

1 International Criminal Court
2 Appeals Chamber
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 Howard Morrison, Judge Chile Eboe-Osuji, Judge Piotr Hofmański,
6 Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa
7 Appeals Chamber Judgment - Courtroom 1/Interactio
8 Tuesday, 30 March 2021
9 (The hearing starts in open session at 3.01 p.m.)
10 THE COURT USHER: [15:01:14] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE MORRISON: [15:01:30] Thank you.
14 Good afternoon to everybody.
15 Would the court officer please call the case.
16 THE COURT OFFICER: [15:01:54] Thank you, Mr President.
17 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
18 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
19 And for the record, we are in open session
20 PRESIDING JUDGE MORRISON: [15:02:09] Thank you.
21 My name is Howard Morrison and I am the Presiding Judge in the appeals arising
22 from the case of the Prosecutor against Bosco Ntaganda.
23 My fellow judges comprising the full Bench in this appeal are Judge Hofmański and
24 Judge Luz del Carmen Ibáñez Carranza, who join me in the courtroom today, and
25 Judge Solomy Balungi Bossa and Judge Chile Eboe-Osuji, who join us through

1 video link.

2 May I ask the parties and participants to introduce themselves for the record, please,
3 starting with the Defence.

4 MR BOURGON: [15:02:47](Microphone not activated)

5 THE INTERPRETER: [15:03:07] Microphone. Microphone, please. The
6 interpreters cannot hear you.

7 The English booth cannot interpret in the absence of a microphone.

8 PRESIDING JUDGE MORRISON: [15:03:26] *Merci*.

9 Office of the Prosecutor, please.

10 MS BRADY: [15:03:30] Good afternoon, your Honours. Appearing for the
11 Prosecution are myself, Helen Brady, senior appeals counsel, and I'm here today with
12 senior trial lawyer, Ms Nicole Samson, and appeals counsel, Ms Meritxell Regue and
13 Mr Matthew Cross and Mr Matteo Costi and Mr George Mugwana. Thank you very
14 much.

15 PRESIDING JUDGE MORRISON: [15:03:57] Thank you.

16 And now the Legal Representative of Victims, please.

17 MS PELLET: [15:04:03](Interpretation) Thank you, your Honour. The former child
18 soldiers are represented by myself, Sarah Pellet, counsel with the Office of Public
19 Counsel for Victims.

20 PRESIDING JUDGE MORRISON: [15:04:14] Thank you.

21 I note that Mr Ntaganda --

22 MR SUPRUN: [15:04:14] Mr President --

23 PRESIDING JUDGE MORRISON: -- is also present in the courtroom.

24 MR SUPRUN: [15:04:18] Excuse me, Mr President, can I introduce myself, please.

25 Good afternoon, Mr President, your Honours. The victims of the attacks are

1 represented today by myself, Dmytro Suprun, counsel at the Office of Public Counsel
2 for Victims. Thank you.

3 PRESIDING JUDGE MORRISON: [15:04:31] Thank you.

4 Now today the Appeals Chamber is delivering two judgments: The first judgment
5 in relation to the appeals of Mr Bosco Ntaganda and the Prosecutor against the
6 decision of Trial Chamber VI of 8 July 2019, which convicted him of war crimes and
7 crimes against humanity; and the second one in relation to the appeal of Mr Ntaganda
8 against the sentencing decision of Trial Chamber VI of 7 November 2019, which
9 sentenced him to a joint sentence of 30 years' imprisonment.

10 I will refer to these decisions as the Conviction Decision and the Sentencing Decision.

11 I shall first address the appeals against the Conviction Decision, starting with the
12 procedural background.

13 On 8 July 2019, the Trial Chamber rendered the Conviction Decision, in which it
14 found Mr Ntaganda guilty of five counts of crimes against humanity, murder and
15 attempted murder, rape, sexual slavery, persecution, forcible transfer and deportation;
16 and 13 counts of war crimes, murder and attempted murder, intentionally directing
17 attacks against civilians, rape, sexual slavery, pillage, ordering the displacement of
18 the civilian population, conscripting and enlisting children under the age of 15 into an
19 armed group and using them to participate actively in hostilities, intentionally
20 directing attacks against protected objects, and destroying the adversary's property.

21 The Trial Chamber found Mr Ntaganda was guilty as an indirect co-perpetrator for all
22 crimes charged and as a direct perpetrator for one act of murder, constituting a crime
23 against humanity and a war crime, as well as an underlying act of persecution as
24 a crime against humanity.

25 Today's judgment by the Appeals Chamber addresses the appeals against the

1 Conviction Decision of both Mr Ntaganda and the Prosecutor. In his appeal brief,
2 Mr Ntaganda raises 15 grounds of appeals challenging the fairness of the proceedings
3 and arguing that the Trial Chamber committed several errors of law, fact and
4 procedure. In her appeal brief, the Prosecutor raises two grounds of appeal
5 challenging the Trial Chamber's interpretation of the term "attack" in Article 8(2)(e)(iv)
6 of the Statute, intentionally directing attacks against protected objects.
7 In relation to some of his challenges, Mr Ntaganda requests that the
8 Appeals Chamber order a new trial or a permanent stay of proceedings and, in
9 relation to others, that it reverse his conviction. The Prosecutor asks the
10 Appeals Chamber to enter additional and limited findings of fact and to convict
11 Mr Ntaganda for two additional incidents.
12 In the first ground of appeal, Mr Ntaganda challenges Judge Kuniko Ozaki's judicial
13 independence under Article 40(2) of the Statute.
14 The Appeals Chamber considers that the legal framework of the Court does not
15 provide for any appeal against a decision taken by an absolute majority of the judges
16 under Article 40 of the Statute to the Appeals Chamber. While Judge Eboe-Osuji
17 does not concur with this reasoning, he concurs with the Appeals Chamber's ultimate
18 outcome. The Appeals Chamber emphasises judicial independence of judges is at
19 the core of the Court's legal framework to safeguard the general integrity of the
20 proceedings before the Court. It is for this reason that the Statute provides for
21 a specific mechanism in Article 40, which focuses on this subject matter and sets out
22 the procedure to follow should an issue about the independence of a judge arise.
23 This procedure has been followed in the present case.
24 The Appeals Chamber considers, however, that an appellant may still raise on appeal
25 matters affecting the fairness of the proceedings. In that regard, the

1 Appeals Chamber notes that Article 81(1)(b)(iv) of the Statute expressly provides the
2 convicted person, or the Prosecutor on his or her behalf, with the possibility to raise
3 a ground that affects the fairness or reliability of the proceedings or decision.
4 In the present case, Mr Ntaganda neither presents arguments challenging the fairness
5 or reliability of the Conviction Decision under that provision, and therefore the
6 Appeals Chamber dismisses the first ground of appeal.
7 Judge Ibáñez, while agreeing with the outcome of the Appeals Chamber, disagrees
8 with its reasoning insofar as it concludes that the issue of judicial independence is not
9 appealable before the Appeals Chamber. In her view, Mr Ntaganda has a right to
10 raise any issue which may have affected the fairness of the proceedings pursuant to
11 Article 81(1)(b)(iv) of the Statute. However, Judge Ibáñez finds that Mr Ntaganda
12 has failed to show a material effect of the lack of independence of Judge Ozaki.
13 Judge Eboe-Osuji is of the view that the Appeals Chamber is not precluded from
14 considering the issue of Judge Ozaki's independence just because it was already
15 determined by the plenary of judges. However, after having examined
16 Mr Ntaganda's arguments, Judge Eboe-Osuji would still confirm the conclusion of the
17 plenary of judges that on the independence of Judge Ozaki and reject the ground of
18 appeal.
19 In his second ground of appeal, Mr Ntaganda submits that his right to a fair trial was
20 violated because (i) the Trial Chamber resorted, in an excessive manner, to ex parte
21 material; and (ii) the Prosecutor failed to disclose Mr Ntaganda's non-privileged
22 conversations from the detention centre, to which she had gained access, and the Trial
23 Chamber did not take measures to mitigate the prejudice that resulted from these
24 disclosure violations; (iii) that the Trial Chamber failed to suspend the proceedings
25 prior to the resolution of the no case to answer appeal; and (iv) that the Trial Chamber

1 prioritised expeditiousness at the expense of Mr Ntaganda's right to a fair hearing.

2 Regarding the first challenge, the Appeals Chamber finds that, while resort to ex parte
3 proceedings should be limited, in the present case Mr Ntaganda received sufficient
4 notice of the content of the relevant ex parte submissions. Furthermore, the
5 Trial Chamber took adequate measures to counterbalance potential prejudice.

6 Regarding the second challenge, the Appeals Chamber finds no error in the
7 Trial Chamber's reliance on the risk of prejudice to the Prosecutor's investigation, as
8 well as on the protection of witnesses, as reasons for withholding parts of the relevant
9 material from disclosure. The Appeals Chamber notes that, in the Trial Chamber's
10 assessment, prejudice to Mr Ntaganda was limited and that it took measures to
11 protect the rights of Mr Ntaganda.

12 Regarding the third challenge, the Appeals Chamber finds that Mr Ntaganda has not
13 demonstrated that the Trial Chamber erred in not suspending the proceedings prior
14 to the resolution of his appeal against the decision denying leave to file his no case to
15 answer motion.

16 With respect to the fourth challenge, the Appeals Chamber finds that Mr Ntaganda
17 has not demonstrated that the Trial Chamber prioritised expeditiousness at the
18 expense of his right to a fair hearing.

19 Therefore, the Appeals Chamber rejects the second ground of appeal.

20 Under the third ground of his appeal, Mr Ntaganda submits that the Trial Chamber
21 erred in convicting him of criminal acts that were outside the scope of the charges.

22 The Appeals Chamber finds that it is not necessarily inconsistent with Article 74(2) of
23 the Statute for the Prosecutor to formulate and for the Pre-Trial Chamber to confirm
24 charges that do not consist of an exhaustive list of individual criminal acts. The
25 Appeals Chamber finds that the criminal acts which Mr Ntaganda challenges under

1 this ground of appeal were included in the confirmed charges and that, therefore, the
2 Trial Chamber did not err in convicting Mr Ntaganda of those acts, as they do not
3 exceed the facts and circumstances described in the charges.

4 The Appeals Chamber therefore rejects the third ground of appeal.

5 In his fourth and fifth grounds of appeal, Mr Ntaganda challenges the Trial
6 Chamber's finding that an attack had been directed against a civilian population
7 pursuant to, or in furtherance of, an organisational policy.

8 In particular, under the fourth ground of appeal, Mr Ntaganda disputes the findings
9 that the UPC/FPLC had a policy to attack and chase away Lendu civilians as well as
10 those who were perceived as non-Iturians. He argues that the Trial Chamber erred
11 in its assessment of the evidence relied upon to establish this policy.

12 For reasons that are fully set out in the judgment and following careful review of the
13 Trial Chamber's evidentiary assessment, the Appeals Chamber rejects this challenge
14 and finds that the Trial Chamber's overall conclusion concerning the existence of an
15 organisational policy is reasonable. Mr Ntaganda also argues that the Trial Chamber
16 erred in finding that the UPC/FPLC was an organisation prior to 9 August 2002.

17 However, he fails to identify any material impact of the alleged error. And,
18 accordingly, this argument is dismissed *in limine*.

19 Under the fifth ground of appeal, Mr Ntaganda challenges the Trial Chamber's
20 finding that an attack was directed against a civilian population. In particular, he
21 alleges that the Trial Chamber failed to find that a civilian population was the
22 primary object of the attack and did not accord sufficient weight to the legitimate
23 purpose of the six military operations during which the attack was committed.

24 He also argues that the Trial Chamber wrongly limited its analysis of the evidence to
25 six military operations and failed to consider relevant evidence regarding other

1 UPC/FPLC operations. Finally, he submits that it was an error to find that orders to
2 attack civilians were issued.

3 For reasons that are fully set out in its judgment, the Appeals Chamber finds that
4 Article 7 of the Statute requires a finding that the attack was directed against any
5 civilian population and does not require a separate finding that the civilian
6 population was the primary object of the attack. This means no more than that the
7 attack targeted the civilian population; it need not be established that the main aim or
8 object of the relevant acts was to attack civilians. An attack directed against
9 a civilian population may also serve other objectives or motives. The question of
10 whether an attack was directed against a civilian population is essentially a factual
11 issue that may be assessed by considering, *inter alia*, the means and method used in
12 the course of the attack, the status of the victims, their number, the discriminatory
13 nature of the attack, the nature of the crimes committed in its course, the resistance to
14 the assailants at the time, and the extent to which the attacking force may be said to
15 have complied or attempted to comply with the precautionary requirements of the
16 laws of war.

17 Taking into account the foregoing, the Appeals Chamber finds that the Trial Chamber
18 properly directed itself as to the relevant considerations and reasonably concluded
19 that the attack was directed against a civilian population.

20 The Appeals Chamber also concurs with the Trial Chamber's view that the
21 requirement that the acts form part of a course of conduct indicates that Article 7 of
22 the Statute is meant to cover a series or overall flow of events, as opposed to a mere
23 aggregate of random or isolated acts. The Appeals Chamber considers that this does
24 not require an analysis of the totality of the activities and military operations of a state
25 or organisation to establish that there was a course of conduct involving the multiple

1 commission of acts referred to in Article 7(1) or that the attack targeted a civilian
2 population.

3 After a careful review of the Trial Chamber's findings and the evidence relied upon,
4 the Appeals Chamber concludes that its conclusions that orders to attack civilians had
5 been issued and that an attack against the civilian population took place was
6 reasonable.

7 On the basis of the foregoing, the Appeals Chamber rejects Mr Ntaganda's fourth and
8 fifth grounds of appeal.

9 Judge Ibáñez and Judge Eboe-Osuji have set out their views on aspects of the legal
10 requirements for the contextual elements of crimes against humanity in separate
11 opinions.

12 Under the sixth ground of appeal, Mr Ntaganda argues that territorial control is
13 a condition of ordering displacement of the civilian population under Article
14 8(2)(e)(viii) of the Statute and that the Trial Chamber therefore erred by relying on
15 orders issued during the conduct of hostilities but prior to the relevant territory
16 falling under the control of the UPC/FPLC to found the conviction for this crime.

17 The Appeals Chamber notes that there is no explicit requirement in Article 8(2)(e)(viii)
18 of the Statute, the Elements of Crimes, Article 17 of the Additional Protocol II, or
19 customary international humanitarian law that, to order the displacement of the
20 civilian population in the context of a non-international armed conflict, the
21 perpetrator must be in occupation of, or exercise territorial control over, the relevant
22 area. While the Appeals Chamber accepts Mr Ntaganda's argument that Article 49
23 of the Fourth Geneva Convention may provide useful guidance in interpreting
24 Article 17 of Additional Protocol II to the extent that similar language is used, the
25 fundamental differences between the two provisions mean that the requirements for

1 one cannot simply be transposed into the other.

2 In view of these differences, the Appeals Chamber cannot accept Mr Ntaganda's
3 arguments that Article 8(2)(e)(viii) of the Statute should be interpreted as requiring
4 territorial control in accordance with the requirements of Article 49 of the Fourth
5 Geneva Convention.

6 With respect to Mr Ntaganda's argument that civilians must be within the
7 perpetrator's power and control in order to give effect to the order to displace and
8 that therefore territorial control is a requirement under Article 8(2)(e)(viii) of the
9 Statute, the Appeals Chamber considers that whether the person is in a position to
10 give an effect to an order to displace the civilian population is a question of fact that
11 depends primarily on the position occupied by the accused person and his or her
12 duties and responsibilities, including the ability to ensure compliance with his or her
13 orders.

14 Given that the Trial Chamber's analysis of this element focused on the perpetrators'
15 positions of authority and power to ensure compliance with their orders, the
16 Appeals Chamber can find no error in the approach.

17 In view of the foregoing, the Appeals Chamber rejects Mr Ntaganda's argument that
18 territorial control is a condition of ordering displacement as a war crime under
19 Article 8(2)(e)(viii) of the Statute, and the sixth ground of appeal is therefore rejected.

20 Under the seventh ground of appeal, Mr Ntaganda challenges the Trial Chamber's
21 assessment of his own testimony, arguing that it rejected his testimony when it
22 contradicted Prosecution evidence and thus reversed the burden of proof.

23 The Appeals Chamber considers that the credibility, reliability, and weight of defence
24 evidence falls to be assessed in the same manner as evidence presented by the
25 Prosecutor. It finds that the Trial Chamber properly assessed the credibility of

1 Mr Ntaganda's testimony in light of the evidentiary record as a whole and resolved
2 inconsistencies in that evidence. There is no indication that, in doing so, it reversed
3 the burden of proof.

4 Mr Ntaganda also argues that the Trial Chamber should have considered the fact that
5 he testified before other Defence witnesses in his favour. The Appeals Chamber
6 finds that the Trial Chamber has discretion in how it considers the timing of the
7 accused's testimony and that the argument that it should have considered the timing
8 of Mr Ntaganda's testimony favourably is unjustified.

9 Also under the seventh ground of appeal, Mr Ntaganda argues that the
10 Trial Chamber wrongly rejected the evidence of one of his former bodyguards,
11 D-0017, in its entirety because it found that it lacked any credibility. The
12 Appeals Chamber is not persuaded by this argument; it considers that the
13 Trial Chamber weighed D-0017's evidence against the other evidence on the record
14 and rejected it on a reasoned basis.

15 Finally, under this ground, Mr Ntaganda argues that the Trial Chamber wrongly
16 relied on the prior recorded statements of two witnesses to enter convictions
17 against him.

18 The majority of the Appeals Chamber considers that there is no legal impediment to
19 prior recorded testimony admitted pursuant to Rule 68(2) of the Rules being relied
20 upon to establish individual criminal acts in circumstances in which they are not the
21 direct acts of the accused. However, prior recorded testimony must not form the
22 sole or decisive basis for the conviction for a particular crime as such. Other
23 instances of similar criminal acts must be established on the basis of oral testimony so
24 that the right of the accused to challenge the evidence grounding his conviction for
25 that crime is not prejudiced.

1 In relation to the prior recorded statements that were the subject of Mr Ntaganda's
2 complaint, the Appeals Chamber considers that they were not the sole or decisive
3 basis for the Trial Chamber to enter convictions against Mr Ntaganda. And,
4 therefore, the Trial Chamber rejects the seventh ground of appeal.

5 Judge Eboe-Osuji is unable to concur with the majority's determinations regarding the
6 use of prior recorded statements for the purposes of conviction and considers that the
7 Trial Chamber erred in relying on unsworn statements that speak to the acts and
8 conduct of those through whom Mr Ntaganda was found to have committed the
9 crimes in question.

10 Under his eighth ground of appeal, Mr Ntaganda challenges the Trial Chamber's
11 findings in relation to six discrete events during which crimes were committed by the
12 UPC/FPLC. Mr Ntaganda argues that the Trial Chamber's assessment of the
13 evidence with regard to those six events was tainted by its reliance on the
14 uncorroborated testimony of accomplice witnesses, namely, P-768, P-963, and P-17.
15 I will not provide a detailed summary of the Appeals Chamber's assessment of the
16 evidence. For present purposes, it suffices to say that the Trial Chamber was aware
17 of the general standards applicable to the assessment of witnesses' credibility,
18 including those concerning accomplice witnesses, and provided sufficient reasoning
19 to support its reliance on the evidence of these witnesses. It is the view of the
20 Trial Chamber -- it is the view that the Trial Chamber provided a reasonable
21 assessment of the evidence of P-768, P-963, and P-17.

22 Accordingly, the eighth ground of appeal is rejected.

23 I now come to the ninth and twelfth grounds of appeal.

24 Under the ninth, tenth, eleventh and twelfth grounds of appeal, Mr Ntaganda submits
25 that the Trial Chamber erred in finding that individuals under the age of 15 years

1 were used as escorts, were enlisted in the UPC/FPLC and actively participated in the
2 hostilities; that it was unreasonable for the Trial Chamber to find that incidents of
3 rape and sexual enslavement occurred or that Mr Ntaganda knew about these
4 incidents based upon the testimony of P-0758, P-0883 and the testimony of a number
5 of witnesses regarding the rape of a person named Mave; and that the Trial Chamber
6 erred in inferring that he intended and knew that individuals under the age of 15
7 would be, or were being recruited or conscripted into the UPC/FPLC and, thereafter,
8 used to participate actively in hostilities.

9 For reasons that are fully set out in the judgment, the Appeals Chamber finds that the
10 Trial Chamber provided a reasonable assessment of the evidence of the relevant
11 witnesses when making the impugned findings regarding the use of individuals
12 under the age of 15 within the UPC/FPLC and Mr Ntaganda's knowledge of incidents
13 of rape and sexual enslavement of individuals under the age of 15, including the rape
14 of Mave, and about the recruitment and conscription of individuals under the age of
15 15 into the UPC/FPLC.

16 On the basis of the foregoing, the Appeals Chamber rejects Mr Ntaganda's ninth,
17 tenth, eleventh and twelfth grounds of appeal.

18 The remaining grounds of appeal relate to the mode of responsibility of indirect
19 co-perpetration.

20 Both Judge Eboe-Osuji and I entertain considerable reservations concerning the
21 application and scope of the Trial Chamber's judgment in respect of Mr Ntaganda's
22 criminal responsibility in utilising the theories of indirect co-perpetration and control
23 of the crime. They are set out in our separate opinions. In our view, the issues and
24 scope of the application of indirect co-perpetration and control of the crime theories
25 are not settled in international criminal law. My reservations do not lead me to

1 conclude that the Conviction Decision needs to be set aside because of the limits of
2 appellate review and because the Trial Chamber was expressly following the earlier
3 jurisprudence of the Court, which was apparent to the appellant. On the other hand,
4 Judge Eboe-Osuji's reservations lead him to conclude that Mr Ntaganda's conviction
5 should be set aside insofar as it is based on the theory of indirect co-perpetration.
6 He would, however, confirm the conviction for those crimes that he considers
7 Mr Ntaganda to have directly committed.

8 Judge Ibáñez also writes separately in support of the theory of indirect
9 co-perpetration and control of the crime. In her view, indirect co-perpetration is
10 a mode of liability enshrined in Article 25(3)(a) of the Rome Statute that constitutes
11 one of the most appropriate tools to deal with the type of mass criminality associated
12 with international crimes under the jurisdiction of this Court.

13 Under the thirteenth ground of appeal, Mr Ntaganda raises a number of arguments
14 aimed at demonstrating that the Trial Chamber erred in its approach to the common
15 plan and the crimes committed in implementation of this plan.

16 The Appeals Chamber is of the view that, contrary to Mr Ntaganda's argument, the
17 Trial Chamber's finding that the co-perpetrators meant the destruction and
18 disintegration of the Lendu community was not an expansion of the common plan
19 charged by the Prosecutor.

20 Regarding the evidence upon which the Trial Chamber relied to make findings in
21 relation to the meeting that took place in Kampala in June 2002, Mr Ntaganda has not
22 demonstrated that this evidence is contradictory and insufficient to sustain a finding.
23 The Appeals Chamber also finds that Mr Ntaganda has not demonstrated an error in
24 the Trial Chamber's reliance on the evidence of that meeting to establish that the
25 co-perpetrators agreed in a common plan to drive out the Lendu from the localities

1 targeted during the course of their military campaign against the RCD-K/ML.
2 Therefore, the Appeals Chamber considers that the Trial Chamber was not required
3 to infer the existence of a common plan from evidence of subsequent concerted action
4 of the co-perpetrators as argued by Mr Ntaganda. Nor was it an error for it to rely
5 upon the evidence of commission of crimes by individual soldiers.
6 Regarding the Trial Chamber's findings on crimes committed in the implementation
7 of the common plan, the Appeals Chamber considers these findings to be sufficiently
8 detailed and specific to the crimes in question. It notes that, contrary to
9 Mr Ntaganda's argument, the findings relate to more than just the commission of
10 crimes and include meetings, specific orders, and instructions to the troops. The
11 Appeals Chamber therefore considers that it was reasonable for the Trial Chamber to
12 infer from these findings that the co-perpetrators meant for these crimes to be
13 committed by virtue of the common plan.
14 Mr Ntaganda also argues that the Trial Chamber erred in convicting him for the
15 actions of Hema civilians in Mongbwalu. The Appeals Chamber finds that it is
16 reasonable for the Trial Chamber to have concluded on the basis of the evidence of
17 orders to the Hema civilians and their joint operation with the UPC/FPLC soldiers
18 that the Hema civilians functioned as a tool in the hands of the co-perpetrators and
19 that their will had become irrelevant.
20 The Appeals Chamber therefore rejects the thirteenth ground of appeal.
21 Under the fourteenth ground of appeal, Mr Ntaganda argues that the Trial Chamber
22 erred in finding that he possessed the requisite *mens rea* as an indirect co-perpetrator
23 for crimes during the first operation. He submits that:
24 (i) the Trial Chamber erred in fact by relying on two alleged directives given by him
25 to enter a finding to his *mens rea*; (ii) none of the other factors relied upon by the

1 Trial Chamber to infer his intent for the crimes charged, either collectively or
2 individually, sustain its finding of *mens rea*; and (iii) in inferring the existence of a fact
3 upon which a conviction relies, the Trial Chamber failed to consider the reasonable
4 possibility of other available conclusions and associated relevant evidence.

5 After a careful review of the evidence underlying each of the Trial Chamber's factual
6 findings supporting the findings on Mr Ntaganda's *mens rea* in the first operation, the
7 Appeals Chamber concludes that none of the appellant's challenges renders the Trial
8 Chamber's determination on his knowledge and intent of the crimes unreasonable.

9 In the fifteenth ground of appeal, Mr Ntaganda alleges:

10 (i) legal errors in the Trial Chamber's application of the law on indirect
11 co-perpetration; (ii) errors in the assessment of his contribution to, and *mens rea* for,
12 the crimes committed during the second operation; (iii) errors in the Trial Chamber's
13 factual findings on his direct contributions to the second operation, arguing that his
14 *de minimis* contributions to the second operation reveal no awareness that he was
15 exercising control over, or making an essential contribution to, the crimes of the
16 second operation; and (iv) errors in the Trial Chamber's reliance on the testimony of
17 P-0055 that Mr Ntaganda was contemporaneously informed of the Kobu massacres
18 and expressed approval of that event.

19 The Appeals Chamber considers that, consistent with the principle of causation, an
20 accused's essential contribution must be to the crime for which he or she is
21 responsible. However, a contribution of a co-perpetrator which, on its face, is not
22 directly to a specific crime, but to the implementation of the common plan more
23 generally may still suffice. The Appeals Chamber finds that for indirect
24 co-perpetration, the knowledge component of *mens rea* includes an awareness on the
25 part of the co-perpetrator of the factual circumstances that enabled him or her,

1 together with other co-perpetrators, to jointly exercise control over the crime and

2 Mr Ntaganda fails to identify an error on the facts of this case.

3 In light of the foregoing, Mr Ntaganda shows no error in the Trial Chamber's
4 application of the law on indirect co-perpetration and his arguments are therefore
5 rejected.

6 In relation to Mr Ntaganda's argument that the Trial Chamber was bound to analyse
7 his responsibility in respect of both operations separately, the Appeals Chamber
8 recalls that the decisive consideration for co-perpetration is whether Mr Ntaganda's
9 contribution as a whole amounted to an essential contribution to the crimes within
10 the framework of a common plan, and determines that the Trial Chamber was not
11 required to analyse Mr Ntaganda's essential contribution with respect to the specific
12 crimes charged in each operation.

13 Therefore, the Trial Chamber was not required to assess Mr Ntaganda's *mens rea* in
14 respect of the specific criminal acts committed in each operation. In order to find
15 him criminally responsible as a co-perpetrator for specific criminal acts of murder or
16 rape that took place on particular dates and in particular locations, it need not be
17 established that Mr Ntaganda was aware of the details of these events, including
18 whether and which specific acts had been committed.

19 Rather, what must be established is that he possessed the requisite *mens rea* with
20 respect to the crimes as such in the sense of murder, rape, persecution, pillage,
21 et cetera, committed in the implementation of the common plan.

22 The Appeals Chamber considers that the Trial Chamber did not err in finding that the
23 first and second operations were part of the same military campaign and constituted
24 a logical succession of events.

25 Given that both operations were an integral part of the common plan and were

1 interrelated, the Trial Chamber was correct to assess Mr Ntaganda's role in a holistic
2 way, rather than conduct a separate analysis of his contributions and *mens rea* for the
3 first and second operations respectively.

4 In relation to Mr Ntaganda's challenges to the Trial Chamber's factual assessment of
5 his essential contribution to the implementation of the common plan, the
6 Appeals Chamber recalls that a determination of whether an alleged co-perpetrator
7 exercised control over the crimes necessarily depends on a holistic assessment of all
8 the relevant facts in evidence. It considers that, on the basis of the findings and
9 evidence relied upon, the Trial Chamber's conclusions in the present case reasonable.
10 Finally, the Appeals Chamber finds that the Trial Chamber's conclusions that
11 Mr Ntaganda meant for the troops deployed during the second operation to engage
12 in the conduct and cause the consequences required for the commission of the crimes
13 was reasonable. And, accordingly, the fourteenth and fifteenth grounds of appeal
14 are rejected.

15 I now turn to the Prosecutor's appeal.

16 The Prosecutor raises two grounds of appeal under which she argues that the
17 Trial Chamber erred in not considering that the term "attack" in Article 8(2)(e)(iv) of
18 the Statute has a special meaning and that an "attack" for the purpose of this provision
19 is not limited to the conduct of hostilities. This is in relation to count 17, under
20 which Mr Ntaganda was charged with attacking protected objects as a war crime,
21 including in relation to looting at the hospital in Mongbwalu and breaking into the
22 church at Sayo. The Trial Chamber concluded that it would not consider these two
23 events under count 17, as they did not constitute attacks.

24 The Appeals Chamber finds by a majority, Judge Ibáñez dissenting, that the
25 Prosecutor's appeal should be rejected.

1 Judge Hofmański and I find that the term "attack" used in Article 8(2)(e)(iv) of the
2 Statute means combat action and that the Trial Chamber did not err by not applying
3 a different definition of "attack".

4 Judge Balungi Bossa considers that it was unacceptable for the Trial Chamber to find
5 that the conduct of hostilities ceased after the assault in Mongbwalu. For reasons set
6 out in her separate opinion, she declines to overturn Mr Ntaganda's acquittal for the
7 charge of attacking protected objects as a war crime against the hospital in
8 Mongbwalu and the church in Sayo.

9 Judge Eboe-Osuji is of the view that the kind of attack that the Rome Statute forbids
10 can occur outside the course of active hostilities and he does not accept the Trial
11 Chamber's findings in this respect. For reasons set out in his partly concurring
12 opinion, he declines to overturn the Trial Chamber's dispositif on this particular
13 matter.

14 Judge Ibáñez Carranza partly agrees with Judge Balungi Bossa and Judge Eboe-Osuji
15 that the Trial Chamber erred in the interpretation of the term "attack" in
16 Article 8(2)(e)(iv) of the Statute, and finds that the term "attack" includes the
17 preparation, the carrying out of combat action and the immediate aftermath thereof.
18 Judge Ibáñez would grant the Prosecutor's appeal and would reverse the
19 Trial Chamber's findings in this respect.

20 The Appeals Chamber confirms by a majority the Conviction Decision and rejects the
21 appeals lodged by Mr Ntaganda and the Prosecutor.

22 But I now turn to the separate opinion of Judge Ibáñez Carranza.

23 In her separate opinion, Judge Ibáñez addresses two fundamental legal concepts that,
24 as illustrated in Mr Ntaganda's submissions made both in the conviction and
25 sentencing appeals proceedings, amount to misrepresentations that require further

1 clarification.

2 The aim of Judge Ibáñez's separate opinion is to strengthen the Appeals Chamber's
3 judgment and to assist in a better understanding of the criminal law applied at the
4 Court for this and future cases both before this Court and other national and
5 international jurisdictions.

6 In this regard, she discusses the contextual elements of crimes against humanity, in
7 particular the requirement that the widespread or systematic attack directed against
8 any civilian population be carried out pursuant to or in furtherance of an
9 organisational policy; and the meaning and scope of indirect co-perpetration,
10 including through an organised power apparatus as a mode of liability provided for
11 in the Statute.

12 In relation to the first issue, Judge Ibáñez considers that the focus of the determination
13 of whether an organisation qualifies as such within the meaning of Article 7 of the
14 Statute ought to be on those features that would allow it to carry out a widespread or
15 systematic attack against any civilian population. Furthermore, to establish the
16 existence of a policy to commit an attack within the meaning of Article 7 of the Statute,
17 it is unnecessary to prove that such policy was underpinned by any sort of ideology
18 or motivation.

19 In Judge Ibáñez's view, it is possible that the State or organisation is motivated by a
20 legitimate aim, but the means through which it seeks to achieve it are criminal
21 resulting in widespread or systematic attacks against the civilian population. She
22 considers that when interpreted in the light of the object and purpose of the Statute,
23 the policy requirement ought to be understood as imposing a minimum threshold
24 that aims at excluding ordinary crimes from the realm of crimes against humanity.
25 Moreover, Judge Ibáñez is of the view that a widespread or systematic attack for the

1 purposes of crimes against humanity amounts to a campaign of serious human rights
2 violations that manifests in the multiple commission of acts referred to in Article 7(1)
3 of the Statute.

4 In relation to the facts of this case, Judge Ibáñez considers that the UPC/FPLC was
5 a well-organised structure capable of planning, conceiving and implementing an
6 organisational policy to attack and chase away the Lendu civilians as well as those
7 who were perceived as non-Iturians.

8 Judge Ibáñez is of the view that while the aim of the UPC/FPLC to put an end to the
9 power exercised by the RCD-K/ML in the territory of Ituri may have been legitimate,
10 the means by which this objective was sought to be achieved crystallised into a policy,
11 the implementation of which resulted in a widespread and systematic attack against
12 the civilian population during both the first and second operations.

13 In her opinion, the fact that the UPC/FPLC may have conducted other military
14 operations in relation to which no evidence of the commission of crimes against
15 civilians was presented, is irrelevant to the Trial Chamber's finding that the attack
16 comprised of multiple acts referred to in Article 7(1) of the Statute, which were
17 directed against the Lendu civilians.

18 With respect to the second issue, Judge Ibáñez finds that indirect co-perpetration is an
19 integrated mode of liability encompassed in Article 25(3)(a) of the Rome Statute that
20 combines the constitutive elements of co-perpetration and indirect perpetration and is,
21 therefore, compatible with the principle of legality and the rights of the accused. She
22 considers that the control of the crime serves as the objective distinguishing
23 criterion to differentiate perpetration in all its modalities from other forms of
24 individual criminal responsibility under Article 25(3) and Article 28 of the Statute.

25 Furthermore, Judge Ibáñez considers that indirect perpetration through an organised

1 power apparatus is one modality of commission through another person as provided
2 in Article 25(3)(a) of the Statute. By virtue of his or her hierarchical position within
3 the hierarchically established organisation and its automatic functioning ensured by
4 the replaceable nature of its members, the indirect perpetrator exercises functional
5 control over the crimes and retains the power to frustrate their commission. Judge
6 Ibáñez is of the view that due to the nature of the crimes under the jurisdiction of the
7 Court that generally involve large-scale and mass criminality, indirect co-perpetration
8 constitutes an appropriate tool to deal with such atrocities and to investigate,
9 prosecute and convict those bearing the highest responsibility.

10 Judge Ibáñez considers that regarding the mental element in the context of indirect
11 co-perpetration through an organised power apparatus, the accused persons must be
12 aware of and intend

- 13 (i) to participate in a common plan that involves the commission of crimes;
- 14 (ii) a coordinated realisation of the objective elements of the crime;
- 15 (iii) the fact that implementing their common plan will result in the realisation of the
16 objective elements of the crime or be aware that the realisation of the objective
17 elements will be a consequence of their acts in the ordinary course of events; and
- 18 (iv) the existence of an organised power structure hierarchically controlled by them
19 that functions automatically and is composed of replaceable elements at the base
20 willing to implement the common plan and to commit crimes as a result.

21 In her view, unlike in cases of direct perpetration where the perpetrator fulfils the
22 concrete elements of the crime in person, there is no need for the indirect
23 co-perpetrator to be aware of the particularities of each criminal incident because
24 these are committed through another person and therefore they are different modes
25 of liability.

1 In this case, Judge Ibáñez finds that the UPC/FPLC was an organised power
2 apparatus given that it was hierarchically organised and composed of replaceable
3 members willing to carry out the criminal plan of the organisation.
4 Throughout the period relevant to the charges, Mr Ntaganda exercised, by virtue of
5 his hierarchical position, control over the automatic functioning of the organisation,
6 which led to compliance with the instructions, directives and orders by the
7 replaceable direct perpetrators on the ground. In Judge Ibáñez's view, the facts of
8 the case show that Mr Ntaganda was aware and intended the commission of crimes
9 that were indirectly perpetrated by UPC/FPLC forces and Hema civilians.
10 She considers, therefore, that he was properly charged and convicted as an indirect
11 co-perpetrator through an organised power apparatus.

12 I'm now turning to the appeal against sentence.

13 Before I do so, I am made aware that the Defence lead counsel did not turn on his
14 computer and therefore the names that he introduced are not read into the record,
15 and it might be therefore appropriate to repeat the appearance before the delivery of
16 any further parts of the judgment.

17 MR BOURGON: [15:54:38](Interpretation) Mr President, the individuals whom I
18 mentioned earlier were Laurence Hortas-Laberge, Mademoiselle Daria Mascetti,
19 Maître Mélissa Beaulieu-Lussier, Maître Didace Nyirinkwaya, Maître Kate Gibson,
20 and via video link, Mademoiselle Haneen Ghali, and myself, Stéphane Bourgon.

21 PRESIDING JUDGE MORRISON: [15:55:10] Thank you.

22 MR BOURGON: [15:55:11] (Interpretation) Thank you, Mr President.

23 PRESIDING JUDGE MORRISON: [15:55:12] Mr Bourgon, it wouldn't be the first
24 time that people have failed to either switch on or switch off their computer at the
25 appropriate time.

1 I now turn to the appeal against sentence and the background of the appeal
2 proceedings.

3 On 7 November 2019, the Trial Chamber sentenced Mr Ntaganda for the five counts
4 of crimes against humanity and the 13 counts of war crimes for which he was
5 convicted. Mr Ntaganda received a joint sentence of 30 years of imprisonment with
6 a deduction for the time spent in detention from 22 March 2013 onwards.

7 In his appeal against the Sentencing Decision, Mr Ntaganda raises 12 grounds of
8 appeal in which he alleges that the Trial Chamber either abused its discretion and/or
9 committed errors of law and fact in relation to its findings on his degree of
10 participation in, and knowledge of, the crimes committed during the first and second
11 operations, as well as findings related to various aggravating and mitigating
12 circumstances. In this respect, he requests that the Appeals Chamber reverse
13 the Trial Chamber's alleged errors and substantially reduce the related individual
14 sentences and the joint sentence.

15 Mr Ntaganda's grounds of appeal and the Appeals Chamber's findings in this regard
16 are summarised as follows.

17 In his first ground of appeal, Mr Ntaganda submits that the Trial Chamber erred in
18 law and in fact by not making a distinction between his degree of participation in the
19 crimes committed during the first operation and those committed in the second
20 operation.

21 The Appeals Chamber is not persuaded by Mr Ntaganda's argument that the
22 Trial Chamber erred in refusing to consider his physical proximity to, and knowledge
23 of the specifics of the crimes committed as demonstrating a lesser degree of
24 participation in the second operation. In its view, it is in the nature of indirect
25 perpetration as a form of criminal responsibility that physical proximity to the

1 commission of crimes and knowledge of the specific details of how the crimes are
2 committed are not required in order to find that an individual is responsible as
3 a principal perpetrator. Although the Appeals Chamber accepts that these factors
4 may be indicative of the degree of participation of an individual in certain
5 circumstances, it is not convinced that the absence of these factors must be taken into
6 account as generally pointing to a lesser degree of participation.

7 In the present case, the Appeals Chamber considers that the Trial Chamber properly
8 assessed Mr Ntaganda's degree of participation by evaluating the role he played in
9 relation to the commission of the crimes.

10 Accordingly, the Appeals Chamber concludes that the Trial Chamber did not err in
11 refusing to consider his physical proximity to, and knowledge of the specifics of the
12 crimes committed as demonstrating a lesser degree of participation in the second
13 operation.

14 Likewise, the Appeals Chamber considers that his argument that the Trial Chamber
15 assessed his participation in the two operations as though it was a single
16 phenomenon is unfounded. In the Appeals Chamber's view, the Trial Chamber
17 carried out an assessment of the *in concreto* gravity of his culpable conduct for each
18 crime.

19 In his second ground of appeal, Mr Ntaganda challenges the Trial Chamber's
20 assessment of his degree of participation in and knowledge of the crime of rape of
21 civilians under counts 4 and 5.

22 The Appeals Chamber notes that the Trial Chamber carried out a concrete assessment
23 of his degree of participation in the crimes. It is recalled that some of the rapes that
24 occurred during the first operation took place at the *Appartements* camp which was
25 Mr Ntaganda's base. Moreover, it took into account his presence at the camp, his

1 awareness that women were brought there, and the fact that he brought women there
2 himself. In the Appeals Chamber's view, his knowledge was therefore clearly
3 established. Furthermore, on the basis of the Trial Chamber's further analysis, it
4 concluded that Mr Ntaganda's degree of culpability was substantial regarding the
5 rapes committed against civilians during both operations.

6 Consequently, the Appeals Chamber finds no error in the Trial Chamber's approach.
7 In his third ground of appeal, Mr Ntaganda submits that the Trial Chamber failed to
8 address his lack of knowledge or concrete participation in the sexual enslavement of
9 civilians and in the rape and sexual slavery of three individuals under the age of 15.
10 With respect to the crimes committed against civilians during the second operation,
11 the Appeals Chamber considers that the Trial Chamber carried out a concrete
12 assessment of his degree of participation in the crimes. Based upon the Trial
13 Chamber's findings, the Appeals Chamber concludes that Mr Ntaganda's knowledge
14 of the crimes committed against the victims was established by virtue of the
15 agreement made between the co-perpetrators to implement the common plan. As
16 for the crimes against individuals under the age of 15, the Appeals Chamber finds no
17 error in the Trial Chamber's conclusion that while his degree of intent was lower than
18 for the sexual crimes against civilians, his degree of involvement and participation in
19 their commission was significant.

20 In his fourth ground of appeal, Mr Ntaganda submits that the Trial Chamber erred by
21 finding that his participation in the second operation murders, including the Kobu
22 massacre, was enhanced by (i) his failure to punish Commander Salumu Mulenda for
23 the Kobu massacre; and (ii) his purported post facto approval of the Kobu massacre
24 and other murders committed by Mr Mulenda's troops.

25 The Appeals Chamber notes that, in reaching its conclusion that the participation and

1 intent regarding the murders and attempted murders in the second operation was
2 substantial, the Trial Chamber did not find that Mr Ntaganda's participation in or
3 intent regarding the second operation was enhanced by his failure to punish
4 Salumu Mulenda or his expression of the approval of the Kobu murders, as
5 Mr Ntaganda suggests. Rather, in reaching its conclusion, the Trial Chamber
6 considered a number of factors, including the fact that Mr Ntaganda took part in the
7 relevant planning of this operation and that he remained in contact with the
8 commanders in the field.

9 As to the argument that the Trial Chamber erred in law by relying upon his
10 expression of post facto approval of the Kobu massacres, the Appeals Chamber
11 considers that this argument conflates the notion of intent with the evidentiary
12 considerations that may be relevant to establishing it. The Trial Chamber took into
13 account the fact that Mr Ntaganda expressed approval of the murders when he was
14 informed of what happened in conjunction with other findings relevant to
15 establishing his *mens rea*.

16 Accordingly, the Appeals Chamber finds no error in the Trial Chamber's assessment
17 of Mr Ntaganda's failure to punish Mr Mulenda or his expression of approval of the
18 Kobu murders for the purposes of sentencing.

19 In his fifth ground of appeal, Mr Ntaganda challenges the Trial Chamber's assessment
20 of an aggravating circumstance relating to the deaths of seven individuals that
21 resulted from the crime of intentionally directing attacks against civilians.

22 The Appeals Chamber notes that under Article 8(2)(e)(i) of the elements, actual harm
23 or death is not a required element for the crime of intentionally directing attacks
24 against civilians to be fulfilled. Hence, where actual harm or death does arise as
25 a consequence of the unlawful attack(s) against civilians, a Trial Chamber is not

1 precluded from considering an actual harm or death in its determination of an
2 appropriate sentence provided that it is sufficiently linked to the crime of
3 intentionally directing attacks against civilians was objectively foreseeable by the
4 convicted person and the findings related to this consequence were established
5 beyond reasonable doubt.

6 Accordingly, the Appeals Chamber finds no error in the Trial Chamber's approach
7 and assessment.

8 In his sixth ground of appeal, Mr Ntaganda argues that by imposing an individual
9 sentence of 30 years for the crime of persecution, which was equal to the highest
10 sentence imposed for the underlying crime of murder, the Trial Chamber
11 impermissibly engaged in double counting. In his view, the only appropriate
12 sentence for persecution in these circumstances was zero, given the overlapping
13 conduct and the related discriminatory dimension between the crimes underlying
14 counts 1 to 5, 7 to 8, 11 to 13, and 17 to 18, and the crime of persecution.

15 The Appeals Chamber considers that Mr Ntaganda's argument ignores the two-step
16 sentencing process prescribed under Article 78(3) of the Statute. The
17 Appeals Chamber considers that the calculation of an individual sentence necessarily
18 entails an assessment of all the circumstances relevant to a particular crime. If the
19 circumstances relevant to more than one individual sentence were to be excluded
20 from the calculation of any one of those individual sentences, the true culpability of
21 a convicted person for a particular crime would be unclear.

22 Consequently, the Appeals Chamber finds that the Trial Chamber did not err in
23 imposing an individual sentence for persecution by taking into account the same
24 underlying conduct and the discriminatory nature of such conduct that was also
25 considered when settling individual sentences for the crimes underlying counts 1 to 5,

1 7 to 8, 11 to 13, and 17 to 18. Moreover, the Appeals Chamber considers that a
2 sentence amounting to zero would have effectively ignored Mr Ntaganda's conviction
3 for the crime of persecution and, therefore, resulted in an error of law.
4 We go on to the seventh and twelfth grounds of appeal.
5 In these grounds of appeal, Mr Ntaganda challenges the Trial Chamber's assessment
6 of mitigating circumstances.
7 In his seventh ground of appeal, he submits that the Trial Chamber erred in law or
8 misrepresented the facts in considering that saving the lives of 64 enemy combatants
9 was not a mitigating factor. In his view, his actions represented a substantial
10 humanitarian act deserving of acknowledgment and weight in mitigation.
11 However, given that the Trial Chamber found Mr Ntaganda's actions to have been
12 aimed at using the captured soldiers for the benefit of the common plan, the
13 Appeals Chamber considers that regardless of how many individuals Mr Ntaganda
14 was alleged to have saved or how forcibly he had intervened to save these lives, his
15 ultimate motive necessarily diminished the value of his actions. As such, his actions
16 cannot objectively amount to a substantial humanitarian act.
17 In his eighth ground of appeal, Mr Ntaganda disputes the Trial Chamber's rejection of
18 his traumatic experience in the Rwandan genocide in mitigation of his sentence. The
19 Appeals Chamber notes that, notwithstanding the fact that the Trial Chamber
20 expressly acknowledged the suffering and discrimination that Mr Ntaganda had
21 endured as a result of his experience in the genocide, it was reasonable for the
22 Trial Chamber to find that his personal experience could not diminish his culpability
23 given his criminal conduct and the gravity of his crimes.
24 In the ninth ground of appeal, Mr Ntaganda submits that the Trial Chamber erred in
25 failing to enter findings on and accord weight in mitigation to (i) his alleged

1 protection of Lendu civilians in Mandro in June 2002; (ii) his protection of other
2 civilians by deploying troops; and (iii) his punishment of crimes against civilians.
3 In his tenth ground of appeal, Mr Ntaganda challenges the weight accorded by the
4 Trial Chamber to his alleged genuine and concrete contribution to peace and
5 reconciliation with the Lendu community, as well as to the demobilisation and
6 integration of UPC/FPLC members into the armed forces of the DRC.
7 For reasons that are fully set out in the judgment, the Appeals Chamber notes the
8 Trial Chamber's comprehensive findings on these issues and concludes that the Trial
9 Chamber's assessment of the evidence was reasonable and based upon the correct
10 application of the balance of probabilities standard of proof and its discretionary
11 power.
12 In his eleventh ground of appeal, Mr Ntaganda challenges the Trial Chamber's
13 assessment of his cooperative behaviour with the Court during trial as a mitigating
14 factor. The Appeals Chamber notes that good behaviour and cooperation with the
15 Court during a trial is expected of any accused person. As such, good behaviour and
16 cooperation cannot, in and of itself, constitute a factor in mitigation of a sentence.
17 However, as correctly stated by the Trial Chamber, such behaviour may be
18 considered to be a mitigating factor if it is found to be exceptional in nature.
19 In rejecting this factor as mitigating, the Appeals Chamber finds that the Trial
20 Chamber's holistic assessment of his behaviour was reasonable and finds no merit in
21 his argument that the Trial Chamber misappreciated the facts when concluding that
22 his conduct during the trial was not exceptional.
23 In his twelfth ground of appeal, Mr Ntaganda challenges the Trial Chamber's
24 assessment of his efforts to assist fellow detainees who could be described as
25 struggling with custody as a mitigating factor.

1 The Appeals Chamber notes that in finding Mr Ntaganda's actions to be
2 commendable, the Trial Chamber was fully aware of the facts and circumstances
3 surrounding his actions and expressed its appreciation for his conduct. The
4 Trial Chamber also clearly assigned weight to this factor in mitigation. However, in
5 balancing this factor against the gravity and aggravating circumstances established
6 for the crimes for which Mr Ntaganda was convicted, it found this factor to be too
7 limited to have an impact on his individual and overall sentences.

8 The Appeals Chamber finds no error with the Trial Chamber's exercise or its
9 discretion in this respect.

10 Having rejected Mr Ntaganda's grounds of appeal in their entirety, the
11 Appeals Chamber hereby confirms the Trial Chamber's sentencing judgment.

12 This brings me to the end of the summary of the Appeals Chamber's judgment. I
13 reiterate of course that this summary is not determinative. For that, one has to look
14 at the full judgment.

15 I would like to thank all Registry staff who assisted in enabling this hearing and to
16 proceed in a partially virtual manner and to the interpreters for their skill and
17 dedication.

18 This hearing is adjourned.

19 THE COURT USHER: [16:12:47] All rise.

20 (The hearing ends in open session at 4.12 p.m.)