable doubt in order
8 to assess the sentence.

9 If I look at the submissions we have heard this morning from the legal representatives, let me begin by
10 the legal representatives for the child soldiers. I have just a few comments, one of which is, the fact
11 that enrolment of child soldier would be the same thing as conscription of child soldier. Well we beg
12 to differ, Mr President, and there is a huge difference between the two in terms of gravity. And in this
13 case the evidence of conscription is remote, if at all present.

14 Another issue raised by the legal representatives for child soldier has to do with the submission that
15 because the problem or the issue of child soldier is a serious one that goes beyond Ituri and DRC, that
16 Mr Ntaganda should have a higher sentence. Again we beg to disagree. The sentence that this
17 Chamber must impose on Mr Ntaganda has to be based on his own culpability and his own actions.

18 If I move to the legal representatives of the attacks, I have two comments by way of introduction.

19 The first one is, clearly, my colleague mixes apples and oranges. There a distinction to be made
20 between gravity and aggravating factor and in this case what we have heard from my colleague is
21 a mix where what is submitted as aggravating factors has to go to gravity. And that is very important
22 when the time comes to determine the sentence.

23 The second issue is of course, my colleague representing the victims of the attacks stands apart from
24 his other colleagues in request a life sentence to be imposed on Mr Ntaganda.

25 Well, I just note at least that amongst his own, the persons that he represents, this is not a majority

1 view, and he said this this morning. And that is, Mr President, we believe, important.

2 So that's in terms of introduction.

3 Allow me to put the overview of the Defence position with respect to the sentence.

4 First of all, we do not deny that the gravity of the crimes for which Mr Ntaganda was convicted is high.

5 Looking at the number of convictions, however, is misleading. It does appear bad to look at 18 counts

6 and 18 convictions and convicted of everything. It does look bad when you look *prima facie*. But

7 when you sit down and look at a concrete assessment of the gravity based on the actual findings

8 adopted beyond a reasonable doubt, it reveals, in our respectful submission, a different picture.

9 What is more, the personal circumstances of Mr Ntaganda - which of course we stand apart from what

10 we have heard this morning - allow to assess the culpability of Bosco Ntaganda in a different light.

11 As mentioned at the beginning, we also take issue with the Prosecution submissions regarding the

12 existence of aggravating factors. We do not believe that there are aggravating factors, despite the high

13 gravity of some of the crimes.

14 More importantly, Mr President, we say that there are very powerful mitigating circumstances which

15 strongly militate in favour of a sentence below the maximum provided in Article 77(a) of the Statute.

16 I move to the first part of my presentation, and that is the gravity of the crimes. Gravity, Mr President,

17 must be assessed, of course, concretely on the basis of the nature and degree and participation of the

18 convicted person. And, of course, his degree of intent.

19 Once again, what really matters is the Chamber's findings beyond reasonable doubt. The temptation

20 to extrapolate - as we have heard this morning - from these findings must be resisted.

21 In Katanga sentencing judgment, it is clear that only those facts which are proved beyond reasonable

22 doubt may be taken into account to convict or as aggravating circumstances. That is why

23 the Chamber should, or must even, according to the Appeals Chamber, set out the exact scale of the

24 crimes committed in that -- or the crimes that will be taken into consideration for sentencing purposes.

25 Regarding the gravity, the Defence submits the following:

1 First of all, we must establish a distinction between the first operation and the second operation, which
2 is something that has been omitted this morning. This does not detract from the Chamber's finding
3 that both operations were part of one conduct. And that was of course in the judgment at 793 and
4 838.

5 But there is a clear distinction to be made. The Trial Chamber's finding reflects a degree of
6 participation in the second operation which is much less than the degree of involvement of
7 Mr Ntaganda in the first operation.

8 Now, why is that significant? Well, because it is important because the scale of violence during the
9 second operation - as found by the Trial Chamber - was much greater than in the first operation.

10 We look at the findings of the Trial Chamber for the second operation:

11 Trial Chamber found that Mr Ntaganda participated in two planning meetings for the second
12 operation.

13 Mr Ntaganda gave instructions concerning the allocation of tasks and where to obtain ammunition
14 way before that second operation.

15 The Trial Chamber found that Mr Ntaganda was monitoring the unfolding of the second operation and
16 that he had a general awareness of the operation, along with other FPLC operations undertaken at the
17 time.

18 On this basis the Trial Chamber also found that Mr Ntaganda exercised oversight over the unfolding of
19 the second operation, but indirectly by reinforcing the chain of command.

20 Trial Chamber indicated that it could not find that Mr Ntaganda was present in the theatre of
21 operations.

22 And also, noting the lack of any specific examples, the Chamber found that Mr Ntaganda -- could not
23 find that Mr Ntaganda had supervised the second operation.

24 Who supervised the second operation? Floribert Kisembo and Salumu. According to the findings of
25 the Trial Chamber.

1 Now that makes a huge difference in terms of the degree of intent and the degree of participation of
2 Mr Ntaganda in the second operation.

3 The degree of intent, which can be identified for the second operation on the basis of the use of terms
4 such as *kupiga na kuchaji*, which according to the Trial Chamber reflects the intent of Bosco Ntaganda.

5 But his real intent for the second operation would be based, according to the Trial Chamber, on the fact
6 that he intended the troops to continue with the same criminal conduct during the course of the second
7 operation as was the case for the first.

8 But what is significant is that, although Mr Ntaganda learned of the Kobu massacre or the killings in
9 Kobu shortly before 6 March 2003, and would have said words that he kind of agreed with what had
10 happened, the Chamber did not make a finding that he had any advance knowledge of what was about
11 to take place during that operation and no advance knowledge of the killings that took place in Kobu.

12 Unfortunately, the Chamber also held that it was unnecessary for the purpose of liability to determine
13 exactly when Mr Ntaganda learned about the Kobu massacre. Well, maybe for liability, Mr President,
14 but for the purpose of imposing a sentence, it is significant to know when Mr Ntaganda learned of
15 those events.

16 The Trial Chamber's findings on the degree of participation in the second operation do not lead to the
17 entrance that he had any direct advance knowledge or that he ordered any of the crimes that took place
18 during the second operation. So when we look at degree of participation that is indeed significant.

19 Crimes of property, of course, another issue is -- are generally of less gravity or lesser gravity than
20 crimes against person or crimes of violence. It is therefore useful in assessing Mr Ntaganda's
21 culpability to look at the gravity of the crimes of violence and, let's say, we begin by looking at what
22 happened in the case that can be compared to other cases so that we have at least some basis of
23 comparison.

24 Looking at the first operation, the careful review of the findings of the Chamber reveals that there were
25 11 specific murders in the context of the first operation, plus an unspecified number of other killings

1 during *ratissage* operation. But of course we have no exact figure there, so we do not know how many
2 above the 11.

3 With respect to rape, the Trial Chamber found six rapes occurred in the immediate aftermath of the
4 first operation, and there would have been four attempted killings.

5 As for the second -- now, the first operation is the one that Mr Ntaganda had the more significant
6 involvement in. But when we look at the second operation, then we see that the number of murders
7 identified by the Trial Chamber is 62, which is, of course, much higher in the second operation than in
8 the first.

9 And when we look at the number of rapes, there would have been nine found by the Trial Chamber,
10 plus some men at Kobu, and an unspecified number of women and girls. And again, four attempted
11 murders.

12 Comparing the two, we cannot put them, lump them together to identify the culpability of
13 Mr Ntaganda, we must assess what he did in the first operation and what he did in the second. And,
14 of course, we must also look to other cases in other international courts and tribunals as to how they
15 have assessed the gravity and the sentences that were imposed for various crimes.

16 Let me just give you a few examples to guide the Trial Chamber. In the Popović case before the ICTY,
17 that was a Srebrenica execution, 5,336 murders found beyond a reasonable doubt, and a finding of
18 genocide, and a life sentence awarded. This is in a league of its own and not even comparable to what
19 we have before us today.

20 Stakić, ICTY, 1,500 murder victims, and the sentence of Mr Stakić, initially life, was reduced to 40 years.

21 This is no, no link to the situation of Mr Ntaganda.

22 If I look at Dragomir Milošević, who was the commander of the Sarajevo forces for the siege of Sarajevo,
23 which lasted 15 months, he was sentenced to 33 years and, over a 15-month tenure as commander of
24 the area in Sarajevo. In that case, the Trial Chamber found 95 persons killed at a minimum, but noted
25 that in one month only of the 15, there had been 70 people killed.

1 Stanislav Galić, also for the siege of Sarajevo, looking at thousands of people injured and hundreds of
2 civilians killed, also was initially given a 20-year sentence which was then increased on appeal.

3 Milan Lukić, for direct perpetration, was found to have directly killed 132 person, he was given a life
4 sentence. Again, no common link with the situation of Mr Ntaganda.

5 In this case, the lesser degree of participation and intent in the second operation, where there are the
6 greater number of victims, is a significant factor.

7 Mr Ntaganda had no advance knowledge of what happened at the Bambu hospital, no advance
8 knowledge of what happened in Kobu.

9 On the other hand, he, Mr Ntaganda, was found guilty for killing one person himself and ordering the
10 killing of four others. We are not going to deny that, those are findings and those are crimes that are
11 of high gravity and we understand that.

12 Mr President, I could go on to move -- to look at also other types of crimes in order to assess the gravity,
13 and we will do so in our written submissions. But, for example, attacking civilians, this is a crime of
14 a much lesser gravity than a conventional crime of violence, because the Trial Chamber recognised that
15 no physical victim was required for a guilty finding under attacking civilians.

16 The indiscriminate attack is also a very interesting one, because the indiscriminate attack, although
17 Mr Ntaganda was found to have in -- targeted indiscriminately, this should be given lesser weight in
18 terms of assessing gravity. Why? Because the Trial Chamber itself, although it found that there was
19 indiscriminate targeting, the Trial Chamber found that there was serious difficulties in telling apart the
20 fighters, including the women and children who were fighting, and the fighters themselves. And that
21 is at paragraph 885 of the Trial Chamber judgment.

22 And the Chamber basically found that the UPC faced resistance in the attack on the town of
23 Mongbwalu from the APC, as well as Lendu fighters, both male and female, who took up arms
24 including arrows, knives, machetes, as well as firearms obtained from the APC and fought. The
25 Lendu fighters were not uniformly dressed, which made them difficult to identify, and included

1 women and children.

2 If I go to the crimes related to child soldier, it is significant, Mr President, that the Trial Chamber
3 should not take into account in assessing gravity any finding that does not relate to a person for whom
4 it was not established beyond reasonable doubt that the person was below 15 years of age.

5 In the Lubanga judgment, the Trial Chamber regularly referred to the enlistment, conscription and use
6 of children, including those under 15, and we could not tell whether there were -- how many of those
7 children were actually under 15.

8 Well, Mr President, 15 and above is not a crime and Mr Ntaganda cannot properly be sentenced for the
9 presence of children who would be 15, 16 or 17. The gravity must be limited to those who were
10 clearly under 15.

11 And we also have to really take into account, given the wording and the elements of the crime, which
12 is based on a should have known standard, that only those for which Mr Ntaganda was aware and that
13 the Chamber found that he was aware can be considered for the purpose of sentencing.

14 It was mentioned today that there were child soldiers in Mr Ntaganda escorts. Indeed, according to
15 the judgment, there were three of them, at a minimum, maybe more, but the finding of the Chamber is
16 that there were three of them.

17 Three out of how many? Mr Ntaganda had well over 100 escorts and he described in -- not only in his
18 testimony, but it is in the evidence, how the escorts were -- conducted their business on a daily basis
19 and how much contact he had with them. The Trial Chamber should not assess gravity on anything
20 other than the number for whom it can say that they were 15 beyond a reasonable doubt.

21 I stop here in terms of, in terms of the crimes, but I could also make arguments with respect to gravity
22 in respect of crimes of property, of pillage and also of forcible transfer. But, again, I urge the
23 Trial Chamber to limit its assessment of these crimes for the purpose of determining the sentence to its
24 own findings beyond a reasonable doubt.

25 But the conclusion on gravity, Mr President, is that if you compare with what we have heard this

1 morning, which regularly goes beyond findings beyond a reasonable doubt or regularly goes beyond
2 and extrapolates from these findings, the conclusion that we suggest to the Chamber is that the gravity
3 of Mr Ntaganda, despite the fact that it is high, is nowhere close to the submissions we have heard this
4 morning.

5 Second part, absence of aggravating factors:

6 The Prosecution mention four or five aggravating factors. We submit, Mr President, that these
7 examples that were -- these submissions given this morning do not amount to the aggravating factors.
8 They are, however, elements of the crime.

9 Now, I take one example, which is taking the goods looted by his soldiers. I am not sure if this
10 referred to the fact that goods were found in Mr Ntaganda's house or to something else, but we say
11 that this is not an aggravating factor.

12 Direct orders to target and kill civilians, Mr President, is an element of the crime, and this is not an
13 aggravating factor. It might raise gravity itself but is not an aggravating factor for the purpose of
14 sentencing.

15 Failure of Mr Ntaganda to protect the population and the women, page 19, lines 13 to 15, or failure to
16 punish, page 19, lines 23 to 25, are not, in our respectful submissions, aggravating factors.

17 One factor, however, that was raised this morning is indeed significant, and that is Mr Ntaganda who
18 would have abused his privileges at the Detention Centre to interfere with the administration of justice.

19 We submit, respectfully, Mr President, that this cannot be taken into consideration, for many reasons,
20 but the main one being there is no finding beyond a reasonable doubt that there was indeed some
21 interference with the administration of justice through these telephone calls.

22 The Prosecution led an investigation in parallel to this case that lasted throughout the case, that hurt
23 the proceedings and that really created a very difficult situation in order for the Defence to be able to
24 represent Mr Ntaganda.

25 They had access to all of Mr Ntaganda's non-privileged conversations, without any vetting, without

1 any surveillance. They had more information than the Defence had and now they will say that
2 Mr Ntaganda is the one who abused, when he was not charged with any offence based on that
3 investigation that lasted two years. This cannot be, Mr President, and we invite the Trial Chamber to
4 stay away from using the conversations of Mr Ntaganda or his right.

5 The fact that Mr Ntaganda did say that on some occasions he breached the rules, Mr Ntaganda was
6 honest enough to say that he did. But those rules and the fact that he breached those rules are not in
7 itself something that can be used for the purpose of sentence, whether in term for an aggravating
8 factor.

9 I move to the individual circumstances of Mr Ntaganda based on Rule 145(1)(b).

10 Some factors that we say are important - and we will say more in our written submissions - we have
11 the family of the convicted person. Mr Ntaganda is married and a father of seven children of a very
12 young age.

13 The age of Mr Ntaganda, Mr Ntaganda had indeed high responsibility at the time, but he was very
14 young in assuming these responsibilities.

15 His educational background is known to the Trial Chamber.

16 His social and economic condition is also known. The Registrar confirmed that he had no assets and
17 that, not only did he have no assets, that he was declared indigent for the purpose of this trial.

18 The Trial Chamber recognised that Mr Ntaganda lived through a genocide. Mr Ntaganda's family
19 was the victim of a genocide in Rwanda.

20 Mr Ntaganda fought against a discriminatory regime on at least two occasions, before the genocide and
21 during the genocide in Rwanda. You have heard his testimony to that effect.

22 The fact that Bosco Ntaganda ended up in Ituri was not directed, was not a choice he made. But once
23 he was there, his decision to join UPC and Mr Lubanga cannot be divorced from his past experiences.

24 The Trial Chamber recognise also at 782, paragraph, the fact that associating with his co-perpetrators,
25 according to the Trial Chamber, back in 2000 can only be properly evaluated in light of the catastrophic

1 fate that had befallen the Tutsi in Rwanda and Bosco Ntaganda's role in stopping a much greater
2 tragedy.

3 I come, Mr President, to the most important part of my submissions this morning, the mitigating
4 factors. Sometimes mitigating factors have a very little overall impact when you compare with
5 gravity. In this case we say that this is different.

6 Cooperation with the Court, I'm not going to be very long on that, but it is recognised that

7 Mr Ntaganda's behaviour in detention was exemplary at all times.

8 Mr Ntaganda's behaviour towards the Court, he was always cooperative with the Court.

9 Mr Ntaganda's cooperation with the Court through his testimony, we heard the Prosecution say today
10 that testifying in a strategic way cannot be taken to be a mitigating factor. Well, Mr Ntaganda was

11 there in front of you for hours and hours and hours responding to any questions that were put to him.

12 The fact that the Trial Chamber found his testimony not to be credible in certain circumstances does
13 not diminish the mitigating value of the fact that he did testify.

14 Some factual findings in the judgment are also mitigating circumstances in and of themselves. I refer

15 specifically to the Trial Chamber's finding that Mr Ntaganda saved the lives of 64 former APC soldiers

16 whom Kisémbó wanted to kill. What did he do? He created a centre for -- to convince these soldiers
17 to fight in the right way, and they were trained, and he used these soldiers. He saved their lives.

18 Mr Ntaganda protected Lendu civilians in and around Mandro. There doesn't appear to be a specific

19 discussion of these events in the judgment, but it does remain, Mr President, as valid mitigation
20 evidence.

21 Now, I come to mitigating evidence that we led during the past few weeks, and I draw your attention

22 to some of the witnesses that we put forward.

23 Witness 302, Witness 302 talked about lack of a discriminatory intent, spoke about Mr Ntaganda's

24 pacification attempts, spoke about reconciliation, spoke about the fact that when he left Ituri he was

25 even assisted by members of the Lendu community.

1 Witness D-20 gave concrete examples of demobilisation and integration of FPLC soldiers in the forces
2 of the national government FARDC, concrete example of demobilisation.

3 Witness D-302 talked about multi-ethnic -- now we are talking 2004, we are talking after the crimes, but
4 she did say that there was a multi-ethnic organisation called the *Mamans de l'UPC*, confirmed by
5 Witness 305.

6 And Witness 302 talked about public address by Mr Ntaganda to protect women, public addresses by
7 Mr Ntaganda to protect Maman, and also, also provided evidence with Bosco Ntaganda taking
8 measures to punish some, some rapes that would have been committed by some of his soldiers.

9 Witness 305 also spoke about multi-ethnic environment in which the Maman operated and in which
10 the APC operated, spoke about reconciliation, spoke about how Bosco Ntaganda assisted victims.

11 Herself, she was one of them, when she found her daughter, who had been kidnapped by a member of
12 the APC, by the intervention of Mr Ntaganda. And she also spoke of public addresses by
13 Mr Ntaganda.

14 I come to two very important witnesses.

15 First one is Witness 306, and that is, in our view, Mr President, the most important aspect of this -- of
16 our submissions today, because Witness 306's testimony rests on, if I can call it this way, real evidence,
17 video evidence.

18 Witness 306 is a member of the Lendu community. Witness 306 had the courage, despite ongoing
19 difficulties going on today in Ituri where ethnic violence is again starting, and he had the courage to
20 come here and to say what he and Mr Ntaganda did together in terms of reconciliation.

21 My colleague representing the victim of the attacks mentioned that why did he not go to Lipri and
22 Kobu? Well, I stand to be corrected, Mr President, but Witness 47 testified that one of the first
23 meetings of reconciliation did take place in Kobu. And he said that if Mr Ntaganda was not there,
24 well, he sent representative, which was his deputy Commander Linganga was there. He mentioned
25 a number of villages inhabited by members of the Lendu community.

1 Now, both -- I believe I think the three, my three colleagues on the other side, Prosecution and both
2 legal representatives, referred to the fact that the Chamber found that one of the intent of the UPC was
3 to basically chase all the Lendus away from Ituri and ensure that they would not return. We have to
4 live with this finding, Mr President, but clearly Mr Ntaganda must be a real fast learner because he
5 took into -- upon himself and within the UPC and we saw live demonstration on video of the Lendu
6 community, and the Hema community, and members of Lendu combatants, and FNI, and members of
7 UPC all together attending a rank-giving ceremony, attending festivities together.

8 Now, that must be assessed as being something that will lead to the protection of the civilian
9 population on both sides. This means that if there was bad conduct - and there were, according to the
10 Trial Chamber - but it did change and it did change quickly.

11 The Prosecution will say that this actually was a threat to peace and that this was against the will of
12 MONUC and the Prosecution did lead a number of MONUC documents in evidence to try and show,
13 on a one way, that MONUC did not agree with the fact that these people would get together. But
14 what is the real -- what is the reality, Mr President? Do we see those people getting along together
15 and living in peace and wanting to spread messages and making public speeches? Or do we see
16 a MONUC document by a lady hungry for power who decided that in 2004 Bosco Ntaganda would be
17 the devil?

18 Now I invite the Trial Chamber, Mr President, to look at all these documents, rumours, reports,
19 everything, not an iota of real evidence as to Mr Ntaganda's real involvement in these events.

20 My colleague from the Prosecution tried to say that when the lady in question, this is
21 Dominique McAdams from the MONUC, that when she met with Bosco Ntaganda the meeting was
22 tense.

23 Well, Mr President, I'm a former military and I would meet any member of the military and, believe me,
24 the meeting, I would feel the pressure and it would be a tense meeting, but that doesn't detract from
25 the fact that they did meet. And the result of that meeting was described by Witness D-47.

1 I move to demobilisation.

2 Demobilisation, again, the Prosecution would like you to believe that Mr Ntaganda was either an
3 obstacle to peace or that he did not do demobilisation.

4 Well, we know on the basis of the evidence that demobilisation did take place. So the question is:
5 Who did it? There were people in Bunia, there was the infighting in Bunia, there was the MONUC in
6 Bunia, there was political struggle in Bunia, there were rumours about Mr Ntaganda in Bunia. But
7 who organised these sites? When they say "*à l'intérieur*", *à l'intérieur* means back in the field, back
8 where the real life is happening.

9 Who organised the troops in the different sites so that they could be integrated in FARDC and that they
10 could be demobilised? Now, D-20, a witness who was considered to be credible in the Lubanga case,
11 he provided a statement and he said Mr Ntaganda said it is time for demobilisation. He put a group
12 together. He took the group to Bunia and they were demobilised. And he saw Ms McAdams there
13 and he got his demobilisation card.

14 The Prosecution, of course, the impact of those MONUC documents, for starters, can only serve to try
15 and oppose the evidence that we adduce in terms of demobilisation. It cannot in and of itself be used
16 for any type of aggravating factors. Aggravating factors must be linked to the crime and must be
17 proved beyond a reasonable doubt. That's not what we are talking about. All of these MONUC
18 documents when you will look at them, Mr President, you have to look into these documents whether
19 they are sufficient to say that demobilisation did not take place.

20 And we respectfully submit, Mr President, that on a balance of probabilities standard, sure,
21 demobilisation took place, and D-47 told you, he said to the Chamber, the guy who is doing it was
22 Bosco Ntaganda.

23 Whether Bosco Ntaganda was doing other activities, right or -- true or false, is beside the point. He
24 did work towards demobilisation, he did work towards the integration, he did multiply his actions of
25 reconciliation. And these, Mr President, are very powerful because you have to assess them in light of

1 your findings. It's a clear-cut contradiction; you want to erase the Lendus and you are partying with
2 the Lendus. This has got to be given maximum weight, and that our respectful submission,
3 Mr President.

4 I would like to move to -- in private session for my next submission, Mr President.

5 PRESIDING JUDGE FREMR: [12:03:51] All right.

6 Court officer, let's move into private session.

7 (Private session at 12.04 p.m.)

8 THE COURT OFFICER: [12:04:07] We're in private session, Mr President.

9 (Redacted)

10 (Redacted)

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(Open session at 12.08 p.m.)

1 THE COURT OFFICER: [12:08:45] We are back in open session, Mr President.

2 PRESIDING JUDGE FREMR: [12:08:56] Thank you, court officer.

3 Mr Bourgon, please proceed.

4 MR BOURGON: [12:09:00] Thank you, Mr President.

5 I come to the final part of my submission, and I was hoping to avoid that, but since my colleague

6 suggested the possibility of a life sentence, well we -- I want to simply submit to the Trial Chamber that

7 even thinking of a life sentence is not appropriate in this case. At least there will be one thing

8 on -- within which the Prosecution and the Defence will agree, so I think this is significant.

9 But imprisonment for life is not appropriate at all in this case, it has nothing to do with Mr Ntaganda.

10 The rationale for imprisonment for life in Article 77(a) or 77(b) talks about imprisonment for life only in

11 the presence of exceptional cases. Such extreme gravity is simply not present here. There is no

12 extreme gravity which warrants a life sentence. And of course I refer the Trial Chamber to what I said

13 earlier about the gravity assessment.

14 But why is so? When the states got together and did include the possibility of a life sentence, they did

15 two things:

16 First they agreed on a maximum of 30 years, because most states agreed that 30 years was the

17 maximum.

18 Some states wanted the death penalty, so in order to get these states on board, then the Trial Chamber

19 can see from the applicable commentaries, it was decided to add the possibility, in extreme cases, to

20 add life sentence.

21 But life sentence, we need to look at the proportionality of a life sentence. And the proportionality,

22 you need to look at cases such as those I referred to earlier, cases like Srebrenica genocide, 5,000 people

23 killed. Cases like before the ICTR for genocide in Rwanda, with thousands and thousands of people

24 killed.

25 This is not what we have here. Mr Ntaganda's gravity of the crimes for which he is convicted does

1 not match the most severe sentence that could be given.

2 Now, equality of sentences is a very, very important factor. Should the Trial Chamber even consider
3 the possibility of a life sentence, this would remove discretion from the judges to adjudicate and
4 impose punishment on crimes much more serious and of much more larger scale likely to come before
5 the Court.

6 This is not the right time. This is not the right case. And I was hoping to avoid this.

7 But also a life sentence needs to be envisaged in cases where rehabilitation is not even possible.

8 Mr President, I respectfully submit that when you look at Mr Ntaganda it is clear, based on the
9 mitigating evidence that was submitted to this Chamber, that rehabilitation, if it's not done already, is
10 certainly something that is well in the works and is not a candidate for a life sentence, despite the fact
11 that a life sentence calls for a review after 25 years.

12 Again I come back on life sentence, according to the commentaries, should be reserved also for people
13 of the highest seniority level, for the presidents, for the politicians, for the big leaders, not for people
14 like Bosco Ntaganda. And, of course, the strength of the mitigation evidence in and of itself should
15 convince the Chamber not even to look at the -- not even to consider a life sentence.

16 On the other hand, the strong mitigating evidence, the powerful mitigating circumstances, despite the
17 high gravity of the crimes, and we do not deny the high gravity of the crimes, strongly militate in
18 favour of a sentence below the maximum provided in Article 77(a), below 30 years. We are not going
19 to put a number, the Chamber can put its own number. But it is not a case for a 30-year sentence and
20 it is not a case for a life sentence.

21 This concludes my submissions this morning, Mr President, and I thank the Trial Chamber for listening.

22 Unless of course you have any questions.

23 PRESIDING JUDGE FREMR: [12:14:15] I don't have. Thank you very much, Mr Bourgon.

24 MR BOURGON: [12:14:17] Thank you.

25 PRESIDING JUDGE FREMR: [12:14:34] And now, as we already indicated, it is time for

1 Mr Ntaganda.

2 Mr Ntaganda, you have right for the final statement or final say, final add. You have the floor.

3 THE INTERPRETER: [12:15:14] The Presiding Judge may wish to turn off his microphone.

4 MR NTAGANDA: [12:15:29] (Interpretation) Your Honours, subsequent to the decision that you

5 handed down on 8 July of this year, it is not easy for me to speak to you, but out of respect and in light

6 of the outcome of my trial it was quite clear to me that I should speak to the Bench today.

7 Your Honours, ever since the beginning of my trial I have addressed the Bench three times. The first

8 time was at the beginning of my trial. At that time, you did not know me very well. I told you that

9 I was a revolutionary, but not a criminal. At that time, I told you that I was aware of the negative

10 portrayals of myself on the internet and I added that these were lies, unfounded lies. At that time, I

11 asked you to carefully assess the evidence against me and to pay no regard to the falsehoods that were

12 provided by a number of witnesses who had their own personal reasons for testifying.

13 I told you about my reasons for my involvement with the UPC in the events of 2002 and 2003 in Ituri,

14 2002 and 2003.

15 Your Honours, I take this opportunity to speak to you now at the end of this trial. Rather, I had

16 an opportunity to speak to the Bench at the very end of the proceedings at the end of my trial, and that

17 time I said that I am a Congolese person and my aim has always been to set in place the conditions that

18 would allow all the people of the Congo, without distinction, to live in peace and harmony. I also told

19 the Bench that you were my last form of recourse and that I was confident that you would be able to

20 carefully weigh the testimony heard during my trial and you would be able to distinguish between the

21 falsehoods and the truth.

22 Between these two times, your Honours, I spoke to you during my own testimony, testimony that

23 lasted several weeks. For more than 120 hours I testified in court. I answered all the questions that

24 were put to me, either by my counsel, by the Prosecutor or from you yourselves. As I had an

25 opportunity to tell you already, I said quite clearly that I -- well, that everything that I did between

1 2002 and 2003, and I could even say that this was an edifying experience for me and that I very much
2 appreciated it. I could add that I would have liked for you to have asked me other questions so that
3 you should better understand the events that unfolded.

4 Your Honours, today, even though you have found me guilty, I do not hesitate to tell you I stand by
5 what I said during my testimony, which lasted more than 120 hours, and I wish to plainly state that
6 what I said was the truth.

7 However, it is very much a shame that you did not find my testimony to be credible, which led to the
8 decision that you handed down. And that is why, as you know, I have asked my Defence team to file
9 an appeal. I availed myself of this right, hoping that that decision would not have a negative impact
10 on the sentence.

11 Your Honours, today I turn to you, I speak to you. Yet, at the same time, I speak to my wife, my
12 mother, my family members, and to all the people of the Ituri region. I speak to all the soldiers with
13 whom I served in Ituri to rebuild the Congo, a country inhabited by Congolese people from all ethnic
14 origins, where people can live together in peace.

15 I wish to also express my deep compassion for all the victims from all the ethnic groups who suffered
16 during the conflicts that have devastated the Congo during this period of time, namely 2002 and 2003,
17 conflicts which still continue.

18 It is my hope that the newly-elected government will be able to put the Congo back on the proper path
19 for the well-being, safety and reconciliation of all Congolese people. I have confidence in the new
20 government and I shall not hesitate to cooperate with them. I hope that we meet these aims.

21 Your Honours, I thank you for giving me the opportunity to speak to you for a fourth time. I thank
22 you.

23 PRESIDING JUDGE FREMR: [12:23:28] Thank you, Mr Ntaganda.

24 So it means that we completed oral submissions on sentencing. Parties know, but, rather, for
25 information of public, I have to add that those oral submissions will be followed by written

1 submissions. Deadline and timeline for written submissions is 30 September, the page limit is 60

2 pages for Defence, 50 pages for the Prosecution and 25 pages each for the legal representatives.

3 And potential responses are expected by 8 October and the page limits for them is 35 pages for Defence,

4 25 pages for Prosecution and 15 pages each for the legal representatives.

5 Then we will, the Chamber will thoroughly consider those written submissions, together with today's

6 oral submissions, and I believe in due course we will deliver our decision on sentence.

7 So that's it for today. I thank all of you for your productive contribution, and court is adjourned.

8 THE COURT USHER: [12:25:00] All rise.

9 (The hearing ends in open session at 12.25 p.m.)