

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Judgment - Courtroom 1
7 Monday, 8 July 2019
8 (The hearing starts in open session at 10.00 a.m.)
9 THE COURT USHER: [10:00:44] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [10:01:38] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [10:01:45] Thank you, Mr President, your Honours.
15 The situation in the Democratic Republic of the Congo, in the case of
16 The Prosecutor versus Bosco Ntaganda, case reference ICC-01/04-02/06.
17 For the record, we are in open session.
18 PRESIDING JUDGE FREMR: [10:02:03] Thank you, court officer.
19 First of all, I would like to welcome back the parties, the participants and
20 Mr Ntaganda, the accused.
21 I also welcome those who are watching this hearing from the public gallery or via the
22 internet.
23 Before I go into the purpose of this hearing, please state the appearances for the
24 record and the public.
25 And we will start with Prosecution.

1 MS BENSOUA: [10:02:36] Thank you, Mr President. Mr President,
2 Honourable Judges, the Office of the Prosecutor is represented by Nicole Samson,
3 senior trial lawyer; Julieta Solano, trial lawyer; Dianne Luping, trial lawyer;
4 Eric Iverson, trial lawyer; Marion Rabanit, associate trial lawyer; Rens van der Werf,
5 associate trial lawyer; Kristy Sim, assistant trial lawyer; Paola Sacchi, assistant legal
6 officer, Claudine Umurungi, assistant legal officer; Selam Yirgou, case manager; and
7 myself Fatou Bensouda, Prosecutor.

8 Thank you, Mr President.

9 PRESIDING JUDGE FREMR: [10:03:29] Thank you, Ms Bensouda.

10 Now Defence, please.

11 MR BOURGON: [10:03:33] (Interpretation) Yes, good morning, Mr President, good
12 morning, your Honours, and good morning to all persons present in the courtroom.

13 Representing Bosco Ntaganda, who is with us this morning, we have

14 Madam Camille Divet, Madam Rahija Muslemani, Mr Benjamin Nodet,

15 Madam Daria Mascetti, Madam Sandrine De Sena, Madam Margaux Portier,

16 Mrs Chloé Grandon, Maître Didace Nyirinkwaya, Mr Christopher Gosnell, and

17 myself Mr Stéphane Bourgon.

18 Thank you, Mr President.

19 PRESIDING JUDGE FREMR: [10:04:18] (Interpretation) Thank you very much,

20 Mr Bourgon.

21 Now the Legal Representatives for Victims, please.

22 MS PELLET: [10:04:25] (Interpretation) Thank you, Mr President. The former child
23 soldiers are represented by Alejandro Kiss, by Anna Bonini, and by myself

24 Sarah Pellet, representative of victims.

25 MR SUPRUN: [10:04:44] (Interpretation) Good morning, Mr President, good

1 morning, your Honours. The victims of the attacks are represented by Anne
2 Grabowski; Cherine Luzaisu, counsel out in the field; and myself Dmytro Suprun,
3 legal counsel for victims.

4 PRESIDING JUDGE FREMR: [10:04:58] Thank you, Ms Pellet.

5 Thank you, Mr Suprun.

6 And Registry, please.

7 MR LEWIS: [10:05:04] Thank you, Mr President, your Honours. The Registry is
8 represented by Jamila Zoubir, associate legal officer, and myself Peter Lewis, the
9 Registrar.

10 PRESIDING JUDGE FREMR: [10:05:18] Thank you, Mr Lewis.

11 To make appearances complete, the Chamber is composed of Judge Kuniko Ozaki on
12 my right, Judge Chang-ho Chung on my left, and myself, Judge Robert Fremr.

13 And the Chamber is today assisted by our legal officers, from the left,

14 Ms Nicole Fitzsimons, then Ms Esther Saabel, Ms Marianne Saracco,

15 Mr Rogier Bartels, Ms Raluca Racasan and Ms Alla Ershova.

16 Today, the Chamber renders its judgment pursuant to Article 74 of the Rome Statute
17 in the case of the Prosecutor versus Bosco Ntaganda. The judgment consists of 539
18 pages and three annexes.

19 I will now read out a summary of the judgment which serves to convey those findings
20 made in the judgment to be considered most relevant to the accused and the public.

21 The full judgment will be made available as soon as this hearing has concluded, and
22 it's a fully public document.

23 I will start with a brief procedural overview.

24 An investigation into the situation in the Democratic Republic of the Congo - which I
25 will refer to as the "DRC" - was opened in June 2004, following a self-referral by

1 the DRC.

2 On 22 August 2006 an arrest warrant was issued for Mr Ntaganda, followed by a
3 second arrest warrant on 13 July 2012.

4 After Mr Ntaganda voluntarily surrendered to the Court on 22 March 2013, and
5 through the cooperation of the United States of America, whose embassy in Kigali he
6 had entered, Mr Ntaganda was transferred to the seat of the Court.

7 A confirmation hearing took place from 10 to 14 February 2014, and on 9 June 2014
8 Pre-Trial Chamber II confirmed most of the charges the Prosecution had brought
9 against Mr Ntaganda.

10 After the confirmation of the charges the case was referred to the present Chamber.

11 Before the start of the trial phase Mr Ntaganda changed his Defence team, following
12 which additional time was granted to his new Defence team to familiarise itself with
13 the case.

14 On 2 September 2015 the trial proceedings commenced and the charges were read out
15 to the accused, and the parties and participants made their opening statements.

16 Over the course of 248 days of hearing, the Chamber heard 102 witnesses called by
17 the Prosecution, the Defence, and on behalf of the victims. 1,791 items were
18 admitted into evidence and 2,129 victims have been authorised to participate in this
19 trial, and in addition to several victims testifying as witnesses before the Chamber,
20 five further victims presented their views and concerns in person. The Chamber
21 issued 347 written decisions and 257 oral decisions during the trial phase.

22 After the presentation of the evidence, the Chamber received written closing
23 submissions from the parties and the Legal Representatives of Victims of more than
24 1,400 pages in total.

25 At a hearing held from 28 to 30 August 2018, the parties and participants made their

1 closing statements, after which the Chamber deliberated to come to the present
2 judgment.

3 I will now turn to the confirmed charges.

4 This case is concerned with alleged conduct by Mr Bosco Ntaganda as a member of
5 the *Union des Patriotes Congolais* - which I will refer to as the "UPC" - and its military
6 wing, the *Forces Patriotiques pour la Libération du Congo* - which I will refer to as "FPLC".

7 This conduct relates to events that took place in Ituri district of the DRC from on or
8 about 6 August 2002 to on or about 31 December 2003.

9 In addition to alleged conduct in relation to conscription and enlistment of children
10 under age of 15 into the UPC/FPLC and their use in hostilities, which was alleged to
11 have occurred throughout the entire temporal scope of the charges, the charges

12 against Mr Ntaganda concern a series of assaults against towns and villages in two
13 *collectivités* during two specific time periods. The assaults against towns and villages
14 of the Banyali-Kilo *collectivité* are alleged to have taken place between on or around
15 20 November 2002 and on or about 6 December 2002. The alleged assaults in the
16 Walendu-Djatsi *collectivité* occurred between on or about 12 February 2003 and or
17 about 27 February 2003.

18 Mr Ntaganda is charged with responsibility under various modes of liability for 18
19 counts, including 5 counts of crimes against humanity and 13 counts of war crimes,
20 namely:

21 Counts 1 and 2: murder and attempted murder as a crime against humanity and as
22 a war crime;

23 Count 3: intentionally taking civilians as a war crime;

24 Counts 4, 5 and 6: rape as a crime against humanity and as a war crime;

25 Counts 7, 8 and 9: sexual slavery as a crime against humanity and as a war crime;

1 Count 10: persecution as a crime against humanity;
2 Count 11: pillage as a war crime;
3 Count 12: forcible transfer of a population as a crime against humanity;
4 Count 13: ordering the displacement of the civilian population as a war crime;
5 Counts 14, 15 and 16: conscription, enlistment and use to participate in active
6 hostilities of children under the age of 15 years as a war crime;
7 Count 17: attacking protected objects as a war crime;
8 And Count 18: destroying the enemy's property as a war crime.

9 Now, Article 74(2) of the Rome Statute of the International Criminal Court - which I
10 will refer to as "the Statute" - requires the Chamber to stay within the bounds of
11 confirmed charges. These boundaries are defined by the confirmation decision, but
12 this does not exclude that further details about the charges, as confirmed by the
13 Pre-Trial Chamber, may also be contained in other auxiliary documents.

14 Regulation 52(b) of the Regulations of the Court sets out that the charges must contain
15 a statement of the facts, including the time and place of the alleged crimes, which
16 provides a sufficient legal and factual basis to bring the person to trial.

17 The Chamber has assessed on a case-by-case basis whether the charges are sufficiently
18 specific to comply with that Regulation, taking into account *inter alia* the nature of the
19 crime charged and the circumstances of the case.

20 Pursuant to Article 66 of the Statute, the accused shall be presumed innocent until
21 proven guilty and it is for the Prosecution to demonstrate the guilt of the accused.

22 For a conviction, each element of the particular offence charged must be established
23 beyond reasonable doubt. Therefore, all the Chamber's factual findings that underlie
24 its legal findings made in the judgment are established beyond reasonable doubt.

25 When determining whether the applicable evidentiary threshold has been met, the

1 Chamber has carried out a holistic evaluation and weighed all the evidence taken
2 together. In case the evidence would allow for more than one possible finding, the
3 Chamber has made the finding most beneficial to the accused.

4 The Prosecution presented various types of evidence to incriminate Mr Ntaganda.
5 Many of the Prosecution's witnesses were granted protective measures pursuant to
6 the Chamber's duty to ensure the security, privacy and psychological well-being of
7 witnesses, as enshrined in Article 68 of the Statute and Rule 87 of the Rules of
8 Procedure and Evidence.

9 Because many witnesses were granted in-court protective measures, much of the trial
10 proceedings took place in private session and could, therefore, not be followed by the
11 public either in the public gallery or online. Therefore, the Chamber has ensured
12 that the judgment is a fully public document so all the relevant aspects of the case are
13 available for those who are interested.

14 The Prosecution's witnesses included so-called insider witnesses, which means former
15 members of the UPC/FPLC, both soldiers and persons who had a non-military role.

16 Some of these soldiers testified that they were below 15 at the relevant time. In
17 addition to the insider witnesses, the Chamber heard crime base witnesses, would
18 testified what had happened to them or members of their family or communities
19 during the assaults on the towns and villages. Several of these witnesses are also
20 participating victims.

21 The Chamber identified, based on the parties' and participants' submissions or its
22 own observations, a number of issues requiring the credibility of certain witnesses to
23 be discussed on an individual basis. In assessing the credibility of witnesses, the
24 Chamber considered the individual circumstances of each witness, including his or
25 her relationship to the accused, age, any involvement in the events under

1 consideration, any possible bias towards or against the accused, or any motives for
2 telling the truth or providing false testimony.

3 The Chamber has also taken into account that the charges relate to events that
4 occurred a relatively long time ago, in 2002 and 2003. Some witnesses were very
5 young at the time of the events and/or suffered trauma and, therefore, may have had
6 particular difficulties in providing a fully consistent, complete and logical account.

7 The Chamber has relied on the evidence of witnesses in relation to whose credibility
8 the Chamber has some reservations, but only to the extent that it was corroborated by
9 other reliable evidence. However, the credibility of certain witnesses was so
10 impugned that they could not be relied upon, even if parts of their testimony were
11 corroborated by other evidence. Certain parts of the testimony of witnesses has not
12 been relied upon, including for a few witnesses who were alleged to be below
13 15 years old when they were recruited into the UPC/FPLC, regarding their age.

14 The Defence called 19 witnesses, a number of who were also granted protective
15 measures. One of the Defence witnesses was the accused himself, who testified for
16 30 days. Mr Ntaganda's testimony was detailed and comprehensive and touched on
17 all matters relevant to this case. As it can be seen throughout this judgment, the
18 Chamber has always considered his testimony and, where appropriate, relied on it for
19 findings of fact. In doing so, the Chamber has assessed the probative value of
20 Mr Ntaganda's evidence in the context of the totality of the evidence. In instances
21 where the evidence provided by Mr Ntaganda is contradicted by other evidence, the
22 Chamber has also considered, on a case-by-case basis and where appropriate, the
23 possibility of Mr Ntaganda's incentive to provide exculpatory evidence in the context
24 of all the relevant evidence. In relation to important aspects of the charges, the
25 Chamber has found that Mr Ntaganda's evidence was rebutted by other credible and

1 reliable evidence.

2 Various expert witnesses testified also before the Chamber, ranging from
3 psychologists who testified about the impact of trauma on the memory of witnesses,
4 to forensic scientists who analysed bone and tooth fragments that had been collected
5 from graves in the relevant areas. Where relevant, the Chamber has relied on the
6 evidence provided by these experts, albeit mostly as corroboration or as relevant
7 context.

8 The Chamber also received a large number of reports drafted by international or
9 non-governmental organisations. The drafters of some of these reports came to
10 testify before the Chamber. The Chamber has been careful in its assessment of these
11 reports, mindful of the various challenges brought by the Defence, and the fact that
12 the information on which these reports are based was not collected for the purposes
13 of a criminal investigation and lacked certain safeguards. The Chamber has given
14 more weight to the daily reports by United Nations peacekeeping mission, MONUC,
15 which were made contemporaneously with the events that took place during the
16 charged period.

17 I will now turn to the Chamber's main findings.

18 This case of the Prosecutor versus Bosco Ntaganda concerns violence in the Ituri,
19 which is a district of Orientale province in the northeast of the DRC, bordering
20 Uganda, with a population estimated to range from 3.5 to 5.5 million people. The
21 capital of Ituri is Bunia. Ituri region is fertile and rich in natural resources, which
22 many actors inside and outside the DRC have sought to exploit throughout the years.
23 The DRC has many different ethnic groups within its borders. In Ituri alone there
24 are approximately 18 different ethnic groups, including the Lendu, the Ngiti, and the
25 Hema, and its subgroup Gegere or Hema North.

1 The UPC, the group that Mr Ntaganda was a member of, was formalised in
2 September 2002 but existed as a political entity before that time. The group's
3 activities were initially limited because some of its key leaders were still members of
4 other movements, most notably the RCD-K/ML. Following a split from the
5 RCD-K/ML in April 2002, the group became active under the name FRP.

6 Thomas Lubanga, who would become the president of the UPC, was one of the FRP
7 leaders. The leaders of the FRP became the political leaders of the UPC/FPLC upon
8 its formal creation in September 2002.

9 At the end of 1999 and beginning of 2000, Mr Ntaganda founded an armed group
10 called the Chui Mobile Force, mostly consisting of dissidents of the military wing of
11 the RCD-K/ML called the APC. Besides Mr Ntaganda, who was the group's leader,
12 the Chui Mobile Force included later members of the FPLC, which became the
13 military wing of the UPC, such as Floribert Kisembo and Nduru Tchaligonza. The
14 members of the Chui Mobile Force were mainly of Hema and Tutsi ethnicity. They
15 had left the APC because they claimed that this armed group sided with the Lendu
16 and discriminated against the Hema.

17 Around May 2002 the FPLC, the emerging military wing of the UPC, began to
18 actively recruit individuals and train recruits at the training facility in Mandro. In
19 July 2002 it obtained enough weapons, which were transported by aeroplanes from
20 Rwanda, to arm all of the 1,800 to 2,000 recruits present at the time at Mandro. In
21 early September 2002, UPC President Thomas Lubanga formally established the FPLC
22 as the armed wing of the UPC. Lubanga himself was the FPLC's
23 commander-in-chief. He appointed Floribert Kisembo to the position of chief of
24 general staff and Mr Ntaganda to the position immediately below this, the one of
25 deputy chief of staff in charge of operations and organisation. The accused held this

1 position until 8 December 2003, when Thomas Lubanga removed Kisembo as chief of
2 staff and appointed Mr Ntaganda to that post.

3 The FPLC organisational structure was similar to that of a conventional army, had a
4 geographical division and was subdivided into brigades, battalions, as well as smaller
5 units. It used various communication systems, and orders given via the radio were
6 noted down in logbooks.

7 At the training centres UPC/FPLC recruits were instructed in the use of both light and
8 heavy weapons. With regards to heavy weapons, recruits and soldiers of the
9 UPC/FPLC also received training in Rwanda. At the end of the training, recruits
10 were provided with a personal weapon.

11 During the relevant period, the UPC/FPLC was involved in fighting with several
12 armed actors which, like the UPC/FPLC, were sufficiently organised to be considered
13 organised armed groups. The time between August 2002 to the summer of 2003
14 included periods of intense fighting, and even the calmer periods did not see a lasting
15 absence of armed clashes. Although Ugandan armed forces were present on the
16 territory of the DRC and were to some extent involved in the fighting, and Rwanda
17 provided certain support to the UPC/FPLC at various times, the Chamber has
18 considered that the involvement of other States did not amount to overall control and,
19 thus, did not result in a classification of the conflict as being international in nature.
20 It concluded that the UPC/FPLC throughout the temporal scope of the charges was at
21 all times involved in at least one non-international armed conflict with an opposing
22 party.

23 In relation to the contextual elements of crimes against humanity, the Chamber found
24 that UPC/FPLC's conduct against the civilian population was not the result of an
25 uncoordinated and spontaneous decision of individual soldiers on the ground. It

1 was the intended outcome of a preconceived strategy, as part of which the Lendu
2 population was specifically targeted. The crimes committed against civilians took
3 place pursuant to a policy of the UPC/FPLC to attack and chase away Lendu civilians,
4 as well as those who were perceived as non-Iturians.

5 The Chamber found that Mr Ntaganda and other military leaders of the UPC/FPLC,
6 including Thomas Lubanga and Floribert Kisembo, worked together and agreed on
7 the common plan to drive out all Lendu from the localities targeted during the course
8 of their military campaign against the RCD-K/ML. Mr Ntaganda and his
9 co-perpetrators wanted to destroy and disintegrate the Lendu community and ensure
10 that the Lendu could not return to the villages that were attacked. This involved the
11 targeting of civilian individuals by way of acts of killing and raping, as well as the
12 targeting of their public and private properties through acts of appropriation and
13 destruction. As a result of the way the UPC/FPLC was organised and the position of
14 the co-perpetrators within the organisation, the Chamber considers that the conduct
15 of individuals who committed the crimes on the ground, namely UPC/FPLC soldiers
16 and occasions of Hema civilians assisting the UPC/FPLC, must be attributed to the
17 co-perpetrators as if it were their own acts.

18 In relation to Mr Ntaganda's conduct, as the Chamber noted above, he fulfilled a very
19 important military function in the UPC/FPLC. He was one of the key leaders. The
20 Chamber has found his role to have been determinative in the UPC/FPLC's ability to
21 set up a strong armed group that was capable of driving the Lendu population from
22 certain areas. Mr Ntaganda, who had obtained extensive experience in military
23 affairs in the years prior to the UPC/FPLC, was the one who devised the tactic that
24 allowed the UPC/FPLC to successfully take over the important village of Mongbwalu
25 after the UPC/FPLC had previously failed to defeat the Lendu fighters at this location.

1 This shows his importance for the organisation. Mr Ntaganda rallied the troops
2 prior to battle and he gave direct orders to the troops during part of the operations
3 and debriefed them afterwards.

4 In addition to his direct orders to target and kill the enemy, including civilians,
5 Mr Ntaganda endorsed criminal conduct of his soldiers by way of his own conduct.
6 Moreover, with his own actions, he showed his troops how the orders were to be
7 implemented with regard to the treatment of Lendu civilians.

8 Mr Ntaganda's skills were held in high regard and relied upon within the UPC/FPLC
9 ranks, including for the planning and organisation of its military operations. The
10 UPC/FPLC military campaign, which followed the UPC/FPLC's successful takeover of
11 Bunia, was largely dependent upon Mr Ntaganda's personal involvement and
12 commitment as one of the group's highest and most experienced and respected
13 military figures.

14 I will now turn to conduct against children under the age of 15 who were part of or
15 associated with the UPC/FPLC.

16 As of June 2002, Mr Ntaganda was involved in large-scale recruitment drives that
17 were conducted by the UPC/FPLC. On at least three occasions, he made calls for
18 young people to join the UPC/FPLC ranks and follow military training, and also
19 stated that parents and families should provide their children to the group.

20 Between August 2002 and June 2003, the UPC/FPLC recruited, trained and deployed
21 children under the age of 15. The soldiers of the UPC/FPLC were treated the same.
22 Those under 15 were threatened, punished and suffered physical violence, as were
23 other recruits and soldiers. They wore uniforms or part of uniforms that were often
24 too large for them, and had weapons, such as AK-47s. They took part in combat
25 operations and were used as bodyguards or personal escorts by the commanders,

1 including of Mr Ntaganda. It was common practice for female members of the
2 UPC/FPLC to be raped and be subjected to other forms of sexual violence during their
3 service. The Chamber found that this included at least three girls under the age of 15,
4 who each were repeatedly raped.

5 I now turn to the UPC/FPLC conduct during assaults on villages and towns from
6 August 2002 to May 2003.

7 On 9 August 2002, the emerging UPC/FPLC, together with the UPDF, launched an
8 assault on the city of Bunia causing Governor Lompondo to flee with a group of APC
9 soldiers. After having taken control of Bunia and the roads leading up to it, in the
10 next months the UPC/FPLC attacked the villages Songolo, Zumbe, and Komanda.
11 Killing and looting took place during these assaults and their aftermath. This
12 conduct falls outside the charges that are brought in relation to the two military
13 operations against towns and villages of the Banyali-Kilo *collectivité* in November
14 2002 and early December 2002, and the one against the Walendu-Djatsi *collectivité* in
15 February 2003. However, the Chamber's findings on these assaults are important for
16 the context of the UPC/FPLC's actions.

17 Now in turning to the Banyali-Kilo *collectivité* before the UPC/FPLC attacked, the APC
18 and Lendu fighters controlled Mongbwalu and Sayo. The headquarters of the
19 Lendu fighters was in Sayo. Mongbwalu also was the seat of the Kilo-Moto gold
20 mining company. Around 9 November 2002, the UPC/FPLC unsuccessfully tried to
21 take over Mongbwalu. Afterwards, following a plan by Mr Ntaganda to attack from
22 two sides, on or about 20 November 2002, the UPC/FPLC launched an assault on
23 Mongbwalu using soldiers, including children under the age of 15, on the ground
24 with AK-47s, supported by heavy weapons. After it took over Mongbwalu, the
25 UPC/FPLC also captured Sayo and Nzebi.

1 In February 2003, the UPC/FPLC launched a coordinated series of assaults at several
2 villages in the Walendu-Djatsi *collectivité* and took control of the villages of Lipri, Tsili,
3 Kobu, Bambu, Buli, Gola, Jitchu, and Nyangarai as well as some surrounding places.
4 In May 2003, following the withdrawal of the UPDF from the city, the UPC/FPLC
5 engaged in fighting in Bunia, in which children under the age of 15 also took part.
6 After a village or town was taken over, the UPC/FPLC soldiers conducted what has
7 been referred to by witnesses as *ratissage* operations. During the *ratissage*
8 operations in Mongbwalu and Sayo, house-to-house searches were carried out by the
9 UPC/FPLC, during which persons were abducted, intimidated and on several
10 occasions killed. UPC/FPLC soldiers looted a variety of items, such as household
11 items, mattresses, clothing, and removed the roofs of some houses. There is no
12 indication that these items served as a military purpose and they were apparently
13 used for personal use.
14 As part of the assaults, and especially once the relevant village or town was taken
15 over, UPC/FPLC soldiers destroyed houses. For example, in Sayo, Lipri, Tsili, and
16 Kobu houses were burnt down, specifically those with thatched roofs. During the
17 attacks, heavy weapons were used to fire at houses. Although it was left standing,
18 the UPC/FPLC also fired at the health centre in Sayo.
19 Some of the women captured by the UPC/FPLC soldiers were raped by them. Some
20 of them were even killed, either when they attempted to resist the rapes or after they
21 were raped. In the aftermath of the assault on Kilo, the UPC/FPLC went after the
22 Lendu in the village, searching their homes and killing some of them. The bodies of
23 those killed were thrown into graves, some of which had been dug by those whose
24 bodies were thrown in it afterwards. The killing was not always successful. A
25 Lendu woman who testified before the Chamber as a witness, for example, was held

1 in a pit in the ground in Kilo after she was captured while fetching water. The next
2 day, a UPC/FPLC soldier slit her throat and she was left there, yet survived, on that
3 occasion.

4 In a UPC/FPLC camp set up after the takeover of Mongbwalu at a place referred to as
5 the *Appartements*, abducted persons were held and questioned. The majority of the
6 Lendu taken there were killed, while members of other ethnic groups were released.
7 At this location, Mr Ntaganda himself shot and killed Abbé Bwanalonga, a man of an
8 advanced age serving as a Catholic priest at the Mongbwalu parish.

9 UPC/FPLC commanders, including Mr Ntaganda ordered their troops to engage in
10 conduct that resulted in the displacement of a significant part of the civilian
11 population. The population was shot at while trying to flee. During the assault on
12 Sayo, for example, Mr Ntaganda ordered a soldier operating the artillery to fire at
13 people wearing civilian clothing making their way up a hill away from the village, not
14 involved in any active hostilities. As the UPC/FPLC's assault on Mongbwalu in
15 November 2002 unfolded, many of those present in the town fled the town, going to
16 the bush and to other places. Later, the civilian population of Lipri, Tsili, Kobu, and
17 Bambu similarly fled to the bush. The orders to chase out the civilians did not aim to
18 ensure the safety of the civilian population and were not justified by military
19 necessity. While in the bush, those who had fled lived in difficult conditions with
20 limited access to food, medication and shelter. The Lendu could not return to their
21 houses during the time the UPC/FPLC controlled the villages concerned.

22 It is worth specifically mentioning the massacre that took place in the village of Kobu.
23 Following the assaults on Kobu and surrounding villages, UPC/FPLC soldiers, under
24 the command of Salumu Mulenda, around 25 and 26 February 2003, brought groups
25 of captured persons to buildings in Kobu, one of which was referred to by witnesses

1 as the Paradiso building. Many of the captured persons, women as well as some
2 men, were raped by members of the UPC/FPLC, including by Commander Mulenda.
3 Shortly thereafter, UPC/FPLC soldiers killed at least 49 captured persons at or close
4 by a banana field behind the Paradiso building. They used sticks and batons, as well
5 as knives and machetes. The bodies of those killed, men, women and children and
6 babies, were found in the banana field over the next days. Some bodies were found
7 naked, some had their hands tied up, and some had their heads crushed. Several
8 bodies were disemboweled or otherwise mutilated.

9 I will now move to the Chamber's findings of Mr Ntaganda's responsibility for the
10 conduct that I have just mentioned.

11 In relation to the Chamber's findings on Mr Ntaganda's guilt, three issues must be
12 emphasised. First, the Chamber has found that in relation to each of the 18 counts, a
13 number or at least part of the charges were proven beyond reasonable doubt, and it
14 will therefore enter convictions for the related crimes. However, the Chamber has
15 not been able to make findings on a number of alleged incidents. Importantly, even
16 though the Prosecution initially alleged crimes to have been committed in a number
17 of villages, and the Pre-Trial Chambers confirmed charges in this regard, the
18 Prosecution did not lead any evidence with regards to some villages, and did not
19 maintain the associated allegations in its closing brief. This concerns the locations
20 referred to as Goy, Langa, Mindjo, and Wadda. For some other locations which
21 were referred to in the Prosecution's closing brief, there was insufficient reliable
22 evidence presented for the Chamber to make any findings. This concerns Pluto,
23 Avetso, Dhekpa, Thali, Mbidjo, and Pili. With regards to Djuba, Katho, and Dyalo,
24 the Chamber found only that the population fled, although the various crimes were
25 charged, in relation to the UPC/FPLC's assault on Bunia in March 2003, the evidence

1 did not show any crimes being committed by the UPC/FPLC.

2 Second, as I mentioned earlier when discussing the Chamber's assessment of witness
3 credibility, the Chamber has found that it was not proven beyond reasonable doubt
4 that some of the members of the UPC/FPLC, who according to the Prosecution were
5 younger than 15 at the relevant time, were indeed below this age. For those specific
6 allegations, no findings have therefore been made in relation to the charges
7 concerning children under the age of 15 incorporated into the UPC/FPLC.

8 Then third, as regards the legal findings, the Chamber has found that certain
9 established facts cannot be legally characterised as crimes under the Statute.

10 Consequently, Mr Ntaganda is not considered responsible for the allegations related
11 to the aforementioned three points. Accordingly, Mr Ntaganda is only found guilty
12 for those facts established beyond reasonable doubt by this Chamber above.

13 The Chamber has found that Mr Ntaganda bears individual criminal responsibility
14 under Article 25(3)(a) of the Statute. This mode of criminal responsibility means that
15 a person is criminally responsible if that person commits a crime within the
16 jurisdiction of the Court, either even as an individual, or jointly with another or
17 through another person, regardless of whether that other person is criminally
18 responsible.

19 The Chamber has considered that Mr Ntaganda was a direct perpetrator pursuant to
20 Article 25(3)(a) for parts of the charges for three of the crimes, and was an indirect
21 co-perpetrator under the same provision for the other parts of these three crimes.

22 For the other crimes he was found an indirect co-perpetrator.

23 Although the Chamber considers that a person's conduct can satisfy the elements of
24 more than one mode of liability, having found Mr Ntaganda's principal liability to
25 have been established for each of the counts charged, it does not consider it

1 appropriate nor necessary to make any further findings on the other confirmed modes
2 of liability.

3 Having applied the legal elements of the alleged crimes to its factual findings, the
4 Chamber concludes that Mr Ntaganda bears individual criminal responsibility for the
5 following crimes:

6 Murder as a crime against humanity under Article 7(1)(a) of the Statute and as a war
7 crime under Article 8(2)(c)(i), as a direct perpetrator under Article 25(3)(a), of
8 Abbé Bwanalunga in Mongbwalu during the first operation, and murder and
9 attempted murder as a crime against humanity under Article 7(1)(a) and as a war
10 crime under Article 8(2)(c)(i), as an indirect co-perpetrator under Articles 25(3)(a) and
11 25(3)(f), in relation to the following killings and attempted killings committed by
12 UPC/FPLC soldiers and - in relation to the killing of people in Mongbwalu during
13 ratissage operations - also by Hema civilians. It includes:

14 the killing of a woman in front of the health centre in Sayo, in the context of the first
15 operation;

16 the killing of people in Mongbwalu and Sayo during ratissage operations, and
17 persons killed at the *Appartements* camp following interrogation, in the context of the
18 first operation;

19 the killing of two Lendu persons in Nzebi, pursuant to Mr Ntaganda's order, in the
20 context of the first operation;

21 the killing of Lendu person, Ngiti man and a pregnant Lendu woman who had been
22 detained in a pit, and of a Nyali man in Kilo, in the context of the first operation;

23 the killing of two fleeing children in Kobu during the assault and the killing of people
24 during the ratissage operation that followed, in the context of the second operation;

25 the killing of nine hospital patients in Bambu and the attempted killing of a tenth, in

1 the context of the second operation;

2 the killing of a woman, while she tried to defend herself against rape, and of another

3 women in Sangi, in the context of the second operation;

4 the killing of at least 49 persons in a banana field near the Paradiso building in Kobu,

5 in the context of the second operation;

6 the killings of some men who were raped by the UPC/FPLC soldiers, in the context of

7 the second operation;

8 and finally, the attempted killing of four persons who acted as witnesses before this

9 Chamber, in the context of the first and second operation.

10 He is also criminally responsible for intentionally directing attacks against civilians as

11 a war crime under Article 8(2)(e)(i) of the Statute, an indirect co-perpetrator under

12 Article 25(3)(a) in Mongbwalu and Sayo, in the context of the first operation, and in

13 Bambu, Jitchu, and Buli, in the context of the second operation;

14 Then, responsible for rape as a crime against humanity under Article 7(1)(g) and as a

15 war crime under Article 8(2)(e)(vi), as an indirect co-perpetrator under Article 25(3)(a),

16 of women and girls during and in the immediate aftermath of the UPC/FPLC assault

17 on Mongbwalu, of girls in Kilo, in the context of the first operation, of detained

18 women and men in Kobu, women in Sangi, and of a woman, who testified as a

19 witness, in Buli, in the context of the second operation;

20 Then he is responsible for sexual slavery as a crime against humanity under

21 Article 7(1)(g) and as a war crime under Article 8(2)(e)(vi), as an indirect

22 co-perpetrator under Article 25(3)(a), of a woman and an 11-year-old girl in Kobu and

23 Buli, in the context of the second operation;

24 Further, for rape as a war crime under Article 8(2)(e)(vi), as an indirect co-perpetrator

25 under Article 25(3)(a), of an approximately 9-year-old girl at Camp Lingo, and rape

1 and sexual slavery of child soldiers as war crimes under Article 8(2)(e)(vi), as an
2 indirect co-perpetrator under Article 25(3)(a), in relation to two girls under 15 years of
3 age, one at Camp Bule, and one assigned to Floribert Kisembo's escort;

4 Then, for persecution as a crime against humanity under Article 7(1)(h), as a direct
5 perpetrator under Article 25(3)(a), of a priest in Mongbwalu, in the context of the first
6 operation; and, as an indirect co-perpetrator under Article 25(3)(a), in Mongbwalu,
7 Nzebi, Sayo, and Kilo, in the context of the first operation, and in Nyangarai, Lipri,
8 Tsili, Kobu, Bambu, Sangi, Gola, Jitchu, and Buli, in the context of the second
9 operation;

10 Then he is responsible for pillage as a war crime under Article 8(2)(e)(v), as an
11 indirect co-perpetrator under Article 25(3)(a), in relation to the looting of items in
12 Mongbwalu and Sayo by UPC/FPLC soldiers, and, in the case of Mongbwalu also by
13 Hema civilians, in the context of the first operation, and in Kobu, Lipri, Bambu, and
14 Jitchu, by UPC/FPLC soldiers, in the context of the second operation;

15 Further, for forcible transfer and deportation as a crime against humanity under
16 Article 7(1)(d) and ordering the displacement of the civilian population as a war crime
17 under Article 8(2)(e)(viii), as an indirect co-perpetrator under Article 25(3)(a), in
18 Mongbwalu, in the context of the first operation, and in Lipri, Tsili, Kobu, and Bambu,
19 in the context of the second operation;

20 Then, for conscripting and enlisting children under the age of 15 years into an armed
21 group between on or about 6 August 2002 and 31 December 2003, and using them to
22 participate actively in hostilities between on or about 6 August 2002 and on or about
23 30 May 2003, with respect to the participation of children under the age of 15 in the
24 first operation and in the UPC/FPLC assault on Bunia in May 2003, the use of children
25 under the age of 15 as bodyguards for UPC/FPLC soldiers and commanders,

1 including for Mr Ntaganda himself, and for the UPC President Thomas Lubanga; and
2 the use of children under the age of 15 to gather information about the opposing
3 forces and MONUC personnel as war crimes under Article 8(2)(e)(vii), an indirect
4 co-perpetrator under Article 25(3)(a);

5 Further, for intentionally directing attacks against protected objects as a war crime
6 under Article 8(2)(e)(iv), as an indirect co-perpetrator under Article 25(3)(a), against
7 the health centre in Sayo, in the context of the first operation;

8 And for destroying the adversary's property as a war crime under Article 8(2)(e)(xii),
9 and as an indirect co-perpetrator under Article 25(3)(a), in Mongbwalu and Sayo, in
10 the context of the first operation, and in Lipri, Tsili, Kobu, Jitchu, Buli, and Sangi, in
11 the context of the second operation.

12 Now, Mr Ntaganda, please rise. Mr Ntaganda, please rise.

13 Mr Ntaganda, for the reasons I have just summarised, the Chamber, having heard all
14 of the evidence presented by the parties, finds you:

15 as concerns Count 1, guilty of murder as crime against humanity;

16 as concerns Count 2, guilty of murder as a war crime;

17 as concerns Count 3, guilty of intentionally directing attacks against civilians as a war
18 crime;

19 as concerns Count 4, guilty of rape as a crime against humanity;

20 as concerns Counts 5 and 6, guilty of rape as a war crime;

21 as concerns Count 7, guilty of sexual slavery as a crime against humanity;

22 as concerns Counts 8 and 9, guilty of sexual slavery as a war crime;

23 as concerns Count 10, guilty of persecution as a crime against humanity;

24 as concerns Count 11, guilty of pillage as a war crime;

25 as concerns Count 12, guilty of forcible transfer of population as a crime against

1 humanity;
2 as concerns Count 13, guilty of ordering the displacement of the civilian population as
3 a war crime;
4 as concerns Counts 14, 15 and 16, guilty of conscripting and enlisting children under
5 the age of 15 years into an armed group and using them to participate activity in his
6 hostilities;
7 as concerns Count 17, guilty of intentionally directing attacks against protected
8 objects as a war crime;
9 and finally as concerns Count 18, guilty of destroying the adversary's property as a
10 war crime.

11 Mr Ntaganda, now you may sit down.

12 Mr Ntaganda is waiting for complete translation, it's fine.

13 Mr Ntaganda, as a result of the Chamber's judgment you shall remain in detention
14 until such time as the Chamber determines your sentence.

15 And later today the Chamber will issue an order instructing parties to file any request
16 for bringing evidence in relation to sentencing. Based on these requests, if any, and
17 in consultation with the parties, the Chamber will determine the timeline for
18 submissions and hearing as soon as possible.

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

20 Mr Ntaganda, you are entitled to appeal this judgment within 30 days. Your
21 Defence team will be able to start discussing the judgment with you already today.

22 As to the sentencing stage, the Chamber has considered which parts of the judgment
23 you should be able to read yourself and translation in Kinyarwanda of those parts
24 will commence today. You will receive this translation as soon as it is ready.

25 This concludes the hearing. I thank you everyone.

Judgment

(Open Session)

ICC-01/04-02/06

- 1 The Court stands adjourned.
- 2 THE COURT USHER: [11:03:00] All rise.
- 3 (The hearing ends in open session at 11.03 a.m.)