

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06  
Date: 7 November 2018

**TRIAL CHAMBER VI**

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF  
*THE PROSECUTOR v. BOSCO NTAGANDA***

**PUBLIC**

**Public redacted version of "Prosecution's Closing Brief", 20 April 2018,  
ICC-01/04-02/06-2277-Conf-Anx1-Corr**

**Source:** The Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Ms Nicole Samson

**Counsel for the Defence**

Mr Stéphane Bourgon  
Mr Christopher Gosnell

**Legal Representatives of the Victims**

Ms Sarah Pellet  
Mr Dmytro Suprun

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>9</b>
<b>II.</b>	<b>CONFIDENTIALITY .....</b>	<b>11</b>
<b>III.</b>	<b>EVALUATING THE EVIDENCE .....</b>	<b>11</b>
A.	OVERVIEW OF THE PROSECUTION’S EVIDENCE.....	11
B.	GENERAL PRINCIPLES.....	13
1.	The first stage: assessing the credibility of the evidence .....	14
2.	The second stage: proof beyond reasonable doubt .....	16
3.	The third stage: the elements of the crimes and modes of liability.....	17
C.	SPECIFIC CATEGORIES OF EVIDENCE .....	18
1.	Witness testimony .....	18
a.	Evaluating witness testimony: general principles .....	18
b.	Accomplice evidence.....	20
c.	Corroboration.....	21
2.	Expert Witnesses .....	22
3.	The Logbook .....	28
4.	UN and NGO evidence .....	30
<b>IV.</b>	<b>CREDIBILITY ASSESSMENTS .....</b>	<b>32</b>
A.	INSIDER WITNESSES .....	32
B.	DUAL-STATUS WITNESSES.....	34
<b>V.</b>	<b>DEFENCE EVIDENCE.....</b>	<b>36</b>
A.	TESTIMONY OF THE ACCUSED.....	36
B.	OTHER DEFENCE WITNESSES.....	45
<b>VI.</b>	<b>CONTEXTUAL ELEMENTS OF WAR CRIMES AND CRIMES AGAINST HUMANITY .....</b>	<b>49</b>
A.	CONTEXTUAL ELEMENTS OF WAR CRIMES .....	49
1.	The armed conflict took place in Ituri, DRC.....	49
2.	There was an armed conflict not of an international character .....	50
3.	The armed conflict was intense and protracted.....	51
4.	The armed conflict took place between organised armed groups .....	54
5.	The nexus requirement is satisfied .....	56
6.	The perpetrators of the crimes were aware of factual circumstances that established the existence of an armed conflict .....	57
B.	CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY .....	58
1.	There was an attack directed against the civilian population .....	58
2.	Multiple commission of acts.....	59
a.	Assault on Bunia in August 2002 .....	60
b.	Assaults on Songolo in 2002.....	62

c.	Assault on Zombe in October 2002 .....	65
d.	Assault on Mambasa, Komanda and Erineti in 2002 .....	66
e.	Assaults in and around Mongbwalu and Lipri, Bambu and Kobu.....	68
f.	Assault on Bunia in March 2003 .....	69
g.	Assault on Bunia in May 2003 .....	70
3.	The Attack was directed against the civilian population .....	71
a.	Non-Hema civilians were identified as the “enemy” and targeted .....	73
b.	There was an ethnic conflict.....	75
4.	Organisational policy .....	77
a.	The organisation .....	77
b.	The policy .....	79
i.	Regular pattern of assaults.....	81
ii.	Planning and coordination.....	81
iii.	Orders prior to or during assaults.....	82
iv.	Intentional targeting of civilians in assaults .....	82
v.	Perpetration of crimes by senior UPC commanders .....	82
vi.	UPC occupation of non-Hema civilian areas.....	83
vii.	Failure to punish or discipline .....	83
viii.	UPC propaganda .....	83
5.	The Attack was widespread and systematic .....	84
6.	The prohibited acts were committed with knowledge of the attack .....	86
<b>VII.</b>	<b>THE INDIVIDUAL CRIMES .....</b>	<b>87</b>
A.	BANYALI-KILO ASSAULT – “THE FIRST ATTACK” .....	87
1.	Attack objectives and synopsis .....	87
2.	Analysis of NTAGANDA’s testimony .....	92
a.	The objectives of the First Attack .....	92
i.	The expulsion of the non-Hema population from Mongbwalu .....	92
ii.	Gold .....	93
b.	NTAGANDA’s role during the First Attack.....	95
i.	NTAGANDA’s role in the planning of the First Attack .....	95
Aru-Mongbwalu axis .....	99	
Bunia - Mongbwalu axis.....	101	
ii.	NTAGANDA’s role in the execution of the First Attack .....	104
iii.	NTAGANDA’s departure from Mongbwalu .....	108
c.	[REDACTED] .....	110
3.	Attacks directed against the civilian population (Article 8(2)(e)(i)) - Count 3....	113
4.	Forcible transfer of population and displacement of civilians (Article 7(1)(d)) and Article 8(2)(e)(viii)) - Counts 12 and 13 .....	116

a.	Mongbwalu .....	118
b.	Nzebi .....	121
5.	Murder and attempted murder (Article 7(1)(a) and 8(2)(c)(i)) - Counts 1 and 2	122
a.	Pluto .....	122
b.	Mongbwalu .....	123
c.	Sayo .....	135
d.	Nzebi and Kilo .....	140
6.	Pillaging (Article 8(2)(e)(v)) - Count 11.....	141
a.	Mongbwalu .....	142
b.	Sayo .....	146
c.	The owners of the pillaged goods need not be “adversaries” .....	147
7.	Destroying the enemy’s property (Article 8(2)(e)(xii)) - Count 18.....	148
a.	Mongbwalu .....	148
b.	Sayo .....	149
8.	Attacking protected objects (Article 8(2)(e)(iv)) - Count 17 .....	150
a.	Mongbwalu .....	151
b.	Sayo .....	151
c.	Protected objects were the intended targets of the attacks.....	152
9.	Rape of civilians (Articles 7(1)(g) and 8(2)(e)(vi)) - Counts 4 and 5.....	152
a.	Mongbwalu and Sayo .....	153
b.	Kilo.....	156
10.	Persecution (Article 7(1)(h)) – Count 10 .....	157
B.	WALENDU-DJATSI ASSAULT – “THE SECOND ATTACK” .....	161
1.	Objectives, planning, and command of the Second Attack.....	161
2.	NTAGANDA’s testimony on the Second Attack .....	171
3.	Attacks directed against the civilian population (Article 8(2)(e)(i)) - Count 3 ....	178
a.	Orders to attack civilians.....	179
b.	Civilians were attacked as part of UPC operations .....	180
c.	Extent of criminality against civilians .....	184
4.	Forcible transfer of population and displacement of civilians (Article 7(1)(d) and Article 8(2)(e)(viii)) -Counts 12 and 13 .....	186
a.	Lipri, Tsili, and Nyangaray .....	188
b.	Kobu, Buli, Jitchu, Bambu, and Gutsi.....	189
5.	Pillaging (Article 8(2)(e)(v)) - Count 11 .....	190
a.	Lipri .....	191
b.	Kobu .....	192
c.	Bambu .....	192
d.	Jitchu.....	193
6.	Destroying the enemy’s property (Article 8(2)(e)(xii)) - Count 18 .....	194
7.	Attacking protected objects (Article 8(2)(e)(iv)) - Count 17 .....	199
8.	Rape and Sexual slavery of civilians (Articles 7(1)(g) and 8(e)(vi)) - Counts 4-5 and 7-8.....	201
a.	Lipri .....	203
b.	Bambu .....	203
c.	Kobu, Buli, Sangi, Jitchu, Ngabuli.....	203
9.	Murder and attempted murder (Article 7(1)(a) and Article 8(2)(c)(i)) - Counts 1 and 2 .....	209

a.	Lipri, Tsili.....	210
b.	Bambu .....	210
c.	Kobu, Sangi, Jitchu .....	211
10.	Persecution (Article 7(1)(h)) - Count 10 .....	219
C.	CONSCRIPTION, ENLISTMENT AND USE OF CHILDREN – COUNTS 14, 15 AND 16 .....	222
1.	Enlistment and conscription can be considered together.....	223
2.	Children under the age of 15 were recruited into the UPC .....	223
3.	UPC trained children in training camps throughout Ituri .....	228
4.	Children under the age of 15 were used to participate actively in hostilities .....	232
a.	UPC used children as military guards on patrols and at roadblocks .....	233
b.	UPC used children in reconnaissance missions or as informants .....	233
c.	UPC had a kadogo unit .....	234
d.	UPC used children in combat .....	234
e.	UPC used children as bodyguards or escorts for commanders.....	236
5.	NTAGANDA knew that there were children under the age of 15 in the UPC... 237	
a.	Documentary evidence on the presence of child soldiers within the UPC.....	238
b.	Videos and photographs show the presence of child soldiers in the UPC .....	241
c.	Age assessments .....	244
6.	NTAGANDA’s denial of children in the UPC is implausible .....	247
7.	Witnesses testified credibly about their experience as child soldiers.....	247
8.	There was no genuine demobilisation by the UPC.....	270
D.	RAPE AND SEXUAL SLAVERY OF CHILDREN (ARTICLE 8(2)(E)(VI)) – COUNTS 6 AND 9 274	
1.	Children recruited into the UPC were raped .....	275
2.	Children recruited into the UPC were sexually enslaved .....	280
<b>VIII.</b>	<b>MODES OF LIABILITY .....</b>	<b>283</b>
A.	ARTICLE 25(3) .....	283
1.	NTAGANDA is individually criminally responsible .....	284
a.	NTAGANDA participated in the crimes as a perpetrator (article 25(3)(a)) .....	284
i.	NTAGANDA directed attacks against civilians .....	284
ii.	NTAGANDA murdered Lendu and non-originares .....	287
iii.	NTAGANDA attacked protected objects, and pillaged them.....	288
iv.	NTAGANDA persecuted non-Hema civilians.....	290
v.	NTAGANDA enlisted children under the age of 15 into the UPC .....	294
vi.	NTAGANDA used children under the age of 15 to participate actively in hostilities.....	296
b.	NTAGANDA participated in the crimes as a co-perpetrator (article 25(3)(a)) ... 297	
i.	NTAGANDA and others shared a common plan to control Ituri.....	298
ii.	The UPC was used for the commission of crimes.....	336
iii.	The UPC was an organised and hierarchical structure of power .....	336

iv.	The UPC leadership, including NTAGANDA, ensured almost automatic compliance with their orders .....	342
v.	NTAGANDA's essential contribution to the realisation of the common plan resulted in the crimes charged.....	344
vi.	NTAGANDA recruited, trained, and used children and other persons to participate in hostilities as members of the UPC .....	346
vii.	NTAGANDA directed, commanded, coordinated, and participated in UPC attacks.....	349
viii.	NTAGANDA directed, controlled, facilitated and participated in the commission of crimes by UPC soldiers .....	353
ix.	NTAGANDA enabled communication and coordination between his co-perpetrators as well as with other actors .....	356
c.	NTAGANDA participated in the crimes by ordering or inducing their commission (article 25(3)(b)).....	357
i.	NTAGANDA held a position of authority in the UPC.....	358
ii.	NTAGANDA instructed others to commit crimes, or to perform acts or omissions that facilitated the crimes.....	359
iii.	NTAGANDA's instructions had a direct effect on the commission of crimes <sup>363</sup>	
d.	NTAGANDA contributed to the crimes committed by a group acting with a common purpose (article 25(3)(d)).....	363
e.	NTAGANDA participated as a co-perpetrator or accessory in attempted murder (article 25(3)(a), (b), (d), (f)) .....	365
2.	NTAGANDA acted with intent and knowledge.....	365
a.	NTAGANDA knew of the factual circumstances relevant to his liability .....	371
b.	NTAGANDA intended the crimes concerning child soldiers committed throughout the armed conflict .....	372
i.	NTAGANDA intended to enlist and to conscript children under the age of 15 into the UPC, and to use them to participate actively in hostilities .....	372
ii.	NTAGANDA intended to rape and to sexually enslave children under the age of 15 recruited into the UPC .....	375
c.	NTAGANDA intended the crimes in the First and Second Attacks.....	377
i.	NTAGANDA intended to kill, to attack civilians, and to destroy property	382
ii.	NTAGANDA intended to persecute non-Hema civilians and to forcibly displace them .....	383
iii.	NTAGANDA intended to pillage and to attack protected objects.....	385
iv.	NTAGANDA intended to rape and to sexually enslave .....	386

<b>IX.</b>	<b>COMMAND RESPONSIBILITY – ARTICLE 28(a)</b> .....	<b>389</b>
1.	NTAGANDA was a military commander.....	390
2.	NTAGANDA had effective command and control over the forces who committed the crimes.....	393
a.	NTAGANDA’s material ability to prevent and punish crimes.....	393
b.	Material ability to punish subordinates for their commission of crimes .....	396
c.	NTAGANDA’s authority over the distribution of weapons, ammunition, and supplies .....	398
d.	Power to appoint, promote, replace or remove .....	398
3.	NTAGANDA knew that the UPC forces were committing or about to commit the charged crimes .....	399
4.	NTAGANDA failed to take all necessary and reasonable measures within his power to prevent or repress the commission of crimes by his subordinates.....	406
a.	NTAGANDA failed to prevent the commission of his subordinates’ crimes.....	407
b.	NTAGANDA failed to repress the commission of his subordinates’ crimes, or to submit them to competent authorities for investigation and prosecution.....	410
5.	The crimes committed by the UPC forces resulted from NTAGANDA’s failure to exercise control over them properly .....	413
<b>X.</b>	<b>CONCLUSION</b> .....	<b>414</b>



## I. INTRODUCTION

1. **Bosco NTAGANDA** “planned the war” and “was in charge of all the war operations”.<sup>1</sup> He “was responsible for everything” when it came to the UPC’s training, deployment and operations.<sup>2</sup> “You couldn’t go to war without his approval.”<sup>3</sup> He was “more present and influential” than his own hierarchical superior;<sup>4</sup> “[h]e was the boss and he was the one who received all the reports.”<sup>5</sup> “He was the person who was responsible, nobody else.”<sup>6</sup>
2. Known as “the Terminator”, **NTAGANDA** was a powerful and influential military leader of the *Forces Patriotiques pour la Libération du Congo* (“FPLC”), the military wing of the *Union des Patriotes Congolais* (“UPC”).<sup>7</sup> He led by the negative example that he set: committing crimes directly and indirectly, ordering or inducing their commission and contributing to the commission of crimes by others. At all times, **NTAGANDA** acted with intent and knowledge. As one of the most senior military commanders he also failed to prevent, repress or punish the crimes committed by his subordinates.
3. **NTAGANDA** and his co-perpetrators including Thomas LUBANGA (UPC President and Commander-in-Chief), Floribert KISEMBO (UPC Chief of Staff), Chief KAHWA (UPC Deputy Defence minister), Aimable RAFIKI SABA (UPC co-founder and *Administrateur Général de la Sécurité*), and senior UPC commanders Abdul BAGONZA KASORO, TCHALIGONZA, and

<sup>1</sup> **P-907:T-89-CONF-ENG-CT**,21:3-13. The preceding citation is the format the Prosecution has used uniformly throughout this brief to refer to trial testimony. It contains the witness code in bold followed by the transcript number, page number(s), and line numbers. The Prosecution used a shortened form of the transcript reference to preserve clarity and brevity. Unless otherwise specified, the citations to testimony cite to the most recent corrected or edited transcript available to the Prosecution at the time of the filing of the brief. Unless otherwise specified (by “FR”), the citations refer to the English transcripts.

<sup>2</sup> **P-768:T-34-CONF-ENG-CT**,52:11-15.

<sup>3</sup> **P-907:T-89-CONF-ENG-CT**,21:14-24.

<sup>4</sup> **P-768:T-33-CONF-ENG-CT**,29:4-15.

<sup>5</sup> **P-907:T-89-CONF-ENG-CT**,16:25-17:9.

<sup>6</sup> **P-907:T-89-CONF-ENG-CT**,21:8-13.

<sup>7</sup> Throughout this brief, “UPC” encompasses and is used interchangeably with “FPLC”, “UPC troops”, and “**NTAGANDA**’s troops”. “UPC” also includes Hema civilian supporters.

KASANGAKI, devised, from at least 6 August 2002 onwards, a common plan to assume military and political control over Ituri. As part of the common plan, **NTAGANDA** and others sought to take over non-Hema dominated areas of Ituri and expel their perceived enemies, particularly the Lendu-Ngiti,<sup>8</sup> their perceived supporters, and the so-called “*non-originaires*” (“non-Hema civilians”) from Ituri.

4. The means used to implement this plan involved the commission of the charged crimes by directing an attack against the non-Hema civilians through intentional attacks, murder, rape, sexual slavery, forcible transfer or displacement, persecution, property destruction, pillaging, and attacks on protected objects, as well as by enlisting, conscripting and using children under the age of 15 to participate actively in hostilities. The rampant rape and sexual slavery of children under the age of 15 in the UPC occurred in the ordinary course of events in implementing the common plan.
5. The crimes against non-Hema civilians for which **NTAGANDA** has been charged relate to acts that occurred during two assaults, the first in Banyali-Kilo *collectivité* in November 2002 and the second in Walendu-Djatsi *collectivité* in February 2003.<sup>9</sup> However, these crimes must be seen in the context of the broader “attack” on the civilian population between on or about<sup>10</sup> 6 August 2002 and 27 May 2003, and the protracted armed conflict that existed between on or about 6 August 2002 and 31 December 2003. In this broader timeframe, the UPC and Hema<sup>11</sup> civilian supporters committed similar crimes in other UPC military assaults (including on Bunia, Zumbe, Songolo, and Mambasa-Komanda-Eringeti), as well as outside of military assaults. In addition, between on or

---

<sup>8</sup> The Lendu South are known as the Ngiti. Every mention of Lendu in these submissions is a reference to both Lendu and Ngiti, unless stated otherwise. Other terms for the Lendu are “*Walendu*” and “*Bale*”.

<sup>9</sup> Hereafter referred to as “The First Attack” and “The Second Attack”, respectively.

<sup>10</sup> Throughout this brief, the expression “on or about” qualifies both dates in the phrase.

<sup>11</sup> The Hema North are known as the Gegere. A reference to Hema in these submissions is a reference to both Hema and Gegere, unless stated otherwise.

about 6 August 2002 and 31 December 2003, children under the age of 15 were enlisted and conscripted into the UPC where they were raped and sexually enslaved; the UPC used these children to participate actively in hostilities between on or about 6 August 2002 and March 2003.

6. This brief summarises the main evidence in this case, which, taken as a whole, overwhelmingly establishes NTAGANDA's guilt beyond reasonable doubt.

## II. CONFIDENTIALITY

7. This brief and its annexes are classified as "Confidential" because they refer to confidential witness testimony and admitted materials. A public redacted version of the brief and its annexes will be filed as soon as possible.

## III. EVALUATING THE EVIDENCE

### A. OVERVIEW OF THE PROSECUTION'S EVIDENCE

8. The Prosecution's oral, documentary and audio-visual evidence is credible, reliable, and corroborated.
9. The Prosecution called 71 witnesses to testify *viva voce*, including 11 experts. The prior recorded testimony of nine other Prosecution's witnesses was admitted under rules 68(2)(b)<sup>12</sup> and (c).<sup>13</sup> The fact witnesses included: (i) 16 members of the UPC military wing [REDACTED],<sup>14</sup> five of whom testified that they were under 15 when recruited and used in the army;<sup>15</sup> (ii) three UPC [REDACTED] members;<sup>16</sup> (iii) three family members of former UPC child soldiers;<sup>17</sup> (iv) two [REDACTED] who worked for the UPC;<sup>18</sup> (v) 31 direct victims or eye-witnesses,

<sup>12</sup> P-39, P-57, P-67. An expert report prepared by P-975 was also admitted under rule 68(2)(b). The Chamber heard P-190's oral testimony and admitted a prior recorded statement under rule 68(2)(b).

<sup>13</sup> P-16, P-22, P-27, P-41, P-103.

<sup>14</sup> P-10, P-16, P-17, P-55, P-190, P-290, P-758, P-768, P-769, P-883, P-888, P-898, P-901, P-907, P-911, P-963.

<sup>15</sup> P-10, P-758, P-883, P-888, P-898.

<sup>16</sup> P-5, P-41, P-67.

<sup>17</sup> P-761, P-773, P-918.

<sup>18</sup> P-2, P-30.

including local leaders;<sup>19</sup> (vi) a UN child protection officer;<sup>20</sup> (vii) the head of the UN Special Investigations Team;<sup>21</sup> (viii) three persons who worked in 2002 and/or 2003 with children demobilised from armed groups;<sup>22</sup> (ix) [REDACTED] victims of sexual violence, including in 2002-2003;<sup>23</sup> (x) a representative of an international NGO reporting on human rights violations in the DRC;<sup>24</sup> (xi) [REDACTED] associated with the UPC;<sup>25</sup> (xii) a politician of another armed group in Bunia;<sup>26</sup> (xiii) a senior judge based in Bunia in 2001-2003;<sup>27</sup> (xiv) [REDACTED];<sup>28</sup> and (xv) a senior Lendu [REDACTED].<sup>29</sup> These witnesses corroborate each other and are also corroborated by authentic, credible, neutral, and reliable contemporaneous documentary evidence.

10. The Prosecution's documentary evidence includes official UPC correspondence and internal documents including a bound logbook of UPC military radio communications from November 2002 – February 2003 ("Logbook");<sup>30</sup> written UPC military orders; decrees, nominations, declarations and press statements from 2002 to 2004; a February 2003 intercepted radio communication of UPC commanders during an operation; and videos of UPC events and visits to its training camps in 2002 and 2003. The evidence further includes registers of demobilised child soldiers from NGOs in partnership with the UN; photographs and satellite images; forensic expert reports; identification documents including birth and school records; maps; sketches; media reports; and panoramic reconstructions of locations of interest.

---

<sup>19</sup> P-18, P-19, P-22, P-27, P-39, P-100, P-103, P-105, P-106, P-108, P-113, P-121, P-127, P-300, P-301, P-790, P-792, P-800, P-805, P-815, P-850, P-857, P-859, P-863, P-868, P-877, P-886, P-887, P-892, P-894, P-912.

<sup>20</sup> P-46.

<sup>21</sup> P-317.

<sup>22</sup> P-31, P-116, P-976.

<sup>23</sup> P-365.

<sup>24</sup> P-315.

<sup>25</sup> P-14.

<sup>26</sup> P-12.

<sup>27</sup> P-43.

<sup>28</sup> P-57.

<sup>29</sup> P-245.

<sup>30</sup> [DRC-OTP-2102-3854](#).

11. While it is not possible to cite all of the evidence establishing NTAGANDA's individual criminal responsibility, the Prosecution has addressed the issues it considers of major significance in this brief. However, should the Chamber find evidence not cited herein which supports the Prosecution's case, its omission should not be construed to suggest that the Prosecution considers that evidence less than compelling.<sup>31</sup>
12. In addition to the admitted evidence, the Chamber noted the agreement between the Parties as to facts relevant to the case and held that a more complete presentation of the evidence pertaining to these agreed facts was not necessary.<sup>32</sup> The Prosecution, therefore, does not address them.

## B. GENERAL PRINCIPLES

13. All evidence that the Prosecution relies on was deemed admissible by the Chamber under articles 64(9)(a) and 69(4) of the Statute, on the basis of its *prima facie* relevance and probative value, and considering any prejudice its admission may cause to a fair trial or to the fair evaluation of the testimony of a witness.<sup>33</sup> The Chamber admitted this evidence primarily for the truth of its contents; it admitted a smaller number of items of contradictory evidence for the purpose of potential witness impeachment, without a full evaluation of their reliability and accuracy;<sup>34</sup> and one item was admitted solely to establish a witness's methodology.<sup>35</sup>
14. The Chamber must now determine the weight to be given to the evidence in light of the evidentiary record as a whole.<sup>36</sup> Likewise, the Chamber is obliged to

<sup>31</sup> [Bemba TJ](#), para.226; [Ngudjolo TJ](#), para.47; [Katanga TJ](#), para.81.

<sup>32</sup> ICC-01/04-02/06-662. The Chamber permitted the Prosecution to adduce additional evidence in relation to agreed fact 69, ICC-01/04-02/06-2184-Red.

<sup>33</sup> ICC-01/04-02/06-619, paras.35-36; ICC-01/04-02/06-1181, para.7.

<sup>34</sup> [T-106-CONF-ENG-CT](#), 72:5-9; [T-117-CONF-ENG-ET](#), 7:10-15; [T-231-CONF-ENG-ET](#), 23:5-17, 47:24-48:9.

<sup>35</sup> [P-317:T-191-CONF-ENG-ET](#), 59:16-21 ([DRC-OTP-0065-0006](#)).

<sup>36</sup> ICC-01/04-02/06-1181, paras.7.

search for and establish the truth.<sup>37</sup> In doing so, the Chamber must apply a three-stage analysis:<sup>38</sup> (i) assessing the credibility of the evidence; (ii) proof beyond reasonable doubt, and (iii) the elements of the crimes and modes of liability.

**1. The first stage: assessing the credibility of the evidence**

15. *First*, the Chamber must assess the credibility of the relevant evidence. A piecemeal approach is not appropriate. Nor is assessing the evidence of each witness separately,<sup>39</sup> “as if it existed in a hermetically sealed compartment.”<sup>40</sup> Individual items of evidence, such as the testimony of different witnesses or documents, must be analysed in light of the entire body of evidence, even if individual items of evidence, when seen in isolation, are open to different interpretations.<sup>41</sup>

16. The various pieces of evidence examined holistically reveal a clear and consistent pattern of criminality: **NTAGANDA** contributed to the implementation of the common plan, personally committed crimes, ordered or induced their commission by his behaviour, contributed to the commission of crimes by others, and failed to prevent and repress them.

17. In particular:

- witness testimony from UPC political and military insiders and **NTAGANDA**, UPC videos, and the Logbook show **NTAGANDA**'s central position in the UPC, his effective control of the troops, his issuance of orders, his coordination and command of troops before, during, and after operations, his ability to discipline, the level of his information and

<sup>37</sup> Article 69(3); *Katanga Reg.55 AJ*,para.104.

<sup>38</sup> *Ntagerura AJ*,para.174.

<sup>39</sup> *Lubanga TJ*,para.94; *Lubanga AJ*,para.22; *Ngudjolo TJ*,para.45; *Katanga TJ*,para.78; *Bemba TJ*,para.225.

<sup>40</sup> *Tadić Contempt AJ*,para.92; *Musema AJ*,para.134; *Ntagerura AJ*,para.171.

<sup>41</sup> *Lubanga TJ*,para.94; *Lubanga AJ*,para.22; *Ngudjolo TJ*,para.45; *Bemba TJ*,para.225; *Bemba et al. TJ*,para.188; *Bemba et al. AJ*,paras.912,1540.

knowledge, and the UPC troops' compliance with his orders;

- the Logbook and official UPC documents show **NTAGANDA** and his co-perpetrators working closely together to commit crimes in implementation of the common plan and reveal the group's plan since 2000;
- victim, insider, and expert witness testimony demonstrates the perpetration of multiple charged crimes –such as torture, rape, and murder– against the same population and even the same individuals, revealing the persecution of non-Hema civilians by the UPC;
- victim and insider witness testimony and intercepted radio communications show a consistent *modus operandi* as the UPC attacked and persecuted the non-Hema civilian population;
- testimony from victims and expert witnesses shows the murder of civilians by UPC troops using blunt force, and DNA evidence corroborates the identity of some of the victims;
- witness testimony from UN and NGO representatives corroborates detailed reports from their organisations, prepared contemporaneously with the victimisation of the non-Hema civilians by the UPC;
- insider and crime-base witness testimony shows the pattern of sexual victimisation of civilians and members of the UPC. Their evidence is corroborated by UN and local and international NGO representatives who were either in Ituri at the time of the crimes or arrived shortly thereafter, who met victims and recorded the criminality in reports they authored;
- witness testimony from insiders and former child soldiers and UN representatives shows the recruitment, use, rape and sexual slavery of children under the age of 15 in the UPC.

18. As the diverse evidence demonstrates, the pattern of conduct is unmistakable. From their various independent vantage points, the witnesses describe the same crimes and the same perpetrators.<sup>42</sup>

**2. *The second stage: proof beyond reasonable doubt***

19. *Second*, the Chamber should analyse whether the relevant evidence, taken in its totality, establishes the alleged facts, notwithstanding the evidence upon which the Defence relies.<sup>43</sup> At this stage, the Chamber should apply the standard of proof beyond reasonable doubt concerning facts comprising the elements of the crimes and modes of liability alleged, and facts indispensable for entering a conviction.<sup>44</sup> As the Appeals Chamber cautions, the reasonable doubt standard “cannot consist in imaginary or frivolous doubt based on empathy or prejudice”, but must be based on logic and common sense and have a rational link to the evidence, to the lack of evidence, or to inconsistencies therein.<sup>45</sup>

20. Applying this standard to the totality of the evidence makes clear that the Prosecution has proved its case. Neither the theories nor the evidence advanced by the Defence disturb the coherence and weight of the evidence of NTAGANDA's guilt beyond reasonable doubt.

21. The theories advanced by the Defence must fail where they are unsupported by evidence. The Defence claimed that it would challenge the accounts of Prosecution witnesses through contrary accounts from other individuals. Yet, in most cases, those challenges remained hypothetical since the Defence failed to call the relevant witnesses. The Defence theories advanced must also fail

---

<sup>42</sup> *Below*, VII.A and B.

<sup>43</sup> *Ntagerura AJ*, para.174; *Bemba TJ*, para.225; *Ngudjolo TJ*, para.46; *Katanga TJ*, para.80.

<sup>44</sup> *Ntagerura AJ*, para.174; *Katanga TJ*, para.69; *Ngudjolo AJ*, para.35; *Bemba TJ*, para.215; *Bemba et al. TJ*, para.186.

<sup>45</sup> *Ngudjolo AJ*, para.109, *Bemba et al. TJ*, para.187, citing *Rutaganda AJ*, para.488.



because they are contradicted by the sheer volume of credible evidence.<sup>46</sup>

22. The facts underpinning the Prosecution's case are proved through direct and circumstantial evidence. The Prosecution's direct evidence – eye-witness testimony, the Logbook, videos, photographs and UPC documents – readily dispels the Defence's attempts to introduce alternative narratives. Likewise, the Defence's hypotheses do not affect the strength of the circumstantial evidence adduced.<sup>47</sup>
23. When available evidence gives rise to only one reasonable conclusion, that particular conclusion is considered established beyond reasonable doubt.<sup>48</sup> However, not every underlying fact needs to be proved separately beyond reasonable doubt<sup>49</sup> to sustain a conviction.

### *3. The third stage: the elements of the crimes and modes of liability*

24. *Third*, and finally, the Chamber must decide whether the elements of charged crimes and modes of liability are proven.<sup>50</sup>
25. On 9 March 2015, the Prosecution requested the Trial Chamber to notify the Parties that the legal characterisation of facts may be subject to change to include direct co-perpetration as an additional and/or alternative form of liability.<sup>51</sup> On 16 February 2017, a Majority of the Trial Chamber decided not to issue a regulation 55 notice, without prejudice to the Chamber's continuing review of the evidence, any further evidence presented in the case, and its views on the appropriateness of such course of action in the future.<sup>52</sup> The Prosecution requests that the Chamber now provide notice to include direct co-perpetration

---

<sup>46</sup> *Bemba TJ*, para.246.

<sup>47</sup> Nothing in the Court's statutory framework prevents the Chamber from relying on circumstantial evidence. *Bemba TJ*, para.239; *Bemba et al. AJ*, paras.868,869, *Bemba et al. AJ*, para.1386.

<sup>48</sup> *Bemba TJ*, para.239; *Bemba et al. AJ*, paras.868,869.

<sup>49</sup> *Lubanga AJ*, para.22; *Bemba et al. AJ*, para.868.

<sup>50</sup> *Ntagerura AJ*, para.174.

<sup>51</sup> ICC-01/04-02/06-501; ICC-01/04-02/06-646.

<sup>52</sup> [T-197-CONF-ENG-ET](#), 73:16-74:9.

as an alternative form of liability. The Appeals Chamber has confirmed that Trial Chambers are entitled to give notice of a possible legal re-characterisation of facts under regulation 55(2), including a change in mode of liability, at the deliberations stage of the trial proceedings. The trial remains fair because the Defence has been aware since the start of trial that potential notice might be given subsequently. It also remains fair because there would be no need to hear further evidence: the evidence adduced by both parties in support of or against the confirmed mode of liability of indirect co-perpetration is entirely relevant to direct co-perpetration.<sup>53</sup>

### C. SPECIFIC CATEGORIES OF EVIDENCE

#### 1. *Witness testimony*

##### a. Evaluating witness testimony: general principles

26. To determine the weight of testimony, the Chamber should assess both the credibility of the witnesses and the reliability of their evidence.<sup>54</sup> Having had the opportunity to observe many witnesses, the Chamber may properly consider their demeanour.

27. Further, in evaluating inconsistencies within and/or among witnesses' testimonies,<sup>55</sup> the Chamber need not consider such evidence tainted or unreliable due to minor inconsistencies. As held in *Kupreškić*:

[t]he presence of inconsistencies in the evidence does not, *per se*, require a reasonable Trial Chamber to reject it as being unreliable. Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not

---

<sup>53</sup> *Katanga Reg.55 AJ*.

<sup>54</sup> *Lubanga AJ*, para.239. Also *Lubanga TJ*, paras.102,106; *Ngudjolo TJ*, para.51,53; *Katanga TJ*, paras.85,87; *Bemba TJ*, paras.229-230.

<sup>55</sup> *Lubanga AJ*, paras.23-24; *Ngudjolo AJ*, para.23.

automatically exclude the Trial Chamber from relying on the evidence.<sup>56</sup>

28. Instead, the Chamber may freely consider such testimony reliable, having resolved the inconsistencies. Moreover, because witnesses may be accurate on some issues, and less accurate on others, the Chamber may accept certain parts of a witness's account while disregarding other portions of it, and consider the impact on the witness's overall reliability.<sup>57</sup>
29. Significantly, several witnesses who appeared before the Chamber were themselves victims of NTAGANDA's crimes and testified about the trauma they suffered. That they may "*forget or mix up small details*" was often a result of the traumatic circumstances they experienced, and does not impugn their evidence on the central facts of the crimes, or render their evidence generally unreliable.<sup>58</sup> Similarly, in assessing the nature of any discrepancy in witness testimony, a Chamber may correctly consider the impact of social and cultural factors to put such "discrepancies" into perspective. For instance, the difficulties that some witnesses may have faced in estimating distances or giving geographical direction should not affect their testimony as a whole or their credibility.<sup>59</sup>
30. Where the credibility of a witness is challenged, the Chamber should consider whether the party seeking to discredit the witness put to the witness the facts or evidence available at the time which are relied on to impeach the witness, as the Chamber ordered.<sup>60</sup> The requirement for a party to put its case to the witness is a well-established rule of fairness, in that the witness must not be discredited without having had an opportunity to comment on or counter the discrediting

---

<sup>56</sup> *Kupreškić AJ*, para.31.

<sup>57</sup> *Lubanga TJ*, para.104; *Ngudjolo TJ*, para.50.

<sup>58</sup> *Rutaganda AJ*, para.219.

<sup>59</sup> *Rutaganda AJ*, paras.230-231.

<sup>60</sup> ICC-01/04-02/06-619, para.28; [T-117-CONF-ENG-ET](#), 2:14-22; [T-177-CONF-ENG-ET](#), 42:3-5.

information.<sup>61</sup> Further, as held by the Chamber when **NTAGANDA** elected not to cross-examine P-290, the right to cross-examine witnesses is discretionary and can be forfeited; choosing not to cross-examine a witness can be construed as a waiver of the right to do so.<sup>62</sup> “[T]he absence of cross-examination does not per se ‘minimise’ the probative value” of a witness’s testimony; it is but one among other factors to be taken into account in the determination of the weight to be given to the testimony, when it is evaluated with the evidence of the case as a whole.<sup>63</sup>

31. The requirement of putting the case to the witness does not extend to the accused who chooses to testify. As held by the ICTR Appeals Chamber, “[w]hen an accused testifies in his own defence, he is well aware of the context of the Prosecution’s questions and of the Prosecution’s case, insofar as he has received sufficient notice of the charges and the material facts supporting them”.<sup>64</sup> As held by the ICTY Appeals Chamber, “his presence during the trial proceedings as a whole informed [him] of the case against him”.<sup>65</sup>

#### **b. Accomplice evidence**

32. No category of witness is *per se* unreliable.<sup>66</sup> Nothing prohibits the Chamber from relying on accomplice testimony, even if viewed with caution in some circumstances.<sup>67</sup> It can be relied upon especially where an accomplice is thoroughly cross-examined.<sup>68</sup> Accomplice testimony does not require corroboration.<sup>69</sup> Indeed, the Chamber “may convict on the basis of the evidence of a single witness, even an accomplice, provided such evidence is viewed with caution.”<sup>70</sup> A Chamber may appropriately approach accomplice evidence by considering

<sup>61</sup> *Browne v. Dunn*, p.70. Also, *Brđanin & Talić*. Appeal Decision, p.4.

<sup>62</sup> *T-67-CONF-ENG-CT*, 40:1-22.

<sup>63</sup> ICC-01/04-02/06-1791-Conf, para. 12.

<sup>64</sup> *Karera AJ*, para.27; *Krajišnik AJ*, paras.369-370.

<sup>65</sup> *Krajišnik AJ*, para.370.

<sup>66</sup> *Bemba et al. AJ*, paras.1019,1081.

<sup>67</sup> E.g. *Nchamihigo AJ*, para.42-43.

<sup>68</sup> *Niyitegeka AJ*, para.42,48,98.

<sup>69</sup> *Bemba et al. AJ*, para.1084.

<sup>70</sup> *Nchamihigo AJ*, para.42.

whether, *inter alia*: (i) discrepancies in the testimony are explained; (ii) the witness has already been tried and, if applicable, sentenced for his own crimes or is awaiting the completion of his trial; (iii) whether the witness may have any other reason for holding a grudge against the accused;<sup>71</sup> and (iv) the witness has decided to testify, despite the possibility that he or his family may, as a result, suffer retaliation. Yet, none of these factors renders accomplice testimony unreliable *per se*. Rather, the Chamber should duly weigh the testimony given the circumstances of each case.<sup>72</sup>

33. The incriminating evidence of witnesses who were members of the UPC at the relevant time is credible, reliable, and probative of facts in issue. These witnesses' accounts were not given in exchange for immunity or assistance from the Court. Their evidence is corroborated by other evidence, is internally consistent, and, assessed in light of the evidence as a whole, worthy of belief. The testimony of the political and military insider witnesses—even if “accomplices” in any sense—easily survives scrutiny.

### c. Corroboration

34. Corroboration is not required at this Court.<sup>73</sup> Nor when considered, does corroboration require that testimonies be identical in all aspects or describe the same facts in the same way.<sup>74</sup> Witness testimonies are deemed corroborative when “one prima facie credible testimony is compatible with the other prima facie credible testimony regarding the same fact or a sequence of linked facts.”<sup>75</sup> Therefore, thematic consistencies among testimonies are sufficient corroboration. Mirror images are unnecessary and unrealistic.

<sup>71</sup> *Nchamihigo AJ*, para.47.

<sup>72</sup> *Nchamihigo AJ*, para.47.

<sup>73</sup> See rule 63(4). *Bemba et al. AJ*, para.1084.

<sup>74</sup> *Gatete AJ*, para.125 (citing *Kanyarukiga AJ*, para.220; *Ntawukulilyayo AJ*, para.24, *Munyakazi AJ*, para.103; *Bikindi AJ*, para.81; *Nahimana AJ*, para.428). Also *Ntabakuze AJ*, para.150.

<sup>75</sup> *Gatete AJ*, para.125 (citing *Kanyarukiga AJ*, para.177, 220); *Ntawukulilyayo AJ*, para.121 (citing *Bikindi AJ*, para.81; *Nahimana AJ*, para.428).

35. The Prosecution witnesses are corroborated: they are *prima facie* credible, and they describe the sequence of linked facts and events in a compatible manner. The sum of the witnesses' testimony traces NTAGANDA's association with the co-perpetrators since 2000, the formation of the common plan and essential contributions to it, his role in the UPC, command of operations, orders and commission of crimes. Every witness testified from their vantage point and experience.<sup>76</sup> Their testimony is thematically consistent across these diverse perspectives. They are compatible. They are corroborated.<sup>77</sup>

## 2. Expert Witnesses

36. Chambers have weighed expert evidence by considering the experts' established professional competence, the methodologies used, the consistency of their findings with other admitted evidence, and their general reliability.<sup>78</sup>

37. The Prosecution called 11 expert witnesses; the Defence accepted their qualifications and reports.<sup>79</sup> The Chamber admitted a report from a twelfth expert, P-975, who corroborated P-790's testimony.<sup>80</sup> The Defence called no experts.

### *Physical and psychological trauma*

38. Forensic Psychologist P-933; Psychotherapist P-938 and Professor of Forensic Medicine P-939 testified about the impact of traumatic events on memory and about the physical and psychological scars of particular witnesses. Their testimony corroborates the core aspects<sup>81</sup> of P-18, P-19, P-113, and P-108's accounts, and provides helpful background evidence for the assessment of their

<sup>76</sup> See *Ntawukulilyayo AJ*, para.24; *Munyakazi AJ*, para.103.

<sup>77</sup> E.g. *Gatete AJ*, para.126.

<sup>78</sup> *Lubanga TJ*, para.112; *Ngudjolo TJ*, para.60; *Katanga TJ*, para.94; *Bemba TJ*, para.233.

<sup>79</sup> ICC-01/04-02/06-826-Red, paras.5,6,19,20,27,28,31,32,40,41,44,45,48,49,52,53,58; ICC-01/04-02/06-1032-Red, paras.39,52,53,55-59; **P-938**:[T-113-CONF-ENG-ET](#),32:23-33:1; **P-934**:[T-125-CONF-ENG-ET](#),31:4-13.

<sup>80</sup> [DRC-OTP-2097-0462](#).

<sup>81</sup> *Kupreškić AJ*, para.31; *Kenyatta DCC*, para.92; *Ruto/Sang DCC*, paras.154-156.

testimony and that of other witnesses.<sup>82</sup> P-933 reported that victims of traumatic events can have vivid or fragmented recall.<sup>83</sup> He opined that victims of sexual assault experience feelings of helplessness because of their total inability to stop the attack. Some cannot recall the traumatic event chronologically because components remain fragmented and disconnected.<sup>84</sup>

39. P-938 and P-939 conducted clinical examinations of P-18, P-19, P-108 and P-113 and prepared joint reports on the consistency of their account with their psychological or physical state.<sup>85</sup>

40. In relation to P-18, P-19 and P-113, and to rape victims in general, P-938 testified that rape victims universally fear shame, stigmatisation, relationship breakdown, and ostracisation if they report their rape; this explains delayed reporting.<sup>86</sup> In conflict or post-conflict areas where there is little trust in the authorities and fear of stigmatisation or reprisals, women are very reluctant to come forward.<sup>87</sup> P-938 opined that in post-conflict situations, rape reporting is either triggered by medical need, the onset of peace, the availability of psychological assistance, or the interviewer's gender.<sup>88</sup> P-938 further observed, about P-18, P-19 and P-113:

*When I'm speaking to a rape victim I would generally expect that person to find it difficult to articulate what had happened. And if we look at the three witnesses I met, this is exactly what I found; distress, one woman covered her face with her shawl, another woman wasn't able to look me in the eye, which was quite different from when they were describing what had happened generally in the incidents in Ituri.*<sup>89</sup>

<sup>82</sup> *Lubanga TJ*, para.105.

<sup>83</sup> **P-933:T-84-ENG-ET**,24:20-26:6; [DRC-OTP-2085-0221](#) at 0229.

<sup>84</sup> **P-933:T-84-ENG-ET**,25:5-22.

<sup>85</sup> **P-938:DRC-OTP-2059-0049,DRC-OTP-2059-0058,DRC-OTP-2059-0069,DRC-OTP-2059-0080; P-939:DRC-OTP-2059-0131,DRC-OTP-2059-0146,DRC-OTP-2059-0161,DRC-OTP-2059-0231,DRC-OTP-2059-0054.**

<sup>86</sup> **P-938:T-113-CONF-ENG-ET**,49:5-50:12.

<sup>87</sup> **P-938:T-113-CONF-ENG-ET**,62:10-13.

<sup>88</sup> **P-938:T-114-CONF-ENG-CT**,73:1-74:10.

<sup>89</sup> **P-938:T-114-CONF-ENG-CT**,15:21-25.

41. P-938 testified that P-18, P-19, P-108 and P-113 exhibited responses one might find worldwide by people who experienced traumatic episodes.<sup>90</sup> All four had clear recollections of their traumatic experiences and the three rape victims were able to give very coherent accounts.<sup>91</sup>
42. As described in further detail in the Second Attack section, P-938 found the psychological consequences described by P-18, P-19 and P-113 “*entirely consistent*” with the events they alleged.
43. P-939, who examined P-18, P-19 and P-108, further concluded that her observations of their physical state were compatible with the witnesses’ declarations.<sup>92</sup>

#### *Exhumations*

44. Five Prosecution experts testified about the exhumation of human remains in Kobu-Wadza, Sayo and Tchudja. The expert evidence corroborates oral and photographic evidence that the UPC murdered Lendu civilians using blunt force during the First and Second Attacks. It also corroborates: (i) evidence that victims were buried in communal graves in Kobu, and (ii) [REDACTED] and [REDACTED]’s accounts of the burials in Tchudja and Sayo.<sup>93</sup>
45. Forensic Archaeologist and Anthropologist P-420 located possible graves and remains in Kobu-Wadza.<sup>94</sup> He reviewed the reports of fellow anthropologists and agreed with their conclusions, methodology and accuracy.<sup>95</sup> P-420 exhumed 22 bodies<sup>96</sup> in Kobu-Wadza, Tchudja, and Sayo:<sup>97</sup> 14 bodies in in Kobu (KOB1); two bodies in Tchudja (TCH1) and five bodies in one grave in Sayo, (SAI1) and

<sup>90</sup> [P-938:T-114-CONF-ENG-CT](#),29:3-6.

<sup>91</sup> [P-938:T-114-CONF-ENG-CT](#),62:10-63:12.

<sup>92</sup> [DRC-OTP-2059-0131](#); [DRC-OTP-2059-0146](#); [DRC-OTP-2059-0231](#).

<sup>93</sup> [REDACTED]. See Section VII.A.5.b. and c.

<sup>94</sup> [P-420:DRC-OTP-2059-0014](#); [T-123-CONF-ENG-ET](#),12:24-14:17.

<sup>95</sup> [P-420:T-123-CONF-ENG-ET](#),53:8-55:16.

<sup>96</sup> [DRC-OTP-2072-0211](#),p.0232 and [DRC-OTP-2074-0148](#),p.0158.

<sup>97</sup> [DRC-OTP-2074-0148](#).



one more body in a second Sayo grave (SAI2).

46. P-420 testified about the methodology followed during the excavation and exhumation.<sup>98</sup> He concluded that the bodies in Kobu were consistent with deaths in 2003<sup>99</sup> and the bodies in two unmarked graves in Sayo had been buried between 6 months and 15 years prior to the exhumation.<sup>100</sup>

47. P-420 testified that the graves he examined differed in important respects from customary burials, suggesting that the circumstances of burial were not at all normal: their orientation was different than is custom; two bodies were exhumed from latrines which is not a regular or respectful gravesite; and multiple bodies were exhumed from a single grave which again is not the normal burial tradition.<sup>101</sup> Graves KOB1-F1 through F4 were all similarly orientated, unmarked, and close to one another, strongly suggesting that they were dug at or around the same time;<sup>102</sup> the bodies consistently showed blunt force trauma to the head.<sup>103</sup> These conclusions support the eye-witness evidence that the burials were done in circumstances of a mass killing, where bodies were buried hastily and where customary burial practices were not applied because those burying the dead were not family members and feared further UPC attacks.

48. P-420 testified that two bodies exhumed in Tchudja (TCH1) had been laid out respectfully, indicating a measure of care, consistent with the testimony of the family of the victims, who informed P-420 that they personally brought a mother and child from Kobu-Wadza for burial.<sup>104</sup>

<sup>98</sup> [P-420:T-123-CONF-ENG-ET,27:25-28:25.](#)

<sup>99</sup> [P-420:T-123-CONF-ENG-ET,71:18-22.](#)

<sup>100</sup> [P-420:T-123-CONF-ENG-ET,120:10-24.](#)

<sup>101</sup> [P-420:T-123-CONF-ENG-ET,27:6-16,113:10-114:20,67:15-19.](#)

<sup>102</sup> [P-420:T-123-CONF-ENG-ET,72:18-25.](#)

<sup>103</sup> [P-420:T-123-CONF-ENG-ET,114:11-20.](#)

<sup>104</sup> [P-420:T-123-CONF-ENG-ET,117:6-9,118:11-15;DRC-OTP-2072-0211,pp.0215,0231.](#) See [REDACTED].

49. Pathologists P-935 and P-937 conducted post-mortem examinations.<sup>105</sup> Both pathologists testified about their role and the process undertaken in the morgue<sup>106</sup> and explained their conclusions, as further detailed in the First and Second Attack sections.
50. Forensic Scientist P-945 received samples from 22 bodies exhumed in Kobu-Wadza, Sayo, and Tchudja, and samples from 11 living possible relatives to generate DNA profiles.<sup>107</sup> He explained his methodology in detail.<sup>108</sup> He testified that 12 of the 22 samples from exhumed bodies could not generate DNA samples due to degradation.<sup>109</sup> The remains in SAI1-F1-B3 showed a familial match<sup>110</sup> with [REDACTED]<sup>111</sup> family, and the remains of TCH1-F1-B1 showed a familial match with [REDACTED] family.<sup>112</sup>
51. Crime-scene evidence collection expert P-934 testified about his role as photographer, videographer and evidence manager during the exhumations,<sup>113</sup> explaining his methodology in detail.<sup>114</sup> He produced two reports and two panoramic 360-degree presentations.<sup>115</sup> He testified about the integrity and security of the exhumation sites.<sup>116</sup>

*Satellite imagery*

52. Satellite image analyst P-810 examined satellite images of locations relevant to the charges.<sup>117</sup> He described the software he used in his analysis and explained

<sup>105</sup> [DRC-OTP-2075-0148](#).

<sup>106</sup> **P-935:**[T-132-CONF-ENG-ET](#),70:18-20; **P-937:**[T-127-ENG-ET](#),4:12-5:20.

<sup>107</sup> **P-945:**[T-124-CONF-ENG-ET](#),61:3-15.

<sup>108</sup> **P-945:**[T-124-CONF-ENG-ET](#),66:10-69:20.

<sup>109</sup> **P-945:**[T-124-CONF-ENG-ET](#),69:21-70:1,76:1-22.

<sup>110</sup> [DRC-OTP-2084-0002](#),p.0006,0010.

<sup>111</sup> **DRC-OTP-2070-0040**; [REDACTED].

<sup>112</sup> **P-945:**[DRC-OTP-2084-0002](#),p.0006,0010; [REDACTED].

<sup>113</sup> **P-934:**[T-125-CONF-ENG-ET](#),22:19-24.

<sup>114</sup> **P-934:**[T-125-CONF-ENG-ET](#),56:3-25,72:19-73:11.

<sup>115</sup> [DRC-OTP-2075-0056](#),[DRC-OTP-2083-0011](#),[DRC-OTP-2075-0094](#),[DRC-OTP-2083-0083](#).

<sup>116</sup> [DRC-OTP-2069-1789](#); **P-934:**[T-125-CONF-ENG-ET](#),73:23-74:3,78:19-80:1.

<sup>117</sup> **P-810:**[DRC-OTP-2084-0443](#); [DRC-OTP-2099-0166](#).

how he concluded that coordinates set for Songolo,<sup>118</sup> Bambu,<sup>119</sup> Kilo,<sup>120</sup> Bunia,<sup>121</sup> Kobu-Wadza,<sup>122</sup> Lipri,<sup>123</sup> Sangi,<sup>124</sup> Ngongo,<sup>125</sup> and several other sites,<sup>126</sup> showed signs of structural destruction or soil disturbance.

### *Epidemiology*

53. Epidemiologist P-453<sup>127</sup> explained her methodology<sup>128</sup> and the results of a 2010 survey of human rights abuses allegedly committed by the UPC in Ituri and related health consequences, based on data collected in 2000-2005.<sup>129</sup> P-453 concluded that in 2000-2005, the UPC was a main contributor to abuses against the Lendu-Ngiti, such as physical violations, sexual violence including rape, and movement violations.<sup>130</sup>

### *Political and historical context*

54. Special Rapporteur for the UN Commission of Human Rights on the DRC (1994-2001) P-931 testified about the political situation and historical context of the Ituri conflict, explaining the methodology used for collecting information while he was UN Special Rapporteur on the DRC.<sup>131</sup> Asked if he would agree that the Ituri conflicts were based on political and economic considerations,<sup>132</sup> P-931 disagreed, stating that as of 1999 there was ever growing evidence that it was an ethnic conflict opposing the Lendu and the Hema.<sup>133</sup>

<sup>118</sup> **P-810:**[T-175-CONF-ENG-ET](#),101:14-102:1.

<sup>119</sup> **P-810:**[T-175-CONF-ENG-ET](#),108:19-109:23.

<sup>120</sup> **P-810:**[T-176-CONF-ENG-ET](#),8:22-9:9.

<sup>121</sup> **P-810:**[T-176-CONF-ENG-ET](#),9:10-10:16.

<sup>122</sup> **P-810:**[T-176-CONF-ENG-ET](#),10:17-25.

<sup>123</sup> **P-810:**[T-176-CONF-ENG-ET](#),11:1-17.

<sup>124</sup> **P-810:**[T-176-CONF-ENG-ET](#),13:12-14:2.

<sup>125</sup> **P-810:**[T-176-CONF-ENG-ET](#),14:3-19.

<sup>126</sup> **P-810:**[T-176-CONF-ENG-ET](#),14:20-16:12.

<sup>127</sup> **P-453:**[DRC-OTP-2084-0523](#),p.0572;[DRC-OTP-2084-0271](#);[DRC-OTP-2080-0220](#).

<sup>128</sup> **P-453:**[T-178-CONF-ENG-ET](#),64:10-75:16.

<sup>129</sup> **P-453:**[DRC-OTP-2084-0271](#),[DRC-OTP-2084-0282](#).

<sup>130</sup> **P-453:**[T-178-CONF-ENG-ET](#),54:17-55:13.

<sup>131</sup> **P-931:**[T-32-CONF-ENG-CT](#),90:20-92:15.

<sup>132</sup> **P-931:**[T-32-CONF-ENG-CT](#),89:1-5.

<sup>133</sup> **P-931:**[T-32-CONF-ENG-CT](#),89:6-21.

### 3. *The Logbook*

55. NTAGANDA's Logbook and the separate loose pages of his radio communications<sup>134</sup> are key pieces of evidence (collectively the "Logbooks"). The Logbook contains contemporaneous, internal records of the UPC's military activities on a near daily basis from 19 November 2002 - 22 February 2003. The loose pages cover communications from 10 October 2002 - 2 June 2003.
56. The Logbooks demonstrate NTAGANDA's position of authority in the UPC, his effective command and control of UPC troops and his essential contributions to a common plan. They record *his own words* at the time of relevant events: his orders to obey and respect the chain of command, on discipline, on promotions and demotions, on troop deployments, on operational strategy, on weapons/ammunition distribution, on coordination of troops before and during attacks. The Logbooks show NTAGANDA's complete knowledge of all daily UPC military activities, large or small, and his resolve to obtain all information necessary for him to do his job.
57. The Logbooks also show NTAGANDA's full awareness of enemy movements and positions throughout Ituri and his knowledge of the Ituri geography. They show the position of UPC troops in all stations and the level of organisation, hierarchy and centralisation in its army. And they show NTAGANDA's regular and frequent contact with the other co-perpetrators.
58. When NTAGANDA's two Logbooks contain no messages on a given day, particularly in the days just before and during an attack, the Chamber can infer that this is because NTAGANDA was close enough to his troops to use the

---

<sup>134</sup> [DRC-OTP-2102-3828](#).

Motorola or to speak in person.<sup>135</sup>

59. [REDACTED]. As **NTAGANDA** confirmed: *“My signaller received all the messages from the FPLC forces without exception, with no exception whatsoever. So that we would be informed and so that the logbook contains all messages.”*<sup>136</sup> [REDACTED].<sup>137</sup>

**NTAGANDA** did not contest that he had daily access to the Logbooks, or that he received all messages contained in it including situation reports,<sup>138</sup> [REDACTED].<sup>139</sup>

60. [REDACTED];<sup>140</sup> [REDACTED];<sup>141</sup> [REDACTED];<sup>142</sup> [REDACTED].<sup>143</sup>

61. The bound Logbook contains approximately 458 incoming and outgoing messages and situation reports to and from the units in the field and the General Staff (EMG). Incoming messages, appearing at the front of the notebook, were received mostly from subordinate commanders to UPC General Staff. 99% of the 108 outgoing messages are from members of the General Staff.<sup>144</sup> All messages were handwritten and dated using the standard military date and time group.

62. The primary sender of messages is the Chef EMG ADJT OPS & ORG (**NTAGANDA**), who sends 80% of the outgoing messages. The other EMG senders of outgoing messages are the Chef EMG (KISEMBO) (4 messages), the President (LUBANGA) (2 messages), the DTR EMG (7 messages), EMG/G1, G2, and EMG.

<sup>135</sup> **P-963:T-78-CONF-ENG-ET**,68:1-69:7,69:16-73:9;**T-81-CONF-ENG-ET**,82:6-83:7,91:1-4;**T-82-CONF-ENG-ET**,20:6-12; **P-55:T-70-CONF-ENG-CT**,95:1-98:19;**T-74-CONF-ENG-CT**,91:3-92:23. See Section VII.A.2.b.

<sup>136</sup> **D-300:T-218-CONF-ENG-CT**,9:4-6.

<sup>137</sup> [REDACTED].

<sup>138</sup> There are approximately 98 situation reports, which were sent for information to the highest levels of the chain of command.

<sup>139</sup> [REDACTED].

<sup>140</sup> [REDACTED].

<sup>141</sup> [REDACTED].

<sup>142</sup> [REDACTED].

<sup>143</sup> [REDACTED].

<sup>144</sup> There are 2 outgoing messages that were not sent from an EMG member; one is from the Comd Administrateur Général de Sécurité (considered part of the UPC Executive) and the other message is from Comd TCHALIGONZA (possibly the 2i/c of the S-E Ops Sect.).

63. **NTAGANDA** was informed of each and every message in the Logbook.<sup>145</sup>

64. [REDACTED].<sup>146</sup> [REDACTED]<sup>147</sup> [REDACTED],<sup>148</sup> [REDACTED].<sup>149</sup>  
 [REDACTED]<sup>150</sup> [REDACTED].<sup>151</sup> [REDACTED]. [REDACTED].<sup>152</sup>  
 [REDACTED]<sup>153</sup> [REDACTED]. [REDACTED],<sup>154</sup> [REDACTED]<sup>155</sup> [REDACTED].

#### 4. *UN and NGO evidence*

65. The Prosecution called six witnesses who worked for the UN and NGOs documenting human rights abuses and the use of child soldiers in Ituri in 2001-2004.<sup>156</sup> They provided detailed testimony about crimes committed by the UPC. The witnesses were experienced in their fields and were direct eye-witnesses to the crimes, or witnessed their aftermath.

66. P-46 interacted with children under the age of 15 in Bunia and at the Rwampara military camp. These children had been recruited, trained and used by the UPC, including in 2002-2003. P-317 witnessed the destruction perpetrated by the UPC during the Second Attack. P-46 and P-317 documented the results of their investigations and daily work in contemporaneous reports and databases.<sup>157</sup> P-315, P-46 and P-317 raised their serious concerns about the crimes committed by

<sup>145</sup> [D-300:T-216-ENG-CT](#),71:21-72:3,81:2-5;[T-218-CONF-ENG-CT](#),9:4-6;[T-227-CONF-ENG-CT](#),3:17-24; [T-227-CONF-ENG-CT](#),5:13-6:2; [REDACTED].

<sup>146</sup> [REDACTED].

<sup>147</sup> [REDACTED].

<sup>148</sup> [REDACTED].

<sup>149</sup> **NTAGANDA** appears to have sent 85 messages; to have been the direct recipient of 59 messages and to have been copied on 114 messages. [REDACTED].

<sup>150</sup> See Sections VII.A.2.b and c, VII.B.2.

<sup>151</sup> [REDACTED].

<sup>152</sup> [REDACTED].

<sup>153</sup> [REDACTED].

<sup>154</sup> [REDACTED].

<sup>155</sup> [REDACTED].

<sup>156</sup> P-46, P-317, P-315, P-31, P-116, P-976.

<sup>157</sup> **P-46:**[T-100-CONF-ENG-CT](#),26:10-27:12,28:22-30:1;[T-101-CONF-ENG-ET](#),87:13-89:7; [DRC-OTP-0074-0422](#);[DRC-OTP-0138-0106](#);[DRC-OTP-0152-0274](#);[DRC-OTP-0152-0286](#);[DRC-OTP-0208-0284](#);[DRC-OTP-0001-0033](#);[DRC-OTP-0001-0046](#);[DRC-OTP-0001-0049](#);[DRC-OTP-0001-0055](#);[DRC-OTP-0001-0067](#);[DRC-OTP-0001-0090](#);[DRC-OTP-0195-2366](#) (database);[DRC-OTP-0203-0319](#);[DRC-OTP-0203-0324](#); **P-317:**[T-191-CONF-ENG-ET](#),31:18-32:21; **P-317:**[DRC-OTP-0065-0019](#);[DRC-OTP-2078-0551](#);[DRC-OTP-2082-1881](#);[DRC-OTP-2082-2013](#);[DRC-OTP-0065-0148](#);[DRC-OTP-0074-0422](#);[DRC-OTP-0100-0314](#);[DRC-OTP-0104-0133](#);[DRC-OTP-0109-0268](#);[DRC-OTP-0153-0066](#);[DRC-OTP-0185-0879](#);[DRC-OTP-2082-2038](#);[DRC-OTP-0171-0434](#);[DRC-OTP-0195-2366\\_0001](#)(database);[DRC-OTP-2066-0475](#).

the UPC during meetings and interviews with **NTAGANDA**, **LUBANGA**, **KISEMBO** and **KAHWA**, and created contemporaneous records of those exchanges.<sup>158</sup> [REDACTED]. [REDACTED].

67. The Chamber can rely on the reports authored by P-46, P-317, and P-315 [REDACTED] because they are based on the witnesses' direct observations and on their contact and face-to-face, individual interviews with hundreds of former child soldiers and victims of other UPC crimes. Importantly, the testimony of the UN and NGO witnesses corroborates the credible evidence adduced in the record that the UPC targeted and attacked non-Hema civilians as it took control of Ituri and that it recruited and used children under the age of 15. Pre-Trial Chambers have previously relied on UN and NGO reports as corroborating evidence at the confirmation of charges stages and in the context of applications for interim release. The Appeals Chamber has found no error with the approach where the methodology of the authors was rigorous.<sup>159</sup>

68. P-46, P-31, and P-116 were part of a network of UN and NGO staff whose specific focus was to identify children associated with the Ituri armed groups and to assist with their reintegration into civilian life. All three, as well as P-976, were well-placed to assess the age of the children they met; indeed it was a professional necessity that they do so accurately. P-46 was an experienced child protection advisor.<sup>160</sup> P-31 [REDACTED] was in direct contact with hundreds of children [REDACTED]. P-116 and P-976 worked directly and closely with the children who were reunited with their family and provided ongoing follow-up with the children over a considerable period of time.

<sup>158</sup> [P-46:T-100-CONF-ENG-CT](#),52:24-54:1;[T-101-CONF-ENG-ET](#),13:10-15:24,41:14-43:20; [P-317:T-191-CONF-ENG-ET](#),84:12-85:5; [P-315:T-107-CONF-ENG-ET](#),76:18-79:9.

<sup>159</sup> *Mbarushimana DCC*, para. 135; ICC-01/04-02/06-271-Conf, paras. 37-43. See also *Kenyatta DCC*, paras. 82, 87.

<sup>160</sup> [P-46:T-100-CONF-ENG-CT](#), 9:7-10:2.

## IV. CREDIBILITY ASSESSMENTS

### A. INSIDER WITNESSES

69. The Prosecution called 16 members of the UPC military wing [REDACTED] (including those who testified that they were under 15 years of age at the time) and three political insiders.<sup>161</sup> From their different vantage points and experience, they provided a wealth of details about NTAGANDA's conduct and intent in the period of the charges. [REDACTED],<sup>162</sup> [REDACTED], and [REDACTED],<sup>163</sup> testified about the origins of the common plan, NTAGANDA's central role as Deputy Chief of Staff, the inner workings of the UPC, and the crimes it committed. [REDACTED],<sup>164</sup> provided a top-to-bottom, from-the-ground account of NTAGANDA's ordering and perpetration of crimes in the implementation of the common plan during the First and Second Attacks. Mid- and low-level insider witnesses placed NTAGANDA at the military camps and other battles at which he trained, used, and sexually abused children under 15 in the ranks of the UPC.<sup>165</sup> [REDACTED].<sup>166</sup>

70. Testifying from different roles, perspectives, and interests, the military insiders gave consistent accounts of the UPC's command structure, reporting, and communications; of the UPC's takeover of Ituri; its recruitment and use and sexual exploitation of children under the age of 15 in its ranks; and the charged crimes, as set out in this brief. They were internally consistent and corroborate each other. The insiders' evidence was corroborated by other evidence, including documentary and video evidence, the evidence from direct victims, local and international actors, and journalists.

---

<sup>161</sup> P-10, P-16, P-17, P-55, P-190, P-290, P-768, P-769, P-901, P-907, P-911, P-963, P-758, P-883, P-888, P-898; P-5, P-41, P-67.

<sup>162</sup> [REDACTED].

<sup>163</sup> [REDACTED].

<sup>164</sup> P-17, P-963; P-907.

<sup>165</sup> P-10, P-911, P-907, P-769.

<sup>166</sup> P-290.



71. The insider witnesses had firm recall of events in the period of the charges despite the passage of time. They remembered the geographical features of the terrain in which the First and Second Attacks unfolded and the routes they followed to reach the site of the hostilities.<sup>167</sup> They gave consistent evidence of the allocation of radio signs.<sup>168</sup> [REDACTED] and [REDACTED] could remember the size and composition of the groups with which they were [REDACTED].<sup>169</sup> P-10, P-963, and P-769 could still recall the lyrics and melody of songs they learnt in the UPC: “*women are for free*”,<sup>170</sup> “[*g*live me a Lendu girl so that I can fuck her all night”,<sup>171</sup> “*give me a knife with a basin so that I can slit the throat of a Lendu*”.<sup>172</sup> P-10 could remember details of [REDACTED] during a visit by **NTAGANDA** to the Rwampara camp on 12 February 2003,<sup>173</sup> which is filmed in a video (Rwampara video).<sup>174</sup>

72. The insider witnesses were measured in their responses and did not embellish or exaggerate. They provided their basis of knowledge and acknowledged readily what they did not know.<sup>175</sup>

73. The insiders corroborated each other on UPC recruitment, training, and daily life in the UPC. The insiders were thoroughly cross-examined<sup>176</sup> and answered questions of both Parties spontaneously and candidly.

74. Assessed as a whole, in light of the entire body of evidence, the testimony of the

<sup>167</sup> E.g. **P-768:T-33-CONF-ENG-CT**,30:23-31:16; **T-34-CONF-ENG-CT** ,3:25-5:22; **P-963:T-78-CONF-ENG-ET**,73:10-17; **P-17:T-58-CONF-ENG-CT**,59:16-18,67:20-68:14;**T-59-CONF-ENG-CT**,65:9-16,66:19-25; **P-907:T-90-CONF-ENG-CT**,27:11-29:7.

<sup>168</sup> **P-17:T-58-CONF-ENG-CT**,19:6-9,45:8-46:16; **P-55:T-70-CONF-ENG-CT**,81:6-83:16; **P-290:T-66-CONF-ENG-CT**,11:19-12:25,30:12-17; **P-907:T-90-CONF-ENG-CT**,49:16-50:7,68:16-24; **P-901:T-28-CONF-ENG-CT**,5:1-3,21:22-22:13,24:2-25:2; **P-768:T-33-CONF-ENG-CT**,22:11-23:3; **P-963:T-78-CONF-ENG-ET**,74:6-16.

<sup>169</sup> [REDACTED].

<sup>170</sup> **P-963:T-80-CONF-ENG-ET**,15:15-18:16.

<sup>171</sup> **P-10:T-47-CONF-ENG-CT**,42:1-3.

<sup>172</sup> **P-769:T-120-CONF-ENG-ET**,32:12-14.

<sup>173</sup> [REDACTED].

<sup>174</sup> [REDACTED].

<sup>175</sup> **P-907:T-90-CONF-ENG-CT**,61:7-17,84:10-17; **P-17:T-58-CONF-ENG-CT**,62:13-17; **P-10:T-47-CONF-ENG-CT**,49:24-50:7; **P-769:T-120-CONF-ENG-ET**,29:7-30:2; **P-963:T-78-CONF-ENG-ET**,66:18-21.

<sup>176</sup> Cf P-290.

Prosecution's insider witnesses was credible, reliable, and probative of facts in issue, as can be seen from the detail of their testimony relied on herein. Their testimony compels NTAGANDA's conviction for the crimes under the modes of liability charged.

## B. DUAL-STATUS WITNESSES

75. The Defence sought to undermine several witnesses by putting to them that they had provided information in their victim participation application forms (VPAFs) which was inconsistent with their testimony.<sup>177</sup> This Defence challenge does not damage the credibility of the witnesses, resting as it does on the theory –rather than the reality– that the VPAFs were read to the witnesses before they signed them. As the record shows, several witnesses testified that this was not the case.<sup>178</sup> Many more described the sub-optimal circumstances in which the forms were completed: often in the presence of others, at busy, noisy locations, and requiring the use of interpreters.<sup>179</sup> As the Chamber is aware, interpretation errors were not uncommon even in the courtroom, where qualified interpreters are used.<sup>180</sup>

76. 18 of the 19 witnesses who applied to participate as victims in the proceedings were assisted in completing their VPAFs.<sup>181</sup> In one of these cases, the assistance was given by VPRS staff, and in another case, it was a Legal Representative of Victims; otherwise, the intermediaries were not Court staff and were not

<sup>177</sup> [P-805:T-26-CONF-ENG-CT](#),43:5-21,50:4-51:1; [P-859:T-51-CONF-ENG-CT](#),29:7-25; [P-892:T-86-CONF-ENG-ET](#),9:13-23,15:17-22; [P-887:T-94-CONF-ENG-CT](#),77:9-83:16; [P-894:T-104-CONF-ENG-ET](#),18:21-24,19:6-10,27:5-18,31:19-25,32:17-33:3,39:14-41:1; [P-100:T-132-CONF-ENG-ET](#),19:10-24:24,58:13-21; [P-758:T-162-CONF-ENG-ET](#),20:17-21:8,23:4-24:11,25:15-25; [P-883:T-168-CONF-ENG-ET](#),70:17-71:13;[T-169-CONF-ENG-ET](#),8:17-15:11,18:8-25:16; [P-868:T-178-CONF-ENG-ET](#),31:6-25[[T-178-CONF-FRA-ET](#),31:8-32:4],33:10-34:2; [P-863:T-181-CONF-ENG-ET](#),42:18-43:21; [V1:T-201-CONF-ENG-ET](#),72:13-73:13,75:3-76:13; [V3:T-203-CONF-ENG-ET](#),90:2-92:16.

<sup>178</sup> *E.g.* [P-805:T-26-CONF-ENG-CT](#),50:4-51:1; [P-883:T-169-CONF-ENG-ET](#),25:13-16; [P-892:T-86-CONF-ENG-ET](#),9:8-16; [P-887:T-94-CONF-ENG-CT](#),83:2-16; [P-100:T-132-CONF-ENG-ET](#),22:11-12.

<sup>179</sup> [V3:T-203-CONF-ENG-ET](#),91:5-22,91:25-92:16,93:4-17,96:1-9; [P-113:T-119-CONF-ENG-CT](#),56:20-57:3; [P-100:T-132-CONF-ENG-ET](#),21:5-22:12; [P-883:T-169-CONF-ENG-ET](#),13:17-22,19:5-13.

<sup>180</sup> Note, for example, the multiple times “APC” was misinterpreted as “UPC” or *vice-versa*.

<sup>181</sup> [DRC-OTP-2107-1936](#),p.1938 (P-39, P-758, P-790, P-805, P-857, P-859, P-863, P-887, P-894, P-892; P-868, P-100, P-113, P-877, V-1); [DRC-D18-0001-6751](#),p.6752(P-883).

supervised.<sup>182</sup> Although VPRS assisted V-3 in completing his VPAF, VPRS could only state –conditionally– that the form “*would have*” been read back to the witness before signature.<sup>183</sup>

77. The VPAFs do not include an acknowledgement of read-back and the VPRS noted repeatedly that it “*cannot make assertions one way or the other as to whether or not the victims’ statements were read back to them before their signature, since VPRS staff was not present during these interviews.*”<sup>184</sup>

78. Critically, VPRS confirmed that: (i) “most intermediaries who volunteer to assist the VPRS in order to complete victim application forms have little or no familiarity with international criminal procedure”;<sup>185</sup> (ii) if they attend training, they receive a large amount of information in a short space of time,<sup>186</sup> (iii) “historically, it has proven difficult for intermediaries to retain all of the elements of the VPRS training” (including how to complete VPAFs),<sup>187</sup> (iv) it is necessary for the VPRS to provide additional guidance (including to the intermediaries assisting V-1 and P-883) on how to submit supplementary information.<sup>188</sup>

79. Many witnesses who applied to participate as victims in the proceedings testified that the individuals completing the VPAFs on their behalf recorded aspects of their stories incorrectly.<sup>189</sup> The Chamber must consider circumstances in which the forms were completed, the lack of confirmation that any read-back or review was conducted, and the overall consistency between the VPAFs and

<sup>182</sup> [DRC-OTP-2107-1936](#),p.1938. P-10 and V-3 completed their applications with assistance from Court staff.

<sup>183</sup> [DRC-OTP-2107-1936](#),p.1937.

<sup>184</sup> [DRC-D18-0001-6742](#),pp.6746-6748.

<sup>185</sup> [DRC-D18-0001-6742](#),p.6744.

<sup>186</sup> [DRC-D18-0001-6742](#),p.6744-6745;

<sup>187</sup> [DRC-D18-0001-6742](#),pp.6744-6745.

<sup>188</sup> [DRC-D18-0001-6751](#),p.6752.

<sup>189</sup> **P-887**:[T-93-CONF-ENG-CT](#),51:4-24;[T-94-CONF-ENG-CT](#),77:17-1880:11-24,81:14-18; **P-39**:[DRC-OTP-2089-0053](#),p.0054; **VI**:[T-201-CONF-ENG-ET](#),70:12-16,72:19-73:1; **P-857**:[T-194-CONF-ENG-ET](#),12:7-8,39:21-40:13,41:3-42:16; **P-100**:[T-132-CONF-ENG-ET](#),19:10-20:5; **P-883**:[T-169-CONF-ENG-ET](#),11:11-13,15:1-11; **P-868**:[T-178-CONF-ENG-ET](#),31:6-25,33:16-34:2; **P-805**:[T-26-CONF-ENG-CT](#),43:13-21.

the witness's testimony on material issues in assessing their credibility.

## V. DEFENCE EVIDENCE

### A. TESTIMONY OF THE ACCUSED

80. **NTAGANDA** testified from 14 June to 13 September 2017. His testimony was carefully crafted and organised, relying heavily on directed questions in examination-in-chief and documentary evidence to guide his memory of events.<sup>190</sup> In cross-examination, however, **NTAGANDA** constantly asked for his previous testimony to be read back to him, even on uncontroversial issues.<sup>191</sup> Much of **NTAGANDA**'s testimony on matters central to the charges was not credible and was contradicted by his own evidence as well as that of Prosecution and Defence witnesses and documentary evidence.

81. When examined against all the evidence, it is clear that **NTAGANDA** attempted to conceal his central role in the creation and crimes of the UPC. He falsely denied his group's objectives, their takeover of Bunia in August 2002, the existence of the UPC before September 2002 in any form, and the true extent of his command authority over UPC troops. He feigned ignorance of contemporaneous events involving his group's activities and conduct, and claimed he never received important information or communications by **LUBANGA**, **KISEMBO** or the General Staff on UPC military matters.

82. **NTAGANDA** also gave a deliberately false account of the existence of the ethnic

<sup>190</sup> See e.g., [D-300:T-220-CONF-ENG-ET](#),63:13-66:4 (“Ms **SAMSON**: Once again we are getting into exchanges of questions and answers where the witness is being led using the logbook, so we’re not asking for the witness’s free recollection of events, we are asking a question and what we can see is that the witness reads and then provides an answer about contextual events [...] it appears the messages are being used to elicit the contextual evidence [...] which [...] could be done without reference to the logbook and then going to the logbook to confirm any points that require confirmation. [...] **PRESIDING JUDGE FREMR** : [...] we agree with Ms Samson that she is formally right [...] it will have impact on our evaluation of the quality of such evidence, but it doesn’t mean that it should be prohibited”; See also, [T-211-CONF-ENG-ET](#),53:3-55:7; [T-221-CONF-ENG-ET](#),81:11- 82:5; [T-222-ENG-CT](#),65:13-66:8.

<sup>191</sup> See [D-300:T-225-CONF-ENG-CT](#),13:22-15:5; [T-224-CONF-ENG-ET](#),11:1-5;16:3-9;26:8-27:8;64:24-65:4;[T-225-CONF-ENG-CT](#),7:14-17;13:8-9;32:2-5;[T-227-CONF-ENG-CT](#),43:11-13;[T-232-CONF-ENG-CT](#),58:14-18;

conflict after September 2002, the UPC's recruitment and use of children under the age of 18, and the large-scale commission of crimes by UPC troops against the non-Hema civilian population during the First and Second Attacks, or at any time. **NTAGANDA** gave false or implausible accounts about his presence at a UPC meeting in Bunia on 16 June 2003 and about a personal family trip to Rwanda in February 2003 in advance of the Second Attack. His claimed errors in radio messages linking him to the Second Attack are self-serving and untenable. **NTAGANDA** repeatedly sought to shift responsibility to others, including, conveniently, to two deceased persons- KISEMBO and KASANGAKI.

83. Despite his attempts to conceal his central role and authority in the UPC and his command of UPC troops who committed crimes, **NTAGANDA** unwittingly admitted underlying facts that reveal his true power and authority and that prove his responsibility for the charged crimes.

84. **NTAGANDA**'s deliberate inaccuracies are scrutinised throughout the brief. A few examples are set out below.

#### *Age of recruits*

85. Asked if recruits arriving at the Mandro military training camp were asked how old they were, **NTAGANDA** replied “[n]o, we didn't put major importance on that”.<sup>192</sup> Much later, he was asked whether questions about age were part of the process of recruitment. **NTAGANDA** responded “it was obligatory”.<sup>193</sup>

#### *No children under 18 in the UPC*

86. **NTAGANDA** categorically denied that there were children under 18 in the UPC.<sup>194</sup> Yet, even two of his own defence witnesses contradicted him and

<sup>192</sup> [D-300:T-213-CONF-ENG-CT](#),74:15-17.

<sup>193</sup> [D-300:T-239-CONF-ENG-CT](#),13:9-12.

<sup>194</sup> [D-300:T-239-CONF-ENG-CT](#),15:7 (“There weren't troops under the age of 18 years in the FPLC.”)

testified that there were children aged 16 in the UPC and in his bodyguard.<sup>195</sup>

*Meaning of “Kupiga na kuchaji”*

87. **NTAGANDA** denied that the battle cry “*kupiga na kuchaji*” meant to charge and to loot, property and women alike.<sup>196</sup> Yet, again, even one of his own Defence witnesses [REDACTED], D-251, contradicted him explaining that “*kupiga na kuchaji is – for example, in a battle where you have attacked and you come to a place and then you loot*”.<sup>197</sup>

*16 February 2003 letter*

88. **NTAGANDA** testified in chief that his secretary signed a “*Rapport de Désarmement des Enfants Soldats*” dated 16 February 2003 and that the inclusion of “PO” shows that this was done under his instruction.<sup>198</sup> The report, he suggested, is a reply to letters dated 21 October 2002 and 27 January 2003 to seek out and release children within the forces who were under 18 years old, an issue he said had also been discussed at a meeting he attended in January 2003.<sup>199</sup>

89. When challenged that this signed letter is, in fact, an acknowledgement from him that there were children under 18 years old in the UPC, **NTAGANDA** sought to distance himself from the letter: “*I think the person who signed the document [...] I think he was being asked to find another solution [...] that is how I interpret the letter*”.<sup>200</sup> He testified that his secretary sent this response in his absence due to a request that came in while he was away, forgetting, it seems, that he had already testified that the report was a reply to letters dated 21

<sup>195</sup> [D-251:T-260-CONF-ENG-CT](#),16:11-12 (discussing **NTAGANDA**’s escorts, D-251 said that bodyguard Claude “*must have been 16 or 17 years old. He was small. That’s why people called him kadogo.*”). See also, [D-251:T-260-CONF-ENG-CT](#),23:11-12; [D-17:T-253-CONF-ENG-ET](#),66:22-67:5. See Section VII.C for a review of the credible evidence that proves the UPC’s recruitment and use of children under the age of 15.

<sup>196</sup> [D-300:T-213-CONF-ENG-CT](#),9:5-10:1.

<sup>197</sup> [D-251:T-260-CONF-ENG-CT](#),99:17-100:6. See Sections VII.A and B for Prosecution evidence on the term.

<sup>198</sup> [D-300:T-223-CONF-ENG-ET](#),47:7-8.

<sup>199</sup> [D-300:T-223-CONF-ENG-ET](#),47:13-16.

<sup>200</sup> [D-300:T-239-CONF-ENG-CT](#),25:10-12.

October 2002 and 27 January 2003. He further contended that when a document is signed “PO, *par ordre*”, it means that “*the person in charge is away that once he’s back the person who signed the document will explain the content of the document he signed to the official, the person in charge*”.<sup>201</sup> He confirmed that his secretary talked to him about the letter after he returned subsequent to claiming that it was signed in his absence, suggesting he never had any discussions with his secretary about it before he left.<sup>202</sup>

#### *No salary*

90. NTAGANDA also contradicted himself on less central details. In line with his attempt to portray himself as a selfless freedom fighter, he first testified that “*rebels aren’t paid*”,<sup>203</sup> that he “*didn’t even think about things like salaries*”,<sup>204</sup> that FPLC soldiers “*did not receive anything because rebels got no salary*”,<sup>205</sup> that “[o]ur army was not a governmental army and we received no salaries”.<sup>206</sup> Much later, NTAGANDA let slip that he received a pension. When asked how much, he said it varied: sometimes it was \$200, sometimes \$500 USD per month.<sup>207</sup>

#### *No UPC desertions due to excessive beatings*

91. NTAGANDA agreed that desertions would have an impact on the strength of the army,<sup>208</sup> were a danger to the civilian population<sup>209</sup> and that he would not tolerate desertion from his ranks.<sup>210</sup> He admitted that he received information from various sources about cases of desertion<sup>211</sup> and ordered one brigade to find defectors because it was important to make an example of them to other

<sup>201</sup> [D-300:T-239-CONF-ENG-CT](#),25:22-26:2.

<sup>202</sup> [D-300:T-239-CONF-ENG-CT](#),26:14-16;25:17-21.

<sup>203</sup> [D-300:T-211-CONF-ENG-ET](#),20:1-5.

<sup>204</sup> [D-300:T-211-CONF-ENG-ET](#),21:3-4.

<sup>205</sup> [D-300:T-234-CONF-ENG-CT](#),3:10-11.

<sup>206</sup> [D-300:T-229-CONF-ENG-ET](#),11:20-21.

<sup>207</sup> [D-300:T-243-CONF-ENG-ET](#),53:19-54:3.

<sup>208</sup> [D-300:T-227-CONF-ENG-CT](#),48:18-49:1.

<sup>209</sup> [D-300:T-227-CONF-ENG-CT](#),48:6.

<sup>210</sup> [D-300:T-227-CONF-ENG-CT](#),49:2-6.

<sup>211</sup> [D-300:T-227-CONF-ENG-CT](#),55:15-20.



soldiers.<sup>212</sup>

92. However, when confronted with a 6 November 2002 report from the UPC G5 to the Chief of General Staff describing cases of UPC desertion in Mandro and Tchomia due to excessive beatings and whippings,<sup>213</sup> **NTAGANDA** implausibly denied knowledge of it using a refrain he invoked often: *“I never received this letter and the situation never existed”*.<sup>214</sup> This is not credible, particularly in light of his own testimony that he did not tolerate desertion, that he received information about desertions generally, that he ordered information related to deserters be transmitted to him, and that if KISEMBO had received this letter, *“he would have told me about it because this message has to do with the men that we were leading”*.<sup>215</sup> But he had no information that KISEMBO did not receive the letter.<sup>216</sup>

*His alleged presence at a meeting in Bunia on 16 June 2003*

93. One of the most blatant examples of **NTAGANDA**'s deliberate falsehoods was his evidence of a meeting he allegedly attended on 16 June 2003 in Bunia. When cross-examined on his whereabouts in June 2003, **NTAGANDA** eventually admitted that he was not in Bunia on 16 June 2003. His testimony further supports pre-existing indicia that a document he stated under oath were minutes of this very meeting is a forgery.

94. In an attempt to paint the UPC as a disciplined, rights-minded organisation that did not have children under the age of 18 in its ranks, **NTAGANDA** claimed that in June 2003 he attended a UPC general staff meeting in Bunia with KISEMBO and other senior commanders during which these issues were

<sup>212</sup> [D-300:T-227-CONF-ENG-CT,55:19-23.](#)

<sup>213</sup> [DRC-OTP-0109-0136.](#)

<sup>214</sup> [D-300:T-227-CONF-ENG-CT,63:6-8.](#)

<sup>215</sup> [D-300:T-227-CONF-ENG-CT,65:2-4.](#)

<sup>216</sup> [D-300:T-227-CONF-ENG-CT,65,6-8.](#)



discussed.<sup>217</sup>

95. In chief, **NTAGANDA** testified that a document, disclosed by the Defence in *Lubanga*, contained the minutes of the meeting he attended.<sup>218</sup> These minutes are dated “*Bunia, le 16 June 2003*”, on FPLC letterhead with a stamp and seal, and purport to be a “*COMPTE RENDU DE LA REUNION DU C.E.M.G. AVEC LES COMDS DES GRANDES UNITES*”. When asked about this document in chief, **NTAGANDA** expressed no reserve: he attended the meeting and confirmed every detail of the document, including the commanders listed as the attendees,<sup>219</sup> the topics addressed during the meeting,<sup>220</sup> and even who was taking notes.<sup>221</sup> While **NTAGANDA** was asked to confirm most details contained in the minutes of the meeting, he was not asked to confirm the date recorded as the meeting date.<sup>222</sup> He was silent about the date, and said nothing to dispute that this alleged meeting took place on the date recorded in the minutes: 16 June 2003.

96. Before addressing this document, however, **NTAGANDA** testified that he returned to Bunia in early June 2003<sup>223</sup> and that the meeting took place approximately two weeks later.<sup>224</sup> He also testified that after this general staff meeting, he left Bunia to attack Mongbwalu.<sup>225</sup> Lastly, he testified that the entire operation to re-capture Mongbwalu, including travelling to and from Mongbwalu, took about two weeks.<sup>226</sup> Critically, he confirmed that he did not return to Bunia for many weeks after the operation.<sup>227</sup> This timeline of events

<sup>217</sup> [D-300:T-221-CONF-ENG-ET](#),60:13-62:1.

<sup>218</sup> [DRC-D01-0003-5900](#); [D-300:T-221-CONF-ENG-ET](#),62:2-20.

<sup>219</sup> [D-300:T-221-CONF-ENG-ET](#),62:2-14, in particular ln.11: “*Yes, I know those commanders. We were together at that meeting*”.

<sup>220</sup> [D-300:T-221-CONF-ENG-ET](#),62:21-66:10,66:19-67:3.

<sup>221</sup> [D-300:T-221-CONF-ENG-ET](#),66:11-18.

<sup>222</sup> [DRC-D01-0003-5900](#),p.5900.

<sup>223</sup> [D-300:T-221-CONF-ENG-ET](#),53:4-8.

<sup>224</sup> [D-300:T-221-CONF-ENG-ET](#),60:13-61:2.

<sup>225</sup> [D-300:T-221-CONF-ENG-ET](#),69:9-71:24.

<sup>226</sup> [D-300:T-221-CONF-ENG-ET](#),74:9-18.

<sup>227</sup> [D-300:T-221-CONF-ENG-ET](#),71:24-73:14;[T-229-CONF-ENG-ET](#),13:17-14:9,29:22-24,29:25-30:3,31:3-8.

proved to be his downfall.

97. When shown a contemporaneous MONUC daily situation report recording that the UPC took Mongbwalu on 11 June 2003, **NTAGANDA** adamantly disagreed with this date: he captured Mongbwalu much later, he said, around 18, 19 or 20 June 2003.<sup>228</sup> Then **NTAGANDA** was shown a diary. Before being asked questions about its content, he admitted the diary - written in his own hand - was his, but had been lost.<sup>229</sup> When shown a page of the diary that recorded the chronology of the attack in his own handwriting,<sup>230</sup> **NTAGANDA** weakly conceded that he captured Mongbwalu on 11 June 2003 (correctly noted in the MONUC daily report) and that he left the town on 14 June 2003.<sup>231</sup> **NTAGANDA** also confirmed his prior testimony that he did not return to Bunia after 14 June 2003 for many weeks.<sup>232</sup> Eventually, he admitted that he was not in Bunia on 16 June 2003.<sup>233</sup>

98. To explain this serious contradiction, **NTAGANDA** began shifting his evidence, with the subsequent versions becoming less and less believable. First, he maintained that he attended the meeting described in document [DRC-D01-0003-5900](#),<sup>234</sup> but claimed that he could not confirm that the date in the document was the date of the meeting.<sup>235</sup> He suggested that the date may reflect when the minutes were finalised instead of when the meeting took place.<sup>236</sup> This explanation is unsupported. In fact, these minutes purportedly even record the precise start and end time of the meeting: "*Ainsi commencee a 10h00, la reunion s'est terminee à 13h10*".<sup>237</sup> It is not plausible that the date of the meeting would not

<sup>228</sup> [D-300:T-229-CONF-ENG-ET](#),14:16-15:12,16:22-17:4.

<sup>229</sup> [D-300:T-229-CONF-ENG-ET](#),26:3-26:18.

<sup>230</sup> [D-300:T-229-CONF-ENG-ET](#),18:10-18:25,26:3-26:18.

<sup>231</sup> [D-300:T-229-CONF-ENG-ET](#),28:3-20,29:22-24.

<sup>232</sup> [D-300:T-229-CONF-ENG-ET](#),29:25-30:3.

<sup>233</sup> [D-300:T-229-CONF-ENG-ET](#),53:6-15.

<sup>234</sup> [D-300:T-229-CONF-ENG-ET](#),31:10-17,32:11-17,34:11-35:138:5-11,41:24-42:4.

<sup>235</sup> [D-300:T-229-CONF-ENG-ET](#),37:1-11.

<sup>236</sup> [D-300:T-229-CONF-ENG-ET](#),35:2-10,38:12-21.

<sup>237</sup> [DRC-D01-0003-5900](#).

be as accurately noted.

99. Then **NTAGANDA** shifted his account slightly more: he did not attend a meeting on 16 June 2003. Rather, he attended a separate meeting somewhat earlier in June 2003 that coincidentally also took place just before the Mongbwalu attack, and included many of the same people, covering exactly the same topics as the 16 June 2003 meeting.<sup>238</sup> This is implausible. Finally, once confronted with the dates of his own diary, **NTAGANDA** posited – upon reflection – that it was possible that [DRC-D01-0003-5900](#) did not reflect the meeting that he allegedly attended at all, but might relate to a different meeting.<sup>239</sup> At this point, **NTAGANDA**'s testimony had shifted completely.

100. This final admission in relation to Document [DRC-D01-0003-5900](#), which lists **NTAGANDA** as a participant in the 16 June 2003 meeting,<sup>240</sup> supports the pre-existing indicia that this document is a forgery.

101. First, the military ranks listed for “*JOVITH LINGANGA (Gén. Bde)*” and “*Peter DZ'THO (Col.) [...] Chef G1 EMG/FPLC*” are contradicted by contemporaneous evidence that both individuals only obtained these ranks at the end of 2003,<sup>241</sup> and not before June 2003, as claimed by **NTAGANDA** and incorrectly set out in the document.<sup>242</sup> **NTAGANDA** was unable to explain these contradictions.<sup>243</sup>

102. Second, a document entitled “*16/6 REUNION MIXTE: EXEC – ETAT-MAJOR*”, seized from RAFIKI on 6 November 2003,<sup>244</sup> lists the names and signatures of 32 UPC commanders and politicians who attended the 16 June 2003 meeting. This document, contrary to [DRC-D01-0003-5900](#), does not list **NTAGANDA** or

<sup>238</sup> [D-300:T-229-CONF-ENG-ET](#),53:19-54:17;[T-242-CONF-ENG-ET](#),51:25-53:8;[T-243-CONF-ENG-ET](#),46:19-47:3;[T-243-CONF-ENG-ET](#),48:5-9,14:23-15:16.

<sup>239</sup> [D-300:T-242-CONF-ENG-ET](#),53:1-8;[T-243-CONF-ENG-ET](#),46:19-47:3.

<sup>240</sup> [DRC-D01-0003-5900](#),p.5900: “*PARTICIPANTS : BOSCO NTAGANDA (Gén. Maj)*”.

<sup>241</sup> [DRC-OTP-0014-0177](#); [DRC-OTP-0016-0042](#); [DRC-OTP-0016-0106](#); [DRC-OTP-0016-0131](#); [DRC-OTP-0018-0165](#); [DRC-OTP-0018-0171](#).

<sup>242</sup> [D-300:T-221-CONF-ENG-ET](#),66:11-18.

<sup>243</sup> [D-300:T-243-CONF-ENG-ET](#),16:2-13,16:14-15,17:23-18:10,18:11-20,19:20-20:6,21:3-25.

<sup>244</sup> [DRC-OTP-0014-0177](#).

DZ'THO as attendees at the meeting, a difference **NTAGANDA** was again unable to credibly explain.<sup>245</sup>

103.Third, a document entitled “*REUNION DU 16/06/2003 AVEC LE HAUT CMDMT DES F.P.L.C.*”, seized at TINANZABO’s house on 16 April 2005<sup>246</sup> contains minutes of a meeting that are strikingly similar – but not identical on critical issues – to those contained in [DRC-D01-0003-5900](#). Where they are similar, *the exact same words* are used when recording what was said at the meeting, while other subjects, such as those related to child soldiers crimes, are significantly more detailed in the Defence document. **NTAGANDA** unconvincingly explained that the subjects listed in these documents are the same and that the exact same language was used by different persons at two separate meetings on the same points because these topics “*came up regularly at every meeting*”<sup>247</sup> even when some topics relate to unique events relevant only in June 2003 and afterwards.<sup>248</sup>

104.A far more plausible explanation is that document [DRC-OTP-0091-0888](#) was used as a basis to forge [DRC-D01-0003-5900](#),<sup>249</sup> given the central importance of the child soldier crimes to the *Lubanga* case. Without the benefit of the list of attendees originally obtained by the Prosecution (and not available in the *Lubanga* case),<sup>250</sup> the drafters made up the list of attendees, inadvertently using ranks that had been assigned only well *after* 16 June 2003. **NTAGANDA** did not attend this meeting and the issues were not discussed separately at two nearly identical meetings held within days of each other.

<sup>245</sup> [D-300:T-229-CONF-ENG-ET](#),39:3-40:22.

<sup>246</sup> [DRC-OTP-0091-0888](#).

<sup>247</sup> [D-300:T-229-CONF-ENG-ET](#),51:18-53:5.

<sup>248</sup> See, references to: (i) the arrival of the French forces; (ii) reduction of escorts in the town to avoid showing that the town is highly militarised.

<sup>249</sup> The Prosecution notes that [DRC-OTP-0091-0888](#) was first disclosed to the *Lubanga* Defence on 5 July 2006. [DRC-D01-0003-5900](#) was allegedly provided by [REDACTED] and the *Lubanga* Defence in November and December 2007, and was subsequently disclosed to the Prosecution on 16 March 2011. Importantly, [DRC-OTP-0014-0177](#), the list of attendees of the 16 June 2003 meeting that significantly differs from the list of attendees on [DRC-D01-0003-5900](#), was never disclosed to *Lubanga*.

<sup>250</sup> [DRC-OTP-0014-0177](#).

## B. OTHER DEFENCE WITNESSES

105. The Defence called 11 additional *viva voce* witnesses<sup>251</sup> and tendered the prior statements of seven more witnesses.<sup>252</sup> The evidence from these witnesses does not disturb the coherence and weight of the overwhelming evidence of NTAGANDA's guilt beyond reasonable doubt. On the contrary, the Defence witnesses at times contradicted each other and contradicted aspects of NTAGANDA's testimony. Each further corroborated aspects of the Prosecution's case, as set out throughout the brief.

106. The evidence from Defence witnesses must be carefully weighed against evidence demonstrating potential bias and motive to give misleading information favourable to NTAGANDA on core matters. Certain Defence witnesses had a close family and/or professional relationship with NTAGANDA. [REDACTED] D-251 and D-17 said they considered NAGANDA like a father and an elder brother,<sup>253</sup> and a man whose orders could not be opposed.<sup>254</sup> D-251 is also [REDACTED].<sup>255</sup> D-210 came from a wealthy family residing across from NTAGANDA; his father purportedly financed the UPC.<sup>256</sup> D-17, D-251 and D-211 had received financial support from NTAGANDA and the UPC.<sup>257</sup> D-210, D-251, D-207, D-134, D-57, D-201, D-38, D-172 and D-80 are Hema or Tutsi.<sup>258</sup> D-13 [REDACTED]; D-57 and D-38 confirmed they were and remain UPC supporters today.<sup>259</sup>

107. Critically, the Chamber must evaluate the credibility of Defence witnesses who

<sup>251</sup> D-17, D-172, D-201, D-207, D-210, D-211, D-251, D-38, D-57, D-243, D-54.

<sup>252</sup> D-123, D-13, D-134, D-148, D-150, D-163, D-80.

<sup>253</sup> **D-251:T-260-CONF-ENG-CT**,37:23-38:4,35:3-4,66:24,67:23-24,85:4-5,40:5-10,85:4-5; **D-17:T-255-CONF-ENG-ET**,39:3-13.

<sup>254</sup> **D-251:T-260-CONF-ENG-CT**,66:4-7.

<sup>255</sup> **D-251:T-260-CONF-ENG-CT**,84:1-12.

<sup>256</sup> **D-210:T-207-CONF-ENG-ET**,19:10-22:8,27:10-29:24,6:5-11.

<sup>257</sup> **D-17:T-255-CONF-ENG-ET**,39:18-22; **D-251:T-260-CONF-ENG-CT**,39:7-11,84:13-85:13; **D-211:T-247-CONF-ENG-CT**,47:22-48:1,87:7-88:21,88:18-90:12,64:18-65:14.

<sup>258</sup> D-210, D-134, D-201, D-207, D-57, D-38, D-251.

<sup>259</sup> **D-13:DRC-D18-0001-6475**,6483:13-6484:21; **D-57:T-246-CONF-ENG-ET**,22:5-16; **D-38:T-251-CONF-ENG-ET**,13:15-25.

categorically denied that the UPC committed crimes where there is a wealth of credible evidence to the contrary, including for murder, recruitment and use of child soldiers, and pillaging.<sup>260</sup> The Chamber must approach this evidence with caution and only rely on Defence witnesses where there is credible corroborative evidence.

108. Particularly telling is the spontaneity of answers to certain questions, juxtaposed against the apparently prepared responses to questions about the charged crimes. For example, when D-251 was asked for the meaning of *kupiga na kuchaji*, her immediate response was to deny that the UPC ever did it before addressing the actual question. When asked to focus on the question and provide the meaning of the term, D-251 admitted that it was an order to loot.<sup>261</sup> D-17 had difficulty remembering details of uncharged incidents but had high recall of events relevant to the charged crimes.<sup>262</sup> At one point D-17 spontaneously listed P-10 as part of a group including commander Tiger One that departed from Bunia for an operation in Mongbwalu,<sup>263</sup> only to correct that when Defence Counsel asked if he had met P-10 “*there at that operation in Mongbwalu or another operation?*”<sup>264</sup> D-38’s readiness to estimate the age of individuals older than him, but not those younger than him,<sup>265</sup> gave the appearance of bias. The bias of D-57, of Hema North ethnicity,<sup>266</sup> is evidenced by his repeated assertion that *all* Lendu were dangerous to the Hema and that while the Lendu were killing the Hema, Hema persons killed the Lendu in self-

<sup>260</sup> [D-38:T-250-CONF-ENG-CT](#),64:24-67:1; [D-251:T-260-CONF-ENG-CT](#),23:6-12,99:17-23; [D-57:T-246-CONF-ENG-ET](#),29:2-30:23; [D-13:DRC-D18-0001-6475](#),6523:14-24,6524:9-6525:6,[DRC-D18-0001-6475](#),6557:15-19.

<sup>261</sup> [D-251:T-260-CONF-ENG-CT](#),99:17-23: “*Madam Witness, have you ever heard the term or slogan "kupiga na kuchaji"?* *THE WITNESS: Yes, I have heard this mentioned. PRESIDING JUDGE FREMR: And on what occasion you have heard this slogan?* *THE WITNESS: (Interpretation) I saw nothing related to that. A soldier can say this, but not carry them out. And our leaders didn't want us to loot. If it had been permitted, then we would have done it*”.

<sup>262</sup> *E.g.* [D-17:T-253-CONF-ENG-ET](#),51:2-53:19.

<sup>263</sup> An operation that could only be the First Attack, because as D-17 conceded, Tiger One did not take part in the June 2003, “48 hour battle” Mongbwalu operation”. [D-17:T-254-CONF-ENG-ET](#),50:15-19.

<sup>264</sup> [D-17:T-253-CONF-ENG-ET](#),32:2-39:22 (emphasis added). *Cf* [D-17:T-254-CONF-ENG-ET](#),39:20-50:19.

<sup>265</sup> [D-38:T-249-CONF-ENG-CT](#),20:13-25:13.

<sup>266</sup> [D-57:T-246-CONF-ENG-ET](#),6:11.

defence before the UPC organised itself but the UPC itself did not kill Lendu.<sup>267</sup>

109. As a result, the Chamber must treat the evidence of Defence witnesses with extreme caution on these points. As the *Lubanga* Trial Chamber found in evaluating the live testimony of Witness D-13 (whose evidence has been admitted in this case):

The Chamber has taken into account the close professional relationship between this witness and the accused, and it has weighed his evidence in light of the other persuasive material that indicates there were children below 15 years of age in the FPLC. The Chamber considers that this witness was frequently evasive in his testimony, which the Chamber has approached with considerable caution. In the result, the Chamber has only relied on his account when supported by other credible evidence.<sup>268</sup>

110. In a clear attempt to mask the reality that he was a UPC child soldier, D-172, who acknowledged that his father worked for the UPC's TINANZABO,<sup>269</sup> provided inconsistent evidence about his basic biographic information.<sup>270</sup> His denial of the fact that he was a UPC soldier<sup>271</sup> despite a wealth of Prosecution exhibits indicating the contrary<sup>272</sup> is not credible. Similarly not worthy of belief is his claim that Bahati BALIDJA, a Hema who was eight or nine years old when he trained with D-172 in Tchankwanzi, Uganda,<sup>273</sup> would pretend to be Lendu and join the FNI,<sup>274</sup> a group D-172 himself acknowledged was a Lendu combatant group.<sup>275</sup> The reality, supported by Prosecution evidence, is that Bahati BALIDJA was a UPC soldier.<sup>276</sup>

111. D-80's prior recorded testimony should be given no weight. He is a senior military commander whose evidence was highly contested, addressed

<sup>267</sup> [D-57:T-246-CONF-ENG-ET](#),10:15-22,29:2-30:23.

<sup>268</sup> *Lubanga* TJ, para. 724.

<sup>269</sup> [D-172:T-245-CONF-ENG-CT](#),104:2-25.

<sup>270</sup> [D-172:T-245-CONF-ENG-CT](#),38:25-39:3,46:21-47:7,53:12-54:2,65:15-67:16.

<sup>271</sup> [D-172:T-245-CONF-ENG-CT](#),35:10-25,37:21-39:17,83:2-84:12.

<sup>272</sup> See [D-172:T-245-CONF-ENG-CT](#),84:13-91:10,93:24-96:22.

<sup>273</sup> [D-172:T-245-CONF-ENG-CT](#),75:9-22,108:18-111:5.

<sup>274</sup> [D-172:T-245-CONF-ENG-CT](#),73:22-76:23,111:1-25.

<sup>275</sup> [D-172:T-245-CONF-ENG-CT](#),108:18-109:2.

<sup>276</sup> See [DRC-OTP-0141-0009](#),p.0110,p.0111:53.



NTAGANDA's acts and conduct, and whose prior recorded testimony is not a verbatim record of the interview, thereby removing the Chamber's ability to assess the spontaneity of his statement and his precise answers on key issues. The account closely mirrors NTAGANDA's testimony on issues that are implausible and run counter to a sheer volume of credible evidence.<sup>277</sup> Moreover, the Prosecution could not challenge his account in cross-examination and the Chamber could not ask any supplementary questions.

112. Despite the various weaknesses set out above, the Defence witnesses corroborated various key aspects of the Prosecution's case, and were spontaneously truthful on issues that were not narrowly about the commission of crimes. For example, the majority of the Defence witnesses acknowledged the ethnic nature of the conflict.<sup>278</sup> Some witnesses confirmed NTAGANDA's role and whereabouts in the UPC including his participation in the First Attack, his visits to UPC training centres, the existence of a reporting system and NTAGANDA's ability to punish his troops.<sup>279</sup> Others provided corroboration of the early stages of the common plan,<sup>280</sup> of the presence of children under the age of 15 in the UPC,<sup>281</sup> and of the role of the Hema civilian supporters.<sup>282</sup> Defence witnesses also provided details authenticating a UPC list of Mandro recruits dated August 2002 and a 1 June 2003 decree from LUBANGA ordering the

<sup>277</sup> Compare, for example, D-300 and D-80's evidence that NTAGANDA expressed concern about certain small people visible in the Rwampara video as not meeting the criteria and was assured by D-80 that they would not receive training and would be sent away; that NTAGANDA was a visionary rebel; and that he worked tirelessly for all ethnic groups. See (i) [D-80:DRC-D18-0001-6163](#), p.6172, para.61(l), p.6171, para.61(f), p.6165, para.23 to [D-300:T-220-CONF-ENG-ET](#), 37:24-38:10, 36:16-24, and 25:23-26:17, respectively; (ii) [D-80:DRC-D18-0001-6163](#), p.6166, paras.26-27 to [D-300:T-209-CONF-ENG-ET](#), 52:9-13, 54:4-18 and [T-235-CONF-ENG-CT](#), 84:12-16; (iii) [D-80:DRC-D18-0001-6163](#), p.6166-6167, paras.31, 32, 36 to [D-300:T-234-CONF-ENG-CT](#), 12:1-7; (iv) [D-80:DRC-D18-0001-6163](#), p.6166-6167, paras.31, 34 to [D-300:T-233-CONF-ENG-CT](#), 41:14-17, 45:19-20, 48:1-6, 55:12-17 and [T-234-CONF-ENG-CT](#), 3:21-24, 4:7-11.

<sup>278</sup> [D-211:T-247-CONF-ENG-CT](#), 52:5-53:19; [D-17:T-254-CONF-ENG-ET](#), 23:20-24:1; [D-251:T-260-CONF-ENG-CT](#), 78:13-79:13; [D-38:T-249-CONF-ENG-CT](#), 47:5-50:18; [D-210:T-207-CONF-ENG-ET](#), 14:16-19; [D-57:T-246-CONF-ENG-ET](#), 10:9-25; 29:25-30:23, 31:12-14; [D-172:T-245-CONF-ENG-CT](#), 21:5-22:14, 69:9-11.

<sup>279</sup> [D-17:T-253-CONF-ENG-ET](#), 19:1-2, 41:3-42:8, 57:16-21, 42-43; [T-254-CONF-ENG-ET](#), 18:24-19:2; [T-252-CONF-ENG-ET](#), 78:9-12; [T-254-CONF-ENG-ET](#), 32:4-33:5; [T-255-CONF-ENG-ET](#), 53:7-21.

<sup>280</sup> *Below*, VIII.A.1.b.i.

<sup>281</sup> [D-57:T-246-CONF-ENG-ET](#), 33:15-35:11.

<sup>282</sup> [D-38:T-250-CONF-ENG-CT](#), 98:9-25; [T-251-CONF-ENG-ET](#), 35:17-21.



demobilisation of child soldiers.<sup>283</sup>

113. The Defence witness evidence does not, therefore, create reasonable doubt concerning the facts comprising the elements of the crimes and modes of liability alleged, or concerning the facts indispensable for entering a conviction.

## VI. CONTEXTUAL ELEMENTS OF WAR CRIMES AND CRIMES AGAINST HUMANITY

### A. CONTEXTUAL ELEMENTS OF WAR CRIMES

114. The protracted armed conflict in Ituri during the temporal scope of the charges involved organised armed groups and was not of an international character. The charged crimes did not take place in the context of internal disturbances and tensions; rather, they took place in the context of and were associated with this armed conflict and the perpetrators of these crimes were aware of the factual circumstances that established its existence.

115. Although it is not necessary to prove, for the contextual elements, that the war crimes were committed as part of a plan or policy or were large-scale,<sup>284</sup> the evidence in this case proves that they were.

#### 1. *The armed conflict took place in Ituri, DRC*

116. The charged crimes took place in Ituri, which at the time was a district within the *Province Orientale* of the DRC. Ituri borders Uganda to the east and the Republic of South Sudan to the north.<sup>285</sup> Ituri is composed of five territories: Aru, Mahagi, Mambasa, Djugu and Irumu,<sup>286</sup> each of which is sub-divided into

<sup>283</sup> [D-13:DRC-D18-0001-6475](#),6503:5-6505:19;[DRC-D18-0001-6475](#):6570:21-6571:6, relating to [DRC-OTP-0113-0070](#); [D-17:T-253-CONF-ENG-ET](#),65:21-23; [D-38:T-249-CONF-ENG-CT](#),65:2-65:8,65:21-68:9; [D-211:T-248-CONF-ENG-ET](#),5:13-6:4,7:14-8:18,6:5-7:11,7:12-13.

<sup>284</sup> *Bemba TJ*, para.126.

<sup>285</sup> Agreed Facts, nos.1-2.

<sup>286</sup> [DRC-OTP-0074-0422](#), p.0428, para.13.

*collectivités*, themselves divided into *groupements*.<sup>287</sup> The district capital is Bunia,<sup>288</sup> the scene of three major assaults during the temporal scope of the charges.

117. The population of Ituri is estimated to have been between 3.5 and 5.5 million during the relevant period of time, composed of approximately 18 ethnic groups.<sup>289</sup> The larger ethnic groups in the district included the Hema, Lendu, Alur and Bira.<sup>290</sup>

118. Ituri is extremely rich in natural resources including gold, diamonds, coltan, timber and oil.<sup>291</sup> The presence of these resources has, in many ways, fanned the flames of conflict in the area.<sup>292</sup>

## *2. There was an armed conflict not of an international character*

119. The armed conflict<sup>293</sup> in relation to which **NTAGANDA** is charged took place between the UPC and other organised armed groups and was not of an international character.

120. A conflict is only deemed “international” if it takes place between two or more States, directly or indirectly, including the partial or total occupation of the territory of another State regardless of whether such occupation meets with armed resistance.<sup>294</sup> While Rwanda and Uganda were involved to varying, but

<sup>287</sup> Agreed Facts, no. 3; **P-790:T-53-CONF-ENG-CT**, 11:24-12:3.

<sup>288</sup> Agreed Facts, no. 1.

<sup>289</sup> **DRC-OTP-0074-0422**, p.0427, para. 12; **P-931:DRC-OTP-2083-0583**, p.0601.

<sup>290</sup> **DRC-OTP-0074-0422**, p.0427, para. 12; **P-931:DRC-OTP-2083-0583**, p.0601; **DRC-OTP-0074-0797**, p.0817.

<sup>291</sup> **P-931:DRC-OTP-2083-0583**, p.0601; **DRC-OTP-0074-0797**, p.0815; **DRC-OTP-0074-0422**, p.0429, para. 16.

<sup>292</sup> **P-55:T-70-CONF-ENG-CT**, 99:13-16; **DRC-OTP-0074-0628**, p.0638; **DRC-OTP-0074-0422**, p.0429, para. 16; **DRC-OTP-0074-0797**, p.0815.

<sup>293</sup> An “armed conflict” exists “*whenever there is a resort to armed force between States or protracted armed violence between government authorities and organized armed groups or between such groups within a State*”, *Tadić*, para. 70 cited in *Katanga TJ*, para. 1173, fn. 2729, *Lubanga TJ*, para. 533, fn. 1629, *Bemba TJ*, para. 128, fn. 299.

<sup>294</sup> *Katanga TJ*, para. 1177; *Lubanga DCC*, para. 209; *Lubanga TJ*, para. 541; *Bemba TJ*, para. 130. States can oppose each other directly through their own armed forces or indirectly through proxy forces which are subject to the overall control of a State. Further, “[i]t is not sufficient for the group to be financially or even militarily assisted by a State”- the State must have a “*role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group.*”

limited, degrees in Ituri, at no stage during the temporal scope of the charges were either involved, directly or indirectly, in an armed conflict with the DRC or with each other. Therefore, their involvement did not render this conflict international in character.<sup>295</sup> Chambers of this Court have found that the armed conflict in Ituri was non-international.<sup>296</sup>

121. Rwanda's provision of training, weapons and ammunition to the UPC does not internationalise the conflict. The UPC forces were never under the overall control of Rwanda or any other State. Neither does Uganda's temporary and geographically limited presence, principally at Bunia airport,<sup>297</sup> or any role it may have had in establishing any armed group, alter the character of the separate non-international armed conflict occurring in Ituri.<sup>298</sup>

### 3. *The armed conflict was intense and protracted*

122. Between 1999 and 2003, "[t]here were a lot of attacks in lots of villages...the Lendu attacked the Hema villages and the Hema attacked the Lendu villages."<sup>299</sup>

123. NTAGANDA's crimes did not take place in the context of internal disturbances and tensions. These were not riots, isolated and sporadic acts of violence or other acts of a similar nature.<sup>300</sup> Rather, the crimes were committed during a

---

In the absence of such either direct or indirect State-on-State hostilities, the armed conflict is of a non-international character, *Tadić AJ*, paras.84,130,137.

<sup>295</sup> *Lubanga TJ*, para.541.

<sup>296</sup> *Lubanga TJ*, paras.534-567; *Katanga TJ*, paras.1196-1230.

<sup>297</sup> **P-30:T-145-CONF-ENG-ET**,75:21-76:8; **DRC-OTP-2078-0704**,p.0704,para.1; **P-963:T-78-CONF-ENG-ET**,72:3-4.

<sup>298</sup> Article 42 of the Hague Regulations of 1907, which is the authoritative definition of a military occupation, states: "*Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised*", International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, article 42; *Lubanga TJ*, paras.542,564-565,fn.1651.

<sup>299</sup> **P-2:T-170-CONF-ENG-ET**,87:7-24.

<sup>300</sup> Chambers of this Court have adopted several non-exhaustive and non-mandatory factors to aid in the assessment of the intensity of the conflict. Trial Chamber I found it appropriate to take into account, *inter alia*, "*the seriousness of attacks and potential increase in armed clashes, their spread over territory and over a period of time, the increase in the number of government forces, the mobilisation and the distribution of weapons among both parties to the conflict, as well as whether the conflict has attracted the attention of the United*

non-international armed conflict between the UPC and other organised armed groups. The armed conflict spanned, and went beyond, the period of the charges.<sup>301</sup>

124. The conflict between the Hema and Lendu was longstanding and intensified in 1999 due to a land dispute.<sup>302</sup> Self-defence forces in both Hema and Lendu communities emerged at this time.<sup>303</sup> Once the UPC set up a centralised military structure, starting in 2000, Hema self-defence forces sent their youth to the UPC; in Hema villages with a UPC base, the self-defence forces were integrated into the UPC.<sup>304</sup> All other Hema self-defence forces remained under the authority of the UPC.<sup>305</sup> Lendu self-defence forces equally integrated into centralised groups known as the FNI and FRPI.<sup>306</sup>

125. The conflict reached a greater level of intensity in 2001,<sup>307</sup> with violent attacks and crimes committed during the temporal scope of the charges.<sup>308</sup>

126. Between August 2002 and May 2003 alone, the UPC attacked areas including in and around Bunia, Songolo, Zumbe, Mambasa, Komanda, Eringeti, Mongbwalu, Sayo, Lipri, Bambu and Kobu. During the same period, there were also large-

---

*Nations Security Council, and if so, whether any resolution on the matter have been passed*”, [Lubanga TJ](#), paras.538, fn.1639 citing [Mrkšić TJ](#), para.407; [Katanga TJ](#), para.1187; [Bemba TJ](#), para.137; [Bemba TJ](#), para.137.

<sup>301</sup> The violence need not be continuous and uninterrupted, see [Bemba TJ](#), para.140.

<sup>302</sup> [P-901:T-27-CONF-ENG-CT](#),18:11-19;[T-30-CONF-ENG-CT](#),42:4-43:9; [P-790:T-53-CONF-ENG-CT](#),21:24-25:25; [P-5:T-185-CONF-ENG-ET](#),5:5-6; [P-17:T-59-CONF-ENG-CT](#),7:11-18; [P-931:DRC-OTP-2083-0622](#),p.0670:7-11,p.0706:1-12; [DRC-OTP-0074-0422](#),p.0473,p.0426,para.6,pp.0429-0430,paras.17-20; [DRC-OTP-0037-0312](#),p.0312.

<sup>303</sup> [D-300:T-225-CONF-ENG-CT](#),32:24-33:18; [P-17:T-59-CONF-ENG-CT](#),7:14-18; [P-5:T-185-CONF-ENG-ET](#),5:1-6:2; [DRC-OTP-0074-0422](#),pp.0425-0426,para.4,p.0433,para.25; [D-13:DRC-D18-0001-6475](#),p.6488:2-9; [P-365:T-147-CONF-ENG-ET](#),13:6-14; [P-901:T-30-CONF-ENG-CT](#),49:14-50:20; [DRC-OTP-0214-0116](#),p.0122.

<sup>304</sup> [D-300:T-225-CONF-ENG-CT](#),34:18-35:11; [P-17:T-59-CONF-ENG-CT](#),12:24-13:6;[T-63-CONF-ENG-ET](#),35:12-36:9; [P-5:T-185-CONF-ENG-ET](#),5:1-6:2; [D-38:T-249-CONF-ENG-CT](#),47:5-16,52:2-53:22,60:4-20;[T-250-CONF-ENG-CT](#),98:9-25;[T-251-CONF-ENG-ET](#),5:22-7:18; [P-365:T-147-CONF-ENG-ET](#),13:6-14.

<sup>305</sup> [DRC-OTP-0093-0121](#); [D-13:DRC-D18-0001-6475](#),p.6499:12-p.6500:4; [DRC-OTP-0089-0146](#).

<sup>306</sup> [D-300:T-225-CONF-ENG-CT](#),35:20-36:22; [DRC-OTP-0074-0422](#),p.0433,para.25; [P-365:T-147-CONF-ENG-ET](#),13:6-14.

<sup>307</sup> [P-245:T-141-CONF-ENG-ET](#),36:22-25,38:19-39:21; [P-365:T-147-CONF-ENG-ET](#),10:5-9; [P-931:DRC-OTP-2083-0622](#),p.0671:11-19; [DRC-OTP-0074-0422](#),pp.0430-0433,paras.19-20,22-23,p.0475; [DRC-OTP-0037-0264](#),p.0264.

<sup>308</sup> [DRC-OTP-0074-0422](#),pp.0425-0433,paras.1-26,pp.0472-0483; [DRC-OTP-0074-0797](#),pp.0822-0831; [DRC-OTP-0074-0628](#),pp.0649-0687; [P-105:T-134-CONF-ENG-ET](#),63:6-16[[T-134-CONF-FRA-ET](#),64:1-11]; [D-300:T-215-ENG-ET](#),6:17-18.

scale Lendu militia offensives in Ituri including attacks on Nyankunde in September 2002,<sup>309</sup> Mahagi in September<sup>310</sup> and December 2002,<sup>311</sup> Dada and Dhendro in January 2003,<sup>312</sup> Bogoro in February 2003,<sup>313</sup> and Drodro in April 2003.<sup>314</sup>

127. Despite the ceasefire agreements negotiated in March,<sup>315</sup> May<sup>316</sup> and June 2003,<sup>317</sup> by December 2003 no peaceful settlement<sup>318</sup> had been achieved.<sup>319</sup> NTAGANDA acknowledged that in June 2003 he shelled Mbidjo, drove out KAKWAVU's soldiers and Lendu combatants from Mongbwalu and took control of it.<sup>320</sup>

128. Indeed, between July and October 2003, protracted armed violence continued between the UPC and other armed groups, as did the commission of crimes throughout Ituri.<sup>321</sup> In particular, on 31 October 2003, 350-400 well-equipped UPC soldiers attacked about 200 PUSIC soldiers, another armed group, in Tchomia.<sup>322</sup> The UPC had carefully planned this attack, which they named "*Opération Effacer PUSIC*".<sup>323</sup>

129. The conflict continued throughout November 2003 and January 2004 with the UPC, PUSIC and Lendu militia continuing to commit crimes including killings,

<sup>309</sup> [DRC-OTP-0074-0422](#), p.0479.

<sup>310</sup> [DRC-OTP-0074-0422](#), p.0479.

<sup>311</sup> [DRC-OTP-2102-3854](#), pp.3864,3896,3898.

<sup>312</sup> [DRC-OTP-2102-3854](#), p.3912.

<sup>313</sup> [DRC-OTP-0074-0422](#), p.0481.

<sup>314</sup> [DRC-OTP-0052-0049](#), pp.0052-0053, para.11.

<sup>315</sup> **P-12:** [DRC-OTP-2054-0073](#), p.0162:25-p.0163:6; **P-30:** [DRC-OTP-2054-3272](#), p.3324,53:5-17.

<sup>316</sup> [DRC-OTP-0107-0324](#); [DRC-OTP-0074-0422](#), p.0482; [DRC-OTP-0065-0148](#), p.0149, para.2.

<sup>317</sup> [DRC-OTP-0074-0422](#), p.0482.

<sup>318</sup> See *Tadić*, para.70; *Bemba TJ*, para.141.

<sup>319</sup> **P-12:** [DRC-OTP-2054-0073](#), p.0162:25-p.0163:6; **P-30:** [DRC-OTP-2054-3272](#), p.3324,53:5-17; [DRC-OTP-0065-0148](#), p.0149, para.2.

<sup>320</sup> **D-300:** [T-221-CONF-ENG-ET](#), 69:9-70:18; [T-225-CONF-ENG-CT](#), 48:21-49:6; [T-229-CONF-ENG-ET](#), 14:10-15,26:3-29:24; See also **P-907:** [T-89-CONF-ENG-CT](#), 75:24-76:3; [DRC-OTP-0074-0628](#), p.0677.

<sup>321</sup> [DRC-OTP-0109-0215](#), pp.0215-0217, paras.2-5, p.0220, para.12; [DRC-OTP-0109-0232](#), p.0235, para.9; [DRC-OTP-0061-0219](#), p.0220, para.3; [DRC-OTP-0074-0422](#), pp.0448-0450, paras.85-87,90-93, p.0452, para.104, pp.0482-0483; [DRC-OTP-0074-0628](#), p.0704.

<sup>322</sup> [DRC-OTP-0006-0221](#), pp.0221-0222; [DRC-OTP-0010-0003](#), p.0003; **D-300:** [T-222-ENG-CT](#), 32:6-8; **P-12:** [DRC-OTP-0105-0085](#), pp.0149-0150, paras.349-354.

<sup>323</sup> [DRC-OTP-0016-0137](#); [DRC-OTP-0010-0003](#), p.0004.

abductions and sexual violence throughout Ituri.<sup>324</sup>

130. MONUC was given a Chapter VII mandate by the UN Security Council on 28 July 2003 authorising it to use the necessary measures to protect civilians.<sup>325</sup> Its mandate was strengthened and extended on 1 October 2004.<sup>326</sup> This further confirms that the armed conflict lasted well past June 2003 and into 2004.

#### 4. *The armed conflict took place between organised armed groups*

131. During the temporal scope of the charges, repeated and intense fighting took place in several locations throughout Ituri between the UPC and armed groups such as the: (i) Lendu militia who formed the FNI/FRPI; (ii) APC; (iii) PUSIC; and (iv) FAPC. These armed groups were “organised”: they possessed a sufficient degree of organisation that enabled them to carry out protracted armed violence.<sup>327</sup>

132. The UPC was an organised politico-military group with an established hierarchy wherein its senior leadership jointly held *de jure* and *de facto* authority, command and control over the organisation. LUBANGA was the President, KISEMBO the Chief of Staff, and NTAGANDA the Deputy Chief of Staff in charge of operations and organisation. The UPC was well-structured. It was a large entity of well-trained, heavily armed forces. Its effective communication systems ensured that orders to all UPC positions were transmitted and received

<sup>324</sup> [DRC-OTP-0109-0305](#), pp.0305-0307, paras.2-7; [DRC-OTP-0109-0199](#), pp.0199-0202, paras.1-2; [DRC-OTP-0037-0206](#), p.0209; [DRC-OTP-0074-0422](#), p.0427, para.10.

<sup>325</sup> [DRC-OTP-0074-0422](#), p.0482.

<sup>326</sup> [DRC-OTP-0074-0628](#), p.0762, fn.466.

<sup>327</sup> See *Lubanga TJ*, paras.535-536. There is no requirement to demonstrate that the armed groups exercised control over territory, or functioned under responsible command, see *Lubanga TJ*, para.536, *Katanga TJ*, para.1186. Chambers of this Court have relied on a number of non-exhaustive and non-mandatory factors in determining whether the armed groups could be described as organised for the purpose of article 8(2)(f), including: “[the] force or group’s internal hierarchy; the command structure and rules; the extent to which military equipment, including firearms, are available; the force or the group’s ability to plan military operations and put them into effect; and the extent, seriousness, and intensity of any military involvement”, *Lubanga TJ*, para.537; *Katanga TJ*, para.1186; *Bemba TJ*, paras.133-136. As the *Lubanga* Trial Chamber emphasised, these criteria “should be applied flexibly ... given the limited requirement in Article 8(2)(f) of the Statute that the armed group was ‘organized’”, *Lubanga TJ*, para.537.

and that all relevant information about operations on the ground was disseminated. It carried out planned, organised, large-scale military operations throughout Ituri.<sup>328</sup>

133. The APC was the armed wing of the RCD-K/ML, led by NYAMWISI.<sup>329</sup> NTAGANDA testified that the APC was a large army present in several locations in Ituri, was able to lead co-ordinated attacks, was engaged in constant fighting against the UPC on the Bunia-Komanda road, and succeeded in repelling a UPC attack on Songolo.<sup>330</sup> The RCD-K/ML participated in Ituri's political process.<sup>331</sup>

134. The Lendu militia, later known as the FNI<sup>332</sup> and FRPI,<sup>333</sup> was well-armed,<sup>334</sup> hierarchically organised,<sup>335</sup> and participated in Ituri's political process.<sup>336</sup> Significantly, it was sufficiently organised to undertake large-scale military attacks, sometimes carried out in coordination with the APC,<sup>337</sup> and was often successful in inflicting serious damage to the opposing party and/or in controlling attacked locations for a period of time.<sup>338</sup> Lendu combatants and APC soldiers were sufficiently organised to repel UPC forces who attempted to attack Mongbwalu in October 2002,<sup>339</sup> and who attacked Lipri around January 2003.<sup>340</sup>

<sup>328</sup> For evidence demonstrating that the UPC was an "organised" armed group, *see* Section VIII.A.1.b.iii.

<sup>329</sup> Agreed Facts, nos. 40, 49; *See* [DRC-OTP-0074-0422](#), p. 0470.

<sup>330</sup> **D-300:** [T-211-CONF-ENG-ET](#), 39:22-40:3; [T-212-CONF-ENG-ET](#), 42:6-13; [T-213-CONF-ENG-CT](#), 59:6-15; [T-214-CONF-ENG-ET](#), 12:8-13:4; [T-214-CONF-ENG-ET](#), 14:16-15:10, 61:20-22, 83:12-85:7; [T-215-ENG-ET](#), 6:15-21, 25:13-19, 27:9-18, 47:13-19; [T-234-CONF-ENG-CT](#), 58:21-25.

<sup>331</sup> *See* Agreed Facts, nos. 57, 63, 64.

<sup>332</sup> The FNI was created at the beginning of 2003, *see* [DRC-OTP-0074-0422](#), p. 0469.

<sup>333</sup> The FRPI was launched in November 2002, *see* [DRC-OTP-0074-0422](#), p. 0470.

<sup>334</sup> **P-5:** [T-185-CONF-ENG-ET](#), 5:13-19; [DRC-OTP-0074-0422](#), p. 0443, para. 65, 85.

<sup>335</sup> [DRC-OTP-0074-0422](#), p. 0441, paras. 57-58, pp. 0443-0444, paras. 64, 66, p. 0449, para. 88, pp. 0469-0470.

<sup>336</sup> *See* Agreed Facts, nos. 63, 65.

<sup>337</sup> *See, e.g.,* [DRC-OTP-0074-0422](#), pp. 0449-0450, paras. 85-87, 90-93, p. 0452, para. 104, pp. 0479, 0481-0483; [DRC-OTP-0074-0628](#), p. 0704.

<sup>338</sup> [DRC-OTP-0074-0422](#), pp. 0440-0444, paras. 52-61, 64-67, pp. 0448-0451, paras. 84-92, 100; **D-300:** [T-237-CONF-ENG-ET](#), 64:20-66:1.

<sup>339</sup> **P-887:** [T-93-CONF-ENG-CT](#), 12:8-14:15; **P-190:** [T-96-CONF-ENG-CT](#), 93:25-94:3; [T-98-CONF-ENG-CT](#), 51:22-25; **P-888:** [T-105-CONF-ENG-CT](#), 74:11-15.

<sup>340</sup> **P-105:** [T-133-CONF-ENG-ET](#), 44:4-21; **P-127:** [T-139-CONF-ENG-ET](#), 3:13-4:6.



135. By early March 2003, KAKWAVU and his troops broke away from the UPC and set up the FAPC based in Aru.<sup>341</sup> [REDACTED].<sup>342</sup> The FAPC shared command of Mongbwalu with the FNI after March 2003<sup>343</sup> and undertook attacks, at times with Lendu militia, in places such as Drodro and Largo in July 2003.<sup>344</sup> The FAPC participated in Ituri's political process.<sup>345</sup>

136. KAHWA created PUSIC at the end of 2002; he was its first leader.<sup>346</sup> PUSIC's secretary general officially represented the party in meetings on the pacification of Ituri.<sup>347</sup> Together with the UPC, PUSIC attacked Bunia in May 2003,<sup>348</sup> and fought against the FRPI to regain control of Tchomia in June 2003.<sup>349</sup>

### *5. The nexus requirement is satisfied*

137. The charged war crimes took place in the context of and were associated with the non-international armed conflict.<sup>350</sup> The perpetrators were UPC soldiers. The victims were civilians or, in relation to the charges concerning child soldiers, members of the UPC. The perpetrators' acts were pursuant to the UPC's policy to attack non-Hema civilians.

138. The armed conflict alone need not be considered to be the root of the conduct

<sup>341</sup> See [DRC-OTP-0074-0422](#), p.0469; [DRC-OTP-0074-0628](#), pp.0673-0674.

<sup>342</sup> **P-768**:[T-35-CONF-ENG-CT](#), 7:25-8:17; **P-55**:[T-74-CONF-ENG-CT](#), 19:19-22; See also **P-16**:[DRC-OTP-0126-0422](#), pp.0437-0438, para.89; **P-290**:[T-67-CONF-ENG-CT](#), 46:17-47:20.

<sup>343</sup> [DRC-OTP-0074-0628](#), p.0722.

<sup>344</sup> [DRC-OTP-2066-0406](#), p.0408, para.6.

<sup>345</sup> See Agreed Facts, nos.63,65.

<sup>346</sup> See [DRC-OTP-0074-0422](#), pp.0468-0469; **P-12**:[DRC-OTP-2054-0073](#), p.0082:25-p.0083:8.

<sup>347</sup> **P-12**:[DRC-OTP-2054-0073](#), p.0085:1-7; See also Agreed Facts, nos.63,65.

<sup>348</sup> [DRC-OTP-2078-0229](#), p.0229, para.1.

<sup>349</sup> **P-901**:[T-28-CONF-ENG-CT](#), 35:18-20; [DRC-OTP-1034-0057](#), p.0059, para.6.

<sup>350</sup> See Elements of Crimes, pp.21-29. The Elements of the Crimes, at p.9, establish that in relation to the requirements of a nexus with an armed conflict and awareness of the factual circumstances establishing the existence of an armed conflict: (a) there is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international; (b) in that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international; and (c) there is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associated with"; ICC-01/04-02/06-1962, para.68; See also *Lubanga TJ*, para.571; *Bemba TJ*, para.142; *Katanga TJ*, para.1176.



and the conduct need not have taken place in the midst of battle.<sup>351</sup> Nonetheless, the armed conflict must play a major part in the perpetrator's decision, in his or her ability to commit the crime, or the manner in which the crime was ultimately committed.<sup>352</sup> Several factors may be considered in determining whether the crimes are sufficiently linked to the armed conflict.<sup>353</sup>

**6. *The perpetrators of the crimes were aware of factual circumstances that established the existence of an armed conflict***

139. The perpetrators of the crimes<sup>354</sup> were aware of the factual circumstances<sup>355</sup> that established the existence of an armed conflict.

140. The perpetrators of the charged crimes are **NTAGANDA** himself, his co-perpetrators, and UPC soldiers. The perpetrators were necessarily aware of the fact that there was a resort to armed force and that the violence was protracted because they were part of, and engaged in the operation of, the armed group. They knew the UPC's policies, ideology and operational commands, and engaged in multiple attacks over the course of more than one year.

141. As Trial Chamber II held in *Katanga*, "*given the breadth of the conflict and its impact across the region, it is difficult to imagine, in the particular context of the case, that anyone could be oblivious to the factual circumstances establishing the existence of an armed conflict.*"<sup>356</sup>

<sup>351</sup> *Bemba TJ*, paras. 142, 144; *Katanga TJ*, para. 1176.

<sup>352</sup> *Bemba TJ*, para. 142; *Katanga TJ*, para. 1176.

<sup>353</sup> These factors include: the status of the perpetrator and victim; whether the act may be said to serve the ultimate goal of a military campaign; and whether the crime is committed as part of, or in the context of, the perpetrator's official duties, see ICC-01/04-02/06-1962, para. 68. Trial Chamber III also noted that "*although there is likely to be some relationship between a perpetrator and a party to the conflict, it is not necessarily the case that a perpetrator must him/herself be a member of a party to the conflict; rather, the emphasis is on the nexus between the crime and the armed conflict*", *Bemba TJ*, para. 143.

<sup>354</sup> See *Bemba TJ*, para. 147.

<sup>355</sup> The factual circumstances that established the existence of the armed conflict are the resort to armed force by, and protracted violence between, the relevant forces, see *Bemba TJ*, para. 667.

<sup>356</sup> *Katanga TJ*, para. 1231.

## B. CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY

142. Between on or about 6 August 2002 and 27 May 2003, the UPC committed crimes listed in article 7(1) as part of a widespread or systematic attack directed against a civilian population with knowledge of this attack (“Attack”).

### 1. *There was an attack directed against the civilian population*

143. As P-907 testified, “[w]hen an area was shelled, civilians and soldiers alike would be killed. The bombs wouldn’t select their victims.”<sup>357</sup>

144. An “attack” is a course of conduct<sup>358</sup> involving the multiple commission of acts<sup>359</sup> referred to in article 7(1) and need not constitute a “military” attack.<sup>360</sup> The course of conduct was undertaken against a civilian population pursuant to or in furtherance of an organisational policy to commit such an attack.

145. NTAGANDA’s testimony that his objective in the FPLC was to “*protect the civilian population and their belongings*”<sup>361</sup> is contradicted by a wealth of credible evidence. Contrary to NTAGANDA’s claims,<sup>362</sup> all civilians had not fled before UPC attacks. They were still present in these locations and the Attack was directed against them.

146. This section describes: (i) the multiple acts constituting the Attack; (ii) how the Attack was intentionally directed against non-Hema civilians; (iii) the organisational policy; (iv) the widespread or systematic nature of the Attack; and (v) how the perpetrators, including NTAGANDA as necessary, were aware

<sup>357</sup> [P-907:T-89-CONF-ENG-CT](#),42:1-15.

<sup>358</sup> The reference to a “course of conduct” means there must be “*a series or overall flow of events as opposed to a mere aggregate of random acts*”, [Bemba TJ](#), para.149.

<sup>359</sup> The requirement that there be “multiple commission of acts” indicates a low quantitative threshold “*requiring ‘more than a few’, ‘several’ or ‘many’ acts. The number of the individual types of acts referred to in Article 7(1) is, however, irrelevant provided that each of the acts fall within the course of conduct and cumulatively satisfy the required quantitative threshold*”, [Bemba TJ](#), para.150(footnote omitted).

<sup>360</sup> Article 7(2)(a); Elements of Crimes,p.3; [Bemba TJ](#), para.149; [Katanga TJ](#), para.1101; [Tadić AJ](#), para.251; [Tadić](#), para.141; [Kunarac AJ](#), para.86; [Stakić TJ](#), para.623.

<sup>361</sup> [D-300:T-221-CONF-ENG-ET](#),81:11-16;[T-213-CONF-ENG-CT](#),9:19-10:1.

<sup>362</sup> [D-300:T-216-ENG-CT](#),53:8-16;[T-217-CONF-ENG-ET](#),55:18-56:2.

of the Attack and the armed conflict.

## 2. *Multiple commission of acts*

147. Eight key assaults, addressed below, form part of the Attack.

148. The acts underlying the charges of crimes against humanity occurred during two of the eight assaults: the First and Second Attacks. As noted in *Katanga*, “where established that it involved such multiple commission of acts, a single event may well constitute an attack within the meaning of article 7(2)(a), provided that the other elements of that article are met.”<sup>363</sup> The First Attack and the Second Attack each considered separately, or, alternatively, the two considered together, constitute a “widespread or systematic attack directed against any civilian population”; the acts in each of these two assaults were committed as part of this attack and with the required knowledge.<sup>364</sup>

149. The six other assaults took place in Bunia, Songolo, Zumbe, and Mambasa, Komanda and Eringeti between August 2002 and May 2003.

150. Evidence of acts under article 7(1) that took place between August 2002 and May 2003 other than during the eight assaults is also relevant.<sup>365</sup>

151. Further, while only those acts enumerated in article 7(1) may be relied upon to demonstrate the “multiple commission of acts” for the purposes of establishing the existence of an attack under Article 7, acts *not* listed in article 7(1) may be considered for other purposes, such as in determining whether the attack was directed against a civilian population or was pursuant to or in furtherance of a

---

<sup>363</sup> *Katanga TJ*, para.1101.

<sup>364</sup> See *Katanga TJ*, paras.1138,1141,1156,1162,1166,1167 where Trial Chamber II found that the attack on Bogoro alone satisfied the contextual elements of crimes against humanity; *Gbagbo/Blé Goudé Adjourning CC Hearing*, para.23, where PTC I refers to the possibility that one incident could establish the existence of an “attack”; *Gbagbo/Blé Goudé Amicus Curiae*, para.12; *Katanga DCC*, para.395; *Milutinović TJ*, paras.1181,1184,1189,1194,1201.

<sup>365</sup> Article 7(2)(a); Elements of Crimes, p.3; *Bemba TJ*, para.149; *Katanga TJ*, para.1101; *Tadić AJ*, para.251; *Tadić*, para.141; *Kunarac AJ*, para.86; *Stakić TJ*, para.623.

State or organizational policy.<sup>366</sup>

152. The evidence of the multiple acts under article 7(1) must be assessed in its totality to determine whether there is as a “course of conduct” amounting to an attack; the acts should not be considered in isolation of one another. It is only the attack itself (a *material* fact) that needs to be proved beyond reasonable doubt and not each individual act under article 7(1) (*subsidiary* facts or evidence).<sup>367</sup>

153. In the same vein, the Chamber must also consider the totality of the relevant evidence when assessing the other constitutive contextual elements, *i.e.* whether the attack was widespread or systematic.<sup>368</sup> It is the widespread or systematic nature of the attack, and not each individual act under article 7(1), that must be proved beyond reasonable doubt.

#### a. Assault on Bunia in August 2002

154. On 6 June 2002, Governor LOMPONDO wrote a letter to NYAMWISI in which he refers to a UPC plan to commit a massacre in Bunia, characterising the UPC as a tribal Gegere militia and describing its main objective to establish Ituri as an autonomous state and chase away the RCD-K/ML and all *non-originaires*.<sup>369</sup> The unfolding of events during the first key assault on Bunia on or about 6-9 August 2002 demonstrated that LOMPONDO’s information was accurate.

155. NTAGANDA played a pivotal role in this assault. He planned it with his co-perpetrators; they discussed the need to oust the Lendu and *non-originaires*, in

---

<sup>366</sup> *Bemba TJ*, para.151. By way of example, the looting of assets from civilians, a key feature in all eight assaults, may be taken into account in considering whether the attack was directed against a civilian population, *see Bemba TJ*, para.153.

<sup>367</sup> “Material facts” are those facts charged which are “*indispensable for the conviction*”, and are usually drawn from the legal elements of crimes and modes, *see Lubanga Reg.55 AJ*, fn.163; *See Lubanga AJ*, para.22; *Gbagbo/Blé Goudé Amicus Curiae*, para.41.

<sup>368</sup> *See Lubanga AJ*, para.22; *Gbagbo/Blé Goudé Amicus Curiae*, para.41; *Ngudjolo Dissent AJ*, paras.31-41.

<sup>369</sup> [DRC-OTP-0055-0472](#), pp.0472-0473. The people perceived as being outsiders in Ituri, because they were not born there, are referred to as “*non- originaires*” and “*jajambo*”, Agreed Facts, no.38.

particular the Nande, from Ituri in Kampala, Uganda, in June 2002<sup>370</sup> and agreed upon the conduct of the attack on Bunia at another meeting not long after weapons and ammunition arrived at Mandro military camp.<sup>371</sup>

156. Prior to the assault, certain Hema had threatened *non-originaires* to leave Ituri, perceiving them as being allied with the Lendu.<sup>372</sup> Not long after that, on or about 6-9 August 2002, the UPC, then allied with the UPDF, attacked Bunia.<sup>373</sup>

157. **NTAGANDA** was one of the senior military commanders leading the UPC in the attack against non-Hema civilians in this assault,<sup>374</sup> exacting revenge for prior attacks on Hema civilians by the APC/Lendu militia.<sup>375</sup>

158. P-12 and P-14 saw, with their own eyes, “*barbarian...macabre scenes*” in Bunia after the UPC took over in August 2002, including corpses of civilians who had been shot dead.<sup>376</sup> In Mudzipela, P-14 witnessed people being killed and mistreated by Gegere and Hema troops, owners of houses being forced out of them, and a house being burnt.<sup>377</sup> He testified that Hema and Gegere persons were celebrating in Bunia at this time.<sup>378</sup>

159. During and immediately after the assault, the UPC hunted down and killed Lendu and ethnic groups perceived as allies of the Lendu or *non-originaires* of Ituri as part of “*ratissage*” operations in which men, women and children were

<sup>370</sup> **P-14:**[DRC-OTP-2054-0429](#),p.0466:1-p.0473:24,p.0478:11-p.0481:6,[DRC-OTP-2054-0612](#),p.0648:14-p.0649:3.

<sup>371</sup> **P-12:**[DRC-OTP-0105-0085](#),pp.0104-0105,paras.110-113,p.0106,paras.118,120-121,p.0107,paras.123-124,[DRC-OTP-2054-0073](#),p.0116:9-25.

<sup>372</sup> **P-16:**[DRC-OTP-0126-0422](#),pp.0428-0429,paras.39-40; **P-12:**[DRC-OTP-0105-0085](#),p.0108,para.129.

<sup>373</sup> **P-31:**[T-174-CONF-ENG-ET](#),36:16-37:25;[T-175-CONF-ENG-ET](#),47:21-48:12; [DRC-OTP-0074-0422](#),p.0439,para.49; **P-12:**[DRC-OTP-0105-0085](#),p.0107,paras.125-126,p.0109,para.134.

<sup>374</sup> **P-17:**[T-58-CONF-ENG-CT](#),18:9-20:13; **P-190:**[T-96-CONF-ENG-CT](#),76:17-77:23; **P-5:**[T-184-CONF-ENG-ET](#),5:7-15; [DRC-OTP-0074-0422](#),p.0439,para.47; **P-317:**[T-192-CONF-ENG-ET](#),10:13-13:11,15:11-16:12; [DRC-OTP-0208-0284](#),p.0320.

<sup>375</sup> **P-5:**[T-185-CONF-ENG-ET](#),20:20-21:20; [DRC-OTP-0074-0797](#),pp.0823-0824.

<sup>376</sup> **P-14:**[DRC-OTP-2054-0612](#),p.0643:25-p.0644:19;[T-136-CONF-ENG-ET](#),21:6-14; **P-12:**[DRC-OTP-0105-0085](#),pp.0108-0109,paras.130-133.

<sup>377</sup> **P-14:**[DRC-OTP-2054-0612](#),p.0644:24-p.0646:15;[T-138-CONF-ENG-ET](#),48:9-49:3,72:19-74:25.

<sup>378</sup> **P-14:**[DRC-OTP-2054-0612](#),p.0644:21-23.

pursued and everything was pillaged or destroyed.<sup>379</sup> Lendu and other non-Hema civilians, mainly women and children, who felt threatened by the UPC takeover and sought refuge at and around LOMPONDO's residence, hoping it would keep them safe, were murdered as part of this manhunt.<sup>380</sup>

160. The UPC killed over 100 non-Hema civilians during this assault,<sup>381</sup> including some who were attempting to flee at roadblocks,<sup>382</sup> using heavy weapons<sup>383</sup> as well as anti-personnel mines.<sup>384</sup> They raped female and male civilians.<sup>385</sup> UPC soldiers, including those known to be close to NTAGANDA,<sup>386</sup> pillaged and destroyed civilian property.<sup>387</sup> The UPC also forcibly expelled non-Hema civilians from their homes; thousands of non-Hema were forced to flee Bunia.<sup>388</sup>

161. The manner in which the UPC conducted this assault, including the types of crimes it committed, set the tone for its subsequent assaults throughout Ituri. When these assaults are considered together, the UPC's *modus operandi* becomes crystal clear.

### b. Assaults on Songolo in 2002

162. KISEMBO and TCHALIGONZA told P-12 that at the start of the August 2002 attack on Songolo, Lendu combatants and APC soldiers fled; P-12 states: "[t]ous m'avaient dit qu'ils avaient tué toutes les personnes se trouvant encore dans le village de

<sup>379</sup> **P-190:**[T-96-CONF-ENG-CT](#),78:11-79:19; **P-14:**[DRC-OTP-2054-0612](#),p.0646:1-6,p.0648:12-p.0649:3;[T-138-CONF-ENG-ET](#),94:12-96:16; **P-12:**[DRC-OTP-0105-0085](#),p.0109,paras.135-136; **P-46:**[T-100-CONF-ENG-CT](#),48:14-50:13; [DRC-OTP-0074-0422](#),pp.0436-0437,para.37,p.0439,para.47,p.0455,para.119 [DRC-OTP-0074-0797](#),pp.0823-0824; [DRC-OTP-0152-0286](#),p.0296,para.25.

<sup>380</sup> **P-31:**[T-174-CONF-ENG-ET](#),36:16-37:25;[T-175-CONF-ENG-ET](#),46:12-48:12; **P-5:**[T-184-CONF-ENG-ET](#),4:6-8.

<sup>381</sup> [DRC-OTP-0074-0422](#),p.0439,paras.47,49,p.0455,para.119; [DRC-OTP-0074-0797](#),pp.0824-0825.

<sup>382</sup> [DRC-OTP-0074-0422](#),p.0439,para.49.

<sup>383</sup> **P-12:**[DRC-OTP-0105-0085](#),pp.0107-0108,paras.127-129; [DRC-OTP-0074-0422](#),p.0439,para.49.

<sup>384</sup> [DRC-OTP-0074-0797](#),p.0823.

<sup>385</sup> **P-5:**[T-185-CONF-ENG-ET](#),22:2-24; [DRC-OTP-0074-0422](#),pp.0436-0437,para.37; [DRC-OTP-2003-0497](#),p.0519.

<sup>386</sup> **P-41:**[DRC-OTP-0147-0002](#),p.0007,para.32;[DRC-OTP-0127-0139](#),p.0139.

<sup>387</sup> [DRC-OTP-2099-0166](#),pp.0208-0209,figures 21-22; [DRC-OTP-0074-0422](#),p.0439,paras.47,49,p.0455,para.119; [DRC-OTP-0074-0797](#),pp.0823-0824.

<sup>388</sup> **P-46:**[T-100-CONF-ENG-CT](#),50:3-6,55:17-56:5; **P-27:**[DRC-OTP-0096-0052](#),p.0055,para.18; **P-301:**[T-149-CONF-ENG-ET](#),27:8-28:4; **P-317:**[T-192-CONF-ENG-ET](#),13:15-14:18.

SONGOLO car pour eux chaque civil était potentiellement un milicien. Cela incluait les hommes, les femmes et les enfants.”<sup>389</sup> This did not surprise P-12: “il s’agit là d’une stratégie habituelle et commune à tous les groupes armés. Aucune différence n’est jamais faite entre civils et combattants.”<sup>390</sup> This assault on Songolo took place on or about 31 August 2002, when the UPC attacked<sup>391</sup> this predominantly Ngiti village,<sup>392</sup> intentionally targeting non-Hema civilians whom they considered their enemy and wanted to expel from Ituri.<sup>393</sup>

163. On 26 August 2002, five days before the assault, **NTAGANDA** ordered UPC Commanders **GERMAIN** and **BYARUHANGA** to be ready to attack and ambush<sup>394</sup> and referred to mortars and rockets he had provided to these Commanders.<sup>395</sup> **NTAGANDA** testified that he wrote and signed this document and that it constituted an order.<sup>396</sup> However, he denied that it related to the attack on Songolo at the end of August 2002,<sup>397</sup> asserting that **GERMAIN** and **BYARUHANGA** were with **MUGISA** in the Kasenyi Battalion<sup>398</sup> and that the order related to a location near a lake by Tchomia, Kasenyi and Joo heading towards Semuliki.<sup>399</sup> While **MUGISA** was indeed in the Kasenyi Battalion,<sup>400</sup> **GERMAIN** was based in a different zone – that of Chai, Nyakeru, Bogoro, Zumbe,<sup>401</sup> which are all near Songolo.<sup>402</sup>

<sup>389</sup> **P-12**:[DRC-OTP-0105-0085](#),pp.0148-0149,para.347.

<sup>390</sup> **P-12**:[DRC-OTP-0105-0085](#),pp.0148-0149,para.347.

<sup>391</sup> [DRC-OTP-0074-0797](#),p.0827; [DRC-OTP-0074-0422](#),p.0440,paras.50-51; **P-190**:[T-96-CONF-ENG-CT](#),85:17-86:5,92:5-17; **P-898**:[T-154-CONF-ENG-ET](#),27:16-28:1.

<sup>392</sup> **P-190**:[T-96-CONF-ENG-CT](#),84:20-85:5,86:6-87:2; [DRC-OTP-0074-0422](#),p.0440,para.50; **D-17**:[T-252-CONF-ENG-ET](#),76:8-9.

<sup>393</sup> **P-888**:[T-105-CONF-ENG-CT](#),46:3-47:14,49:2-13,50:16-51:16,52:5-14,55:1-6,56:2-9,60:19-61:6; **P-190**:[T-96-CONF-ENG-CT](#),84:20-85:5,86:6-87:2; **P-898**:[T-154-CONF-ENG-ET](#),27:16-28:1; **P-12**:[DRC-OTP-0105-0085](#),p.0148,para.343.

<sup>394</sup> [DRC-OTP-2061-0715](#),p.0716.

<sup>395</sup> [DRC-OTP-2061-0715](#),p.0716.

<sup>396</sup> **D-300**:[T-226-ENG-CT](#),50:21-52:14.

<sup>397</sup> **D-300**:[T-226-ENG-CT](#),54:23-55:23.

<sup>398</sup> **D-300**:[T-226-ENG-CT](#),54:13-55:23.

<sup>399</sup> **D-300**:[T-226-ENG-CT](#),57:24-58:11.

<sup>400</sup> [DRC-OTP-2102-3854](#),p.4005(second).

<sup>401</sup> [DRC-OTP-2102-3854](#),p.4005(second); [DRC-OTP-0208-0284](#),p.0342.

<sup>402</sup> See [DRC-OTP-2106-0044](#).



164. NTAGANDA's denial is an attempt to conceal the reality that he planned, coordinated, and commanded this assault.<sup>403</sup> His position of authority was such that he did not even inform KISEMBO or LUBANGA about the attack until after he carried it out.<sup>404</sup> NTAGANDA's orders for this assault, including to child soldier P-888 who participated in it, were clear – to massacre Lendu found there.<sup>405</sup> When NTAGANDA was no longer present in Songolo, he put other commanders in charge of the operation in the field, instructing them to conduct the *ratissage* operation.<sup>406</sup>

165. During this assault, the UPC, allied with the Bira, used bladed weapons, heavy weapons such as mortars and rockets, and laid mines.<sup>407</sup> They conducted a *ratissage* operation to kill anybody found.<sup>408</sup> They cut off escape routes and killed people as they fled.<sup>409</sup> The UPC did not distinguish civilians from fighters and killed at least 140 non-Hema civilians, including women and children.<sup>410</sup> UPC soldiers pillaged the village, including the health centre,<sup>411</sup> and destroyed civilian property by setting fire to many homes.<sup>412</sup>

166. This was not an isolated incident: there were other UPC attacks on Songolo.<sup>413</sup>

<sup>403</sup> [P-190:T-96-CONF-ENG-CT](#),49:14-20,84:13-86:5,92:5-17; [P-888:T-105-CONF-ENG-CT](#),46:3-47:14,49:2-13,50:16-51:16,52:5-14,55:1-6,56:2-9; [P-315:DRC-OTP-2058-0990](#),p.1016,para.141; [P-901:T-29-CONF-ENG-CT](#),43:17-45:2,48:9-50:8.

<sup>404</sup> [P-190:T-96-CONF-ENG-CT](#),50:8-11,91:10-92:2.

<sup>405</sup> [P-888:T-105-CONF-ENG-CT](#),46:3-47:14,52:5-14,49:2-13,50:16-51:16,52:5-14,55:1-6,56:2-9; [P-190:T-97-CONF-ENG-CT](#),40:19-41:11.

<sup>406</sup> [P-190:T-96-CONF-ENG-CT](#),92:12-17.

<sup>407</sup> [P-888:T-105-CONF-ENG-CT](#),61:15-22; [DRC-OTP-0074-0422](#),p.0440,paras.50-51; [DRC-OTP-0074-0797](#),p.0827.

<sup>408</sup> [P-888:T-105-CONF-ENG-CT](#),46:3-47:14,52:5-14; [DRC-OTP-0074-0797](#),p.0827.

<sup>409</sup> [DRC-OTP-0074-0797](#),p.0827.

<sup>410</sup> [DRC-OTP-0074-0797](#),p.0827; [P-315:DRC-OTP-2058-0990](#),p.1016,para.141; [DRC-OTP-0074-0422](#),p.0440,paras.50-51; [P-888:T-105-CONF-ENG-CT](#),46:3-47:14,52:5-14,54:19-25; [P-12:DRC-OTP-0105-0085](#),pp.0148-0149,para.347.

<sup>411</sup> [P-888:T-105-CONF-ENG-CT](#),46:3-47:14,52:5-14,57:16-58:24; [DRC-OTP-0074-0797](#),p.0827; [DRC-OTP-0074-0422](#),p.0440,paras.50-51.

<sup>412</sup> [P-888:T-105-CONF-ENG-CT](#),46:3-47:14,52:5-14,57:16-58:24; [P-810:DRC-OTP-2099-0166](#),p.0211,figure 24.

<sup>413</sup> [D-17:T-252-CONF-ENG-ET](#),80:13-81:13;[T-255-CONF-ENG-ET](#),7:13-17; [D-300:T-215-ENG-ET](#),27:9-18,47:13-19.



### c. Assault on Zumbe in October 2002

167. Zumbe and other villages in the Lendu Bedu-Ezekere *groupement* were attacked several times between January 2001 and March 2003.<sup>414</sup> A key assault took place on 15 and 16 October 2002, when the UPC, including [REDACTED]<sup>415</sup> and a child soldier interviewed by P-46,<sup>416</sup> together with UPDF elements, attacked Zumbe.<sup>417</sup>

168. NTAGANDA testified that he knew about this operation and that it involved forces from Mandro.<sup>418</sup> What he did not admit is that he ordered this assault and received a report from Commander SAFARI afterwards.<sup>419</sup>

169. During the October 2002 assault, the UPC occupied Zumbe for about two days and killed over 100 civilians.<sup>420</sup> The UPC used heavy weapons<sup>421</sup> and planted anti-personnel mines in locations where civilians would gather, including at water supplies, market places, and a church.<sup>422</sup>

170. The UPC pillaged<sup>423</sup> and burnt down houses<sup>424</sup> in Zumbe; they also burnt surrounding villages.<sup>425</sup> [REDACTED] other UPC forces were given the order: “[à] Zumbe, il y a l’ennemi, frappez Zumbe sans pitié”, and that they killed civilians, mainly the elderly and women.<sup>426</sup>

171. The UPC’s tactic in this assault and the types of crimes it committed in Zumbe mirrored those in Bunia and Songolo and foreshadowed its actions in the

<sup>414</sup> [DRC-OTP-0074-0422](#), pp.0442-0443, paras.62-63; [P-976:T-152-CONF-ENG-ET](#), 20:8-21:13.

<sup>415</sup> [REDACTED].

<sup>416</sup> [DRC-OTP-0208-0284](#), p.0286.

<sup>417</sup> [P-907:T-92-CONF-ENG-CT](#), 65:9-14; [D-300:T-215-ENG-ET](#), 4:2-3; [DRC-OTP-0074-0422](#), pp.0442-0443, paras.62-63; [D-17:T-252-CONF-ENG-ET](#), 74:4-75:7; [T-254-CONF-ENG-ET](#), 65:24-66:18.

<sup>418</sup> [D-300:T-215-ENG-ET](#), 78:15-79:11.

<sup>419</sup> [REDACTED].

<sup>420</sup> [DRC-OTP-0074-0422](#), pp.0442-0443, paras.62-63; [D-17:T-252-CONF-ENG-ET](#), 74:4-75:7.

<sup>421</sup> [D-17:T-254-CONF-ENG-ET](#), 65:24-66:18.

<sup>422</sup> [P-907:T-89-CONF-ENG-CT](#), 72:9-10, 74:15-22; [DRC-OTP-0074-0422](#), pp.0442-0443, paras.62-63.

<sup>423</sup> [P-907:T-89-CONF-ENG-CT](#), 72:10-13.

<sup>424</sup> [P-907:T-89-CONF-ENG-CT](#), 70:16-72:8.

<sup>425</sup> [DRC-OTP-0074-0422](#), pp.0442-0443, paras.62-63.

<sup>426</sup> [REDACTED].

subsequent assaults.

#### d. Assault on Mambasa, Komanda and Eringeti in 2002

172. KISEMBO told NTAGANDA that “the most important location was Komanda”.<sup>427</sup>

It’s no surprise then, that the UPC, led by NTAGANDA, spared no soul when they sought to take control of that area.

173. From mid-2002, UPC forces allied with the MLC and RCD-N carried out attacks on Mambasa, Komanda, and Eringeti – often referred to as *Opération Effacer le Tableau*.<sup>428</sup> During a meeting in Aru, the UPC discussed opening a front in Komanda as part of its plan to capture Ituri.<sup>429</sup> The UPC had carefully planned its attack and its forces were ordered to drive out the enemy.<sup>430</sup>

174. NTAGANDA conceded that he was responsible for the Komanda and Mahagi operations prior to February 2003.<sup>431</sup> In particular, he stated that he went to Komanda at the end of August 2002 and personally fought in and commanded the forces that drove the APC away and brought Komanda under UPC control.<sup>432</sup> He acknowledged that UPC soldiers looted civilian homes during this assault.<sup>433</sup> D-17 also confirms this.<sup>434</sup> NTAGANDA executed a UPC soldier for failing to fight in this assault.<sup>435</sup>

175. The UPC was responsible for the majority of crimes committed in Komanda, including the murder of civilians in their homes during *ratissage* operations,

<sup>427</sup> [D-300:T-214-CONF-ENG-ET](#),80:14–21;[T-215-ENG-ET](#),3:15-17.

<sup>428</sup> [P-317:T-192-CONF-ENG-ET](#),37:20-39:5; [DRC-OTP-0074-0422](#),pp.0452-0453,paras.105-108; [DRC-OTP-0100-0314](#),p.0317,para.6; [P-901:T-29-CONF-ENG-CT](#),43:9-16,48:9-21; [P-907:T-89-CONF-ENG-CT](#),36:2-38:4; [P-898:T-154-CONF-ENG-ET](#),8:12-9:7; [P-911:T-157-CONF-ENG-ET](#),17:15-18:15; [D-17:T-252-CONF-ENG-ET](#),75:11-76:18,79:8-80:12;[T-253-CONF-ENG-ET](#),16:19-18:12.

<sup>429</sup> [P-14:T-137-CONF-ENG-ET](#),48:1-50:1;[T-138-CONF-ENG-ET](#),97:7-98:23; See also [DRC-OTP-0017-0025](#).

<sup>430</sup> [P-907:T-89-CONF-ENG-CT](#),38:5-39:11.

<sup>431</sup> [D-300:T-219-CONF-ENG-ET](#),32:21-33:1;[T-220-CONF-ENG-ET](#),12:19-24.

<sup>432</sup> [D-300:T-213-CONF-ENG-CT](#),13:9-14;[T-214-CONF-ENG-ET](#),80:14-21;[T-215-ENG-ET](#),7:18-8:7;[T-225-CONF-ENG-CT](#),46:1-6;[T-226-ENG-CT](#),50:3-9.

<sup>433</sup> [D-300:T-213-CONF-ENG-CT](#),13:9-14.

<sup>434</sup> [D-17:T-252-CONF-ENG-ET](#),75:11-76:18,79:8-80:12;[T-253-CONF-ENG-ET](#),16:19-18:12.

<sup>435</sup> [DRC-OTP-0208-0284](#),p.0290(ref.23).

abductions and rapes of non-Hema, property destruction and pillaging.<sup>436</sup>

176.Indeed, one of the specific UPC objectives for the Komanda operation was to pillage.<sup>437</sup> UPC soldiers, including P-907 who took part in the attack,<sup>438</sup> pillaged items such as mattresses, bicycles and food.<sup>439</sup> Those who burnt down houses, looted, or killed civilians were not punished<sup>440</sup> a characteristic of all eight assaults. Another characteristic of the assaults was the UPC's use of child soldiers, including P-898 during the assault on Komanda.<sup>441</sup>

177.P-907 confirmed that the UPC considered civilians in the Komanda area to be their enemy.<sup>442</sup> After capturing Komanda, the UPC's enemy fled and, upon their commander's order, UPC soldiers then started searching all the houses in the area, resulting in the murder of civilians in their homes and the arrest of others.<sup>443</sup> There were still attacks in Komanda in January 2003.<sup>444</sup>

178.NTAGANDA's assertion that there were no civilians in Komanda when he attacked,<sup>445</sup> and D-17's testimony that there were no civilians in Komanda during either of the two attacks he took part in with the UPC there,<sup>446</sup> are self-serving and not credible in light of the evidence referred to above. NTAGANDA made similar assertions in relation to other attacks; those assertions are equally not credible.

179.The MLC and RCD-N were responsible for most of the killings, pillaging and

<sup>436</sup> [P-907:T-89-CONF-ENG-CT](#),39:3-8,42:1-48:9; [DRC-OTP-0100-0314](#),p.0327,paras.57-61,p.0335,para.118; [DRC-OTP-0074-0422](#),p.0453,paras.107-109; [P-317:T-192-CONF-ENG-ET](#),37:20-39:5.

<sup>437</sup> [P-901:T-29-CONF-ENG-CT](#),18:20-19:12.

<sup>438</sup> [P-907:T-89-CONF-ENG-CT](#),36:2-38:4

<sup>439</sup> [P-907:T-89-CONF-ENG-CT](#),46:21-48:9.

<sup>440</sup> [P-907:T-89-CONF-ENG-CT](#),46:21-48:9.

<sup>441</sup> [P-898:T-154-CONF-ENG-ET](#),8:12-9:7; [P-907:T-89-CONF-ENG-CT](#),30:12-17; [DRC-OTP-0208-0284](#),p.0346(ref.167),p.0316(ref.104),p.0314(ref.96).

<sup>442</sup> [P-907:T-89-CONF-ENG-CT](#),42:1-15.

<sup>443</sup> [P-907:T-89-CONF-ENG-CT](#),43:9-44:12,48:21-49:25.

<sup>444</sup> [D-300:T-219-CONF-ENG-ET](#),16:20-17:11;[T-214-CONF-ENG-ET](#),81:5-16.

<sup>445</sup> [D-300:T-213-CONF-ENG-CT](#),15:15-18;[T-215-ENG-ET](#),8:16-18.

<sup>446</sup> [D-17:T-252-CONF-ENG-ET](#),76:13-77:7;[T-253-CONF-ENG-ET](#),18:13-19:12.

widespread rape committed in Mambasa.<sup>447</sup> With this assault, *“the region witnessed a new scale of violence characterized by a premeditated operation and the use of looting, rape and summary execution as tools of warfare.”*<sup>448</sup>

**e. Assaults in and around Mongbwalu and Lipri, Bambu and Kobu**

180. NTAGANDA's crimes were committed during the fifth and sixth assaults, also referred to as the First and Second Attacks addressed in detail below. The UPC also committed crimes in and around Mongbwalu, Lipri, Bambu and Kobu at times other than during the First and Second Attacks. These crimes are also relevant to establishing the existence of the Attack.

181. The UPC attacked Mongbwalu multiple times from May 2002.<sup>449</sup> In relation to other crimes around the Mongbwalu area, NTAGANDA testified that at the end of August or beginning of September 2002 he sent two companies to Mabanga.<sup>450</sup> The UPC forces led by NTAGANDA that attacked Mabanga targeted *non-originaires* and Lendu in order to mine the area for profit.<sup>451</sup> Further, shortly before the First Attack, there were attacks on Mudzipela and NTAGANDA led an attack on Mwanga.<sup>452</sup> NTAGANDA also testified that there was a UPC assault in Kilo Mission in mid-February 2003,<sup>453</sup> and that he shelled Mbidjo and captured 24 soldiers<sup>454</sup> before driving out KAKWAVU's soldiers and Lendu combatants from Mongbwalu and taking control of it in June 2003.<sup>455</sup>

182. In relation to other crimes around Lipri, Bambu and Kobu, the UPC attacked

<sup>447</sup> [DRC-OTP-0074-0422](#), p.0453, paras.107-109; **P-317**:[T-191-CONF-ENG-ET](#),30:23-31:1; [DRC-OTP-0100-0314](#), p.0335, para.118.

<sup>448</sup> [DRC-OTP-0074-0422](#), pp.0452-0453, para.106.

<sup>449</sup> **P-39**:[DRC-OTP-0104-0015-R03](#), p.0018, para.18, [DRC-OTP-2062-0244-R02](#), p.0247, para.10; **P-300**:[T-166-CONF-ENG-ET](#),27:7-28:14.

<sup>450</sup> **D-300**:[T-215-ENG-ET](#),21:16-23:16.

<sup>451</sup> **P-190**:[T-96-CONF-ENG-CT](#),81:3-84:4,85:23-25

<sup>452</sup> **D-300**:[T-216-ENG-CT](#),50:7-54:3; **P-55**:[T-71-CONF-ENG-CT](#),46:13-49:23.

<sup>453</sup> **D-300**:[T-223-CONF-ENG-ET](#),12:17-13:24.

<sup>454</sup> **D-300**:[T-229-CONF-ENG-ET](#),26:3-29:24.

<sup>455</sup> **D-300**:[T-225-CONF-ENG-CT](#),48:21-49:6;[T-229-CONF-ENG-ET](#),14:10-15,26:3-29:24; *See also* **P-907**:[T-89-CONF-ENG-CT](#),76:2-3;[T-90-CONF-ENG-CT](#),64:19-65:14; [DRC-OTP-0074-0628](#),p.0677; **P-10**:[T-47-CONF-ENG-CT](#),16:3-17:13.

Kobu and its surroundings multiple times in 2002.<sup>456</sup> It attacked Lipri in August 2002,<sup>457</sup> and between about November 2002 and January 2003 attacked Bambu several times, using heavy weapons, killing civilians and causing others to flee.<sup>458</sup> NTAGANDA testified that in January 2003 there was another UPC assault on Lipri.<sup>459</sup> The UPC killed Lendu civilians during this attack.<sup>460</sup> The UPC also attacked Ngongo and surrounding areas in early 2003, looting and causing civilians to flee,<sup>461</sup> as it always did.

#### f. Assault on Bunia in March 2003

183. The seventh assault took place in Bunia on or about 6 March 2003,<sup>462</sup> when the UPC was ousted by UPDF forces and their Lendu allies.<sup>463</sup>

184. NTAGANDA testified that on 5 March 2003 he and others, [REDACTED], held a meeting about fighting the UPDF<sup>464</sup> and that he and KISEMBO personally participated in the attack that took place the next day.<sup>465</sup> NTAGANDA, who was armed for the operation,<sup>466</sup> ordered troops, including P-888, to attack the enemy in Bunia and then ordered them to withdraw.<sup>467</sup>

185. During this assault, several civilians were killed and houses, shops and offices were looted or destroyed.<sup>468</sup> Despite this unsuccessful attack, the UPC continued

<sup>456</sup> [P-790:T-53-CONF-ENG-CT](#),28:11-37:22; [P-301:T-149-CONF-ENG-ET](#),28:1-29:8; [P-190:T-97-CONF-ENG-CT](#),20:24-24:7; [P-127:T-139-CONF-ENG-ET](#),3:10-17.

<sup>457</sup> [P-901:T-29-CONF-ENG-CT](#),43:17-24; [P-190:T-97-CONF-ENG-CT](#),20:24-24:7; [P-127:T-139-CONF-ENG-ET](#),3:10-17.

<sup>458</sup> [P-863:T-180-CONF-ENG-ET](#),11:23-16:20.

<sup>459</sup> [D-300:T-223-CONF-ENG-ET](#),12:17-13:24.

<sup>460</sup> [DRC-OTP-0065-0003](#),p.0003; [P-127:T-139-CONF-ENG-ET](#),35:6-36:17; [P-105:T-133-CONF-ENG-ET](#),44:9-16.

<sup>461</sup> [P-105:T-133-CONF-ENG-ET](#),53:12-54:10; [D-300:T-219-CONF-ENG-ET](#),13:18-22,30:13-31:15;[T-238-CONF-ENG-CT](#),64:16-20.

<sup>462</sup> Agreed Facts,no.55.

<sup>463</sup> [DRC-OTP-2078-0202](#); [DRC-OTP-2067-1989](#),p.1989,para.1.

<sup>464</sup> [D-300:T-215-ENG-ET](#),44:24-45:7; *See also* [P-190:T-97-CONF-ENG-CT](#),24:13-26:9.

<sup>465</sup> [D-300:T-221-CONF-ENG-ET](#),32:2-13; *See also* [P-190:T-97-CONF-ENG-CT](#),24:13-26:9; [P-963:T-80-CONF-ENG-ET](#),35:20-37:2.

<sup>466</sup> [P-963:T-80-CONF-ENG-ET](#),35:20-37:2.

<sup>467</sup> [P-888:T-105-CONF-ENG-CT](#),85:19-88:21.

<sup>468</sup> [DRC-OTP-2067-1994](#),p.1994,para.1; [DRC-OTP-2067-1989](#),p.1989,para.1; [DRC-OTP-0074-0422](#),pp.0445-0446,paras.73-74.

to operate,<sup>469</sup> and soon engaged in further assaults.

**g. Assault on Bunia in May 2003**

186. The eighth assault took place after the withdrawal of UPDF forces from Bunia on 6 May 2003 when the UPC fought against the FNI for control of Bunia and retook it.<sup>470</sup> **NTAGANDA** assisted in obtaining weapons and ammunition from Rwanda before this assault.<sup>471</sup>

187. Prior to the assault, the Hema civilian population was warned to leave Bunia or risk being considered the enemy; no such warning was issued to civilians of other ethnic groups.<sup>472</sup> UPC troops were told that anyone in Bunia was an enemy and they all had to be killed.<sup>473</sup> The order was given to troops to "*kupiga na kuchaji*";<sup>474</sup> the soldiers obeyed this order.<sup>475</sup>

188. Video footage<sup>476</sup> of Bunia in the wake of this UPC attack shows numerous corpses, seriously injured persons, and part of the damage to property that was caused during this assault. Fighting between the UPC and the Lendu caused hundreds of civilian casualties and was characterised by systematic looting of buildings and the destruction of about 1,000 dwellings by fire.<sup>477</sup> The UPC targeted and hunted *non-originaires* and those perceived to be assisting the Lendu; many of those captured were killed or disappeared while approximately 200,000 persons were forced to flee.<sup>478</sup> The UPC reportedly killed 260 persons.<sup>479</sup>

<sup>469</sup> [DRC-OTP-0029-0280](#).

<sup>470</sup> [DRC-OTP-1061-0212](#),p.0458,para.423; [DRC-OTP-0074-0422](#),pp.0446-0447,para.77; **P-46:T-101-CONF-ENG-ET**,7:24-9:21.

<sup>471</sup> [DRC-OTP-0074-0422](#),pp.0434-0435,para.29.

<sup>472</sup> **P-758:T-161-CONF-ENG-ET**,38:17-40:20.

<sup>473</sup> **P-758:T-161-CONF-ENG-ET**,38:17-40:20.

<sup>474</sup> See, e.g. Section VII.A.6.a.

<sup>475</sup> **P-12:T-164-CONF-ENG-ET**,34:10-37:16; **P-30:DRC-OTP-0151-0645**,pp.0645-0646,paras.1-6;**T-144-CONF-ENG-ET**,70:19-73:24; **P-758:T-161-CONF-ENG-ET**,43:17-44:4.

<sup>476</sup> [DRC-OTP-0164-0910](#),00:00:00-00:05:55.

<sup>477</sup> [DRC-OTP-0074-0422](#),pp.0446-0447,paras.77-78; [DRC-OTP-0164-0910](#),00:00:00-00:05:55; **P-810:DRC-OTP-2099-0166**,p.0209,figure 22; **P-31:T-174-CONF-ENG-ET**,108:1-111:19; **P-317:T-192-CONF-ENG-ET**,20:25-21:14.

<sup>478</sup> [DRC-OTP-0074-0422](#),pp.0436-0437,para.37,p.0448,para.82,p.0458,para.131; **P-12:T-164-CONF-ENG-ET**,34:10-37:16; [DRC-OTP-0065-0148](#),pp.0151-0152,paras.11-13; **P-46:T-101-CONF-ENG-ET**,7:24-9:21; **P-**

About 125 persons were raped.<sup>480</sup>

189. Once the UPC was able to take over Bunia in May 2003, and even after the ceasefire agreement was signed between the UPC and FNI/FRPI forces later that month,<sup>481</sup> the UPC continued to commit crimes in Bunia, including pillaging, rape, enforced disappearance, torture and killing, in particular against non-Hema civilians.<sup>482</sup> As put by P-46, “*people were still being killed, raped, disappeared, threatened...the situation was horrific*”.<sup>483</sup>

190. As late as the end of July 2003, there were increased incidents of shooting in Bunia and a new wave of attacks by the Lendu and FAPC combatants was reported in Drodro and Largo.<sup>484</sup>

### 3. *The Attack was directed against the civilian population*

191. The UPC “*detested the Lendu*”<sup>485</sup> and considered them “*mchafu*” (“dirt”), which they needed to “*be rid of or wipe out*”.<sup>486</sup> UPC soldiers said: “*[t]he Lendu are useless wild animals and we can do with them anything we want. They are not humans*”.<sup>487</sup> For

---

**30:**[DRC-OTP-0151-0645](#),pp.0645-0646,paras.1-6; [DRC-OTP-0164-0910](#),00:02:31–00:03:17; **P-31:**[T-174-CONF-ENG-ET](#),108:1-111:19; **P-300:**[T-166-CONF-ENG-ET](#),69:5-73:12; **P-46:**[T-101-CONF-ENG-ET](#),7:24-9:21; [DRC-OTP-0109-0199](#),p.0199,para.1.

<sup>479</sup> [DRC-OTP-0074-0422](#),pp.0446-0447,paras.77-78; [DRC-OTP-0195-2366](#),pp.2383-2395and **P-317:**[T-191-CONF-ENG-ET](#),97:3-104:23;[T-192-CONF-ENG-ET](#),20:25-21:14; [DRC-OTP-0065-0148](#),pp.0151-0152,paras.11-13.

<sup>480</sup> [DRC-OTP-2003-0497](#),pp.0517-0519; [DRC-OTP-0074-0422](#),pp.0436-0437,para.37; **P-317:**[T-192-CONF-ENG-ET](#),20:25-21:14; **P-30:**[DRC-OTP-0151-0645](#),pp.0645-0646,paras.1-6;[T-144-CONF-ENG-ET](#),70:19-73:24; **P-31:**[T-174-CONF-ENG-ET](#),38:18-40:19,108:1-111:19.

<sup>481</sup> [DRC-OTP-0107-0324](#); [DRC-OTP-0074-0422](#),p.0482; [DRC-OTP-0065-0148](#),p.0149,para.2.

<sup>482</sup> [DRC-OTP-0074-0422](#),p.0448,para.82,p.0458,para.131; [DRC-OTP-2003-0497](#),pp.0517-0519; [DRC-OTP-0195-2366](#),pp.2383-2395and **P-317:**[T-191-CONF-ENG-ET](#),97:3-104:23;[T-192-CONF-ENG-ET](#),25:6-26:5; [DRC-OTP-0203-0319](#),p.0321and **P-46:**[T-101-CONF-ENG-ET](#),29:22-30:9;[T-101-CONF-ENG-ET](#),7:24-9:21;[T-101-CONF-ENG-ET](#),12:1-14:9; [DRC-OTP-0074-0422](#),pp.0436-0437,para.37; [DRC-OTP-0074-0422](#),p.0447,para.80; **P-30:**[T-146-CONF-ENG-ET](#),19:10-21:11; [DRC-OTP-0151-0665](#),00:11:12-00:15:31 and **P-30:**[T-146-CONF-ENG-ET](#),28:19-35:19;[T-146-CONF-ENG-ET](#),35:22-36:9,84,2-25; [DRC-OTP-0065-0148](#),p.0149,para.2; [DRC-OTP-0005-0276](#),p.0276; [DRC-OTP-0001-0046](#),p.0046.

<sup>483</sup> **P-46:**[T-103-CONF-ENG-ET](#),51:15-22.

<sup>484</sup> [DRC-OTP-2066-0406](#),p.0408.

<sup>485</sup> **P-768:**[T-34-CONF-ENG-CT](#),57:1-6.

<sup>486</sup> **P-859:**[T-51-CONF-ENG-CT](#),39:9-25; **P-898:**[T-154-CONF-ENG-ET](#),19:23-21:21.

<sup>487</sup> **P-19:**[T-115-CONF-ENG-CT](#),31:12-16,38:24-39:5,50:22-51:9;[T-116-CONF-ENG-CT](#),5:19-21; *See also* **P-315:**[DRC-OTP-2058-0990](#),p.1012, para.127.



the UPC, the Lendu were the enemy, regardless of their civilian status.<sup>488</sup> For the UPC, “[a] good Lendu is a dead Lendu.”<sup>489</sup>

192. In this section, the Prosecution describes how the Attack was directed against non-Hema civilians. An attack is “directed against the civilian population” when it intentionally targets civilians due to the “*absolute prohibition on targeting of civilians in customary international law*”.<sup>490</sup> Accordingly, the presence of military or other motives for an attack alongside an intentional targeting of the civilian population does not modify the nature of the attack.<sup>491</sup> The presence, within the civilian population, of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.<sup>492</sup>

193. In this case civilians were the primary object of the Attack. The intentional and directed nature of the Attack is demonstrated *inter alia*, by: (i) the identification of non-Hema civilians as “the enemy”, including in orders or instructions (explicit or implied), given before and during assaults to target these civilians; (ii) the intentional targeting of these civilians during or after the execution of the assaults; and (iii) the failure to punish or discipline UPC forces for the crimes perpetrated against these civilians. Points (i) and (ii) are addressed in the following sub-sections while point (iii) is addressed in the section concerning article 28.

<sup>488</sup> [P-17:T-63-CONF-ENG-ET](#),47:18-48:4; [P-758:T-161-CONF-ENG-ET](#),17:1-7,34:24-35:19,39:9-24.

<sup>489</sup> [P-898:T-154-CONF-ENG-ET](#),19:23-21:21.

<sup>490</sup> See e.g. [Blaškić AJ](#),para.109; See also ICJ Advisory Opinion,p. 226,para.78. See Section IX.

<sup>491</sup> See [Katanga DCC](#),paras.403-405; [CDF AJ](#),paras.247,250-252,299,300; [Kunarac TJ](#),para.579; [Tadić AJ](#), paras.268-270, 272; [Kordić & Čerkez TJ](#),para.187; Eboe-Osuji C,'Crimes against Humanity: Directing Attacks against a Civilian Population.'(2008) 2(2) *Afr J Legal Stud* 118,p.129: “*To cast the inquiry as one in which the civilian population must be seen as the primary object of the attack risks unwittingly to include the inquirer to take a monocular view of the purpose of the attack [...] the more encompassing formulation of the test of directing attacks against a civilian population engages the question whether the civilian population was intentionally targeted. It should not be limited to asking whether they were primarily targeted*”.

<sup>492</sup> In such a case, in order to determine whether an attack was directed against a civilian population, the Chamber may consider a variety of factors such as: (i) the means and methods used in the course of the attack; (ii) the status of the victims; (iii) the number of victims; (iv) the discriminatory nature of the attack; (v) the nature of the crimes committed in the course of the attack; (vi) the form of resistance to the assailants at the time of the attack; and (vii) the extent to which the attacking force complied with the precautionary requirements of the laws of war, see [Bemba TJ](#),para.153; [Katanga TJ](#),paras.1104-1105; See also [Tolimir AJ](#),paras.141-142.



**a. Non-Hema civilians were identified as the “enemy” and targeted**

194. The manner in which the UPC identified non-Hema civilians as being the UPC’s “enemy” and targeted them, as well as the frequency of attacks on villages largely inhabited by such civilians, is evidence of the intentional and directed nature of the Attack.

195. Right from the beginning of their training, recruits were taught that all Lendu, including civilians, were the enemy.<sup>493</sup> For instance, at Mandro military training camp, trainers, officers and recruits, at times in NTAGANDA’s presence and seeming approval,<sup>494</sup> sang anti-Lendu songs that included lyrics about the extermination of Lendu<sup>495</sup> and raping Lendu girls.<sup>496</sup> At the camp in Ndromo, commanders would explain the UPC ideology through songs containing lyrics about slitting the throats of Lendu.<sup>497</sup>

196. Prior to and during military assaults, NTAGANDA and other UPC commanders gave orders to the UPC forces to chase and deliberately target Lendu without distinction and to exterminate them.<sup>498</sup> Hema civilians were warned of attacks in advance while Lendu civilians were not since the UPC considered all Lendu as the enemy.<sup>499</sup> The UPC targeted *non-originaires* or *jajambo*,<sup>500</sup> in particular the Nande – originally of North Kivu and of the same

<sup>493</sup> **P-10:**[T-46-CONF-ENG-ET](#),41:1-5;[T-47-CONF-ENG-CT](#),48:12-13; **P-888:**[T-105-CONF-ENG-CT](#),37:8-38:11; **P-963:**[T-78-CONF-ENG-ET](#),74:18-24;[T-80-CONF-ENG-ET](#),30:20-25; **P-907:**[T-90-CONF-ENG-CT](#),36:20-24.

<sup>494</sup> **P-10:**[T-47-CONF-ENG-CT](#),41:20-43:5.

<sup>495</sup> **P-16:**[DRC-OTP-0126-0422](#),pp.0432-0433,paras.56-58,[DRC-OTP-2054-1447](#),p.1465:20-p.1466:25.

<sup>496</sup> **P-10:**[T-47-CONF-ENG-CT](#),41:20-43:5.

<sup>497</sup> **P-769:**[T-120-CONF-ENG-ET](#),30:6-33:24.

<sup>498</sup> **P-768:**[T-33-CONF-ENG-CT](#),37:2-16,53:3-54:17; **P-10:**[T-47-CONF-ENG-CT](#),9:21-10:18,14:16-15:16; **P-17:**[T-63-CONF-ENG-ET](#),41:4-17;[T-59-CONF-ENG-CT](#),62:17-63:3; **P-963:**[T-78-CONF-ENG-ET](#),72:23-75:7,77:15-18,81:12-22,84:7-85:14;[T-79-CONF-ENG-ET](#),15:25-16:8,43:1-47:8; **P-758:**[T-161-CONF-ENG-ET](#),17:1-7,34:24-35:19,39:9-24; **P-868:**[T-177-CONF-ENG-ET](#),79:20-81:11; **P-907:**[T-90-CONF-ENG-CT](#),8:1-9:19.

<sup>499</sup> **P-758:**[T-161-CONF-ENG-ET](#),38:17-40:20;[T-162-CONF-ENG-ET](#),40:18-25; **P-16:**[DRC-OTP-0126-0422](#),p.0436,para.83,pp.0459-0460,paras.216-217.

<sup>500</sup> See Agreed Facts, no.38; see also **P-14:**[T-138-CONF-ENG-ET](#),99:3-100:4,[DRC-OTP-2054-0429](#),p.0478:11–p.0481:6; **P-245:**[T-142-CONF-ENG-ET](#),9:16-10:12.

ethnicity as NYAMWISI<sup>501</sup> – because they perceived them as aligned with, or trying to assist, the Lendu.<sup>502</sup> Members of the international community were targeted for the same reasons.<sup>503</sup>

197.Indeed, one of the UPC's goals in the creation of the province of Ituri was to oust the *non-originaires*.<sup>504</sup>

198.The targeting of non-Hema civilians was in no way random. Most of the villages that the UPC attacked were predominantly inhabited by Lendu and/or *non-originaires*.<sup>505</sup> It was easy to distinguish persons of Lendu ethnicity from those who were Hema based, for example, on their physical appearance.<sup>506</sup> At times, UPC soldiers would question individuals regarding their parents' names, their region of origin, or their linguistic abilities in order to determine whether they were Lendu and, if they determined that they were Lendu, they would harm the individuals.<sup>507</sup>

199.Throughout the temporal scope of the charges, non-Hema civilians were

<sup>501</sup> See Agreed Facts, no.39; **P-190:T-96-CONF-ENG-CT**,78:11-79:19; **P-12:DRC-OTP-0105-0085**,p.0148,para.343; **P-43:DRC-OTP-0126-0086**,p.0092,para.34; **P-16:DRC-OTP-0126-0422**,p.0428,para.39; **DRC-OTP-0074-0422**,p.0453,para.109; **P-317:T-192-CONF-ENG-ET**,13:15-14:8; **P-14:DRC-OTP-2054-0429**,p.0480:16-p.0481:6; **DRC-OTP-0127-0110** and **P-5:T-185-CONF-ENG-ET**,28:10-29:18;**T-187-CONF-ENG-ET**,4:25-9:15,14:15-15:2; **DRC-OTP-0164-0447**,p.0448.

<sup>502</sup> **DRC-OTP-0074-0422**,p.0436,para.37,p.0455,para.119; **P-43:DRC-OTP-0126-0086**,p.0092,para.34; **P-12:DRC-OTP-0105-0085**,p.0108,para.129; **DRC-OTP-0074-0422**,pp.0458-0459 paras.129-132; **P-5:T-183-CONF-ENG-ET**,32:25-33:4; **DRC-OTP-0136-0173**,p.0173; **P-245:T-142-CONF-ENG-ET**,9:16-10:12; **P-894:DRC-OTP-2076-0194**,pp.0201-0202,para.38; **P-365:T-147-CONF-ENG-ET**,15:1-16. See also Section VIII.A.1.b.i.

<sup>503</sup> See Section VIII.A.1.b.i (Discriminatory nature of the UPC and targeting of Lendu and non-originaires).

<sup>504</sup> **P-5:T-185-CONF-ENG-ET**,28:10-29:18; **P-245:T-142-CONF-ENG-ET**,21:19-22:12; **P-16:DRC-OTP-0126-0422**,p.0428,para.39; **P-12:DRC-OTP-0105-0085**,p.0148,para.343; **P-14:DRC-OTP-2054-0612**,p.0634:7-p.0638:4,p.0648:14-24,p.0649:25-p.0654:24;**T-136-CONF-ENG-ET**,61:19-63:7;**DRC-OTP-2054-0816**,p.0823:15-p.0817:11;**T-137-CONF-ENG-ET**,36:20-40:21,49:6-50:1;**T-138-CONF-ENG-ET**,97:7-98:23;**T-138-CONF-ENG-ET**,99:3-100:4;**DRC-OTP-2054-0429**,p.0478:11-p.0481:6; **P-888:T-105-CONF-ENG-CT**,37:8-38:11.

<sup>505</sup> **P-190:T-96-CONF-ENG-CT**,86:6-14; **P-16:DRC-OTP-0126-0422**,pp.0459-0460,paras.216-217; **P-22:DRC-OTP-0104-0026**,p.0030,para.22; **P-39:DRC-OTP-2062-0244**,pp.0247-0248,paras.11,13; **DRC-OTP-0074-0422**,p.0436,para.37,p.0455,para.119; **P-963:T-79-CONF-ENG-ET**,16:17-25; **P-105:T-133-CONF-ENG-ET**,42:4-12; **P-453:T-178-CONF-ENG-ET**,55:10-13,**DRC-OTP-2084-0523**,p.0558.

<sup>506</sup> **P-859:T-51-CONF-ENG-CT**,62:5-63:5; **P-17:T-60-CONF-ENG-ET**,20:13-19; **P-10:T-50-CONF-ENG-CT**,62:9-14; **P-907:T-89-CONF-ENG-CT**,68:13-69:2; **P-815:T-76-CONF-ENG-CT**,29:9-30:19.

<sup>507</sup> **P-315:DRC-OTP-2058-0990**,p.1014,para.131; **P-815:T-76-CONF-ENG-CT**,29:9-30:19; **P-912:T-148-CONF-ENG-ET**,52:1-55:1. Persons who were half Lendu did not reveal this in order to protect themselves, see **P-758:T-161-CONF-ENG-ET**,8:22-9:5,37:20-23;**T-162-CONF-ENG-ET**,4:14-25.

deliberately hunted down in their homes, in public places, and at roadblocks; they were raped, killed, or forced to flee; their property was pillaged or destroyed.<sup>508</sup> The Logbook confirms that hunting civilians was part of the UPC's *modus operandi*.<sup>509</sup>

## b. There was an ethnic conflict

200. The conflict that took place during the temporal scope of the charges was an ethnic one. The victims of NTAGANDA's crimes knew it.<sup>510</sup> UPC members and its soldiers fighting on the ground knew it.<sup>511</sup> The United Nations knew it.<sup>512</sup> Defence witnesses knew it.<sup>513</sup> Even the UPC acknowledged it.<sup>514</sup> Nevertheless, during his testimony, NTAGANDA persistently denied that the conflict had an ethnic dimension during the temporal scope of the charges, stating "*it wasn't an inter-ethnic war*" once the UPC officially took power.<sup>515</sup> Instead, he expects the Chamber to believe that "*[a]ll these things about ethnic groups, that doesn't exist in the army*".<sup>516</sup> But the Chamber cannot believe his implausible assertion when

<sup>508</sup> **P-888:**[T-105-CONF-ENG-CT](#),46:3-47:14,49:2-13,50:16-51:16,52:5-14,55:1-6,56:2-9,60:19-61:6; **P-39:**[DRC-OTP-2062-0244](#),pp.0247-0248,paras.11,13; **P-12:**[DRC-OTP-0105-0085](#),p.0109,para.136,p.0148,para.343; **P-22:**[DRC-OTP-0104-0026](#),p.0030,para.22; **P-17:**[T-59-CONF-ENG-CT](#),74:24-76:7;**T-63-CONF-ENG-ET**,41:4-17; **P-105:**[T-133-CONF-ENG-ET](#),42:4-12,65:19-67:1; **P-768:**[T-33-CONF-ENG-CT](#),59:7-21,65:24-67:10;**T-35-CONF-ENG-CT**,72:11-76:25; **P-907:**[T-89-CONF-ENG-CT](#),43:9-44:12; **DRC-OTP-0074-0422**, p.0436, para.37, p.0439, para.47, p.0455,para.119,pp.0458-0459,paras.129-132; **DRC-OTP-0074-0797**,p.0828; **DRC-OTP-0074-0628**,pp.0664-0666.

<sup>509</sup> **DRC-OTP-2102-3854**,p.3935(second).

<sup>510</sup> **P-39:**[DRC-OTP-2062-0244](#),pp.0247-0248,paras.11,13; **P-868:**[T-177-CONF-ENG-ET](#),79:20-81:11; **P-245:**[T-141-CONF-ENG-ET](#),29:7-8,47:21-22; **V-3:**[T-203-CONF-ENG-ET](#),101:4-7; **P-805:**[T-25Bis-CONF-ENG-CT](#),11:5-8; **P-886:**[T-36-CONF-ENG-CT](#),70:3-11; **P-859:**[T-51-CONF-ENG-CT](#),15:3-6,33:3-21,61:20-62:3;**T-52-CONF-ENG-CT**,19:12-21,21:19-25; **P-113:**[T-118-CONF-ENG-CT](#),11:10-21; **P-894:**[DRC-OTP-2076-0194](#),p.0201,para.38;**T-103-CONF-ENG-ET**,97:12-22;

<sup>511</sup> **P-898:**[T-154-CONF-ENG-ET](#),10:21-11:12; **P-907:**[T-90-CONF-ENG-CT](#),36:20-24,51:15-23 ; **P-17:**[T-60-CONF-ENG-ET](#),14:20-15:12;**T-63-CONF-ENG-ET**,47:18-48:4; **P-10:**[T-46-CONF-ENG-ET](#),41:1-5;**T-47-CONF-ENG-CT**,48:12-13; **P-888:**[T-105-CONF-ENG-CT](#),37:8-38:11.; **P-768:**[T-33-CONF-ENG-CT](#),37:2-16,44:21-23,53:3-54:17; **T-34-CONF-ENG-CT**,16:11-15; **P-963:**[T-78-CONF-ENG-ET](#),72:23-75:7,77:15-18,81:12-22,84:7-85:14;**T-79-CONF-ENG-ET**,15:25-16:8,43:1-47:8;**T-80-CONF-ENG-ET**,30:20-25; **P-758:**[T-161-CONF-ENG-ET](#),17:1-7,34:24-35:19,39:9-24; **P-190:**[T-96-CONF-ENG-CT](#),63:4-10; **P-55:**[T-70-CONF-ENG-CT](#),60:8-61:16;**T-72-CONF-ENG-CT**,15:9-16:12; **P-5:**[T-183-CONF-ENG-ET](#),11:2-3; **P-769:**[T-120-CONF-ENG-ET](#),16:17-21; **V-1:**[T-201-CONF-ENG-ET](#),11:1-13; **P-41:**[DRC-OTP-2054-5030](#),p.5107:2-10.

<sup>512</sup> **DRC-OTP-0109-0232**,p.0235,para.9; **P-317:**[T-191-CONF-ENG-ET](#),44:3-9.

<sup>513</sup> **D-251:**[T-260-CONF-ENG-CT](#),78:13-79:13; **D-172:**[T-245-CONF-ENG-CT](#),21:1-18,69:3-11,80:2-81:6,83:16-19,111:1-25.

<sup>514</sup> **DRC-OTP-0093-0136**,p.0137; **DRC-OTP-0093-0121**,p.0122; **DRC-OTP-0037-0266**,p.0266.

<sup>515</sup> **D-300:**[T-224-CONF-ENG-ET](#),44:21-49:15.

<sup>516</sup> **D-300:**[T-226-ENG-CT](#),43:3-8.

faced with overwhelming credible evidence to the contrary.

201. That the UPC was undeniably a Hema organisation<sup>517</sup> is a product of the ethnic conflict. Those who controlled the UPC were Hema or Tutsi; non-Hema UPC members had no real power and were shut out of discussions on anything to do with the military.<sup>518</sup> The UPC included some non-Hema members in order to project the image of being an inclusive organisation.<sup>519</sup> Non-Hema persons had no real choice but to join the UPC when asked to do so.<sup>520</sup> The majority of the other armed groups that fought along with and/or against the UPC were also largely mono-ethnic.<sup>521</sup>

202. D-251, of Hema Nord ethnicity,<sup>522</sup> conceded that the fact that members of her family were killed during a 2002 Lendu attack [REDACTED] played a great role in her decision to join the UPC.<sup>523</sup> She testified that when she was in the UPC, including as a member of [REDACTED], there was a conflict between the Lendu and the Hema.<sup>524</sup> Her testimony that the UPC was mainly composed of Hema<sup>525</sup> reflects that of numerous other witnesses. D-251 knew that the UPC was fighting to protect her ethnic group and, in particular, that **NTAGANDA** was dedicated

<sup>517</sup> [P-5:T-183-CONF-ENG-ET](#),12:1;[T-184-CONF-ENG-ET](#),14:18-19; [P-245:T-141-CONF-ENG-ET](#),47:21-22; [P-17:T-58-CONF-ENG-CT](#),38:21-39:21; [P-859:T-51-CONF-ENG-CT](#),11:7-8; [P-16:DRC-OTP-0126-0422](#),p.0432,para.56; [P-55:T-70-CONF-ENG-CT](#),61:8-16; [P-14:DRC-OTP-2054-0612](#),p.0657:21-p.0658:3; [P-12:DRC-OTP-2054-0073](#),p.0097:11-p.0098:1; [P-31:T-177-CONF-ENG-ET](#),3:17-4:1; [DRC-OTP-2102-3854](#),pp.3981-3982; [P-907:T-89-CONF-ENG-CT](#),66:12-19.

<sup>518</sup> [P-43:T-190-CONF-ENG-ET](#),31:13-32:1,[DRC-OTP-0126-0086](#),pp.0090-0091,para.26; [P-41:DRC-OTP-0147-0002](#),p.0019,para.103,p.0026,para.150; [P-16:DRC-OTP-0126-0422](#),pp.0439-0440,para.97,p.0453,paras.179-180; [P-5:T-184-CONF-ENG-ET](#),14:17-15:17;[T-185-CONF-ENG-ET](#),26:17-27:1; [P-14:DRC-OTP-2054-0612](#),p.0667:11-p.0668:8,p.0686:10-p.0687:9;[T-136-CONF-ENG-ET](#),63:5-7; [P-41:DRC-OTP-2054-5384](#),p.5450:3-24; [P-12:DRC-OTP-2054-0073](#),p.0118:19-p.0119:8; [P-31:T-177-CONF-ENG-ET](#),3:17-4:1.

<sup>519</sup> [P-41:DRC-OTP-0147-0002](#),p.0019,para.103,p.0026,para.150; [P-14:DRC-OTP-2054-0612](#),p.0667:11-p.0668:8; [P-31:T-177-CONF-ENG-ET](#),3:17-4:1.

<sup>520</sup> [P-5:T-183-CONF-ENG-ET](#),10:12-11:7; [P-31:T-177-CONF-ENG-ET](#),3:17-4:1.

<sup>521</sup> [D-300:T-212-CONF-ENG-ET](#),23:3-13,30:15-16; [DRC-OTP-0107-0198](#),p.0201; [P-5:T-186-CONF-ENG-ET](#),32:1-6; [DRC-OTP-0074-0797](#),pp.0818-0819; [P-758:T-161-CONF-ENG-ET](#),11:16-17.

<sup>522</sup> [D-251:T-260-CONF-ENG-CT](#),78:19-20.

<sup>523</sup> [D-251:T-260-CONF-ENG-CT](#),78:21-79:4.

<sup>524</sup> [D-251:T-260-CONF-ENG-CT](#),78:13-18.

<sup>525</sup> [D-251:T-260-CONF-ENG-CT](#),79:5-7.

to the protection of the Hema.<sup>526</sup>

#### 4. Organisational policy

203. The UPC constituted an “organisation” pursuant to article 7(2)(a). This organisation actively promoted or encouraged the policy to attack non-Hema civilians.

##### a. The organisation

204. Concerned about the presence of Hema civilians taking the roofs off houses after an operation in [REDACTED], P-55 turned to **NTAGANDA** to ask what was going on.<sup>527</sup> **NTAGANDA** reassured P-55 **that these civilians were “our people, our combatants whom we had mobilised to see what there was in the houses and to take the roofs off the Walendu houses”**.<sup>528</sup>

205. **NTAGANDA armed Hema civilians with Kalashnikovs and brought them to Mongbwalu.**<sup>529</sup> **When** P-768 arrested these Hema civilians because they were killing Lendu civilians after the operations in Mongbwalu, the Hema civilians told him that they had received orders from **NTAGANDA**.<sup>530</sup> P-768 asked **NTAGANDA** about this issue and **NTAGANDA** told him to “*leave them alone, that they were civilians working with [NTAGANDA]*.”<sup>531</sup>

206. The UPC constitutes an organisation within the meaning of article 7(2)(a). It: (i) had the capability to commit a widespread or systematic attack against a civilian population; (ii) had an established hierarchy in which the senior leadership jointly held *de jure* and *de facto* authority and command and control over the organisation; (iii) operated with an established structure and had a

<sup>526</sup> **D-251:T-260-CONF-ENG-CT**,79:8-13.

<sup>527</sup> **P-55:T-71-CONF-ENG-CT**,46:16-47:5,47:22-49:19.

<sup>528</sup> **P-55:T-71-CONF-ENG-CT**,49:9-23.

<sup>529</sup> **P-768:T-33-CONF-ENG-CT**,34:22-35:5,41:21-42:11.

<sup>530</sup> **P-768:T-33-CONF-ENG-CT**,34:22-35:5,41:21-42:12,43:18-44:2.

<sup>531</sup> **P-768:T-33-CONF-ENG-CT**,42:10-15.

communication system to transmit and receive information about events on the ground; and (iv) had the means to carry out the overall attack, including access to financing, means of transport, weapons and ammunition. The key evidence regarding these four elements is described in detail in Section VIII.A.1.b.iii.<sup>532</sup>

207. The Hema civilian supporters formed part of the “organisation” and came under the control of the UPC, committing crimes pursuant to or in furtherance of the organisational policy. As described in the sections on the First and Second Attacks, Hema civilian supporters accompanied and assisted the UPC forces during their attacks and committed crimes in a structured and systematic manner.

208. UPC commanders, including **NTAGANDA**, used Hema civilian supporters in operations,<sup>533</sup> including to carry weapons and ammunition.<sup>534</sup> The UPC had a system to mobilise and coordinate the Hema civilian supporters.<sup>535</sup> During attacks, they were under the control of the leader of that attack, often **NTAGANDA** himself.<sup>536</sup>

209. **NTAGANDA** was fully aware of the fact that the Hema civilian supporters were under the UPC’s control.<sup>537</sup> **NTAGANDA** and UPC commanders briefed the Hema civilians and gave them instructions before assaults, and ordered

<sup>532</sup> Although the requirements for an organisation for the purposes of article 7 differ to those for an organisation under article 25(3)(a), the evidence underlying them overlaps.

<sup>533</sup> **P-892:T-83-CONF-ENG-CT**,31:3-33:2,36:19-38:19,41:10-42:3;**T-85-CONF-ENG-CT**,13:4-14:17;**T-86-CONF-ENG-ET**,17:14-23; **P-887:T-93-CONF-ENG-CT**,48:21-50:2; **DRC-OTP-0074-0422**,p.0439,para.47; **P-758:T-161-CONF-ENG-ET**,42:10-43:8; **P-55:T-71-CONF-ENG-CT**,46:13-50:6; **P-898:T-154-CONF-ENG-ET**,13:6-21,13:22-14:2,14:17-22; **P-907:T-90-CONF-ENG-CT**,11:13-20; **P-768:T-33-CONF-ENG-CT**,34:22-35:5,41:21-44:2; **P-17:T-58-CONF-ENG-CT**,58:17-23 ;**T-59-CONF-ENG-CT**,9:16-10:7.

<sup>534</sup> **P-768:T-33-CONF-ENG-CT**,34:22-35:5; **P-887:T-93-CONF-ENG-CT**,48:21-50:2; **P-17:T-59-CONF-ENG-CT**,9:16-10:7; **P-907:T-89-CONF-ENG-CT**,79:11-80:13;**T-90-CONF-ENG-CT**,18:22-19:3; **P-190:T-97-CONF-ENG-CT**,19:20-20:3; **P-963:T-78-CONF-ENG-ET**,85:17-86:12

<sup>535</sup> **P-898:T-154-CONF-ENG-ET**,13:6-14:2,34:10-35:22; **P-17:T-59-CONF-ENG-CT**,11:20-13:6; **P-907:T-90-CONF-ENG-CT**,53:3-54:22; **P-55:T-71-CONF-ENG-CT**,47:11-21,50:2-6.

<sup>536</sup> **DRC-OTP-0074-0422**,p.0439,para.47; **P-768:T-33-CONF-ENG-CT**,41:21-44:2; **P-887:T-93-CONF-ENG-CT**,48:21-50:2; **P-963:T-78-CONF-ENG-ET**,85:17-86:12.

<sup>537</sup> **P-55:T-71-CONF-ENG-CT**,46:13-50:6; **P-768:T-33-CONF-ENG-CT**,34:22-35:5,41:21-44:2; *See also D-300:T-217-CONF-ENG-ET*,32:19-35:4.



them to commit crimes.<sup>538</sup> The Hema civilians were also specifically used in captured areas to pillage, including my taking metal roofs, and to burn houses.<sup>539</sup> At times, UPC commanders instructed Hema civilians to pillage and then hand over items of value to the UPC soldiers.<sup>540</sup> Hema civilian supporters could also be required to bury those killed.<sup>541</sup>

210. **NTAGANDA** and other UPC members provided weapons to the Hema civilians.<sup>542</sup> For instance, prior to the assault on Banyali-Kilo, **NTAGANDA** armed the Hema civilians; and armed Hema civilians under the UPC's control killed Lendu civilians.<sup>543</sup>

### b. The policy

211. [REDACTED] testified that *"it was a tribal war, and the purpose was to drive out the Lendu or eliminate all of them, loot their possessions, their various goods, possessions, financial means, occupy their houses."*<sup>544</sup>

212. The course of conduct involving the multiple commission of acts under article 7(1) was committed pursuant to or in furtherance of the UPC's organisational policy to attack non-Hema civilians; the acts were connected, and not perpetrated by isolated and uncoordinated individuals acting randomly on their

<sup>538</sup> [P-768:T-33-CONF-ENG-CT](#),41:21-44:2; [P-887:T-93-CONF-ENG-CT](#),48:21-50:2; [P-907:T-90-CONF-ENG-CT](#),18:22-19:3,27:13-29:7,33:5-20.

<sup>539</sup> [P-892:T-83-CONF-ENG-CT](#),36:19-38:19,41:10-42:3; [P-55:T-71-CONF-ENG-CT](#),46:13-50:6; [P-768:T-33-CONF-ENG-CT](#),41:21-44:2; [P-898:T-154-CONF-ENG-ET](#),13:6-21; [DRC-OTP-0074-0422](#),p.0439,para.47; [P-30:T-146-CONF-ENG-ET](#),35:22-36:9,84:2-25.

<sup>540</sup> [P-907:T-90-CONF-ENG-CT](#),12:2-21,18:22-19:3; [P-963:T-82-CONF-ENG-ET](#),87:6-16.

<sup>541</sup> [P-17:T-58-CONF-ENG-CT](#),79:11-18;[T-59-CONF-ENG-CT](#),7:19-9:15; [P-963:T-78-CONF-ENG-ET](#),85:17-86:12.

<sup>542</sup> [P-768:T-33-CONF-ENG-CT](#),41:21-44:2; [P-907:T-89-CONF-ENG-CT](#),79:11-80:13.

<sup>543</sup> [P-768:T-33-CONF-ENG-CT](#),41:21-44:2; [P-17:T-58-CONF-ENG-CT](#),73:8-79:18;[T-59-CONF-ENG-CT](#),7:19-9:15; [P-907:T-90-CONF-ENG-CT](#),12:2-21.

<sup>544</sup> [P-963:T-78-CONF-ENG-ET](#),73:7-9. During one visit to Rwampara, **NTAGANDA** gave the troops a morale boosting song. In the presence of LUBANGA and **NTAGANDA** the recruits were led to sing a song about how even if the enemy wore their "*gris gris*" (fetishes) this would not protect them as the UPC would win. The Lendu were known to wear fetishes in their battles. *See e.g.* [D-300:T-220-CONF-ENG-ET](#),33:11-34:22;[DRC-D18-0001-0463](#)(00:00:00-00:02:45)(trans.[DRC-D18-0001-5576](#),p.5577:2-p.5578:30;transl.[DRC-D18-0001-5587](#),p.5589:1-p.5590:39); [P-768:T-33-CONF-ENG-CT](#),47:22-48:19; [D-17:T-254-CONF-ENG-ET](#),23:11-19.

own.<sup>545</sup> The policy must be seen in light of the historical ethnic conflict that intensified from 1999 onwards and involved attacks against civilians by multiple organised armed groups.

213. It is irrelevant that this policy may not have been formalised or explicitly set out;<sup>546</sup> after all “*explicitly advanced motivations are ultimately of little importance.*”<sup>547</sup> That the UPC acted pursuant to an organisational policy to attack non-Hema civilians may be inferred from a variety of factors which, taken together, establish, beyond reasonable doubt, that this policy existed.<sup>548</sup> The Chamber must reject any suggestion that the crimes were unconnected, uncoordinated or the spontaneous decision of the perpetrators acting in isolation.

214. The Prosecution need not establish that the perpetrators of the crimes were motivated by the policy, or that they themselves were members of the organisation.<sup>549</sup> Nevertheless, it is clear that the perpetrators, including **NTAGANDA** himself and UPC soldiers, adopted, as well as actively encouraged or promoted,<sup>550</sup> the policy to attack non-Hema civilians.

215. The existence of this policy may be inferred from the: (i) regular pattern of assaults; (ii) planning and coordination prior to assaults; (iii) orders or instructions (both explicit and implied) given before and during assaults to target and expel the non-Hema civilians from their areas; (iv) intentional targeting of non-Hema civilians during and after the execution of the assaults; (v) crimes directly perpetrated by **NTAGANDA** and other senior UPC

---

<sup>545</sup> See *Bemba TJ*, para.161.

<sup>546</sup> *Bemba TJ*, para.160; *Katanga TJ*, paras.1108-1109 ; *Gbagbo/Blé Goudé DCC*, para.215 ; *Gbagbo/Blé Goudé Amicus Curiae*, paras.4-5,21,31-36.

<sup>547</sup> *Katanga TJ*, para.1108.

<sup>548</sup> *Bemba TJ*, para.160 where Trial Chamber III noted that such factors may include (i) that the attack was planned, directed or organized; (ii) a recurrent pattern of violence; (iii) the use of public or private resources to further the policy; (iv) the involvement of the State or organizational forces in the commission of crimes; (v) statements, instructions or documentation attributable to the State or the organization condoning or encouraging the commission of crimes; and/or (vi) an underlying motivation, see also paras.676-685; *Katanga TJ*, para.1109.

<sup>549</sup> *Bemba TJ*, para.161.

<sup>550</sup> See Elements of Crimes, p.3.



commanders against non-Hema civilians; (vi) manner in which the UPC maintained its occupation of the areas from which the non-Hema civilians were expelled; (vii) failure to punish or discipline UPC soldiers for crimes perpetrated against civilians; and (viii) existence of UPC propaganda regarding, *inter alia*, non-Hema civilians.

216. These factors are explained below and addressed in more detail in the relevant sections of this brief.

*i. Regular pattern of assaults*

217. The regular pattern of UPC assaults is a key indicator of the existence of the UPC's organisational policy. As demonstrated above by reference to at least eight assaults between August 2002 and May 2003 and further highlighted below in relation to the First and Second Attacks, there was a regular pattern of coordinated assaults undertaken by the UPC. Its *modus operandi* was to kill, rape, sexually enslave and persecute non-Hema civilians, to force them to flee, and to pillage and/or destroy their homes and villages.

*ii. Planning and coordination*

218. As described above and throughout this brief, **NTAGANDA**, his co-perpetrators and other UPC commanders planned, coordinated and implemented multiple assaults to take over areas where the non-Hema civilian population lived and to gain control of Ituri. They recruited and trained the armed forces, deployed a significant number of troops and transported weapons, ammunition and other supplies in a coordinated fashion. All of this indicates that the UPC was acting pursuant to an organisational policy.

*iii. Orders prior to or during assaults*

219. The sections addressing NTAGANDA's crimes and modes of liability detail: (i) NTAGANDA's orders to kill Lendu civilians, given on numerous occasions before UPC assaults, as well orders to kill specific individuals; (ii) NTAGANDA's orders to attack, rape and pillage; (iii) instructions and songs taught to UPC recruits referring to the ill-treatment or extermination of Lendu; (iv) orders to target specific Lendu villages, stating that nobody was to be spared; (v) automatic identification of non-Hema civilians as the enemy, regardless of their civilian status; (vi) the killing of any captured Lendu prisoners; and (vii) *ratissage* operations targeting non-Hema civilians once the UPC had control over an area. The common thread among these orders is highly indicative of an organisational policy.

*iv. Intentional targeting of civilians in assaults*

220. The organisational policy is additionally established from evidence, set out throughout this brief, that the attackers intentionally targeted non-Hema civilians and chased them away from their areas.

*v. Perpetration of crimes by senior UPC commanders*

221. Direct perpetration of crimes by the organisation's senior leaders, including NTAGANDA, is further indication of an organisational policy. As described in the section concerning article 25,<sup>551</sup> NTAGANDA directly perpetrated crimes listed in article 7(1). As set out in the sections dealing with the First and Second Attacks, other UPC commanders, including MULENDA, LINGANGA, SIMBA, ERIC, AMÉRICAIN and SAIDI also committed such crimes.

---

<sup>551</sup> See Section VIII.A.1.a.

*vi. UPC occupation of non-Hema civilian areas*

222. A common feature of UPC assaults was that the UPC made it difficult for civilians to return to the attacked areas. UPC forces systematically destroyed homes and key civilian infrastructure, pillaged civilian goods and, in some instances, laid landmines. As described in the section concerning the Second Attack, during that attack, 26 localities were completely destroyed: the main hospital of the region, all religious structures, the orphanage and schools were looted, and all electronic devices, archives and medical equipment were destroyed. The pattern of destruction demonstrated that the UPC wanted to eliminate any social infrastructure for the population.<sup>552</sup>

*vii. Failure to punish or discipline*

223. Further evidence of the organisational policy, as described in the section concerning article 28, is NTAGANDA's failure, and that of other senior UPC commanders, to punish those responsible for crimes against the non-Hema civilians. Had the actions of the perpetrators of the prohibited acts actually gone against the UPC's policy, the UPC would have certainly consistently punished them for such acts. But it did not, despite NTAGANDA's claims.<sup>553</sup>

*viii. UPC propaganda*

224. The UPC attempted to mask the reality of what was happening on the ground by using propaganda, mainly in the form of videos and public statements, which sought to portray the UPC as a multi-ethnic inclusive organisation that respected humanitarian law, strived to achieve peace in Ituri, harboured no ill-will towards non-Hema civilians, and made every effort to demobilise any child soldiers within its ranks.<sup>554</sup> Nothing could be further from the truth. This effort

<sup>552</sup> [P-317:T-191-CONF-ENG-ET](#),30:10-18,43:22-44:9; [DRC-OTP-0074-0422](#),p.0452,para.102.

<sup>553</sup> See Section IX.4.

<sup>554</sup> See Section VI.B.4.b.viii.

to portray an entirely distorted view of reality further reinforces the existence of the UPC's organisational policy.

### 5. *The Attack was widespread and systematic*

225. During the temporal scope of the charges, the UPC and/or the other organised armed groups were involved in an average of at least one assault per month throughout Ituri.<sup>555</sup> The evidence referred to above and that discussed in further detail below clearly shows that the assaults launched by the UPC followed an established pattern.

226. Although the Prosecution need only establish that the Attack was widespread *or* systematic,<sup>556</sup> in this case it was clearly both. The Attack was "widespread" since the acts under article 7(1) were committed on a large scale and against a large number of persons.<sup>557</sup> It was also "systematic" since the acts under article 7(1) were carried out in an organised nature- there was nothing random about their occurrence.<sup>558</sup>

227. The widespread nature of the attack is demonstrated by:

- the high frequency of assaults against non-Hema civilians between on or about 6 August 2002 and 27 May 2003;
- the rather lengthy nature of a number of these assaults;
- the high intensity of these assaults;
- the large number of victims of murder (at least 740),<sup>559</sup> rape, and forcible displacement (at least 260,000);<sup>560</sup>

<sup>555</sup> [DRC-OTP-0074-0422](#), pp.0478-0483.

<sup>556</sup> See *Bemba TJ*, para.162, fn.371.

<sup>557</sup> See *Bemba TJ*, para.163; *Katanga TJ*, para.1123; *Kunarac AJ*, para.94.

<sup>558</sup> See *Katanga TJ*, para.1123; *Kunarac AJ*, para.94.

<sup>559</sup> [DRC-OTP-0152-0286](#), pp.0301-0303, paras.52-57, 61-63; [DRC-OTP-0074-0422](#), p.0438, paras.44-45, p.0444, paras.68-70, p.0447, paras.78-79, p.0452, para.102, p.0453, para.109; [DRC-OTP-0074-0797](#), pp.0824-

- the broad geographic distribution of the Attack throughout Ituri.

228. The systematic nature of the Attack is demonstrated by the following factors:

- the UPC forces carried out numerous attacks, in some instances acting jointly with allied armed forces;
- the violence perpetrated by the UPC forces was not random; rather, victims were targeted because of their non-Hema ethnicity and the perception that they were the enemy;
- the individual attacks followed a regular pattern in that they contained one or more of the following elements:
  - villages with a predominantly non-Hema population were targeted;
  - villages were surrounded to prevent individuals from being able to escape, including by closing off exit routes, shooting at fleeing civilians and setting up roadblocks to capture and rape and/or kill the non-Hema civilians;
  - heavy and indiscriminate shelling, and deliberate targeting of civilians with heavy weapons;
  - incursions on foot to kill all without distinction;
  - deliberate attempts to identify and hunt down the non-Hema civilian population and to rape and/or kill them in *ratissage* operations;
  - sexual violence used to persecute non-Hema civilians and boost the UPC troops' morale;

---

0827; **P-317:T-191-CONF-ENG-ET**,50:15-51:4,64:8-65:15;**T-192-CONF-ENG-ET**,20:25-21:14,4:19-6:13;**T-193-CONF-ENG-ET**,26:21-27:4; **DRC-OTP-0074-0628**,pp.0666-0668. These attacks also featured other crimes not listed under article 7(1) such as pillaging and destruction of property.

<sup>560</sup> **DRC-OTP-0074-0422**,pp.0444-0445,para.70,p.0448,para.82,p.0458,para.131; **P-317:T-191-CONF-ENG-ET**,65:16-66:3; **DRC-OTP-0074-0628**,pp.0666-0668; **P-31:T-174-CONF-ENG-ET**,108:1-111:19.

- pillaging and burning of homes, and destroying or damaging other civilian infrastructure such as hospitals and health centres, as well as taking other measures like laying landmines to make it difficult for survivors to return to the UPC occupied areas;
- killing survivors who returned.

#### *6. The prohibited acts were committed with knowledge of the attack*

229. The perpetrators of the prohibited acts, and NTAGANDA as necessary,<sup>561</sup> knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.<sup>562</sup> This does not require proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the organization.<sup>563</sup>

230. That the perpetrators of the prohibited acts knew, at all times, about the attack is evidenced by several factors. First, their role – the perpetrators were members of organised armed groups or acted under the command of such groups, and were often involved in multiple assaults. Second, the attack was well-publicised during the temporal scope of the conflict, including through radio broadcasts, newspaper articles and reports by international media, and NGOs.

---

<sup>561</sup> In *Bemba*, Trial Chamber III rejected the Defence contention that the “knowledge of the attack” requirement applied to the accused charged under article 28 as well as to the perpetrators of the crimes, holding that “*knowledge of the contextual elements on the part of the commander is not a requirement to determine whether or not the alleged underlying crimes against humanity were committed. What is relevant for this purpose is to analyse the mens rea of the perpetrators of the crimes.*” *Bemba TJ*, para.168 (footnotes omitted).

<sup>562</sup> Elements of Crimes, pp.4-9.

<sup>563</sup> Elements of Crimes, p.3.

## VII. THE INDIVIDUAL CRIMES

### A. BANYALI-KILO ASSAULT – “THE FIRST ATTACK”<sup>564</sup>

231. Between on or about 20 November 2002 and 6 December 2002, the UPC launched a massive attack on the Banyali-Kilo collectivité, including in or around Pluto, Mongbwalu, Sayo, Nzebi and Kilo. During and after this attack, NTAGANDA and the UPC troops under his command committed war crimes and crimes against humanity on a large scale.

#### 1. Attack objectives and synopsis

232. The non-Hema civilian population was the primary target of the UPC assault on Mongbwalu.<sup>565</sup> This is clear from NTAGANDA’s own instructions to his troops in relation to this assault, ordering them to “drive out the Lendu or eliminate all of them, loot their possessions, their various goods, possessions, financial means, occupy their houses”.<sup>566</sup> The fact that the UPC also sought to exploit the mineral resources of the town for their own benefit<sup>567</sup> and to seize control of the airport<sup>568</sup> does not detract from the criminal nature of this assault.

233. Some weeks before the First Attack,<sup>569</sup> NTAGANDA made an initial attempt to capture Mongbwalu. He ordered UPC forces under the command of

<sup>564</sup> The UPC carried out the First Attack in the Banyali-Kilo *collectivité* between on or about 20 November 2002 until 6 December 2002.

<sup>565</sup> [P-963:T-78-CONF-ENG-ET](#),70:7-25,72:25-73:9,74:17-75:7,77:15-18,81:12-22[[T-78-CONF-FRA-ET](#),72:12-73:5]; [P-768:T-33-CONF-ENG-CT](#),37:2-16,52:9-54:17; [P-907:T-90-CONF-ENG-CT](#),8:1-9:19.

<sup>566</sup> [P-963:T-78-CONF-ENG-ET](#),69:18-70:25,72:25-73:17.

<sup>567</sup> [P-963:T-78-CONF-ENG-ET](#),70:18-72:20; [P-768:T-33-CONF-ENG-CT](#),36:6-11; [P-10:T-50-CONF-ENG-CT](#),60:10-20; [P-907:T-90-CONF-ENG-CT](#),6:7-12; [P-55:T-70-CONF-ENG-CT](#),98:20-99:17; [P-901:T-28-CONF-ENG-CT](#),54:10-55:6; [P-190:T-97-CONF-ENG-CT](#),6:19-7:4; [P-16:DRC-OTP-0126-0422](#),p.0444,paras.119-121;[DRC-OTP-2054-1625](#),p.1641:10-23; [DRC-OTP-2058-0251](#),00:07:08-00:07:40 (transl.[DRC-OTP-2102-3766](#),p.3772:116-124),00:34:58-00:37:39 (transl.[DRC-OTP-2102-3766](#),p.3782:506-522); [DRC-OTP-0074-0628](#),p.0661; [DRC-OTP-0074-0797](#),p.0828; [DRC-OTP-0136-0161](#); [P-315:DRC-OTP-2058-0990](#),p.1015-1016,para.138.

<sup>568</sup> [D-300:T-216-ENG-CT](#),46:24-47:10;[T-217-CONF-ENG-ET](#),81:23-82:2,82:21-24,84:7-85:13;[T-234-CONF-ENG-CT](#),58:4-7; [P-963:T-78-CONF-ENG-ET](#),70:18-72:20.

<sup>569</sup> [P-907:T-89-CONF-ENG-CT](#),84:13-20; [DRC-OTP-0074-0628](#),p.0662; [P-800:T-68-CONF-ENG-ET](#),15:5-8,20:21-21:3; [P-894:DRC-OTP-2076-0194-R02](#),p.0200,para.32.

MULENDA<sup>570</sup> to attack<sup>571</sup> Mongbwalu from the east, through Dala,<sup>572</sup> Dhamblo<sup>573</sup> and Mongbwalu airport.<sup>574</sup> After a short battle in Mongbwalu, the UPC troops were pushed back and forced to withdraw.<sup>575</sup>

234. For his second attempt, NTAGANDA devised a different, two-pronged, attack strategy,<sup>576</sup> mobilising KAKWAVU's troops<sup>577</sup> to attack Mongbwalu from the north, while NTAGANDA and MULENDA would attack from the east.<sup>578</sup>

235. NTAGANDA attended planning meetings with his subordinates<sup>579</sup> and briefed them on the manner in which this attack should be executed.<sup>580</sup> He organised his troops for the attack,<sup>581</sup> including by deploying additional soldiers<sup>582</sup> and military equipment.<sup>583</sup> He personally delivered light and heavy weapons, including SMGs, 12.7mm guns, B-10's, and grenade launchers, as well as ammunition, to KAKWAVU's troops in Aru [REDACTED].<sup>584</sup>

236. NTAGANDA also visited his troops and held military parades in their positions to raise morale and explain the targets of the attack. At a military

<sup>570</sup> [P-907:T-89-CONF-ENG-CT](#),80:5-21; [D-300:T-216-ENG-CT](#),40:15-22,41:12-42:16; [P-768:T-33-CONF-ENG-CT](#),32:19-23.

<sup>571</sup> [P-907:T-89-CONF-ENG-CT](#),78:8-82:21;[T-92-CONF-ENG-CT](#),24:15-23:3,26:24-27:22,28:20-30:7.

<sup>572</sup> [P-907:T-89-CONF-ENG-CT](#),80:9-25,82:20-21; [P-898:T-154-CONF-ENG-ET](#),10:1-11.

<sup>573</sup> [P-907:T-89-CONF-ENG-CT](#),81:1-11;[T-92-CONF-ENG-CT](#),32:4-34:25; [P-887:T-93-CONF-ENG-CT](#),16:12-17:16.

<sup>574</sup> [P-907:T-89-CONF-ENG-CT](#),81:12-24.

<sup>575</sup> [P-907:T-89-CONF-ENG-CT](#),81:24-82:10; [P-768:T-33-CONF-ENG-CT](#),32:19-23; [P-887:T-93-CONF-ENG-CT](#),13:5-14:18; [P-800:T-68-CONF-ENG-ET](#),15:5-16:19,18:7-15,20:21-21:3; [P-894:DRC-OTP-2076-0194-R02](#),p.0198-0199,paras.22-25;[T-104-CONF-ENG-ET](#),53:11-57:3; [DRC-OTP-0074-0422](#),pp.0451-0452,para.101.

<sup>576</sup> [D-300:T-216-ENG-CT](#),44:10-21,45:6-16;[T-226-ENG-CT](#),72:4-13,74:25-75:20;[T-234-CONF-ENG-CT](#),45:17-47:14,72:8-24,73:5-74:8; [P-55:T-70-CONF-ENG-CT](#),52:11-53:23,55:11-19.

<sup>577</sup> [D-300:T-216-ENG-CT](#),48:12-25; [DRC-OTP-0074-0628](#),p.0662.

<sup>578</sup> [P-901:T-28-CONF-ENG-CT](#),40:13-43:20,46:3-51:4,52:10-21; [DRC-REG-0001-0003](#); [P-17:T-58-CONF-ENG-CT](#),57:8-58:16;[T-59-CONF-ENG-CT](#),13:7-14:9; [P-907:T-90-CONF-ENG-CT](#),4:10-20,7:3-25; [P-190:T-96-CONF-ENG-CT](#),93:4-95:11;[T-97-CONF-ENG-CT](#),5:23-7:4.

<sup>579</sup> [REDACTED].

<sup>580</sup> [REDACTED].

<sup>581</sup> [P-55:T-70-CONF-ENG-CT](#),43:19-44:21.

<sup>582</sup> [P-768:T-33-CONF-ENG-CT](#),30:11-18,31:20-32:3; [P-963:T-78-CONF-ENG-ET](#),69:24-70:6.

<sup>583</sup> [P-55:T-70-CONF-ENG-CT](#),40:4-22,43:3-16,43:23-25,44:1-5,44:12-21,45:12-23,49:7-17,50:20-51:16,51:17-55:19,56:13-57:16;[T-71-CONF-ENG-CT](#),5:24-7:4;[T-73-CONF-ENG-CT](#),89:21-90:4;[T-74-CONF-ENG-CT](#),85:16-86:15; [P-768:T-33-CONF-ENG-CT](#),29:16-30:10; [T-34-CONF-ENG-CT](#),6:12-7:8,10:15-14:1;[DRC-OTP-2058-0669-R02](#);[DRC-OTP-2058-0671-R02](#);[DRC-OTP-2058-0673-R02](#); [P-963:T-78-CONF-ENG-ET](#),69:24-70:6; [P-901:T-28-CONF-ENG-CT](#),42:5-43:20,53:18-54:2;[T-31-CONF-ENG-CT](#),72:5-73:11.

<sup>584</sup> [REDACTED]; [DRC-OTP-0074-0628](#),p.0662.



parade in Kandoyi, **NTAGANDA** briefed his troops about the attack and told them that they “*had to do everything to join up with the troops coming from Mabanga*”.<sup>585</sup> He then proceeded to test the heavy weapons he had brought.<sup>586</sup> At another pre-attack parade in Mabanga, **NTAGANDA** told his troops to capture Mongbwalu and to “*drive out*” or “*eliminate*” the Lendu.<sup>587</sup>

237. Following his instructions, **NTAGANDA**’s troops marched to Mongbwalu. [REDACTED],<sup>588</sup> [REDACTED] **NTAGANDA** and **MULENDA** advanced [REDACTED] brigade and **NTAGANDA**’s personal heavy weapons unit from Bunia, through Mabanga, Lalu, Dala and on to Mongbwalu airport to the east of the town.<sup>589</sup> The UPC mobilised Hema civilians to carry their heavy weapons, ammunition and supplies.<sup>590</sup> **NTAGANDA** remained in constant communication with his subordinates during this time.<sup>591</sup>

238. On 19 November 2002, **NTAGANDA** ordered his troops to advance to Mongbwalu: “*Faites tout votre possible et avancez tous jusqu’à l’objectif*”.<sup>592</sup> He also informed his commanders that he was on his way to Mongbwalu and would bring ammunition to commander **MULENDA**.<sup>593</sup>

239. The attack was coordinated.<sup>594</sup> On the first day, following **NTAGANDA**’s attack strategy, one brigade, under the command of **MULENDA**, assaulted

<sup>585</sup> [REDACTED].

<sup>586</sup> [REDACTED]; **D-300:T-216-ENG-CT**,37:8-19.

<sup>587</sup> [REDACTED].

<sup>588</sup> [REDACTED].

<sup>589</sup> [REDACTED]; **P-55:T-70-CONF-ENG-CT**,95:1-96:25.

<sup>590</sup> **P-17:T-59-CONF-ENG-CT**,9:16-10:7[**T-59-CONF-FRA-CT**,9:8-26];**T-61-CONF-ENG-ET**,54:10-55:2,56:6-57:6,58:7-60:11[**T-61-CONF-FRA-ET**,59:13-61:18]; **P-768:T-33-CONF-ENG-CT**,34:22-35:5; **P-55:T-70-CONF-ENG-CT**,95:1-98:19;**T-74-CONF-ENG-CT**,91:3-92:23.

<sup>591</sup> **P-768:T-33-CONF-ENG-CT**,32:24-33:18;**T-35-CONF-ENG-CT**,43:20-22; **DRC-OTP-0017-0033**,p.0213 (second) (transl.**DRC-OTP-2102-3854**,p.4035); **DRC-OTP-0017-0003**,p.0003 (third), p.0005 (first and third), p.0010 (second), p.0020 (transl.**DRC-OTP-2102-3828**,p.3829,p.3831,p.3836,p.3846).

<sup>592</sup> **DRC-OTP-0017-0033**,p.0213 (second) (transl.**DRC-OTP-2102-3854**,p.4035); **D-300:T-216-ENG-CT**,76:8-25;**T-226-ENG-CT**,70:11-71:18.

<sup>593</sup> **DRC-OTP-0017-0033**,p.0213 (second) (transl.**DRC-OTP-2102-3854**,p.4035).

<sup>594</sup> **P-963:T-78-CONF-ENG-ET**,75:22-76:4; **P-17:T-58-CONF-ENG-CT**,62:21-63:9;**T-61-CONF-ENG-ET**,48:18-49:10,51:20-52:4; **P-907:T-90-CONF-ENG-CT**,28:3-29:7,30:21-31:14,32:17-33:11; **D-300:T-234-CONF-ENG-CT**,73:1-4.

Mongbwalu from the east, [REDACTED].<sup>595</sup>

240. By the end of the day, UPC troops under NTAGANDA's overall command<sup>596</sup> had captured the airport,<sup>597</sup> the Kilo-Moto Offices,<sup>598</sup> Camp Goli,<sup>599</sup> and the centre of Mongbwalu.<sup>600</sup> In the evening, the two brigades converged in the centre.<sup>601</sup>

241. That same evening, the military commanders met with NTAGANDA at Camp Goli,<sup>602</sup> where he received a report on the ongoing operation<sup>603</sup> and gave his orders for the next day.<sup>604</sup> He ordered MULENDA to capture the factory and to attack Sayo, [REDACTED].<sup>605</sup> These orders were executed on the second day of the attack.<sup>606</sup> NTAGANDA supported both operations with the heavy weapons unit under his personal command.<sup>607</sup> He communicated with the commanders engaged in the attack<sup>608</sup> and issued further orders, including to fire on specific targets.<sup>609</sup>

<sup>595</sup> [REDACTED].

<sup>596</sup> **D-300:T-216-ENG-CT**,44:10-21,44:22-45:5;**T-226-ENG-CT**,71:19-72:3; **P-963:T-78-CONF-ENG-ET**,76:22-25,77:19-78:4;**T-79-CONF-ENG-ET**,11:10-12:1; **P-768:T-33-CONF-ENG-CT**,29:4-15; **P-898:T-154-CONF-ENG-ET**,15:24-13:5; **P-55:T-71-CONF-ENG-CT**,18:6-15; **P-901:T-28-CONF-ENG-CT**,40:13-22; **P-190:T-96-CONF-ENG-CT**,48:25-49:20; **DRC-OTP-0074-0628**,p.0664; **P-315:DRC-OTP-2058-0990**,pp.1011-1012;**T-108-CONF-ENG-ET**,22:19-37:8,41:24-61:14.

<sup>597</sup> **P-963:T-78-CONF-ENG-ET**,75:12-16;**T-82-CONF-ENG-ET**,21:20-22:6; **P-17:T-58-CONF-ENG-CT**,59:15-18,62:21-63:6; **P-768:T-33-CONF-ENG-CT**,33:19-34:3;**T-35-CONF-ENG-CT**,44:11-18; **P-907:T-90-CONF-ENG-CT**,28:3-29:7,30:21-31:14,32:17-33:11; **P-898:T-154-CONF-ENG-ET**,12:10-23.

<sup>598</sup> **P-768:T-33-CONF-ENG-CT**,33:19-25.

<sup>599</sup> **P-768:T-35-CONF-ENG-CT**,44:11-25; **P-17:T-58-CONF-ENG-CT**,63:15-64:14,64:24-65:12; **P-963:T-82-CONF-ENG-ET**,26:24-29:8.

<sup>600</sup> **P-768:T-33-CONF-ENG-CT**,33:19-25;**T-35-CONF-ENG-CT**,44:11-25; **P-17:T-58-CONF-ENG-CT**,66:2-11[**T-58-CONF-FRA-CT**,64:3-15];**T-61-CONF-ENG-ET**,49:20-50:1,55:6-56:2[**T-61-CONF-FRA-ET**,56:9-57:7]; **P-963:T-78-CONF-ENG-ET**,75:14-18;**T-82-CONF-ENG-ET**,26:24-29:8.

<sup>601</sup> [REDACTED].

<sup>602</sup> [REDACTED].

<sup>603</sup> [REDACTED]. *See also* [REDACTED].

<sup>604</sup> [REDACTED].

<sup>605</sup> [REDACTED].

<sup>606</sup> **P-768:T-33-CONF-ENG-CT**,37:17-20; **P-17:T-58-CONF-ENG-CT**,66:21-24;**T-61-CONF-ENG-ET**,62:22-63:3,65:21-25,66:7-16.

<sup>607</sup> **P-768:T-33-CONF-ENG-CT**,35:23-36:1.

<sup>608</sup> **P-17:T-58-CONF-ENG-CT**,65:24-66:1,67:1-10; **P-963:T-78-CONF-ENG-ET**,77:19-24;**T-79-CONF-ENG-ET**,11:10-12:8; **P-768:T-33-CONF-ENG-CT**,37:17-24;**T-35-CONF-ENG-CT**,43:20-22; **P-10:T-47-CONF-ENG-CT**,12:10-18.

<sup>609</sup> **P-17:T-58-CONF-ENG-CT**,70:12-73:7; **P-963:T-78-CONF-ENG-ET**,77:1-12,81:23-84:6.

242. Armed Hema civilians<sup>610</sup> under NTAGANDA's control<sup>611</sup> came to reinforce the UPC troops on the second day of the attack.<sup>612</sup> These civilians, alongside a UPC "reserve unit",<sup>613</sup> systematically searched every house in the areas of Mongbwalu newly captured by the UPC,<sup>614</sup> killing or capturing everyone they would encounter,<sup>615</sup> pillaging all they could find,<sup>616</sup> and destroying houses.<sup>617</sup>

243. On the third day of the assault, NTAGANDA's troops then completed the occupation of Mongbwalu<sup>618</sup> and continued their assault onto Sayo and Nzebi, to the west, taking both villages by the end of the day.<sup>619</sup> NTAGANDA personally commanded the operation to capture Sayo.<sup>620</sup> From the *Appartements* in Mongbwalu, which was NTAGANDA's base in the town,<sup>621</sup> he supported the infantry with his heavy weapons unit.<sup>622</sup> Followed by armed Hema civilians,<sup>623</sup> NTAGANDA later joined the troops in Sayo<sup>624</sup> and ordered them to fire upon fleeing civilians.<sup>625</sup>

244. After the operation, NTAGANDA ordered that landmines be placed at the

<sup>610</sup> [P-907:T-90-CONF-ENG-CT](#),11:13-24,12:13-21; [P-17:T-61-CONF-ENG-ET](#),58:7-60:11[[T-61-CONF-FRA-ET](#),59:13-61:18]; [P-768:T-33-CONF-ENG-CT](#),34:41:18-42:2.

<sup>611</sup> [P-768:T-33-CONF-ENG-CT](#),41:18-44:2; [P-907:T-90-CONF-ENG-CT](#),12:2-12,17:13-16,18:22-19:3.

<sup>612</sup> [P-907:T-90-CONF-ENG-CT](#),27:13-28:9,28:12-29:7,33:5-34:10; [P-17:T-61-CONF-ENG-ET](#),58:7-60:11[[T-61-CONF-FRA-ET](#),59:13-61:18].

<sup>613</sup> [REDACTED].

<sup>614</sup> [REDACTED].

<sup>615</sup> [P-907:T-90-CONF-ENG-CT](#),33:17-34:10; [P-768:T-33-CONF-ENG-CT](#),41:18-44:2; [P-898:T-154-CONF-ENG-ET](#),13:6-21,14:17-22.

<sup>616</sup> [P-907:T-90-CONF-ENG-CT](#),8:1-11,10:3-9,12:2-12,17:13-16,18:22-19:3,33:17-34:10; [P-898:T-154-CONF-ENG-ET](#),13:6-12,14:17-22.

<sup>617</sup> [P-768:T-33-CONF-ENG-CT](#),41:18-44:2; [P-907:T-90-CONF-ENG-CT](#),12:13-21.

<sup>618</sup> [P-963:T-78-CONF-ENG-ET](#),75:18-21; [DRC-OTP-2058-0251](#),00:07:38-00:08:10 (transl.[DRC-OTP-2102-3766](#),p.3772:124-129).

<sup>619</sup> [P-17:T-58-CONF-ENG-CT](#),66:1-6,66:21-67:10,66:24-67:1; [T-61-CONF-ENG-ET](#),65:25-66:6; [P-768:T-33-CONF-ENG-CT](#),48:20-49:24; [P-963:T-78-CONF-ENG-ET](#),76:5-79:9.

<sup>620</sup> [D-300:T-225-CONF-ENG-CT](#),48:12-15;[T-235-CONF-ENG-CT](#),58:3-11,83:24-84:2; [P-17:T-58-CONF-ENG-CT](#),65:24-66:1,67:2-10,70:12-73:7;[T-61-CONF-ENG-ET](#),99:14-100:23; [P-963:T-79-CONF-ENG-ET](#),11:19-12:8; [P-768:T-33-CONF-ENG-CT](#),37:17-20,49:25-50:8[[T-33-CONF-FRA-ET](#),49:10-16].

<sup>621</sup> [P-963:T-78-CONF-ENG-ET](#),89:2-3; [P-768:T-34-CONF-ENG-CT](#),7:9-18,10:1-8,43:19-21,46:14-16 and [DRC-OTP-2058-0251](#),00:46:23; [P-17:T-62-CONF-ENG-ET](#),48:6-50:25 and [DRC-OTP-2058-0251](#),00:45:55-00:48:35; [P-10:T-47-CONF-ENG-CT](#),12:19-22; [P-894:DRC-OTP-2076-0194-R02](#),p.0202,para.41;[T-103-CONF-ENG-ET](#),102:23-103:19;[DRC-OTP-2076-0211](#);[T-104-CONF-ENG-ET](#),37:17-39:8.

<sup>622</sup> [REDACTED]; [D-300:T-217-CONF-ENG-ET](#),46:23-47:3,48:5-11,48:12-24,49:18-51:5,51:7-14.

<sup>623</sup> [REDACTED].

<sup>624</sup> [REDACTED].

<sup>625</sup> [REDACTED].

entry points of Mongbwalu.<sup>626</sup> Days later, on or about 6 December 2002, NTAGANDA's troops attacked and took nearby Kilo.<sup>627</sup>

245. During this assault, the UPC soldiers and Hema civilians under NTAGANDA's effective command committed crimes on a large scale. They forcibly transferred the population of Banyali-Kilo and killed scores of innocent civilians, raped them, pillaged their goods, and destroyed their houses.

## *2. Analysis of NTAGANDA's testimony*

246. In an attempt to conceal his central and personal role in the crimes committed during the First Attack, NTAGANDA concocted a story of a man physically removed from the planning, execution and aftermath of the attack. When video or documentary evidence proved his presence in Mongbwalu, NTAGANDA shifted his account to claim that he was merely executing his superior's orders while protecting the civilian population.

247. NTAGANDA's admission of a command role for this attack is wholly incompatible with his alleged lack of communication with his troops, lack of coordination and lack of information. His account is internally contradictory and refuted by a wealth of other evidence.

### **a. The objectives of the First Attack**

#### *i. The expulsion of the non-Hema population from Mongbwalu*

248. NTAGANDA denied that the UPC sought to expel the non-Hema population from Mongbwalu. He claimed, instead, that the UPC sought to liberate the entire population of Mongbwalu from the APC and the Lendu combatants, and wanted everyone to return after the UPC captured the town, regardless of

<sup>626</sup> [P-768:T-33-CONF-ENG-CT](#),59:15-21,65:11-67:10;[T-35-CONF-ENG-CT](#),71:14-76:25.

<sup>627</sup> [P-22:DRC-OTP-0104-0026](#),p.0031,paras.24-25; [P-963:T-79-CONF-ENG-ET](#),17:4-10;[T-80-CONF-ENG-ET](#),5:14-6:3; [P-17:T-62-CONF-ENG-ET](#),58:5-9,58:21-59:9; [DRC-OTP-0074-0628](#),pp.0666-0668; [V-3:T-203-CONF-ENG-ET](#),10:11-20,14:1-11; [P-850:DRC-OTP-2067-1825-R02](#),p.1830,paras.36-37; [P-877:DRC-OTP-2069-2086-R03](#),p.2090,para.23;[DRC-OTP-2077-0140](#),p.0210(transl.[DRC-OTP-2081-0589](#),p.0661).

ethnicity.<sup>628</sup> This claim is not credible.

249. *First*, NTAGANDA's own subordinates who participated in the First Attack confirmed that the non-Hema civilian population of Banyali-Kilo was its target.<sup>629</sup> *Second*, while NTAGANDA denied that the UPC's objective was to allow only the Hema to return to Mongbwalu, he also stated that "*the idea was [...] to allow those who had fled because of their ethnic origin to return to their homes*"<sup>630</sup> and acknowledged that those who had been driven out of Mongbwalu were the Hema.<sup>631</sup> As there could be no co-existence between the Hema and the Lendu,<sup>632</sup> the return of the Hema automatically meant the expulsion of the Lendu and their perceived supporters.

ii. *Gold*

250. In another attempt to portray himself as a liberator and to distance himself from the truth, NTAGANDA denied that the UPC was interested in Mongbwalu's gold, claiming that there was gold everywhere in Ituri, not just in Mongbwalu, and that even if the UPC had wanted to exploit Mongbwalu's gold, it could not have done so because gold extraction facilities were not operational.<sup>633</sup>

251. NTAGANDA himself acknowledged that "*Mongbwalu is well known for the quantity of gold that it holds*"<sup>634</sup> and even admitted using the words "*the place with the stones*" or "*the place with the sand*" as a code to refer to Mongbwalu.<sup>635</sup> More importantly, NTAGANDA's denial is contradicted by a wealth of evidence

<sup>628</sup> [D-300:T-234-CONF-ENG-CT](#),43:7-44:12,44:13-45:10.

<sup>629</sup> [P-10:T-47-CONF-ENG-CT](#),10:6-18; [P-17:T-58-CONF-ENG-CT](#),70:12-74:19;[T-59-CONF-ENG-CT](#),21:5-25:3; [P-768:T-33-CONF-ENG-CT](#),36:18-37:16,52:9-54:17; [P-907:T-90-CONF-ENG-CT](#),8:12-18,8:23-9:19; [P-963:T-78-CONF-ENG-ET](#),70:7-25,72:25-73:9,74:17-75:7,77:15-18,81:12-22[[T-78-CONF-FRA-ET](#),72:12-73:5].

<sup>630</sup> [D-300:T-217-CONF-ENG-ET](#),83:15-24.

<sup>631</sup> [D-300:T-229-CONF-ENG-ET](#),71:12-74:20,74:21-75:10; *See also* [DRC-OTP-0074-0422](#),p.0451.para.100; [P-907:T-91-CONF-ENG-CT](#),28:4-22; [P-887:T-94-CONF-ENG-CT](#),49:-23-50:21; [P-800:T-69-CONF-ENG-CT](#),26:7-17.

<sup>632</sup> [P-55:T-70-CONF-ENG-CT](#),73:25-75:2; [P-17:T-59-CONF-ENG-CT](#),6:24-7:10; [P-907:T-90-CONF-ENG-CT](#),50:8-22,51:9-18; *See also* [DRC-OTP-0074-0628](#),p.0666.

<sup>633</sup> [D-300:T-217-CONF-ENG-ET](#),82:11-24,83:3-14,83:24-84:6;[T-234-CONF-ENG-CT](#),30:13-15.

<sup>634</sup> [D-300:T-234-CONF-ENG-CT](#),30:16-19.

<sup>635</sup> [D-300:T-243-CONF-ENG-ET](#),9:7-10:18.

showing: (i) that the UPC planned, as early as September 2002,<sup>636</sup> to capture Mongbwalu with a view to, *inter alia*, benefiting from its gold,<sup>637</sup> as shown by UPC correspondence with the director of the Office of Kilo-Moto gold company (OKIMO); and (ii) that it implemented this plan just days after conquering the town.

252. Video evidence taken just three days after the capture of Mongbwalu<sup>638</sup> shows a delegation of senior UPC commanders, including NTAGANDA and KISEMBO, going to the town's gold extraction facilities, located at the other side of Mongbwalu from the airport,<sup>639</sup> as the very first part of their tour in the town.<sup>640</sup> A journalist accompanying the UPC during this tour can be heard calling for foreign investment in Mongbwalu stating that the UPC would assure their security.<sup>641</sup> [REDACTED] a delegation of foreign businessmen who came to inspect the Kilo-Moto infrastructures in Mongbwalu. These men [REDACTED]

<sup>636</sup> [DRC-OTP-0136-0161](#); [DRC-OTP-0074-0628](#),p.0661; **D-300:T-234-CONF-ENG-CT**,31:10-33:7; **P-315:DRC-OTP-2058-0990**,p.1015-1016,para.138.

<sup>637</sup> **P-963:T-78-CONF-ENG-ET**,70:18-72:20; **P-768:T-33-CONF-ENG-CT**,36:6-11; **P-907:T-90-CONF-ENG-CT**,6:7-12; **P-55:T-70-CONF-ENG-CT**,98:20-99:17; **P-901:T-28-CONF-ENG-CT**,54:10-55:6; **P-190:T-97-CONF-ENG-CT**,6:19-7:4; **P-16:DRC-OTP-0126-0422**,p.0444,paras.119-121;[DRC-OTP-2054-1625](#),p.1641:10-23.

<sup>638</sup> Video [DRC-OTP-2058-0251](#), which was shot over the course of two days, starts with a portion that shows NTAGANDA welcoming KISEMBO at Mongbwalu airport and giving an interview to journalist Mike Arereng. Whereas NTAGANDA testified that this portion was filmed on 26 November 2002 (**D-300:T-237-CONF-ENG-ET**,39:23-40:3), evidence shows that it was actually filmed on 27 November 2002. *First*, journalist Mike Arereng states on the first day that Mongbwalu was captured “three days ago” (transl.[DRC-OTP-2102-3766](#),p.3710:31-32,p.3712:82-83). The UPC captured Mongbwalu on 24 November 2002 (**DRC-OTP-0091-0709**; **DRC-OTP-0092-0541**; **DRC-OTP-0074-0422**,p.0452,para.102.). *Second*, KISEMBO states on the video (transl.[DRC-OTP-2102-3766](#),p.3792:858-877) that he and LUBANGA went to Aru for the funeral of Governor ENEKO, where they stayed for three days, and then returned to Bunia. LUBANGA (and KISEMBO) arrived in Aru on the day of the funeral, 24 November 2002 (**DRC-OTP-0017-0003**,p.0012; transl.[DRC-OTP-2102-3828](#),p.3838; *see also* **D-300:T-237-CONF-ENG-ET**,39:22-41:20,43:22-46:9). *Third*, in a scene filmed on the second day (*see* transl.[DRC-OTP-2102-3766](#),p.3786:658-659,3792:876-877, where KISEMBO states that he arrived in Mongbwalu the day before), NTAGANDA asks a woman when he can come to drink “Kaikpo” (a locally brewed alcoholic drink). The woman answers that it would be ready on Wednesday (transl.[DRC-OTP-2102-3766](#),p.3824:2049-2054). This reference to a *future* Wednesday shows that this scene was not filmed on Wednesday, 27 November 2002, as claimed by NTAGANDA, but on 28 November 2002.

<sup>639</sup> **D-300:T-217-CONF-ENG-ET**,42:21-46:1;[DRC-REG-0001-0068](#).

<sup>640</sup> [DRC-OTP-2058-0251](#),00:17:30-00:43:07; **D-300:T-234-CONF-ENG-CT**,34:8-25; **P-768:T-34-CONF-ENG-CT**,37:14-41:15; **P-2:DRC-OTP-2060-0002-R03**,p.0008,para.50.

<sup>641</sup> [DRC-OTP-2058-0251](#),00:34:58-00:37:39(transl.[DRC-OTP-2102-3766](#),p.3782:503-526): “*les investisseurs étrangers sont à présent invités, car ils vont être fournis par... car leur sécurité va être assurée par les rebelles de l'UPC qui sont désireux d'aider les investisseurs étrangers à réhabiliter cette usine*”.



intended to mine Mongbwalu's gold and provide the UPC with weapons.<sup>642</sup>

253. Yet, the UPC did not even need the Kilo-Moto factory to be functional in order to benefit from Mongbwalu's gold. It collected gold from artisanal miners, many of whom were forced to work for the UPC; the UPC even exploited gold mines itself.<sup>643</sup> NTAGANDA himself set up a team, headed by his cousin KUBI, to collect gold in Mongbwalu and bring it to his home in Bunia.<sup>644</sup>

## b. NTAGANDA's role during the First Attack

### i. NTAGANDA's role in the planning of the First Attack

254. Throughout his testimony on the First Attack, NTAGANDA wove a story of a commander far removed from his troops,<sup>645</sup> unable to communicate with his subordinates,<sup>646</sup> repeatedly delayed by events out of his control,<sup>647</sup> and systematically arriving on the battlefield when all hostilities were over.<sup>648</sup> According to NTAGANDA: (i) he spent two full weeks in Aru<sup>649</sup> while the UPC attempted to take over Mongbwalu for the first time, unbeknownst to him,<sup>650</sup> and while the UPC planned the second attempt; (ii) he was given command of

<sup>642</sup> [REDACTED]; see also [DRC-OTP-0074-0628](#),p.0661,p.0670.

<sup>643</sup> [P-768:T-33-CONF-ENG-CT](#),61:6-19; [DRC-OTP-0074-0628](#),pp.0670-0671; [DRC-OTP-0074-0422](#),p.0452.para.102.

<sup>644</sup> [REDACTED].

<sup>645</sup> NTAGANDA claims that the very first time that he makes contact with the troops involved in the Mongbwalu attack is in the evening of 23 November 2002, just hours before the end of all operations during the First Attack, according to him ([D-300:T-216-ENG-CT](#),79:4-80:1,81:13-19;[T-217-CONF-ENG-ET](#),35:22-36:6).

<sup>646</sup> [D-300:T-216-ENG-CT](#),85:20-86:6;[T-226-ENG-CT](#),72:19-73:3.

<sup>647</sup> From 19 to 21 November 2002, NTAGANDA claims that his car is being repaired and, as a result, he can only leave Bunia on 21 November 2002 ([D-300:T-216-ENG-CT](#),54:13-17,54:23-55:4,77:1-7,83:10-13;[T-226-ENG-CT](#),72:14-18;[T-234-CONF-ENG-CT](#),74:9-14,74:15-22). NTAGANDA claims that, from 21 November 2002 to 23 November 2003([D-300:T-216-ENG-CT](#),79:4-80:1,81:13-19;[T-217-CONF-ENG-ET](#),35:22-36:6), he was travelling to Mongbwalu, but was delayed by the poor condition of the road, requiring him to push his vehicle ([D-300:T-217-CONF-ENG-ET](#),29:17-21). NTAGANDA claims that he was further delayed because of slippery roads between Dala and Mongbwalu ([D-300:T-217-CONF-ENG-ET](#),35:16-25). On his way, NTAGANDA also spent one night in Iga Barrière ([D-300:T-217-CONF-ENG-ET](#),29:7-9) and one night in Mabanga ([D-300:T-217-CONF-ENG-ET](#),29:17-21).

<sup>648</sup> NTAGANDA claims that he arrived in Mongbwalu when the UPC had captured the entire area, except for Sayo ([D-300:T-217-CONF-ENG-ET](#),36:16-23,37:6-38:15). NTAGANDA arrives in Sayo when all hostilities are over ([D-300:T-217-CONF-ENG-ET](#),52:3-7).

<sup>649</sup> [D-300:T-216-ENG-CT](#),42:7-9.

<sup>650</sup> [D-300:T-216-ENG-CT](#),40:15-22,41:12-18,41:19-42:6,42:10-16.

the First Attack on the day of his return to Bunia<sup>651</sup> with no background information but spent the two next days involved in unrelated skirmishes along the Mudzipela – Mwanga – Lipri axis,<sup>652</sup> while the final preparations for the Mongbwalu operation were ongoing; (iii) he then ordered two brigades to attack,<sup>653</sup> but spent two and a half more days in Bunia, waiting for his vehicle to be repaired,<sup>654</sup> apparently unconcerned about the major attack he just launched and unable to communicate with those very subordinates for days; (iv) he spent another two and a half days struggling on muddy roads<sup>655</sup> and mingling with the local population on the way<sup>656</sup> before finally making his way to Mongbwalu,<sup>657</sup> only to arrive when his troops are already in control of the entirety of the town.<sup>658</sup>

255. This account is not credible. As the most senior military officer with command over the troops engaged in the attack and as Deputy Chief of Staff in charge of operations and organisation, **NTAGANDA** cannot plausibly have been unaware of the operation until three days before he launched it, entirely uninvolved in its planning and preparation, and uninvolved in the attack's progress until its completion. Further, it is hard to reconcile with **NTAGANDA**'s own description of his role as commander during UPC military attacks<sup>659</sup> as well as his testimony that *"as leaders we had to be close to the soldiers to show them our support during the fighting"*.<sup>660</sup>

256. Yet, **NTAGANDA** would have the Chamber believe that he was given

<sup>651</sup> [D-300:T-216-ENG-CT](#),44:10-21,44:22-45:5,46:14-47:10;[T-226-ENG-CT](#),71:10-72:3.

<sup>652</sup> [D-300:T-216-ENG-CT](#),50:4-54:12.

<sup>653</sup> [DRC-OTP-0017-0033](#),p.0213 (second) (transl.[DRC-OTP-2102-3854](#),p.4035); [D-300:T-216-ENG-CT](#),76:8-25;[T-226-ENG-CT](#),70:11-71:18.

<sup>654</sup> [D-300:T-216-ENG-CT](#),54:13-17,54:23-55:4,77:1-7,83:10-13;[T-226-ENG-CT](#),72:14-18;[T-234-CONF-ENG-CT](#),74:9-14,74:15-22.

<sup>655</sup> [D-300:T-217-CONF-ENG-ET](#),29:17-21,35:16-25.

<sup>656</sup> [D-300:T-217-CONF-ENG-ET](#),26:18-27:18,27:9-18,29:17-21,30:8-10,31:8-18.

<sup>657</sup> [D-300:T-216-ENG-CT](#),79:4-80:1,81:13-19;[T-217-CONF-ENG-ET](#),35:16-36:6.

<sup>658</sup> [D-300:T-217-CONF-ENG-ET](#),36:16-23,37:6-38:15.

<sup>659</sup> [D-300:T-213-CONF-ENG-CT](#),7:11-9:4.

<sup>660</sup> [D-300:T-216-ENG-CT](#),34:1-7.



command of the operation on 17 November 2002,<sup>661</sup> ordered his troops to attack two days later, on 19 November 2002,<sup>662</sup> and, between those two days, did nothing to prepare for the First Attack.

257. **NTAGANDA** claims that he did not brief his troops on the attack plan,<sup>663</sup> distribute weapons and ammunition to them,<sup>664</sup> or even communicate with them at all until the completion of the attack.<sup>665</sup> **NTAGANDA** even went as far as to deny being informed about operational matters in advance of the attack when shown a clear, unambiguous message from one of his commanders about troop deployment.<sup>666</sup> He further contradicted himself when asked whether it was his role to coordinate the two brigades' advance, denying it once,<sup>667</sup> but confirming it later.<sup>668</sup> Ultimately, **NTAGANDA** admitted making a single, although not negligible, contribution during the preparatory phase of the attack: he gave KISEMBO the idea to use KAKWAVU's troops to takeover Mongbwalu.<sup>669</sup> **NTAGANDA's** alleged ambivalence about the attack after preparing the attack plan, and his proclaimed lack of involvement beyond this one suggestion, is simply not believable.

258. According to **NTAGANDA**, the commanders "*all knew what the objective was*"<sup>670</sup> and he "*felt that they would be able to get to the objective by themselves*".<sup>671</sup> "*[e]verything was ready. When I gave them the order they carried it out*".<sup>672</sup> In short, according to **NTAGANDA**, on 19 November 2002, his troops were miraculously

<sup>661</sup> **NTAGANDA** claims that he issued his order to attack Mongbwalu on 19 November 2002 ([DRC-OTP-0017-0033](#), p.0213 (second) (transl. [DRC-OTP-2102-3854](#), p.4035)), two days after he returned from Aru ([D-300:T-216-ENG-CT](#), 42:25-43:4, 43:5-19, 44:10-21, 46:14-47:10, 50:4-54:12).

<sup>662</sup> [DRC-OTP-0017-0033](#), p.0213 (second) (transl. [DRC-OTP-2102-3854](#), p.4035).

<sup>663</sup> [D-300:T-234-CONF-ENG-CT](#), 57:13-59:20; [T-235-CONF-ENG-CT](#), 56:23-58:2.

<sup>664</sup> [D-300:T-226-ENG-CT](#), 73:4-74:24.

<sup>665</sup> [D-300:T-216-ENG-CT](#), 85:20-86:6; [T-226-ENG-CT](#), 72:19-73:3.

<sup>666</sup> [D-300:T-234-CONF-ENG-CT](#), 66:14-68:17.

<sup>667</sup> [D-300:T-226-ENG-CT](#), 72:19-73:3.

<sup>668</sup> [D-300:T-234-CONF-ENG-CT](#), 73:1-4.

<sup>669</sup> [D-300:T-216-ENG-CT](#), 45:6-16; [T-226-ENG-CT](#), 72:4-13, 74:25-75:20; [T-234-CONF-ENG-CT](#), 45:17-47:14, 72:8-24, 73:5-74:8.

<sup>670</sup> [D-300:T-216-ENG-CT](#), 76:8-25.

<sup>671</sup> [D-300:T-226-ENG-CT](#), 72:19-73:3.

<sup>672</sup> [D-300:T-241-CONF-ENG-CT](#), 71:14-72:25, 74:13-75:4.

fully prepared and ready to engage in a major operation at the push of a button, all without a single intervention by the man who had been carefully chosen by the UPC's leadership to carry out an attack it had previously attempted, but failed.

259. That **NTAGANDA** would send his troops in a major attack without issuing further orders or even expecting to be informed about its progress is implausible and inconsistent with his own acknowledgments that complex military operations such as the capture of Mongbwalu require careful planning as well as constant monitoring of, and communication with, the commanders engaged in the battle:

*That's obvious. You have to have preparation within the army [...] Before starting an operation there are numerous preparations to be made, not only weapons and munitions, you need to see whether anyone is ill and therefore has to be excluded from the operation. You have to check also that morale among the troops is good. There's lots to be done before actually starting an operation.*<sup>673</sup>

*One can't be at different places at the same time, but when one has enough time, one has to give an example, one has to monitor the activities of the commanders during battle, and even keep direct contact with them.*<sup>674</sup>

260. His testimony is further inconsistent with Logbook messages showing that, both immediately before and after the First Attack, **NTAGANDA** gave detailed, quasi-daily operational orders to one of his commanders in a different sector. On 19 November 2002, he ordered KAKWAVU to harass the enemy in his sector.<sup>675</sup> On 24 November 2002, he issued two orders, including an order to "ALL STATIONS" to regularly carry out operations in their zones.<sup>676</sup> On 25, 26 and 27 November 2002, he ordered KAKWAVU to attack the enemy in Ndrele and

<sup>673</sup> [D-300:T-234-CONF-ENG-CT](#),56:6-57:12.

<sup>674</sup> [D-300:T-227-CONF-ENG-CT](#),17:21-22:6.

<sup>675</sup> [DRC-OTP-0017-0033](#),p.0212 (first) (transl.[DRC-OTP-2102-3854](#),p.4034); [D-300:T-216-ENG-CT](#),77:25-79:3;[T-235-CONF-ENG-CT](#),11:23-12:15.

<sup>676</sup> [DRC-OTP-0017-0033](#),p.0212 (third) (transl.[DRC-OTP-2102-3854](#),p.4034); [D-300:T-216-ENG-CT](#),79:4-80:1,81:13-19;[T-217-CONF-ENG-ET](#),41:16-42:10.

issued further orders related to the operations in his sector.<sup>677</sup> It is entirely implausible that **NTAGANDA** would issue orders in relation to operations in different sectors, but would issue none in relation to the one he is commanding directly. In fact, as detailed below, **NTAGANDA** was instrumental to the planning of the First Attack on both of its axes.

#### *Aru-Mongbwalu axis*

261. On the Aru-Mongbwalu front, **NTAGANDA** denied any involvement in the planning of the operation and organisation of troops, apart from having the idea to use **KAKWAVU**'s troops<sup>678</sup> and ordering him to mobilise his troops for the attack.<sup>679</sup> Concretely, **NTAGANDA** denied that his mission in Aru and Kandoyi in the weeks before the First Attack had anything to do with the preparations for this attack, claiming that, at this point, he had never even heard about Mongbwalu or the UPC's plans to capture it<sup>680</sup> and merely went to Aru to educate **KAKWAVU**'s troops on the UPC's ideology and to show solidarity to him, as he had recently been attacked.<sup>681</sup> This is as unconvincing as **NTAGANDA**'s claim that in the midst of intense military and political activity and an imminent attack by the UPDF in February 2003, he decided to go on a family vacation paid for by **LUBANGA**.<sup>682</sup>

262. **NTAGANDA**'s account that, as Deputy Chief of Staff in charge of operations and organisation, he knew nothing about the planning of one of the UPC's most important military operations is not only unbelievable,<sup>683</sup> it is also contradicted by the evidence of three senior UPC military commanders who were involved in

<sup>677</sup> [DRC-OTP-0017-0003](#),p.0013,p.0022(transl.[DRC-OTP-2102-3828](#),p.3839,p.3848); [DRC-OTP-0017-0033](#),p.0211 (second and third) (transl.[DRC-OTP-2102-3854](#),p.4033); **D-300:T-217-CONF-ENG-ET**,59:7-60:8,63:14-64:6,91:12-21.

<sup>678</sup> **D-300:T-216-ENG-CT**,45:6-16;[T-226-ENG-CT](#),72:4-13,74:25-75:20;[T-234-CONF-ENG-CT](#),45:17-47:14,72:8-24,73:5-74:8.

<sup>679</sup> **D-300:T-216-ENG-CT**,48:12-25.

<sup>680</sup> **D-300:T-216-ENG-CT**,41:19-42:6,42:10-16;[T-234-CONF-ENG-CT](#),47:19-48:1,57:13-23,57:24-59:20;[T-242-CONF-ENG-ET](#),9:7-10:6,10:7-16,33:21-23.

<sup>681</sup> **D-300:T-216-ENG-CT**,21:8-23,31:12-32:5.

<sup>682</sup> See Section VII.B.

<sup>683</sup> **D-300:T-234-CONF-ENG-CT**,57:24-59:20.

or had knowledge of the planning of the First Attack, as well as documentary evidence.

263.[REDACTED], saw **NTAGANDA** pick up equipment, weapons, ammunition, bombs and shells for the Mongbwalu operation [REDACTED] in Bunia.<sup>684</sup> [REDACTED],<sup>685</sup> [REDACTED]<sup>686</sup> [REDACTED].<sup>687</sup> [REDACTED].<sup>688</sup> [REDACTED], **NTAGANDA** and **KAKWAVU** travelled together to Kandoyi<sup>689</sup> to deliver weapons<sup>690</sup> and brief the troops on the imminent attack on Mongbwalu.<sup>691</sup> [REDACTED].<sup>692</sup> [REDACTED].<sup>693</sup>

264.**NTAGANDA**'s assertion that the UPC only provided weapons to **KAKWAVU** as part of an exchange of troops between Bunia and Aru<sup>694</sup> is squarely contradicted by a UPC delivery receipt for submachine guns, mortars, ammunition and uniforms signed by **KAKWAVU** on 26 or 27 October 2002.<sup>695</sup> **NTAGANDA**'s suggestion that this document is not authentic is unreasonable and not corroborated by any credible evidence. **NTAGANDA** argues that it was Peter DZ'THO and not Didier WANICAN who was responsible for the transfer of armed troops to Aru;<sup>696</sup> that **NTAGANDA** would have signed the document himself, had he been present;<sup>697</sup> and that "*the FPLC didn't have a computer*" and could not have created such a document at the time.<sup>698</sup> These claims are contradicted by [REDACTED]<sup>699</sup> [REDACTED] that the UPC delivered weapons

<sup>684</sup> [REDACTED].

<sup>685</sup> [REDACTED].

<sup>686</sup> [REDACTED].

<sup>687</sup> [REDACTED].

<sup>688</sup> [REDACTED].

<sup>689</sup> [REDACTED].

<sup>690</sup> [REDACTED].

<sup>691</sup> [REDACTED].

<sup>692</sup> [REDACTED].

<sup>693</sup> [REDACTED].

<sup>694</sup> [D-300:T-215-ENG-ET](#),70:22-74:11;[T-242-CONF-ENG-ET](#),15:11-18:2.

<sup>695</sup> [DRC-OTP-0109-0115](#); [D-300:T-234-CONF-ENG-CT](#),51:23-55:10.

<sup>696</sup> [D-300:T-234-CONF-ENG-CT](#),49:15-51:4;[T-242-CONF-ENG-ET](#),16:21-17:15.

<sup>697</sup> [D-300:T-242-CONF-ENG-ET](#),15:11-16:20.

<sup>698</sup> [D-300:T-242-CONF-ENG-ET](#),17:16-24.

<sup>699</sup> [D-300:T-234-CONF-ENG-CT](#),51:23-55:10.

and ammunition in Aru on several occasions, separately from any exchange of troops.<sup>700</sup> Lastly, they are contradicted by an FPLC document plainly created on a computer in December 2002,<sup>701</sup> as well as his admission that the FPLC had access to the UPC's computers.<sup>702</sup>

265. **NTAGANDA**'s statement that he never discussed the Mongbwalu attack<sup>703</sup> during his alleged two-week mission in Aru,<sup>704</sup> including during the last three to four days after LUBANGA allegedly told him he was going to attack Mongbwalu,<sup>705</sup> is also hard to believe, given his admission that he devised the plan to involve KAKWAVU's troops in a two-pronged attack on Mongbwalu.

*Bunia - Mongbwalu axis*

266. **NTAGANDA** wholly denied making any contribution to the preparations for the attack in relation to the Bunia - Mongbwalu axis. He claimed that he was physically removed from the scene of the planning, being in Aru, Bunia or involved in skirmishes along the Mudzipela – Mwangi – Lipri axis while the preparations for the First Attack took place. He further argued that MULENDA had re-organised his troops after the failed first attempt to capture Mongbwalu, knew what the objectives were, and that KISEMBO had already provided him with sufficient ammunition.<sup>706</sup> **NTAGANDA**'s attempt to evade his responsibility and blame someone else is clear from his statement that “[t]he ammunition that liberated Mongbwalu was given by Kisembo to Salumu”.<sup>707</sup>

267. **NTAGANDA**'s account is contradicted by his own radio communications logbook, which shows that **NTAGANDA** was being kept informed about the

<sup>700</sup> [REDACTED].

<sup>701</sup> [DRC-OTP-0109-0122](#); [D-300:T-243-CONF-ENG-ET](#),22:1-23:24.

<sup>702</sup> [D-300:T-222-ENG-CT](#),23:25-25:5: “This document was written by them because we had no computer. So we gave them the content of the letter and they used the computer to draft it. Once they had done so, they brought it to us and we signed it”.

<sup>703</sup> [D-300:T-234-CONF-ENG-CT](#),57:24-59:20.

<sup>704</sup> [D-300:T-216-ENG-CT](#),42:7-9.

<sup>705</sup> [D-300:T-216-ENG-CT](#),42:17-24.

<sup>706</sup> [D-300:T-216-ENG-CT](#),54:18-22;[T-234-CONF-ENG-CT](#),77:13-78:4.

<sup>707</sup> [D-300:T-226-ENG-CT](#),74:15-24.

two brigades' deployments as well as their needs for the operation.<sup>708</sup> Moreover, the Logbook shows that MULENDA sent NTAGANDA requests for ammunition, equipment and medication in advance of the attack, and that NTAGANDA responded favourably.

268. *First*, on 19 November 2002, at 07:30, MULENDA sent a request to be provided with ammunition for SMGs.<sup>709</sup> Just hours later, NTAGANDA responded positively and told him that he would leave as soon as possible: *“MOI A TOUT MOMENT ILS SONT EN TRAIN DE REPARER MES VEHICULES - JE T'APPORTE SALUMU LES CARTOUCHES QUE TU AS DONNEES A SEYI”*.<sup>710</sup> In an attempt to distance himself from any provision of ammunitions to his troops, NTAGANDA claimed that these messages were merely about reimbursing MULENDA for ammunition he gave to SEYI.<sup>711</sup> This claim is both implausible and contradicted by credible evidence to the contrary.

269. On 19 November 2002, MULENDA would not send a request for ammunition to be delivered after the attack. He needed the ammunition during the attack.<sup>712</sup> NTAGANDA's further explanation that MULENDA needed reserve ammunition for after the attack<sup>713</sup> also lacks credibility in light of his own statement that the ammunition MULENDA had given to SEYI represented only a small percentage of his total ammunition<sup>714</sup> and the fact that, in his initial message, MULENDA requested double the amount of ammunition that he gave to SEYI: *“En ce qui concerne les munitions, j'en ai envoyé 10 pour le SMG, je voudrais que vous puissiez m'en envoyer vingt”*.<sup>715</sup>

<sup>708</sup> [DRC-OTP-0017-0003](#), p.0003 (third), p.0005 (first and third), p.0010 (second), p.0020 (first and second) (transl.[DRC-OTP-2102-3828](#), p.3829, p.3831, p.3836, p.3846).

<sup>709</sup> [DRC-OTP-0017-0003](#), p.0020 (first) (transl.[DRC-OTP-2102-3828](#), p.3846).

<sup>710</sup> [DRC-OTP-0017-0033](#), p.0213 (second) (transl.[DRC-OTP-2102-3854](#), p.4035).

<sup>711</sup> [D-300:T-216-ENG-CT](#), 77:8-13; [T-234-CONF-ENG-CT](#), 69:2-11, 69:23-70:2, 74:23-76:4, 77:1-12.

<sup>712</sup> [D-300:T-234-CONF-ENG-CT](#), 75:14-76:4, 77:1-12.

<sup>713</sup> [D-300:T-234-CONF-ENG-CT](#), 75:14-76:4.

<sup>714</sup> [D-300:T-241-CONF-ENG-CT](#), 75:5-77:7.

<sup>715</sup> [DRC-OTP-0017-0003](#), p.0020 (first) (transl.[DRC-OTP-2102-3828](#), p.3846).

270. MULENDA had previously failed to capture Mongbwalu because he ran out of ammunition.<sup>716</sup> In providing MULENDA with needed supplies, NTAGANDA ensured that this did not happen again. [REDACTED].<sup>717</sup> [REDACTED] saw NTAGANDA arrive with [REDACTED] ammunition in Mongbwalu and give it to MULENDA while the attack was still ongoing.<sup>718</sup>

271. *Second*, on 21 November 2002, MULENDA sent another request, this time listing his needs (“*état de besoins*”), including spare parts for vehicles, fuel, food and large quantities of medication.<sup>719</sup> Again, on 21 November 2002, MULENDA would not request spare parts for a vehicle and fuel for after the Mongbwalu attack. He expected to receive this equipment from NTAGANDA before commencement of the attack.<sup>720</sup> In an attempt to neutralise this fact, NTAGANDA distorted the plain reading of this message by claiming that the list of needs contained in it was, in fact, part of a previous message sent by MUGISA from Mahagi.<sup>721</sup> This claim is not based on any material fact from the Logbook. It is telling that NTAGANDA first stated that the message was from MULENDA, before correcting himself.<sup>722</sup> NTAGANDA’s distorted interpretation is also contradicted by a separate list of needs actually sent from Mahagi just a day after MULENDA’s message.<sup>723</sup>

272. That NTAGANDA was actually with MULENDA and his troops or in close communication with them is further supported by the chronology of messages he sent between 19 and 24 November 2002. Indeed, following two messages sent on 19 November 2002, including a message whereby NTAGANDA ordered his two brigades to attack and informed them that he would leave to join them “A

<sup>716</sup> [D-300:T-216-ENG-CT](#),44:2-9.

<sup>717</sup> [REDACTED].

<sup>718</sup> [REDACTED]; *see also* [REDACTED].

<sup>719</sup> [DRC-OTP-0017-0003](#),p.0003 (third) (transl.[DRC-OTP-2102-3828](#),p.3829).

<sup>720</sup> *See* [D-300:T-226-ENG-CT](#),73:4-74:24;[T-234-CONF-ENG-CT](#),74:23-76:4,77:1-78:4.

<sup>721</sup> [D-300:T-216-ENG-CT](#),81:20-82:23.

<sup>722</sup> [D-300:T-216-ENG-CT](#),82:18-23.

<sup>723</sup> [DRC-OTP-0017-0003](#),p.0005 (second) (transl.[DRC-OTP-2102-3828](#),p.3831).



TOUT MOMENT”,<sup>724</sup> NTAGANDA is silent until 24 November 2002.<sup>725</sup> NTAGANDA confirmed that this message meant that he would leave as soon as possible,<sup>726</sup> but incredibly claimed that he was delayed for five days due to reasons out of his control. NTAGANDA himself stated that even “*if you are not at the battlefield, there are other means of communication, including the Motorola, for example, and it is through that channel that one is able to follow the attack as it unfolds*”.<sup>727</sup>

273. NTAGANDA’s account of his involvement in the planning of the First Attack is further contradicted by credible evidence of: (i) his attendance at planning meetings in Bunia, prior to the attack;<sup>728</sup> (ii) his attendance at military parades during which he briefed his troops on the imminent attack, including in Bunia<sup>729</sup> and Mabanga;<sup>730</sup> (iii) his travel from Mabanga to Mongbwalu with the troops that would later participate in the attack on Mongbwalu;<sup>731</sup> and (iv) his arrival in Mongbwalu<sup>732</sup> when substantive parts of the town, including the factory and the hill above the market, remained to be captured.<sup>733</sup>

ii. *NTAGANDA’s role in the execution of the First Attack*

274. NTAGANDA appears to have accepted that he commanded the First Attack.<sup>734</sup>

However, his description of the manner in which he exercised command over the operation is entirely unrealistic.

<sup>724</sup> [DRC-OTP-0017-0033](#),p.0213 (second) (transl.[DRC-OTP-2102-3854](#),p.4034,p.4035).

<sup>725</sup> [DRC-OTP-0017-0033](#),p.0212 (second and third) (transl.[DRC-OTP-2102-3854](#),p.4034).

<sup>726</sup> [D-300:T-226-ENG-CT](#),72:14-18;[T-234-CONF-ENG-CT](#),78:5-14.

<sup>727</sup> [D-300:T-213-CONF-ENG-CT](#),10:21-11:3.

<sup>728</sup> [P-907:T-90-CONF-ENG-CT](#),3:19-4:9,5:5-15,23:10-25,26:20-27:2;[T-92-CONF-ENG-CT](#),58:14-23.

<sup>729</sup> [REDACTED].

<sup>730</sup> [REDACTED].

<sup>731</sup> [REDACTED].

<sup>732</sup> [P-768:T-33-CONF-ENG-CT](#),33:19-35:10; [P-17:T-58-CONF-ENG-CT](#),62:7-17,63:15-64:14,64:24-65:12;[T-62-CONF-ENG-ET](#),59:17-60:17.

<sup>733</sup> [REDACTED].

<sup>734</sup> [D-300:T-216-ENG-CT](#),44:10-21,44:22-45:5;[T-225-CONF-ENG-CT](#),48:12-15;[T-226-ENG-CT](#),71:19-72:3;[T-234-CONF-ENG-CT](#),73:1-4. See also, however, NTAGANDA’s more ambiguous answers during cross-examination: [D-300:T-223-CONF-ENG-ET](#),8:1-4,9:1-15,10:5-16;[T-235-CONF-ENG-CT](#),58:3-11,60:14-65:9,65:10-67:9.



275. **NTAGANDA** would have the Chamber believe that one day, **LUBANGA** and **KISEMBO** informed him for the very first time about the UPC's intention to capture Mongbwalu and gave him command of the operation,<sup>735</sup> and that, nine days later,<sup>736</sup> he handed over the responsibility for Mongbwalu back to **KISEMBO**, as soon as he arrived on site.<sup>737</sup> **NTAGANDA**'s description of the UPC's decision-making process, which entirely negates any role for the Deputy Chief of Staff in charge of operations and organisation and portrays him as someone who merely executes the orders from his superiors, is not plausible in light of abundant evidence of his actual, central role in the conception, planning and execution of military operations.<sup>738</sup>

276. Equally unrealistic is **NTAGANDA**'s claim that, in the course of the nine days that he allegedly had command over the troops engaged in the First Attack, including the mere four and a half days he claims to have spent in Mongbwalu,<sup>739</sup> the extent of his involvement was limited to: (i) ordering two brigades to advance to the objective<sup>740</sup> after **KISEMBO** had informed him that the troops were ready and had received sufficient ammunition;<sup>741</sup> (ii) receiving a situation report upon his arrival in Mongbwalu four days later;<sup>742</sup> (iii) visiting the wounded and supervising their transportation to Bunia;<sup>743</sup> (iv) supervising a support weapons unit as it fired (three times) on Sayo and missed its targets, but scared the enemy away;<sup>744</sup> (v) ordering commander **SEYI** to cease (friendly)

<sup>735</sup> **D-300:T-216-ENG-CT**,44:10-21,44:22-45:5,46:14-47:10.

<sup>736</sup> **NTAGANDA** claimed **KISEMBO** and **LUBANGA** ordered him to capture Mongbwalu on 17 November 2002 and that he handed over the responsibility for Mongbwalu back to **KISEMBO** on 26 November 2002.

<sup>737</sup> **D-300:T-217-CONF-ENG-ET**,80:15-81:23.

<sup>738</sup> See Section VIII.

<sup>739</sup> **NTAGANDA** claims that he arrived in Mongbwalu in the night of 23 November 2002 (**D-300:T-217-CONF-ENG-ET**,35:22-36:6;**T-216-ENG-CT**,79:4-80:1,81:13-19) and that he left by plane on 28 November 2002 around noon (**D-300:T-217-CONF-ENG-ET**,92:2-15;**T-218-CONF-ENG-CT**,4:14-22).

<sup>740</sup> **DRC-OTP-0017-0033**,p.0213 (second) (transl.**DRC-OTP-2102-3854**,p.4035); **D-300:T-216-ENG-CT**,76:8-25;**T-226-ENG-CT**,70:11-71:18.

<sup>741</sup> **D-300:T-234-CONF-ENG-CT**,77:13-78:4.

<sup>742</sup> **D-300:T-217-CONF-ENG-ET**,36:16-2337:6-38:15,47:9-48:4.

<sup>743</sup> **D-300:T-217-CONF-ENG-ET**,39:1-11.

<sup>744</sup> **D-300:T-217-CONF-ENG-ET**,48:5-51:14.

fire<sup>745</sup> and changing his call sign in the middle of the battle;<sup>746</sup> (vi) ordering the release of what he claimed was the only enemy soldier captured during the entire operation;<sup>747</sup> (vii) punishing one commander for allegedly arriving late<sup>748</sup> and another one for pillaging;<sup>749</sup> (viii) authorising the interrogation of a priest suspected of having assisted the enemy;<sup>750</sup> (ix) congratulating his commanders after the successful operation;<sup>751</sup> (x) ordering his commanders not to let the troops wander around Mongbwalu;<sup>752</sup> (xi) taking KISEMBO on a tour of Mongbwalu<sup>753</sup> and giving him a situation report.<sup>754</sup>

277. **NTAGANDA** portrayed himself as a passive observer of the aftermath of the hostilities, arriving in Mongbwalu<sup>755</sup> and Sayo<sup>756</sup> when all hostilities were over, incredibly denying that he gave any orders upon arriving in Mongbwalu,<sup>757</sup> and only taking such benevolent action as caring for the wounded or releasing an enemy prisoner. **NTAGANDA**'s careful selection leaves out the most important responsibilities that he himself recognised a commander should exercise:

*To be able to overcome the enemy, one has to give proper orders to the soldiers and also to monitor the unfolding of the fighting so that one is able to know where to deploy more forces. Now, when you need reinforcements and weapons, you can send them to such areas where such need arises. Now, as the fighting unfolds, you then decide which area has to be reinforced and how the fighting or the combat has to be guided or directed.<sup>758</sup>*

278. Witnesses P-10, P-17, P-768, P-907, and P-963, who participated in the First

<sup>745</sup> **D-300:**[T-217-CONF-ENG-ET](#),51:15-52:2,52:8:24,53:10-18.

<sup>746</sup> **D-300:**[T-216-ENG-CT](#),39:23-40:11;[T-217-CONF-ENG-ET](#),51:15-52:2;[T-235-CONF-ENG-CT](#),67:10-69:22,69:23-70:18,70:19-25.

<sup>747</sup> **D-300:**[T-217-CONF-ENG-ET](#),53:25-54:13,55:4-14.

<sup>748</sup> **D-300:**[T-217-CONF-ENG-ET](#),68:17-70:23;[T-235-CONF-ENG-CT](#),43:11-44:5.

<sup>749</sup> **D-300:**[T-217-CONF-ENG-ET](#),57:23-58:12.

<sup>750</sup> **D-300:**[T-217-CONF-ENG-ET](#),72:22-73:7.

<sup>751</sup> **D-300:**[T-217-CONF-ENG-ET](#),69:24-70:7.

<sup>752</sup> **D-300:**[T-217-CONF-ENG-ET](#),70:10-11.

<sup>753</sup> **D-300:**[T-217-CONF-ENG-ET](#),78:16-19,78:25-79:19.

<sup>754</sup> **D-300:**[T-217-CONF-ENG-ET](#),81:6-23.

<sup>755</sup> **D-300:**[T-217-CONF-ENG-ET](#),36:16-23,37:6-38:15.

<sup>756</sup> **D-300:**[T-217-CONF-ENG-ET](#),52:3-7.

<sup>757</sup> **D-300:**[T-217-CONF-ENG-ET](#),38:16-18.

<sup>758</sup> **D-300:**[T-213-CONF-ENG-CT](#),11:4-14; *see also* [T-213-CONF-ENG-CT](#),10:21-11:3,11:15-12:14.

Attack in different roles and positions, all confirm that NTAGANDA's role during the attack went well beyond what he described during testimony. Indeed, in addition to exercising the overall command over the troops,<sup>759</sup> NTAGANDA was present during the attack,<sup>760</sup> issued orders related to the operation,<sup>761</sup> including to deploy to and attack specific areas of Mongbwalu,<sup>762</sup> actively participated in the fighting with the heavy weapons unit under his command,<sup>763</sup> designated targets for heavy weapons operators and ordered them to fire,<sup>764</sup> communicated<sup>765</sup> and met<sup>766</sup> with his subordinates, received reports from them,<sup>767</sup> and distributed ammunition.<sup>768</sup>

279.A video-recorded interview demonstrates, contrary to NTAGANDA's testimony,<sup>769</sup> that he had personal knowledge of the attack, because he was present as it unfolded. Indeed, in the same interview taken at Mongbwalu airstrip, NTAGANDA refers to "*combats [...] intenses*"<sup>770</sup> and explains how the attack unfolded: "*nous sommes entrés le matin, nous nous sommes divisés en deux groupes dans la ville, et ensuite, le lendemain vers 14 heures, nous avons pris le contrôle de tout ... nous étions entrés dans la ville*".<sup>771</sup> This account, unlike his testimony, reflects the truth. NTAGANDA is the senior commander who gives

<sup>759</sup> [P-963:T-78-CONF-ENG-ET](#),76:22-25;[T-79-CONF-ENG-ET](#),11:10-12:1; [P-768:T-33-CONF-ENG-CT](#),29:4-15; [P-898:T-154-CONF-ENG-ET](#),12:24-13:5; [P-315:DRC-OTP-2058-0990](#),pp.1011-1012;[T-108-CONF-ENG-ET](#),22:19-37:8,41:24-61:14.

<sup>760</sup> [P-768:T-33-CONF-ENG-CT](#),33:19-36:8; [P-17:T-58-CONF-ENG-CT](#),62:7-17;[T-62-CONF-ENG-ET](#),59:17-60:17; [P-10:T-47-CONF-ENG-CT](#),9:21-24; [P-963:T-78-CONF-ENG-ET](#),77:1-9;[T-81-CONF-ENG-ET](#),90:18-25.

<sup>761</sup> [P-963:T-78-CONF-ENG-ET](#),77:1-9,81:23-84:6; [P-10:T-47-CONF-ENG-CT](#),13:16-21; [P-17:T-58-CONF-ENG-CT](#),70:12-73:7.

<sup>762</sup> [P-768:T-33-CONF-ENG-CT](#),35:11-36:8.

<sup>763</sup> [P-768:T-33-CONF-ENG-CT](#),35:23-36:1; [P-17:T-58-CONF-ENG-CT](#),69:16-25;[T-62-CONF-ENG-ET](#),11:8-13:24.

<sup>764</sup> [REDACTED].

<sup>765</sup> [P-963:T-79-CONF-ENG-ET](#),11:19-12:8; [P-17:T-58-CONF-ENG-CT](#),65:24-66:1,67:2-10;[T-61-CONF-ENG-ET](#),99:14-100:23; [P-768:T-33-CONF-ENG-CT](#),37:21-24; [P-10:T-47-CONF-ENG-CT](#),12:10-18.

<sup>766</sup> [P-768:T-33-CONF-ENG-CT](#),35:11-36:8,40:5-24,41:5-17; [P-907:T-90-CONF-ENG-CT](#),37:18-38:5,38:18-38:14.

<sup>767</sup> [P-17:T-58-CONF-ENG-CT](#),65:24-66:1,67:2-10;[T-61-CONF-ENG-ET](#),99:14-100:23; [P-768:T-33-CONF-ENG-CT](#),35:11-36:8,40:5-24,41:5-17.

<sup>768</sup> [P-17:T-58-CONF-ENG-CT](#),63:15-64:14,64:24-65:12; [P-963:T-78-CONF-ENG-ET](#),77:19-78:4.

<sup>769</sup> [D-300:T-235-CONF-ENG-CT](#),60:14-65:9.

<sup>770</sup> [DRC-OTP-2058-0251](#),00:07:37-00:07:56(transl.[DRC-OTP-2102-3766](#),p.3772:125-127).

<sup>771</sup> [DRC-OTP-2058-0251](#),00:08:27-00:08:41(transl.[DRC-OTP-2102-3766](#),p.3772:140-145).

the interview about the details of the attack because he was there.

iii. *NTAGANDA's departure from Mongbwalu*

280. Contrary to his testimony, **NTAGANDA** neither left Mongbwalu on 28 November 2002,<sup>772</sup> nor did he hand over his responsibilities to **KISEMBO**<sup>773</sup> or leave to Mahagi to supervise operations in that area.<sup>774</sup> *First*, as explained above, **NTAGANDA** incorrectly dated the last day of the “Mongbwalu video” on 27 November 2002, when, in fact, it was shot a day later.<sup>775</sup> *Second*, on this same video, taken two days after **NTAGANDA's** alleged “handover” meeting with **KISEMBO**, the latter can be seen standing next to **NTAGANDA** and explaining to the local population that: “[l]ui, c'est mon adjoint [...] [l]ui, il est basé ici pour gérer les problèmes que les subalternes pourraient causer ça et là, de petites bavures quoi”.<sup>776</sup> *Third*, Witness P-2 testified that [REDACTED] **NTAGANDA** remained in Mongbwalu.<sup>777</sup> *Fourth*, Witnesses P-768, P-901 and P-963 all confirm that **NTAGANDA** stayed in Mongbwalu longer than a week.<sup>778</sup> *Fifth*, a Logbook message sent by **NTAGANDA** on 3 December 2002 shows that it was **KISEMBO**, and not **NTAGANDA** himself, who travelled to Mahagi to supervise operations in the area.<sup>779</sup> *Sixth*, a situation report from **MULENDA**, dated 2 December 2002, shows that **NTAGANDA** went to Kilo: “*NOUS SOMMES*

<sup>772</sup> **NTAGANDA** claimed to have left Mongbwalu on 28 November 2002, just four and a half days after his alleged arrival (D-300:T-217-CONF-ENG-ET,92:2-15;T-218-CONF-ENG-CT,4:14-22;T-237-CONF-ENG-ET,10:25-11:14;T-241-CONF-ENG-CT,67:17-68:20).

<sup>773</sup> **NTAGANDA** claimed that he had handed over the responsibility for Mongbwalu to **KISEMBO** on 26 November 2002 (D-300:T-217-CONF-ENG-ET,80:15-81:5).

<sup>774</sup> **NTAGANDA** claimed that, on 26 November 2002, **KISEMBO** ordered him to supervise operations in Mahagi while he would himself stay in charge of Mongbwalu (D-300:T-217-CONF-ENG-ET,80:15-81:5,81:23-82:5,87:10-88:8;T-218-CONF-ENG-CT,5:22-6:7).

<sup>775</sup> See above.

<sup>776</sup> [DRC-OTP-2058-0251](#),01:54:32-01:55:14(transl.[DRC-OTP-2102-3766](#),p.3822:1993-p.3823:2002), emphasis added.

<sup>777</sup> [REDACTED]; see also [REDACTED].

<sup>778</sup> [P-901:T-28-CONF-ENG-CT](#),57:19-24; [P-768:T-34-CONF-ENG-CT](#),7:9-18; [P-963:T-78-CONF-ENG-ET](#),89:4-6;T-79-CONF-ENG-ET,26:1-3;T-82-CONF-ENG-ET,40:9-16[T-82-CONF-FRA-ET,43:15-22]. See also [P-17:T-62-CONF-ENG-ET](#),71:10-15,72:10-12.

<sup>779</sup> [DRC-OTP-0017-0033](#),p.0210 (first) (transl.[DRC-OTP-2102-3854](#),p.4032).

DANS LA LOC. KILO, DEMAIN MATIN C'EST V/C ET T.R.”.<sup>780</sup> [REDACTED]  
 “T.R.” referred to NTAGANDA.<sup>781</sup> Importantly, NTAGANDA confirmed the meaning of the message itself: *“what is contained in the message is that the person who has drafted the message is announcing that they will be in Kilo tomorrow morning”*.<sup>782</sup> Seventh, Witness P-850 saw NTAGANDA in Kilo within days of its capture by the UPC.<sup>783</sup>

281. While NTAGANDA returned to Bunia at a later date,<sup>784</sup> he remained involved in operations in Mongbwalu and Kilo throughout early December, as evidenced by the quasi-daily reports he received<sup>785</sup> and the orders he gave to his subordinates in the area.<sup>786</sup> When shown one of the reports about the capture of an enemy soldier,<sup>787</sup> NTAGANDA stated: *“Yes, he informs me because I am supposed to be informed about the situation. It is quite normal, nothing wrong with that”*.<sup>788</sup>

282. NTAGANDA also returned to the Banyali-Kilo *collectivité* in December 2002. [REDACTED] NTAGANDA travelled by plane to Mongbwalu when the UPC was in control of the town<sup>789</sup> and Witnesses P-877 and V-3 both saw

<sup>780</sup> [DRC-OTP-0017-0033](#),p.0035 (first) (transl.[DRC-OTP-2102-3854](#),p.3857). NTAGANDA implausibly denied that the initials “T.R.” referred to his own call sign “Tango Romeo” ([D-300:T-237-CONF-ENG-ET](#),47:25-48:24), explaining that, if it had been a reference to his call sign, there would not be any dots after the letters “T” and “R” ([D-300:T-216-ENG-CT](#),72:4-25.), and T.R. alone would be insufficient to identify someone as senior as he was ([D-300:T-237-CONF-ENG-ET](#),49:7-11); even though he admitted that another message ([DRC-OTP-0017-0033](#),p.0212 (first) (transl.[DRC-OTP-2102-3854](#),p.4034)) referring solely to “T.R.” refers to him ([D-300:T-237-CONF-ENG-ET](#),48:25-51:7.). He did not provide any credible alternative explanation as to why his call sign initials appear in the message ([D-300:T-237-CONF-ENG-ET](#),48:25-49:20), merely stating that *“if the question were put to a signaller he might be able to answer”* ([D-300:T-216-ENG-CT](#),72:4-25).

<sup>781</sup> [REDACTED].

<sup>782</sup> [D-300:T-237-CONF-ENG-ET](#),49:21-50:3.

<sup>783</sup> [P-850:DRC-OTP-2067-1825](#),p.1832,para.50.

<sup>784</sup> See [DRC-OTP-0017-0033](#),p.0210 (second) (transl.[DRC-OTP-2102-3854](#),p.4032).

<sup>785</sup> [DRC-OTP-0017-0033](#),p.0036 (first), p.0037 (first,second,third), p.0038 (first), p.0040 (first,second), p.0041 (first), p.0042 (first), p.0043 (second), p.0044 (second), p.0045 (first,second), p.0046 (first), p.0048 (first,second,third) (transl.[DRC-OTP-2102-3854](#), p.3858, p.3589, p.3590, p.3862, p.3863, p.3864, p.3865, p.3866, p.3867, p.3868, p.3870).

<sup>786</sup> [DRC-OTP-0017-0033](#), p.0205 (first), p.0208 (second,fourth),p.0209 (first) (transl.[DRC-OTP-2102-3854](#), p.4027, p.4030, p.4031).

<sup>787</sup> [DRC-OTP-0017-0033](#),p.0041 (first) (transl.[DRC-OTP-2102-3854](#),p.3863).

<sup>788</sup> [D-300:T-218-CONF-ENG-CT](#),36:5-9.

<sup>789</sup> [REDACTED]; see also [P-768:T-34-CONF-ENG-CT](#),7:19-8:11.

NTAGANDA in Kilo shortly after Christmas 2002.<sup>790</sup>

c. [REDACTED]

283.[REDACTED] , [REDACTED].

284.[REDACTED],<sup>791</sup> [REDACTED]<sup>792</sup> [REDACTED].<sup>793</sup> [REDACTED].<sup>794</sup> For the reasons detailed below, it is clear that NTAGANDA's account on this issue is not credible.

285.*First*, NTAGANDA has a clear self-interest in discrediting the evidence of numerous crimes committed by himself and the troops under his command. Indeed, he repeatedly tried to discredit [REDACTED],<sup>795</sup> [REDACTED],<sup>796</sup> [REDACTED].<sup>797</sup> [REDACTED].

286.*Second*, NTAGANDA's self-serving re-organisation and interpretation of the loose pages radio communications log<sup>798</sup> is not supported by the facts. Indeed, the message that NTAGANDA relied on [REDACTED],<sup>799</sup> [REDACTED].<sup>800</sup>

287.[REDACTED].<sup>801</sup> [REDACTED].

288.Moreover, NTAGANDA's memory regarding the messages he allegedly received on [REDACTED],<sup>802</sup> is faulty. Indeed, the [REDACTED] message reads as follows: [REDACTED].<sup>803</sup> [REDACTED].<sup>804</sup> [REDACTED],<sup>805</sup> allegedly at

<sup>790</sup> P-877:[DRC-OTP-2077-0118-R03](#),p.0125,paras.39-41;[T-109-CONF-ENG-ET](#),50:19-51:11,53:8-54:11; V-3:[T-203-CONF-ENG-ET](#),39:23-41:24.

<sup>791</sup> [REDACTED].

<sup>792</sup> [REDACTED].

<sup>793</sup> [REDACTED].

<sup>794</sup> [REDACTED].

<sup>795</sup> [REDACTED].

<sup>796</sup> [REDACTED].

<sup>797</sup> [REDACTED].

<sup>798</sup> [DRC-D18-0001-5748](#).

<sup>799</sup> [REDACTED].

<sup>800</sup> [REDACTED].

<sup>801</sup> [REDACTED].

<sup>802</sup> [REDACTED].

<sup>803</sup> [REDACTED].

<sup>804</sup> [REDACTED].

17:00,<sup>806</sup> [REDACTED]<sup>807</sup> [REDACTED]<sup>808</sup> [REDACTED].<sup>809</sup> Critically, NTAGANDA's own Logbook confirms this: the first two messages about ENEKO's death are dated 22 November 2002. The first message indicates that ENEKO fell into an ambush and that the local UPC would send intelligence staff to inquire about the situation.<sup>810</sup> It is only the second message, a report of the intelligence staff sent at 19:44 on 22 November 2002, that confirms ENEKO's death for the first time.<sup>811</sup> Accordingly, on 21 November 2002, NTAGANDA could not have been informed about ENEKO's death and LUBANGA could certainly not have arrived in Aru for his burial.<sup>812</sup>

289.[REDACTED],<sup>813</sup> [REDACTED].<sup>814</sup>

290.[REDACTED].<sup>815</sup> [REDACTED].

291.The Prosecution emphasises that NTAGANDA spent a considerable amount of time meticulously constructing a defence based on his re-organisation and own interpretation of his Logbook. [REDACTED]<sup>816</sup> [REDACTED],<sup>817</sup> [REDACTED]<sup>818</sup> [REDACTED]<sup>819</sup> [REDACTED], NTAGANDA manifestly sought to shelter it from a test it would not have withstood. This is not compatible with a genuine desire to establish the truth.

292.*Third*, NTAGANDA's claim that [REDACTED] entirely lacks credibility or

---

<sup>805</sup> [REDACTED].

<sup>806</sup> [REDACTED].

<sup>807</sup> [REDACTED].

<sup>808</sup> [REDACTED].

<sup>809</sup> [REDACTED].

<sup>810</sup> [DRC-OTP-0017-0003](#),p.0006 (first) (transl.[DRC-OTP-2102-3828](#),p.3832).

<sup>811</sup> [DRC-OTP-0017-0003](#),p.0006 (second) (transl.[DRC-OTP-2102-3828](#),p.3832).

<sup>812</sup> See [D-300:T-235-CONF-ENG-CT](#),28:22-31:2.

<sup>813</sup> [REDACTED].

<sup>814</sup> [REDACTED].

<sup>815</sup> [REDACTED].

<sup>816</sup> [REDACTED].

<sup>817</sup> [REDACTED].

<sup>818</sup> [REDACTED].

<sup>819</sup> [REDACTED].



factual foundation. [REDACTED].<sup>820</sup> [REDACTED], his testimony remains uncorroborated by any witness, document or radio message. Moreover, in an attempt to insulate his defence from scrutiny, **NTAGANDA** did not cross-examine [REDACTED] on [REDACTED], nor any other witness who was present in Mongbwalu.

293.[REDACTED]<sup>821</sup> [REDACTED].<sup>822</sup> [REDACTED]<sup>823</sup> [REDACTED].<sup>824</sup>

294.*Fourth*, **NTAGANDA**'s testimony that [REDACTED] is not consistent with the fact that [REDACTED].<sup>825</sup> [REDACTED],<sup>826</sup> [REDACTED],<sup>827</sup> [REDACTED].<sup>828</sup>

295.*Fifth* and last, **NTAGANDA**'s claim that [REDACTED] is contradicted by credible evidence to the contrary. [REDACTED].<sup>829</sup> [REDACTED].<sup>830</sup>

296.[REDACTED].<sup>831</sup> [REDACTED]<sup>832</sup> [REDACTED]<sup>833</sup> [REDACTED],<sup>834</sup>  
[REDACTED].<sup>835</sup> [REDACTED]<sup>836</sup> [REDACTED]<sup>837</sup> [REDACTED].

297.The following sections describe the crimes committed by the UPC forces in the course of the First Attack.

---

<sup>820</sup> [REDACTED].

<sup>821</sup> [REDACTED].

<sup>822</sup> [REDACTED].

<sup>823</sup> [REDACTED].

<sup>824</sup> [REDACTED].

<sup>825</sup> [REDACTED].

<sup>826</sup> [REDACTED].

<sup>827</sup> [REDACTED].

<sup>828</sup> [REDACTED].

<sup>829</sup> [REDACTED].

<sup>830</sup> [REDACTED].

<sup>831</sup> [REDACTED].

<sup>832</sup> [REDACTED].

<sup>833</sup> [REDACTED].

<sup>834</sup> [REDACTED].

<sup>835</sup> [REDACTED].

<sup>836</sup> [REDACTED].

<sup>837</sup> [REDACTED].



### 3. Attacks directed against the civilian population (Article 8(2)(e)(i)) - Count

3<sup>838</sup>

298. UPC troops under NTAGANDA's orders intentionally attacked civilians,<sup>839</sup> capturing and killing those attempting to flee and those who were too weak to flee,<sup>840</sup> and causing thousands to flee their homes.<sup>841</sup>

299. The three specific constituent elements of the war crime of attacking civilians are met.<sup>842</sup> First, the perpetrator directed an attack. Second, the object of the attack was a civilian population as such, or individuals not taking a direct part in the hostilities. Third, the perpetrator intended the civilian population to be the object of the attack.

300. As regards the first and third elements, the evidence shows that NTAGANDA planned, coordinated, and executed a large-scale attack on the Banyali-Kilo *collectivité* with the intention to eliminate every person that his troops would encounter and to cleanse the area of the non-Hema civilian population.

301. A video taken three days after the assault on Mongbwalu shows a journalist introduce NTAGANDA as Sector Commander, but NTAGANDA corrects him, stating that he is the UPC Chief of Staff. NTAGANDA confirms that the UPC attacked Mongbwalu in two groups and that the assault only lasted a few

<sup>838</sup> This section concerns the crimes committed in or around Mongbwalu and Sayo.

<sup>839</sup> **P-17**:[T-58-CONF-ENG-CT](#),70:7-73:7;[T-59-CONF-ENG-CT](#),4:18-5:19; **P-963**:[T-78-CONF-ENG-ET](#),70:7-25,72:25-73:9,74:17-75:7,77:15-18,81:12-22[[T-78-CONF-FRA-ET](#),72:12-73:5]; **P-768**:[T-33-CONF-ENG-CT](#),37:2-16,52:9-54:17; **P-907**:[T-90-CONF-ENG-CT](#),8:1-9:19; **DRC-OTP-0074-0628**,pp.0666,p.0668; **DRC-OTP-0074-0797**,p.0828; **P-22**:[DRC-OTP-0104-0026](#),p.0030,para.22.

<sup>840</sup> **P-17**:[T-58-CONF-ENG-CT](#),70:7-73:7,67:20-69:6,73:8-74:19;[T-59-CONF-ENG-CT](#),4:18-5:19; **P-907**:[T-90-CONF-ENG-CT](#),33:12-36:24; **P-963**:[T-78-CONF-ENG-ET](#),79:5-13,84:7-85:14;[T-79-CONF-ENG-ET](#),13:25-14:4;14:15-16:8.

<sup>841</sup> **P-17**:[T-59-CONF-ENG-CT](#),11:13-19; **P-768**:[T-34-CONF-ENG-CT](#),15:5-16:10; **P-963**:[T-78-CONF-ENG-ET](#),79:23-81:22;[T-79-CONF-ENG-ET](#),17:1-10; **P-907**:[T-90-CONF-ENG-CT](#),50:8-51:18; **P-805**:[T-25Bis-CONF-ENG-CT](#),3:4-4:3,5:10-13; **P-300**:[T-166-CONF-ENG-ET](#),29:5-30:17; **P-901**:[T-29-CONF-ENG-CT](#),8:24-9:10; **P-315**:[DRC-OTP-2058-0990](#),p.1015,para.136; **DRC-OTP-0074-0628**,p.0668; **DRC-OTP-0074-0797**,p.0829.

<sup>842</sup> Elements of Crimes, article 8(2)(e)(i).

days.<sup>843</sup> This demonstrates NTAGANDA's presence in Mongbwalu at the time of the assault, and his role as a senior commander.

302. NTAGANDA was the overall commander during the operation,<sup>844</sup> he was physically present<sup>845</sup> and in constant communication with his subordinates,<sup>846</sup> giving them specific orders regarding their deployment and their targets.<sup>847</sup>

303. NTAGANDA, both at meetings prior to the assault and on the ground during the assault, gave instructions to target and kill civilians.<sup>848</sup> He targeted and killed civilians himself.<sup>849</sup>

304. At a pre-attack parade in Mabanga, NTAGANDA told his troops that everyone they would encounter in Mongbwalu was the enemy and his order was to kill everyone.<sup>850</sup>

305. He repeated those orders on the first day of the assault during a meeting in his headquarters in Mongbwalu.<sup>851</sup> NTAGANDA repeatedly stated to his subordinates that the Lendu were their enemies and that they had to be exterminated.<sup>852</sup> After this meeting, NTAGANDA and his brigade commanders

<sup>843</sup> [DRC-OTP-2058-0251](#),00:05:35-00:06:58,00:07:10-00:09:50 (transl. [DRC-OTP-2102-3766](#),p.3771:82-111,p.3772:118-3773:158); [REDACTED].

<sup>844</sup> [P-768:T-33-CONF-ENG-CT](#),29:4-15; [P-963:T-78-CONF-ENG-ET](#),76:22-25,77:19-78:4; [P-55:T-71-CONF-ENG-CT](#),18:6-15; [P-901:T-28-CONF-ENG-CT](#),40:13-22; [P-190:T-96-CONF-ENG-CT](#),48:25-49:20.

<sup>845</sup> [P-17:T-58-CONF-ENG-CT](#),62:7-12,63:15-64:14,69:16-74:19; [P-768:T-33-CONF-ENG-CT](#),33:19-36:3,37:17-20; [P-963:T-78-CONF-ENG-ET](#),77:1-9;[T-81-CONF-ENG-ET](#),90:18-25; [P-55:T-70-CONF-ENG-CT](#),95:1-98:19;[T-74-CONF-ENG-CT](#),91:3-92:23; [P-2:T-170-CONF-ENG-ET](#),61:2-66:1.

<sup>846</sup> [P-17:T-58-CONF-ENG-CT](#),65:24-66:1,67:2-10; [P-963:T-78-CONF-ENG-ET](#),77:19-24;[T-79-CONF-ENG-ET](#),11:10-12:8; [P-768:T-33-CONF-ENG-CT](#),37:17-24;[T-35-CONF-ENG-CT](#),43:20-22; [P-10:T-47-CONF-ENG-CT](#),12:10-18.

<sup>847</sup> [P-17:T-58-CONF-ENG-CT](#),70:12-73:7; [P-963:T-78-CONF-ENG-ET](#),77:1-12,81:23-84:6; [P-768:T-33-CONF-ENG-CT](#),54:18-55:7;[T-35-CONF-ENG-CT](#),50:4-17,51:2-60:2.

<sup>848</sup> [P-17:T-58-CONF-ENG-CT](#),70:12-74:19;[T-59-CONF-ENG-CT](#),21:5-25:3; [P-963:T-78-CONF-ENG-ET](#),70:7-17,72:25-73:9,81:20-22; [P-768:T-33-CONF-ENG-CT](#),36:18-37:16,52:9-54:17; [P-907:T-90-CONF-ENG-CT](#),8:12-9:19.

<sup>849</sup> [P-768:T-33-CONF-ENG-CT](#),54:18-55:7;[T-35-CONF-ENG-CT](#),50:4-17,51:2-60:2;[T-33-CONF-ENG-CT](#),55:8-56:25;[T-35-CONF-ENG-CT](#),60:24-67:2; [DRC-OTP-0074-0628](#),p.0669; [P-894:DRC-OTP-2076-0194-R02](#),p.0202-0204,paras.39-46;[DRC-OTP-2076-0212](#);[T-103-CONF-ENG-ET](#),105:3-11;[T-104-CONF-ENG-ET](#),7:19-8:5,65:12-67:19.

<sup>850</sup> [P-963:T-78-CONF-ENG-ET](#),70:7-25,72:25-73:9,74:17-75:7,77:15-18,81:12-22[[T-78-CONF-FRA-ET](#),72:12-73:5].

<sup>851</sup> [REDACTED].

<sup>852</sup> [P-768:T-33-CONF-ENG-CT](#),54:8-17; [P-10:T-47-CONF-ENG-CT](#),10:6-18.

went to the frontlines to raise the morale of his troops and encouraged them to kill everyone, telling his troops that all Lendu are enemies.<sup>853</sup>

306. These orders were further repeated, relayed and followed by **NTAGANDA**'s subordinates. P-907, who participated in both of the UPC's assaults on Mongbwalu in 2002, heard many commanders, including Commanders **MULENDA**, **AMÉRICAIN**, **ROY** and **NTAGANDA** himself, tell their subordinates that everyone they would encounter in Mongbwalu would be the enemy and that they should "*spare no one*". The troops were told to "*strike, [...] loot, [and] [...] take advantage of the situation*". According to P-907, it "*was the same message from the very beginning right to the very end*".<sup>854</sup> P-907 later participated in a "*mop-up*" operation in Mongbwalu during which civilians were killed in their houses or taken prisoner to UPC camps and executed.<sup>855</sup>

307. On the third day of the assault, in Sayo, **NTAGANDA** himself ordered P-17, [REDACTED], to fire [REDACTED] towards the population that was fleeing the UPC's advance.<sup>856</sup>

308. For UPC troops, "*the purpose was to drive out the Lendu or eliminate all of them, loot their possessions [...] occupy their houses*".<sup>857</sup> P-963, who participated in the attack [REDACTED], testified: "*[o]ur mission in Mongbwalu was to shoot at anything that moved*".<sup>858</sup> **NTAGANDA**'s intention is further evidenced by the very nature of the material acts establishing that there was indeed an attack on the civilian population.

309. During the course of the First Attack, the UPC made civilians or individuals not

<sup>853</sup> **P-768**:[T-33-CONF-ENG-CT](#),52:9-16,53:3-18,54:8-17; **P-907**:[T-90-CONF-ENG-CT](#),37:18-39:14.

<sup>854</sup> **P-907**:[T-90-CONF-ENG-CT](#),8:12-18,8:23-9:19.

<sup>855</sup> **P-907**:[T-90-CONF-ENG-CT](#),33:12-36:24.

<sup>856</sup> **P-17**:[T-58-CONF-ENG-CT](#),70:12-73:7;[T-59-CONF-ENG-CT](#),4:18-5:19.

<sup>857</sup> **P-963**:[T-78-CONF-ENG-ET](#),73:3-9.

<sup>858</sup> **P-963**:[T-78-CONF-ENG-ET](#),81:20-22.

taking a direct part in the hostilities, the object of attack.<sup>859</sup> The following facts described under counts 1/2 (murder and attempted murder), as well as those facts underlying counts 4/5 (rape), 11 (pillaging), 17 (attacking protected objects), 18 (destroying the enemy's property),<sup>860</sup> 12/13 forcible transfer and forcible deportation) and 10 (persecution), establish the second element of the war crime of attacking civilians.

*4. Forcible transfer of population and displacement of civilians (Article 7(1)(d) and Article 8(2)(e)(viii)) - Counts 12 and 13*<sup>861</sup>

310. The crime against humanity of deportation or forcible transfer of population requires that the perpetrator forcibly transferred, without grounds permitted under international law, one or more persons to another location, by expulsion or other coercive acts. Such person or persons must have been lawfully present in the area from which they were transferred.<sup>862</sup>

311. It is not necessary to prove that the population was actually targeted or physically harmed. The Statute and Elements of Crimes make clear that the term "forcibly" is not restricted to physical force but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power or by taking advantage of a coercive environment.<sup>863</sup> The perpetrator may commit one or more different conducts which can amount to "expulsion or other coercive acts", so as to produce the effect to deport or forcibly transfer the victim from the area where he or she is lawfully present.<sup>864</sup> Accordingly, where civilians become aware of an imminent UPC assault and flee, especially in the context of a widespread or systematic attack against a civilian population, there is a clear link between the

<sup>859</sup> ICC-01/04-02/06-309, para. 48.

<sup>860</sup> ICC-01/04-02/06-309, para. 48.

<sup>861</sup> This section concerns the crimes committed in or around Mongbwalu and Nzebi.

<sup>862</sup> Elements of Crimes, article 7(1)(d).

<sup>863</sup> Statute, articles 7(1)(d) and 7(2)(d); Elements of Crimes, article 7(1)(d), fn. 12.

<sup>864</sup> *Ruto/Sang DCC*, para. 244-245.

displacement or forcible transfer and the assault. Non-Hema civilians, aware of the UPC's pattern of criminal conduct and the context of the ethnic war, fled as a result of their legitimate fear that they would be targeted and become victims of the UPC's crimes, in the same way non-Hema civilians had been victimised by the UPC in previous assaults.

312. For the purposes of displacing civilians, the conduct by which the perpetrator(s) force(s) civilians to leave a certain area is not limited to an order.<sup>865</sup> As Pre-Trial Chamber II held, if this were the case, *“the actual circumstances of civilian displacement in the course of an armed conflict would be unduly restricted. [...] This is specifically reflected in the general introduction to the Elements of Crimes, which states that ‘[t]he elements [...] apply “mutatis mutandis” to all those whose criminal responsibility may fall under articles 25 and 28 of the Statute’.”*<sup>866</sup>

313. **NTAGANDA**, the most senior military commander on the ground, ordered his subordinates to target and eliminate the non-Hema civilians of Banyali-Kilo.<sup>867</sup> As a result of his orders, UPC soldiers shot at fleeing men, women and children<sup>868</sup> and those who could not flee or who returned to their homes were executed.<sup>869</sup> This evidence confirms that **NTAGANDA** issued an order to cleanse the area of its non-Hema population.

314. As a result of the UPC military assault in late 2002 and early 2003, including the assaults on the Banyali-Kilo and the Walendu-Djatsi *collectivités*, P-315 estimates that *“over 140,000 people were displaced”*.<sup>870</sup> Thousands of civilians were forced to

<sup>865</sup> Elements of Crimes, article 8(2)(e)(viii).

<sup>866</sup> ICC-01/04-02/06-309, para. 64.

<sup>867</sup> **P-963**:[T-78-CONF-ENG-ET](#),70:7-25,72:25-73:9,74:17-75:7,77:15-18,81:12-22[[T-78-CONF-FRA-ET](#),72:12-73:5]; **P-768**:[T-33-CONF-ENG-CT](#),37:2-16,52:9-54:17; **P-907**:[T-90-CONF-ENG-CT](#),8:1-9:19; **P-17**:[T-58-CONF-ENG-CT](#),70:7-73:7,73:8-74:19;[T-59-CONF-ENG-CT](#),4:18-5:19.

<sup>868</sup> **P-963**:[T-78-CONF-ENG-ET](#),79:5-13,84:7-85:14;[T-79-CONF-ENG-ET](#),13:25-14:4,14:15-16:8; **P-17**:[T-58-CONF-ENG-CT](#),67:20-68:5,73:8-79:18;[T-59-CONF-ENG-CT](#),7:19-9:15; **P-768**:[T-33-CONF-ENG-CT](#),44:14-46:5,47:22-48:25,50:24-51:7,58:22-59:4;[DRC-OTP-2058-0664-R02](#); **P-907**:[T-90-CONF-ENG-CT](#),33:12-36:24; **P-888**:[T-105-CONF-ENG-CT](#),79:13-81:5; **P-800**:[T-68-CONF-ENG-ET](#),31:7-24.

<sup>869</sup> See Section VII.A.5.

<sup>870</sup> [DRC-OTP-0074-0628](#),p.0668; **P-315**:[DRC-OTP-2058-0990](#),p.0994-1016.

stay in the forests and the bush, as the roads were not safe.<sup>871</sup>

#### a. Mongbwalu

315. The evidence shows that during the First Attack, UPC soldiers forcibly evicted the civilian population from Mongbwalu. Due to its strategic importance, particularly in terms of the gold market, the UPC's goal was to provide security for the mostly Hema traders and *"to drive out the Lendu or eliminate all of them"*.<sup>872</sup>

316. As a result of the assault on Mongbwalu, mostly Lendu civilians were forced to leave the area and to take refuge in the surrounding villages.<sup>873</sup> Eyewitnesses met by P-315 stated that thousands of civilians fled to Sayo during the Mongbwalu attack.<sup>874</sup> As they left, some of these civilians were shot at and injured by machete.<sup>875</sup> Displaced civilians were forced to live in the bush *"de façon quasi permanente [...] dans l'insécurité la plus complète"*.<sup>876</sup> These displaced civilians would have been killed had they attempted to return to their homes.<sup>877</sup> P-39, a Lendu, stated: *"[a]ll the Lendu fled because they knew that if the Hema militiamen found them, they would have no pity and they would kill them immediately"*.<sup>878</sup> Many civilians died on their way to safer territories. Others were killed at UPC roadblocks.<sup>879</sup>

317. NTAGANDA claimed that, when the UPC attacked Mongbwalu, there were no

<sup>871</sup> *Ibid.*

<sup>872</sup> **P-963:T-78-CONF-ENG-ET**,73:3-9,75:4-7; **P-17:T-58-CONF-ENG-CT**,53:21-55:3,57:8-58:3[**T-58-CONF-FRA-CT**,52:9-53:15,55:20-56:12]; **P-16:DRC-OTP-2054-1625**,p.1641:22-23.

<sup>873</sup> **P-19:T-115-CONF-ENG-CT**,16:4-5],17:7-18:5; **P-805:T-25-CONF-ENG-CT**,30:24-31:9; **T-25Bis-CONF-ENG-CT**,2:20-3:25,4:22-5:15,6:13-21,8:22-9:1,10:4-8,10:17-11:8; **T-26-CONF-ENG-CT**,26:22-30:25; **P-300:T-166-CONF-ENG-ET**,29:5-30:17; **P-863:T-180-CONF-ENG-ET**,9:21-24,11:23-12:12; **P-907:T-90-CONF-ENG-CT**,35:13-22; **P-963:T-78-CONF-ENG-ET**,79:23-81:33;**T-79-CONF-ENG-ET**,17:1-10; **P-55:T-70-CONF-ENG-CT**,95:17-96:11; **P-901:T-29-CONF-ENG-CT**,8:24-9:10; **DRC-OTP-0074-0628**,p.0665; **DRC-OTP-0074-0797**,p.0828.

<sup>874</sup> **P-315:DRC-OTP-2058-0990**,p.1015,para.136.

<sup>875</sup> **P-19:T-115-CONF-ENG-CT**,17:20-18:25; **P-800:T-68-CONF-ENG-ET**,21:16-22:24,26:13-29:17.

<sup>876</sup> **P-22:DRC-OTP-0104-0026**,p.0030,paras.22-23.

<sup>877</sup> **P-907:T-90-CONF-ENG-CT**,50:8-51:18; **P-963:T-79-CONF-ENG-ET**,15:22-16:9,22:16-19; **DRC-OTP-0074-0628**,p.0666.

<sup>878</sup> **P-39:DRC-OTP-2062-0244-R02**,p.0249,para.19.

<sup>879</sup> **DRC-OTP-0074-0628**,p.0666.

civilians left in the town.<sup>880</sup> Yet, numerous victims testified to their forced displacement as a direct result of the UPC attack.<sup>881</sup> P-887 fled from Mongbwalu when the UPC attacked the first time as a result of heavy fighting.<sup>882</sup> She later returned, and then fled again when they attacked a second time.<sup>883</sup>

318.P-103 was in Mongbwalu when he heard the UPC attack the villages of Pili Pili and Pluto, north of Mongbwalu, with guns and mortars. The men decided to send the majority of the women, children and elderly people to the surrounding forests, while they would stay to keep their goods. When the UPC attacked Mongbwalu airport, in the East, he and many other civilians fled towards Kobu. He walked for two days through the forest with his pregnant wife, four young children and other family members before reaching the village.<sup>884</sup>

319.P-894 fled from Mongbwalu with his family when the UPC attacked, because *“if you stayed behind and the Hema found you, you would be killed”*.<sup>885</sup> P-850 also fled the town on both occasions when the UPC attacked in November/December 2002.<sup>886</sup> As they left the town, he recalled that most of the people fleeing were Lendu civilians.<sup>887</sup> P-859 and his sister fled Mongbwalu when bombs fired by the UPC landed on their houses.<sup>888</sup> P-912 ran when the UPC attacked, and was separated from her mother and sister.<sup>889</sup>

320.Civilians who managed to flee to the bush lived in dire conditions. When he fled from Sayo, P-886 stayed in the bush near a river for three days: *“We had*

<sup>880</sup> [D-300:T-213-CONF-ENG-CT](#),15:13-18;[T-217-CONF-ENG-ET](#),36:16-23.

<sup>881</sup> [P-815:T-76-CONF-ENG-CT](#),12:8-23,15:22-16:21; [P-886:T-36-CONF-ENG-CT](#),70:17-71:7;[T-37-CONF-ENG-ET](#),5:11-24,9:3-10:6,12:4-18;[T-39-CONF-ENG-CT](#),24:6-18; [P-39:DRC-OTP-0104-0015-R03](#),p.0019,paras.21,23; [DRC-OTP-2062-0244-R02](#),p.0249-0250,paras.17,19-21,24; [P-805:T-25Bis-CONF-ENG-CT](#),3:4-4:3,5:10-13,6:13-21,8:22-9:1,10:17-11:8.

<sup>882</sup> [P-887:T-93-CONF-ENG-CT](#),12:8-13:23.

<sup>883</sup> [P-887:T-93-CONF-ENG-CT](#),14:19-15:1,18:10-19:7.

<sup>884</sup> [P-103:DRC-OTP-0104-0170-R02](#),p.0173-0175,paras.16-25.

<sup>885</sup> [P-894:DRC-OTP-2076-0194-R02](#),p.0200,para.33.

<sup>886</sup> [P-850:DRC-OTP-2067-1825](#),p.1827,paras.17-18,p.1829-1830,paras.31-32.

<sup>887</sup> [P-850:DRC-OTP-2067-1825](#),p.1830,para.33.

<sup>888</sup> [P-859:T-51-CONF-ENG-CT](#),15:12-17:24.

<sup>889</sup> [REDACTED].



*nothing to eat, there was no water to drink, we didn't have any fire and [...] it was raining [...] -- we had no shelter. We were under the trees. That's all we had for shelter".*<sup>890</sup> P-805, who also fled the UPC's assault on Mongbwalu, testified that the fleeing civilians *"were suffering tremendously"*.<sup>891</sup>

321. Following the UPC takeover of Mongbwalu, Commander SALONGO recorded that there had been a *"period of massive deportation of the local population."*<sup>892</sup> When confronted with this UPC document, NTAGANDA implausibly claimed that the population had left because they *"had been taken hostage by the combatants"*, meaning the APC.<sup>893</sup>

322. However, video evidence taken three days after the attack shows Mongbwalu, a normally densely populated town, deserted by its inhabitants<sup>894</sup> and confirms that the civilian population had fled as a result of the UPC's assault. In KISEMBO's words: *"les habitants, [...] ils s'étaient enfuis très loin à cause de la peur"*.<sup>895</sup>

323. The UPC also shot at the civilian population as it fled Mongbwalu and Sayo.<sup>896</sup> P-800 was among civilians being shot at while fleeing.<sup>897</sup> P-17 saw civilians being killed by the UPC, including an old unarmed man and a young girl.<sup>898</sup>

324. In a discussion with NTAGANDA's commanders, which was filmed at the *Appartements* three days after the UPC's capture of the town, KASANGAKI, one of the commanders involved in the fighting, states: *"[q]uand les gens prenaient la fuite, on tirait sur eux, ils se couchaient par terre, et puis ils se relevaient et continuaient*

<sup>890</sup> [P-886:T-37-CONF-ENG-ET](#),12:5-18[[T-37-CONF-FRA-ET](#),12:15-19].

<sup>891</sup> [P-805:T-25Bis-CONF-ENG-CT](#),3:4-4:3,5:10-13,6:13-21,8:22-9:1,10:17-11:8.

<sup>892</sup> [DRC-OTP-0092-0541](#); [DRC-OTP-0091-0709](#).

<sup>893</sup> [D-300:T-235-CONF-ENG-CT](#),71:1-73:5.

<sup>894</sup> [DRC-OTP-2058-0251](#),00:14:10-00:16:10.

<sup>895</sup> [DRC-OTP-2058-0251](#),00:53:34-00:54:32(transl.[DRC-OTP-2102-3766](#),p.3789:776-3790:787); *See also* 00:10:17-00:10:45(transl.[DRC-OTP-2102-3766](#),p.3773:167-175).

<sup>896</sup> [P-17:T-58-CONF-ENG-CT](#),70:12-73:7;[T-59-CONF-ENG-CT](#),4:18-5:19.

<sup>897</sup> [P-800:T-68-CONF-ENG-ET](#),31:7-24.

<sup>898</sup> [P-17:T-61-CONF-ENG-ET](#),70:16-24.



à s'enfuir". Moments later, referring to a line of women and children, NTAGANDA can be heard saying: "[c]elui qui n'a pas trouvé la mort en ce moment-là, il a pris la fuite en débandade".<sup>899</sup>

#### b. Nzebi

325. Civilians were displaced from Nzebi during the First Attack by the UPC soldiers. [REDACTED].<sup>900</sup>

326. In Banyali-Kilo, civilians fled in all directions as the UPC progressed in its assault: from Pluto to Mongbwalu, from Mongbwalu to Sayo and Nzebi, and towards Kilo. From Kilo, thousands, fled to the *collectivité* of Walendu-Djatsi.<sup>901</sup> Among them were Witnesses P-39,<sup>902</sup> P-300<sup>903</sup> and P-805.<sup>904</sup>

327. NTAGANDA ordered his troops to fire upon fleeing civilians. When two Lendu civilians tried to return to their houses in Nzebi, NTAGANDA ordered his bodyguards to shoot and kill them.<sup>905</sup>

328. There was no justification for this displacement and forcible transfer of civilians. The non-Hema civilians who were chased away were lawfully present in the Banyali-Kilo *collectivité*. NTAGANDA intended to remove them in order to control the region and exploit its natural resources.

329. The civilians who fled from Nzebi during the First Attack would have been

<sup>899</sup> [DRC-OTP-2058-0251](#),00:46:00-00:48:20(transl.[DRC-OTP-2102-3766](#),p.3786:666-3787:698). See also **D-300**:[T-235-CONF-ENG-CT](#),74:6-80:13.

<sup>900</sup> [REDACTED].

<sup>901</sup> [DRC-OTP-0074-0797](#),p.0828; [DRC-OTP-0074-0628](#),p.0664-0665; **P-22**:[DRC-OTP-0104-0026](#),p.0030,para.22; **P-315**:[DRC-OTP-2058-0990](#),p.1015,para.136; **P-963**:[T-79-CONF-ENG-ET](#),17:1-10; **V-3**:[T-203-CONF-ENG-ET](#),14:17-23;[T-203-CONF-ENG-ET](#),100:25-101:7; **P-792**:[T-150-CONF-ENG-ET](#),45:23-47:23.

<sup>902</sup> **P-39**:[DRC-OTP-0104-0015-R03](#),p.0019,paras.21,23.

<sup>903</sup> **P-300**:[T-166-CONF-ENG-ET](#),29:5-30:17.

<sup>904</sup> **P-805**:[T-25-CONF-ENG-CT](#),30:24-31:9; [T-25Bis-CONF-ENG-CT](#),2:20-3:25,4:22-5:15,6:13-21,8:22-9:1,10:4-8,10:17-11:8; [T-26-CONF-ENG-CT](#),26:22-30:25.

<sup>905</sup> [REDACTED].

killed had they attempted to return to their houses.<sup>906</sup>

**5. Murder and attempted murder (Article 7(1)(a) and 8(2)(c)(i)) - Counts 1 and 2<sup>907</sup>**

330.Both the war crime and crime against humanity of murder require that the perpetrator must have killed one or more persons.<sup>908</sup> Additionally, the war crime of murder requires such person or persons to be *hors de combat*, civilians, medical personnel, or religious personnel taking no active part in the hostilities.<sup>909</sup>

331.NTAGANDA and the troops under his command murdered large numbers of non-Hema civilians during and in the aftermath of the assault on the Banyali-Kilo collectivité. P-315, an NGO researcher who conducted fact finding missions shortly after the attack on Mongbwalu and spoke to dozens of eyewitnesses and victims of crimes committed by NTAGANDA's troops, documented at least 200 cases of civilians killed as a result of the assault on Banyali-Kilo.<sup>910</sup>

332.NTAGANDA's testimony that he did not witness a single murder and only saw one dead body, in Sayo,<sup>911</sup> lacks any credibility in light of overwhelming evidence that the UPC committed murder on a large scale during and after the First Attack.

**a. Pluto**

333.The killing of civilians started as soon as NTAGANDA's troops arrived in the *collectivité*, via the North and the East. One eyewitness met by Witness P-315 stated:

<sup>906</sup> [REDACTED]; **P-907**:[T-90-CONF-ENG-CT](#),50:8-51:18; **P-963**:[T-79-CONF-ENG-ET](#),15:22-16:9,22:16-19; [DRC-OTP-0074-0628](#),p.0666.

<sup>907</sup> This section concerns the crimes committed in or around Pluto, Mongbwalu, Sayo, Nzebi, and Kilo.

<sup>908</sup> Elements of Crimes, articles 7(1)(a) and 8(2)(c)(i)-1.

<sup>909</sup> Elements of Crimes, article 8(2)(c)(i)-1.

<sup>910</sup> [DRC-OTP-0074-0797](#),p.0829.

<sup>911</sup> **D-300**:[T-235-CONF-ENG-CT](#),80:14-83:7;[T-237-CONF-ENG-ET](#),9:11-10:2.

*I fled from Pluto and ran to Mongbwalu [...] As I was running I saw people being hit by bullets. Women and children were falling. Some people did not run and hid in their houses in Pluto. I heard afterwards that these people were all slaughtered.*<sup>912</sup>

334. Another eyewitness stated: *“The UPC arrived in Pluto at about 9:00 am... If they caught someone they would ask them their tribe. If they were not their enemies they would let them go. They killed the ones who were Lendu”*.<sup>913</sup>

335. In Beba,<sup>914</sup> Witness V-2 saw a UPC soldier brandishing the head of a young Lendu man on his knife and shouting: *“we have decapitated a Lendu”*.<sup>915</sup> UPC troops then arrested her and other fleeing civilians. After separating the women from the men, they raped seven women<sup>916</sup> and killed the men, including V-2’s husband, by crushing their heads with clubs because they refused to join the UPC.<sup>917</sup>

#### **b. Mongbwalu**

336. Around the same time, UPC troops killed civilians as they advanced towards Mongbwalu.<sup>918</sup> Military insider P-963, [REDACTED], confirmed: *“we fired at everyone and then we would come across bodies”*.<sup>919</sup> Among these bodies, P-963 saw women, children and elderly people.<sup>920</sup> Those who could not flee were eliminated.<sup>921</sup> P-768 also witnessed many killings and saw many bodies on the side of the roads of Mongbwalu.<sup>922</sup> P-800, [REDACTED] in Sayo when the UPC

<sup>912</sup> [DRC-OTP-0074-0797](#),p.0828; **P-315**:[DRC-OTP-2058-0990](#),p.0994,para.23; **P-887**:[T-93-CONF-ENG-CT](#),14:19-15:7; **P-300**:[T-166-CONF-ENG-ET](#),29:5-21; **P-886**:[T-39-CONF-ENG-CT](#),86:12-21; **P-768**:[T-33-CONF-ENG-CT](#),30:23-31:16; **P-894**:[DRC-OTP-2076-0194-R02](#),p.0200,para.32.

<sup>913</sup> [DRC-OTP-0074-0628](#),p.0664.

<sup>914</sup> Beba is situated at two kilometers from Pluto (see **V-2**:[T-202-CONF-ENG-CT](#),22:24-23:3).

<sup>915</sup> **V-2**:[T-202-CONF-ENG-CT](#),16:10-18:4,21:20-22:1,24:3-8,32:1-5.

<sup>916</sup> **V-2**:[T-202-CONF-ENG-CT](#),17:24-18:9,21:23-22:23,24:16-27:2,32:6-13,32:17-34:12.

<sup>917</sup> **V2**:[T-202-CONF-ENG-CT](#),28:5-30:4,32:14-16,35:2-7.

<sup>918</sup> **P-963**:[T-78-CONF-ENG-ET](#),84:7-85:15; **P-888**:[T-105-CONF-ENG-CT](#),79:13-81:5; **V-2**:[T-202-CONF-ENG-CT](#),13:5-16:9,18:10-19:1,31:12-25; **P-886**:[T-37-CONF-ENG-ET](#),7:2-19; [DRC-OTP-0074-0628](#),p.0665.

<sup>919</sup> **P-963**:[T-78-CONF-ENG-ET](#),84:7-8.

<sup>920</sup> **P-963**:[T-78-CONF-ENG-ET](#),79:5-13,84:7-85:15.

<sup>921</sup> **P-963**:[T-78-CONF-ENG-ET](#),84:7-85:15; **P-907**:[T-90-CONF-ENG-CT](#),33:12-36:24.

<sup>922</sup> **P-768**:[T-33-CONF-ENG-CT](#),34:22-35:5,41:18-44:25,58:22-59:4;[DRC-OTP-2058-0664-R02](#); **P-894**:[DRC-OTP-2076-0194-R02](#),p.0201,para.38; **P-887**:[T-93-CONF-ENG-CT](#),14:3-15; **P-892**:[T-85-CONF-ENG-CT](#),16:24-17:14.

attacked Mongbwalu, [REDACTED] many civilians hit by bullets or fragments of rockets.<sup>923</sup> Among them were three severely wounded Lendu civilians who had been shot at while fleeing.<sup>924</sup>

337. **NTAGANDA** filmed the attack.<sup>925</sup> [REDACTED].<sup>926</sup>

338. No distinction was made between civilians or soldiers. Witnesses P-907, P-768, P-10, P-963 and P-17, who all participated in the assault on Mongbwalu as part of different units, confirmed this: *“it was clear right from the beginning that the Lendu was a sworn enemy and that if one saw a Lendu they should be killed”*;<sup>927</sup> **NTAGANDA** *“didn’t make a difference between [...] Lendu civilians and the militia. He spoke about Lendus, only Lendus, and everybody had to assess that in their own way”*;<sup>928</sup> *“[t]here were no good Lendus”*;<sup>929</sup> *“the Lendu were considered as the enemy of the UPC”*;<sup>930</sup> *“all the Lendu, whether man or woman. When they were part of the ethnic group called Lendu it was considered as an enemy of the UPC, including children”*;<sup>931</sup> *“[w]hen you come across the enemy, you must hit him. That was the only order that was given to us”*.<sup>932</sup>

339. **NTAGANDA** also armed Hema civilians to participate in the assault and kill the Lendu.<sup>933</sup> P-907 and P-17 saw Hema civilians who participated in the Mongbwalu assault with machetes, spears and knives.<sup>934</sup> P-892 witnessed the murder of a Lendu man by a Hema civilian in Mongbwalu. The man had come

<sup>923</sup> **P-800**:[T-68-CONF-ENG-ET](#),22:4-7,24:10-17,26:13-28:17.

<sup>924</sup> **P-800**:[T-68-CONF-ENG-ET](#),22:4-24:9.

<sup>925</sup> **P-17**:[T-58-CONF-ENG-CT](#),70:7-71:3; **P-768**:[T-33-CONF-ENG-CT](#),39:25-41:4.

<sup>926</sup> [REDACTED].

<sup>927</sup> **P-907**:[T-90-CONF-ENG-CT](#),51:15-16.

<sup>928</sup> **P-768**:[T-33-CONF-ENG-CT](#),37:2-16.

<sup>929</sup> **P-963**:[T-79-CONF-ENG-ET](#),16:9.

<sup>930</sup> **P-17**:[T-59-CONF-ENG-CT](#),7:10.

<sup>931</sup> **P-17**:[T-59-CONF-ENG-CT](#),62:17-63:3.

<sup>932</sup> **P-10**:[T-47-CONF-ENG-CT](#),10:6-18.

<sup>933</sup> **P-768**:[T-33-CONF-ENG-CT](#),34:22-35:5,41:18-44:2; **P-17**:[T-58-CONF-ENG-CT](#),58:17-59:1;[T-59-CONF-ENG-CT](#),9:16-13:1; **P-907**:[T-90-CONF-ENG-CT](#),8:1-12:21,17:13-16,18:22:19:3,27:18-28:9,33:5-34:10; **P-898**:[T-154-CONF-ENG-ET](#),13:6-14:22,34:10-36:12; **P-55**:[T-70-CONF-ENG-CT](#),95:1-98:19;[T-74-CONF-ENG-CT](#),91:3-92:23; **P-2**:[T-170-CONF-ENG-ET](#),61:2-66:1.

<sup>934</sup> **P-907**:[T-90-CONF-ENG-CT](#),11:13-12:20; **P-17**:[T-58-CONF-ENG-CT](#),78:19-79:3.

out of his hiding place because he was hungry. After a group of UPC soldiers and Hema civilians pursued and captured him, a Hema civilian struck him on the head with a machete, killing him instantly.<sup>935</sup>

340.P-315 met a witness who described the UPC's assault as follows:

*There were two groups of Hema militia: one with firearms, the other with machetes, spears, and [knives]. The second group was killing civilians who hadn't fled. The victims were Lendu and Jajabo. [...] They slashed them with machetes and killed them.*<sup>936</sup>

341.As UPC troops advanced through Mongbwalu, they conducted house-by-house searches. Anyone attempting to flee was shot.<sup>937</sup> P-315 met eyewitnesses and victims who confirmed that **NTAGANDA's** troops went from house to house to identify Lendu. They "tested" them by asking their parents' names, their region of origin, language abilities, and other similar questions. Those who were considered to be Lendu were executed.<sup>938</sup> [REDACTED], P-877 saw two Lendu men being ordered to strip down naked, tied up and taken away to a river by UPC soldiers carrying hammers. He later heard them crying and shouting and never saw them again.<sup>939</sup> P-912 saw two Lendu boys captured by UPC troops in the streets of Mongbwalu. She later found their dead bodies lying on the ground.<sup>940</sup> P-887's Hema father was abducted and killed by UPC soldiers. They had called him a traitor because he had stayed in Mongbwalu when the Lendu occupied the town.<sup>941</sup> Many other civilians were abducted by UPC soldiers and never seen again.<sup>942</sup>

<sup>935</sup> [P-892:T-85-CONF-ENG-CT](#),13:1-14:19.

<sup>936</sup> [DRC-OTP-0074-0797](#),p.0829; [P-315:DRC-OTP-2058-0990](#),p.0994,para.23.

<sup>937</sup> [P-907:T-90-CONF-ENG-CT](#),33:12-36:24; [P-17:T-58-CONF-ENG-CT](#),70:7-73:7,67:20-69:6,73:8-74:19;[T-59-CONF-ENG-CT](#),4:18-5:19; [P-963:T-78-CONF-ENG-ET](#),79:5-13,84:7-85:14;[T-79-CONF-ENG-ET](#),13:25-14:4;14:15-16:8; [P-898:T-154-CONF-ENG-ET](#),13:6-14:22,34:10-36:12; [P-888:T-105-CONF-ENG-CT](#),79:13-81:5; [P-894:DRC-OTP-2076-0194-R02](#),p.0201,para.38.

<sup>938</sup> [P-315:DRC-OTP-2058-0990](#),pp.1013-1014,paras.129-131.

<sup>939</sup> [P-877:DRC-OTP-2069-2086-R03](#),pp.2088-2089,paras.11-15;[DRC-OTP-2069-2095](#).

<sup>940</sup> [P-912:T-148-CONF-ENG-ET](#),61:16-62:17,66:8-21; [P-892:T-85-CONF-ENG-CT](#),8:1-2.

<sup>941</sup> [P-887:T-93-CONF-ENG-CT](#),19:15-21:18.

<sup>942</sup> [P-892:T-85-CONF-ENG-CT](#),14:20-16:7,16:8-23.

342. After the attack, NTAGANDA ordered that anti-personnel landmines be placed around Mongbwalu. These mines killed and wounded many civilians who were attempting to leave Mongbwalu.<sup>943</sup> NTAGANDA claimed that the UPC did not use any anti-personnel mines, because “*it was forbidden to use such mines*”.<sup>944</sup> However, his own communications logbook shows otherwise. Indeed, on 5 December 2002, SALONGO sent NTAGANDA a request for mines to place on the road from Kilo to Kobu.<sup>945</sup> NTAGANDA responded just hours later, asking: “*CONCERNANT LES MINES JE DEMANDE SI CE SONT DES MINES ANTIPERSONNEL OU POUR LES VEHICULES*”.<sup>946</sup> NTAGANDA’s explanation that he asked this because KISEMBO disposed of a box of antipersonnel mines in Bunia,<sup>947</sup> despite his claim that such weapons were forbidden and were not being used by the UPC, simply defies logic. NTAGANDA’s testimony is further contradicted by evidence that the UPC did, in fact, use anti-personnel mines.<sup>948</sup>

343. UPC troops arrested many Lendu civilians and held them captive at the *Appartements*.<sup>949</sup> These civilians were interrogated and often executed.<sup>950</sup> P-17 testified that for a Lendu who had been taken prisoner, “*there was a 99 percent chance he would be killed*”.<sup>951</sup> He saw Lendu prisoners being taken to the prison in his camp and heard soldiers of the UPC’s *Bureau 2* (military intelligence) being ordered to execute Lendu prisoners at the “FOREN” – the morning and

<sup>943</sup> [P-768:T-33-CONF-ENG-CT](#),59:15-21,65:11-67:10;[T-35-CONF-ENG-CT](#),71:14-76:25.

<sup>944</sup> [D-300:T-218-CONF-ENG-CT](#),39:18-41:4.

<sup>945</sup> [DRC-OTP-0017-0033](#),p.0041(first)(transl.[DRC-OTP-2102-3854](#),p.3863).

<sup>946</sup> [DRC-OTP-0017-0033](#),p.0209(first)(transl.[DRC-OTP-2102-3854](#),p.4031).

<sup>947</sup> [D-300:T-218-CONF-ENG-CT](#),39:18-41:4;[T-226-ENG-CT](#),84:25-88:16,90:5-19.

<sup>948</sup> [DRC-OTP-0017-0033](#),p.0112(first)(transl.[DRC-OTP-2102-3854](#),p.3934), containing a request for “MINES ANTI PERS”; [DRC-OTP-0074-0797](#),p.0823; [P-907:T-89-CONF-ENG-CT](#),69:3-70:2,72:2-10,74:15-22; [P-17:T-58-CONF-ENG-CT](#),24:5-8; [P-769:T-120-CONF-ENG-ET](#),68:25-69:3; [P-963:T-78-CONF-ENG-ET](#),57:20-58:14.

<sup>949</sup> [P-315:DRC-OTP-2058-0990](#),p.1014,paras.129-132; [P-17:T-59-CONF-ENG-CT](#),21:5-25:3; [P-963:T-79-CONF-ENG-ET](#),21:19-22:19; [P-907:T-90-CONF-ENG-CT](#),33:12-34:25; [P-898:T-154-CONF-ENG-ET](#),18:18-21:21; [P-768:T-33-CONF-ENG-CT](#),55:8-56:25;[T-35-CONF-ENG-CT](#),60:24-67:2.

<sup>950</sup> [P-17:T-59-CONF-ENG-CT](#),21:5-25:3; [P-963:T-79-CONF-ENG-ET](#),21:19-22:19; [P-907:T-90-CONF-ENG-CT](#),33:12-34:25; [P-898:T-154-CONF-ENG-ET](#),18:18-21:21; [P-768:T-33-CONF-ENG-CT](#),55:8-56:25;[T-35-CONF-ENG-CT](#),60:24-67:2; [P-887:T-93-CONF-ENG-CT](#),33:1-34:11; [DRC-OTP-0074-0797](#),p.0829.

<sup>951</sup> [P-17:T-63-CONF-ENG-ET](#),50:19-23; *See also* [DRC-OTP-0074-0628](#),p.0668.

afternoon roll calls. These soldiers would then leave towards the prison.<sup>952</sup>

344.[REDACTED] witnessed the execution of prisoners [REDACTED], NTAGANDA would often come [REDACTED] at night and take prisoners away. These prisoners did not return.<sup>953</sup> One night, NTAGANDA ordered [REDACTED] to take two prisoners out and tie them up. The prisoners were then taken outside the camp and beaten up by UPC soldiers and NTAGANDA's bodyguards. One UPC soldier "finished" the prisoners using his bayonet. NTAGANDA was present when these two prisoners were murdered.<sup>954</sup>

345.Like [REDACTED], [REDACTED] often saw Lendu prisoners being taken to the *Appartements* camp. He would later hear gunfire from behind the camp. The soldiers said that they were "*cleaning up the dirt*", meaning the Lendu, and used the phrase: "[a] good Lendu is a dead Lendu".<sup>955</sup> An eyewitness met by P-315 saw fresh graves around the *Appartements*.<sup>956</sup> After 2002, human remains have regularly been found at the *Appartements*.<sup>957</sup>

346.One of the captured and murdered civilians was a priest from Mongbwalu. At the time of the First Attack, Abbé Boniface BWANALONGA ("BWANALONGA") was a 70 year-old Ngiti<sup>958</sup> who, together with another priest,<sup>959</sup> served as a Catholic priest at the Mongbwalu parish.<sup>960</sup> When the UPC attacked Mongbwalu, the other priest fled to Sayo,<sup>961</sup> but BWANALONGA, who

<sup>952</sup> [P-17:T-59-CONF-ENG-CT](#),36:17-37:18,38:2-7.

<sup>953</sup> [REDACTED].

<sup>954</sup> [REDACTED].

<sup>955</sup> [REDACTED]; [DRC-OTP-0074-0628](#),p.0668.

<sup>956</sup> [DRC-OTP-0074-0628](#),p.0666.

<sup>957</sup> [P-894:DRC-OTP-2076-0194-R02](#),p.0204-0205,para.50.

<sup>958</sup> [DRC-OTP-0127-0118](#),p.0119,para.11; [P-894:DRC-OTP-2076-0194-R02](#),p.0204,para.48; [P-859:T-51-CONF-ENG-CT](#),34:14-35:8; [DRC-OTP-2058-0251](#)(transl.[DRC-OTP-2102-3766](#),p.3798:1122-1125).

<sup>959</sup> [REDACTED]. See [DRC-OTP-0127-0118](#),p.0118,para.5; [DRC-OTP-2058-0251](#)(transl.[DRC-OTP-2102-3766](#),p.3798:1119-1121).

<sup>960</sup> [DRC-OTP-0127-0118](#),p.0118,para.5.

<sup>961</sup> [DRC-OTP-0127-0118](#),p.0118,para.7; [DRC-OTP-2058-0251](#)(transl.[DRC-OTP-2102-3766](#),p.3798:1116-1121).



was too old and weak to flee, stayed behind.<sup>962</sup>

347. On 25 November 2002,<sup>963</sup> the UPC arrested BWANALONGA at the parish and took him, as well as three nuns and two cooks to the *Appartements*.<sup>964</sup> There, NTAGANDA interrogated BWANALONGA while beating him with a piece of wood.<sup>965</sup> When he was done, NTAGANDA ordered his bodyguards to take BWANALONGA outside and shot him several times.<sup>966</sup> [REDACTED]. NTAGANDA also ordered the murder of the three nuns, who were locked in a room at the *Appartements*.<sup>967</sup> However, they were liberated on 28 November 2002.<sup>968</sup> [REDACTED] later learnt that NTAGANDA's bodyguards had raped the nuns.<sup>969</sup>

348. After murdering BWANALONGA, NTAGANDA instructed his bodyguards to throw the priest's body behind the *Appartements*, where it was buried the next day.<sup>970</sup> In 2013, BWANALONGA's body was found and exhumed at the *Appartements*. It was subsequently re-buried at the Catholic church.<sup>971</sup>

349. NTAGANDA denied committing this murder.<sup>972</sup> In doing so, he: (i) concocted a counter-narrative by distorting the evidence against him; (ii) tried to shift the blame to someone else while, once again, portraying himself in a favourable

<sup>962</sup> [DRC-OTP-0127-0118](#),p.0118,paras.6-7 and fn.4; **P-859**:[T-51-CONF-ENG-CT](#),34:14-35:8.

<sup>963</sup> [DRC-OTP-0127-0118](#),pp.0118-0119,paras.8-9; [DRC-OTP-0074-0628](#),p.0669-0670.

<sup>964</sup> [DRC-OTP-0127-0118](#),pp.0118-0119,paras.8-9 and fn.6(this document only refers to two nuns, namely “*deux soeurs de la Charité Maternelle [...] [REDACTED]*”). The third nun taken by the UPC belonged to the other religious community of the *Servantes de Dieu*. See [DRC-OTP-2058-0251](#)(transl.[DRC-OTP-2102-3766](#),p.3794:936: “*L'une est des nôtres, de notre communauté*”); [DRC-OTP-0074-0628](#),p.0669-0670; **P-315**:[DRC-OTP-2058-0990](#),p.1014-1015,para.134; **P-859**:[T-51-CONF-ENG-CT](#),35:9-35:12,35:16-21,37:9-38:18;[T-52-CONF-ENG-CT](#),24:16-26:15; **P-963**:[T-79-CONF-ENG-ET](#),22:20-25:15; **P-768**:[T-33-CONF-ENG-CT](#),55:8-22;[T-35-CONF-ENG-CT](#),62:1-62:22; [DRC-OTP-2058-0251](#)(transl.[DRC-OTP-2102-3766](#),p.3794:905-911,p.3798:1113-3799:1139,p.3802:1237-1238,p.3803:1295-1297).

<sup>965</sup> [REDACTED]; **P-315**:[DRC-OTP-2058-0990](#),p.1014-1015,para.134.

<sup>966</sup> [REDACTED]; **P-894**:[DRC-OTP-2076-0194-R02](#),p.0204,para.48; **P-963**:[T-79-CONF-ENG-ET](#),22:20-25:15; [DRC-OTP-0074-0628](#),p.0669-0670; **P-315**:[DRC-OTP-2058-0990](#),p.1014-1015,para.134; [DRC-OTP-0074-0422](#),p.0457,para.124.

<sup>967</sup> [REDACTED].

<sup>968</sup> [DRC-OTP-0127-0118](#),p.0119,para.9 and fn.6.

<sup>969</sup> [REDACTED].

<sup>970</sup> [REDACTED]; **P-315**:[DRC-OTP-2058-0990](#),p.1015,para.135.

<sup>971</sup> [DRC-OTP-2066-0532](#); **P-894**:[DRC-OTP-2076-0194-R02](#),p.0204,para.49; **P-859**:[T-51-CONF-ENG-CT](#),35:12-15,35:22-36:9; **P-800**:[T-69-CONF-ENG-CT](#),43:24-44:5,80:18-82:6.

<sup>972</sup> **D-300**:[T-223-CONF-ENG-ET](#),31:13-16;[T-237-CONF-ENG-ET](#),7:11-18.



light; and, lastly, (iii) implausibly denied learning about BWANALONGA's death until arriving at the ICC, over ten years later. NTAGANDA's denial is not credible and should not be given any weight.

350. *First*, NTAGANDA tried to dispute both that BWANALONGA and the three nuns stayed in Mongbwalu when the UPC attacked and that they were arrested at the Mongbwalu parish. He claimed, instead, that the 70-year old priest and the three nuns fled with the APC and that KASANGAKI found them in the bush as they were returning to Mongbwalu after the attack.<sup>973</sup> He further claimed that, when the UPC found BWANALONGA and took him to the *Appartements* for questioning, the nuns insisted on accompanying the priest to the UPC's military camp and went along with the soldiers out of their own free will.<sup>974</sup> This is both entirely implausible and contradicted by credible evidence.

351. NTAGANDA's claim is, in fact, merely a repetition and extension of a lie KISEMBO used to reassure Mongbwalu's religious community about the disappearance of the priest and three nuns during the First Attack. Indeed, video evidence of a meeting between KISEMBO and several nuns of the *Servantes de Dieu* community ("*Servantes de Dieu* Nuns"),<sup>975</sup> on 28 November 2002,<sup>976</sup> shows KISEMBO attempting to reassure the visibly concerned nuns<sup>977</sup> by telling them that the three nuns who were missing actually went to hide in the bush during the attack<sup>978</sup> but were now under the UPC's protection at the *Appartements*.<sup>979</sup> The *Servantes de Dieu* Nuns, however, contradict this version of

<sup>973</sup> [D-300:T-217-CONF-ENG-ET](#),70:17-71:10,71:22-72:8;[T-237-CONF-ENG-ET](#),3:8-9,3:10-24,3:25-5:5.

<sup>974</sup> [D-300:T-237-CONF-ENG-ET](#),5:6-19.

<sup>975</sup> [DRC-OTP-2058-0251](#),00:55:41-01:25:47(transl.[DRC-OTP-2102-3766](#),p.3791:826-3805:1359).

<sup>976</sup> See Section VII.A2.a.ii.

<sup>977</sup> The *Servantes de Dieu* Nuns initially believed that the three nuns had died because they had been taken away from the Mongbwalu parish: "*Ce sont celles qui sont décédées, nous en sommes très tristes. [...] Ils les ont embarquées d'ici, on le sait. Ils sont arrivés ...*" (transl.[DRC-OTP-2102-3766](#),p.3793:903-911). See also [DRC-OTP-2058-0251](#)(transl.[DRC-OTP-2102-3766](#),p.3798:1122-3799:1139,p.3802:1233-1238,p.3803:1285-1297).

<sup>978</sup> [DRC-OTP-2058-0251](#),00:59:14-01:01:08(transl.[DRC-OTP-2102-3766](#),p.3793:909,p.3794:929-932).

<sup>979</sup> [DRC-OTP-2058-0251](#),00:59:14-01:01:08(transl.[DRC-OTP-2102-3766](#),p.3794:941-942).

events, telling KISEMBO: “[i]ls les ont embarquées d’ici, on le sait”.<sup>980</sup> Throughout their discussion, as KISEMBO tries to persuade them that everything is fine, the *Servantes de Dieu* Nuns remain sceptical about KISEMBO’s reassurances, repeating their concerns about the disappeared priest and nuns<sup>981</sup> and explicitly calling into question KISEMBO’s honesty: “Et notre curé, il y en a qui disent qu’il a été emmené, d’autres donnent une autre version, et nous ne savons pas qui dit la vérité”.<sup>982</sup>

352. It is telling that KISEMBO is simply unable to reassure the *Servantes de Dieu* Nuns about the fate of BWANALONGA. When one of the *Servantes de Dieu* Nuns tells KISEMBO “on se demande pourquoi on n’a pas de nouvelles du vieil homme qui a été appréhendé jusqu’à présent”,<sup>983</sup> KISEMBO answers: “[p]our vous répondre en ce moment sur une question concernant des individus, ce sera difficile pour moi, car je suis arrivé hier seulement”.<sup>984</sup> This is, in fact, a lie. NTAGANDA himself testified that he gave KISEMBO a report about the priest and the nuns a day before this meeting with the *Servantes de Dieu* Nuns, adding that, when he did so, KISEMBO already knew.<sup>985</sup> Moreover, at this time, KISEMBO had spent over 24 hours in Mongbwalu,<sup>986</sup> including one night at the *Appartements*,<sup>987</sup> where, according to his own statement on 28 November 2002, the three nuns were being guarded: “[p]our le moment, elles sont avec les troupes là-bas, sous la garde des militaires puisqu’il y a des maisons là-bas à Kilo-Moto”.<sup>988</sup> In fact, at this time, KISEMBO already knew that the priest had been murdered. Critically, however, KISEMBO’s feigned lack of knowledge regarding BWANALONGA’s

<sup>980</sup> [DRC-OTP-2058-0251](#),00:59:14-01:01:08(transl.[DRC-OTP-2102-3766](#),p.3793:908).

<sup>981</sup> [DRC-OTP-2058-0251](#),01:13:45-01:16:11,01:19:56-01:20:19,01:22:59-01:23:30(transl.[DRC-OTP-2102-3766](#),p.3798:1122-3799:1139,p.3802:1233-1238,p.3803:1285-1297).

<sup>982</sup> [DRC-OTP-2058-0251](#),01:19:56-01:20:19(transl.[DRC-OTP-2102-3766](#),p.3802:1237-1238).

<sup>983</sup> [DRC-OTP-2058-0251](#),01:13:45-01:16:11(transl.[DRC-OTP-2102-3766](#),p.3799:1137-1139).

<sup>984</sup> [DRC-OTP-2058-0251](#),01:20:20-01:21:22(transl.[DRC-OTP-2102-3766](#),p.3802:1247-1248).

<sup>985</sup> [D-300:T-217-CONF-ENG-ET](#),81:18-21.

<sup>986</sup> KISEMBO’s meeting with the *Servantes de Dieu* Nuns was filmed on the second day of his visit to Mongbwalu.

<sup>987</sup> [D-300:T-217-CONF-ENG-ET](#),88:19-22.

<sup>988</sup> [DRC-OTP-2058-0251](#),00:59:14-01:01:08(transl.[DRC-OTP-2102-3766](#),p.3794:941-942).

whereabouts at this time contradicts NTAGANDA's claims that the priest was found hiding in the bush together with the three nuns and that the three nuns went to the *Appartements* out of their own free will, because they wanted to stay with the priest.

353. When referring to BWANALONGA,<sup>989</sup> one of the *Servantes de Dieu* Nuns unambiguously states that he stayed in Mongbwalu when the UPC attacked and only then disappeared. Moreover, just hours after his disappearance, the nuns were told that he had been taken by soldiers:

La seule personne que nous connaissons restait toujours dans sa maison, car c'était un vieil homme. Il restait dans la maison durant les troubles. Il ne faisait que s'occuper des chrétiens, et le matin il sonnait la cloche, afin que ceux qui sont en ville viennent à la messe. Après cette période, d'autres troupes sont venues et les gens se sont enfuis, mais lui, il est resté là. Le lendemain, le jour où je suis arrivée, il est venu nous dire bonjour au matin comme d'habitude, mais lorsque je suis allée le voir le jour suivant, on ne l'a pas vu. Dans l'après-midi, on a appris que des militaires l'avaient appréhendé, et nous ne savons pas s'ils l'ont emmené avec eux. Si ce sont des militaires de votre groupe, je ne sais pas s'ils ...<sup>990</sup>

354. NTAGANDA's account is further contradicted by several eye-witnesses of the arrest<sup>991</sup> and a report on the events emanating from the Catholic Church itself, which clearly states that BWANALONGA was arrested at the parish by soldiers of the army that attacked Mongbwalu:

Une partie de l'armée assiégeant Mongbwalu [...] se détachera dans la soirée du lundi, le 25 novembre 02 [...] pour se diriger vers la Paroisse. [...] Les soldats frapperont longtemps à la porte d'entrée et finalement l'Abbé Boniface ouvrira. Il sera tabassé à la porte d'entrée et même foulé au bras. Ils [...] amèneront avec eux l'Abbé et les deux cuisiniers [...]. Ils passeront aussi

<sup>989</sup> During their meeting with KISEMBO, the *Servantes de Dieu* Nuns refer to two priests: “[REDACTED]” (see transl. [DRC-OTP-2102-3766](#), p.3798:1116:1121) and “un vieil homme” (see transl. [DRC-OTP-2102-3766](#), p.3798:1114-1116, p.3798:1122-3799:1129). “[REDACTED]” refers to [REDACTED] ([DRC-OTP-0127-0118](#), p.0118, para.5). The “vieil homme” or “old man” is BWANALONGA.

<sup>990</sup> [DRC-OTP-2058-0251](#), 01:13:45-01:16:11 (transl. [DRC-OTP-2102-3766](#), p.3798:1122-3799:1129).

<sup>991</sup> **P-859**:[T-51-CONF-ENG-CT](#), 35:9-35:12, 35:16-21, 37:9-38:18; [T-52-CONF-ENG-CT](#), 24:16-26:15; **P-315**:[DRC-OTP-2058-0990](#), p.1014-1015, para.134.

prendre les deux soeurs [...] Tous sont amenés au quartier général des soldats.<sup>992</sup>

355. *Second*, **NTAGANDA** would have the Chamber believe that **KASANGAKI** arrested **BWANALONGA** and the three nuns on his own initiative,<sup>993</sup> while his own intervention in this incident was limited to ensuring that the priest and the nuns remained safe while in **KASANGAKI**'s custody and that they would be safely returned to their parish.<sup>994</sup>

I said to the nuns "Don't be afraid, after having questioned the curate I am going to accompany you home." And I went to *Appartements* and I greeted the curate and I said to him, "Don't be afraid, "after you have given your statement we will take you home." And that's what happened there.<sup>995</sup>

356. Moreover, **NTAGANDA** expects the Chamber to believe that, after leaving the four in **KASANGAKI**'s good hands, he never saw them or heard about them again,<sup>996</sup> and he did not have any reason<sup>997</sup> to believe that **KASANGAKI** would harm them.<sup>997</sup> This self-serving account, which either wholly shifts all the blame for **BWANALONGA**'s death to deceased Commander **KASANGAKI** or suggests that **BWANALONGA** left the *Appartements* alive and well only to vanish into thin air, is neither corroborated by any evidence, nor based on any fact.

357. *Third*, **NTAGANDA**'s claim that: (i) he knew nothing about **BWANALONGA**'s death until he arrived at the ICC;<sup>998</sup> (ii) he learnt about the death of a priest in Mongbwalu in November 2002 at the end of 2003, but did not make any link between this event and the First Attack;<sup>999</sup> (iii) in any event, he could not conduct an investigation because, amongst other reasons, **KASANGAKI** was

<sup>992</sup> [DRC-OTP-0127-0118](#), pp.0118-0119, paras.8-9.

<sup>993</sup> [D-300:T-217-CONF-ENG-ET](#), 70:17-71:10, 71:22-72:8, 72:22-73:2.

<sup>994</sup> [D-300:T-217-CONF-ENG-ET](#), 72:9-21, 73:3-13; [T-237-CONF-ENG-ET](#), 2:22-3:1.

<sup>995</sup> [D-300:T-217-CONF-ENG-ET](#), 72:18-21.

<sup>996</sup> [D-300:T-218-CONF-ENG-CT](#), 6:8-10.

<sup>997</sup> [D-300:T-217-CONF-ENG-ET](#), 73:3-13.

<sup>998</sup> [D-300:T-223-CONF-ENG-ET](#), 6:14-19, 6:20-7:5.

<sup>999</sup> [D-300:T-223-CONF-ENG-ET](#), 3:4-25, 5:8-19.

already dead;<sup>1000</sup> and (iv) he never had a chance to discuss the priest's disappearance with anyone in the FPLC,<sup>1001</sup> are not believable and are contradicted by credible evidence to the contrary.

358. On 28 November 2002, while the three arrested nuns were still at the *Appartements*, without BWANALONGA, KISEMBO had a lengthy discussion with the *Servantes de Dieu* Nuns about the priest's and the three nuns' disappearance. [REDACTED], states: "*we went there because some of the nuns were missing and the priest had been killed*".<sup>1002</sup> As shown above, during this meeting, KISEMBO simply could not tell the *Servantes de Dieu* Nuns where BWANALONGA was or even whether he was still alive. NTAGANDA went to the parish with KISEMBO during this visit and subsequently left with him. His claim that he did not know anything about the content of KISEMBO's conversation and never learnt about it because he stayed outside, is simply not believable.

359. Witness [REDACTED], who [REDACTED] learnt about BWANALONGA's death from the commanders he met during his visit, testified: "*everyone knew that a priest had been killed*".<sup>1003</sup> As early as December 2002, the Catholic Church complained to LUBANGA about the priest's disappearance.<sup>1004</sup> P-41 received a detailed report on BWANALONGA's disappearance in January 2003.<sup>1005</sup> Yet, NTAGANDA stubbornly denied knowing anything. When P-315 asked NTAGANDA about BWANALONGA's disappearance in 2010, he claimed that he did not know him.<sup>1006</sup> P-315 found his answers evasive:

<sup>1000</sup> [D-300:T-223-CONF-ENG-ET](#),5:20-6:13.

<sup>1001</sup> [D-300:T-223-CONF-ENG-ET](#),6:9-13;[T-237-CONF-ENG-ET](#),7:23-8:1.

<sup>1002</sup> [REDACTED].

<sup>1003</sup> [REDACTED].

<sup>1004</sup> [DRC-OTP-0074-0628](#),pp.0669-0670.

<sup>1005</sup> [P-41:DRC-OTP-0147-0002](#),p.0006,pp.0015-0016,para.80; [DRC-OTP-0127-0118](#).

<sup>1006</sup> [DRC-OTP-2062-0363](#),p.0363.

*I was surprised, for example, when I asked him about Abbé Boniface Bwanalongba. His immediate and very quick reaction was "I don't know him." When I said "the Abbé of Mongbwalu" who was extremely well-known in the area who had been arrested by his troops, he again repeated very quickly "I don't know him."<sup>1007</sup>*

360. Finally, even NTAGANDA's own Defence team, when trying to discredit the witnesses against him, suggested that BWANALONGA's death was "an event that was widely broadcast and very well-known since 2002".<sup>1008</sup> Indeed, everyone knew about it, including NTAGANDA.

361. Prisoners were also taken to and executed in other UPC camps in Mongbwalu.<sup>1009</sup> [REDACTED] a Lendu woman, accused of being a chieftain of the Lendu combatants, was interrogated, tortured and executed at Commander MULENDA's camp.<sup>1010</sup>

362. NTAGANDA claimed that the UPC only took a single prisoner in Mongbwalu, that he personally ordered his troops to let him go, and asked the prisoner, an enemy soldier, to tell the other soldiers to join the UPC.<sup>1011</sup> He also claimed that this incident was filmed.<sup>1012</sup> [REDACTED].<sup>1013</sup> Critically, in a filmed interview taken three days after the attack, NTAGANDA directly contradicts this claim, as he refers on three separate occasions to the many prisoners taken by the UPC: "*nous avons capturé beaucoup de gens dans leurs rangs, et un grand nombre parmi eux ont été tués*".<sup>1014</sup> When confronted with this evidence, NTAGANDA unconvincingly described these statements as propaganda destined to scare the enemy.<sup>1015</sup> NTAGANDA's general denial that he ever heard about civilian

<sup>1007</sup> [P-315:T-107-CONF-ENG-ET](#),78:12-16;[T-108-CONF-ENG-ET](#),64:15-65:2.

<sup>1008</sup> [P-768:T-35-CONF-ENG-CT](#),71:6-13; [P-859:T-52-CONF-ENG-CT](#),24:8-15.

<sup>1009</sup> [P-898:T-154-CONF-ENG-ET](#),18:18-19:4,19:14-22.

<sup>1010</sup> [REDACTED].

<sup>1011</sup> [D-300:T-217-CONF-ENG-ET](#),53:25-54:13,55:4-14;[T-235-CONF-ENG-CT](#),84:17-19.

<sup>1012</sup> [D-300:T-217-CONF-ENG-ET](#),54:12-13.

<sup>1013</sup> [REDACTED].

<sup>1014</sup> [DRC-OTP-2058-0251](#),00:08:15-00:08:26,00:12:04-00:12:40,00:23:03-00:23:08(transl.[DRC-OTP-2102-3766](#),p.3772:131-139,p.3774:198-207,p.3778:360-364).

<sup>1015</sup> [D-300:T-235-CONF-ENG-CT](#),84:20-86:15,86:16-57:4.

casualties in Mongbwalu<sup>1016</sup> is further contradicted by the evidence of senior UPC insiders who went to Mongbwalu shortly after its capture and heard that many civilians had died during the attack.<sup>1017</sup>

### c. Sayo

363. UPC troops under **NTAGANDA**'s command attacked civilians in Sayo without any regard for human life. Many civilians from Sayo were killed as a result of the systematic shelling of the village undertaken by **NTAGANDA**, when he deployed his heavy weapons in Mongbwalu, on the third day of the assault.<sup>1018</sup> P-768 visited Sayo on the third day and found many dead bodies of civilians, some of whom had been killed by the artillery fire in their houses.<sup>1019</sup>

364. UPC troops continued to kill civilians as they advanced towards Sayo, including those who could not flee or took refuge.<sup>1020</sup> In the days following the attack, [REDACTED] 49 bodies of civilians that the UPC had left in the streets.<sup>1021</sup> Victims were shot or killed by bladed weapons.<sup>1022</sup> As **NTAGANDA**'s troops advanced through to Sayo, they conducted house-by-house searches, seeking out Lendu. Anyone attempting to flee was killed.<sup>1023</sup>

365. UPC soldiers murdered [REDACTED].<sup>1024</sup> When he arrived in Sayo, just days after the UPC's attack, Witness [REDACTED] found their decomposing bodies lying alongside the road [REDACTED].<sup>1025</sup> [REDACTED], a woman, had a dead

<sup>1016</sup> **D-300:T-237-CONF-ENG-ET**,9:11-10:2.

<sup>1017</sup> [REDACTED].

<sup>1018</sup> **P-17:T-58-CONF-ENG-CT**,69:16-74:19;**T-59-CONF-ENG-CT**,4:18-5:19; **P-768:T-33-CONF-ENG-CT**,44:24-46:2,47:22-48:25,50:13-51:3; **P-963:T-78-CONF-ENG-ET**,79:5-13;**T-79-CONF-ENG-ET**,12:9-14:4; **P-898:T-154-CONF-ENG-ET**,26:4-18.

<sup>1019</sup> **P-768:T-33-CONF-ENG-CT**,44:24-46:2,47:22-48:25,50:13-51:3.

<sup>1020</sup> **DRC-OTP-0074-0628**,p.0666; **P-886:T-37-CONF-ENG-ET**,7:20-25; **P-17:T-61-CONF-ENG-ET**,70:16-24.

<sup>1021</sup> [REDACTED].

<sup>1022</sup> **P-17:T-58-CONF-ENG-CT**,73:8-79:18;**T-59-CONF-ENG-CT**,7:19-9:15; **P-886:T-37-CONF-ENG-ET**,60:6-62:10.

<sup>1023</sup> **P-17:T-58-CONF-ENG-CT**,70:1-11;**T-61-CONF-ENG-ET**,70:2-11,103:5-104:3; **P-963:T-79-CONF-ENG-ET**,14:15-16:9.

<sup>1024</sup> [REDACTED]; **P-800:T-68-CONF-ENG-ET**,57:19-25,80:15-81:4,83:3-6,83:18-86:6; **P-934:DRC-OTP-2083-0083**,panoramas:14,20,23.

<sup>1025</sup> [REDACTED].



baby strapped on her back.<sup>1026</sup>

366. In 2014, a team led by Witness P-420 exhumed<sup>1027</sup> the bodies of these five individuals.<sup>1028</sup> P-420 described the circumstances of their burial as “*very irregular*”, as the bodies were found in an unmarked shallow grave very near the roadside and the bodies did not “*appear to have been laid out too carefully*”.<sup>1029</sup> Pathologist P-937 concluded that the skeletal remains of three of these corpses<sup>1030</sup> had damage consistent with gunshot wounds.<sup>1031</sup> While the two other bodies<sup>1032</sup> showed no definitive signs of perimortem injuries, P-937 explained that different kinds of blunt force trauma to the head may be followed by death without any injuries to the skull; a bullet may pass through the body without hitting the bones or sharp injuries by a machete or knife may cut large blood vessels without hitting the bones.<sup>1033</sup> As such, when the soft tissue decomposes and only the skeleton remains, these injuries are no longer visible.<sup>1034</sup> P-937 also admitted that he was quite conservative in his conclusions about cause of death.<sup>1035</sup>

367. P-937 further noted that one of these two bodies appeared to be the body of a small child between two and four years-old<sup>1036</sup> who was being carried, wrapped in fabric on the back<sup>1037</sup> of one of the bodies killed by gunshot.<sup>1038</sup> Lastly, forensic

<sup>1026</sup> [REDACTED].

<sup>1027</sup> **P-420:** [DRC-OTP-2074-0148](#), pp.0154-0156, p.0158; [DRC-OTP-2069-2279](#); [DRC-OTP-2069-2280](#); [DRC-OTP-2069-2294](#); [DRC-OTP-2069-2336](#); [T-123-CONF-ENG-ET](#), 31:20-34:15, 65:18-68:7; **P-934:** [DRC-OTP-2083-0083](#), panoramas: 14, 14a.

<sup>1028</sup> **SAI1-F1-B1:** a 7 to 11 year-old child (*see* **P-420:** [DRC-OTP-2074-0174](#)), **SAI1-F1-B2:** an 18 to 29 year-old male (*see* [DRC-OTP-2074-0180](#)), **SAI1-F1-B3:** a male who was sixty or more years at death (*see* **P-420:** [DRC-OTP-2074-0189](#)), **SAI1-F1-B4:** an individual between 13 and 17 years old (*see* **P-420:** [DRC-OTP-2074-0195](#)) and **SAI1-F1-B5:** a child between 2 and 4 years old (*see* **P-420:** [DRC-OTP-2074-0202](#)).

<sup>1029</sup> **P-420:** [T-123-CONF-ENG-ET](#), 31:19-20:6.

<sup>1030</sup> **SAI1-F1-B1**, **SAI1-F1-B2**, and **SAI-F1-B4**.

<sup>1031</sup> **SAI1-F1-B1** (**P-937:** [DRC-OTP-2075-0440](#), p.0443; [T-127-ENG-ET](#), 29:11-30:15; *see also* **P-420:** [DRC-OTP-2074-0174](#), p.0177); **SAI1-F1-B2** (**P-937:** [DRC-OTP-2075-0462](#), p.0465; **P-937:** [T-127-ENG-ET](#), 27:6-28:8, 30:16-31:21; *see also* **P-420:** [DRC-OTP-2074-0180](#), pp.0182-0184, p.0188); **SAI-F1-B4** (**P-937:** [DRC-OTP-2075-0510](#), p.0514; **P-937:** [T-127-ENG-ET](#), 28:9-29:10; *see also* **P-420:** [DRC-OTP-2074-0195](#), pp.0197-0199).

<sup>1032</sup> **SAI1-F1-B3** (**P-937:** [DRC-OTP-2075-0487](#), p.0490) and **SAI1-F1-B5** (**P-937:** [DRC-OTP-2075-0534](#), p.0537).

<sup>1033</sup> **P-937:** [T-127-ENG-ET](#), 32:9-22.

<sup>1034</sup> **P-935:** [T-132-CONF-ENG-ET](#), 69:21-70:10.

<sup>1035</sup> **P-937:** [T-127-ENG-ET](#), 27:16-25.

<sup>1036</sup> **SAI1-F1-B5**.

<sup>1037</sup> **P-937:** [T-127-ENG-ET](#), 33:13-20; **P-420:** [DRC-OTP-2074-0172](#).

<sup>1038</sup> **SAI1-F1-B4**.

scientist P-945 concluded that one of the bodies in this grave,<sup>1039</sup> a male of over 60 years old,<sup>1040</sup> showed a familial DNA match with [REDACTED].<sup>1041</sup>

368. In Sayo, NTAGANDA and his bodyguards found women, children, elderly people and priests hiding in a church. P-17 was present when NTAGANDA's bodyguards took one man from the church and fired at him. He later learnt that all those who were hiding in the church had been killed with bladed weapons.<sup>1042</sup> NTAGANDA personally filmed the attack.<sup>1043</sup> Witnesses met by P-315 confirmed that these civilians, who tried to hide as the troops advanced, were slaughtered in the church.<sup>1044</sup>

369. UPC soldiers also killed those who stayed at the Sayo health centre and could not flee. When [REDACTED] fled from the health centre during this assault, several civilians were left behind. These civilians included three severely injured Lendu men, one of whom had been shot in the eye,<sup>1045</sup> and one woman called Charlotte with her two year old child.<sup>1046</sup>

370. When P-17 moved through Sayo during the attack, he saw a woman lying dead outside a dispensary and heard a baby crying inside.<sup>1047</sup> On his way back to Mongbwalu, P-17 passed the dispensary again and saw the body of a baby surrounded by blood. There was also blood on the wall, which made him think that the baby had been thrown against the wall.<sup>1048</sup> The Defence attempted to challenge P-17's account by suggesting that a UPC soldier called [REDACTED],

<sup>1039</sup> **SAII-F1-B3.**

<sup>1040</sup> See **P-420:DRC-OTP-2074-0189.**

<sup>1041</sup> **P-945:DRC-OTP-2084-0002**,p.0010,para.1;**T-124-CONF-ENG-ET**,76:23-79:12.

<sup>1042</sup> **P-17:T-58-CONF-ENG-CT**,73:8-79:18;**T-59-CONF-ENG-CT**,7:19-9:15.

<sup>1043</sup> **P-17:T-58-CONF-ENG-CT**,70:7-71:3; **P-768:T-33-CONF-ENG-CT**,39:25-41:4; **P-55:T-70-CONF-ENG-CT**,95:1-98:19;**T-74-CONF-ENG-CT**,91:3-92:23; **P-2:T-170-CONF-ENG-ET**,61:2-66:1.

<sup>1044</sup> **DRC-OTP-0074-0628**,p.0665; **P-315:DRC-OTP-2058-0990**,p.0994,para.23; **DRC-OTP-0074-0422**,p.0452,para.102.

<sup>1045</sup> [REDACTED].

<sup>1046</sup> [REDACTED].

<sup>1047</sup> **P-17:T-58-CONF-ENG-CT**,68:3-69:6.

<sup>1048</sup> **P-17:T-58-CONF-ENG-CT**,80:7-19;**T-59-CONF-ENG-CT**,3:20-4:17[**T-59-CONF-FRA-CT**,3:22-4:14];**T-61-CONF-ENG-ET**,103:16-104:23.

who was allegedly present during the Sayo attack, would testify that he never saw any dead woman on the ground in Sayo.<sup>1049</sup> P-17 repeatedly affirmed that [REDACTED] was not amongst the troops that captured Sayo.<sup>1050</sup> [REDACTED] never testified.

371. Some days after the UPC's attack on Sayo, [REDACTED] 27 decomposing bodies of men in civilian clothing in a hospital room inside the Sayo health centre. Some of the bodies were missing limbs while others had gunshot wounds. One of the bodies had received a bullet in the eye. [REDACTED] all 27 by throwing them in a pit next to the Health Centre.<sup>1051</sup> [REDACTED] Charlotte's body outside the health centre with the body of her child still on her back. [REDACTED] buried them together.<sup>1052</sup> [REDACTED] returned to Sayo, in March 2003, he found black pools of blood and cartridges on the ground in the health centre as well as the semi-buried bones of Charlotte and her child.<sup>1053</sup>

372. Like in Mongbwalu, the UPC kept civilians in underground prisons in Sayo. [REDACTED] the release of an old man who was detained for three days in an underground pit located at the UPC camp next to the Catholic church. The pit was covered by an iron sheet and guarded by two armed UPC soldiers. [REDACTED], the man told [REDACTED] that there were many people inside the pit. Some of them were taken out at night and did not return.<sup>1054</sup> When the UPC left Sayo, the inhabitants of Sayo found many decomposing human remains behind the church.<sup>1055</sup>

373. Some days after the UPC took over Sayo, **NTAGANDA** came to visit his troops

<sup>1049</sup> [P-17:T-61-CONF-ENG-ET](#),104:16-105:7.

<sup>1050</sup> [P-17:T-61-CONF-ENG-ET](#),21:17-18,95:17-96:3,104:16-105:7.

<sup>1051</sup> [REDACTED].

<sup>1052</sup> [REDACTED].

<sup>1053</sup> [REDACTED].

<sup>1054</sup> [REDACTED].

<sup>1055</sup> [REDACTED].

at the UPC camp near the church and gave a speech to the population.<sup>1056</sup> After the meeting, **NTAGANDA** personally shot and killed a Lulu man whom his troops had brought to him on the suspicion that he was a Lendu combatant. **NTAGANDA** also killed the man's father and his two young nephews who had come to plead for the man's release.<sup>1057</sup> He also ordered the capture of LUSALA, a then 66-year-old retired army officer,<sup>1058</sup> because he suspected him of cooperating with the Lendu.<sup>1059</sup> **NTAGANDA** pierced LUSALA's eyes with his bayonet and shot him in the chest.<sup>1060</sup> [REDACTED].<sup>1061</sup> LUSALA's body was left in the streets.<sup>1062</sup> [REDACTED].<sup>1063</sup>

374. In 2014, a team led by Witness P-420 exhumed<sup>1064</sup> the body [REDACTED]<sup>1065</sup> from an irregular, shallow grave close to the roadside.<sup>1066</sup> Pathologist P-937 concluded that the damage to the skeletal remains of this man who was between 50 and 80 years old were consistent with gunshot injuries.<sup>1067</sup> Moreover, P-937 found that "[s]everal of the holes in the clothes are consistent with defects due to a sharp object or gunshot".<sup>1068</sup> Photographs of the clothes found on this body show several holes in the chest and abdomen areas.<sup>1069</sup>

---

<sup>1056</sup> [REDACTED].

<sup>1057</sup> [REDACTED].

<sup>1058</sup> [REDACTED].

<sup>1059</sup> [REDACTED].

<sup>1060</sup> [REDACTED].

<sup>1061</sup> [REDACTED].

<sup>1062</sup> [REDACTED].

<sup>1063</sup> [REDACTED].

<sup>1064</sup> **P-420**:[DRC-OTP-2074-0148](#),pp.0157-0158;[DRC-OTP-2069-2472](#);[T-123-CONF-ENG-ET](#),68:8-70:3; **P-934**:[DRC-OTP-2083-0083](#),panorama.23.

<sup>1065</sup> **SAI2-F1-B1**: a male between 50 and 80 years old (**P-420**:[DRC-OTP-2074-0208](#),p.0213).

<sup>1066</sup> **P-420**:[T-123-CONF-ENG-ET](#),32:4-6,68:20-69:8.

<sup>1067</sup> **P-937**:[DRC-OTP-2075-0556](#),pp.0559-0560;[T-127-ENG-ET](#),30:16-31:21. *See also* **P-420**:[DRC-OTP-2074-0208](#),pp.0211-0213.

<sup>1068</sup> **P-937**:[DRC-OTP-2075-0556](#),p.0560.

<sup>1069</sup> **P-934**:[DRC-OTP-2069-2491](#);[DRC-OTP-2069-2492](#);[DRC-OTP-2069-2493](#);[DRC-OTP-2069-2494](#);[DRC-OTP-2069-2495](#);[DRC-OTP-2069-2496](#);[DRC-OTP-2069-2497](#);[DRC-OTP-2069-2498](#);[DRC-OTP-2069-2499](#);[DRC-OTP-2069-2500](#);[DRC-OTP-2069-2501](#);[DRC-OTP-2069-2502](#);[DRC-OTP-2069-2503](#);[DRC-OTP-2069-2504](#);[DRC-OTP-2069-2507](#);[DRC-OTP-2069-2508](#);[DRC-OTP-2069-2509](#);[DRC-OTP-2069-2510](#).

#### d. Nzebi and Kilo

375. On the third day of the attack two Lendu civilians returning to their houses were shot and killed in Nzebi by **NTAGANDA**'s bodyguards, after he ordered them to do so.<sup>1070</sup> [REDACTED], he saw that many civilians had been killed: *"we would come upon civilians who had been killed inside their own homes [...] [i]t was really very serious."*<sup>1071</sup>

376. The killings of civilians continued when UPC troops attacked Kilo, south of Mongbwalu, on or about 6 December 2002,<sup>1072</sup> causing its inhabitants as well as countless non-Hema civilians who had taken refuge in Kilo following the UPC's assault on Mongbwalu, to flee to the forest<sup>1073</sup> and beyond.<sup>1074</sup> After the UPC's takeover of Kilo, the UPC started a manhunt for the Lendu in the surrounding forests.<sup>1075</sup> The troops captured Lendu men, women and children, and ordered them to dig their own graves before killing them.<sup>1076</sup> An eyewitness stated:

I saw many people tied up ready to be executed. The UPC said they were going to kill them all. They made the Lendu dig their own graves. [...] They would kill them by hitting them on the head with a sledghammer.<sup>1077</sup>

377. When P-22, a Lendu, returned to Kilo out of fear of being shot at in the forest, where she had hidden with many other civilians,<sup>1078</sup> UPC soldiers captured and

<sup>1070</sup> [REDACTED].

<sup>1071</sup> [REDACTED].

<sup>1072</sup> **P-877**:[DRC-OTP-2069-2086-R03](#),p.2090,para.23;[DRC-OTP-2077-0118-R03](#),p.0122,para.21;[DRC-OTP-2077-0140](#),p.0210(transl.[DRC-OTP-2081-0589](#),p.0661); **P-850**:[DRC-OTP-2067-1825](#),p.1830,para.36,38; [DRC-OTP-0074-0628](#),p.0666-0668; **P-963**:[T-80-CONF-ENG-ET](#),5:14-7:19.

<sup>1073</sup> **P-877**:[DRC-OTP-2069-2086-R03](#),p.2090,paras.23-24; **P-850**:[DRC-OTP-2067-1825](#),p.1830,paras.36-37; **P-22**:[DRC-OTP-0104-0026](#),p.0030,para.23-24; **V-3**:[T-203-CONF-ENG-ET](#),14:17-23.

<sup>1074</sup> **P-19**:[T-115-CONF-ENG-CT](#),16:4-5,16:14-15,17:7-11,17:20-18:25; **P-815**:[T-76-CONF-ENG-CT](#),12:8-23,15:22-16:25; **P-886**:[T-37-CONF-ENG-ET](#),9:3-10:6,12:5-18; **P-39**:[DRC-OTP-0104-0015-R03](#),p.0019,paras.21,23; [DRC-OTP-2062-0244-R02](#),p.0249-0250,paras.17,19-21,24; **P-805**:[T-25Bis-CONF-ENG-CT](#),3:4-4:3,5:10-13,6:13-21,8:22-9:1,10:17-11:8.

<sup>1075</sup> **P-850**:[DRC-OTP-2067-1825](#),p.1830-1832,paras.40-43,46-47; **P-877**:[DRC-OTP-2069-2086-R03](#),p.2091,para.30;[DRC-OTP-2077-0118-R03](#),p.0124,para.32;[T-109-CONF-ENG-ET](#),44:1-46:8; **P-22**:[DRC-OTP-0104-0026](#),p.0031,para.28; **V-3**:[T-203-CONF-ENG-ET](#),17:2-25,18:21-24,32:19-33:8,35:19-36:2,36:15-38:17,57:23-58:15 [DRC-OTP-0074-0628](#),p.0666-0667.

<sup>1076</sup> [DRC-OTP-0074-0628](#),p.0666-0668.

<sup>1077</sup> **P-315**:[DRC-OTP-2058-0990](#),p.0994,para.23; [DRC-OTP-0074-0628](#),p.0667.

<sup>1078</sup> **P-22**:[DRC-OTP-0104-0026](#),p.0030,paras.23-24.

detained her.<sup>1079</sup> They tied her up and put her in a hole in the ground together with other prisoners.<sup>1080</sup> The next day, she was taken to a pit, where she saw the slaughtered corpse of an Ngiti civilian. She saw a UPC soldier kill a pregnant Lendu woman with a knife and throw her in the same pit, leaving her to die. The soldier then cut P-22's neck and left her for dead.<sup>1081</sup>

378.P-850 saw four tied up Lendu civilians being led away by UPC soldiers. He later heard screams and the sound of blows.<sup>1082</sup> P-877 saw a UPC commander shoot and kill a disabled Lendu civilian for singing an anti-Hema song.<sup>1083</sup> V-3's [REDACTED] of Kilo<sup>1084</sup> [REDACTED],<sup>1085</sup> was abducted from his house at night by NTAGANDA and UPC soldiers under NTAGANDA's direct orders.<sup>1086</sup> V-3 learnt that [REDACTED] and murdered.<sup>1087</sup> He never saw him again.<sup>1088</sup>

379.After the UPC left Kilo, the population of Kilo found a mass grave at the boundary of the UPC camp. It was filled with bodies that had been thrown on top of each other.<sup>1089</sup> Since then, the inhabitants of Kilo have regularly come across human remains near the locations used by the UPC.<sup>1090</sup>

#### **6. Pillaging (Article 8(2)(e)(v)) - Count 11<sup>1091</sup>**

380.The crime of pillaging requires that the perpetrator appropriated certain property, without the consent of the owner, and with the intent to appropriate it

<sup>1079</sup> P-22:[DRC-OTP-0104-0026](#),pp.0031-0032,paras.27-30.

<sup>1080</sup> P-22:[DRC-OTP-0104-0026](#),p.0032,paras.30-33.

<sup>1081</sup> P-22:[DRC-OTP-0104-0026](#),pp.0033-0034,paras.37-41;[DRC-OTP-0104-0039](#)-[DRC-OTP-0104-0052](#) (14 photographs of P-22's injuries).

<sup>1082</sup> P-850:[DRC-OTP-2067-1825](#),pp.1830-1831,paras.40-43;[DRC-OTP-2067-1836](#).

<sup>1083</sup> P-877:[DRC-OTP-2069-2086-R03](#),p.2091,para.31; P-850:[DRC-OTP-2067-1825](#),p.1832,para.47.

<sup>1084</sup> V-3:[T-203-CONF-ENG-ET](#),8:1-22,11:16-18,16:22-17:1.

<sup>1085</sup> V-3:[T-203-CONF-ENG-ET](#),18:9-20:10,23:3-25:22,32:15-34:24,35:19-36:14.

<sup>1086</sup> V-3:[T-203-CONF-ENG-ET](#),39:23-45:5,48:9-49:3.

<sup>1087</sup> V-3:[T-203-CONF-ENG-ET](#),45:8-46:5,47:6-48:8.

<sup>1088</sup> V-3:[T-203-CONF-ENG-ET](#),46:6-15.

<sup>1089</sup> P-877:[DRC-OTP-2069-2086-R03](#),p.2091-2092,para.33;[T-109-CONF-ENG-ET](#),46:9-47:5.

<sup>1090</sup> P-877:[DRC-OTP-2069-2086-R03](#),p.2092,para.34;[DRC-OTP-2069-2096](#);[T-109-CONF-ENG-ET](#),47:6-22; P-850:[DRC-OTP-2067-1825](#),p.1832,para.48.

<sup>1091</sup> This section concerns the crimes committed in or around Mongbwalu and Sayo.

for private or personal use.<sup>1092</sup>

381. UPC troops committed pillaging on a massive scale in the Banyali-Kilo *collectivité* between on or about 20 November and 6 December 2002. NTAGANDA gave orders to pillage and his troops looted everything they could find. He was also a direct perpetrator of this crime.

#### a. Mongbwalu

382. Prior to the First Attack, NTAGANDA and other commanders promised looting to the UPC troops,<sup>1093</sup> who were not paid.<sup>1094</sup> This promise was made explicit through his orders to UPC troops under his command as the First Attack began.<sup>1095</sup> NTAGANDA and other senior commanders ordered the troops to pillage at pre-assault military briefings, using the expression “*Kupiga na Kuchaji*”.<sup>1096</sup> P-17, P-963, P-55, P-907, P-768, P-901, P-888, P-10 and D-251 all understood the term *piga na kuchaji* to include to loot or to pillage.<sup>1097</sup> Contrary to NTAGANDA’s claim,<sup>1098</sup> this was not limited to the enemy’s equipment. P-963 explained: “[w]e were supposed to loot systematically, take everything that we found [...] vehicles, mattresses, televisions, radios, furniture, everything”.<sup>1099</sup> As further set out below,<sup>1100</sup> the soldiers implemented this order by raping and/or killing civilians, burning their homes, and taking war booty that included women.

<sup>1092</sup> Elements of Crimes, article 8(2)(v).

<sup>1093</sup> **P-963**:[T-78-CONF-ENG-ET](#),70:7-17,72:25-73:9; **P-907**:[T-90-CONF-ENG-CT](#),5:16-7:1,8:1-11,8:21-10:13.

<sup>1094</sup> **P-963**:[T-82-CONF-ENG-ET](#),86:19-25; **P-17**:[T-58-CONF-ENG-CT](#),55:24-56:2; **D-17**:[T-254-CONF-ENG-ET](#),18:2-11; **P-55**:[T-74-CONF-ENG-CT](#),98:11-18; **D-300**:[T-211-CONF-ENG-ET](#),19:24-20:5;[T-234-CONF-ENG-CT](#),3:10-11.

<sup>1095</sup> **P-10**:[T-47-CONF-ENG-CT](#),14:16-15:16.

<sup>1096</sup> **P-17**:[T-58-CONF-ENG-CT](#),54:1-55:23;[T-61-CONF-ENG-ET](#),29:20-32:22; **P-963**:[T-78-CONF-ENG-ET](#),70:7-17,72:25-73:9; **P-10**:[T-47-CONF-ENG-CT](#),14:16-15:16; **P-768**:[T-33-CONF-ENG-CT](#),64:21-65:10; **P-907**:[T-90-CONF-ENG-CT](#),8:1-11,8:21-10:13; **P-888**:[T-105-CONF-ENG-CT](#),77:1-78:8.

<sup>1097</sup> **P-17**:[T-58-CONF-ENG-CT](#),54:19-55:3;[T-61-CONF-ENG-ET](#),29:25-31:20; **P-963**:[T-78-CONF-ENG-ET](#),70:12-17,72:25-73:9; **P-55**:[T-72-CONF-ENG-CT](#),9:25-11:14; **P-907**:[T-90-CONF-ENG-CT](#),8:7-9,9:6-7,9:17-18; **P-768**:[T-33-CONF-ENG-CT](#),64:21-65:10; **P-901**:[T-29-CONF-ENG-CT](#),18:20-20:25; **P-888**:[T-105-CONF-ENG-CT](#),77:9-12; **P-10**:[T-47-CONF-ENG-CT](#),14:16-15:6; **D-251**:[T-260-CONF-ENG-CT](#),99:17-100:6.

<sup>1098</sup> **D-300**:[T-213-CONF-ENG-CT](#),9:5-10:12.

<sup>1099</sup> **P-907**:[T-90-CONF-ENG-CT](#),1:3-13.

<sup>1100</sup> See Sections VII.A.9 and B.8.



383. NTAGANDA's subordinate commanders repeated that order to the UPC troops.<sup>1101</sup> At a pre-attack military parade in Lulu, MULENDA told his troops that they would capture Mongbwalu, where they would " *receive money, [...] sleep on mattresses, [...] have food, [...] have women and [...] forget all the suffering that they had endured*".<sup>1102</sup> AMÉRICAIN told his troops: "*[w]e are going to take advantage of this attack on Mongbwalu, we are going to loot*".<sup>1103</sup> Looting was not against the UPC's ideology, as claimed by NTAGANDA.<sup>1104</sup> It was an integral part of it.

384. In Mongbwalu, UPC soldiers followed by Hema civilian supporters under the command of NTAGANDA,<sup>1105</sup> went house-to-house searching for items to loot.<sup>1106</sup> UPC troops systematically entered every house and shop,<sup>1107</sup> pillaging all they could find,<sup>1108</sup> including clothes<sup>1109</sup> and even vehicles.<sup>1110</sup>

385. NTAGANDA's claim that there was nothing left in Mongbwalu, because the soldiers who were in Mongbwalu before the UPC had taken everything with

<sup>1101</sup> [P-17:T-58-CONF-ENG-CT,54:1-55:23](#); [T-61-CONF-ENG-ET,29:20-32:22](#); [P-963:T-78-CONF-ENG-ET,70:7-17,72:25-73:9](#); [P-768:T-33-CONF-ENG-CT,64:21-65:10](#); [P-907:T-90-CONF-ENG-CT,8:1-11,8:21-10:13](#); [P-10:T-47-CONF-ENG-CT,14:16-15:16](#); [P-888:T-105-CONF-ENG-CT,77:1-78:8](#).

<sup>1102</sup> [P-17:T-58-CONF-ENG-CT,54:12-55:18](#).

<sup>1103</sup> [P-907:T-90-CONF-ENG-CT,8:1-11](#).

<sup>1104</sup> [D-300:T-239-CONF-ENG-CT,85:24-86:21](#).

<sup>1105</sup> [P-963:T-78-CONF-ENG-ET,85:25-86:12](#); [P-17:T-59-CONF-ENG-CT,9:16-10:7,11:21-13:6](#); [T-61-CONF-ENG-ET,54:10-60:11](#); [P-892:T-83-CONF-ENG-CT,42:4-44:10](#); [P-55:T-71-CONF-ENG-CT,46:13-49:23](#); [P-907:T-90-CONF-ENG-CT,11:13-12:21](#); [P-768:T-33-CONF-ENG-CT,34:22-35:5,41:18-44:2](#); [P-2:DRC-OTP-2060-0002-R03,p.0005](#).

<sup>1106</sup> [P-907:T-90-CONF-ENG-CT,10:3-12:21,33:12-34:10,36:8-16](#); [T-92-CONF-ENG-CT,60:21-63:1](#); [P-17:T-59-CONF-ENG-CT,19:9-23,20:5-22](#); [T-62-CONF-ENG-ET,60:20-61:16](#); [P-912:T-148-CONF-ENG-ET,56:1-59:3](#); [P-963:T-78-CONF-ENG-ET,80:17-21](#); [T-79-CONF-ENG-ET,19:10:20:9,31:23-32:16,34:3-9](#); [P-2:DRC-OTP-2060-0002-R03,pp.0005-0006,para.30](#); [P-315:DRC-OTP-2058-0990,pp.1011-1012](#); [P-892:T-83-CONF-ENG-CT,36:3-39:5](#); [DRC-OTP-2058-0251,00:15:06-00:16:10](#), a video taken in the centre of Mongbwalu three days after the attack and showing civilians carrying items such as mattresses (00:15:07,00:15:21,00:16:00,00:16:04,00:16:06) as well as emptied houses and stores (00:15:11-00:15:31).

<sup>1107</sup> [P-17:T-59-CONF-ENG-CT,19:14-23](#); [P-768:T-33-CONF-ENG-CT,64:6-20](#); [P-190:T-97-CONF-ENG-CT,16:20-17:8](#); [P-907:T-90-CONF-ENG-CT,33:21-34:10,36:8-16](#); [P-10:T-47-CONF-ENG-CT,13:7-18](#); [P-892:T-83-CONF-ENG-CT,36:3-39:5](#).

<sup>1108</sup> [P-907:T-90-CONF-ENG-CT,10:3-13,33:21-34:10,36:8-16](#); [P-10:T-47-CONF-ENG-CT,13:13-15](#); [P-17:T-58-CONF-ENG-CT,80:24-81:7](#); [P-892:T-83-CONF-ENG-CT,37:1-5](#); [P-888:T-105-CONF-ENG-CT,82:14-83:2](#).

<sup>1109</sup> [P-888:T-105-CONF-ENG-CT,82:14-19](#); [P-768:T-33-CONF-ENG-CT,64:6-20](#); [P-907:T-90-CONF-ENG-CT,36:8-16](#).

<sup>1110</sup> [P-55:T-72-CONF-ENG-CT,11:1-22,13:7-10](#); [P-888:T-105-CONF-ENG-CT,82:14-84:19](#); [P-768:T-33-CONF-ENG-CT,59:22-61:19,63:23-64:5](#); [T-36-CONF-ENG-CT,13:14-15:21](#); [P-190:T-97-CONF-ENG-CT,16:20-17:8](#); [P-907:T-90-CONF-ENG-CT,10:3-13,36:8-16](#); [P-17:T-58-CONF-ENG-CT,81:1-82:7](#); [T-59-CONF-ENG-CT,20:16-22](#).

them,<sup>1111</sup> is contradicted by overwhelming evidence that UPC soldiers and Hema civilians supporters engaged in a looting frenzy in the streets of Mongbwalu as soon as the town was captured.

386.P-907, who participated in looting in the centre of Mongbwalu, said:

*We were supposed to loot systematically, take everything that we found. Each time we attacked a particular place we were supposed to loot. And the civilians that went along with us were supposed to go and help the soldiers carry the looted goods; vehicles, mattresses, televisions, radios, furniture, everything. As soon as we entered a house we really couldn't pick and choose, we were supposed to take everything.*<sup>1112</sup>

387. Similarly, P-963, who also participated in the pillaging himself<sup>1113</sup> along with other UPC commanders,<sup>1114</sup> states: *"Everyone, everybody pillaged",*<sup>1115</sup> *"all commanders, all leaders [...] everybody pillaged."*<sup>1116</sup> P-10 took a bed, clothes, shoes, drinks and cigarettes.<sup>1117</sup> P-17 saw looted computers, TVs and DVDs at the residence of MULENDA.<sup>1118</sup> Vehicles were reserved for the commanders.<sup>1119</sup>

388. UPC soldiers also looted the hospital in Mongbwalu. P-17 saw medical equipment at NTAGANDA's residence.<sup>1120</sup> P-768 was told by a nurse that there was no medication in this hospital because *"everything had been pillaged"*.<sup>1121</sup> P-768 later saw pillaged goods, including boxes with medicine, being loaded onto a pickup truck also looted in Mongbwalu by NTAGANDA.<sup>1122</sup>

389. NTAGANDA, like all commanders, had troops pillage on his behalf.<sup>1123</sup> P-10

<sup>1111</sup> [D-300:T-218-CONF-ENG-CT](#),9:17-24;[T-234-CONF-ENG-CT](#),7:8-8:15.

<sup>1112</sup> [P-907:T-90-CONF-ENG-CT](#),10:3-13.

<sup>1113</sup> [P-963:T-79-CONF-ENG-ET](#),19:10-20:2,20:6-9.

<sup>1114</sup> [P-963:T-79-CONF-ENG-ET](#),20:10-20; [P-17:T-58-CONF-ENG-CT](#),81:8-82:17.

<sup>1115</sup> [P-963:T-79-CONF-ENG-ET](#),20:10-20.

<sup>1116</sup> [P-963:T-79-CONF-ENG-ET](#),20:16-20.

<sup>1117</sup> [P-10:T-47-CONF-ENG-CT](#),13:13-15.

<sup>1118</sup> [P-17:T-58-CONF-ENG-CT](#),80:24-81:3,81:8-13;[T-62-CONF-ENG-ET](#),64:4-16.

<sup>1119</sup> [P-907:T-90-CONF-ENG-CT](#),36:8-16; [P-888:T-105-CONF-ENG-CT](#),82:14-84:19; [P-17:T-59-CONF-ENG-CT](#),20:16-22.

<sup>1120</sup> [P-17:T-58-CONF-ENG-CT](#),82:5-17;[T-63-CONF-ENG-ET](#),61:24-62:14.

<sup>1121</sup> [P-768:T-33-CONF-ENG-CT](#),59:5-21; [P-10:T-47-CONF-ENG-CT](#),13:22-14:15.

<sup>1122</sup> [P-768:T-33-CONF-ENG-CT](#),59:22-61:19,63:23-64:5;[T-36-CONF-ENG-CT](#),13:14-15:21.

<sup>1123</sup> [P-963:T-79-CONF-ENG-ET](#),20:10-20.

and P-768 saw that **NTAGANDA** organised the transportation of pillaged goods to his residence in Mongbwalu.<sup>1124</sup> He also arranged for cars and planes to bring these goods back to Bunia.<sup>1125</sup> **NTAGANDA** had pillaged so much that the plane had to fly back and forth several times.<sup>1126</sup> P-16, who was in Bunia at the time, saw **NTAGANDA**'s bodyguards unloading the pillaged goods from Mongbwalu.<sup>1127</sup> P-888 confirms that UPC commanders took the looted goods back to their homes in Bunia.<sup>1128</sup>

390. Numerous residents of Mongbwalu testified to the looting of their possessions.<sup>1129</sup> P-859 saw Hema civilians wearing his own clothes, but was too afraid to approach them.<sup>1130</sup> Witness P-887, a resident of Mongbwalu, saw UPC soldiers pillaging the homes of Lendu civilians. Her own family's house was also pillaged.<sup>1131</sup> Both soldiers and Hema civilians were looting shops and houses in Mongbwalu.<sup>1132</sup>

391. Everything that was left behind was pillaged by the UPC soldiers.<sup>1133</sup> Hema militiamen took everything from the home of P-39, taking whatever they found to be of value.<sup>1134</sup>

<sup>1124</sup> **P-768:T-33-CONF-ENG-CT**,59:5-61:19.

<sup>1125</sup> **P-16:DRC-OTP-2054-1625**,pp.1650-1652; **P-963:T-79-CONF-ENG-ET**,20:15:21:18; **P-901:T-28-CONF-ENG-CT**,57:19-58:23;**T-32-CONF-ENG-CT**,28:25-33:6; **P-892:T-83-CONF-ENG-CT**,39:21-41:1,43:7-15; **P-768:T-33-CONF-ENG-CT**,59:22-61:5; **P-10:T-50-CONF-ENG-CT**,21:4-10,22:17-23:5.

<sup>1126</sup> **P-16:DRC-OTP-2054-1625**,p.1650:4-p.1652:16; **DRC-OTP-0017-0033**,p.0209(second)(transl.**DRC-OTP-2102-3854**,p.3859).

<sup>1127</sup> **P-16:DRC-OTP-0126-0422**,p.0446,paras.130,132;**DRC-OTP-2054-1625**,p.1631:21-p.1633:15,p.1650:4-p.1652:16.

<sup>1128</sup> **P-888:T-105-CONF-ENG-CT**,82:14-84:19.

<sup>1129</sup> *E.g.* **P-892**:83,40:21-23,41:10-42:3,43:1-6; **P-912:T-148-CONF-ENG-ET**,56:1-59:3; **P-859:T-51-CONF-ENG-CT**,26:7-16;**T-52-CONF-ENG-CT**,6:12-18; **P-894:DRC-OTP-2076-0194-R02**,p.0207,para.58;**T-103-CONF-ENG-ET**,103:20-104:15;**T-104-CONF-ENG-ET**,8:21-9:4;**T-104-CONF-ENG-ET**,67:25-68:12; **V-2:T-202-CONF-ENG-CT**,19:2-5.

<sup>1130</sup> **P-859:T-51-CONF-ENG-CT**,32:20-33:2.

<sup>1131</sup> **P-887:T-93-CONF-ENG-CT**,27:14-28:20.

<sup>1132</sup> **P-963:T-78-CONF-ENG-ET**,85:25-86:12; **P-907:T-90-CONF-ENG-CT**,10:3-12:21,33:12-34:10,36:8-16;**T-92-CONF-ENG-CT**,60:21-63:1; **P-2-DRC-OTP-2060-0002-R03**,pp.0005-0006,para.30; **P-898:T-154-CONF-ENG-ET**,21:22-22:2;**T-155-CONF-ENG-ET**,57:17-25.

<sup>1133</sup> **P-17:T-58-CONF-ENG-CT**,81:6-7; **P-907:T-90-CONF-ENG-CT**,10:3-13; **P-55:T-72-CONF-ENG-CT**,11:9-17.

<sup>1134</sup> **P-39:DRC-OTP-2062-0244-R02**,p.0251,para.27.

392. UPC soldiers pillaged P-877's belongings and money of other [REDACTED].<sup>1135</sup>

P-912 witnessed UPC looting shops in the centre of Mongbwalu, saying "*the time ha[s] come to loot*". They took all her belongings and carried them back to the UPC camp.<sup>1136</sup>

#### b. Sayo

393. UPC soldiers under the command of **NTAGANDA**, followed by Hema civilian supporters,<sup>1137</sup> went on to systematically pillage Sayo.<sup>1138</sup> P-17 saw civilians carrying bags full of what he believed to be pillaged goods.<sup>1139</sup>

394. Civilian dwellings were looted and burnt, including the health centre.<sup>1140</sup> UPC soldiers robbed it of all its medicine, leaving the population without medical supplies to treat injuries.<sup>1141</sup>

395. The church in Sayo was completely pillaged by **NTAGANDA** and his soldiers. The church doors were smashed and "*everything was pillaged*".<sup>1142</sup>

396. UPC soldiers also took the corrugated iron from civilian dwellings in Sayo.<sup>1143</sup> P-886 was ordered to load these goods onto a truck; electronic items, clothes, food, bicycles and furniture were also loaded and taken away.<sup>1144</sup>

397. Through his own perpetration of pillaging<sup>1145</sup> and his orders for his

<sup>1135</sup> **P-877**:[DRC-OTP-2069-2086-R03](#), pp.2088-2089, paras.11,13,16.

<sup>1136</sup> **P-912**:[T-148-CONF-ENG-ET](#),56:1-59:3.

<sup>1137</sup> **P-17**:[T-58-CONF-ENG-CT](#),58:17-59:1,77:16-78:4;[T-59-CONF-ENG-CT](#),7:19-9:15.

<sup>1138</sup> **P-768**:[T-33-CONF-ENG-CT](#),45:23-46:5,50:13-51:14; **P-963**:[T-79-CONF-ENG-ET](#),14:15-23; **P-17**:[T-58-CONF-ENG-CT](#),79:19-80:3,80:20-81:7; **P-800**:[T-68-CONF-ENG-ET](#),52:6-20,81:5-11; **P-16**:[DRC-OTP-0126-0422](#),p.0446,para.132; **P-886**:[T-36-CONF-ENG-CT](#),70:17-23;[T-37-CONF-ENG-ET](#),16:15-25,17:5-18:19; [T-40-CONF-ENG-CT](#),17:10-25.

<sup>1139</sup> **P-17**:[T-58-CONF-ENG-CT](#),79:19-80:3.

<sup>1140</sup> **P-815**:[T-76-CONF-ENG-CT](#),57:16-60:21,58:5-60:21.

<sup>1141</sup> [REDACTED].

<sup>1142</sup> **P-768**:[T-33-CONF-ENG-CT](#),45:23-46:5,50:13-51:14.

<sup>1143</sup> **P-886**:[T-37-CONF-ENG-ET](#),17:5-18:19.

<sup>1144</sup> **P-886**:[T-37-CONF-ENG-ET](#),19:5-20:16.

<sup>1145</sup> **P-17**:[T-58-CONF-ENG-CT](#),81:1-82:17,82:5-17;[T-63-CONF-ENG-ET](#),61:24-62:14; **P-768**:[T-33-CONF-ENG-CT](#),59:5-61:19,63:23-64:5,64:6-20;[T-36-CONF-ENG-CT](#),13:14-15:21; **P-963**:[T-79-CONF-ENG-ET](#),20:10-21:18; **P-901**:[T-28-CONF-ENG-CT](#),57:19-58:23;[T-32-CONF-ENG-CT](#),28:25-33:6; **P-888**:[T-105-CONF-ENG-CT](#),82:14-84:19.

subordinates to pillage,<sup>1146</sup> NTAGANDA was aware that the UPC committed the crime of pillaging during the assault on Banyali-Kilo.

**c. The owners of the pillaged goods need not be “adversaries”**

398. The victims of pillaging need not be individuals supporting opposing armed groups. No such requirement appears in the elements of this crime in article 8(2)(e)(v),<sup>1147</sup> as noted by Trial Chamber II.<sup>1148</sup> Pre-Trial Chamber I expressly rejected any such requirement.<sup>1149</sup> What it noted to be important was whether the properties in the attacked village were pillaged, with the intention: (i) to destroy the village, (ii) to deprive the owners of their properties, (iii) to displace the persons that lived there, or (iv) to appropriate the villagers’ belongings for private or personal use.<sup>1150</sup>

399. The UPC destroyed non-Hema civilian property with the awareness that the property belonged to these civilians. This is demonstrated by the fact that UPC commanders ordered the destruction of civilian areas<sup>1151</sup> which was comprehensively executed by UPC soldiers, notably by shelling or burning down villages, for the purpose of ousting the non-Hema civilian population from the areas they attacked.<sup>1152</sup>

400. UPC troops committed pillaging during the assaults in areas inhabited by Lendu and non-Hema,<sup>1153</sup> during which forcible displacement<sup>1154</sup> and destruction of property were ordered and committed by UPC troops.<sup>1155</sup> Witnesses whose goods were pillaged<sup>1156</sup> – or who were used as porters of looted goods taken

<sup>1146</sup> [P-963:T-78-CONF-ENG-ET](#),70:7-17,72:25-73:9; [P-907:T-90-CONF-ENG-CT](#),8:21-10:13.

<sup>1147</sup> Elements of crimes, article 8(2)(e)(v).

<sup>1148</sup> [Katanga TJ](#),para.907.

<sup>1149</sup> [Mbarushimana DCC](#),para.176 and fn.411 therein.

<sup>1150</sup> [Katanga DCC](#),para.329 and fn.430 therein.

<sup>1151</sup> [P-963:T-79-CONF-ENG-ET](#),78:16-79:7; [P-17:T-59-CONF-ENG-CT](#),75:18-76:7.

<sup>1152</sup> See Sections VII.A.6. and B.6.

<sup>1153</sup> See Sections VII.A.5. and B.5.

<sup>1154</sup> See Sections VII.A.4. and B.4.

<sup>1155</sup> See Sections VII.A.6. and B.6.

<sup>1156</sup> E.g. Witnesses [P-39](#), [P-800](#), [P-859](#), [P-877](#), [P-886](#), [P-892](#), [P-894](#), [P-912](#), and [V-2](#).

from non-Hema areas<sup>1157</sup> – are themselves non-Hema.

### 7. *Destroying the enemy's property (Article 8(2)(e)(xii)) - Count 18*<sup>1158</sup>

401. During the First Attack, UPC troops under the command of NTAGANDA destroyed property of the adversary which was protected from such destruction under the international law of armed conflict; such destruction was not required by military necessity.<sup>1159</sup>

402. UPC soldiers destroyed houses<sup>1160</sup> and were not punished for doing so.<sup>1161</sup> The evidence establishes that there was a deliberate intent to destroy property.<sup>1162</sup>

#### a. Mongbwalu

403. NTAGANDA deployed UPC troops to Mongbwalu, including several heavy weapons units.<sup>1163</sup> One of these units operated directly under his command.<sup>1164</sup> These units shelled houses<sup>1165</sup> in civilian areas inhabited by a majority of Lendu,<sup>1166</sup> using heavy weapons, mortars and rocket-propelled grenades.<sup>1167</sup> This means of warfare resulted in the extensive destruction<sup>1168</sup> of civilian homes and

<sup>1157</sup> *E.g.* Witnesses **P-19**, **P-100**, and **P-113**.

<sup>1158</sup> This section concerns the crimes committed in or around Mongbwalu and Sayo.

<sup>1159</sup> The property concerned must belong to an "opponent" in the conflict. The goods in question - movable or immovable, private or public - should belong to allied natural or legal persons or by allegiance to a party to the conflict opposed or hostile to the author of crime, which can be established on the basis of ethnic origin or the last place of residence. *See Katanga TJ*, para.892 and *Mbarushimana DCC*, para.171.

<sup>1160</sup> **P-963:T-78-CONF-ENG-ET**,81:23-83:10;**T-79-CONF-ENG-ET**,12:9-13:24; **V-2:T-202-CONF-ENG-CT**,13:5-20,15:19-23,18:10-19:1,31:12-17.

<sup>1161</sup> **P-907:T-90-CONF-ENG-CT**,51:19-52:23; **P-768:T-34-CONF-ENG-CT**,16:11-15; **P-888:T-106-CONF-ENG-CT**,8:19-9:4.

<sup>1162</sup> Elements of Crimes, article 8(2)(e)(xii).

<sup>1163</sup> **P-17:T-58-CONF-ENG-CT**,59:15-62:17;**T-61-CONF-ENG-ET**,23:24-24:19; **P-963:T-78-CONF-ENG-ET**,69:2-15,77:13-14,78:5-15; **P-10:T-47-CONF-ENG-CT**,11:3-12:9.

<sup>1164</sup> **P-17:T-58-CONF-ENG-CT**,62:7-62:17; **P-963:T-78-CONF-ENG-ET**,81:23-84:6; **P-768:T-33-CONF-ENG-CT**,34:22-36:1.

<sup>1165</sup> **P-17:T-58-CONF-ENG-CT**,62:21-63:14; **P-10:T-50-CONF-ENG-CT**,60:22-61:19; **DRC-OTP-0074-0422**,pp.0451-0452,paras.101-102.

<sup>1166</sup> **DRC-OTP-0074-0628**,p.0660.

<sup>1167</sup> **P-17:T-58-CONF-ENG-CT**,59:15-62:17;**T-61-CONF-ENG-ET**,23:24-24:19; **P-963:T-78-CONF-ENG-ET**,69:2-15; **P-768:T-33-CONF-ENG-CT**,34:22-36:1; **P-103:DRC-OTP-0104-0170-R02**,pp.0173-0174,para.19; **DRC-OTP-0074-0422**,p.0452,para.102.

<sup>1168</sup> **DRC-OTP-0074-0422**,p.0452,para.102.



buildings.<sup>1169</sup> UPC heavy weapons completely destroyed Lendu civilian dwellings in the town.<sup>1170</sup>

404. Following the attack, UPC soldiers and Hema civilians spread in Mongbwalu, looting and destroying houses and shops in the process.<sup>1171</sup> When P-39 returned to Mongbwalu, he saw that lots of destruction and pillaging had taken place in the city. He had to go to live with his son, whose house had not been destroyed.<sup>1172</sup>

#### b. Sayo

405. Shortly after the assault on Mongbwalu, UPC troops systematically shelled Sayo, a predominantly Lendu village.<sup>1173</sup> The attack resulted in the destruction of many houses and buildings in Sayo.<sup>1174</sup> UPC soldiers proceeded to burn down houses in the village.<sup>1175</sup> One eyewitness stated: “[t]he [UPC] were using incendiary grenades and burned houses that still had people in them”.<sup>1176</sup>

406. UPC troops on the ground completed the destruction of the buildings with heavy weapons.<sup>1177</sup> P-815’s house in Sayo was destroyed, along with that of his father and many others.<sup>1178</sup> P-886 saw many houses that were damaged in Sayo, including his own.<sup>1179</sup> All houses with thatched roofs were burnt, with every

<sup>1169</sup> [DRC-OTP-0074-0422](#),p.0452,para.102.

<sup>1170</sup> [P-859:T-51-CONF-ENG-CT](#),16:14-17:24,17:21-24,26:17-19;[T-52-CONF-ENG-CT](#),6:19-22; [V-2:T-202-CONF-ENG-CT](#),18:10-17,19:2-5.

<sup>1171</sup> [P-768:T-33-CONF-ENG-CT](#),42:5-21; [P-907:T-90-CONF-ENG-CT](#),12:13-21; [P-888:T-105-CONF-ENG-CT](#),79:13-81:5; [P-892:T-83-CONF-ENG-CT](#),36:3-39:5,42:4-44:10.

<sup>1172</sup> [P-39:DRC-OTP-2062-0244-R02](#),p.0257,para.59.

<sup>1173</sup> [P-17:T-58-CONF-ENG-CT](#),66:24,68:6-14,69:16-73:3; [P-768:T-33-CONF-ENG-CT](#),50:13-51:7;[DRC-OTP-2058-0664-R02](#); [P-963:T-78-CONF-ENG-ET](#),79:5-7;[T-79-CONF-ENG-ET](#),12:9-13:24; [P-886:T-37-CONF-ENG-ET](#),9:3-9; [P-315:DRC-OTP-2058-0990](#),p.1015,para.136.

<sup>1174</sup> [P-768:T-33-CONF-ENG-CT](#),50:13-51:7;[DRC-OTP-2058-0664-R02](#); [P-898:T-154-CONF-ENG-ET](#),26:4-27:8; [P-800:T-68-CONF-ENG-ET](#),81:12-23;[T-69-CONF-ENG-CT](#),51:7-52:22.

<sup>1175</sup> [P-815:T-76-CONF-ENG-CT](#),57:1-15.

<sup>1176</sup> [DRC-OTP-0074-0628](#),p.0666.

<sup>1177</sup> [P-768:T-33-CONF-ENG-CT](#),50:13-51:7;[DRC-OTP-2058-0664-R02](#); [P-17:T-58-CONF-ENG-CT](#),66:24,68:6-14,69:16-73:3; [P-963:T-78-CONF-ENG-ET](#),79:5-7;[T-79-CONF-ENG-ET](#),12:9-13:24; [P-886:T-37-CONF-ENG-ET](#),9:3-6; [P-315:DRC-OTP-2058-0990](#),p.1015,para.136.

<sup>1178</sup> [P-815:T-76-CONF-ENG-CT](#),57:16-25.

<sup>1179</sup> [P-886:T-37-CONF-ENG-ET](#),16:15-18:19.



door and window broken.<sup>1180</sup> UPC soldiers also destroyed the local Catholic church, known as “Mungu Samaki”.<sup>1181</sup>

407. The destruction of property in the Banyali-Kilo *collectivité* was not required by any military necessity. In the course of the attack, UPC soldiers made no distinction between military and civilian objects when indiscriminately shelling and attacking the densely populated villages of Mongbwalu and Sayo.<sup>1182</sup>

### 8. *Attacking protected objects (Article 8(2)(e)(iv)) - Count 17*<sup>1183</sup>

408. The first element of this crime is that the perpetrator directed an “attack”.<sup>1184</sup> The UPC’s “attack” was the destruction of property and extensive pillaging of these structures. The Prosecution incorporates by reference in this section the evidence on the pillaging and destruction of “protected” property.<sup>1185</sup>

409. The second element of this crime requires that the object of the attack “was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.”<sup>1186</sup>

410. During the course of the First Attack, UPC soldiers targeted structures that

<sup>1180</sup> [P-815:T-76-CONF-ENG-CT](#),57:1-15.

<sup>1181</sup> [P-898:T-154-CONF-ENG-ET](#),26:4-27:8.

<sup>1182</sup> [P-963:T-79-CONF-ENG-ET](#),15:22-16:9; [P-768:T-33-CONF-ENG-CT](#),37:2-16.

<sup>1183</sup> This section concerns the crimes committed in or around Mongbwalu and Sayo.

<sup>1184</sup> An ‘attack’ is not defined in the Statute or the Elements of Crimes. However, article 13(2) of Additional Protocol II states that “the civilian population as such, as well as individual civilians, shall not be the object of attack”. See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (Protocol II), 8 June 1977. See also, [Katanga TJ](#), paras 797-798, and C. Pilloud et al., Commentary of the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, ICRC, Geneva, Martinus Nijhoff (1987), commentary to article 13(2) APII, p.1453, para.4783.

<sup>1185</sup> See Sections VII.A.7 and 8.

<sup>1186</sup> Elements of Crimes, p.36. Military objectives are “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definitive military advantage”, in accordance with article 52(2) AP I.” See [Katanga DCC](#), para.312. The jurisprudence of the ICTY has dealt extensively with the issue of destruction of protected objects: “The damage or destruction must have been committed intentionally to institutions which may clearly be identified as dedicated to religion or education and which were not being used for military purposes at the time of the acts.” [Blaškić TJ](#), para.185. However, the fact that an institution is in the “immediate vicinity of military objective” does not justify its destruction. See [Natic & Martinovic TJ](#), para.604.

were protected under article 8(2)(e)(iv), including schools, hospitals, local health centres and churches.

**a. Mongbwalu**

411. As part of the plan to systematically drive the non-Hema civilians away from the Banyali-Kilo *collectivité*, NTAGANDA and UPC troops under his command attacked the hospital in Mongbwalu, taking medication and equipment,<sup>1187</sup> as they had previously done in other locations. After NTAGANDA left, the nurse at Mongbwalu hospital was left without any medication to treat sick patients.<sup>1188</sup>

**b. Sayo**

412. In Sayo, UPC troops attacked the church known as “Mungu Samaki”, in the presence of NTAGANDA.<sup>1189</sup> NTAGANDA filmed the civilians fleeing to hide inside the church.<sup>1190</sup> At least one civilian was removed from the church and executed in front of NTAGANDA.<sup>1191</sup> Many civilians were then murdered at this church.<sup>1192</sup> P-768 saw the aftermath of the pillaging carried out at the church, observing that the doors were broken and that “*it was absolute serious disorder all over the place*”.<sup>1193</sup> The church was subsequently destroyed.<sup>1194</sup>

413. UPC troops also attacked the health centre in Sayo.<sup>1195</sup> The soldiers opened fire on the health centre without warning.<sup>1196</sup> They then pillaged the building, taking equipment and medicine.<sup>1197</sup> Following the assault, bullet cartridges were found

<sup>1187</sup> [P-768:T-33-CONF-ENG-CT](#),59:5-61:19; [P-17:T-58-CONF-ENG-CT](#),81:8-82:17;[T-63-CONF-ENG-ET](#),61:24-62:14.

<sup>1188</sup> [P-768:T-33-CONF-ENG-CT](#),59:5-21.

<sup>1189</sup> [P-17:T-58-CONF-ENG-CT](#),73:8-79:18;[T-59-CONF-ENG-CT](#),7:19-9:15.

<sup>1190</sup> [P-17:T-58-CONF-ENG-CT](#),70:7-71:3.

<sup>1191</sup> [P-17:T-58-CONF-ENG-CT](#),73:8-74:19.

<sup>1192</sup> [P-17:T-58-CONF-ENG-CT](#),73:8-79:18;[T-59-CONF-ENG-CT](#),7:19-9:15.

<sup>1193</sup> [P-768:T-33-CONF-ENG-CT](#),45:23-46:5,50:13-51:14.

<sup>1194</sup> [P-898:T-154-CONF-ENG-ET](#),26:4-27:8.

<sup>1195</sup> [REDACTED].

<sup>1196</sup> [REDACTED].

<sup>1197</sup> [REDACTED].

in the rooms of the health centre and blood was on the floor.<sup>1198</sup> UPC soldiers had killed wounded and sick patients who were being treated at the health centre.<sup>1199</sup> [REDACTED] 27 bodies inside the health centre shortly after the UPC's attack on Sayo.<sup>1200</sup>

### c. Protected objects were the intended targets of the attacks

414. **NTAGANDA** and the UPC troops were aware of the nature and purpose of the protected objects and intended to attack them. The church and hospitals, systematically pillaged and destroyed or otherwise attacked, were easily identifiable.<sup>1201</sup> The UPC troops could not have failed to recognise their nature and purpose as they were targeting them.

415. **NTAGANDA** took part in the attack both on Mongbwalu hospital and the church in Sayo.<sup>1202</sup> He thereby conveyed to his troops the message that these protected objects could be targeted.

### 9. Rape of civilians (Articles 7(1)(g) and 8(2)(e)(vi)) - Counts 4 and 5<sup>1203</sup>

416. During a pre-assault briefing in Mabanga, **NTAGANDA** ordered the UPC troops to "*Piga Na Kuchaji*".<sup>1204</sup> In advance of the attack, **NTAGANDA** and his commanders told the troops that "*all the people there in Mongbwalu [were] [their] enemies*", so they "*must take advantage of the situation*".<sup>1205</sup> Commander **MULENDA** further encouraged them, telling them that the troops "*will receive money, [...] would sleep on mattresses, [...] have food, [...] have women*".<sup>1206</sup> The UPC

<sup>1198</sup> [REDACTED].

<sup>1199</sup> **P-17:T-58-CONF-ENG-CT**,68:6-69:6;**T-59-CONF-ENG-CT**,3:20-4:17;**T-61-CONF-ENG-ET**,70:16-72:7,103:16-105:7; [REDACTED].

<sup>1200</sup> [REDACTED].

<sup>1201</sup> **P-768:T-33-CONF-ENG-CT**,50:24-51:7,59:7-21; **P-800:T-68-CONF-ENG-ET**,51:25-53:7,81:5-11.

<sup>1202</sup> **P-768:T-33-CONF-ENG-CT**,59:5-61:5; **P-17:T-58-CONF-ENG-CT**,81:8-82:17,73:8-79:18;**T-59-CONF-ENG-CT**,7:19-9:15;**T-63-CONF-ENG-ET**,61:24-62:14.

<sup>1203</sup> This section concerns the crimes committed in or around Mongbwalu, Sayo and Kilo.

<sup>1204</sup> [REDACTED].

<sup>1205</sup> **P-907:T-90-CONF-ENG-CT**,8:21-9:19.

<sup>1206</sup> **P-17:T-58-CONF-ENG-CT**,53:21-55:17.

soldiers implemented these orders by raping women. According to P-17, “it was a way of motivating the troops”.<sup>1207</sup> P-963 confirmed: “[i]f you are a soldier, the army is a place of happiness and joy for you. You will have women for free, houses for free and everything is free when you are a soldier”.<sup>1208</sup>

417. Accordingly, UPC soldiers and Hema civilian supporters brutally raped women and girls of the civilian population of Banyali-Kilo during the operation that started on or about 21 November 2002.

418. V-2 is one of the victims of the UPC’s rapes. As she was fleeing the UPC’s advance, V-2 and a group of civilian men and seven women were stopped by UPC soldiers in Beba. After separating the men from the women, the soldiers told V-2 to give her child to a soldier and to lie down. When V-2 refused to comply, a UPC soldier hit her [REDACTED] with the butt of his rifle, [REDACTED]. Two soldiers then raped V-2 in the bush, one after the other, as a third soldier stood aside [REDACTED]. When they were done, they told her to leave. V-2 later met three of the women who were stopped at the same time. All three told her that the UPC soldiers had raped them.<sup>1209</sup>

#### a. Mongbwalu and Sayo

419. In the aftermath of the takeover, the UPC occupying force raped women at will during daily *ratissage* operations.<sup>1210</sup> Troops openly discussed raping during patrols.<sup>1211</sup> P-887 saw an armed UPC soldier chase a girl in the streets and forcibly take her away. The girl, P-887’s neighbour, only returned the following

<sup>1207</sup> [P-17:T-58-CONF-ENG-CT](#),55:4-9.

<sup>1208</sup> [P-963:T-80-CONF-ENG-ET](#),17:2-18:24.

<sup>1209</sup> [V-2:T-202-CONF-ENG-CT](#),16:10-18:9,21:23-22:23,24:16-27:2,32:6-13,32:17-34:12.

<sup>1210</sup> [P-887:T-93-CONF-ENG-CT](#),19:17-20,22:17-19,24:10-25:14; [P-963:T-79-CONF-ENG-ET](#),31:24-36:7,33:22-35:4,35:10-11,36:4-7; [P-898:T-154-CONF-ENG-ET](#),16:4-17:1; [P-907:T-90-CONF-ENG-CT](#),39:15-40:6; [P-888:T-105-CONF-ENG-CT](#),81:9-22.

<sup>1211</sup> [P-963:T-79-CONF-ENG-ET](#),31:24-36:7,33:22-35:4,35:10-11,36:4-7; [P-898:T-154-CONF-ENG-ET](#),16:4-17:1.

morning.<sup>1212</sup>

420. UPC intelligence agents reported numbers of rape to their hierarchy, and [REDACTED] verified the veracity of the information in local dispensaries.<sup>1213</sup> No disciplinary action was taken as a result.<sup>1214</sup> UPC soldiers were free to rape. P-963 said: *“in general it was do whatever you wanted, do as you will”*.<sup>1215</sup> NTAGANDA claimed that he instructed his officers not to let the soldiers go around town after the capture of Mongbwalu.<sup>1216</sup> Yet, video evidence taken one day after his alleged instruction shows exactly that: young, undisciplined soldiers wandering around Mongbwalu, harassing women and showing off their weapons to the camera.<sup>1217</sup>

421. During one patrol, three armed UPC soldiers entered [REDACTED]’s house in Mongbwalu and captured her daughter, [REDACTED], *“to do some work for them”*.<sup>1218</sup> [REDACTED] was dragged to a civilian house and three other armed soldiers beat her up in the bedroom. UPC Commander [REDACTED] raped her first while she was held by the other two. When he finished, a second soldier quickly switched position and raped the [REDACTED]-year-old girl.<sup>1219</sup>

422. For several days, UPC soldiers returned to the same neighbourhood and abducted women as sex slaves – gang raping and beating them.<sup>1220</sup> Some were further exploited as cooks for the troops.<sup>1221</sup>

423. UPC soldier BASARA captured a 16-year-old Nyali girl in Mongbwalu. Armed, he threatened to kill her if she did not take off her clothes. She was afraid.

<sup>1212</sup> [P-887:T-93-CONF-ENG-CT](#),24:10-25:14.

<sup>1213</sup> [REDACTED].

<sup>1214</sup> [P-190:T-97-CONF-ENG-CT](#),18:16-19:3; [P-907:T-90-CONF-ENG-CT](#),52:11-13; [P-963:T-79-CONF-ENG-ET](#),35:9-11,36:4-7.

<sup>1215</sup> [P-963:T-80-CONF-ENG-ET](#),40:10-13[[T-80-CONF-FRA-ET](#),41:12-15].

<sup>1216</sup> [D-300:T-217-CONF-ENG-ET](#),68:17-70:23.

<sup>1217</sup> [DRC-OTP-2058-0251](#),00:49:54-00:50:59.

<sup>1218</sup> [REDACTED].

<sup>1219</sup> [REDACTED].

<sup>1220</sup> [REDACTED].

<sup>1221</sup> *Ibid.*

BASARA raped her and told her: “[i]f anyone comes after you and asks questions, you say that you’re Basara’s wife”.<sup>1222</sup> [REDACTED] is an eyewitness of this rape.

424. Soldiers also brought the victims back to their settlements in the UPC camps, including just below the *Appartements*.<sup>1223</sup> There, rape was common.<sup>1224</sup> Women were present in the military camp of the occupying force, the UPC, under coercive circumstances.<sup>1225</sup> Witness P-907 said of the women at the camps: “[t]hey were there to sexually satisfy the soldiers”.<sup>1226</sup> Armed UPC soldiers brought them as prisoners; when they finished raping and exploiting them, they would throw them out and find another woman.<sup>1227</sup> P-887, [REDACTED], saw UPC soldiers take women inside the camp: “once they arrived, the soldiers would have them go into the house and then shortly after they would leave the place. If one would come in the evening, she would spend the night, and the next morning she would leave again”. When they left, the women were crying.<sup>1228</sup> At the *Appartements*, NTAGANDA’s bodyguards raped the three nuns detained with BWANALONGA.<sup>1229</sup>

425. [REDACTED] [REDACTED].<sup>1230</sup> [REDACTED]<sup>1231</sup> [REDACTED].<sup>1232</sup> Many officers, such as Commander MULENDA, kept women in the camps.<sup>1233</sup> One night in MULENDA’s camp, P-17 heard a woman’s screams coming from a soldier’s hut and went to see what was happening. When he arrived at the hut, P-17 saw a half-naked woman lying down. The bare-chested UPC soldier who was with her promised P-17 “to quickly finish and to let [her] go”.<sup>1234</sup>

<sup>1222</sup> [REDACTED].

<sup>1223</sup> [REDACTED].

<sup>1224</sup> [P-907:T-90-CONF-ENG-CT](#),79:3-19,80:8-15.

<sup>1225</sup> [P-17:T-59-CONF-ENG-CT](#),22:5-17,25:4-7,27:10-25,28:2-12,30:24-31:16,32:23-33:23; [P-907:T-90-CONF-ENG-CT](#),79:3-19,79:20-80:7,80:8-15.

<sup>1226</sup> [P-907:T-90-CONF-ENG-CT](#),80:25-81:9.

<sup>1227</sup> [P-907:T-90-CONF-ENG-CT](#),41:15-43:6.

<sup>1228</sup> [P-887:T-93-CONF-ENG-CT](#),31:11-21,32:5-25,36:22-25.

<sup>1229</sup> [P-768:T-33-CONF-ENG-CT](#),55:17-22,57:1-58:7;[T-35-CONF-ENG-CT](#),66:6-71:5.

<sup>1230</sup> [REDACTED].

<sup>1231</sup> *Ibid.*

<sup>1232</sup> [REDACTED].

<sup>1233</sup> [P-17:T-59-CONF-ENG-CT](#),32:7-22.

<sup>1234</sup> [P-17:T-59-CONF-ENG-CT](#),32:23-33:23.

426. NTAGANDA himself and other officers brought back women to the camp.<sup>1235</sup>

P-17 saw NTAGANDA and SALONGO go to the centre of Mongbwalu to drink alcohol and come back with women at the camp. These women stayed in the camp overnight and “[f]rom the start until the moment they left they were silent”. They appeared “lost” and “intimidated”.<sup>1236</sup>

427. NTAGANDA tried to discredit P-17, claiming that in the days that he spent in Mongbwalu, “there were no bars, there were no drinks, and the population had not yet returned to Mongbwalu”, and adding: “people have said a lot of things in this Court, but these are just total lies”.<sup>1237</sup> Yet, video evidence taken on 28 November 2002 at the centre of Mongbwalu squarely contradicts NTAGANDA. Indeed, on this video, NTAGANDA can be seen asking a woman when he can come to drink “Kaikpo”,<sup>1238</sup> a locally brewed alcoholic drink<sup>1239</sup> that P-850 described as “a local drink which would get you drunk very easily”.<sup>1240</sup>

#### b. Kilo

428. When the UPC attacked Kilo on or about 6 December 2002, rape occurred on such a large scale that antibiotics to treat soldiers for venereal disease had to be delivered to the soldiers.<sup>1241</sup>

429. UPC soldiers continued to capture women and bring them to their camp to sexually exploit them. Commanders MULENDA, ERIC, and AMÉRICAIN sexually abused the same woman and passed her to each other in the UPC camp in Kilo.<sup>1242</sup> The local population had no choice but to endure sexual exploitation

<sup>1235</sup> P-17: [T-59-CONF-ENG-CT](#),25:4-7,27:10-25,28:2-12,30:24-31:16; P-888: [T-105-CONF-ENG-CT](#),81:23-82:13; P-907: [T-90-CONF-ENG-CT](#),40:8-10.

<sup>1236</sup> P-17: [T-59-CONF-ENG-CT](#),25:4-7,27:10-25,28:2-12,30:24-31:16.

<sup>1237</sup> D-300: [T-223-CONF-ENG-ET](#),39:7-40:12.

<sup>1238</sup> [DRC-OTP-2058-0251](#),01:56:32-01:56:55(transl. [DRC-OTP-2102-3766](#),p.3824:2049-2054).

<sup>1239</sup> P-887: [T-94-CONF-ENG-CT](#),49:3-9; P-907: [T-91-CONF-ENG-CT](#),30:23-31:8; P-850: [T-112-CONF-ENG-ET](#),69:3-6.

<sup>1240</sup> P-850: [T-112-CONF-ENG-ET](#),69:3-6.

<sup>1241</sup> P-17: [T-59-CONF-ENG-CT](#),38:8-41:5[[T-59-CONF-FRA-CT](#),38:9-41:12].

<sup>1242</sup> P-17: [T-59-CONF-ENG-CT](#),40:16-41:5[[T-59-CONF-FRA-CT](#),40:25-41:12].



by its occupying force, the UPC.<sup>1243</sup> KISEMBO told the mostly Nyali population that they should ally with the UPC in order to stop being victims and to be able to complain about abuse.<sup>1244</sup>

430.P-22, a Lendu woman, captured by a UPC soldier near Kilo market at the beginning of December 2002, was put in a hole in the ground with other non-Hema prisoners. She was hit on the head with the butt of a gun; and she and the other prisoners were regularly beaten. [REDACTED]. As she was raped, the soldiers were laughing. The next day, a UPC soldier proceeded to cut her neck until he thought she was dead.<sup>1245</sup>

431.NTAGANDA claimed ignorance of the countless rapes committed by the UPC in Kilo, saying that *“Kisembo once assigned me to supervise the Aru and Komanda areas, but while there I never learnt about these things”*.<sup>1246</sup> NTAGANDA had initially claimed that he was assigned to supervise operations in Mahagi<sup>1247</sup> and not in Aru or Komanda. As detailed above,<sup>1248</sup> it was actually KISEMBO who went to Mahagi and, in any event, NTAGANDA remained deeply involved in the operations in Kilo and its surroundings throughout December 2002. Moreover, NTAGANDA’s claim is contradicted by his own admission that *“I was up to speed with all the offences being committed in our forces, [...] I was really aware of everything that was going on”*.<sup>1249</sup>

### **10. Persecution (Article 7(1)(h)) – Count 10<sup>1250</sup>**

432.During the First Attack, the UPC perpetrated the crimes charged<sup>1251</sup> targeting Lendu and non-Hema on the basis of their ethnicity; thereby depriving them of

<sup>1243</sup> [P-17:T-59-CONF-ENG-CT](#),40:5-7,40:25-41:5,43:9-11.

<sup>1244</sup> [P-17:T-59-CONF-ENG-CT](#),42:13-19.

<sup>1245</sup> [P-22:DRC-OTP-0104-0026](#); [DRC-OTP-0104-0039](#)-[DRC-OTP-0104-0052](#).

<sup>1246</sup> [D-300:T-237-CONF-ENG-ET](#),47:11-22.

<sup>1247</sup> [D-300:T-217-CONF-ENG-ET](#),80:15-81:5,81:23-82:5,87:10-88:8;[T-218-CONF-ENG-CT](#),5:22-6:7.

<sup>1248</sup> See section VII.A.2.b.iii.

<sup>1249</sup> [D-300:T-222-ENG-CT](#),67:18-68:3.

<sup>1250</sup> This section concerns the crimes committed in or around Mongbwalu, Sayo, Pluto, Nzebi, and Kilo.

<sup>1251</sup> Counts 1-2, 3, 4-5, 8-9, 11, 12-13, 18 and 18.

their fundamental rights.<sup>1252</sup>

433. At the time relevant to the charges, the UPC and its Hema civilian supporters were engaged in a ruthless ethnic war with their Lendu enemies as well as the Lendu's perceived supporters.<sup>1253</sup> All those involved in the First Attack, including NTAGANDA, knew this.<sup>1254</sup> As P-907 stated: *"it was clear right from the beginning that the Lendu was a sworn enemy and that if one saw a Lendu they should be killed"*.<sup>1255</sup>

434. At pre-attack briefings, NTAGANDA and his commanders told their troops that the Lendu were the enemy.<sup>1256</sup> According to P-963, *"[i]t was a tribal war, and the purpose was to drive out the Lendu or eliminate all of them"*. Likewise, P-10, referring to the Lendu,<sup>1257</sup> testified: *"[w]hen you come across the enemy, you must hit him. That was the only order that was given to us"*.<sup>1258</sup> During the attack itself, NTAGANDA repeated his orders to eliminate the Lendu: *"[e]very time he held a meeting, these words were said again and again. He said the same thing every time"*.<sup>1259</sup>

435. In November 2002, the Banyali-Kilo *collectivité* was predominantly a Lendu and non-Hema area.<sup>1260</sup> The UPC attacked this area accompanied by armed Hema civilian supporters<sup>1261</sup> who had earlier been chased out of Mongbwalu<sup>1262</sup> and

<sup>1252</sup> Such as the right to life, liberty and security, the right not to be enslaved, the right not to be subjected to arbitrary arrest and detention, the right to freedom of movement and residence, the right to education, and the right to a standard of living adequate for the health (Universal Declaration of Human Rights).

<sup>1253</sup> See Section VI.B.3.b.

<sup>1254</sup> See Section VI.B.3.b.

<sup>1255</sup> P-907:[T-90-CONF-ENG-CT](#),51:15-16.

<sup>1256</sup> P-10:[T-47-CONF-ENG-CT](#),10:6-18; P-963:[T-78-CONF-ENG-ET](#),70:7-25,72:25-73:9,74:17-75:7,77:15-18,81:12-22[[T-78-CONF-FRA-ET](#),72:12-73:5].

<sup>1257</sup> P-10:[T-47-CONF-ENG-CT](#),10:11-18.

<sup>1258</sup> P-10:[T-47-CONF-ENG-CT](#),10:9-10.

<sup>1259</sup> P-768:[T-33-CONF-ENG-CT](#),37:2-16,52:9-54:17.

<sup>1260</sup> P-800:[T-68-CONF-ENG-ET](#),21:4-15,24:6-9; P-887:[T-93-CONF-ENG-CT](#),12:22-25; [DRC-OTP-0074-0422](#),pp.0451-0452,paras.98,100-102; P-815:[T-76-CONF-ENG-CT](#),14:15-22; P-850:[DRC-OTP-2067-1825](#),p.1827,paras.11-12; P-877:[DRC-OTP-2069-2086-R03](#),p.2090,para.22; P-886:[T-37-CONF-ENG-ET](#),17:3-4; P-859:[T-52-CONF-ENG-CT](#),21:19-25; P-17:[T-59-CONF-ENG-CT](#),4:18-5:1.

<sup>1261</sup> P-907:[T-90-CONF-ENG-CT](#),11:13-24,12:13-21,17:13-16,18:22-19:3,27:13-28:9,28:12-29:7,33:5-34:10; P-768:[T-33-CONF-ENG-CT](#),41:18-44:2; P-17:[T-61-CONF-ENG-ET](#),58:7-60:11[[T-61-CONF-FRA-ET](#),59:13-61:18]; P-898:[T-154-CONF-ENG-ET](#),13:6-21,14:17-22.

<sup>1262</sup> [DRC-OTP-0074-0797](#),p.0827; D-300:[T-229-CONF-ENG-ET](#),71:12-74:20;[T-229-CONF-ENG-ET](#),74:21-75:10; P-815:[T-76-CONF-ENG-CT](#),12:8-16,13:11-19.

were eager to obtain revenge.<sup>1263</sup>

436. Together with these civilians, UPC troops went house to house or in the bush to identify Lendu during *ratissage* operations.<sup>1264</sup> Many were killed on the spot, while others were captured, interrogated and killed.<sup>1265</sup> P-963 said of those who were captured: “if you were a Lendu person you were dead [...] civilian or combatant [...] [t]here were no good Lendus”.<sup>1266</sup> UPC soldiers who were in charge of executing Lendu captives were talking about “cleaning up the dirt” and used the phrase: “[a] good Lendu is a dead Lendu”.<sup>1267</sup> Two soldiers who had just killed Lendu men with a hammer explained that they had a problem with the Lendu.<sup>1268</sup>

437. In Kilo, the UPC engaged in a manhunt for Lendu, whether civilians or fighters.<sup>1269</sup> Every day, P-877 saw UPC soldiers go to the bush and come back from the bush with two or three tied up Lendu prisoners. He would never see those prisoners again.<sup>1270</sup>

438. The UPC’s *modus operandi* demonstrates that the non-Hema population of Banyali-Kilo was the target of its assault. UPC soldiers enquired about the ethnicity of civilians; those who responded Lendu were further persecuted.<sup>1271</sup> UPC troops also used specific means to identify civilians of Lendu ethnicity in order to victimise them. They identified Lendu on the basis of their physical

<sup>1263</sup> [P-768:T-33-CONF-ENG-CT](#),42:16-24,43:10-11.

<sup>1264</sup> [P-907:T-90-CONF-ENG-CT](#),12:13-21,33:12-36;24,33:17-34:10; [P-963:T-79-CONF-ENG-ET](#),14:15-16:9; [P-768:T-33-CONF-ENG-CT](#),41:18-44:2; [P-898:T-154-CONF-ENG-ET](#),13:6-14:22,34:10-36:12; [P-888:T-105-CONF-ENG-CT](#),79:13-81:5; [P-877:DRC-OTP-2069-2086-R03](#),p.2091,para.30; [P-850:DRC-OTP-2067-1825](#),p.1832,para.47; [P-315:DRC-OTP-2058-0990](#),pp.1011-1014,paras.127-132; [P-894:DRC-OTP-2076-0194-R02](#),p.0201,para.38.

<sup>1265</sup> [P-907:T-90-CONF-ENG-CT](#),33:12-36:24; [P-963:T-79-CONF-ENG-ET](#),14:15-16:9.

<sup>1266</sup> [P-963:T-79-CONF-ENG-ET](#),15:22-16:9.

<sup>1267</sup> [P-898:T-154-CONF-ENG-ET](#),18:18-19:4,19:14-22,19:23-21:21; [DRC-OTP-0074-0628](#),p.0668.

<sup>1268</sup> [P-877:DRC-OTP-2069-2086-R03](#),p.2089,paras.13,15,19.

<sup>1269</sup> [V-3:T-203-CONF-ENG-ET](#),17:2-25,18:21-24,32:19-33:8,35:19-36:2,36:15-38:17,57:23-58:15; [P-877:DRC-OTP-2069-2086-R03](#),p.2091,para.30; [P-850:DRC-OTP-2067-1825](#),p.1832,para.47; [DRC-OTP-0074-0628](#),pp.0666-0668.

<sup>1270</sup> [P-877:DRC-OTP-2069-2086-R03](#),p.2091,para.30.

<sup>1271</sup> [P-22:DRC-OTP-0104-0026](#),pp.0031-0034,paras.29-41; [P-850:DRC-OTP-2067-1825](#),p.1832,para.47; [P-877:DRC-OTP-2069-2086-R03](#),p.2091,paras.13,30; [P-39:DRC-OTP-2062-0244-R02](#),p.0249,para.19; [P-315:DRC-OTP-2058-0990](#),p.0994,para.23,p.1015,paras.129-131.

appearance, or because they were wearing distinctive bracelets and necklaces.<sup>1272</sup>

439. UPC soldiers categorised prisoners brought back to the prison at the military camp in Mongbwalu.<sup>1273</sup> Civilian prisoners were detained with all non-Hema co-detainees.<sup>1274</sup> Lendu prisoners were automatically treated as the enemy, regardless of whether they were civilians or fighters.<sup>1275</sup>

440. During the Banyali-Kilo attack, it was clear to the Lendu that the UPC was killing them because of their ethnicity.<sup>1276</sup> This triggered a massive displacement of the population.<sup>1277</sup> Other tribes were also targeted by the UPC on the sole basis that they lived alongside the Lendu.<sup>1278</sup> Witness P-894 stated: *“it was like a manhunt. It was like they came to look for people one by one, determined their tribe and decided what was to be done with them. The first target was the Lendu and the second was us, those who came from other regions in Congo [...]. They called us JAJAMBU [...] they said we were advising the Lendu. All the Lendu and JAJAMBU were targeted”*.<sup>1279</sup> After the assault, Lendu could not return to the conquered areas.<sup>1280</sup> As P-17 stated: *“[t]hey were in a conflict with the Hema and they could be taken or arrested, which would mean death”*.<sup>1281</sup>

<sup>1272</sup> **P-315**:[DRC-OTP-2058-0990](#),pp.1011-1014paras.127-132; **P-850**:[DRC-OTP-2067-1825](#),p.1831,para.42; **P-886**:[T-37-CONF-ENG-ET](#),10:7-9,21:2-23:10; **P-17**:[T-59-CONF-ENG-CT](#),5:2-9.

<sup>1273</sup> **P-963**:[T-79-CONF-ENG-ET](#),21:19-22:19; **P-17**:[T-63-CONF-ENG-ET](#),50:19-23; **P-907**:[T-90-CONF-ENG-CT](#),33:12-34:25; **P-898**:[T-154-CONF-ENG-ET](#),18:18-21:21; See also [DRC-OTP-0074-0628](#),p.0668.

<sup>1274</sup> **P-22**:[DRC-OTP-0104-0026](#),pp.0031-0034,paras.29-41; **P-315**:[DRC-OTP-2058-0990](#),pp.1011-1014,paras.127-132.

<sup>1275</sup> **P-17**:[T-63-CONF-ENG-ET](#),50:19-23; **P-963**:[T-79-CONF-ENG-ET](#),15:22-16:9,22:16-19.

<sup>1276</sup> **P-39**:[DRC-OTP-2062-0244-R02](#),p.0249,para.19; **P-805**:[T-25Bis-CONF-ENG-CT](#),10:17-11:8; **P-907**:[T-90-CONF-ENG-CT](#),50:8-51:18; **P-963**:[T-79-CONF-ENG-ET](#),15:22-16:9,22:16-19; [DRC-OTP-0074-0628](#),p.0666.

<sup>1277</sup> **P-792**:[T-150-CONF-ENG-ET](#),45:23-47:23.

<sup>1278</sup> **P-887**:[T-93-CONF-ENG-CT](#),19:15-21:18; **P-894**:[DRC-OTP-2076-0194-R02](#),pp.0202-0203,paras.40,42-43,45;[DRC-OTP-2076-0212](#);[T-103-CONF-ENG-ET](#),105:12-106:1;[T-104-CONF-ENG-ET](#),66:18-67:19; **P-886**:[T-37-CONF-ENG-ET](#),48:24-49:18.

<sup>1279</sup> **P-894**:[DRC-OTP-2076-0194-R02](#),p.0201-0202,para.38;[T-104-CONF-ENG-ET](#),65:6-11.

<sup>1280</sup> **P-963**:[T-79-CONF-ENG-ET](#),15:22-16:9,22:16-19; **P-907**:[T-90-CONF-ENG-CT](#),50:8-51:18; **P-768**:[T-33-CONF-ENG-CT](#),54:18-55:7;[T-35-CONF-ENG-CT](#),50:4-17,51:2-60:2; [T-34-CONF-ENG-CT](#),15:5-16:10; **P-901**:[T-29-CONF-ENG-CT](#),8:24-9:10; [DRC-OTP-0074-0628](#),p.0666; **P-315**:[DRC-OTP-2058-0990](#),pp.1011-1014,paras.127-132; **P-850**:[DRC-OTP-2067-1825](#),p.1831,paras.42; **P-887**:[T-93-CONF-ENG-CT](#),27:14-20; **P-886**:[T-38-CONF-ENG-CT](#),13:15-15:10.

<sup>1281</sup> **P-17**:[T-59-CONF-ENG-CT](#),11:8-19.

## B. WALENDU-DJATSI ASSAULT – “THE SECOND ATTACK”

441. *There was no operation that could be planned without Ntaganda*”. NTAGANDA was the operations commander during all UPC battles.<sup>1282</sup> The UPC’s coordinated assault on over 40 localities in the Walendu-Djatsi *collectivité* was no exception. During the Second Attack, UPC troops, including NTAGANDA, committed war crimes and crimes against humanity in or around the villages of Bambu, Kobu, Lipri, Jitchu, Camp P.M., Buli, Djuba, Sangi, Tsili, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Dyalo, Ngongo, Dhepka, Mbidjo, Thali, Gutsi, and Ngabuli.<sup>1283</sup>

### 1. Objectives, planning, and command of the Second Attack

#### *Objectives*

442. The goal of the Second Attack was to expel the mainly non-Hema civilians and combatants from their villages in Walendu-Djatsi<sup>1284</sup> in order to expand the UPC’s territorial control, including over the important route between Mongbwalu and Bunia.

443. After the UPC attacked and occupied Mongbwalu and other locations in Banyali-Kilo, it intensified its operations to open the road connecting Mongbwalu to Bunia through Kobu and Bambu.<sup>1285</sup> This road was shorter and in

<sup>1282</sup> [P-55:T-71-CONF-ENG-CT](#),43:9-44:8; [P-190:T-96-CONF-ENG-CT](#),49:9-14.

<sup>1283</sup> The locations are visible on maps and sketches: [DRC-OTP-0003-0028](#), [P-790:DRC-OTP-2078-2408](#); [DRC-OTP-2079-0316](#); [DRC-OTP-2079-0317](#); [DRC-OTP-2079-0318](#); [P-863:DRC-REG-0001-0005](#); [P-805:DRC-REG-0001-0002](#); [P-300:DRC-OTP-2055-1328](#); [P-18:DRC-OTP-2052-0188](#); [P-27:DRC-OTP-0096-0072](#); [P-877:DRC-OTP-2069-2097](#); [P-100:T-131-CONF-ENG-ET](#),24:14-25:5; [P-127:T-139-CONF-ENG-ET](#),10:14-11:2,58:15-22; [P-105:T-133-CONF-ENG-ET](#),46:1-5.

<sup>1284</sup> [P-55:T-71-CONF-ENG-CT](#),30:16-17; [P-963:T-79-CONF-ENG-ET](#),16:16-25; [P-790:T-53-CONF-ENG-CT](#),20:1-12; [P-301:T-149-CONF-ENG-ET](#),30:23-31:3; [P-127:T-139-CONF-ENG-ET](#),11:21-12:1,13:1-11; [P-17:T-63-CONF-ENG-ET](#),40:24-41:17; [T-59-CONF-ENG-CT](#),74:3-16; [P-121:T-172-CONF-ENG-ET](#),61:15-17; [P-108:T-185-CONF-ENG-ET](#),44:19-20; [P-768:T-34-CONF-ENG-CT](#),61:2-3.

<sup>1285</sup> [P-55:T-71-CONF-ENG-CT](#),28:25-30:12.

better condition<sup>1286</sup> compared to the two other main roads.<sup>1287</sup>

444. Controlling that road would allow UPC troops to transport weapons arriving in Mongbwalu by plane<sup>1288</sup> and facilitate business between the two locations. LUBANGA told P-55 that the road needed to be opened, explaining that people and goods arriving by plane from Rwanda to Mongbwalu needed to travel to Bunia.<sup>1289</sup>

445. NTAGANDA conceded that the UPC *“had the intention”* to open the road through Kobu, while denying any involvement or knowledge of the operation at the time it unfolded.<sup>1290</sup>

446. But opening that road was not the only objective; the UPC wanted full control of the territory. NTAGANDA, in a message to KISEMBO and LUBANGA dated 19 February 2003, explained that the troops were to remain in Lipri, Bambu and Kobu.<sup>1291</sup> This shows that the troops were to occupy Lipri, Kobu and Bambu.<sup>1292</sup>

447. The fact that the UPC sought control of the route to Lipri, and Lipri village itself, reveals a greater plan, because the route to Lipri is not on the road between Bunia and Mongbwalu.<sup>1293</sup> Nonetheless, the UPC wanted to control it. P-963 explained the goal of the Second Attack: *“we needed to fulfil our operation of retrieving all the villages in Ituri”*.<sup>1294</sup>

448. MULENDA told the troops that they were *“going to have an operation in Kobu and at the same time in Lipri and Bambu in order to destroy that triangle which was a*

<sup>1286</sup> [P-901:T-29-CONF-ENG-CT](#),10:12-24;[T-28-CONF-ENG-CT](#),46:4-51:8;[T-31-CONF-ENG-CT](#),54:8-58:3;[DRC-REG-0001-0003](#); [P-963:T-79-CONF-ENG-ET](#),40:17-25,41:6-23; [P-907:T-90-CONF-ENG-CT](#),61:7-62:6; [P-17:T-63-CONF-ENG-ET](#),56:11-57:6.

<sup>1287</sup> A second route went through Nyangaray and Kabakaba, and a third through Mabanga; *see e.g.*: [P-901:T-28-CONF-ENG-CT](#),46:4-51:8,[DRC-REG-0001-0003](#).

<sup>1288</sup> [P-963:T-82-CONF-ENG-ET](#),47:2-20.

<sup>1289</sup> [P-55:T-71-CONF-ENG-CT](#),29:23-30:4.

<sup>1290</sup> [D-300:T-220-CONF-ENG-ET](#),79:5-13.

<sup>1291</sup> [DRC-OTP-2102-3854](#),p.3998(fourth).

<sup>1292</sup> [P-901:T-29-CONF-ENG-CT](#),17:2-12.

<sup>1293</sup> [P-907:T-90-CONF-ENG-CT](#),61:7-62:6.

<sup>1294</sup> [P-963:T-79-CONF-ENG-ET](#),40:20.

*pocket of resistance to the UPC*".<sup>1295</sup> No distinction was made between Lendu civilians and combatants.<sup>1296</sup>

### *Planning*

449.LUBANGA [REDACTED].<sup>1297</sup> **NTAGANDA** participated in a meeting to prepare the Second Attack with [REDACTED], KISEMBO, SALONGO and TCHALIGONZA. **NTAGANDA** and KISEMBO asked SALONGO and TCHALIGONZA to handle the Lipri road. KISEMBO would prepare the troops from Mongbwalu.<sup>1298</sup> [REDACTED]. **NTAGANDA** was to go to Fataki for a few days.<sup>1299</sup>

450.P-907, [REDACTED], testified that it was **NTAGANDA** who appointed SALONGO for the Second Attack.<sup>1300</sup> P-901 believes that the operation was conducted at the initiative of **NTAGANDA** and KISEMBO.<sup>1301</sup>

### *NTAGANDA's command*

451.When asked if **NTAGANDA** had any command function over the Lipri, Bambu, Kobu operation, P-55 was clear: "[y]es. He was the operations commander during all those battles".<sup>1302</sup>

452.High level military insiders and soldiers deployed on the ground all corroborate that **NTAGANDA** organised and commanded the Second Attack. P-901, [REDACTED], explained that **NTAGANDA's** role was to contact commanders and give operational orders: "*he would monitor closely all the developments in the operations and he would give them orders so that operations would*

<sup>1295</sup> [P-17:T-59-CONF-ENG-CT](#),46:4-12.

<sup>1296</sup> [P-901:T-29-CONF-ENG-CT](#),17:2-12; [P-17:T-59-CONF-ENG-CT](#),62:24-25;[T-63-CONF-ENG-ET](#),47:18-48:4; [P-10:T-47-CONF-ENG-CT](#),48:12-13; [P-758:T-162-CONF-ENG-ET](#),40:18-50:3; [P-16:DRC-OTP-0126-0422-R03](#),p.0463,para.239; [P-963:T-79-CONF-ENG-ET](#),41:20- 42:17; [P-17:T-59-CONF-ENG-CT](#),46:4-12.

<sup>1297</sup> [REDACTED].

<sup>1298</sup> [REDACTED].

<sup>1299</sup> [REDACTED].

<sup>1300</sup> The troops involved belonged to the South-East Sector headed by SALONGO.

<sup>1301</sup> [P-901:T-29-CONF-FRA-CT](#),11:13-16;[T-29-CONF-ENG-CT](#),10:12-20.

<sup>1302</sup> [P-55:T-71-CONF-ENG-CT](#),43:9-44:8.



*unfold smoothly*".<sup>1303</sup> P-907, who heard [REDACTED] communication between SALONGO and NTAGANDA, confirmed that NTAGANDA supervised the unfolding of the operation.<sup>1304</sup>

453.P-17 and P-963 were both deployed [REDACTED].<sup>1305</sup> P-17 testified that for the Second Attack: "*[e]ach movement within our troops for every attack needed the authorisation from the chief of staff -- from the general staff, rather, and the authorisation would come from that person who was in charge of operations, Commander Bosco, the G3*".<sup>1306</sup> The fact that P-17 ascribed the G3 function to NTAGANDA is both proof that it was a role NTAGANDA was fulfilling<sup>1307</sup> and proof of NTAGANDA's detailed involvement in operations. In addition, this attack required coordination from brigades coming from Mongbwalu and Bunia, and NTAGANDA was the most senior officer in charge of operations in Bunia; P-963 explained that: "*there was no other chief*", except for LUBANGA, "*who was not a military man*".<sup>1308</sup>

454.NTAGANDA briefed the troops on how to conduct the operations.<sup>1309</sup> He was in charge of weapons and ammunition for the Second Attack: "*everything that had to do with operations was handled by Ntaganda*".<sup>1310</sup> In Mongbwalu, [REDACTED], [REDACTED] MULENDA, who was to attack Kobu during the Second Attack, collected arms, ammunitions from the weapon depot for the attacks.<sup>1311</sup> NTAGANDA ordered [REDACTED] the troops ammunition for the

<sup>1303</sup> [P-901:T-29-CONF-ENG-CT](#),13:6-16.

<sup>1304</sup> [P-907:T-90-CONF-ENG-CT](#),62:9-15.

<sup>1305</sup> [P-17:T-59-CONF-ENG-CT](#),64:5-9; [P-963:T-79-CONF-ENG-ET](#),49:13-18.

<sup>1306</sup> [P-17:T-60-CONF-ENG-ET](#),7:1-22.

<sup>1307</sup> [P-16:DRC-OTP-0126-0422-R03](#),pp.0439-0440,para.97; [DRC-OTP-0016-0131](#),decree appointing LINGANGA as Deputy Chief of Staff and G3 on 6 December 2003. Between 6 March 2003 - 6 December 2003, NTAGANDA was fulfilling the G3 role.

<sup>1308</sup> [P-963:T-79-CONF-ENG-ET](#),43:23-44:7;[T-79-CONF-FRA-ET](#),45:21-23("Parce que c'était lui le chef militaire supérieur à Bunia, il n'y avait pas, à part lui, un autre chef militaire supérieur, à part le président, qui n'est pas un militaire, bien sûr.").

<sup>1309</sup> [P-55:T-72-CONF-ENG-CT](#),9:14-24.

<sup>1310</sup> [P-55:T-72-CONF-ENG-CT](#),6:16-21.

<sup>1311</sup> [REDACTED].

attack on Bambu.<sup>1312</sup>

455. The Logbook further illustrates the true extent of **NTAGANDA**'s role in planning and commanding the Second Attack. On 12 February 2003, **NTAGANDA** sent the new structure of UPC troops to all FPLC stations, and announced that checks of the new deployment will be organised.<sup>1313</sup> On 13 February 2003, he sent an *erratum*<sup>1314</sup> and ordered that the North-East and South-East Sector Commanders - **KAKWAVU** and **SALONGO**, respectively - send names of sector general staff from Brigades to Battalions.<sup>1315</sup>

456. On the same day, **NTAGANDA** sent a message to **KAKWAVU** demanding that commanders under his responsibility follow the formal chain of command and not send **NTAGANDA** messages directly.<sup>1316</sup> A Battalion Commander had asked **NTAGANDA** for weapons, ammunitions, and additional troops.<sup>1317</sup> Responding to the Battalion Commander in the message addressed to the Sector Commander, **NTAGANDA** ordered he retrieve the two machine guns lost to the enemy.<sup>1318</sup> **NTAGANDA** sent another message directly to the Brigade Commander - only copying the Sector Commander - reiterating that he will not tolerate officers subordinated to the Brigade Commander coming directly to him.<sup>1319</sup>

457. Also on 13 February 2003, **MULENDA** reported to **SALONGO**, copying **NTAGANDA** and **KISEMBO**, that there had been fighting close to Kilo with casualties amongst his soldiers and he requested RPGs and bombs "*POUR LES ATTAQUES*".<sup>1320</sup> P-17 described ambushes near Kilo before the Second Attack

---

<sup>1312</sup> [REDACTED].

<sup>1313</sup> [DRC-OTP-2102-3854](#), pp.4006-4004(third); **D-300**:[T-220-CONF-ENG-ET](#), 12:25-13:11.

<sup>1314</sup> [DRC-OTP-2102-3854](#), p.4004(second).

<sup>1315</sup> [DRC-OTP-2102-3854](#), p.4003(second).

<sup>1316</sup> [DRC-OTP-2102-3854](#), p.4003(first).

<sup>1317</sup> [DRC-OTP-2102-3854](#), p.3978(second).

<sup>1318</sup> [DRC-OTP-2102-3854](#), p.4003(first).

<sup>1319</sup> [DRC-OTP-2102-3854](#), p.4002(second).

<sup>1320</sup> [DRC-OTP-2102-3854](#), p.3982(second).

where three soldiers died, under the Command of AMÉRICAIN.<sup>1321</sup> P-907 confirmed that Commander AMÉRICAIN was part of an advance party to strike Kilo.<sup>1322</sup>

458. The Logbook messages sent by NTAGANDA via his *phonie* base in Bunia do not record messages sent by NTAGANDA between 14 February 2003 at 11h40 and 17 February 2003 at 08h31.<sup>1323</sup> The Logbook shows that NTAGANDA *received* messages, however, on 15 and 16 February 2003.<sup>1324</sup>

459. On 17 February 2003, NTAGANDA, in Bunia,<sup>1325</sup> sent KAKWAVU a message indicating that he has been circulating in the Djugu area to check the deployment.<sup>1326</sup> In this message NTAGANDA also clearly states: “MAINTENANT NOUS SOMMES DANS OPS”, a reference to the ongoing operation.<sup>1327</sup> On the same day, KISEMBO briefed the troops in Mongbwalu who were to attack Kobu.<sup>1328</sup> That day, the UPC failed in an attempt to take Lipri.<sup>1329</sup>

460. In the early hours of 18 February 2003, MULENDA instructed the troops that were to attack Kobu and gave orders to commit crimes.<sup>1330</sup> At 9h10 on the same day, MULENDA sent the following message to SALONGO, copying NTAGANDA: “CMD AMERICAIN A REFUSE DE PARTIR PARCE QU’IL A PEUR DE LA FACON DONT ILS ONT PRIS NOTRE ARME A LIPRI”.<sup>1331</sup> NTAGANDA responded directly to MULENDA, only copying SALONGO: “IL N’Y A AUCUN COMD QUI A LE POUVOIR DE REFUSER UN ORDRE VENANT D’EN HAUT”.<sup>1332</sup> This message proves that

<sup>1321</sup> [P-17:T-59-CONF-ENG-CT](#),46:20-47:18.

<sup>1322</sup> [P-907:T-90-CONF-ENG-CT](#),11:6-7.

<sup>1323</sup> [DRC-OTP-2102-3854](#),p.4001(second).

<sup>1324</sup> [DRC-OTP-2102-3854](#),p.3983-3985.

<sup>1325</sup> [DRC-OTP-2102-3854](#),pp.4000-3998; [D-300:T-220-CONF-ENG-ET](#),59:8-11.

<sup>1326</sup> [DRC-OTP-2102-3854](#),p.3999(third); *see also*: p.3988(third).

<sup>1327</sup> [DRC-OTP-2102-3854](#),p.3999(third).

<sup>1328</sup> [P-963:T-79-CONF-ENG-ET](#),45:19-46:4.

<sup>1329</sup> [P-55:T-71-CONF-ENG-CT](#),35:11-36:8;[T-74-CONF-ENG-CT](#),43:23-47:15; [P-17:T-63-CONF-ENG-ET](#),13:5-14:21; [P-127:T-139-CONF-ENG-ET](#),4:1-6; [P-105:T-133-CONF-ENG-ET](#),53:7-21.

<sup>1330</sup> [P-963:T-79-CONF-ENG-ET](#),45:19-46:8,47:1-8; [P-17:T-59-CONF-ENG-CT](#),60:12-25,62:17-25.

<sup>1331</sup> [DRC-OTP-2102-3854](#),p.3990(second); *see also*: [P-17:T-59-CONF-ENG-CT](#),66:16-21;[T-63-CONF-ENG-ET](#),14:13-21.

<sup>1332</sup> [DRC-OTP-2102-3854](#),p.3998(third).

the Second Attack order came from “*en haut*” and that, as such, **NTAGANDA** and the rest of the UPC high command insisted that its orders be executed. The message also proves **NTAGANDA**’s direct command of the Kobu attack.

461. Significantly, neither the original message from MULENDA nor **NTAGANDA**’s direct response is sent or copied to KISEMBO, showing that the *de facto* chain of command during the operation was from **NTAGANDA** to MULENDA.

462. Lipri, Bambu and Kobu were captured on or about 18 and 19 February 2003 by different UPC brigades attacking from different directions. MULENDA’s brigade attacked Kobu from Kilo.<sup>1333</sup> SALONGO and TCHALIGONZA’s troops attacked Lipri from Bunia,<sup>1334</sup> with a battalion from MULENDA’s brigade on stand by for assistance in Kabakaba. TCHALIGONZA’s and SALONGO’s troops attacked Bambu from Nizi<sup>1335</sup> and Mabanga, receiving reinforcement from MULENDA’s brigade.<sup>1336</sup> [REDACTED], as **NTAGANDA** ordered him to do.<sup>1337</sup>

463. The attack plan was meticulously coordinated down to the exact time of the launching of each assault. Commanders communicated with one another and with UPC headquarters using Motorola radios and Thurayas.<sup>1338</sup> MULENDA communicated with the commanders attacking Lipri.<sup>1339</sup> [REDACTED].<sup>1340</sup>

464. UPC troops committed the crimes charged during the takeover of Lipri, Bambu and Kobu.

<sup>1333</sup> [P-907:T-90-CONF-ENG-CT](#),62:1-6; [P-963:T-79-CONF-ENG-ET](#),43:6-44:7; [P-17:T-59-CONF-ENG-CT](#),58:7-2461:2-13.

<sup>1334</sup> [P-907:T-90-CONF-ENG-CT](#),62:1-6; [P-55:T-71-CONF-ENG-CT](#),35:8-10; [P-963:T-79-CONF-ENG-ET](#),43:6-44:7; [P-17:T-59-CONF-ENG-CT](#),59:2-18.

<sup>1335</sup> [P-963:T-79-CONF-ENG-ET](#),43:6-44:7; [P-17:T-59-CONF-ENG-CT](#),59:19-60-2; [P-55:T-74-CONF-ENG-CT](#),42:2-24.

<sup>1336</sup> [P-17:T-59-CONF-ENG-CT](#),59:19-60-2; [P-963:T-79-CONF-ENG-ET](#),79:15-19.

<sup>1337</sup> [REDACTED].

<sup>1338</sup> [P-963:T-79-CONF-ENG-ET](#),45:5-44:15; [P-17:T-59-CONF-ENG-CT](#),64:19-24,66:2-7.

<sup>1339</sup> [P-963:T-79-CONF-ENG-ET](#),45:5-44:15; [P-17:T-59-CONF-ENG-CT](#),64:19-24,66:2-7

<sup>1340</sup> [REDACTED].

465. On 19 February 2003, **NTAGANDA** sent the following message to **KISEMBO**, copying **LUBANGA**: “*LE TRAVAIL DE OPS DE RESTER A LIPRI (-) BAMBU ET KOBU (-) LES TROUPES SONT DEJA ARRIVEES DANS CHAQUE ZONE (-) VOUS SEREZ INFORMES DE LA SUITE*”.<sup>1341</sup> **NTAGANDA** informed the co-perpetrators that UPC troops had captured Lipri, Bambu and Kobu and must maintain their positions. **NTAGANDA** confirmed that **LUBANGA** and **KISEMBO** will be further updated. [REDACTED].<sup>1342</sup>

466. Once UPC troops set up bases in Lipri, Bambu, and Kobu, they conducted *ratissage* operations. P-907 explained what this meant: “*clean up everything you find across your path, clean everything, insects, birds, animals, men, hit everything, spare nothing*”.<sup>1343</sup> UPC soldiers and witnesses confirmed that during *ratissage* operations, the UPC committed crimes against the population.<sup>1344</sup>

467. On 21 February 2003, **NTAGANDA** sent three messages<sup>1345</sup> and on 22 February 2003, he received one message.<sup>1346</sup> The Logbook available to the Prosecution ends here. But this does not mean that **NTAGANDA** stopped communicating using his *phonie* or that he no longer used any of his other multiple means of communication.

468. On or about 25 February 2003, the UPC attacked the civilians displaced in Sangi, Buli and the surrounding villages. The attack was coordinated.<sup>1347</sup> UPC soldiers in brigades attacking from Shari and Nyangaray<sup>1348</sup> communicated with

<sup>1341</sup> [DRC-OTP-2102-3854](#), p.3998(fourth); [REDACTED].

<sup>1342</sup> [REDACTED].

<sup>1343</sup> [P-907:T-89-CONF-ENG-CT](#), 74:1-6.

<sup>1344</sup> [P-963:T-79-CONF-ENG-ET](#), 78:16-79:7; [P-17:T-59-CONF-ENG-CT](#), 74:22-76:7; [P-105:T-133-CONF-ENG-ET](#), 44:22-45:10; [P-127:T-139-CONF-ENG-ET](#), 7:12-8:12; [P-868:T-177-CONF-ENG-ET](#), 62:11-22; [P-790:T-54-CONF-ENG-ET](#), 12:2-16; [P-106:T-44-CONF-ENG-CT](#), 28:4-23, 29:5-6.

<sup>1345</sup> [DRC-OTP-2102-3854](#), pp.3997-3996.

<sup>1346</sup> [DRC-OTP-2102-3854](#), p.3995(first).

<sup>1347</sup> [DRC-OTP-0162-0115](#); track1:1:42-3:50, 6:50-13:38, 7:00-12:00, 23:45-25:44, (transl. [DRC-OTP-2101-2958](#)), track2:00:00:23- 06:08, 3:00-9:00, 5:20-6:25, (transl. [DRC-OTP-2101-2948](#), p.2450:5-p.2955:170); [P-901:T-29-CONF-ENG-CT](#), 12:23, 32:18-22, 39:13-17; [P-17:T-60-CONF-ENG-ET](#), 40:1-5; [P-963:T-79-CONF-ENG-ET](#), 6-22; [P-301:T-149-CONF-ENG-ET](#), 48:19-49-9, 50:5-7.

<sup>1348</sup> [P-901:T-29-CONF-ENG-CT](#), 30:23-32:21.

commanders from the brigade arriving from Kobu.<sup>1349</sup> UPC troops captured unarmed Lendu civilians<sup>1350</sup> who were executed in a mass murder in Kobu on or about the night of 26 February 2003.<sup>1351</sup>

469. During this operation, **NTAGANDA** was in communication with his commanders. P-55 stressed that **NTAGANDA** *“was following developments through Manpack, and he was in communication with the people who were in Kobu and in Mongbwalu”*.<sup>1352</sup> All situation reports were communicated to **NTAGANDA** through the chain of command.<sup>1353</sup> **NTAGANDA** spoke to SALONGO on the *phonie* every day.<sup>1354</sup>

470. **NTAGANDA** had a Thuraya at the time of the Second Attack.<sup>1355</sup> According to [REDACTED], TCHALIGONZA and SALONGO transmitted information about the failed Lipri attack to **NTAGANDA** *via* Thuraya, and **NTAGANDA**, furious, confronted them about the way they had conducted the operation.<sup>1356</sup> MULENDA also used a Thuraya during the Second Attack.<sup>1357</sup>

471. [REDACTED] **NTAGANDA** went to Fataki with a Manpack when the operation had already started<sup>1358</sup> for a passing out ceremony after recruits had finished their training. The Logbook<sup>1359</sup> contradicts the Defence suggestion<sup>1360</sup> that there was no training centre in Fataki.

472. When **NTAGANDA** returned from Fataki,<sup>1361</sup> [REDACTED]; P-55 confirms that

<sup>1349</sup> [P-17:T-60-CONF-ENG-ET](#),40:1-41:6.

<sup>1350</sup> [DRC-OTP-2101-2948](#),p.2952:84-p.2953:103;[P-901:T-29-CONF-ENG-CT](#),38:15-18; [P-17:T-60-CONF-ENG-ET](#),43:8-18.

<sup>1351</sup> See Section VII.B.9.

<sup>1352</sup> [P-55:T-71-CONF-ENG-CT](#),43:9-44:8.

<sup>1353</sup> [P-907:T-90-CONF-ENG-CT](#),62:9-63:10.

<sup>1354</sup> [REDACTED].

<sup>1355</sup> [D-300:T-238-CONF-ENG-CT](#),29:11-16; [D-300:T-221-CONF-ENG-ET](#),20:4-5.

<sup>1356</sup> [REDACTED].

<sup>1357</sup> [REDACTED].

<sup>1358</sup> [REDACTED].

<sup>1359</sup> [DRC-OTP-2102-3854](#),p.4017(first - “CI : FATAKI”),p.3955(first),p.3846(fourth); [REDACTED].

<sup>1360</sup> [P-55:T-74-CONF-ENG-CT](#),34:12-22.

<sup>1361</sup> [P-55:T-71-CONF-ENG-CT](#),34:15-25

NTAGANDA was then following operations *via* Manpack.<sup>1362</sup>

473. NTAGANDA was able to follow the operations from afar, as other officers did. [REDACTED].<sup>1363</sup> [REDACTED] heard radio communications between UPC commanders on the hills of Lipri from [REDACTED] in Bunia.<sup>1364</sup> He also confirmed that, from Bunia, he heard the radio communications that were intercepted, recorded and admitted as evidence in this case.<sup>1365</sup> From Mongbwalu, P-907 heard reports [REDACTED] about the Lendu being captured around Buli [REDACTED].<sup>1366</sup>

474. In Bunia, LUBANGA, learnt about the massacre perpetrated by UPC troops in Kobu and [REDACTED].<sup>1367</sup> P-55 testified that he obtained information from [REDACTED] part of MULENDA's Brigade that UPC soldiers had killed Lendu civilians under the pretence of peace talks.<sup>1368</sup> NTAGANDA, already aware of the incident, spoke with P-55 about it and said "*Salumu was a real man*". P-55 understood this to mean that NTAGANDA agreed with what had happened.<sup>1369</sup> Indeed, the UPC never punished MULENDA or anyone else for these crimes.<sup>1370</sup> A couple of weeks after the massacre in Kobu, NTAGANDA met MULENDA again, with [REDACTED] to plan an attack against the UPDF in Bunia.<sup>1371</sup>

475. MULENDA himself spoke openly about the massacre. He told P-768 that they organised a "*masquerade*"<sup>1372</sup> meeting with the Lendu in Kobu, then murdered

<sup>1362</sup> [P-55:T-71-CONF-ENG-CT](#),43:17-19.

<sup>1363</sup> [REDACTED].

<sup>1364</sup> [REDACTED].

<sup>1365</sup> [REDACTED].

<sup>1366</sup> [REDACTED].

<sup>1367</sup> [REDACTED].

<sup>1368</sup> [P-55:T-71-CONF-ENG-CT](#),50:7-52:6.

<sup>1369</sup> [P-55:T-71-CONF-ENG-CT](#),52:9-53:1,56:20-21.

<sup>1370</sup> [P-55:T-71-CONF-ENG-CT](#),57:24-58:4; [P-17:T-60-CONF-ENG-ET](#),27:4-5;[T-63-CONF-ENG-ET](#),8:11-15; [P-963:T-79-CONF-ENG-ET](#),74:12-22; [P-768:T-34-CONF-ENG-CT](#),61:10-13; [P-16:DRC-OTP-0126-0422-R03](#),p.0451,para.163.

<sup>1371</sup> [REDACTED].

<sup>1372</sup> [P-768:T-34-CONF-ENG-CT](#),61:1.



members of the population. P-768 testified that the UPC hierarchy knew about the massacre because he himself heard commanders talk about the killings on their radios and everyone could follow the radio frequency: *“everyone was talking about what had happened”*.<sup>1373</sup>

476. UPC soldiers who perpetrated the massacre in the Kobu banana field, including MULENDA discussed the murders with other soldiers.<sup>1374</sup>

477. [REDACTED], P-41, heard about the massacre through the [REDACTED],<sup>1375</sup> murdered in Kobu.<sup>1376</sup> So did P-16, who confirms that NTAGANDA knew about the massacre.<sup>1377</sup> This massacre was widely known in and outside of the armed branch of the UPC. P-55 testified that: *“the entire Bunia population was aware”* of the killings in Kobu.<sup>1378</sup>

## 2. NTAGANDA's testimony on the Second Attack

478. *“I didn't know that at the time when the attack was carried out. I wasn't present. I therefore was not aware of the attack.”*<sup>1379</sup> *“But nobody informed me about the fact that we were going to attack. I did not receive that information.”*<sup>1380</sup> *“In certain cases the commanders in the field could carry out attacks without notifying us.”*<sup>1381</sup>

479. These are the implausible answers NTAGANDA provided about the Second Attack. Notwithstanding his concession that he was present in Bunia at the dates of the take-over of Lipri, Bambu and Kobu,<sup>1382</sup> NTAGANDA testified that he, the UPC Deputy Chief of Staff in charge of operations and organisation, had no knowledge that an attack on Walendu-Djatsi was unfolding. Yet, his answers

<sup>1373</sup> [P-768:T-34-CONF-ENG-CT](#),60:11-61:13.

<sup>1374</sup> [P-17:T-60-CONF-ENG-ET](#),21:1-24:20; [P-963:T-79-CONF-ENG-ET](#),74:23-76:19.

<sup>1375</sup> [P-41:DRC-OTP-0147-0002](#),p.0016,paras.82-85.

<sup>1376</sup> [P-301:\[REDACTED\]](#); [P-27:\[REDACTED\]](#); [P-105:\[REDACTED\]](#); [P-121:\[REDACTED\]](#).

<sup>1377</sup> [P-16:DRC-OTP-0126-0422-R03](#),p.0449-0450,para.155-161.

<sup>1378</sup> [P-55:T-74-CONF-ENG-CT](#),61:1;[P-976:T-152-CONF-ENG-ET](#),22:5-23:8.

<sup>1379</sup> [D-300:T-238-CONF-ENG-CT](#),11:13-17.

<sup>1380</sup> [D-300:T-238-CONF-ENG-CT](#),11:18-20.

<sup>1381</sup> [D-300:T-238-CONF-ENG-CT](#),11:21-12:5.

<sup>1382</sup> [D-300:T-220-CONF-ENG-ET](#),59:8-11,72:22-24,75:24-25; [DRC-OTP-2102-3854](#),pp.3997-4000.

reveal extensive knowledge of this operation; he said he knew in 2004 that a person named DEBA was in MULENDA's brigade during the Second Attack.<sup>1383</sup> When asked how he knew about DEBA's involvement in the attack, NTAGANDA clearly struggled: *"Well, it was said that it was Salumu who was leading up the brigade. And when you look at the video from Mandro you can see Deba on it and he was therefore with Salumu in Mandro, and I was fully aware of that."*<sup>1384</sup> Given NTAGANDA's position, his self-professed role in discipline, and reliable contradictory evidence, it would be highly unreasonable to conclude that NTAGANDA did not know about the massacre of civilians in Kobu.<sup>1385</sup>

480. NTAGANDA claimed he did not know about the assault even though several UPC brigades were launching coordinated attacks starting from several positions, attacking several different locations, some on the same day. He did not know about it even though the UPC was engaged in this offensive for nearly two weeks covering a large territory and involving dozens of villages. He did not know about it even though MONUC purportedly received reports of these attacks as they were unfolding and confronted LUBANGA about it. Finally, he claims he did not know about it because he was on a personal holiday for three days *before* the attack started, and then went on mission *after* the attack unfolded.

481. NTAGANDA's initial testimony on the required degree of planning, coordination and authorisation from the hierarchy to launch complex assaults reveals the truth.<sup>1386</sup> His later answers denying knowledge of a complex, large-scale UPC attack are evasive, incredible, and contradict this very testimony. NTAGANDA testified that UPC commanders could launch these attacks on their own volition without orders from the hierarchy.<sup>1387</sup> He had stated the

<sup>1383</sup> [D-300:T-223-CONF-ENG-ET](#),14:20-15:14.

<sup>1384</sup> [D-300:T-238-CONF-ENG-CT](#),72:13-16.

<sup>1385</sup> [D-300:T-238-CONF-ENG-CT](#),73:11-74:5;[T-239-CONF-ENG-CT](#),6:2-7:11.

<sup>1386</sup> [D-300:T-238-CONF-ENG-CT](#),11:20-14:8.

<sup>1387</sup> [D-300:T-238-CONF-ENG-CT](#),11:20-14:8.

opposite a few days earlier.<sup>1388</sup> In fact, **NTAGANDA** testified that he personally went to arrest LINGANGA because he had launched an attack that **NTAGANDA** claimed had not been authorised, in the same region, just a month earlier.<sup>1389</sup> Moreover, the military insiders who testified were consistent that no one could launch attacks unless ordered to do so.<sup>1390</sup>

482. The Logbook shows that **NTAGANDA** sent and received operational reports and orders to and from units deployed for the Second Attack.<sup>1391</sup> His claim that he did not know what operation these messages related to because it was not spelt out in the message<sup>1392</sup> is not plausible in light of his position and duties, and it is contradicted by the rapid and concise responses he sent to these very communications. Moreover, the Logbook recorded only one of the means of communications that **NTAGANDA** used in the UPC; it was certainly not his only means of communication.<sup>1393</sup>

483. MONUC was informed of this attack on the day it occurred;<sup>1394</sup> on the following day, UPC headquarters purportedly ordered that MONUC be denied access to Lipri.<sup>1395</sup> **NTAGANDA** conceded he was in Bunia on 18 and 19 February 2003.<sup>1396</sup> Confronted with a 24 February 2003 video purportedly showing a MONUC General asking LUBANGA about allegations that UPC troops were chasing fleeing people in the forest around Nyangaray and Kobu, which LUBANGA appears to know about, **NTAGANDA**'s response that no one spoke to him

<sup>1388</sup> [D-300:T-234-CONF-ENG-CT](#),56:23-26;[T-215-ENG-ET](#),38:16-18;[T-211-CONF-ENG-ET](#),51:14-20;[T-214-CONF-ENG-ET](#),5:3-4.

<sup>1389</sup> [D-300:T-219-CONF-ENG-ET](#),31:2-25;[T-238-CONF-ENG-CT](#),2:22-11:12.

<sup>1390</sup> [P-901:T-30-CONF-ENG-CT](#),32:2-6.

<sup>1391</sup> [DRC-OTP-2102-3854](#),p.3982(second),p.3990(second),p.3998(third),p.3997(first).

<sup>1392</sup> [D-300:T-220-CONF-ENG-ET](#),73:5-74:20,78:9-13;[T-238-CONF-ENG-CT](#),45:3-46:5.

<sup>1393</sup> [REDACTED]; [DRC-OTP-2102-3854](#),p.3996(first): sent by **NTAGANDA**: “*Je n’envoie pas beaucoup par message. Je t’informe par téléphone chez toi*”.

<sup>1394</sup> [D-300:T-238-CONF-ENG-CT](#),46:6-47:13; [DRC-OTP-2067-1945](#),p.1945,para.2.

<sup>1395</sup> [D-300:T-238-CONF-ENG-CT](#),54:4-63:4; [DRC-OTP-2067-1949](#),p.1951,para.9(impeachment).

<sup>1396</sup> [D-300:T-220-CONF-ENG-ET](#),72:22-24,75:24-25.

about it is not credible.<sup>1397</sup>

484. Other evidence also undermines NTAGANDA's testimony that he lacked knowledge of the attack. NTAGANDA testified that he first learnt about the operation through the Logbook message of 19 February 2003, in which he actually informs LUBANGA and KISEMBO that the troops had taken Lipri, Bambu and Kobu.<sup>1398</sup> He claimed he did not send the message but, rather, he received it and that its position in the "out" (sent) part of the Logbook was an error by his signaller.<sup>1399</sup>

485. The same message does appear in both the "in" and "out" parts of the Logbook, but both messages indicate that NTAGANDA was the sender.<sup>1400</sup> In addition, the "out" (sent) message follows sequential numbering, indicating it is at its designated place. It is sent message number 53, in between numbers 52 and 54, in a series of messages from numbers 50 to 56.<sup>1401</sup> NTAGANDA did not contest the accuracy or sequential placement of any surrounding messages.<sup>1402</sup> The "out" message also follows the chronological order of dates and times of messages above and below. In contrast, the "in" message, also dated 19 February 2003, appears between two messages dated 20 February 2003. Critically, the "out" (sent) message bears the mention "*passed*",<sup>1403</sup> which, [REDACTED], was a secondary step to ensure a message was actually transmitted.<sup>1404</sup> [REDACTED].<sup>1405</sup> The Defence did not challenge [REDACTED] account [REDACTED].

<sup>1397</sup> [D-300:T-238-CONF-ENG-CT](#),58:4-63:19; [DRC-OTP-0127-0061](#),1.29.09-1.33.09(transc.[DRC-OTP-2082-1033](#),p.1075,1.447-p.1077,1.1518) ; [D-300:T-238-CONF-ENG-CT](#),63:21-65:14; [DRC-OTP-2078-0586](#),p.0588,para.10(impeachment).

<sup>1398</sup> [D-300:T-220-CONF-ENG-ET](#),76:23-78:13.

<sup>1399</sup> [D-300:T-238-CONF-ENG-CT](#),48:8-51:7.

<sup>1400</sup> [DRC-OTP-2102-3854](#),pp.3998(fourth),3993(first); [D-300:T-238-CONF-ENG-CT](#),50:25-51:7.

<sup>1401</sup> [DRC-OTP-2102-3854](#),pp.3997-3998.

<sup>1402</sup> [D-300:T-238-CONF-ENG-CT](#),49:15-50:24.

<sup>1403</sup> [DRC-OTP-0017-0033](#),p.0176(fourth).

<sup>1404</sup> [REDACTED].

<sup>1405</sup> [REDACTED].

486. **NTAGANDA**'s last response on this message is telling. When asked to confirm that the content of the message is identical in the "in" and "out" sections, he replies that there was a mistake, and adds: *"I would also say if you read the content of the message, it's not speaking about fighting, it's quite simply saying that all the forces have arrived on that road Bambu, Lipri, but it doesn't speak specifically about fighting. It just says that the information will be given subsequently"*.<sup>1406</sup> **NTAGANDA** here appears to be saying – implausibly - that he does not even know that the message relates to fighting although the Commanders ask for bombs for the attacks,<sup>1407</sup> they report that a commander refuses to advance,<sup>1408</sup> and **NTAGANDA** himself conceded that UPC forces had arrived in three Lendu localities on roads the UPC could not previously use.<sup>1409</sup>

487. **NTAGANDA**'s account of a trip to meet his son in Rwanda on 14 to 17 February 2003 is not credible on many levels. First, his admitted involvement in a large number of defensive and offensive operations and important obligations for the UPC in February 2003 make it highly unlikely that this was the opportune time for a family trip, in particular one that he had postponed for the last four years.<sup>1410</sup> Second, **NTAGANDA** disclosed alleged hotel ledgers to support his account, yet he was never able to provide the originals, nor sought to admit the copies into evidence.<sup>1411</sup> The person who provided the documents<sup>1412</sup> appeared on the Defence witness list, but was dropped following **NTAGANDA**'s testimony.<sup>1413</sup>

488. **NTAGANDA** could not explain the circumstances in which the alleged hotel receipts were collected, where they were kept for over 10 years, why the hotel

<sup>1406</sup> [D-300:T-238-CONF-ENG-CT](#),50:24-51:7.

<sup>1407</sup> [DRC-OTP-2102-3854](#),p.3982(second); [D-300:T-238-CONF-ENG-CT](#),17:6-18:5.

<sup>1408</sup> [DRC-OTP-2102-3854](#),p.3990(second); p.3998(third); [D-300:T-238-CONF-ENG-CT](#),42:23-44:5,45:3-46:5.

<sup>1409</sup> [D-300:T-220-CONF-ENG-ET](#),79:5-18.

<sup>1410</sup> [D-300:T-238-CONF-ENG-CT](#),25:14-25:22

<sup>1411</sup> [D-300:T-238-CONF-ENG-CT](#),38:13-39:10.

<sup>1412</sup> [D-300:T-238-CONF-ENG-CT](#),32:6-23.

<sup>1413</sup> [D-76](#). [D-257](#), also meant to provide evidence on this alibi, was not called to testify either.

would have given one of its guests the hotel receipt of a different hotel guest who was in another room, why the receipt and ledger do not refer to his son's mother as an occupant of **NTAGANDA's** room (where he claims she stayed) yet it does refer to the name of his toddler son, and why the receipts actually show that **NTAGANDA** paid in full for a hotel room from 15-19 February 2003 when he now claims to have only stayed there from 15-17 February 2003.<sup>1414</sup>

489. It should be inferred from **NTAGANDA's** testimony that the ledgers were recently created to place him on a personal trip to Rwanda during days when the Second Attack unfolded - notably on 17, 18, 19 February 2003. But because the Logbook irrefutably establishes **NTAGANDA's** presence in Bunia by no later than 8h31 on 17 February 2003 and in the following days,<sup>1415</sup> **NTAGANDA** later shifted his evidence and stated that, contrary to his own disclosed items, he left Kigali on 17 February 2003 in the early hours of the morning, flew to Mongbwalu, then flew to Bunia and was back in Bunia sending messages at 8h31 in the morning.<sup>1416</sup> The Defence did not rely on the ledgers because it knows they are not authentic. The Chamber should draw the relevant conclusions regarding **NTAGANDA's** credibility on this point.

490. **NTAGANDA's** Logbook suggests instead that he was not in Rwanda at the time. In a message dated 17 February 2003, **NTAGANDA** tells **KAKWAVU** "*JE SUIS ALLE M'ASSURER QU'IL EXISTE JE NE PEUX PAS METRE EN PLACE UN BN EN THEORIE (-) J'AI CIRCULE DANS TOUTE LA ZONE POUR VOIR LE DEPLOYEMENT*".<sup>1417</sup> **NTAGANDA** attempted to distort the plain reading of the text and explain that the use of past tense in the message really meant that he was going to circulate in Djugu in the future.<sup>1418</sup> This is illogical in a context where precision and accuracy in military messaging is paramount. Another message sent by **KAKWAVU** on the 18<sup>th</sup> of

<sup>1414</sup> [D-300:T-238-CONF-ENG-CT](#),34:10-38:15.

<sup>1415</sup> [DRC-OTP-2102-3854](#),pp.3997-4000.

<sup>1416</sup> [D-300:T-238-CONF-ENG-CT](#),25:23-29:6.

<sup>1417</sup> [DRC-OTP-2102-3854](#),p.3999(third, emphasis added).

<sup>1418</sup> [D-300:T-228-CONF-ENG-CT](#),60:16-65:14.

February states: “*CES VEHICULES DE CELUI QUE TU CONNAIS DEPUIS QUE TU AS APPORTE LE BRIEFING JUSQU’AUJOURD’HUI NE SONT PAS ENCORE ARRIVES DANS NOTRE ZONE MAIS JE LES ATTENDS*”.<sup>1419</sup>

491. Interestingly, the Defence did not put the suggestion that **NTAGANDA** was in Rwanda during that time to Prosecution witnesses such as, for example, P-55 who testified about **NTAGANDA**’s whereabouts in February 2003 but who did not place him in Rwanda at that time.<sup>1420</sup>

492. **NTAGANDA**’s arguments that his physical absence from Ituri exonerates him constitutes an alibi defence that should have been notified to the Prosecution long before trial as required by rule 79. The Defence did not raise **NTAGANDA**’s alibi until it disclosed the hotel ledgers in April 2017, after the close of the Prosecution’s case. And the Prosecution had no notice of the shift in **NTAGANDA**’s testimony on the exact dates he claims he was in Rwanda until he testified. The Defence assertion that **NTAGANDA**’s testimony concerning his presence in Rwanda in February 2003 does not constitute an alibi<sup>1421</sup> is an attempt to justify the failure to provide notice.

493. The mere fact that **NTAGANDA** presented an alibi does not, on its own, raise the reasonable possibility that it is true, and the Chamber should simply disregard it.<sup>1422</sup> Should the Chamber decide it will consider it, the Chamber can, and should, question the circumstances surrounding its late notification and the failure to produce evidence to support it:<sup>1423</sup> “*it is well-established that the manner in which an alibi is presented may impact its credibility.*”<sup>1424</sup> Late notification of an alibi may support concerns that it was fabricated; difficulties in supporting such alibi may, when considered among other facts that raise questions about an

<sup>1419</sup> [DRC-OTP-2102-3854](#), p.3988 (third, emphasis added).

<sup>1420</sup> [P-55:T-72-CONF-ENG-CT](#), [T-74-CONF-ENG-CT](#).

<sup>1421</sup> See ICC-01/04-02/06-2222-Conf, paras.2,28-31; ICC-01/04-02/06-2229-Conf, paras.2-5.

<sup>1422</sup> [Nizeyimana TJ](#), para.1287; [Nizeyimana AJ](#), para.54.

<sup>1423</sup> See [Kanyarukiga AJ](#), para.102.

<sup>1424</sup> [Nizeyimana AJ](#), para.29.



alibi's credibility, allow a reasonable trier of fact to conclude that the alibi is not reasonably possibly true.<sup>1425</sup>

494. It is also entirely implausible that NTAGANDA left Bunia for over two weeks - from 21 February 2003 to 3 March 2003 - in the midst of highly coordinated, large-scale operations and high tensions with the UPDF.<sup>1426</sup> NTAGANDA's account of prolonged absence from Bunia aims solely at sheltering him from responsibility by distancing him from the operation. It seeks to contradict Prosecution witnesses on their testimony on the means of communication NTAGANDA was using at the time, or on meetings and encounters they had with NTAGANDA.

495. In any event, NTAGANDA's precise whereabouts at the time do not undermine his criminal responsibility for the Second Attack.<sup>1427</sup> By his own admission, NTAGANDA was present in Bunia during the heart of the Second Attack and always had the ability to communicate.<sup>1428</sup> The evidence detailed above demonstrates how he planned the operation, gave operational orders and received reports. NTAGANDA is also liable through other modes of individual criminal responsibility and as a superior commander.<sup>1429</sup>

### *3. Attacks directed against the civilian population (Article 8(2)(e)(i)) - Count*

**3**<sup>1430</sup>

496. During the Second Attack, UPC troops directed attacks against the civilian population. The crimes constitute "attacks" and the civilian population was, and was intended to be, the object of the attacks: (i) attacking civilians was ordered

<sup>1425</sup> See [Nizeyimana TJ](#), para.1277; [Kamuhanda TJ](#), para.82; [Niyitegeka TJ](#), para.50.

<sup>1426</sup> [D-300:T-221-CONF-ENG-ET](#), 12:23-23:19.

<sup>1427</sup> See [Ngudjolo TJ](#), para.423.

<sup>1428</sup> [D-300:T-238-CONF-ENG-CT](#), 11:16; [D-300:T-221-CONF-ENG-ET](#), 20:4-5.

<sup>1429</sup> See Sections VIII and IX.

<sup>1430</sup> This section concerns the crimes committed in or around Bambu, Kobu, Lipri, Jitchu, Camp P.M., Buli, Djuba, Sangi, Tsili, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Dyalo, Dhepka, Mbidjo, Thali and Ngabuli.

or implied; (ii) the crimes occurred as an integral part of UPC operations; and (iii) the extent of criminality suffered by the population during the second attack proves it.

**a. Orders to attack civilians**

497. NTAGANDA conceded that he knew the order “*kupiga na kuchaji*” but denied it had any illicit meaning.<sup>1431</sup> UPC insider witnesses, however, including a Defence witness, tell a different story: it was an order to attack and plunder.<sup>1432</sup> As such, it is, in and of itself, an order to attack the population. It was taught to recruits and used by all commanders in most operations.<sup>1433</sup> The troops whom NTAGANDA ordered to “*kupiga na kuchaji*” during the First Attack were deployed again for the Second Attack with MULENDA’s brigade. The troops followed that same order in the Second Attack, which was carried out according to the same *modus operandi* and during which the troops committed the same crimes against the population.

498. During the pre-attack briefing in Kilo, MULENDA reiterated the order to “*kupiga na kuchaji*”.<sup>1434</sup> P-17 was present; he testified that the goal was to “destroy” the Kobu, Lipri, Bambu triangle, which was a pocket of resistance to the UPC.<sup>1435</sup>

499. The orders were also that all Lendu were the enemy,<sup>1436</sup> without distinction for civilians, and this order in itself is again an order to attack civilians in the context of the ethnic war.<sup>1437</sup> P-963 explained: “*It was the same operation Piga na*

<sup>1431</sup> [D-300:T-213-CONF-ENG-CT](#),9:5-23.

<sup>1432</sup> [P-10:T-47-CONF-ENG-CT](#),14:16-15:12; [P-17:T-58-CONF-ENG-CT](#),54:19-55:23;[T-62-CONF-ENG-ET](#),29:20-31:20; [P-963:T-78-CONF-ENG-ET](#),70:16-17,72:25-73:9; [P-55:T-72-CONF-ENG-CT](#),9:25-11:14; [P-907:T-90-CONF-ENG-CT](#),8:7-9,9:6-7,9:17-18; [P-768:T-33-CONF-ENG-CT](#),64:21-65:10; [P-901:T-29-CONF-ENG-CT](#),18:20-22:25; [P-888:T-105-CONF-ENG-CT](#),77:9-12; [D-251:T-260-CONF-ENG-CT](#),99:17-100:6.

<sup>1433</sup> [P-901:T-29-CONF-ENG-CT](#),18:20-22:25; [P-10:T-47-CONF-ENG-CT](#),14:16-15:16; [P-17:T-61-CONF-ENG-ET](#),29:25-30:10,31:16-20; [P-55:T-72-CONF-ENG-CT](#),11:1-14; [P-768:T-33-CONF-ENG-CT](#),64:21-65:10.

<sup>1434</sup> [P-963:T-79-CONF-ENG-ET](#),45:21-46:7.

<sup>1435</sup> [P-17:T-59-CONF-ENG-CT](#),46:6-12,60:12-61:22.

<sup>1436</sup> [P-17:T-59-CONF-ENG-CT](#),62:18-25.

<sup>1437</sup> [P-17:T-63-CONF-ENG-ET](#),40:24-41:17; [P-901:T-29-CONF-ENG-CT](#),17:7-12.

*kuchaji. And we were fighting the Lendu. The orders were clear: Shoot at everyone*".<sup>1438</sup>

500. UPC troops were to drive out all civilians: *"they would either leave or they would be killed"*.<sup>1439</sup> UPC soldiers implemented orders and forced the population to leave or be killed during the attacks.<sup>1440</sup> Once Kobu was captured, the UPC conducted *ratissage* and offensives on surrounding villages; MULENDA ordered UPC troops to torch villages so that the Lendu would not return.<sup>1441</sup>

501. In Kobu, the night of the banana field massacre, [REDACTED].<sup>1442</sup>

#### **b. Civilians were attacked as part of UPC operations**

502. The crime pattern proves that the crimes were an integral part of the attack, and civilians were a constant target. Specifically, when the UPC attacked Kobu on or about 18 February 2003, they forced the population out of the village and into the bush. Those left behind, including children, were killed.<sup>1443</sup> After Kobu was taken, MULENDA ordered his soldiers to fire [REDACTED] whenever small fire or light was visible in the forest around Kobu to *"exert pressure"* on the displaced people.<sup>1444</sup> Commanders continued to send units to attack and destroy neighbouring villages around Kobu to ensure that the displaced, mostly Lendu, population could not come back.<sup>1445</sup> In Bambu, Lipri, and surroundings villages, such as in Dyalo,<sup>1446</sup> the population fled as well when UPC troops took over their villages.<sup>1447</sup>

<sup>1438</sup> [P-963:T-79-CONF-ENG-ET](#),47:1-8.

<sup>1439</sup> [P-963:T-79-CONF-ENG-ET](#),43:1-5; [P-17:T-63-CONF-ENG-ET](#),40:24-41:17.

<sup>1440</sup> [P-55:T-71-CONF-ENG-CT](#),45:3-11; [P-105:T-133-CONF-ENG-ET](#),41:17-25,70:19-71:7; [P-790:T-53-CONF-ENG-CT](#),44:21-46:6,47:14-48:3.

<sup>1441</sup> [P-963:T-79-CONF-ENG-ET](#),78:16-79:7; [P-17:T-59-CONF-ENG-CT](#),75:18-76:7.

<sup>1442</sup> [REDACTED].

<sup>1443</sup> [P-790:T-53-CONF-ENG-CT](#),44:21-46:6,47:14-48:3.

<sup>1444</sup> [P-17:T-59-CONF-ENG-CT](#),68:14-73-25.

<sup>1445</sup> [P-17:T-59-CONF-ENG-CT](#),74:22-75:5; [T-60-CONF-ENG-ET](#),29:7-19; [P-963:T-79-CONF-ENG-ET](#),77:17-78:7.

<sup>1446</sup> [P-105:T-133-CONF-ENG-ET](#),49:11-24.

<sup>1447</sup> See *i.e.*: [P-105:T-133-CONF-ENG-ET](#),41:17-25,70:20-71:8; [P-18:T-110-CONF-ENG-ET](#),50:25-51:9,55:13-56:2; [P-863:T-180-CONF-ENG-ET](#),24:8-24.

503. By 19 February 2003, the UPC controlled Lipri, Bambu and Kobu.<sup>1448</sup> Yet, they did not stop the assault. It lasted an additional week. From Lipri and Nyangaray on one side, and from Kobu and Bambu on the other, the troops hunted the civilians they had displaced in the forest and burnt down villages, far from the main roads it sought to control. P-300 explained: “[T]hey were closing the circle” on the “asphyxiated” population.<sup>1449</sup> There was no way for civilians to escape. They could not return.<sup>1450</sup> UPC soldiers further conducted manhunts during *ratissage* operations,<sup>1451</sup> killing or capturing Lendu hiding in the bush to exploit as porters of looted goods or sex slaves.<sup>1452</sup>

*“Shika na Mukono”*

504. The Second Attack was known to the local population as “*shika na mukono*” - in Swahili, that translates to “take with the hands”. Witnesses heard UPC soldiers shout this war cry as they were capturing them in the bush.<sup>1453</sup> P-963 confirmed that MULENDA used that expression when he ordered the soldiers to capture people during the attack on the Buli area.<sup>1454</sup> He explained its meaning: “*if the person is not armed, then one should not use a weapon. One should not waste ammunition*”.<sup>1455</sup> NTAGANDA testified that this cry was intended to frighten the enemy and capture people without using bullets, in order to gather intelligence. He attempted to explain that it means “*don’t shoot*”.<sup>1456</sup> However, logically, soldiers would only seek to capture targets “with their bare hands” if those

<sup>1448</sup> [DRC-OTP-2102-3854](#), p.3998 (fourth).

<sup>1449</sup> [P-300:T-166-CONF-ENG-ET](#), 33:8-34:1, 47:18-24; *see also* [P-127:T-139-CONF-ENG-ET](#), 13:1-11.

<sup>1450</sup> [P-17:T-63-CONF-ENG-ET](#), 46:2-7; [P-868:T-177-CONF-ENG-ET](#), 61:11-62:25; [P-105:T-133-CONF-ENG-ET](#), 70:8-71-19.

<sup>1451</sup> [P-868:T-177-CONF-ENG-ET](#), 62:11-22; [P-790:T-54-CONF-ENG-ET](#), 12:2-16; [P-106:T-44-CONF-ENG-CT](#), 28:1-23, 29:5-6.

<sup>1452</sup> [P-113:T-118-CONF-ENG-CT](#), 33:3-13, 35:4-23, 36:1-37:3; [P-18:T-110-CONF-ENG-ET](#), 76:21-77:17, 10:12-17; [P-39:DRC-OTP-0104-0015-R03](#), pp.0020-0021, paras.26-30, [DRC-OTP-2062-0244-R02](#), pp.0252-0253, paras.33-41.

<sup>1453</sup> [P-790:T-54-CONF-ENG-ET](#), 31:22-32:4; [P-18:T-110-CONF-ENG-ET](#), 47:4-13; [P-100:T-131-CONF-ENG-ET](#), 39:23-41:12; [P-300:T-166-CONF-ENG-ET](#), 50:1-12; [P-121:T-172-CONF-ENG-ET](#), 63:10-64:4; [P-127:T-139-CONF-ENG-ET](#), 14:4-24.

<sup>1454</sup> [P-963:T-79-CONF-ENG-ET](#), 81:1-83:11; *see also* [P-10:T-47-CONF-ENG-CT](#), 26:16-23.

<sup>1455</sup> [P-963:T-79-CONF-ENG-ET](#), 81:6-8.

<sup>1456</sup> [D-300:T-213-CONF-ENG-CT](#), 18:12-19:13.

targets were unarmed. This further proves beyond reasonable doubt that the civilians were the deliberate object of the UPC attacks.

*Invitation to the so-called Pacification Meeting*

505. On or about 22 February 2003, MULENDA invited the displaced population to attend a “pacification meeting” (Pacification Meeting) in Sangi.<sup>1457</sup> [REDACTED].<sup>1458</sup> In his first message, MULENDA states that KISEMBO is informed of this initiative, and invites them to meet, specifying that Lendu *notables* from Bunia will also attend.<sup>1459</sup> The Lendu civilian *notables* respond requesting that the UPC withdraw its troops so that the population can resettle in their villages, and that the UPC send politicians and civilian *notables* to discuss peace.<sup>1460</sup> [REDACTED].<sup>1461</sup> Lendu civilians decided to attend the Pacification Meeting, desperate to find an end to the conflict and, while apprehensive, a meeting between the UPC and Lendu representatives took place in Ngongo in January 2003 without incident.<sup>1462</sup> The UPC used this Pacification Meeting as a pretext to lure displaced Lendu civilians from hiding.<sup>1463</sup> On or about 25 February 2003, instead of a pacification meeting, the UPC arrested the unarmed delegation and launched an attack on the Sangi and Buli area.<sup>1464</sup>

*Radio Intercepts*

506. An audio recording provides strong evidence of the coordinated<sup>1465</sup> attack that

<sup>1457</sup> [DRC-OTP-0152-0286](#),p.0302,para.60; [DRC-OTP-0065-0003](#)(FR-[DRC-OTP-2055-0364](#)); [P-127:T-139-CONF-ENG-ET](#),19:25-25:10,35:6-43:10; [P-300:T-166-CONF-ENG-ET](#),42:7-46:15; [P-792:T-150-CONF-ENG-ET](#),48:9-54:7,56:15-20; [P-105:T-134-CONF-ENG-ET](#),9:8-18:2; [P-27:DRC-OTP-0096-0052-R04](#),pp.0057-0058, paras.25-27; [P-18:T-110-CONF-ENG-ET](#),62:21-63:15,64:6-11,65:5-70:3; [P-19:T-115-CONF-ENG-CT](#),27:12-30:13; [P-100:T-131-CONF-ENG-ET](#),40:12-41:19; [P-108:T-185-CONF-ENG-ET](#),45:7-48:7; [P-868:T-177-CONF-ENG-ET](#),59:5-8,66:18-69-17; [P-317:T-191-CONF-ENG-ET](#),43:5-20,46:7-48:16,49:13-50:1,77:7-11; [P-103:DRC-OTP-0104-0170-R02](#),pp.0176-0177,paras.32-37.

<sup>1458</sup> [REDACTED]; [DRC-OTP-0065-0003](#)(FR-[DRC-OTP-2055-0364](#)).

<sup>1459</sup> [DRC-OTP-2055-0364](#),p.0365.

<sup>1460</sup> [DRC-OTP-0065-0003](#),p.0004(second).

<sup>1461</sup> [REDACTED].

<sup>1462</sup> [P-105:T-133-CONF-ENG-ET](#),56:22-62:8,68:7-69:16;[T-134-CONF-ENG-ET](#),69:10-23.

<sup>1463</sup> [DRC-OTP-2055-0364](#),p.0365(second).

<sup>1464</sup> See Section VII.B.9.

<sup>1465</sup> [P-901:T-29-CONF-ENG-CT](#),30:23-32:21; [P-17:T-60-CONF-ENG-ET](#),40:1-41:6.

followed the Pacification Meeting.<sup>1466</sup> Five witnesses, including four UPC soldiers, confirm it is a recording of radio communications between UPC soldiers during the Second Attack. [REDACTED].<sup>1467</sup> In addition to mentioning names of related villages<sup>1468</sup> and officers,<sup>1469</sup> the intercept records commanders describing the action during the Second Attack, in particular: the attack on Buli,<sup>1470</sup> the *ratissage* operations,<sup>1471</sup> the search for Kabuli and heavy weapons,<sup>1472</sup> and the capture of prisoners.<sup>1473</sup> The recording shows that orders were given,<sup>1474</sup> implemented, and reported upon.<sup>1475</sup> MULENDA transmitted orders to take Buli.<sup>1476</sup>

507. Six witnesses saw the radio base set in Gutsi and confirmed that the Lendu inhabitants were able to listen to UPC communications during the Second Attack.<sup>1477</sup> P-301 heard several exchanges himself. In one message, he heard an order for weapons to be directed towards the valley where the population had

<sup>1466</sup> [DRC-OTP-0162-0115](#); track1:1:42-3:50,6:50-13:38,7:00-12:00,23:45-25:44, (transl. [DRC-OTP-2101-2958](#)), track2:00:00:23- 06:08,3:00-9:00,5:20-6:25, (transl. [DRC-OTP-2101-2948](#), p.2450:5-p.2955:170).

<sup>1467</sup> [P-901:T-29-CONF-ENG-CT](#),12:23,32:18-22,39:13-17; [P-17:T-60-CONF-ENG-ET](#),41:4-6,40:1-5; [P-963:T-79-CONF-ENG-ET](#),90:6-22; [P-907:T-90-CONF-ENG-CT](#),59:7-10,63:16-22,63:11-22,69:5-10; [P-301:T-149-CONF-ENG-ET](#),48:19-49-9,50:5-7.

<sup>1468</sup> Kilo: [DRC-OTP-2101-2948](#), p.2952:97, p.2954:151; [P-17:T-60-CONF-ENG-ET](#),43:17; [P-907:T-90-CONF-ENG-CT](#),69:2-10; [P-301:T-149-CONF-ENG-ET](#),50:10-13. Nyangaray: [DRC-OTP-2101-2948](#), p.2953:103; [P-907:T-90-CONF-ENG-CT](#),68:2-9.2. Bambu: [P-901:T-29-CONF-ENG-CT](#),38:15-24.

<sup>1469</sup> Salumu MULENDA (Sierra Alpha), Commandant Éric (Echo Charlie), Pascal OKITO (Papa Oscar), KAGUMA (Bravo Charlie), Chuma KU MAYI, Saidi (Sierra Delta), Rwandais (Romeo Whiskey), Théophile MATEO (Tango Hotel), Samy (Sierra Mike): [P-901:T-29-CONF-ENG-CT](#),31:2-32:6 ; [P-963:T-79-CONF-ENG-ET](#),89:25-90:3; [P-17:T-60-CONF-ENG-ET](#),40:7-20; [P-907:T-90-CONF-ENG-CT](#),68:2-13; [P-16:DRC-OTP-0126-0422-R03](#), p.0448, para.144.

<sup>1470</sup> [DRC-OTP-2101-2948](#), p.2951:61, p.2953:112-124, [P-907:T-90-CONF-ENG-CT](#),69:2-10; [P-901:T-29-CONF-ENG-CT](#),32:15-22; [P-963:T-79-CONF-ENG-ET](#),90:9-11.

<sup>1471</sup> [DRC-OTP-2101-2948](#), p.2950:22.

<sup>1472</sup> [DRC-OTP-2101-2958](#), p.2961:32-27.

<sup>1473</sup> [DRC-OTP-2101-2948](#), p.2952:84, p.2953:103; [DRC-OTP-2101-2958](#), p.2962:64-68.

<sup>1474</sup> “attachez les avec une corde...ligotez-les...rapidement et amenez-les ici”: [DRC-OTP-2101-2948](#), p.2950:20; “passez le village au peigne fin”: [DRC-OTP-2101-2948](#), p.2950:22; “avancez vers Buri”: [DRC-OTP-2101-2948](#), p.2953:123; “tuez les gens”: [DRC-OTP-2101-2958](#), p.2973:444-447; [P-17:T-60-CONF-ENG-ET](#),41:15-42:4.

<sup>1475</sup> [DRC-OTP-2101-2948](#), p.2952:89, p.2954:148.

<sup>1476</sup> [DRC-OTP-2101-2948](#), p.2951:61, p.295:112-124; [P-901:T-29-CONF-ENG-CT](#),38:15-21; [P-963:T-79-CONF-ENG-ET](#),90:16-20.

<sup>1477</sup> [P-863:T-180-CONF-ENG-ET](#),37:7-38:24; [T-181-CONF-ENG-ET](#),50:1-52:4; [P-857:T-193-CONF-ENG-ET](#),75:12-76:11; [P-790:T-53-CONF-ENG-CT](#),61:10-62:10; [T-54-CONF-ENG-ET](#),6:2-19; [P-103:DRC-OTP-0104-0170-R02](#), pp.0175-0176, paras.29-31; [P-121:T-172-CONF-ENG-ET](#),77:18-80:8; [P-301:T-149-CONF-ENG-ET](#),37:6-23.

sought refuge.<sup>1478</sup> In another exchange, P-301 heard soldiers being ordered to carry out “salongo” in the nearby bush in which the population was located.<sup>1479</sup> In a third exchange, he heard an order that machetes be sharpened to carry out the operation.<sup>1480</sup> P-100 also heard UPC soldiers refer to “salongo”, which he said meant: “Burn houses, abduct the people, take them to Kobu and kill them. [...] That’s what salongo was. That’s what salongo means”.<sup>1481</sup>

508. The audio recording of the Buli attack establishes that UPC troops under battalion commander Echo Charlie captured and tied up over 40 unarmed individuals whom he intended to bring to locations controlled by the UPC, and reported this to brigade commander MULENDA.<sup>1482</sup> Those prisoners were brought to Kobu.<sup>1483</sup> They were killed in a banana field, on orders from UPC hierarchy on or about the night of 26 February 2003.<sup>1484</sup>

509. UPC soldiers persecuted the population until the very end of the offensive. The UPC forced men and women to carry UPC war booty, or raped them during the UPC retreat to Bunia or Centrale.<sup>1485</sup>

### c. Extent of criminality against civilians

510. The fact that the UPC conducted attacks against civilians is further shown by the range of crimes committed,<sup>1486</sup> their geographic spread, and the multiple crimes UPC troops inflicted on Walendu-Djatsi’s inhabitants. P-17 testified that *all* the little villages around Kobu were affected during the operation.<sup>1487</sup>

<sup>1478</sup> [P-301:T-149-CONF-ENG-ET](#),37:6-20.

<sup>1479</sup> [P-301:T-149-CONF-ENG-ET](#),37:24-38:2.

<sup>1480</sup> [P-301:T-149-CONF-ENG-ET](#),38:3-4,39:25-40:7.

<sup>1481</sup> [P-100:T-131-CONF-ENG-ET](#),43:21-44:8.

<sup>1482</sup> [DRC-OTP-2101-2948](#),p.2952:84,p.2953:103; [P-901:T-29-CONF-ENG-CT](#),38:15-18; [P-17:T-60-CONF-ENG-ET](#),43:8-18.

<sup>1483</sup> [P-17:T-60-CONF-ENG-ET](#),10:5-9.

<sup>1484</sup> [P-17:T-60-CONF-ENG-ET](#),15:17-17:5.

<sup>1485</sup> [P-113:T-118-CONF-ENG-CT](#),53:25-54-12; [P-790:T-54-CONF-ENG-ET](#),32:5-21; [P-17:T-60-CONF-ENG-ET](#),25:11-20; [P-17:T-60-CONF-ENG-ET](#),28:1-29:6; [P-39:DRC-OTP-0104-0015-R03](#),p0021,para.32;[DRC-OTP-2062-0244-R02](#),p.0254,paras.46.

<sup>1486</sup> Nine different types of material acts supporting thirteen counts.

<sup>1487</sup> [P-17:T-59-CONF-ENG-CT](#),62:6-16.



[REDACTED]<sup>1488</sup> of the unfolding of the UPC attacks and destruction of numerous villages during the Second Attack.<sup>1489</sup> [REDACTED].<sup>1490</sup>

511.P-317 was the head of the MONUC Special Investigation Team that looked into severe human rights violations in Ituri including in Walendu-Djatsi at the beginning of 2003.<sup>1491</sup> P-46, a MONUC Child Protection Advisor, took part in this investigation.<sup>1492</sup> In early April 2003, a few weeks after the Second Attack, P-317, P-46, and their team went on mission on site<sup>1493</sup> and interviewed 85 victims and eyewitnesses.<sup>1494</sup> Their report concluded that grave crimes were committed on a massive scale.<sup>1495</sup> P-317 testified: *“that was one of the worst situations that I saw during all these years in the Congo.”*<sup>1496</sup>

512.Civilians were often the victim of several crimes, not just one, perpetrated by UPC troops over several days.<sup>1497</sup> This further demonstrates that the attack was intentionally directed against them.

513.For example, after hearing shots [REDACTED] signalling the UPC attack on Bambu on or about 19 February 2003, P-18 fled to the forest with her small child, parents and other family members.<sup>1498</sup> They progressed through the bush, looking for a place to hide, through [REDACTED].<sup>1499</sup> When P-18 finally arrived in Buli, she found other displaced people who had fled Bambu and Kobu as a result of the UPC attacks. They were Lendu, Bira, Nyali or *Jajambo*.<sup>1500</sup> On or about 25 February, as the UPC launched an attack on the area, she tried to flee to

<sup>1488</sup> [REDACTED]; [DRC-OTP-0065-0003](#)(FR-[DRC-OTP-2055-0364](#)).

<sup>1489</sup> [REDACTED].

<sup>1490</sup> [P-127:T-139-CONF-ENG-ET](#),45:1-47:14; [DRC-OTP-1033-0221](#)(00:34:00-00:45:22)(transl.[DRC-OTP-2055-0261](#),pp.0267-0272:152-335); [P-317:T-191-CONF-ENG-ET](#),77:20- 83:7.

<sup>1491</sup> [P-317:T-191-CONF-ENG-ET](#),17:21-18:16,19:17-21; [DRC-OTP-0152-0286](#),p.0286,para.2.

<sup>1492</sup> [P-46:T-100-CONF-ENG-CT](#),63:19-67:3,76:14-76:20; [DRC-OTP-0152-0286](#),p.0286,para.2.

<sup>1493</sup> [DRC-OTP-0152-0286](#),p.0287,para.3,p.0300,para.51.

<sup>1494</sup> [P-317:T-191-CONF-ENG-ET](#),50:4-51:19; [DRC-OTP-0152-0286](#),p.0287,p.0301,para.52.

<sup>1495</sup> [P-46:T-100-CONF-ENG-CT](#),63:19-65:20; [DRC-OTP-0152-0286](#),p.0313,para.103.

<sup>1496</sup> [P-317:T-191-CONF-ENG-ET](#),30:6-18.

<sup>1497</sup> P-18, P-19, P-27, P-39, P-100, P-103, P-105, P-113, P-127, P-301, P-790, P-863, P-868.

<sup>1498</sup> [P-18:T-110-CONF-ENG-ET](#),48:24-49:19.

<sup>1499</sup> [P-18:T-110-CONF-ENG-ET](#),50:25-51:9,55:13-56:1.

<sup>1500</sup> [P-18:T-110-CONF-ENG-ET](#),56:23-57:4,59:20-60:14.

Jitchu but was captured.<sup>1501</sup> She saw UPC soldiers setting the villages on fire as she and other civilian prisoners were forced to carry looted goods.<sup>1502</sup> In Sangi, she saw UPC soldiers beat, rape and kill prisoners, [REDACTED].<sup>1503</sup> After raping P-18, a UPC soldier shot her [REDACTED] and left her for dead, [REDACTED].<sup>1504</sup> [REDACTED].<sup>1505</sup>

514. The following facts described under counts 1/2 (murder and attempted murder), as well as those facts underlying counts 4/5 (rape), 6 (sexual slavery) 11 (pillaging), 17 (attacking protected objects) and 18 (destroying the enemy's property), and counts 7/8 (sexual slavery), 12/13 (forcible transfer and forcible deportation) and 10 (persecution), further establish the second element of the war crime of attacking civilians, namely that the civilians were the object of the attack.

***4. Forcible transfer of population and displacement of civilians (Article 7(1)(d) and Article 8(2)(e)(viii) -Counts 12 and 13***<sup>1506</sup>

515. "[W]henver the UPC came in, it would burn down houses and loot and abuse the inhabitants and the population. That is why the inhabitants had to flee into the forest along with the children, because they had no choice."<sup>1507</sup> Following the *modus operandi* of the First Attack, UPC troops continued to forcibly transfer and displace non-Hema civilians in or around Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu and Gutsi.

516. During the pre-attack briefing in Mongbwalu, KISEMBO ordered UPC troops to

<sup>1501</sup> [P-18:T-110-CONF-ENG-ET](#),63:9-25,69:21-70:3,76:17-78:3.

<sup>1502</sup> [P-18:T-110-CONF-ENG-ET](#),69:25-70:3,76:21-77:17.

<sup>1503</sup> [P-18:T-111-CONF-ENG-CT](#),8:7-10:11,14:10-20:1.

<sup>1504</sup> [P-18:T-111-CONF-ENG-CT](#),10:12-17.

<sup>1505</sup> [P-18:T-111-CONF-ENG-CT](#),22:8-23:10.

<sup>1506</sup> This section concerns the crimes committed in or around Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu and Gutsi.

<sup>1507</sup> [P-105:T-133-CONF-ENG-ET](#),41:17-25.

*“drive the Lendu out of that place, push them out of there”*.<sup>1508</sup> P-963 was clear about what was expected of UPC soldiers regarding civilians during this attack: *“they were to drive them all out. It was up to us to occupy the location and for them to leave, whether they would either leave or they would be killed”*.<sup>1509</sup> UPC troops implemented these orders.<sup>1510</sup>

517. Even after the population had fled to the forest, MULENDA ordered his soldiers to fire [REDACTED] at them.<sup>1511</sup> UPC commanders sent units to attack neighbouring villages around Kobu *“with a view of driving them out”*, taking some prisoners and killing others.<sup>1512</sup> P-17 stated: *“those who were fleeing were our enemy”*.<sup>1513</sup>

518. P-55 testified that once an area was captured by the UPC, no Lendu person could return or they would be murdered.<sup>1514</sup> P-17 confirmed that this applied to the Second Attack.<sup>1515</sup>

519. The predominantly Lendu men, women and children of the area were lawfully present in the attacked villages.<sup>1516</sup> Their displacement was neither permitted under international law nor justified by military necessity. NTAGANDA intended to remove them in order to control the region.

520. UPC troops displaced massive amounts of civilians who had no choice but to flee during this attack because they would either have been killed or hunted down during *ratissage* missions. 14 Prosecution witnesses were forcibly

<sup>1508</sup> [P-963:T-79-CONF-ENG-ET](#),46:23.

<sup>1509</sup> [P-963:T-79-CONF-ENG-ET](#),43:1-5.

<sup>1510</sup> [P-55:T-71-CONF-ENG-CT](#),45:3-11; [P-105:T-133-CONF-ENG-ET](#),41:17-25,70:19-71:8; [P-790:T-53-CONF-ENG-CT](#),44:21-46:6,47:14-48:3.

<sup>1511</sup> [P-17:T-59-CONF-ENG-CT](#),73:9:25.

<sup>1512</sup> [P-17:T-60-CONF-ENG-ET](#),29:7-19; [P-963:T-79-CONF-ENG-ET](#),77:17-78:7.

<sup>1513</sup> [P-17:T-63-CONF-ENG-ET](#),40:24-41:17.

<sup>1514</sup> [P-55:T-71-CONF-ENG-CT](#),21:8-22:7.

<sup>1515</sup> [P-17:T-63-CONF-ENG-ET](#),46:2-7;[T-59-CONF-ENG-CT](#),74:22-75:5; [P-868:T-177-CONF-ENG-ET](#),61:11-62:22.

<sup>1516</sup> [P-55:T-71-CONF-ENG-CT](#),30:16-17; [P-790:T-53-CONF-ENG-CT](#),20:9-12; [P-301:T-149-CONF-ENG-ET](#),30:23-31:3; [P-127:T-139-CONF-ENG-ET](#),11:23-12:1,13:1-11; [P-17:T-63-CONF-ENG-ET](#),40:24-41:17;[T-59-CONF-ENG-CT](#),74:3-16; [P-121:T-172-CONF-ENG-ET](#),61:15-17; [P-108:T-185-CONF-ENG-ET](#),44:19-20.

transferred and displaced by UPC troops during that attack. UN agencies estimated that 60,000 civilians were forced to flee to the surrounding bush as a result of the assault on Walendu-Djatsi.<sup>1517</sup>

**a. Lipri, Tsili, and Nyangaray**

521.P-105 testified that the Lendu population living in the Lipri area were repeatedly forced away from their homes by the UPC.<sup>1518</sup> He fled to the bush during the Lipri attack on or about 18 February 2003 and took refuge with the entire displaced population of Tsili, Gola, Katho, and Dyalo on [REDACTED].<sup>1519</sup> The Lendu could not go to their farms, find food, or even move around or they would be killed.<sup>1520</sup> In Tsili, P-127 fled the UPC troops' deadly progression, and went first to [REDACTED] where he met many other displaced people escaping from Lipri and Dehkpa.<sup>1521</sup> People displaced in the bush had little to no food, no shelter, and constantly feared being attacked.<sup>1522</sup>

522.When UPC troops attacked Nyangaray, P-868 fled to [REDACTED], in the bush, hours away by foot.<sup>1523</sup> There, about 60 displaced men and women - including babies and elderly persons - had taken refuge.<sup>1524</sup> There was very little food; the UPC would kill people they caught returning to their farms.<sup>1525</sup> P-868 fled again, further away from Nyangaray: *"I was afraid that they may return and kill us at that location"*.<sup>1526</sup>

<sup>1517</sup> [P-317:T-191-CONF-ENG-ET](#),65:18-66:3; [DRC-OTP-0074-0422](#),pp.0444-0445,para.70; [DRC-OTP-0152-0286](#),p.0287,para.6,p.0301,para.56; [DRC-OTP-0074-0628](#),p.0668.

<sup>1518</sup> [P-105:T-133-CONF-ENG-ET](#),41:17-25.

<sup>1519</sup> [P-105:T-133-CONF-ENG-ET](#),46:13-50:7.

<sup>1520</sup> [P-105:T-133-CONF-ENG-ET](#),70:19-71:7.

<sup>1521</sup> [P-127:T-139-CONF-ENG-ET](#),7:6-11,9:12-10:23.

<sup>1522</sup> [P-127:T-139-CONF-ENG-ET](#),9:12-10:23.

<sup>1523</sup> [P-868:T-177-CONF-ENG-ET](#),54:10-18,56:15-19,60:13-19.

<sup>1524</sup> [P-868:T-177-CONF-ENG-ET](#),60:20-61:10;84:20-85:10.

<sup>1525</sup> [P-868:T-177-CONF-ENG-ET](#),61:11-62:25,62:11-62:22.

<sup>1526</sup> [P-868:T-177-CONF-ENG-ET](#),77:13-25.

## b. Kobu, Buli, Jitchu, Bambu, and Gutsi

523. In Kobu, on or about 18 February 2003 villagers all ran away when the UPC attacked. P-963 confirmed that a few civilians had been killed, while many had fled towards Buli.<sup>1527</sup> P-790 described UPC troops chasing him and other displaced people in the bush, firing at them, and forcing them to flee further to Ngabulo and Jitchu.<sup>1528</sup>

524. P-19 fled Kobu to Gola, where she met other displaced people of mostly Lendu ethnicity.<sup>1529</sup> P-106 was also displaced in Gola.<sup>1530</sup> The many displaced villagers built shelters and searched for food in the bush, in constant fear of being attacked.<sup>1531</sup> P-121,<sup>1532</sup> P-301,<sup>1533</sup> and P-805<sup>1534</sup> fled the UPC attack of Kobu towards Gutsi.

525. In Bambu on or about 19 February 2003, P-18 fled the UPC attack into the forest with her small child, and family.<sup>1535</sup> They kept walking through the bush, looking for a place to hide until they reached Buli.<sup>1536</sup> There, she found other displaced people who were Lendu, Bira, Nyali or *jajambo*.<sup>1537</sup> P-113 fled the Bambu attack towards Sangi, and then to Ngabuli.<sup>1538</sup> There, Lendu, Nande, Alur, and Bira refugees built small huts with tarpaulin or straw or sought refuge in the church.<sup>1539</sup>

526. P-863, his [REDACTED] wife and [REDACTED] children, fled Bambu to the

<sup>1527</sup> [P-963:T-79-CONF-ENG-ET](#),51:10-18.

<sup>1528</sup> [P-790:T-53-CONF-ENG-CT](#),44:21-46:6,47:14-48:3;[T-54-CONF-ENG-ET](#),12:2-16.

<sup>1529</sup> [P-19:T-115-CONF-ENG-CT](#),19:4-20:21.

<sup>1530</sup> Sometimes referred to as "Agora", [P-106:T-44-CONF-ENG-CT](#),27:9-10,12:8-23.

<sup>1531</sup> [P-106:T-44-CONF-ENG-CT](#),30:11-23-18,28:4-23,29:5-6,32:22,33:18-25.

<sup>1532</sup> [P-121:T-172-CONF-ENG-ET](#),60:2-8.

<sup>1533</sup> [P-301:T-149-CONF-ENG-ET](#),30:5-31:10; *see also* [P-857:T-193-CONF-ENG-ET](#),70:12-16.

<sup>1534</sup> [P-805:T-25Bis-CONF-ENG-CT](#),15:15-17:35; [T-26-CONF-ENG-CT](#),16:16-17:3,[DRC-REG-0001-0002](#).

<sup>1535</sup> [P-18:T-110-CONF-ENG-ET](#),48:24-49:19.

<sup>1536</sup> [P-18:T-110-CONF-ENG-ET](#),50:25-51:9,55:13-56:1,[DRC-REG-0001-0029](#),[DRC-REG-0001-0007](#).

<sup>1537</sup> [P-18:T-110-CONF-ENG-ET](#),56:23-57:4,59:20-60:14; *see also* [P-127:T-139-CONF-ENG-ET](#),16:15-24.

<sup>1538</sup> [P-113:T-118-CONF-ENG-CT](#),13:17-23.

<sup>1539</sup> [P-113:T-118-CONF-ENG-CT](#),19:2-20:7.

bush around Gutsi.<sup>1540</sup> There, several people died due to the dire living conditions, and had to be buried in the bush.<sup>1541</sup>

527. In Buli, on or about 25 February 2003, P-27 fled the UPC assault to the bush. He and other displaced people were trapped in a small location, unable to reach the forest because UPC troops blocked the way and closed in on them from all directions.<sup>1542</sup> P-39 also fled Buli under UPC gunfire and hid overnight in the nearby bush. A UPC soldier then arrested him, forcing him as porter to carry a looted mattress to Kobu.<sup>1543</sup>

#### 5. Pillaging (Article 8(2)(e)(v)) - Count 11<sup>1544</sup>

528. During the Second Attack, UPC troops and their Hema civilian supporters committed pillaging on a massive scale in or around Bambu, Kobu, Lipri and Jitchu between on or about 12 and 27 February 2003, following the “*kupiga na kuchaji*” order.<sup>1545</sup>

529. In addition to being a reward for unpaid UPC soldiers,<sup>1546</sup> the pillage of items that were necessary for the civilian population’s survival ensured that civilians could not return to areas the UPC sought to control.<sup>1547</sup> P-55 testified this was the UPC objective,<sup>1548</sup> and [REDACTED] P-790 confirmed it was implemented: “*they left nothing behind that would enable us to inhabit the house again*”.<sup>1549</sup>

530. After the Second Attack, in Bunia, P-901 saw UPC soldiers and commanders carrying “war booty” such as bicycles, radios, motorbikes, TVs and furniture

<sup>1540</sup> [P-863:T-180-CONF-ENG-ET](#),24:8-24,35:3-24.

<sup>1541</sup> [P-863:T-180-CONF-ENG-ET](#),34:11-35:2.

<sup>1542</sup> [P-27:DRC-OTP-0096-0052-R04](#),p.0062,paras.46-47.

<sup>1543</sup> [P-39:DRC-OTP-0104-0015-R03](#),pp.0020-0021,paras.26-30; [DRC-OTP-2062-0244-R02](#),pp.0252-0253, paras.33-41.

<sup>1544</sup> This section concerns the crimes committed in or around Bambu, Kobu, Lipri and Jitchu.

<sup>1545</sup> [P-963:T-79-CONF-ENG-ET](#),46:4-7.

<sup>1546</sup> [P-55:T-74-CONF-ENG-CT](#),98:11-19; [P-17:T-58-CONF-ENG-CT](#),55:25-56:2; [P-963:T-78-CONF-ENG-ET](#),66:7-8.

<sup>1547</sup> [P-55:T-71-CONF-ENG-CT](#),47:1-21.

<sup>1548</sup> [P-55:T-71-CONF-ENG-CT](#),47:1-21.

<sup>1549</sup> [P-790:T-54-CONF-ENG-ET](#),31:4-5.

that they had looted from the population. Those troops had just been deployed in Kobu, Buli, Lipri and Nyangaray, and returned with possessions they did not have before the fighting.<sup>1550</sup>

531. Pillaging was an integral part of the operation. P-907 testified that in UPC operations “each time we attacked a particular place, we were supposed to loot”.<sup>1551</sup> This is further demonstrated by the fact that looting occurred automatically, as a set *modus operandi*.<sup>1552</sup> Looting was committed everywhere.<sup>1553</sup> The planned and coordinated exploitation of Lendu civilians as porters,<sup>1554</sup> and the use of vehicles<sup>1555</sup> to carry the loot back to Bunia<sup>1556</sup> prove that pillaging was intended and organised.

532. The UPC also used Hema civilian supporters to loot and remove roofs; **NTAGANDA** was in charge of mobilising them.<sup>1557</sup> **NTAGANDA** knew and intended that Hema civilian supporters were given this task.<sup>1558</sup>

#### a. Lipri

533. Hema civilian supporters removed roofs from houses in Lipri as ordered, as they did in several other villages during the Second Attack.<sup>1559</sup>

534. Once the UPC controlled Lipri, they launched attacks on the surrounding villages of Tsili, Avetso, Djuba, Katho and Nyarara<sup>1560</sup> where they looted harvest and crops from farms.<sup>1561</sup> P-105 described that when the UPC looted, it stationed

<sup>1550</sup> [P-901:T-29-CONF-ENG-CT](#),18:3-19:24,21:4-24.

<sup>1551</sup> [P-907:T-90-CONF-ENG-CT](#),10:3-13.

<sup>1552</sup> [P-55:T-71-CONF-ENG-CT](#),47:1-21;[P-17:T-59-CONF-ENG-CT](#),74:20-76:7.

<sup>1553</sup> [DRC-OTP-0152-0286](#),p.0303,para.63.

<sup>1554</sup> [P-113:T-118-CONF-ENG-CT](#),42:23-43:7; [P-18:T-110-CONF-ENG-ET](#),63:16-64:4,78:7-79:15.

<sup>1555</sup> [P-105:T-133-CONF-ENG-ET](#),50:8-12.

<sup>1556</sup> [P-901:T-29-CONF-ENG-CT](#),18:3-19:24,21:4-24.

<sup>1557</sup> [P-55:T-71-CONF-ENG-CT](#),47:11-21.

<sup>1558</sup> [P-55:T-71-CONF-ENG-CT](#),49:1-23.

<sup>1559</sup> [P-55:T-71-CONF-ENG-CT](#),47:1-21.

<sup>1560</sup> These villages are “in or around Lipri” as per Count 11.

<sup>1561</sup> [P-105:T-133-CONF-ENG-ET](#),45:25-46:6.



a vehicle in Lipri and loaded it with war booty.<sup>1562</sup> When villagers returned to Lipri in March 2003, the roofs of their houses had been removed,<sup>1563</sup> and their farms had been looted and destroyed.<sup>1564</sup>

#### **b. Kobu**

535.UPC commanders removed metal sheets from Kobu houses and brought them to Kilo.<sup>1565</sup> During their *ratissage* operations in each village around Kobu, UPC troops searched the houses and brought back “*anything they would find*”.<sup>1566</sup>

536.[REDACTED] came back to the village to find that the UPC and the Hema civilian supporters had looted all the personal belongings they had to leave behind when fleeing the attack.<sup>1567</sup> His roof, kitchen utensils, his wife’s clothing, his chairs: “*everything was looted*”.<sup>1568</sup> The UPC troops pillaged P-805’s home and took money, gold, clothes, a bicycle and the tin roofing.<sup>1569</sup>

#### **c. Bambu**

537.The UPC attacked Bambu several times in February 2003.<sup>1570</sup> They extensively looted the offices of Kilo Moto, the largest gold-mining company in the region,<sup>1571</sup> orphanages, schools and religious structures, and took personal belongings.<sup>1572</sup>

538.P-963 went to Bambu [REDACTED]. [REDACTED] guarding the mattress

<sup>1562</sup> [P-105:T-133-CONF-ENG-ET](#),50:8-12,54:8-10.

<sup>1563</sup> [P-105:T-133-CONF-ENG-ET](#),45:8-10.

<sup>1564</sup> [P-105:T-133-CONF-ENG-ET](#),51:12-14;*see also* [P-127:T-139-CONF-ENG-ET](#),78:25-79:3.

<sup>1565</sup> [P-963:T-79-CONF-ENG-ET](#),77:10-16,78:9-15.

<sup>1566</sup> [P-17:T-59-CONF-ENG-CT](#),74:20-77:14.

<sup>1567</sup> [P-790:T-53-CONF-ENG-CT](#),35:13-36:23.

<sup>1568</sup> [P-790:T-54-CONF-ENG-ET](#),31:1-14,38:4-10.

<sup>1569</sup> [P-805:T-25Bis-CONF-ENG-CT](#),20:2-21:1.

<sup>1570</sup> [DRC-OTP-0152-0286](#),p.0287,para.6,pp.0303-0304,p.64; [DRC-OTP-0074-0422](#),p.0444,para.69.

<sup>1571</sup> [P-317:T-191-CONF-ENG-ET](#),30:6-18,44:2-9; [DRC-OTP-0074-0422](#),p.0444,para.69; [DRC-OTP-0152-0286](#),p.0303,para.64; [DRC-OTP-0065-0006](#),pp.0007-0008.

<sup>1572</sup> [P-863:T-180-CONF-ENG-ET](#),49:8-50:9; [P-46:T-100-CONF-ENG-CT](#),65:6-12; [P-317:T-191-CONF-ENG-ET](#),30:6-18,44:2; [DRC-OTP-0074-0422](#),p.0444,para.69; [DRC-OTP-0152-0286](#),p.0303,p.64; [DRC-OTP-0065-0006](#),pp.0007-0008.

(“foam”) they had looted.<sup>1573</sup> As she passed through Bambu forced to carry goods looted by the UPC, P-113 saw Hema civilians looting items from private homes.<sup>1574</sup>

539. In the local hospital, the UPC pillaged sterilizing material, medicine, and laboratory and dentistry equipment.<sup>1575</sup> P-863 testified that the UPC looted the chalice from the church, clothing and books from both the clergy’s residence and schools, and food supplies for malnourished children from the nutrition centre.<sup>1576</sup> The soldiers took the pots, plates and mugs [REDACTED] hidden in the church in an attempt to prevent pillaging.<sup>1577</sup> The UPC pillaged goods from P-863’s home.<sup>1578</sup>

540. The looting of health, religious and administrative buildings in Bambu was aimed at depriving the civilian population of infrastructure and assistance.<sup>1579</sup>

#### d. Jitchu

541. UPC troops extensively pillaged Jitchu.<sup>1580</sup> P-18 testified that UPC troops pillaged goats, chickens and all their goods from the houses in Jitchu after capturing her.<sup>1581</sup> She and about ten other Lendu captives, were forced to carry the goods that had been looted from Jitchu, including clothes and mattresses.<sup>1582</sup> P-39 was caught in the bush by UPC armed men and used as a porter to carry a looted mattress to Jitchu.<sup>1583</sup>

<sup>1573</sup> [P-963:T-79-CONF-ENG-ET](#),80:3-20.

<sup>1574</sup> [P-113:T-118-CONF-ENG-CT](#),52:16-24.

<sup>1575</sup> [P-863:T-180-CONF-ENG-ET](#),48:1-19; [P-46:T-100-CONF-ENG-CT](#),65:6-8; [P-317:T-192-CONF-ENG-ET](#),90:2-5;[T-193-CONF-ENG-ET](#),55:10-11; [DRC-OTP-0152-0286](#),p.0301,0303-0304,paras.56,64; [DRC-OTP-0074-0422](#),p.0444,para.69; [DRC-OTP-0065-0006](#),pp.0007-0008.

<sup>1576</sup> [P-863:T-180-CONF-ENG-ET](#),48:1-19.

<sup>1577</sup> [REDACTED].

<sup>1578</sup> [P-863:T-180-CONF-ENG-ET](#),50:10-12,70:11-16.

<sup>1579</sup> [P-317:T-191-CONF-ENG-ET](#),30:6-18,44:9; [DRC-OTP-0152-0286](#),p.0301,para.56,p.303,para.64.

<sup>1580</sup> Sometimes spelt JITCHO; [DRC-OTP-0152-0286](#),p.0303,para.63; [P-17:T-59-CONF-ENG-CT](#),74:20-76:7.

<sup>1581</sup> [P-18:T-110-CONF-ENG-ET](#),63:16-64:4.

<sup>1582</sup> [P-18:T-110-CONF-ENG-ET](#),63:16-64:4;[T-111-CONF-ENG-CT](#),78:7-79:15.

<sup>1583</sup> [P-39:DRC-OTP-0104-0015-R03](#),pp.0020-0021,paras.26-30; [DRC-OTP-2062-0244-R02](#),pp.0252-0253,paras.33-41.

542. UPC troops pillaged<sup>1584</sup> Buli.<sup>1585</sup> Once captured, P-113 saw her own looted [REDACTED] in the hands of UPC soldiers.<sup>1586</sup> From Buli to Kobu, then to Bunia, P-113 and other Lendu civilians were forced to carry the UPC's looted goods. MULENDA asked P-113 to carry a mattress to [REDACTED].<sup>1587</sup> Other civilians were forced to carry bags of beans, corrugated iron or parts of furniture.<sup>1588</sup> P-963 confirmed UPC pillage in Buli: "*it was piga na kuchaji*".<sup>1589</sup>

**6. Destroying the enemy's property (Article 8(2)(e)(xii)) - Count 18**<sup>1590</sup>

543. During the course of the Second Attack, UPC troops implemented orders to destroy the non-Hema population's property in the Bambu, Kobu and Lipri triangle. Once again, this crime aimed at preventing resettlement of non-Hema civilians.<sup>1591</sup>

544. To that end, MULENDA ordered UPC troops to torch villages.<sup>1592</sup> P-963 stated that the soldiers were also motivated by revenge.<sup>1593</sup> P-17 explained that the instructions were implemented through "*ratissage*" operations.<sup>1594</sup>

545. P-857 corroborates P-17: he explained that while UPC soldiers were occupying Kobu, they were heading towards Buli, Sangi, Jitchu, setting the area on fire, burning many houses.<sup>1595</sup> In Lipri, [REDACTED] P-127 and P-105 testified that UPC troops used the same pattern: they set Lipri on fire, then the soldiers methodically set alight all thatched civilian homes as they progressed through

<sup>1584</sup> **P-18:** [T-111-CONF-ENG-CT](#),73:8-16; **P-113:** [T-118-CONF-ENG-CT](#),39:17-41:10.

<sup>1585</sup> Buli is "in or around Jitchu": **P-39:** [DRC-OTP-2062-0244-R02](#),p.0253,para.37;**P-863:** [DRC-REG-0001-0050](#); **P-790:** [DRC-OTP-2079-0317](#); **P-300:** [DRC-OTP-2055-1328](#); **P-877:** [DRC-OTP-2069-2097](#).

<sup>1586</sup> **P-113:** [T-118-CONF-ENG-CT](#),39:17-41:10.

<sup>1587</sup> **P-113:** [T-118-CONF-ENG-CT](#),42:23-43:7.

<sup>1588</sup> **P-113:** [T-118-CONF-ENG-CT](#),42:7-43:7.

<sup>1589</sup> **P-963:** [T-79-CONF-ENG-ET](#),78:22-79:2.

<sup>1590</sup> This section concerns the crimes committed in or around Kobu, Lipri, Bambu, Camp P.M, Buli, Jitchu, Djuba, Sangi, Tsili, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Dhepka, Mbidjo, Thali and Ngabuli.

<sup>1591</sup> **P-55:** [T-71-CONF-ENG-CT](#),47:8-21; **P-17:** [T-59-CONF-ENG-CT](#),74:22-75:5.

<sup>1592</sup> **P-963:** [T-79-CONF-ENG-ET](#),78:16-79:7; **P-17:** [T-59-CONF-ENG-CT](#),75:18-76:7.

<sup>1593</sup> **P-963:** [T-79-CONF-ENG-ET](#),79:3-7.

<sup>1594</sup> **P-17:** [T-59-CONF-ENG-CT](#),75:18-76:7.

<sup>1595</sup> **P-857:** [T-193-CONF-ENG-ET](#),71:2-72:2.

the villages towards the forest.<sup>1596</sup>

546. On site just a month after the attack,<sup>1597</sup> P-317 and P-46 were able to assess the scale of the destruction first-hand. Both saw that villages on the roads between Lipri, Kobu, and Bambu were burnt.<sup>1598</sup>

(i) *Lipri, Tsili, Dhekpa, Nyangaray, Mbidjo, Thali, Avetso, Katho, Djuba, Mpetsi/Petsi Pili,*

547. The UPC fired heavy weapons into Lipri,<sup>1599</sup> then set the houses on fire in and around Lipri, and in neighbouring villages Ngaru, Ndr'chukpa, and Ngongo.<sup>1600</sup> Witnesses saw the extensive damage caused by the UPC that burnt or otherwise destroyed most of the civilian houses and churches.<sup>1601</sup> UPC soldiers used buildings with metal roofs in the centre of Lipri market to set up their camp, rather than destroying them.<sup>1602</sup> Expert P-810 concluded that one satellite image taken on 22 May 2003 showed between 17-20 structural remains - such as roofless walls - possibly showing traces of destruction in<sup>1603</sup> or around Lipri, such as in Ngongo.<sup>1604</sup>

548. Once Lipri was captured, UPC troops progressed to the small villages of Dhekpa and Tsili and set them ablaze as the population fled to the forest.<sup>1605</sup> When P-127 went back to Tsili, he found that the UPC soldiers burnt his home,

<sup>1596</sup> [P-105:T-133-CONF-ENG-ET](#),44:22-45:10; [P-127:T-139-CONF-ENG-ET](#),7:12-8:12.

<sup>1597</sup> [DRC-OTP-0152-0286](#),p.0300,para.51; [P-46:T-100-CONF-ENG-CT](#),64:8-65:9,76:13-76:19; [P-317:T-191-CONF-ENG-ET](#),17:21-18:16,19:17-21,42:6-7.

<sup>1598</sup> [P-46:T-100-CONF-ENG-CT](#),65:8-9; [P-317:T-191-CONF-ENG-ET](#),42:11-43:7; [DRC-OTP-0074-0422](#),pp.0444-0445,para.70.

<sup>1599</sup> [P-127:T-139-CONF-ENG-ET](#),4:19-23.

<sup>1600</sup> [P-127:T-139-CONF-ENG-ET](#),7:13-8:24,60:2-64:24,67:16-68:25.

<sup>1601</sup> [P-105:T-133-CONF-ENG-ET](#),44:22-45:5,50:15-21,51:5-21; [P-55:T-71-CONF-ENG-CT](#),46:13-47:21; [P-27:DRC-OTP-0096-0052-R04](#),p.0057,para.24; *see also*: [DRC-OTP-2055-1346](#),p.1351; [DRC-OTP-0152-0286](#),p.0302,para.59; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.31.

<sup>1602</sup> [P-127:T-139-CONF-ENG-ET](#),61:14-62:15,65:5-11; [P-113:T-118-CONF-ENG-CT](#),55:1-10.

<sup>1603</sup> [P-810:T-176-CONF-ENG-ET](#),11:1-23;[DRC-OTP-2099-0166](#),pp.0181-0183,0187,0198(fig.11),0199(fig.12).

<sup>1604</sup> [P-810:T-176-CONF-ENG-ET](#),14:3-19;[DRC-OTP-2099-0166](#),pp.0181-0183,0187,0212(fig.25).

<sup>1605</sup> [P-127:T-139-CONF-ENG-ET](#),5:1-13,7:25-9:6,64:18-21; [DRC-OTP-2055-1346](#),pp.1351-1352; [DRC-OTP-0152-0286](#),p.0302,para.59; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.31.

as well as all other thatched roof houses.<sup>1606</sup> Expert P-810 concluded that indications of destruction in Tsili were found for up to 42 destroyed structures, analysing an image taken on 22 May 2003.<sup>1607</sup>

549. When P-868 returned to Nyangaray, he realised that the UPC burnt his and other homes.<sup>1608</sup> They had destroyed the village's churches and schools.<sup>1609</sup> To this day, one of the schools has not been fully rebuilt, preventing classes from taking place during the rainy season.<sup>1610</sup> The UPC burnt civilian homes in Mbidjo,<sup>1611</sup> Thali,<sup>1612</sup> Avetso,<sup>1613</sup> Katho,<sup>1614</sup> Djuba,<sup>1615</sup> Mpetsi/Petsi,<sup>1616</sup> and Pili.<sup>1617</sup>

(ii) *Ngabuli, Buli, Jitchu, Sangi, Gola*

550. In Buli, the UPC fired heavy weapons<sup>1618</sup> and burnt down civilian homes.<sup>1619</sup> [REDACTED] testified that: "*after attacking Buli, we torched the entire village*".<sup>1620</sup> P-113, P-18, P-790 and P-300 saw UPC soldiers setting houses on fire in Buli.<sup>1621</sup> P-300, hidden in the forest, observed the UPC soldiers burning houses down in the valley while they were singing. His wife commented: "*death is on our*

<sup>1606</sup> [P-127:T-139-CONF-ENG-ET](#),9:25-10-13,62:16-63:17.

<sup>1607</sup> [P-810:DRC-OTP-2099-0166](#),pp.0181-0183,0187,0206(fig.19).

<sup>1608</sup> [P-868:T-177-CONF-ENG-ET](#),78:24-79:17; *see also* [P-105:T-133-CONF-ENG-ET](#),41:10-22; [DRC-OTP-0152-0286](#),p.0301,para.56.

<sup>1609</sup> [P-868:T-177-CONF-ENG-ET](#),78:22-79:17.

<sup>1610</sup> [REDACTED].

<sup>1611</sup> [P-127:T-139-CONF-ENG-ET](#),64:18-21; [DRC-OTP-0065-0003](#); [DRC-OTP-0152-0286](#),p.0302,para.59; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.31.

<sup>1612</sup> [DRC-OTP-0065-0003](#); [DRC-OTP-2055-1346](#),p.1351; [DRC-OTP-0152-0286](#),p.302,para.59; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.31.

<sup>1613</sup> [DRC-OTP-2055-1346](#),p.1351.

<sup>1614</sup> [P-105:T-133-CONF-ENG-ET](#),48:24-49:10.

<sup>1615</sup> [P-105:T-133-CONF-ENG-ET](#),49:4-10,46:10-25; [DRC-OTP-0065-0003](#); [DRC-OTP-2055-1346](#),p.1351; [DRC-OTP-0152-0286](#),p.302,para.59; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.31.

<sup>1616</sup> [P-105:T-133-CONF-ENG-ET](#),44:22-45:5.

<sup>1617</sup> [DRC-OTP-0065-0003](#); [DRC-OTP-2055-1346](#),p.1352; [DRC-OTP-0152-0286](#),p.0303,para.63; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.32.

<sup>1618</sup> [REDACTED]; [DRC-OTP-1061-0212](#),p.0456,para.420,pt.2.

<sup>1619</sup> [P-105:T-133-CONF-ENG-ET](#),45:25-46:9,51:15; [P-27:DRC-OTP-0096-0052-R04](#),pp.0063-0064,para.52; [DRC-OTP-0152-0286](#),p.303,para.63; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.32; [DRC-OTP-2055-1346](#),p.1352.

<sup>1620</sup> [REDACTED].

<sup>1621</sup> [P-113:T-118-CONF-ENG-CT](#),43:8-21; [P-790:T-54-CONF-ENG-ET](#),13:8-16:2; [P-18:T-110-CONF-ENG-ET](#),79:16-19.

*doorsteps*".<sup>1622</sup> Expert P-810 analysed an image of Buli dated 22 May 2003 and concluded that it presented multiple areas of possibly destroyed structures and some apparent structural remains.<sup>1623</sup>

551. UPC troops set Jitchu on fire, burning houses and the Catholic church.<sup>1624</sup>

552. P-790 and P-113 testified that UPC soldiers had burnt all the houses in Ngabuli.<sup>1625</sup> Expert P-810, who analysed an image of the locality dated 22 May 2003, concluded that it presented several areas of possibly destroyed structures and one possible area of structural remains.<sup>1626</sup>

553. P-113, P-19, and P-18 saw UPC soldiers setting the houses on fire in Sangi.<sup>1627</sup> P-18 also saw the houses burning and the smoke rising.<sup>1628</sup> P-790 walked through Sangi when the UPC had left and saw that all the houses had been burnt.<sup>1629</sup> Expert P-810 analysed an image of Sangi dated 22 May 2003 and concluded that it presented some possible indications of destruction, depicting clear areas which could have been structures.<sup>1630</sup>

554. P-106 had to go back to living in the bush after seeing that the UPC had burnt all the houses in Gola.<sup>1631</sup>

(iii) *Kobu, Camp P.M.*

<sup>1622</sup> [P-300:T-166-CONF-ENG-ET](#),48:14-24.

<sup>1623</sup> [P-810:DRC-OTP-2099-0166](#),pp.0181-0183,0192(fig.5).

<sup>1624</sup> [P-790:T-54-CONF-ENG-ET](#),13:8-16:2; [P-300:T-166-CONF-ENG-ET](#),48:14-24; [P-100:T-131-CONF-ENG-ET](#),33:20-34:5; [P-857:T-193-CONF-ENG-ET](#),71:2-12; [P-27:DRC-OTP-0096-0052-R04](#),p.0063,para.52; [DRC-OTP-2055-1346](#),p.1352; [DRC-OTP-0152-0286](#),p.303,para.63; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.32.

<sup>1625</sup> [P-790:T-54-CONF-ENG-ET](#),13:8-15-2; [P-113:T-118-CONF-ENG-CT](#),52:16-53:5,(both referring to "Ngabulo"); [DRC-OTP-0152-0286](#),p.0303,para.63; [DRC-OTP-0074-0422](#),p.0444,para.69,fn.32.

<sup>1626</sup> [P-810:DRC-OTP-2099-0166](#),pp.0181-0183,0201(fig.14).

<sup>1627</sup> [P-113:T-118-CONF-ENG-CT](#),43:8-2152:16-53:5; [P-19:T-115-CONF-ENG-CT](#),32:19-24,34:21-35:8; [P-18:T-110-CONF-ENG-ET](#),80:7-16; *see also* [P-105:T-134-CONF-ENG-ET](#),18:6-20; [P-103,DRC-OTP-0104-0170-R02](#),p.0175, paras.27-28.

<sup>1628</sup> [P-18:T-110-CONF-ENG-ET](#),80:7-16; *see also*: [P-105:T-134-CONF-ENG-ET](#),18:6-20; [P-103,DRC-OTP-0104-0170-R02](#),p.0175,paras.27-28.

<sup>1629</sup> [P-790:T-54-CONF-ENG-ET](#),13:8-15-2.

<sup>1630</sup> [P-810:T-176-CONF-ENG-ET](#),13:7-14:2,[DRC-OTP-2099-0166](#),pp.0181-0183,0186,0204(fig.17).

<sup>1631</sup> [P-106:T-44-CONF-ENG-CT](#),32:9-14,43:21-44:15, (referring to "Agola"); *see also* [P-857:T-193-CONF-ENG-ET](#),71:2-72:2; [P-105:T-133-CONF-ENG-ET](#),48:24-49:10, (both referring to "Gora").

555. In Kobu, P-963 [REDACTED] houses that had sheet metal roofing and so he did not see torching of straw houses. He nevertheless confirmed that the soldiers broke all the home's doors.<sup>1632</sup> After the UPC's departure from Kobu, P-790 saw that the only houses remaining were those that had been occupied by the soldiers.<sup>1633</sup> The UPC destroyed his home and pillaged his property<sup>1634</sup> as they did in the rest of the villages.<sup>1635</sup> P-121 confirmed that many houses were destroyed; thatched homes, remote from the centre, were burnt down.<sup>1636</sup> The UPC destroyed the schools, churches and health centres: "[a]fter the events, we started to rebuild from nothing".<sup>1637</sup>

556. Expert P-810 analysed an image of Kobu dated 22 May 2003 and concluded that 10 or 20 structures were possibly removed. Some were identifiable as "clear areas" which could have been structures, and others were identifiable by structural remains such as walls.<sup>1638</sup> In Wadza, in or around Kobu, P-810 concluded that there are apparent structural remains, likely to include debris of the walls at the location of the church.<sup>1639</sup>

557. Upon returning to Camp P.M., after fleeing the UPC attack, [REDACTED] had been burnt as had other houses.<sup>1640</sup>

*(iv) Bambu*

558. In Bambu, UPC troops fired bombs, extensively destroying civilian buildings, and burnt houses.<sup>1641</sup> Expert P-810 concluded that at least 20 structures had been

<sup>1632</sup> [P-963:T-79-CONF-ENG-ET](#),78:8-15.

<sup>1633</sup> [P-790:T-53-CONF-ENG-CT](#),35:13-20.

<sup>1634</sup> [P-790:T-53-CONF-ENG-CT](#),36:13-23.

<sup>1635</sup> [P-790:T-54-CONF-ENG-ET](#),31:10-14; *see also* [P-805:T-25Bis-CONF-ENG-CT](#),20:20; [P-103:DRC-OTP-0104-0170-R02](#),p.0179,para.46.

<sup>1636</sup> [P-121:T-173-CONF-ENG-ET](#),79:15-80:11; *see also* [P-19:T-115-CONF-ENG-CT](#),32:19-24,34:21-35:8.

<sup>1637</sup> [P-790:T-54-CONF-ENG-ET](#),31:15-21.

<sup>1638</sup> [P-810:T-176-CONF-ENG-ET](#),10:17-25;[DRC-OTP-2099-0166](#),pp.0181-0183,0186,0197(fig.10).

<sup>1639</sup> [P-810:DRC-OTP-2099-0166](#),pp.0181-0183,0186,0207(fig.20).

<sup>1640</sup> [REDACTED]; [DRC-OTP-0074-0422](#),p.0444,para.69.

<sup>1641</sup> [P-863:T-181-CONF-ENG-ET](#),6:5-12:7;[T-180-CONF-ENG-ET](#),49:8-50:9;[P-317:T-191-CONF-ENG-ET](#),30:6-18,44:2,53:20-54:22; [DRC-OTP-0074-0422](#),p.0444,para.69; [DRC-OTP-0152-0286](#),p.0303,para.64; [DRC-OTP-0065-0006](#),pp.0007-0008.



removed and destroyed in Bambu between 26 January and 22 May 2003, with indications of burning and use of explosives.<sup>1642</sup> Two kilometres south, in or around Bambu, P-810 assessed that “*pretty much all the structures have disappeared*”.<sup>1643</sup> He identified about 60 structures that had been removed between the same dates.<sup>1644</sup>

559. During the Second Attack, UPC soldiers and Hema civilian supporters implemented orders and destroyed property of their “adversary”: non-Hema civilians.<sup>1645</sup> Such property was protected under IHL, and their civilian nature was obvious as they were mostly homes that the soldiers torched when they were progressing through the villages: they could not ignore their protected status. The destruction of property during this assault was not required by military necessity, but on the contrary targeted civilians and was ordered to prevent non-Hema civilians from resettling.<sup>1646</sup> In fact, the UPC burnt properties *after* the departure of the Lendu combatants.<sup>1647</sup>

### 7. *Attacking protected objects (Article 8(2)(e)(iv)) - Count 17*<sup>1648</sup>

560. On or about 19 February 2003, UPC troops deliberately targeted protected objects in Bambu, turning the once developed locality into a “ghost town”.<sup>1649</sup>

561. UPC troops attacked Bambu hospital, [REDACTED]. [REDACTED] found patients killed,<sup>1650</sup> and saw bullet marks in the walls of the operating room.<sup>1651</sup>

<sup>1642</sup> [P-810:T-175-CONF-ENG-ET](#),108:19-109:23;[DRC-OTP-2099-0166](#),pp0181-0183,0185,0190(fig.3).

<sup>1643</sup> [P-810:T-176-CONF-ENG-ET](#),8:16-17.

<sup>1644</sup> [P-810:T-176-CONF-ENG-ET](#),8:3-21, [DRC-OTP-2099-0166](#),pp.0185,0191(fig.4).

<sup>1645</sup> [P-55:T-71-CONF-ENG-CT](#),30:16-17; [P-790:T-53-CONF-ENG-CT](#),20:9-12; [P-301:T-149-CONF-ENG-ET](#),30:23-31:3; [P-127:T-139-CONF-ENG-ET](#),11:21-12:1,13:1-11;[P-17:T-63-CONF-ENG-ET](#),40:24-41:17;[T-59-CONF-ENG-CT](#),74:3-16; [P-121:T-172-CONF-ENG-ET](#),61:15-17; [P-108:T-185-CONF-ENG-ET](#),44:19-20.

<sup>1646</sup> [P-55:T-71-CONF-ENG-CT](#),47:8-10; [P-963:T-79-CONF-ENG-ET](#),78:16-79:7; [P-17:T-59-CONF-ENG-CT](#),75:18-76:7.

<sup>1647</sup> [P-17:T-59-CONF-ENG-CT](#),75:18-76:7; [P-127:T-139-CONF-ENG-ET](#),4:7-5:11; [P-27:DRC-OTP-0096-0052-R04](#),p.0057,para.24.

<sup>1648</sup> This section concerns the crimes committed in or around Bambu.

<sup>1649</sup> [DRC-OTP-0152-0286](#),pp.0303-0304,para.64.

<sup>1650</sup> [REDACTED].

<sup>1651</sup> [REDACTED].

The UPC had pillaged medical supplies such as the sterilizing material, medicine, laboratory and dentistry equipment; including items the hospital staff had purposely hidden in the roof and underground to prevent looting.<sup>1652</sup>

562. In the hospital, P-317 stated that the UPC destroyed what could not be carried away.<sup>1653</sup> Her report, based on the SIT's observations and interviews with victims and local officials,<sup>1654</sup> indicates that the UPC damaged electronic devices, archives and medical equipment in the hospital.<sup>1655</sup> A letter, drafted at the time by a local *notable* and handed over to P-317 during the SIT mission,<sup>1656</sup> lists the extent of UPC damage to the hospital and the properties it contained.<sup>1657</sup>

563. The UPC also ransacked the Bambu schools, orphanage, nutrition centre, and churches, breaking down doors and looting books, clothes, the chalice, and children's nutrition items.<sup>1658</sup> P-863 saw the damage.<sup>1659</sup>

564. The UPC targeted protected objects that were easily identifiable as such. The troops entered these locations, as evidenced by the destruction and pillaging inside. They spent enough time in the buildings to realise that they were attacking protected objects. For example, UPC troops found and pillaged hidden medical equipment. None of these buildings were used for military purposes. The type of goods they pillaged also proves that the UPC soldiers knew the purpose and use of the protected objects.

565. The attack on these protected objects was intentional and it was central to the UPC's strategy to persecute non-Hema civilians in order to eliminate them from territories it sought to control.

---

<sup>1652</sup> [REDACTED].

<sup>1653</sup> [P-317:T-192-CONF-ENG-ET](#),90:2-5.

<sup>1654</sup> [DRC-OTP-0152-0286](#),p.0301,para.56; [P-317:T-193-CONF-ENG-ET](#),55:10-11.

<sup>1655</sup> [DRC-OTP-0152-0286](#),pp.0303-304,para.64.

<sup>1656</sup> [P-317:T-191-CONF-ENG-ET](#),53:20- 55:22.

<sup>1657</sup> [DRC-OTP-0065-0006](#),pp.0007-0008(pts.1,a,c,3).

<sup>1658</sup> [P-317:T-191-CONF-ENG-ET](#),30:6-18,44:2,53:20-55:22; [DRC-OTP-0074-0422](#),p.0444,para.69; [DRC-OTP-0152-0286](#),p.0303,para.64; [DRC-OTP-0065-0006](#),pp.0007-0008(pts1,a,c,3).

<sup>1659</sup> [P-863:T-180-CONF-ENG-ET](#),49:8-51:9.

566. First, the UPC's attacks against protected objects in Bambu followed the same pattern of attacks against protected objects used during the First Attack.<sup>1660</sup> Second, this pattern of attacking was consistent across villages during the Second Attack, as stressed by P-317: "in Kobu and everywhere we went [...] the hospitals had been destroyed".<sup>1661</sup> Finally, this deliberate targeting is further proven by the fact that the UPC attacked all protected objects in a village,<sup>1662</sup> indicating that they intended to deprive the population of facilities that were essential for its survival as a community.<sup>1663</sup>

567. P-317 emphasized her consistent finding that the UPC "wanted to completely eliminate all chances for the population of the region to have social assistance",<sup>1664</sup> in particular access to health care so that "more Lendu would die".<sup>1665</sup>

**8. Rape and Sexual slavery of civilians (Articles 7(1)(g) and 8(e)(vi)) - Counts 4-5<sup>1666</sup> and 7-8<sup>1667</sup>**

568. Between on or about 12 and 27 February 2003, UPC soldiers raped and sexually enslaved civilians as part of the attack to oust non-Hema civilians from Walendu-Djatsi.<sup>1668</sup> Rape and sexual slavery were not merely unforeseeable by-products of the attack or the acts of a few renegade soldiers. Rather, sexual violence crimes were a means of inflicting violence: an integral part of the UPC plan to drive the non-Hema population out of a territory the UPC sought to control.<sup>1669</sup>

<sup>1660</sup> See Section VII.A.8.

<sup>1661</sup> [P-317:T-191-CONF-ENG-ET](#),44:5-7; see also [P-790:T-54-CONF-ENG-ET](#),31:10-21; [P-868:T-177-CONF-ENG-ET](#),78:22-79:17; [P-27:DRC-OTP-0096-0052-R04](#),p.0057,para.24,p.0063,para.52.

<sup>1662</sup> [P-317:T-191-CONF-ENG-ET](#),30:6-18,44:2,53:20-55:22; [DRC-OTP-0074-0422](#),p.0444,para.69; [DRC-OTP-0152-0286](#),p.0303,para.64; [DRC-OTP-0065-0006](#),pp.0007-0008(pts1,a,c,3).

<sup>1663</sup> [DRC-OTP-0152-0286](#),p.0301,para.56,p.0303,para.64; [DRC-OTP-0065-0006](#).

<sup>1664</sup> [DRC-OTP-0152-0286](#),pp.0303-304,para.64; [P-317:T-191-CONF-ENG-ET](#),30:6-18,44:9.

<sup>1665</sup> [P-317:T-191-CONF-ENG-ET](#),44:2-9.

<sup>1666</sup> This section concerns the crimes committed in or around Lipri, Kobu, Bambu, Sangi, and Buli.

<sup>1667</sup> This section concerns the crimes committed in or around Kobu, Sangi, Buli, Jitchu, and Ngabuli.

<sup>1668</sup> [DRC-OTP-1061-0212](#),p.0588,para.756; [DRC-OTP-2082-1881](#),pp.1882-1883.

<sup>1669</sup> [P-365:T-147-CONF-ENG-ET](#),20:22-21:23.

569.P-14 testified that in a UPC meeting he heard it said that rape of enemy women was “another way of waging war”.<sup>1670</sup> The UPC goal, he explained, was to inflict fear and shame, and have a psychological impact on the enemy.<sup>1671</sup> For the Second Attack, the “*kupiga na kuchaji*” order was still operative and was implemented by raping and/or killing civilians, burning their homes and by taking war booty that included women.<sup>1672</sup> MULENDA, himself a perpetrator of sexual violence,<sup>1673</sup> instructed the UPC soldiers to destroy the “resistance”<sup>1674</sup> of an enemy defined as the Lendu - whether men, women or children.<sup>1675</sup> Therefore, sexual violence, like other types of violence, ensued just as foreseeably as did murders, looting and destruction of property. Rape was not punished in the UPC.<sup>1676</sup>

570.UPC committed sexual violence in earlier operations, including during the First Attack.<sup>1677</sup> UPC Commanders themselves committed rape and sexual slavery during the Second Attack, projecting an acceptable model for foot soldiers to follow.<sup>1678</sup> Insider witnesses and direct victims all describe the same pattern of the UPC’s sexual crimes in their military operations.<sup>1679</sup> Armed UPC troops captured prisoners during *ratissage* patrols and raped them while in custody. Some were executed. The soldiers exploited others at will for cooking, to rape or for use as porters of looted goods.<sup>1680</sup> The direct victims’ accounts prove how the UPC’s sexual crimes were a core part of its objectives and criminality. Supported

<sup>1670</sup> [P-14:T-136-CONF-ENG-ET](#),57:13-20.

<sup>1671</sup> [P-14:T-138-CONF-ENG-ET](#),100:9-102:7.

<sup>1672</sup> [P-963:T-79-CONF-ENG-ET](#),47:1-8;[T-80-CONF-ENG-ET](#),17:2-18:24; [P-17:T-58-CONF-ENG-CT](#),53:21-55:17.

<sup>1673</sup> [P-113:T-118-CONF-ENG-CT](#),50:23-51:17; [P-14:T-136-CONF-ENG-ET](#),59:11; [P-17:T-59-CONF-ENG-CT](#),32:7-22.

<sup>1674</sup> [P-17:T-59-CONF-ENG-CT](#),46:6-12.

<sup>1675</sup> [P-17:T-59-CONF-ENG-CT](#),62:18-25.

<sup>1676</sup> [P-963:T-79-CONF-ENG-ET](#),36:4-7; [P-16:DRC-OTP-0126-0422-R03](#),p.0463,para.235; [P-365:T-148-CONF-ENG-ET](#),17:25-18:5.

<sup>1677</sup> See Section VII.A.9

<sup>1678</sup> [P-19:T-115-CONF-ENG-CT](#),38:14-40:23,46:12-47:12; [P-113:T-118-CONF-ENG-CT](#),50:23-51:17; [P-17:T-60-CONF-ENG-ET](#),28:1-29:6; [P-963:T-79-CONF-ENG-ET](#),76:5-14; [P-17:T-59-CONF-ENG-CT](#),25:4-7,27:10-25,28:2-12,30:24-31:16,32:7-22.

<sup>1679</sup> See below and [P-365:T-147-CONF-ENG-ET](#),26:3-10.

<sup>1680</sup> See below and [P-365:T-147-CONF-ENG-ET](#),31:10-31:18.

by the conclusions of the experts, these accounts also show the extent of the victims' physical and psychological suffering and the devastating impact that these crimes had on their lives and their relationships.<sup>1681</sup>

**a. Lipri**

571. UPC troops captured and raped women in or around Lipri.<sup>1682</sup> After the take-over, on or about 18 February 2003, UPC soldiers abducted two pregnant women in the fields and took them as their "wives" in Lipri.<sup>1683</sup> Near Nyangaray, in or around Lipri, UPC soldiers raped three women in the fields, and then executed them. They were found tied up with their wraps.<sup>1684</sup>

**b. Bambu**

572. UPC troops raped and killed women during the Bambu assault on or about 19 February 2003.<sup>1685</sup> The troops killed two Lendu women whose corpses were buried by civilians.<sup>1686</sup> Both women bore wounds caused by the introduction of a sharp object into their genitals. P-863 saw traces of semen on one of the women's thighs.<sup>1687</sup>

**c. Kobu, Buli, Sangi, Jitchu, Ngabuli**

573. UPC troops raped and sexually enslaved women and men they had captured with bare hands in and around Kobu, Buli, Sangi, and Jitchu, following the "*shika na mukono*" order.<sup>1688</sup>

574. P-19, a Lendu woman,<sup>1689</sup> [REDACTED] on or about 25 February 2003. UPC

<sup>1681</sup> See below and [P-365:T-147-CONF-ENG-ET](#),22:25-23:19,25:7-26:2,33:21-37:1.

<sup>1682</sup> [DRC-OTP-0152-0286](#),p.301,para.53; [DRC-OTP-1061-0212](#),p.0588,para.756.

<sup>1683</sup> [P-105:T-134-CONF-ENG-ET](#),24:13-21.

<sup>1684</sup> [P-105:T-134-CONF-ENG-ET](#),23:20-24:12.

<sup>1685</sup> [DRC-OTP-1061-0212](#),p.0588, para.756.

<sup>1686</sup> [P-863:T-180-CONF-ENG-ET](#),30:1-30:7,56:4-57:1,58:21-59:8.

<sup>1687</sup> [P-863:T-180-CONF-ENG-ET](#),30:1-30:7,59:17-18,59:19-25;[T-181-CONF-ENG-ET](#),68:3-70:21.

<sup>1688</sup> [P-963:T-79-CONF-ENG-ET](#),81:1-83:11.

<sup>1689</sup> [P-19:T-115-CONF-ENG-CT](#),12:11-12.

soldiers captured her and [REDACTED] members of the delegation in Sangi.<sup>1690</sup> She witnessed UPC soldiers severely beating the prisoners, cutting off some men's genitalia, and uttering death threats.<sup>1691</sup> The soldiers dragged some women towards the forest and gang raped them.<sup>1692</sup> Some of the women did not come back.<sup>1693</sup> The next day, UPC troops ordered P-19 and other prisoners to carry looted goods to Kobu-Wadza.<sup>1694</sup> There, P-19 was detained in a house [REDACTED],<sup>1695</sup> where LINGANGA anally and vaginally raped her.<sup>1696</sup> UPC soldiers raped other women in the house, inserting sticks in their vaginas.<sup>1697</sup> P-19 witnessed a large group of UPC soldiers gang rape Lendu male prisoners before executing them.<sup>1698</sup> The next day, as P-19 and other Lendu women<sup>1699</sup> were ordered to cook for the commanders, P-19 attempted to flee. UPC soldiers shot at P-19 as she fled [REDACTED].<sup>1700</sup>

575.P-938 examined P-19 and concluded that the psychological consequences she described, [REDACTED] that P-19 suffers, are wholly consistent with her account and *"are of a level of severity that would be anticipated following exposure to such extreme traumatic events"*.<sup>1701</sup> P-19 feared being ostracised because of her rape and she delayed reporting it because she felt men would fear her if they knew she had been raped.<sup>1702</sup> P-938 found her account of rape *"entirely credible"*.<sup>1703</sup> P-939 examined P-19 and concluded that [REDACTED] are consistent with P-19's

<sup>1690</sup> [P-19:T-115-CONF-ENG-CT,27:16-29:15.](#)

<sup>1691</sup> [P-19:T-116-CONF-ENG-CT,3:9-5:21.](#)

<sup>1692</sup> [P-19:T-115-CONF-ENG-CT,30:5-31:18.](#)

<sup>1693</sup> [P-19:T-115-CONF-ENG-CT,30:17-20.](#)

<sup>1694</sup> [P-19:T-115-CONF-ENG-CT,32:19-33:2,34:24-35:16 ;T-116-CONF-ENG-CT,47:11-12.](#)

<sup>1695</sup> [P-19:T-115-CONF-ENG-CT,36:12-38:4.](#)

<sup>1696</sup> [P-19:T-115-CONF-ENG-CT,38:14-40:23,46:12-47:12.](#)

<sup>1697</sup> [P-19:T-115-CONF-ENG-CT,40:2-9,49:12-22.](#)

<sup>1698</sup> [P-19:T-115-CONF-ENG-CT,45:8-46:11.](#)

<sup>1699</sup> [P-19:T-115-CONF-ENG-CT,44:22-25.](#)

<sup>1700</sup> [P-19:T-115-CONF-ENG-CT,50:7-51:22;DRC-OTP-0108-0155;DRC-OTP-0108-0156;DRC-OTP-0108-0157.](#)

<sup>1701</sup> [P-938:T-114-CONF-ENG-CT,8:17-10:9;DRC-OTP-2059-0080-R03,pp.0085-0086.](#)

<sup>1702</sup> [P-938:T-114-CONF-ENG-CT,8:17-10:9;DRC-OTP-2059-0080-R03; P-19:T-115-CONF-ENG-CT,56:10-17.](#)

<sup>1703</sup> [P-19:T-115-CONF-ENG-CT,56:18-57:9; P-938:T-114-CONF-ENG-CT,8:17-10:9;DRC-OTP-2059-0080-R03,pp.0085-0086.](#)

account.<sup>1704</sup>

576.P-18, a Lendu woman,<sup>1705</sup> was displaced in the bush, captured by UPC soldiers on or about 26 February 2003, and forced to carry their looted goods.<sup>1706</sup> UPC troops detained P-18 in Sangi, [REDACTED], with other civilian women. They were separated from the male prisoners.<sup>1707</sup> The next day, P-18 witnessed UPC soldiers gang rape detained women while subjecting them to heavy beatings and verbal abuse. P-18 witnessed women being executed after their rapes.<sup>1708</sup> UPC soldiers murdered [REDACTED] before her eyes.<sup>1709</sup> On that same day, a UPC soldier raped P-18. Then, he shot her [REDACTED] because she resisted.<sup>1710</sup> [REDACTED].<sup>1711</sup>

577.P-938 examined P-18<sup>1712</sup> and concluded that the psychological consequences she described were “*entirely consistent*” with the events alleged. Regarding the allegation of rape, P-938 found her account “*entirely credible*”, citing P-18’s distress, [REDACTED], and her terror at the possibility of disclosure of the rape to her community.<sup>1713</sup> P-938 concluded that P-18’s [REDACTED], feelings of shame, and embarrassment [REDACTED] were consistent with having been raped.<sup>1714</sup> Women who have been sexually violated often feel contaminated, dirty, or unclean.<sup>1715</sup> P-938 further explained P-18’s delayed reporting by

<sup>1704</sup> [P-939:T-143-CONF-ENG-ET](#),21:20-25:16;[DRC-OTP-2059-0131-R02](#).

<sup>1705</sup> [P-18:T-110-CONF-ENG-ET](#),42:2.

<sup>1706</sup> [P-18:T-110-CONF-ENG-ET](#),63:16-25-64:1-4,71:18-79:11;[DRC-OTP-2052-0188-R01](#);[DRC-OTP-0096-0128-R01](#);[DRC-REG-0001-0029](#).

<sup>1707</sup> [P-18:T-110-CONF-ENG-ET](#),64:1-4,81:21-82:7.

<sup>1708</sup> [P-18:T-111-CONF-ENG-CT](#),10:1-12:19,14:2-20:24.

<sup>1709</sup> [P-18:T-111-CONF-ENG-CT](#),10:10-11,30:17-31:10.

<sup>1710</sup> [P-18:T-111-CONF-ENG-CT](#),10:12-21,20:7-21:2,79:25-82:19.

<sup>1711</sup> [P-18:T-111-CONF-ENG-CT](#),23:11-24:24;[DRC-OTP-0096-0133](#);[DRC-OTP-0096-0134](#);[DRC-OTP-0096-0135](#);[DRC-OTP-0096-0136](#);[DRC-OTP-0096-0137](#);[DRC-OTP-0096-0138](#);[DRC-OTP-0096-0139](#); [DRC-OTP-0096-0140](#); [DRC-OTP-0096-0141](#);[DRC-OTP-0096-0142](#);[DRC-OTP-0096-0143](#);[DRC-OTP-0096-0144](#);[DRC-OTP-0096-0145](#); [DRC-OTP-2052-0207](#);[DRC-OTP-2059-0172](#);[DRC-OTP-2059-0173](#);[DRC-OTP-2059-0174](#);[DRC-OTP-2059-0175](#).

<sup>1712</sup> [P-18:T-111-CONF-ENG-CT](#),24:25-29:20;[DRC-OTP-2052-0190-R03](#);[DRC-OTP-2052-0189-R03](#).

<sup>1713</sup> [P-938:T-114-CONF-ENG-CT](#),6:6-8:16;[DRC-OTP-2059-0058-R02](#),p.0064.

<sup>1714</sup> [P-938:T-114-CONF-ENG-CT](#),6:8-16,8:1-6.

<sup>1715</sup> [P-938:T-114-CONF-ENG-CT](#),8:7-9.



[REDACTED].<sup>1716</sup> P-939 examined Witness P-18's [REDACTED] "*perfectly compatible*" with her account, and also [REDACTED] as P-18 had recounted.<sup>1717</sup>

578.P-113, a Lendu woman,<sup>1718</sup> was abducted by UPC soldiers on or about 26 February 2003 around Ngabuli where she was hiding [REDACTED].<sup>1719</sup> Detained in Buli, UPC soldiers forced her and other women to cook for them.<sup>1720</sup> A UPC soldier raped P-113, threatening to kill her if she screamed. Then he ordered her to continue her work.<sup>1721</sup> UPC troops used P-113 and other prisoners as porters to carry looted goods from Buli to Kobu.<sup>1722</sup> On the road, another armed soldier raped her under threat of death.<sup>1723</sup> Once in Kobu, P-113 escaped the mass execution in the banana field when soldiers came to get her on MULENDA's orders.<sup>1724</sup> That night, MULENDA raped her.<sup>1725</sup> [REDACTED] [REDACTED].<sup>1726</sup> [REDACTED].<sup>1727</sup>

579.P-938 examined P-113 and concluded that her distorted self-image, shame, and fear of others learning of her rape are wholly consistent with her experience.<sup>1728</sup> P-113's fear of stigmatisation, coupled with [REDACTED] advice not to speak of the rape led her to delay reporting it.<sup>1729</sup> Listing, notably, P-113's acute shame, terror of disclosure of the rape to her community, and [REDACTED], P-938 found her account of rape "*entirely credible.*"<sup>1730</sup>

<sup>1716</sup> [P-938:T-114-CONF-ENG-CT](#),8:15-16; [P-18:T-111-CONF-ENG-CT](#),31:14-33:11.

<sup>1717</sup> [P-939:T-143-CONF-ENG-ET](#),13:4-18:18;[DRC-OTP-2059-0231-R01](#),p.0241.

<sup>1718</sup> [P-113:T-118-CONF-ENG-CT](#),8:2-3.

<sup>1719</sup> [P-113:T-118-CONF-ENG-CT](#),30:7-32:15.

<sup>1720</sup> [P-113:T-118-CONF-ENG-CT](#),33:3-13,35:4-23.

<sup>1721</sup> [P-113:T-118-CONF-ENG-CT](#),36:1-37:3.

<sup>1722</sup> [P-113:T-118-CONF-ENG-CT](#),42:2-43:12.

<sup>1723</sup> [P-113:T-118-CONF-ENG-CT](#),46:3-18.

<sup>1724</sup> [P-113:T-118-CONF-ENG-CT](#),49:1-50:22.

<sup>1725</sup> [P-113:T-118-CONF-ENG-CT](#),50:23-51:17.

<sup>1726</sup> [P-113:T-118-CONF-ENG-CT](#),52:1-11.

<sup>1727</sup> [P-113:T-118-CONF-ENG-CT](#),53:25-54:12.

<sup>1728</sup> [P-113:T-118-CONF-ENG-CT](#),63:3-8; [P-938:T-114-CONF-ENG-CT](#),10:10-12:21;[DRC-OTP-2059-0069-R04](#).

<sup>1729</sup> [P-938:T-114-CONF-ENG-CT](#),11:23-12:5; [P-113:T-118-CONF-ENG-CT](#),63:9-65:7.

<sup>1730</sup> [P-938:DRC-OTP-2059-0069-R04](#),p.0075.

580.P-18, P-19, and P-113 were diagnosed with Post-Traumatic Stress Disorder.<sup>1731</sup>

581.In Bambu hospital, [REDACTED] a number of women who were raped during the UPC attack, including a woman abducted around Buli and raped in Kobu. The medical staff tried to obtain the assistance of doctors and NGOs to deal with the consequences, including psychological, of those assaults.<sup>1732</sup> [REDACTED] testified about UPC sexual crimes and their impact on the community.<sup>1733</sup> P-790 remembered three women who had been abducted from Kobu, raped and used as slaves by the UPC soldiers. One of them was forced to carry the soldiers' "personal belongings" and was then abandoned in Centrale.<sup>1734</sup> P-790 testified in his experience [REDACTED]:

*[...]when, for example, a woman is raped, she can no longer live in peace. Where we come from, she will be abandoned by her husband because the woman has had a bad experience. That is how things unfold where we come from, and that is the reason why the women do not speak openly about having been raped.*<sup>1735</sup>

582.The UPC's pattern of sexual violence as described by direct victims and community elders is corroborated by military witnesses who participated in the Second Attack. When the UPC retreated from Kobu, UPC commander SIMBA brought the 11-year-old girl he had sexually enslaved back to Bunia.<sup>1736</sup> SIMBA had captured the Lendu girl during *ratissage* operations around Kobu, and raped her. P-17 observed that: "she was forced to do that in order to keep her alive or to spare her life".<sup>1737</sup> P-17 testified that a UPC soldier brought a woman "under his protection"<sup>1738</sup> all the way back to the UPC camp in Bunia. Her baby died during

<sup>1731</sup> **P-938:**[DRC-OTP-2059-0069-R04](#),p.0074;[DRC-OTP-2059-0058-R02](#),p.0064;[DRC-OTP-2059-0080-R03](#),p.0085.

<sup>1732</sup> [REDACTED].

<sup>1733</sup> **P-105:**[T-134-CONF-ENG-ET](#),24:21-22; **P-127:**[T-139-CONF-ENG-ET](#),33:19-20.

<sup>1734</sup> **P-790:**[T-54-CONF-ENG-ET](#),32:5-21,34:12-17.

<sup>1735</sup> **P-790:**[T-54-CONF-ENG-ET](#),35:9-14.

<sup>1736</sup> **P-17:**[T-60-CONF-ENG-ET](#),28:1-29:6.

<sup>1737</sup> **P-17:**[T-60-CONF-ENG-ET](#),29:5-6.

<sup>1738</sup> **P-17** also used the expression "took her under his wing" to refer to a soldier sexually enslaving an 11-year-old-girl: [T-60-CONF-ENG-ET](#),28:19.

the travel and was left by the road.<sup>1739</sup>

583. UPC soldiers boasted to P-963 that they raped women before executing them in the Kobu banana field.<sup>1740</sup> Those soldiers [REDACTED], and raped the prisoners in the presence of SIMBA, the commander in charge.<sup>1741</sup> When he saw the bodies in the banana field in Kobu, P-121 realised that the anuses and vaginas of some of the bodies had been penetrated with sticks.<sup>1742</sup>

584. The evidence demonstrates beyond reasonable doubt that the UPC sexually enslaved non-Hema civilians. They were abducted, detained in armed custody, threatened, beaten and humiliated. UPC soldiers and commanders subjected the civilians to multiple and extremely brutal rapes and gang rapes. They were also forced, under armed guard, to work as porters carrying pillaged goods from one place to the next, and to cook for the troops. They were thereby deprived of their liberty, and reduced to a servile status as they were treated as objects – subjected to forced labour and rape. Some, when deemed no longer exploitable, were murdered or left for dead. These UPC soldiers and commanders exercised full physical and psychological control over the detainees, who were in a position of absolute vulnerability and had no possibility to make any decisions, or freely leave.<sup>1743</sup>

585. Some victims of sexual slavery were held captive for one or two days before they escaped. This, however, does not modify the nature of their victimisation or the applicability of the crime of sexual slavery. Duration is not an element of the crime of slavery under the Statute,<sup>1744</sup> nor is it discussed in the *travaux préparatoires*. In the *Katanga* Trial Judgment, the Chamber referred to duration as

<sup>1739</sup> [P-17:T-60-CONF-ENG-ET](#),25:11-20,27:23-28:2.

<sup>1740</sup> [P-963:T-79-CONF-ENG-ET](#),74:23-75:18.

<sup>1741</sup> [P-963:T-79-CONF-ENG-ET](#),76:5-14.

<sup>1742</sup> [P-121:T-173-CONF-ENG-ET](#),14:1-4,17:15-21.

<sup>1743</sup> See [Kunarac AJ](#), para.119; [Brima TJ](#), paras.705,708-709,1105-1188; [Sesay TJ](#), paras.158-163,2305-2307.

<sup>1744</sup> Article 7(1)(g)-2 and article 8(2)(e)(vi)-2, Elements of Crimes.

only one of the possible factors that may be considered to assess whether the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons.<sup>1745</sup>

586. International instruments and jurisprudence from other international tribunals also do not refer to duration when defining slavery.<sup>1746</sup> The Appeals Chamber in the *Kunarac* case expressly held that “*duration is not an element of the crime*” but rather a factor to determine the quality of the relationship between the perpetrator and the victim; as well as an aggravating circumstance of the crime.<sup>1747</sup> In that case, an accused, Kovač, was found guilty of having sexually enslaved two women for one week.<sup>1748</sup> In the *Charles Taylor* case, the Trial Chamber made findings of enslavement for a particular incident that started and ended on the same day.<sup>1749</sup>

**9. Murder and attempted murder (Article 7(1)(a)) and Article 8(2)(c)(i) - Counts 1 and 2**<sup>1750</sup>

587. UPC troops murdered and attempted to murder countless civilians during the

<sup>1745</sup> [Katanga TJ](#), p.391, para.976.

<sup>1746</sup> League of Nations Convention on Slavery, Servitude, Forced Labour and Similar Institutions and Practices, 60 LNTS 253; International Labour Organisation Convention Concerning Forced or Compulsory Labour (No. 29), 39 UNTS 59; Universal Declaration of Human Rights, G.A. res., U.N. Doc A/810, p.71; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 222, Article 4; 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 UNTS 3; International Labour Organisation Convention Concerning the Abolition of Forced Labour (No. 105), 30 UNTS 29; United Nations International Covenant on Civil and Political Rights, 99 UNTS 171; OAS, American Convention on Human Rights, O.A.S Treaty Series No. 36, 1144 UNTS 123; International Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 UNTS 243; Additional Protocol II to the Geneva Conventions of 12 August 1949, 1125 UNTS 609; OAU African (Banjul) Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2220 UNTS 3; Inter-American Convention on International Traffic in Minors, OAS Treaty Series No. 79; Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, CETS No. 197; International Labour Organisation Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 183), 2133 UNTS 161; United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2237 UNTS 39574; South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

<sup>1747</sup> [Kunarac AJ](#), paras.121,356.

<sup>1748</sup> [Kunarac TJ](#), paras.780-782.

<sup>1749</sup> [Taylor TJ](#), paras.1152-1168.

<sup>1750</sup> This section concerns the crimes committed in or around Lipri, Tsili, Bambu, Jitchu, Sangi, Kobu.

Second Attack, during the takeover of villages, or in *ratissage* operations which were manhunts to take by hand (“*shika na mukono*”) the displaced people. The attack culminated in a massacre of unarmed civilians in Kobu.

588.P-46 and P-317 travelled to Lipri, Bambu and Kobu on UN missions to collect information about the UPC attack on these and surrounding localities soon after the attacks occurred. They documented 350 victims of this attack.<sup>1751</sup> At the time, they compiled the information they received directly from witnesses in a database and recorded identifying details of victims, date and place of the incident, types of crimes, names of victims, and identification of perpetrators, among other details.<sup>1752</sup> This document, a contemporaneous record of investigations, corroborates direct evidence from other witnesses.

#### a. Lipri, Tsili

589.On or about 18 February 2003, the UPC attacked Lipri and nearby villages, including Tsili. That day and the following day, the UPC murdered approximately 30 victims in and around Lipri.<sup>1753</sup> P-863 [REDACTED] a woman who had been cut with a machete by UPC soldiers in a village near Nyangaray, which is around Lipri. The UPC killed all four people who were attacked together with this woman.<sup>1754</sup>

#### b. Bambu

590. UPC soldiers fired heavy weapons onto Bambu on or about 19 February

<sup>1751</sup> [P-317:T-191-CONF-ENG-ET](#),30:19-22,50:4-51-7,60:14-62:17,64:8-66:3;[T-192-CONF-ENG-ET](#),52:22-53:15; [DRC-OTP-0074-0422](#),pp.0444-0445,para.70; *see also:* [DRC-OTP-0152-0286](#),p.0286,para.1,p.0287,para.5,p.0292,para.6,p.0293,para.9,p.0301,paras.52-53; [P-46:T-100-CONF-ENG-CT](#),73:10-25; [DRC-OTP-2078-0551](#),p.0561, paras.26-28; [P-127:T-141-CONF-ENG-ET](#),9:4-11:13.

<sup>1752</sup> [DRC-OTP-0195-2366\\_0001](#); [P-317:T-191-CONF-ENG-ET](#),102:20-103-5; [P-46:T-101-CONF-ENG-ET](#),87:13-89:7.

<sup>1753</sup> [P-105:T-133-CONF-ENG-ET](#),54:1-55:8; [P-127:T-139-CONF-ENG-ET](#),16:4-14; [DRC-OTP-2067-1945](#),p.1945,para.2; [DRC-OTP-2078-0551](#),p.0561,paras.26-29; [DRC-OTP-0195-2366\\_0001](#), “Lipri”, “chili près de Lipri”, “Lipri (alentour)” and “Tzili”, provides a figure of 27 murder or attempted murders in the Second Attack period by perpetrators identified as UPC or Hema; all documented by P-317 or P-46 on 3 April 2003.

<sup>1754</sup> [P-863:T-180-CONF-ENG-ET](#),51:7-52:25.

2003.<sup>1755</sup> The UPC shelled a house and killed six members of a family - including children - in Yalala, around Bambu.<sup>1756</sup>

591. At the time of the UPC attack, [REDACTED] Bambu hospital, [REDACTED] an individual who had stepped on a mine. [REDACTED], the individual [REDACTED] informed [REDACTED] that the UPC had shot at him in the hospital.<sup>1757</sup> [REDACTED] found the bodies of nine patients who were too weak to escape the UPC attack in the hospital courtyard. They were “massacred”,<sup>1758</sup> shot or killed with axes and machetes by UPC soldiers.<sup>1759</sup> [REDACTED].<sup>1760</sup>

### c. Kobu, Sangi, Jitchu

592. When UPC troops launched the Kobu takeover, on or about 18 February 2003, [REDACTED], P-790 was [REDACTED] to flee.<sup>1761</sup> He tried to save [REDACTED] who were left behind. UPC soldiers entering the village fired at him as he was running away [REDACTED]. They shot [REDACTED], killing them. P-790 was shot [REDACTED].<sup>1762</sup> P-975, who examined the witness, concluded that: “*Dans leur ensemble, Les lésions et troubles séquellaires observés sont très compatibles avec les faits tels qu’exposés par le témoin P-0790 lors de ses auditions*”.<sup>1763</sup>

593. After taking Kobu, MULENDA invited the displaced Lendu community of Buli, Gutsi and Jitchu to meet under the pretence of discussing peace in Sangi. Invitations were delivered by letter through a Nyali man called GOMBILI.<sup>1764</sup>

<sup>1755</sup> [P-19:T-115-CONF-ENG-CT](#),19:10-20:1.

<sup>1756</sup> [P-863:T-180-CONF-ENG-ET](#),27:24-29:22; [V-1:T-201-CONF-ENG-ET](#),20:12-24:21,27:1-35:17;[DRC-PCV-0001-0086](#);[DRC-PCV-0001-0089](#);[DRC-PCV-0001-0092](#);[DRC-PCV-0001-0126](#).

<sup>1757</sup> [REDACTED].

<sup>1758</sup> [REDACTED].

<sup>1759</sup> [REDACTED].

<sup>1760</sup> [REDACTED]; see also [DRC-OTP-0152-0286](#),p.0304,para.66; [DRC-OTP-0195-2366\\_0001](#), cases 371,392.

<sup>1761</sup> [P-790:T-53-CONF-ENG-CT](#),39:3-40:4,41:21-42:7.

<sup>1762</sup> [P-790:T-53-CONF-ENG-CT](#),44:21-46:6,47:14-48:3.

<sup>1763</sup> [P-975:DRC-OTP-2105-8083](#),p.8097.

<sup>1764</sup> [DRC-OTP-0152-0286](#),p.0302,para.60; [DRC-OTP-0065-0003](#)(FR-[DRC-OTP-2055-0364](#)); [P-127:T-139-CONF-ENG-ET](#),19:25-25:10,35:6-43:10; [P-300:T-166-CONF-ENG-ET](#),37:25-38:10; [P-792:T-150-CONF-ENG-ET](#),48:9-54:7,56:15-20; [P-105:T-134-CONF-ENG-ET](#),9:8-18:2; [P-27:DRC-OTP-0096-0052-R04](#),pp.0057-0058,paras.25-27; [P-18:T-110-CONF-ENG-ET](#),62:21-63:15,64:6-11,65:5-70:3; [P-19:T-115-](#)

MULENDA himself went to talk to the population on the hill between Sangi and Buli,<sup>1765</sup> demanding the return of a weapon known as “*saba-saba*”.<sup>1766</sup> The recovery of this weapon, which had been stolen by Lendu combatants in Lipri, was a key UPC pre-condition for “peace”.<sup>1767</sup> A truce was then established for a few days.<sup>1768</sup> [REDACTED], MULENDA showed him the UPC weapons depot and added that if the weapon was not produced, the UPC would strike them.<sup>1769</sup>

594. Many of those who had been displaced decided not to attend the Pacification Meeting, fearing it was a trap. Lendu in Gutsi warned others not to attend; they had intercepted UPC communications on a stolen Motorola base.<sup>1770</sup> Other mainly Lendu community leaders and non-Hema villagers, tired of living in the bush, accepted the invitation.<sup>1771</sup> It was a sham meeting, designed to lure prominent Lendu civilians to one location.<sup>1772</sup> Following the invitation, a delegation comprised of around 50 Lendu dignitaries, civilians and unarmed members of the combatant forces left to attend the meeting.<sup>1773</sup>

595. P-963 confirmed that, after a UPC patrol was ambushed, KISEMBO ordered MULENDA to attack.<sup>1774</sup>

---

[CONF-ENG-CT](#),27:12-30:13; [P-100:T-131-CONF-ENG-ET](#),40:12-41:19; [P-108:T-185-CONF-ENG-ET](#),45:7-48:7; [P-868:T-177-CONF-ENG-ET](#),59:5-8,66:18-69-17; [P-317:T-191-CONF-ENG-ET](#),43:5-20,46:7-48:16,49:13-50:1,77:7-11; [P-103:DRC-OTP-0104-0170-R02](#),pp.0176-0177,paras.32-37.

<sup>1765</sup> [P-790:T-53-CONF-ENG-CT](#),48:10-49:19; [P-113:T-118-CONF-ENG-CT](#),24:8-23; [P-100:T-131-CONF-ENG-ET](#),44:13-45:9; [P-27:DRC-OTP-0096-0052-R04](#),pp.0057-0058,para.26-28.

<sup>1766</sup> [P-790:T-53-CONF-ENG-CT](#),49:24-50:8.

<sup>1767</sup> [P-790:T-53-CONF-ENG-CT](#),49:24-50:8; [DRC-OTP-2055-0364](#); [P-106:T-45-CONF-ENG-CT](#),52:1-53:8

<sup>1768</sup> [P-17:T-59-CONF-ENG-CT](#),80:8-14; [P-963:T-79-CONF-ENG-ET](#),52:11-25; [P-790:T-54-CONF-ENG-ET](#),4:18-5:15.

<sup>1769</sup> [REDACTED].

<sup>1770</sup> [P-863:T-180-CONF-ENG-ET](#),43:12-44:1;[T-181-CONF-ENG-ET](#),52:5-55:19; [P-127:T-139-CONF-ENG-ET](#),28:15-29:20; [P-301:T-149-CONF-ENG-ET](#),33:24-36:25; [P-792:T-150-CONF-ENG-ET](#),48:9-54:7,56:15-20; [P-105:T-134-CONF-ENG-ET](#),11:1-9; [P-18:T-110-CONF-ENG-ET](#),62:21-63:15,64:6-11,65:5-70:3; [P-19:T-115-CONF-ENG-CT](#),27:12-30:13; [P-857:T-193-CONF-ENG-ET](#),75:12-77:18; [P-103:DRC-OTP-0104-0170-R02](#),pp.0178-179,paras.40-44; [P-868:T-177-CONF-ENG-ET](#),77:13-78:12; [P-27:DRC-OTP-0096-0052-R04](#),p.0065,para.59.

<sup>1771</sup> [P-108:T-185-CONF-ENG-ET](#),55:16-58:20; [P-103:DRC-OTP-0104-0170-R02](#); [P-790:T-54-CONF-ENG-ET](#),9:24-10:3.

<sup>1772</sup> [DRC-OTP-2058-0990](#),p.1009,paras.119-123.

<sup>1773</sup> [P-18:T-110-CONF-ENG-ET](#),69:8-13; [P-868:T-177-CONF-ENG-ET](#),68:1-69-17; [P-108:T-185-CONF-ENG-ET](#),50:18-19; [P-790:T-54-CONF-ENG-ET](#),10:10-11:4.

<sup>1774</sup> [P-963:T-79-CONF-ENG-ET](#),64:11-25.



596. Upon the arrival of the delegation in Sangi, MULENDA demanded the return of the “*saba-saba*”.<sup>1775</sup> Two Lendu men were sent back to retrieve the weapon while MULENDA’s soldiers detained the rest of the delegation.<sup>1776</sup> The UPC soldiers beat, raped, and murdered some of the prisoners in Sangi.<sup>1777</sup>

597. The UPC unleashed its coordinated attack on Buli<sup>1778</sup> and surrounding areas, as captured in the intercepted UPC radio communication.<sup>1779</sup> P-963, [REDACTED], testified that following orders, civilians were caught: “*the persons who were found were either killed or captured*”.<sup>1780</sup>

598. UPC troops started their manhunt by yelling at the fleeing population that they would raid the bush and drive them out.<sup>1781</sup> Trapped in the bush between Buli and Jitchu, hiding from UPC manhunts, P-27 saw a UPC soldier on patrol murder his uncle with a machete in the bush, and he saw eight bodies of villagers with gunshot wounds in Jitchu.<sup>1782</sup> UPC soldiers captured and killed up to 92 civilians in Jitchu forest.<sup>1783</sup> P-113 and [REDACTED] were separated as they were fleeing in the bush. [REDACTED] was killed by the UPC.<sup>1784</sup> UPC soldiers

<sup>1775</sup> [P-105:T-134-CONF-ENG-ET](#),12:16-14:10; [P-27:DRC-OTP-0096-0052-R04](#),p.0062,para.45.

<sup>1776</sup> [P-105:T-134-CONF-ENG-ET](#),12:16-14:10; [P-18:T-110-CONF-ENG-ET](#),79:24-81:15; [P-27:DRC-OTP-0096-0052-R04](#),p.0062,para.45; [P-19:T-115-CONF-ENG-CT](#),29:25-30:9; [P-792:T-150-CONF-ENG-ET](#),56:24-57:4.

<sup>1777</sup> [P-19:T-115-CONF-ENG-CT](#),30:5-20;[T-116-CONF-ENG-CT](#),3:9-5:21; [P-18:T-111-CONF-ENG-CT](#),6:20-24:24,[DRC-OTP-0096-0133](#) to 0138,[DRC-OTP-0096-0002](#) to 0009.

<sup>1778</sup> [DRC-OTP-2101-2948](#),p.2951,l.61,p.2953,ll.112-124; [P-907:T-90-CONF-ENG-CT](#),69:2-10; [P-901:T-29-CONF-ENG-CT](#),32:15-24; [P-963:T-79-CONF-ENG-ET](#),90:9-11.

<sup>1779</sup> UPC commanders identified in the audio intercept include : Salumu MULENDA (SIERRA ALPHA), Commandant Éric (ECHO C

HARLIE), Pascal OKITO (PAPA OSCAR), Kaguma (BRAVO CHARLIE), Chuma KU MAYI, Saidi (SIERRA DELTA), Rwandais (ROMEO WHISKEY), Théophile MATEO (TANGO HOTEL), Samy (SIERRA MIKE): [P-901:T-29-CONF-ENG-CT](#),31:2-32:6; [P-963:T-79-CONF-ENG-ET](#),89:25-90:3; [P-17:T-60-CONF-ENG-ET](#),40:7-20; [P-907:T-90-CONF-ENG-CT](#),68:2-13;[P-16:DRC-OTP-0126-0422-R03](#),p.448,para.144.

<sup>1780</sup> [P-963:T-79-CONF-ENG-ET](#),66:16-25; [P-19:T-116-CONF-ENG-CT](#),3:9-4.

<sup>1781</sup> [P-792:T-150-CONF-ENG-ET](#),57:5-58:16; [P-113:T-118-CONF-ENG-CT](#),30:7-32:15.

<sup>1782</sup> [P-27:DRC-OTP-0096-0052-R04](#),p.0063-0064,paras.51-52.

<sup>1783</sup> [P-317:T-191-CONF-ENG-ET](#),67:8-20; [DRC-OTP-0074-0422](#),p.0444,para.69; [DRC-OTP-0152-0286](#),p.0303,para.63; [P-127:T-139-CONF-ENG-ET](#),35:7-43:16; [DRC-OTP-0065-0003](#),p.0004; [DRC-OTP-2055-0261](#),p.268:178-202.

<sup>1784</sup> [P-113:T-118-CONF-ENG-CT](#),58:13-59:13,60:23-61:14.

captured P-39 and forced him to bring looted goods to Kobu, [REDACTED].<sup>1785</sup>

599. UPC troops brought many prisoners from the bush to their base in Kobu.<sup>1786</sup> [REDACTED] saw Commander ECHO CHARLIE bring back a first group of 40 non-Hema unarmed male prisoners to the camp.<sup>1787</sup> Then, Commander ROMEO WHISKEY (“*Rwandais*”)<sup>1788</sup> brought 20 more Lendu prisoners, the majority of whom were women and children, unarmed and dressed in civilian clothes.<sup>1789</sup> [REDACTED] saw about 47 prisoners in Kobu: men and women, not armed, screaming that they were civilians.<sup>1790</sup> The intelligence unit - Bureau 2 - questioned them about the location of weapons and tortured one of them. The person in charge of the prisoners was Commander SIMBA.<sup>1791</sup>

600. On the Motorola radio, [REDACTED] heard KISEMBO order MULENDA to kill the prisoners by instructing: “*ubatendeye*” - “*show them what you are capable of*”.<sup>1792</sup> [REDACTED], P-963 and P-17 saw the troops moving the crying prisoners to their place of execution.<sup>1793</sup>

601. SIMBA and his troops executed the prisoners that night in the banana field behind *Hôtel Paradiso*.<sup>1794</sup> [REDACTED], [REDACTED].<sup>1795</sup> [REDACTED].<sup>1796</sup>

602. SIMBA, and another UPC soldier, used the term “*kafuni*” to describe the murders he committed, indicating that they used *armes blanches*. [REDACTED].<sup>1797</sup> [REDACTED]. MULENDA was there too.<sup>1798</sup> [REDACTED].<sup>1799</sup>

<sup>1785</sup> P-39: [DRC-OTP-0104-0015-R03](#), pp.0020-0021, paras.26-30; [DRC-OTP-2062-0244-R02](#), pp.0252-0254, paras.33-45.

<sup>1786</sup> [DRC-OTP-2101-2948](#), p.2952:84-p.2953:103; P-901: [T-29-CONF-ENG-CT](#), 38:15-18; P-17: [T-60-CONF-ENG-ET](#), 43:8-18.

<sup>1787</sup> [REDACTED].

<sup>1788</sup> “*Rwandais*” was in the CHUI Mobile Force with NTAGANDA, D-300: [T-213-CONF-ENG-CT](#), 59:21-22.

<sup>1789</sup> [REDACTED].

<sup>1790</sup> [REDACTED].

<sup>1791</sup> [REDACTED].

<sup>1792</sup> [REDACTED].

<sup>1793</sup> P-963: [T-79-CONF-ENG-ET](#), 71:14-24; P-17: [T-60-CONF-ENG-ET](#), 14:19-16:4.

<sup>1794</sup> [REDACTED].

<sup>1795</sup> P-113: [T-118-CONF-ENG-CT](#), 48:3-50:1.

<sup>1796</sup> [REDACTED].

<sup>1797</sup> [REDACTED].

P-963 stated: “[REDACTED]”.<sup>1800</sup> When asked why the members of the delegation were killed, he simply answered: “*because they were Lendu*”.<sup>1801</sup>

603. When the UPC troops left, retreating to Bunia to fight another battle, [REDACTED].<sup>1802</sup> The Lendu population slowly came out of the surrounding bush and returned to Kobu.<sup>1803</sup> They discovered approximately 50 women, children and men<sup>1804</sup> massacred in the banana field behind *Hôtel Paradiso*.<sup>1805</sup>

604. The bodies lay on the ground; many were tied up and partially naked. Some victims had been disembowelled; others dismembered, or had their genitalia cut off. Some had their throats slit, others were beheaded. Many had machete wounds on their bodies or smashed skulls.<sup>1806</sup> UPC soldiers had torn fetuses out of pregnant women’s stomachs.<sup>1807</sup>

605. Lendu dignitaries BUROMBI, KABULI,<sup>1808</sup> and DYIKPANU,<sup>1809</sup> as well as other

---

<sup>1798</sup> [REDACTED].

<sup>1799</sup> [REDACTED].

<sup>1800</sup> [REDACTED].

<sup>1801</sup> [P-963:T-79-CONF-ENG-ET](#),73:6-7.

<sup>1802</sup> [REDACTED].

<sup>1803</sup> [P-100:T-131-CONF-ENG-ET](#),49:10-51:25; [P-105:T-134-CONF-ENG-ET](#),18:21-19:25; [P-106:T-44-CONF-ENG-CT](#),46:21-48:14;[T-45-CONF-ENG-CT](#),23:20-24:22; [P-121:T-173-CONF-ENG-ET](#),8:1-9:21; [P-300:T-166-CONF-ENG-ET](#),51:16-52:7; [P-790:T-54-CONF-ENG-ET](#),15:1-15; [P-792:T-150-CONF-ENG-ET](#),56:5-20,59:17-61:10; [P-857:T-193-CONF-ENG-ET](#),73:24-74:12; [P-19:T-115-CONF-ENG-CT](#),54:2-55:1.

<sup>1804</sup> [P-301:T-149-CONF-ENG-ET](#),60:2-19; [P-100:T-131-CONF-ENG-ET](#),49:10-51:25; [P-105:T-134-CONF-ENG-ET](#),20:1-21:23; [P-121:T-173-CONF-ENG-ET](#),12:6-19,16:5-12,19:9-24; [P-790:T-54-CONF-ENG-ET](#),16:3-21,17:15-19:6; [P-857:T-193-CONF-ENG-ET](#),78:5-82:18; [P-805:T-26-CONF-ENG-CT](#),7:5-11:2.

<sup>1805</sup> [P-934:DRC-OTP-2075-0094](#)(Panorama:2,1,6,15,14); [P-790:DRC-OTP-2078-2407](#); [P-121:DRC-REG-0001-0049](#); [P-792:DRC-REG-0001-0047](#); [P-805:DRC-OTP-2058-1105-R02](#); [P-857:DRC-OTP-2068-0031](#).

<sup>1806</sup> [P-301:T-149-CONF-ENG-ET](#),62:11-24,78:3-6; [P-103:DRC-OTP-0104-0170-R02](#),p.0179,para.47; [P-100:T-131-CONF-ENG-ET](#),50:3-51:24; [P-105:T-134-CONF-ENG-ET](#),19:23-21:23; [P-106:T-44-CONF-ENG-CT](#),46:21-48:14;[T-45-CONF-ENG-CT](#),23:20-24:22; [P-121:T-173-CONF-ENG-ET](#),14:1-18:1; [P-790:T-54-CONF-ENG-ET](#),16:3-21,17:15-19:6; [P-792:T-150-CONF-ENG-ET](#),56:5-20,59:17-61:10; [P-857:T-193-CONF-ENG-ET](#),78:5-82:18; [P-963:T-79-CONF-ENG-ET](#),71:14-72:21; [P-805:T-26-CONF-ENG-CT](#),7:5-11:2; [P-27:DRC-OTP-0096-0052-R04](#),p.0065,para.58.

<sup>1807</sup> [P-301:T-149-CONF-ENG-ET](#),62:11-24,[DRC-REG-0001-0046](#); [P-105:T-134-CONF-ENG-ET](#),19:23-21:23; [P-790:T-54-CONF-ENG-ET](#),16:3-21,17:15-19:6; [P-100:T-131-CONF-ENG-ET](#),50:3-51:24; [P-27:DRC-OTP-0096-0052-R04](#),p.0065,para.58.

<sup>1808</sup> A teacher from Bambu: [P-113:T-118-CONF-ENG-CT](#),27:18-24; [P-857:T-193-CONF-ENG-ET](#),82:16-17.

<sup>1809</sup> [P-301:T-149-CONF-ENG-ET](#),61:6-62:24,66:20-68:18;[P-105:T-134-CONF-ENG-ET](#),19:23-21:23; [P-868:T-177-CONF-ENG-ET](#),66:18-74:5;[P-792:T-150-CONF-ENG-ET](#),67:23:68-6; [P-121:T-173-CONF-ENG-ET](#),18:2-14; [P-790:T-54-CONF-ENG-ET](#),16:3-21,17:15-19:6; [P-857:T-193-CONF-ENG-ET](#),78:5-82:18; [P-805:T-26-CONF-ENG-CT](#),7:5-11:2; [P-27:DRC-OTP-0096-0052-R04](#),p.0065,para.58; [DRC-OTP-0195-2366 0001](#),cases.415,416.

Lendu civilians,<sup>1810</sup> who were caught and imprisoned at the Pacification Meeting, were among the corpses in the banana field. Trial witnesses testified that over 20 of their loved ones, including children, were murdered by the UPC in the banana field in Kobu.<sup>1811</sup>

606.P-108's family found him [REDACTED]. He was attacked as he tried to flee from *Hôtel Paradiso*. UPC soldiers struck him [REDACTED] with machetes and he lost consciousness.<sup>1812</sup>

607.Expert P-939 examined [REDACTED] P-108's [REDACTED].<sup>1813</sup> [REDACTED].<sup>1814</sup> [REDACTED].<sup>1815</sup> [REDACTED].<sup>1816</sup> [REDACTED].<sup>1817</sup>

608.The bodies of the victims were photographed at the site,<sup>1818</sup> and eight unique pictures were admitted.<sup>1819</sup> Nine witnesses testified that these pictures depict the scene of the mass murder in the banana field in Kobu.<sup>1820</sup> One photograph depicts three victims, two of whom have their arms tied behind their back.

<sup>1810</sup> [P-100:T-131-CONF-ENG-ET,20:10-21:2](#); [P-105:T-134-CONF-ENG-ET,20:1-21:23](#); [P-106:T-44-CONF-ENG-CT,46:21-48:14](#);[T-45-CONF-ENG-CT,23:20-24:22](#); [P-790:T-54-CONF-ENG-ET,16:3-21,17:15-19:6](#); [P-792:T-150-CONF-ENG-ET,56:5-20,59:17-61:10](#); [P-857:T-193-CONF-ENG-ET,78:5-82:18](#); [P-19:T-115-CONF-ENG-CT,54:2-55:1](#); [P-863:T-180-CONF-ENG-ET,41:12-43:11](#); [P-805:T-26-CONF-ENG-CT,7:5-11:2](#).

<sup>1811</sup> [P-19:T-115-CONF-ENG-CT,54:2-55:1](#); [P-100:T-131-CONF-ENG-ET,20:10-21:2](#); [P-106:T-44-CONF-ENG-CT,46:21-48:14](#);[T-45-CONF-ENG-CT,23:20-24:22](#); [P-857:T-193-CONF-ENG-ET,78:5-82:18](#); [P-18:T-111-CONF-ENG-CT,22:8-23:10](#); [P-863:T-180-CONF-ENG-ET,41:12-43:11](#); [P-868:T-177-CONF-ENG-ET,66:18-74:5](#); [P-792:T-150-CONF-ENG-ET,56:5-20,59:17-61:10](#).

<sup>1812</sup> [P-108:T-185-CONF-ENG-ET,49:11-22,57:16-61:5](#), [DRC-OTP-0108-0103](#), [DRC-OTP-0108-0112](#), [DRC-OTP-0108-0113](#), [DRC-OTP-0108-0114](#), [DRC-OTP-0108-0115](#).

<sup>1813</sup> [P-939:T-143-CONF-ENG-ET,26:5-25](#);[DRC-OTP-2059-0146-R02](#).

<sup>1814</sup> [P-939:T-143-CONF-ENG-ET,26:5-18](#).

<sup>1815</sup> [P-939:T-143-CONF-ENG-ET,27:7-16](#).

<sup>1816</sup> [P-939:T-143-CONF-ENG-ET,30:18-21](#).

<sup>1817</sup> [P-938:T-113-CONF-ENG-ET,78:10-20](#); [DRC-OTP-2059-0049-R02](#).

<sup>1818</sup> [P-790:T-54-CONF-ENG-ET,19:15-20:8](#); [P-121:T-173-CONF-ENG-ET,18:15-23,43:3-44:1](#); [P-103:DRC-OTP-0104-0170-R02](#),pp.179-180,paras.48-49;[P-792:T-150-CONF-ENG-ET,73:2-14,77:9-20,88:18-89:2](#).

<sup>1819</sup> The following groups of items are either duplicates or annotated versions. The first group is: [DRC-OTP-0077-0292](#), [DRC-OTP-0152-0240](#) and [DRC-OTP-2058-1110](#). The second is: [DRC-OTP-0077-0293](#), [DRC-OTP-0152-0239](#), [DRC-REG-0001-0012](#), [DRC-OTP-2058-1111](#) and [DRC-REG-0001-0046](#). The third is: [DRC-OTP-0077-0294](#) and [DRC-OTP-2058-1112](#). The fourth is: [DRC-OTP-0077-0295](#), [DRC-OTP-2058-1107](#) and [DRC-OTP-2058-1113](#). The fifth is: [DRC-OTP-0072-0473-R01](#) and [DRC-OTP-2058-1106](#). The sixth is: [DRC-REG-0001-0051](#) and [DRC-OTP-2058-1108](#). The seventh unique photograph is: [DRC-OTP-2069-0012-R01](#), and the eighth: [DRC-OTP-2058-1109](#).

<sup>1820</sup> [P-976:T-152-CONF-ENG-ET,23:1-27:17,52:7-53:19](#); [P-301:T-149-CONF-ENG-ET,64:19-66:20](#) ; [P-100:T-131-CONF-ENG-ET,53:14-55:3](#); [P-106:T-44-CONF-ENG-CT,49:1-52:17](#); [P-121:T-173-CONF-ENG-ET,26:3-30:5](#); [P-790:T-54-CONF-ENG-ET,21:21-27-22](#); [P-792:T-150-CONF-ENG-ET,73:15-74:4](#); [P-857:T-193-CONF-ENG-ET,86:3-88:11](#) ; [P-805:T-25Bis-CONF-ENG-CT,39:5-40:20](#); [T-26-CONF-ENG-CT,15:5-16:5](#).

[REDACTED].<sup>1821</sup> The body of a child is visible on the lower right part of another picture.<sup>1822</sup>

609. Another photograph shows several bodies lying on top of one another, some with arms tied up.<sup>1823</sup> P-301 [REDACTED] recognised some of the victims.<sup>1824</sup> A similar photograph shows two of the deceased victims.<sup>1825</sup> [REDACTED] recognised [REDACTED].<sup>1826</sup> [REDACTED] victim is DYIKPANU. [REDACTED].<sup>1827</sup> DYIKPANU's body appears in another photograph, [REDACTED].<sup>1828</sup>

610. Three bodies appear in another photograph, lying on banana leaves. A man who has visible injuries to his torso is wearing blue trousers with a wide waistband.<sup>1829</sup> These trousers match those found on skeletal remains exhumed in Kobu.<sup>1830</sup>

611. The exhumation site and other locations of interest in Kobu, such as the *Hôtel Paradiso*, are visible on the 360-degree presentation produced by P-934.<sup>1831</sup> P-420 exhumed 14 bodies in six graves in Kobu, and two bodies in a single grave in Tchudja.<sup>1832</sup> He concluded that the state of the skeletal remains in Kobu is consistent with death in 2003.<sup>1833</sup>

<sup>1821</sup> [DRC-OTP-2058-1108](#); [DRC-REG-0001-0051](#); [P-857:T-193-CONF-ENG-ET](#),87:4-88:11.

<sup>1822</sup> [DRC-OTP-2058-1109](#).

<sup>1823</sup> [DRC-OTP-0077-0293](#), [DRC-OTP-0152-0239](#), [DRC-REG-0001-0012](#), [DRC-OTP-2058-1111](#) and [DRC-REG-0001-0046](#).

<sup>1824</sup> [P-301:T-149-CONF-ENG-ET](#),65:17-67:8; [P-805:T-25Bis-CONF-ENG-CT](#),39:5-40:20; [T-26-CONF-ENG-CT](#),15:5-16:5; [P-790:T-54-CONF-ENG-ET](#),23:8-25:19; [P-100:T-131-CONF-ENG-ET](#),53:14-55:3; [P-857:T-193-CONF-ENG-ET](#),86:3-88:11 ; [P-976:T-152-CONF-ENG-ET](#),23:9-27:1; [P-121:T-173-CONF-ENG-ET](#),28:25-29:15.

<sup>1825</sup> [DRC-OTP-0077-0292](#), [DRC-OTP-0152-0240](#), [DRC-OTP-2058-1110](#).

<sup>1826</sup> [REDACTED].

<sup>1827</sup> [REDACTED].

<sup>1828</sup> [REDACTED].

<sup>1829</sup> [DRC-OTP-0072-0473-R01](#); [DRC-OTP-2058-1106](#).

<sup>1830</sup> [DRC-OTP-2067-0825](#); [DRC-OTP-2067-0722](#); [P-937:T-127-ENG-ET](#),23:12-24:6,[DRC-OTP-2075-0265](#).

<sup>1831</sup> [DRC-OTP-2075-0056-R01](#); [DRC-OTP-2075-0094](#).

<sup>1832</sup> [DRC-OTP-2072-0211](#),p.0232; [DRC-OTP-2074-0148](#),p.0158.

<sup>1833</sup> [P-420:T-123-CONF-ENG-ET](#),71:18-22.

612. [REDACTED].<sup>1834</sup> [REDACTED].<sup>1835</sup> P-935 examined this body<sup>1836</sup> and concluded that it showed no sign of perimortem trauma. However, he added that it was possible that the woman's throat had been slit without leaving any trace on the bone: *"it's plausible that only the soft tissue was cut in that case"*.<sup>1837</sup>

613.[REDACTED].<sup>1838</sup> [REDACTED].<sup>1839</sup> P-937 examined the second skeleton located in the grave and concluded that it showed no definitive signs of perimortem injuries.<sup>1840</sup> However, he explained that *"sharp injuries by, for instance, a knife or a machete may cut large blood vessels without hitting the bones"*.<sup>1841</sup> [REDACTED].<sup>1842</sup>

614.P-935 concluded that the likely manner of death for the remaining eight corpses he examined was homicide.<sup>1843</sup> Seven corpses showed signs of blunt force trauma to the head,<sup>1844</sup> while one showed a burnt skull possibly related to a projectile injury.<sup>1845</sup> P-935 concluded that the general state of the corpses he examined in 2014 was compatible with them having been dead for 11 years,<sup>1846</sup> and that the bodies had been buried before they decomposed.<sup>1847</sup>

<sup>1834</sup> [REDACTED].

<sup>1835</sup> [REDACTED].

<sup>1836</sup> [REDACTED].

<sup>1837</sup> [REDACTED].

<sup>1838</sup> [REDACTED].

<sup>1839</sup> [REDACTED].

<sup>1840</sup> [REDACTED].

<sup>1841</sup> [REDACTED].

<sup>1842</sup> [REDACTED].

<sup>1843</sup> [KOB1-F1-B1: P-935:T-132-CONF-ENG-ET,82:4-23](#); [KOB1-F1-B2: P-935:T-132-CONF-ENG-ET,85:16-86:7](#); [KOB1-F1-B3: P-935:T-132-CONF-ENG-ET,87:8-88:7](#); [KOB1-F2-B3: P-935:T-133-CONF-ENG-ET,5:17-6:15](#); [KOB1-F2-B4: P-935:T-133-CONF-ENG-ET,7:22-9:25](#); [KOB1-F3-B1: P-935:T-133-CONF-ENG-ET,10:1-11:11](#); [KOB1-F3-B2: P-935:T-133-CONF-ENG-ET,12:4-13:20](#); [KOB1-F5-B1: P-935,T-133-CONF-ENG-ET,14:3-19:1](#).

<sup>1844</sup> [KOB1-F1-B1: P-935:DRC-OTP-2081-0674,p.0688-0689](#); [DRC-OTP-2067-0165](#); [DRC-OTP-2067-0166](#); [DRC-OTP-2067-0168](#); [KOB1-F1-B2: P-935:DRC-OTP-2081-0674,p.0684-0685](#); [DRC-OTP-2067-0206](#); [DRC-OTP-2067-0205](#); [DRC-OTP-2067-0202](#); [DRC-OTP-2067-0203](#); [KOB1-F1-B3: P-935:DRC-OTP-2081-0674,p.0687](#); [DRC-OTP-2067-0252](#); [DRC-OTP-2067-0246](#); [KOB1-F2-B4: P-935:DRC-OTP-2081-0674,p.0696-0698](#); [DRC-OTP-2067-0475](#); [DRC-OTP-2067-0476](#); [DRC-OTP-2067-0479](#); [KOB1-F3-B1: P-935:DRC-OTP-2081-0674,p.0700-0702](#); [DRC-OTP-2067-0540](#); [DRC-OTP-2067-0539](#); [DRC-OTP-2067-0542](#); [KOB1-F2-B3: P-935:DRC-OTP-2081-0674,p.0691-0693](#); [DRC-OTP-2067-0431](#); [DRC-OTP-2067-0434](#); [KOB1-F3-B2: P-935:DRC-OTP-2081-0674,p.0711-0715](#); [DRC-OTP-2067-0431](#); [DRC-OTP-2067-0434](#).

<sup>1845</sup> [KOB1-F5-B1: P-935:DRC-OTP-2081-0674,p.0706-0708](#); [DRC-OTP-2067-0848](#); [DRC-OTP-2067-0859](#); [DRC-OTP-2067-0857](#); [DRC-OTP-2067-0852](#).

<sup>1846</sup> [P-935:T-132-CONF-ENG-ET,68:25-69:3,80:1-81:12](#).

<sup>1847</sup> [P-935:T-132-CONF-ENG-ET,75:15-26](#); [T-133-CONF-ENG-ET,24:25-26:3](#).



615.P-937 concluded that of the six corpses he examined in Kobu-Wadza, three died from blunt force trauma to the head,<sup>1848</sup> two may have died from blunt force trauma,<sup>1849</sup> and the sixth corpse was a “textbook illustration” of a gunshot to the neck.<sup>1850</sup>

### **10. Persecution (Article 7(1)(h)) - Count 10**<sup>1851</sup>

616.During the Walendu-Djatsi attack, the UPC perpetrated the crimes charged<sup>1852</sup> targeting Lendu and non-Hema civilians on the basis of their ethnicity; thereby depriving them of fundamental rights.<sup>1853</sup>

617.At the time relevant to the charges, the UPC was fighting the Lendu and their perceived supporters.<sup>1854</sup> UPC leaders - including **NTAGANDA** - identified them to the troops as the enemy regardless of their civilian status.<sup>1855</sup> The UPC soldiers understood:<sup>1856</sup> *“For me, all the Lendu, whether man or woman. When they were part of the ethnic group called Lendu it was considered as an enemy of the UPC,*

<sup>1848</sup> [P-937:T-127-ENG-ET](#),14:19-16:14,13:15-14:11; [KOB1-F2-B1: P-937:DRC-OTP-2075-0140](#),p.0143;[T-127-ENG-ET](#),20:23-21:23,[DRC-OTP-2067-0316](#);[DRC-OTP-2067-0319](#);[DRC-OTP-2067-0333](#);[DRC-OTP-2067-0335](#);[DRC-OTP-2067-0336](#);[DRC-OTP-2075-0158](#); [KOB1-F2-B2: P-937:DRC-OTP-2075-0173](#),p.0176;[DRC-OTP-2067-0374](#);[DRC-OTP-2067-0382](#);[DRC-OTP-2067-0384](#);[DRC-OTP-2067-0386](#);[DRC-OTP-2067-0387](#);[DRC-OTP-2067-0388](#);[DRC-OTP-2067-0389](#);[DRC-OTP-2075-0190](#); [KOB1-F4-B1: P-937:DRC-OTP-2075-0205](#),p.0208-0209;[DRC-OTP-2067-0688](#);[DRC-OTP-2067-0690](#);[DRC-OTP-2067-0658](#);[DRC-OTP-2067-0691](#);[DRC-OTP-2075-0222](#).

<sup>1849</sup> [P-937:T-127-ENG-ET](#),13:15-14:11;[KOB1-F4-B2: P-937:DRC-OTP-2075-0235](#),p.0238-0239;[DRC-OTP-2067-0756](#);[DRC-OTP-2075-0252](#); [KOB1-F4-B3: P-937:DRC-OTP-2075-0265](#),p.0268-0269;[DRC-OTP-2075-0282](#).

<sup>1850</sup> [KOB1-F6-B1: P-937:T-127-ENG-ET](#),14:19-16-14,18:16-23,21:26:13;[DRC-OTP-2075-0312](#),p.0315-0216;[DRC-OTP-2069-0852](#);[DRC-OTP-2069-0854](#);[DRC-OTP-2069-0856](#);[DRC-OTP-2075-0330](#).

<sup>1851</sup> This section concerns the crimes committed in or around Kobu, Sangi, Bambu, Lipri, Tsili, Camp P.M., Buli, Jitchu, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Gutsi, Ngongo, Djuba, Dyalo, Dhepka, Mbidjo, Thali, and Ngabuli.

<sup>1852</sup> Counts 1-2, 3-5, 8-9, 11-13, 17 and 18.

<sup>1853</sup> Such as the right to life, liberty and security, the right not to be enslaved, the right not to be subjected to arbitrary arrest and detention, the right to freedom of movement and residence, the right to education, and the right to a standard of living adequate for health (Universal Declaration of Human Rights).

<sup>1854</sup> [P-14:T-138-CONF-ENG-ET](#),99:3-100:4.

<sup>1855</sup> [P-55:T-70-CONF-ENG-CT](#),73:25-74:22;[T-71-CONF-ENG-CT](#),21:8-22:7,46:13-47:5;[T-72-CONF-ENG-CT](#),16:9-12,32:6-14; [P-963:T-78-CONF-ENG-ET](#),74:5-75:7; [P-17:T-59-CONF-ENG-CT](#),7:6-18,62:17-63:3;[T-63-CONF-ENG-ET](#),47:18-48:4; [P-190:T-96-CONF-ENG-CT](#),78:20-79:19;[T-97-CONF-ENG-CT](#),32:15-33:7; [P-888:T-105-CONF-ENG-CT](#),50:16-51:16; [P-768:T-33-CONF-ENG-CT](#),52:2-54:18.

<sup>1856</sup> [P-10:T-47-CONF-ENG-CT](#),48:12-13; [P-758:T-162-CONF-ENG-ET](#),49:18-50:3; [P-17:T-63-CONF-ENG-ET](#),47:18-48:4; [P-16:DRC-OTP-0126-0422-R03](#),p.0463,para.239.



*including children*".<sup>1857</sup>

618. In the pre-attack briefings in Mongbwalu and Kilo, KISEMBO and MULENDA ordered the UPC troops to "*drive out the Lendu*".<sup>1858</sup> UPC soldiers implemented the orders, and were motivated by a desire for revenge rooted in the ethnic conflict. As P-963 explained: "*they had torched our villages, it was our turn to torch theirs*".<sup>1859</sup> UPC troops attacked all Lendu simply because of their ethnicity, regardless of whether they were civilians.<sup>1860</sup>

619. The *modus operandi* of the UPC troops proves that they intended to target the non-Hema population. In Walendu-Djatsi, UPC forces attacked areas inhabited almost exclusively by Lendu and non-Hema.<sup>1861</sup> During the assault and *ratissage* operations, UPC forces systematically attacked, pillaged and burnt down the villages - such as Ngongo<sup>1862</sup> - on a massive scale. They chased, raped, sexually enslaved and murdered the civilians who were non-Hema.<sup>1863</sup> This persecution aimed at ousting the population belonging to non-Hema ethnic groups - particularly Lendu- so that the UPC could control the area.<sup>1864</sup> The Lendu could not return or they would be killed.<sup>1865</sup>

620. The UPC particularly targeted the Lendu population. In a desperate attempt to save her life, P-113 lied and told the UPC soldiers who arrested her in the bush

<sup>1857</sup> [P-17:T-59-CONF-ENG-CT](#),62:24-25.

<sup>1858</sup> [P-963:T-79-CONF-ENG-ET](#),43:1-5,46:23-47:8.

<sup>1859</sup> [P-963:T-79-CONF-ENG-ET](#),79:1-7.

<sup>1860</sup> [P-17:T-59-CONF-ENG-CT](#),74:1-16;[T-63-CONF-ENG-ET](#),41:4-17.

<sup>1861</sup> [P-55:T-71-CONF-ENG-CT](#),30:16-17; [P-963:T-79-CONF-ENG-ET](#),16:16-25; [P-790:T-53-CONF-ENG-CT](#),20:1-12; [P-301:T-149-CONF-ENG-ET](#),30:23-31:3; [P-127:T-139-CONF-ENG-ET](#),11:21-12:1,13:1-11;[P-17:T-63-CONF-ENG-ET](#),40:24-41:17;[T-59-CONF-ENG-CT](#),74:3-16; [P-121:T-172-CONF-ENG-ET](#),61:15-17;[P-108:T-185-CONF-ENG-ET](#),44:19-20; [P-768:T-34-CONF-ENG-CT](#),61:2-3.

<sup>1862</sup> [P-127:T-139-CONF-ENG-ET](#),7:13-8:24; [P-810:T-176-CONF-ENG-ET](#),14:3-19,[DRC-OTP-2099-0166](#),pp.0181-0183,0187,0212(fig.25).

<sup>1863</sup> [P-17:T-59-CONF-ENG-CT](#),73:13-74:16;[T-60-CONF-ENG-ET](#),13:1-6; [P-55:T-71-CONF-ENG-CT](#),58:5-7; [P-805:T-25Bis-CONF-ENG-CT](#),11:1-8; [P-19:T-115-CONF-ENG-CT](#),34:9-17; [P-317:T-191-CONF-ENG-ET](#),44:3-44:9; [P-863:T-180-CONF-ENG-ET](#),31:11-32:1.

<sup>1864</sup> [P-963:T-79-CONF-ENG-ET](#),46:8-47:8; [P-55:T-71-CONF-ENG-CT](#),47:6-10; [P-17:T-59-CONF-ENG-CT](#),74:20-76:7.

<sup>1865</sup> [P-17:T-63-CONF-ENG-ET](#),46:2-7; [P-868:T-177-CONF-ENG-ET](#),61:11-62:23;[P-105:T-133-CONF-ENG-ET](#),70:8-71-19.

that she was [REDACTED].<sup>1866</sup> UPC troops forced her to carry looted goods and sexually enslaved her; but she survived. She survived again when [REDACTED].<sup>1867</sup> To those who wanted her to be killed, MULENDA responded that she was [REDACTED], not Lendu.<sup>1868</sup> [REDACTED] confirmed that some [REDACTED] prisoners were released that night when MULENDA stated that those who were not part of their enemies should be freed.<sup>1869</sup> UPC soldiers executed most of the prisoners in the banana field solely “[b]ecause they were Lendu”.<sup>1870</sup>

621.[REDACTED] P-105 testified that:

*[...] all Lendu villages inhabitants had fled the village to seek refuge in the bush, because the strategy was to drive out all Lendu inhabitants. That is why in the entire area, in all Lendu villages, houses were torched, property was destroyed and looted. And it is only the Lendu villages that were affected by this type of looting.*<sup>1871</sup>

622.The UPC’s verbal abuse towards their victims also demonstrates the deliberate targeting of non-Hema civilians. In Sangi, UPC soldiers told the members of the population whom they were torturing: “in three days we are going to exterminate you Lendu”.<sup>1872</sup> UPC soldiers knew they could commit their crimes with impunity<sup>1873</sup> because they were endorsed by the UPC hierarchy: it was impossible for the Lendu to complain to the UPC authorities and,<sup>1874</sup> in any case, crimes against Lendu were not punished in the UPC.<sup>1875</sup>

<sup>1866</sup> [P-113:T-118-CONF-ENG-CT](#),31:1-14.

<sup>1867</sup> [P-113:T-118-CONF-ENG-CT](#),49:3-16.

<sup>1868</sup> [P-113:T-118-CONF-ENG-CT](#),54:21-55:3.

<sup>1869</sup> [REDACTED].

<sup>1870</sup> [P-963:T-79-CONF-ENG-ET](#),73:1-7.

<sup>1871</sup> [P-105:T-133-CONF-ENG-ET](#),42:9-12; *see also* [P-127:T-139-CONF-ENG-ET](#),13:1-23.

<sup>1872</sup> [P-19:T-115-CONF-ENG-CT](#),31:12-16;[T-116-CONF-ENG-CT](#),3:9-5:21.

<sup>1873</sup> [P-18:T-111-CONF-ENG-CT](#),17:11-17

<sup>1874</sup> [P-55:T-70-CONF-ENG-CT](#),73:25-74:22.

<sup>1875</sup> [P-963:T-79-CONF-ENG-ET](#),22:16-19,74:12-22,77:7-9; [P-17:T-60-CONF-ENG-ET](#),27:4-5;[T-63-CONF-ENG-ET](#),43:2-5; [P-190:T-97-CONF-ENG-CT](#),55:23-25; [P-55:T-71-CONF-ENG-CT](#),59:11- 59:23; [P-907:T-89-CONF-ENG-CT](#),48:2-9; [P-768:T-34-CONF-ENG-CT](#),61:10-13; [P-888:T-106-CONF-ENG-CT](#),8:19-9:4.

### C. CONSCRIPTION, ENLISTMENT AND USE OF CHILDREN – COUNTS 14, 15 AND 16

623. The evidence shows beyond reasonable doubt that children under the age of 15 were unlawfully recruited into the UPC, trained, and used to participate actively in hostilities. In order to take control of Ituri, remain in power, and enlarge the territory over which they exercised control, **NTAGANDA** and his co-perpetrators needed a constant supply of soldiers in their ranks. To achieve this, they enlisted and conscripted young persons, including children under the age of 15, into the UPC between on or about August 2002 and December 2003, trained them, and then used them to participate actively in hostilities between on or about August 2002 and 30 May 2003. The commission of these crimes occurred throughout Ituri.

624. The extensive, coordinated nature of the UPC's recruitment and use of a large number of children, including those under the age of 15, demonstrates that these were not isolated or rare instances. It also demonstrates that the UPC leadership, including **NTAGANDA**, was aware of the recruitment into and use of these children by its forces. Moreover, throughout the period of the charges there was never a genuine intention to cease the recruitment of these children or to effect their demobilisation from the UPC.

625. **NTAGANDA** knew or should have known that the children recruited into the UPC and used to participate actively in hostilities were under the age of 15. His order and those from LUBANGA and KISEMBO to demobilise children within their ranks prove their presence in the UPC, and **NTAGANDA**'s knowledge of their presence as well as the knowledge of his co-perpetrators. The need to issue demobilisation orders throughout the period of the charges (in October 2002; January, February and June 2003), proves in itself that the UPC's recruitment and use of children continued unabated. It also shows that these demobilisation orders were not genuine, but shams created to ease pressure from local and international actors, as corroborated by witness testimony.

### 1. *Enlistment and conscription can be considered together*

626. Enlistment and conscription are both forms of recruitment.<sup>1876</sup> As these crimes are continuous in nature, their commission ends when either the child reaches the age of 15 or leaves the armed group.<sup>1877</sup>

627. Compulsion is required for the crime of conscription as distinguished from the crime of enlistment.<sup>1878</sup> Whether or not the element of compulsion has been established is a case by case determination.<sup>1879</sup> It can, for instance, be established by demonstrating that an individual joined the armed group due to, *inter alia*, a legal obligation, use of brute force, threat of force or psychological pressure amounting to coercion.<sup>1880</sup> There is no requirement to demonstrate a lack of consent or that the act is against the conscripted child's will.<sup>1881</sup> Similarly, a child's consent is not a valid defence due to a child's lack of capacity or ability to give informed or genuine consent.<sup>1882</sup>

628. The Appeals Chamber has confirmed that Chambers may assess the evidence of the separate offences of enlistment and conscription together given their overlapping legal requirements,<sup>1883</sup> *"as long as it is clearly stipulated which facts establish the legal requirements that are different for each crime"*.<sup>1884</sup>

### 2. *Children under the age of 15 were recruited into the UPC*

629. Between on or about 6 August 2002 and 31 December 2003, the UPC undertook a massive, organised campaign throughout Ituri to conscript and enlist soldiers in

---

<sup>1876</sup> *Lubanga TJ*, para.607.

<sup>1877</sup> *Lubanga TJ*, paras.618 and 759, citing *Lubanga DCC*, para.248 and *Nahimana AJ*, para.721.

<sup>1878</sup> *Lubanga AJ*, paras.4, 278.

<sup>1879</sup> *Lubanga AJ*, para.273.

<sup>1880</sup> *Lubanga AJ*, para.278.

<sup>1881</sup> *Lubanga AJ*, paras.301-303.

<sup>1882</sup> *Lubanga AJ*, para.300; also: *Lubanga TJ*, para.617.

<sup>1883</sup> *Lubanga AJ*, paras.307, 311. The Appeals Chamber did not consider whether 'enlistment', 'conscription' and 'use to participate actively in hostilities' are separate crimes or different prescribed conducts of one crime, as this was not a ground of appeal raised by either party, and proceeded on the basis that they are separate crimes (*Lubanga AJ*, para.38 with Judge Song dissenting on this issue).

<sup>1884</sup> *Lubanga AJ*, para. 311.

large numbers in order to increase its troop strength.<sup>1885</sup> According to P-116, [REDACTED], the UPC recruited children into its ranks in 2002 “because the UPC was striving to consolidate its position as a strong political movement in the Ituri region”.<sup>1886</sup> Military insider P-55 testified that this recruitment took place: “partout, à différents endroits. Des cadres se promenaient partout pour chercher des jeunes gens afin de rejoindre le groupe armé.”<sup>1887</sup>

630. The UPC recruitment campaign targeted people of all ages, including children under the age of 15.<sup>1888</sup> In the words of P-14, “*parmi les enfants qui ont été recrutés, il s’agissait pratiquement de n’importe qui, sans tenir compte d’âge, sans tenir compte de l’aspect santé et consorts.*”<sup>1889</sup>

631. The UPC recruited children who, by their physical appearance, were manifestly under the age of 15. Many witnesses described how the military uniforms given to these children were ill-fitting due to their small size.<sup>1890</sup> Children were deliberately targeted for recruitment because they were obedient, bellicose and fearless as they did not fully grasp the consequences of their actions and were

<sup>1885</sup> **P-55:**[T-70-CONF-ENG-CT](#),60:21-61:7;**T-71-CONF-ENG-CT**,63:1-10; **P-14:**[DRC-OTP-2054-0429](#),p.0481:7-p.0489:19;[DRC-OTP-2054-0612](#),p.0636:7-p.0638:4;[DRC-OTP-2054-0816](#),p.0826:13-p.0829:4,p.0830:2-15; **P-963:**[T-78-CONF-ENG-ET](#),39:16-18; **P-898:**[T-153-CONF-ENG-ET](#),57:11-58:-25; **P-769:**[T-120-CONF-ENG-ET](#),14:22-19:5; **P-907:**[T-89-CONF-ENG-CT](#),13:5-14:11,19:23-20:18,35:25-36:4; **P-46:**[T-100-CONF-ENG-CT](#),49:14-52:16,93:23,95:3-8; **P-31:**[DRC-OTP-2054-3760](#),p.3778:12-p.3779:2; **DRC-OTP-2067-1914**,p.1916,para.10; [DRC-OTP-0074-0422](#),p.0462,para.143; [DRC-OTP-0074-0797](#),p.0850-0851. Also: **P-116:**[DRC-OTP-0174-0025](#),p.0031,paras.27-36;[DRC-OTP-2054-4494](#),p.4589:3-24;[T-195-CONF-ENG-ET](#),22:4-23. Indeed, the UPC Statute even refers to efforts to “mobiliser, organiser et encadrer la jeunesse congolaise” (see: [DRC-OTP-0091-0039](#),p.0046, articles 51 and 52).

<sup>1886</sup> **P-116:**[DRC-OTP-2054-4494](#),p.4589:13-23. Also: **P-31:**[T-175-CONF-ENG-ET](#),15:21-16:4.

<sup>1887</sup> **P-55:**[T-71-CONF-ENG-CT](#),65:19-66:7[[T-71-CONF-FRA-CT](#),66:26-27]

<sup>1888</sup> **P-768:**[T-34-CONF-ENG-CT](#),49:8-11,50:24-51:3; **P-898:**[T-153-CONF-ENG-ET](#),51:4-53:12,57:11-59:12;[T-154-CONF-ENG-ET](#),78:17-79:5;[T-155-CONF-ENG-ET](#),59:11-60:24; **P-758:**[T-160-CONF-ENG-ET](#),88:3-90:11,[T-161-CONF-ENG-ET](#),9:6-11:17; **P-883:**[T-168-CONF-ENG-ET](#),3:15-7:6,31:2-21; **P-10:**[T-46-CONF-ENG-ET](#),28:21-31:21;[T-47-CONF-ENG-CT](#),51:9-52:13; **P-190:**[T-96-CONF-ENG-CT](#),88:8-25; **P-16:**[DRC-OTP-2054-1447](#),p.1461:20-p.1462:3,p.1470:14-p.1471:15; **P-963:**[T-80-CONF-ENG-ET](#),12:9-13:12; **P-14:**[T-137-CONF-ENG-ET](#),4:16-7:1; **P-116:**[T-195-CONF-ENG-ET](#),33:15-37:12;[DRC-OTP-2054-6975](#),p.7035:15-p.7038:25; **P-46:**[T-100-CONF-ENG-CT](#),73:10-75:10; **P-976:**[DRC-OTP-2054-2599](#),p.2649:2-p.2650:14; **P-41:**[DRC-OTP-2054-5199](#),p.5246:8-17;[DRC-OTP-0147-0002](#),p.0028,paras.166-167; **P-31:**[DRC-OTP-2054-3760](#),p.3839:5-6,p.3784:2-3786:22; [DRC-OTP-0152-0286](#),p.0309-0310,paras.85-90; [DRC-OTP-0074-0422](#),p.0462,paras.143-145; [DRC-OTP-0074-0797](#),p.0851.

<sup>1889</sup> **P-14:**[DRC-OTP-2054-0816](#),p.0851:12-15 [[DRC-OTP-2054-0888](#),p.0923:9-11].

<sup>1890</sup> **P-963:**[T-80-CONF-ENG-ET](#),14:6-10; **P-290:**[T-65-CONF-ENG-CT](#),42:24-43:3; **P-17:**[T-58-CONF-ENG-CT](#),53:8-20; **P-10:**[T-47-CONF-ENG-CT](#),5:18-7:25; **P-190:**[T-96-CONF-ENG-CT](#),90:22-91:9,[T-97-CONF-ENG-CT](#),46:6-12; **P-14:**[T-136-CONF-ENG-ET](#),39:2-9; **P-30:**[T-144-CONF-ENG-ET](#),34:22-35:20; **P-892:**[T-85-CONF-ENG-CT](#),18:2-14; **P-912:**[T-148-CONF-ENG-ET](#),55:2-15; **P-886:**[T-37-CONF-ENG-ET](#),10:22-11:1.

easily exploited.<sup>1891</sup> They were also seen to be undemanding.<sup>1892</sup>

632. Young children in the UPC were referred to as “*kadogo*,” a Swahili word meaning small or young one.<sup>1893</sup> During his testimony, NTAGANDA proffered that *kadogo* meant thin and had nothing to do with age.<sup>1894</sup> This explanation is not credible; it is contradicted by the evidence of numerous witnesses who unequivocally and consistently testified that *kadogo* referred to minors in the UPC.

633. A conservative estimate by P-46 and MONUC’s Child Protection Section was that 40% of the UPC troops were under the age of 18, with a “*significant minority*” below the age of 15.<sup>1895</sup> P-31 stated that over 80% of the approximately 168 children, between 9 and 17 years old who [REDACTED], had been child soldiers in the UPC.<sup>1896</sup>

634. Contemporaneous logbooks recording the entry and exit of children from a demobilisation centre in Bunia illustrate the volume of children under the age of 15 in the UPC and the systemic nature of the plan to recruit and use children.<sup>1897</sup> P-31 [REDACTED] between 2002 and 2004 and found that a large number of the children [REDACTED] were from the UPC.<sup>1898</sup> A list of soldiers being integrated from armed groups into the FARDC in 2005 shows the significant presence of

<sup>1891</sup> **P-14:**[DRC-OTP-2054-0612](#),p.0634:7-25;[DRC-OTP-2054-0816](#),p.0835:12-p.0837:13,p.0854:13-18; **P-963:**[T-80-CONF-ENG-ET](#),32:11-14; **P-976:**[DRC-OTP-2054-2801](#),p.2822:9-19,[DRC-OTP-2054-2599](#),p.2651:22-p.2652:2; **P-886:**[T-38-CONF-ENG-CT](#),6:25-7:8; **P-365:**[T-147-CONF-ENG-ET](#),48:18-50:13,51:20-52:2.

<sup>1892</sup> **P-963:**[T-80-CONF-ENG-ET](#),32:11-17.

<sup>1893</sup> **P-768:**[T-34-CONF-ENG-CT](#),49:12-15; **P-55:**[T-71-CONF-ENG-CT](#),68:14-24; **P-901:**[T-29-CONF-ENG-CT](#),51:13-52:22[[T-29-CONF-FRA-CT](#),53:17-54:26];[T-30-CONF-ENG-CT](#),39:25-40:7; **P-907:**[T-89-CONF-ENG-CT](#),28:18-29:9; **P-963:**[T-80-CONF-ENG-ET](#),9:16-10:8,35:6-11; **P-17:**[T-59-CONF-ENG-CT](#),43:12-21; **P-883:**[T-168-CONF-ENG-ET](#),12:15-21; **P-10:**[T-46-CONF-ENG-ET](#),40:22-41:1; **P-898:**[T-153-CONF-ENG-ET](#),57:20-58:3; **P-888:**[T-105-CONF-ENG-CT](#),27:14-15; **P-14:**[T-136-CONF-ENG-ET](#),37:24-39:9; **P-365:**[T-148-CONF-ENG-ET](#),3:19-23; **P-886:**[T-37-CONF-ENG-ET](#),64:10-65:15; [T-40-CONF-ENG-CT](#),44:17-45:8; **P-113:**[T-118-CONF-ENG-CT](#),51:13-19.

<sup>1894</sup> **D-300:**[T-209-CONF-ENG-ET](#),34:15-35:11;[T-211-CONF-ENG-ET](#),24:12-25:4;[T-224-CONF-ENG-ET](#),73:11-75:19.

<sup>1895</sup> [DRC-OTP-0074-0422](#),p.0461,para.141; **P-46:**[T-101-CONF-ENG-ET](#),4:7-5:24.

<sup>1896</sup> **P-31:**[DRC-OTP-2054-3760](#),p.3784:2-p.3785:6,p.3786:1-8.

<sup>1897</sup> [REDACTED]; [DRC-OTP-0160-0190](#),p.0191-0230; [DRC-OTP-0160-0002](#),p.0004-0049. Also: [DRC-OTP-0140-0510](#) [REDACTED];[DRC-OTP-0138-0106](#) [REDACTED].

<sup>1898</sup> **P-31:**[DRC-OTP-2054-3760](#),p.3783:16-p.3784:23,p.3786:14-p.3787:22.

children under the age of 15 who were still in the UPC.<sup>1899</sup>

635. As illustrated by the accounts of the child soldier witnesses, the UPC abducted children under the age of 15, and forcibly incorporated them into their ranks.<sup>1900</sup> Children were forcibly recruited from schools<sup>1901</sup> and taken from the streets by UPC soldiers to training camps,<sup>1902</sup> including by NTAGANDA personally.<sup>1903</sup>

636. Coupled with the practice of abducting children and conscripting them into military service, the UPC also exerted pressure on families in UPC-controlled areas to support the war effort. The systematic use of intimidation, threats of force and psychological pressure amounted to coercion.

637. The UPC demanded that each Hema family provide a child or, if they did not have a child, financial support or food.<sup>1904</sup> Children under the age of 15 were not exempt from this forced recruitment.<sup>1905</sup> Parents who refused would face sanction or imprisonment.<sup>1906</sup> Communities were also intimidated and threatened with not being protected against Lendu attacks if they refused to provide their children.<sup>1907</sup> In the context of an ethnic war, this was a serious threat, and the UPC preyed

<sup>1899</sup> [DRC-OTP-0138-0027](#),p.0027-p.0029,p.0035-p.0038.

<sup>1900</sup> [P-55:T-71-CONF-ENG-CT](#),66:3-68:7; [P-10:T-46-CONF-ENG-ET](#),28:21-31:21; [P-5:T-185-CONF-ENG-ET](#),7:3-13; [T-185-CONF-FRA-ET](#),7:2-20],8:20-12:4; [P-46:T-100-CONF-ENG-CT](#),59:22-63:18; [T-102-CONF-ENG-CT](#),12:12-13:14; [DRC-OTP-0074-0797](#),p.0850-0851.

<sup>1901</sup> [P-190:T-97-CONF-ENG-CT](#),37:18-39:8; [P-14:T-136-CONF-ENG-ET](#),42:22-43:13; [T-137-CONF-ENG-ET](#),5:7-5:13; [P-31:DRC-OTP-2054-3760](#),p.3777:11-21, p.3787:8-14; [P-46:T-100-CONF-ENG-CT](#),50:19-52:5; [DRC-OTP-0074-0797](#),p.0851.

<sup>1902</sup> [P-883:T-168-CONF-ENG-ET](#),6:23-7:6,31:7-21; [P-14:DRC-OTP-2054-0816](#),p.0851:3-p.0853:1; [T-136-CONF-ENG-ET](#),42:22-43:3; [P-46:T-100-CONF-ENG-CT](#),78:3-24; [DRC-OTP-0152-0274](#),p.0277(20),p.0280(23),p.0282(30); [DRC-OTP-0152-0286](#),p.0309, para.88; [DRC-OTP-0074-0422](#),p.0462,para.143.

<sup>1903</sup> [P-190:T-96-CONF-ENG-CT](#),88:13-90:21; [T-97-CONF-ENG-CT](#),31:2-35:8,39:9-40:18; [T-99-CONF-ENG-CT](#),49:22-54:6;98:12-99:5; [P-888:T-105-CONF-ENG-CT](#),16:6-18,17:16-20:16; [P-14:T-136-CONF-ENG-ET](#),42:22-46:1.

<sup>1904</sup> [P-55:T-71-CONF-ENG-CT](#),67:19-68:3; [P-963:T-78-CONF-ENG-ET](#),29:6-30:22,36:3-18; [P-14:T-137-CONF-ENG-ET](#),4:16-5:25; [P-41:DRC-OTP-0147-0002](#),p.0028,paras.162-164; [P-31:DRC-OTP-2054-3760](#),p.3788:13-20, [DRC-OTP-2054-4308](#),p.4309:10-p.4311:24; [P-894:DRC-OTP-2076-0194-R02](#),p.0202,para.42; [P-12:T-164-CONF-ENG-ET](#),26,1:-27:4; [P-57:DRC-OTP-0150-0354](#),p.0373,paras.85-86; [P-46:T-100-CONF-ENG-CT](#),51:2-51:7; [DRC-OTP-0074-0797](#),p.0851.

<sup>1905</sup> [P-55:T-71-CONF-ENG-CT](#),66:3-68:7; [P-14:T-137-CONF-ENG-ET](#),3:19-7:1; [DRC-OTP-2054-0816](#),p.0851:5-15; [P-898:T-155-CONF-ENG-ET](#),58:23-59:9.

<sup>1906</sup> [P-41:DRC-OTP-0147-0002](#),p.0028,paras.162-164; [P-976:DRC-OTP-2054-2599](#),p.2686:17-p.2687:17; [P-31-DRC-OTP-2054-3760](#),p.3788:13-20.

<sup>1907</sup> [P-963:T-78-CONF-ENG-ET](#),36:3-11; [P-901:T-27-CONF-ENG-CT](#),61:6-11,68:4-69:17; [P-877:T-109-CONF-ENG-ET](#),48:7-50:4; [T-109-CONF-FRA-ET](#),41:8-42:26].



upon the fear and vulnerability of the population, particularly the Hema. Villages were left with little choice but to give their children to the UPC.

638. For example, [REDACTED] NTAGANDA and KAHWA told the population of [REDACTED] that if they did not join the army, their village would be left undefended.<sup>1908</sup> Shortly thereafter vehicles were loaded with recruits, including children under the age of 15, and driven to Mandro camp for training.<sup>1909</sup>

639. The UPC also relied on propaganda messages transmitted by emissaries, elders, community and religious leaders – mainly Hema – to recruit and to raise financial and logistical support.<sup>1910</sup> UPC commanders, including NTAGANDA, held public meetings where children, as well as adults, were pressured to join the UPC as there was no age restriction on recruitment.<sup>1911</sup>

640. NTAGANDA attended meetings with community leaders demanding that children be sent to the UPC for military training.<sup>1912</sup> People had no choice but to give their children.<sup>1913</sup>

641. Some parents tried to get their children back.<sup>1914</sup> P-17 saw the mother of a 12-year old come to the entrance of a camp near Kilo for days, crying and asking for

---

<sup>1908</sup> [REDACTED].

<sup>1909</sup> [REDACTED].

<sup>1910</sup> **P-901:**[T-27-CONF-ENG-CT](#),66:24-67:3,68:18-69:17; **P-55:**[T-71-CONF-ENG-CT](#),63:14-64:3,65:19-66:2,76:4-7; **P-17:**[T-59-CONF-ENG-CT](#),42:15-19,44:2-13; **P-41:**[DRC-OTP-0147-0002](#),p.0027,para.161; **P-14:**[DRC-OTP-2054-0612](#),p.0625:8-0628:2,[DRC-OTP-2054-0816](#),p.0830:16-p.0834:3; **P-31:**[DRC-OTP-2054-3760](#),p.3787:5-22;[DRC-OTP-2054-4308](#),p.4309:12-25; **P-116:**[T-195-CONF-ENG-ET](#),14:23-15:23,[T-196-CONF-ENG-ET](#),10:1-12:17,[DRC-OTP-2054-4494](#),p.4590:14-p.4591:3; **P-46:**[T-100-CONF-ENG-CT](#),51:2-51:20; [DRC-OTP-0152-0286](#),p.0310,para.90.

<sup>1911</sup> **P-17:**[T-59-CONF-ENG-CT](#),42:15-19,44:2-13; **P-963:**[T-78-CONF-ENG-ET](#),36:3-18; **P-768:**[T-34-CONF-ENG-CT](#),49:8-11,56:15-57:4; **P-10:**[T-47-CONF-ENG-CT](#),51:9-52:13; **P-14:**[DRC-OTP-2054-0816](#) p.0851:3-p.0852:6; **P-31:**[DRC-OTP-2054-3760](#),p.3790:13-3791:16; **P-877:**[DRC-OTP-2077-0118-R03](#),p.0123,para.28;[DRC-OTP-2069-2086-R03](#),p.2091,para32;[T-109-CONF-ENG-ET](#),48:7-50:4[[T-109-CONF-FRA-ET](#),41:8-42:26].

<sup>1912</sup> **P-901:**[T-27-CONF-ENG-CT](#),60:15-61:11,66:24-67:3,68:4-69:17;[T-32-CONF-ENG-CT](#),55:20-57:3; **P-10:**[T-47-CONF-ENG-CT](#),51:9-52:13; **P-918:**[T-155-CONF-ENG-ET](#),79:12-83:4.

<sup>1913</sup> **P-901:**[T-27-CONF-ENG-CT](#),69:14-17; **P-46:**[T-101-CONF-ENG-ET](#),83:6-83:13; **P-14:**[DRC-OTP-2054-0816](#),p.0836:21-p.0837:13;[T-137-CONF-ENG-ET](#),10:4-11:6. Also: [DRC-OTP-0109-0136](#),p.0140-0141(para.7) (see: **P-14:**[T-136-CONF-ENG-ET](#),48:20-53:20).

<sup>1914</sup> **P-918:**[T-155-CONF-ENG-ET](#),83:12-85:25; **P-883:**[T-168-CONF-ENG-ET](#),61:8-23; **P-55:**[T-71-CONF-ENG-CT](#),70:17-20,87:2-88:18; **P-46:**[T-101-CONF-ENG-ET](#),83:5-13.

her son as he was only 12. She was eventually chased away by UPC soldiers.<sup>1915</sup>

642. For children under the age of 15 who seemingly joined the UPC ‘voluntarily’, their enlistment was often motivated by factors such as a desire to avenge the death of family members killed (or allegedly killed) by the militias opposing the UPC,<sup>1916</sup> the effects of social or community pressures and propaganda,<sup>1917</sup> the desire to protect their family or community,<sup>1918</sup> and/or the desperately coercive circumstances in which the children found themselves in urgent need of protection and food.<sup>1919</sup>

### 3. UPC trained children in training camps throughout Ituri

643. In order to build their army, the UPC sent recruits, including those under the age of 15, for military training to various camps throughout Ituri,<sup>1920</sup> including in Mandro,<sup>1921</sup> Lingo,<sup>1922</sup> Rwampara,<sup>1923</sup> Bule,<sup>1924</sup> Sota,<sup>1925</sup> Mongbwalu,<sup>1926</sup> Bunia,<sup>1927</sup>

<sup>1915</sup> [P-17:T-59-CONF-ENG-CT](#),44:2-24[[T-59-CONF-FRA-CT](#),44:17-45:14].

<sup>1916</sup> [P-365:T-148-CONF-ENG-ET](#),4:8-5:2; [P-898:T-153-CONF-ENG-ET](#),51:4-52:22; [P-46:T-102-CONF-ENG-CT](#),63:15-63:21; [DRC-OTP-0152-0274](#),p.0274 (ref 1),p.0280 (ref 26).

<sup>1917</sup> [P-31:DRC-OTP-2054-3760](#),p.3787:15-22; [P-551:DRC-OTP-2095-0376-R01](#), p.0383,para.34; [P-41:DRC-OTP-0147-0002](#),p.0027,paras.161; [P-365:T-148-CONF-ENG-ET](#),4:8-5:2.

<sup>1918</sup> [P-898:T-153-CONF-ENG-ET](#),51:4-52:22;[T-154-CONF-ENG-ET](#),71:16-75:21; [P-14:T-137-CONF-ENG-ET](#),5:7-25; [P-290:T-66-CONF-ENG-CT](#),65:4-9; [P-46:T-102-CONF-ENG-CT](#),63:15-25.

<sup>1919</sup> [P-907:T-89-CONF-ENG-CT](#),24:25-25:13; [P-918:T-155-CONF-ENG-ET](#),82:9-83:4; [P-16:DRC-OTP-0126-0422-R03](#),p.0465,para.251; [P-365:T-148-CONF-ENG-ET](#),4:8-5:2; [P-31:T-174-CONF-ENG-ET](#),23:9-26:1.

<sup>1920</sup> [P-14:T-137-CONF-ENG-ET](#),86:24-88:24; [DRC-OTP-0074-0422](#),p.0463,para.147.

<sup>1921</sup> [P-901:T-27-CONF-ENG-CT](#),66:9-23; [P-190:T-97-CONF-ENG-CT](#),38:15-39:8,44:1-8; [P-55:T-71-CONF-ENG-CT](#),64:4-10; [P-769:T-120-CONF-ENG-ET](#),41:23-42:11,53:14-25; [P-907:T-89-CONF-ENG-CT](#),18:20-20:18; [P-888:T-105-CONF-ENG-CT](#),16:17-17:5,26:9-27:8; [P-898:T-153-CONF-ENG-ET](#),55:23-56:17,57:11-58:8;[T-155-CONF-ENG-ET](#),34:17-38:13; [P-768:T-34-CONF-ENG-CT](#),48:20-25,50:17-23,51:15-20,52:16-18; [P-10:T-46-CONF-ENG-ET](#),41:11-42:21; [P-17:T-58-CONF-ENG-CT](#),36:14-17;[T-60-CONF-ENG-ET](#),36:18-22; [P-963:T-78-CONF-ENG-ET](#),28:11-18,29:4-5,31:21-32:8,38:4-7,54:14-21; [P-14:DRC-OTP-2054-0816](#),p.0834:4-p.0835:11;[T-137-CONF-ENG-ET](#),86:24-87:12; [P-16:DRC-OTP-2054-1447](#),p.1461:4-p.1463:20; [P-901:T-27-CONF-ENG-CT](#),60:15-61:11; [P-46:T-100-CONF-ENG-CT](#),81:17-82:13(see: [DRC-OTP-0208-0284](#),p.0287(ref.11),p.0307(ref.70)); [DRC-OTP-0082-0016](#); [DRC-OTP-0074-0797](#),p.0851.

<sup>1922</sup> [P-758:T-160-CONF-ENG-ET](#),88:3-24;[T-161-CONF-ENG-ET](#),9:6-11:17; [DRC-OTP-2081-0009](#).

<sup>1923</sup> [P-31:T-174-CONF-ENG-ET](#),23:9-25:22,106:12-108:9; [P-17:T-58-CONF-ENG-CT](#),36:14-17; [P-901:T-29-CONF-ENG-CT](#),50:11-51:25; [P-10:T-46-CONF-ENG-ET](#),31:22-33:12; [P-55:T-71-CONF-ENG-CT](#),68:25-70:41; [P-898:T-153-CONF-ENG-ET](#),55:23-56:1,57:11-19;[T-155-CONF-ENG-ET](#),7:16-8:4; [P-46:T-100-CONF-ENG-CT](#),67:4-70:22,78:16-79:5; [DRC-OTP-0120-0293](#); [DRC-OTP-0074-0797](#),p.0851.

<sup>1924</sup> [P-883:T-168-CONF-ENG-ET](#),15:20-18:1; [P-14:T-137-CONF-ENG-ET](#),87:24-88:9; [P-17:T-58-CONF-ENG-CT](#),36:14-17;[T-60-CONF-ENG-ET](#),36:18-22; [P-901:T-29-CONF-ENG-CT](#),50:11-15,51:20-25; [P-963:T-80-CONF-ENG-ET](#),37:9-13.

<sup>1925</sup> [P-55:T-71-CONF-ENG-CT](#),81:14-82:2; [P-14:T-137-CONF-ENG-ET](#),87:10-23.

<sup>1926</sup> [P-17:T-58-CONF-ENG-CT](#),36:14-17;[T-60-CONF-ENG-ET](#),36:18-22; [P-963:T-78-CONF-ENG-ET](#),55:18-21;[T-80-CONF-ENG-ET](#),12:9-13:15; [P-907:T-89-CONF-ENG-CT](#),54:1-13.

Fataki,<sup>1928</sup> Aru,<sup>1929</sup> Kilo,<sup>1930</sup> and Mont Awa.<sup>1931</sup> The training was meant to prepare the children for active participation in hostilities.

644. Many of the recruits that P-14 saw being trained at the UPC headquarters in Bunia in July and August 2002 were under the age of 15.<sup>1932</sup> They were in a classroom learning how to shoot at a target, how to fall without hurting themselves, about war tactics and obeying their commanders.<sup>1933</sup> **NTAGANDA** visited the UPC headquarters on an almost daily basis to check on the progress of the recruits; no one at the headquarters could have avoided seeing the children present there.<sup>1934</sup> P-14 also saw soldiers at KAKWAVU's headquarters in March or April 2003 trying to disarm a young child who refused to cede his weapon. He heard the child say they would have to kill him first as: *"le commandant Bosco m'a tout appris, il m'a appris que mon arme était mon père, ma mère, mon frère, ma soeur et mon épouse. C'est tout pour moi"*.<sup>1935</sup>

645. Boys and girls under the age of 15 recruited for military training by the UPC received the same training and treatment as adults.<sup>1936</sup> Living conditions in the training camps were harsh.<sup>1937</sup> Recruits were fed inadequately and slept outside

<sup>1927</sup> **P-14:**[DRC-OTP-2054-0429](#),p.0490:11-p.0491:3,p.0494:19-p.0496:21;[T-136-CONF-ENG-ET](#),32:7-17;[T-137-CONF-ENG-ET](#),7:12-8:4; **P-55:**[T-71-CONF-ENG-CT](#),64:11-16; **P-17:**[T-60-CONF-ENG-ET](#),83:8-21; **P-769:**[T-120-CONF-ENG-ET](#),28:22-29:23.

<sup>1928</sup> **P-14:**[T-137-CONF-ENG-ET](#),87:24-88:9; **P-55:**[T-71-CONF-ENG-CT](#),64:11-16;[T-74-CONF-ENG-CT](#),34:18-22.

<sup>1929</sup> **P-55:**[T-71-CONF-ENG-CT](#),64:11-16.

<sup>1930</sup> **P-17:**[T-59-CONF-ENG-CT](#),42:13-19,44:2-13.

<sup>1931</sup> **P-768:**[T-34-CONF-ENG-CT](#),53:10-54:6; **P-46:**[T-100-CONF-ENG-CT](#),62:21-63:18.

<sup>1932</sup> **P-14:**[DRC-OTP-2054-0429](#),p.0490:21-25,p.0502:3-7,p.0511:4-p.0516:4;[DRC-OTP-2054-0816](#),p.0846:25-p.0847:10;[T-136-CONF-ENG-ET](#),37:9-39:17.

<sup>1933</sup> **P-14:**[DRC-OTP-2054-0429](#),p.0511:4-18,p.0516:5-15.

<sup>1934</sup> **P-14:**[DRC-OTP-2054-0429](#),p.0490:21-p.0491:3;[T-136-CONF-ENG-ET](#),32:7-34:1,37:9-40:14; **P-290:**[T-65-CONF-ENG-CT](#),50:25-51-12,52:3-11; **P-769:**[T-120-CONF-ENG-ET](#),41:14-20; **P-46:**[T-101-CONF-ENG-ET](#),78:8-79:4.

<sup>1935</sup> **P-14:**[DRC-OTP-2054-0816](#),p.0841:8-p.0843:14[[DRC-OTP-2054-0888](#),p.0912:23-p.0915:8];[T-136-CONF-ENG-ET](#),40:15-41:7[[T-136-CONF-FRA-ET](#),39:7-28].

<sup>1936</sup> **P-758:**[T-161-CONF-ENG-ET](#),9:25-10:11,13:8-11; **P-10:**[T-48-CONF-ENG-CT](#),20:5-22; **P-907:**[T-89-CONF-ENG-CT](#),26:1-12,28:18-29:2;[T-90-CONF-ENG-CT](#),77:3-11; **P-883:**[T-168-CONF-ENG-ET](#),26:22-27:22,30:22-31:6;[T-170-CONF-ENG-ET](#),8:7-9:5; **P-768:**[T-34-CONF-ENG-CT](#),50:19-51:10; **P-963:**[T-80-CONF-ENG-ET](#),24:10-18; **P-16:**[DRC-OTP-0126-0422-R03](#),p.0465-0466,para.253; **P-14:**[DRC-OTP-2054-0429](#),p.0511:4-p.0515:21; **P-769:**[T-120-CONF-ENG-ET](#),36:4-39:12,40:5-12; **P-55:**[T-71-CONF-ENG-CT](#),75:20-76:3,77:7-21.

<sup>1937</sup> **P-758:**[T-161-CONF-ENG-ET](#),10:14-22,37:16-23; **P-883:**[T-168-CONF-ENG-ET](#),6:17-20,11:21-12:14,15:1-6,25:19-22; **P-888:**[T-105-CONF-ENG-CT](#),22:11-23:6,33:19-36:17; **P-898:**[T-153-CONF-ENG-ET](#),52:11-

without proper shelter.<sup>1938</sup>

646. By contrast, D-17 described good sanitary conditions and enough food at the training camp.<sup>1939</sup> Given the volume of credible evidence from other military personnel to the contrary, the Chamber should approach this evidence with extreme caution. For instance, P-907 testified about eating rotten, infested beans and rice, and having lice in his clothes.<sup>1940</sup> Child soldier witnesses provided consistent details, such as receiving food once a day spooned directly into their hands or shirts, and having to go without if they dropped it because it was too hot.<sup>1941</sup>

647. In addition to performing physical drills, learning basic military tactics and weapons training,<sup>1942</sup> recruits were indoctrinated through speeches and singing aggressive songs often disparaging towards or threatening to kill the Lendu population, who were identified as the 'enemy.'<sup>1943</sup> NTAGANDA acknowledged the importance of nightly "*kitamaduni*", when recruits would gather to sing revolutionary songs or songs about him to boost their morale.<sup>1944</sup>

648. Recruits at UPC training camps, whether conscripted or enlisted, were subjected to severe discipline such as beatings and whippings for stopping during

---

53:24;71:9-72:13,75:23-76:5;[T-154-CONF-ENG-ET](#),3:20-4:8,7:8-8-11; **P-907**:[T-90-CONF-ENG-CT](#),76:9-77:2;[T-91-CONF-ENG-CT](#),44:3-12; **P-14**:[DRC-OTP-2054-0612](#),p.0630:1-23; **P-46**:[T-101-CONF-ENG-ET](#),66:22-67:21.

<sup>1938</sup> **P-888**:[T-105-CONF-ENG-CT](#),22:18-22,33:4-9; **P-907**:[T-90-CONF-ENG-CT](#),76:9-77:2; **P-758**:[T-161-CONF-ENG-ET](#),10:14-22,11:23-12:6; **P-898**:[T-153-CONF-ENG-ET](#),71:9-72:13; **P-883**:[T-168-CONF-ENG-ET](#),30:19-31:6,28:1-11; **P-46**:[T-101-CONF-ENG-ET](#),67:22:24.

<sup>1939</sup> **D-17**:[T-252-CONF-ENG-ET](#),63:17-22,64:12-17.

<sup>1940</sup> **P-907**:[T-90-CONF-ENG-CT](#),76:10-15,76:23-24.

<sup>1941</sup> **P-888**:[T-105-CONF-ENG-CT](#),22:17-18; **P-898**:[T-153-CONF-ENG-ET](#),71:9-72:13; **P-883**:[T-168-CONF-ENG-ET](#),28:1-11.

<sup>1942</sup> **P-758**:[T-161-CONF-ENG-ET](#),10:12-11:10; **P-883**:[T-168-CONF-ENG-ET](#),15:20-16:5,17:21-18:1; **P-888**:[T-105-CONF-ENG-CT](#),16:19-17:5,23:24-26:5; **P-898**:[T-154-CONF-ENG-ET](#),6:19-7:7;[T-155-CONF-ENG-ET](#),21:21-24:3; **P-190**:[T-97-CONF-ENG-CT](#),45:23-46:5; **P-907**:[T-89-CONF-ENG-CT](#),14:25-15:13,26:13-27:25; **P-963**:[T-78-CONF-ENG-ET](#),39:2-5; **P-55**:[T-71-CONF-ENG-CT](#),75:20-76:3,77:7-21; **P-14**:[T-136-CONF-ENG-ET](#),32:12-33:3; **P-769**:[T-120-CONF-ENG-ET](#),30:6-24,40:16-41:8; **P-46**:[T-101-CONF-ENG-ET](#),69:22-71:3.

<sup>1943</sup> **P-758**:[T-161-CONF-ENG-ET](#),11:14-17,34:24-35:19,37:20-23; **P-888**:[T-105-CONF-ENG-CT](#),37:8-22; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0432-0433,paras.56-58; **P-190**:[T-97-CONF-ENG-CT](#),32:15-33:7; **P-10**:[T-46-CONF-ENG-ET](#),33:9-14,41:1-5,[T-47-CONF-ENG-CT](#),48:12-13,[T-47-CONF-ENG-CT](#),41:20-43:5; **P-769**:[T-120-CONF-ENG-ET](#),31:13-32:24; **P-31**:[DRC-OTP-2054-4308](#),p.4313:6-12.

<sup>1944</sup> **D-300**:[T-213-CONF-ENG-CT](#),65:8-10,66:10-11.

exercises, and threatened with death for attempting to escape.<sup>1945</sup> Those who were caught while trying to flee were killed.<sup>1946</sup>

649. At the end of training, recruits were provided with a uniform and weapon and deployed.<sup>1947</sup> There was no distinction made on the basis of age.<sup>1948</sup> P-901 was present for a 'promotion' at Rwampara, which included boys and girls under the age of 15.<sup>1949</sup>

650. NTAGANDA was in charge of recruitment and training for the UPC.<sup>1950</sup> He visited and inspected training camps, saw children under the age of 15 being trained and encouraged them.<sup>1951</sup> NTAGANDA attended ceremonies at the end of training and personally handed-out weapons to recruits.<sup>1952</sup> He decided where to

<sup>1945</sup> [P-758:T-161-CONF-ENG-ET](#),18:9-19:19; [P-883:T-168-CONF-ENG-ET](#),12:3-18,25:14-26:2; [P-888:T-105-CONF-ENG-CT](#),40:10-41:3; [P-898:T-154-CONF-ENG-ET](#),7:8-8:1 ; [P-963:T-80-CONF-ENG-ET](#),26:12-27:9; [P-907:T-89-CONF-ENG-CT](#),28:18-29:2;[T-90-CONF-ENG-CT](#),77:19-78:19; [P-16:DRC-OTP-2054-1447](#),p.1490:11-p.1493:25; [P-10:T-46-CONF-ENG-ET](#),39:12-40:12,[T-48-CONF-ENG-CT](#),20:5-22; [P-46:T-100-CONF-ENG-CT](#),62:21-63:18;[T-101-CONF-ENG-ET](#),67:11:21; [P-14:DRC-OTP-2054-0612](#),p.0628:3-p.0629:4;[T-137-CONF-ENG-ET](#),7:12-8:25; [P-769:T-120-CONF-ENG-ET](#),34:10-19.

<sup>1946</sup> [P-16:DRC-OTP-2054-1447](#),p.1492:15-p.1493:25; [P-190:T-97-CONF-ENG-CT](#),32:15-33:7; [P-907:T-90-CONF-ENG-CT](#),78:13-15;[T-91-CONF-ENG-CT](#),49:24-51-12.

<sup>1947</sup> [P-963:T-78-CONF-ENG-ET](#),52:12-22;[T-80-CONF-ENG-ET](#),10:17-11:2; [P-758:T-161-CONF-ENG-ET](#),13:20-17:17,30:24-31:8,34:14-18; [P-10:T-46-CONF-ENG-ET](#),32:22-33:12,41:11-42:21,[T-47-CONF-ENG-CT](#),4:14-5:8; [P-55:T-71-CONF-ENG-CT](#),78:6-11,79:24-80:11,82:3-16; [P-16:DRC-OTP-2054-1447](#),p.1503:12-1506:17; [P-898:T-153-CONF-ENG-ET](#),56:18-57:10;[T-155-CONF-ENG-ET](#),9:13-10:20; [P-888:T-105-CONF-ENG-CT](#),26:6-8; [P-46:T-101-CONF-ENG-ET](#),69:22-70:23; [P-14:T-136-CONF-ENG-ET](#),41:4-7.

<sup>1948</sup> [P-911:T-160-CONF-ENG-ET](#),63:10-64:6; [P-55:T-71-CONF-ENG-CT](#),90:5-9; [P-290:T-65-CONF-ENG-CT](#),70:14-19;[T-67-CONF-ENG-CT](#),18:17-19:4; [P-901:T-29-CONF-ENG-CT](#),50:23-51:23,52:23:53:25; [P-907:T-89-CONF-ENG-CT](#),29:10-30:17.

<sup>1949</sup> [P-901:T-29-CONF-ENG-CT](#),50:23-52:14.

<sup>1950</sup> [P-768:T-34-CONF-ENG-CT](#),51:25-52:1; [P-963:T-78-CONF-ENG-ET](#),67:15-19; [P-907:T-89-CONF-ENG-CT](#),14:25-15:13; [P-17:T-60-CONF-ENG-ET](#),37:12-18; [P-55:T-70-CONF-ENG-CT](#),60:21-61:7;[T-71-CONF-ENG-CT](#),63:1-10; [P-41:DRC-OTP-0147-0002](#),p.0028,para.166;[DRC-OTP-2054-5199](#),p.5250:6-7; [P-901:T-27-CONF-ENG-CT](#),60:15-61:11,68:4-15;[T-29-CONF-ENG-CT](#),53:2-20;[T-32-CONF-ENG-CT](#),55:20-57:3; [P-46:T-100-CONF-ENG-CT](#),89:22-91:7; [P-14:T-136-CONF-ENG-ET](#),32:12-34:1,41:4-7; [P-31:T-174-CONF-ENG-ET](#),26:2-27:14; [P-12:T-164-CONF-ENG-ET](#),26,1:-27:4.

<sup>1951</sup> [P-17:T-58-CONF-ENG-CT](#),19:23-20:13; [P-769:T-120-CONF-ENG-ET](#),41:23-42:11; [P-963:T-78-CONF-ENG-ET](#),38:8-39:1; [P-14:T-136-CONF-ENG-ET](#),39:14-40:14; [P-55:T-71-CONF-ENG-CT](#),68:25-70:14,77:2-6; [P-16:DRC-OTP-0126-0422-R03](#),p.0465,para.252;[DRC-OTP-2054-1447](#),p.1466:7-p.1467:14; [P-907:T-89-CONF-ENG-CT](#),16:25-17:9,17:22-18:8; [P-758:T-161-CONF-ENG-ET](#),13:20-17:17; [P-888:T-105-CONF-ENG-CT](#),31:2-32:22; [P-898:T-153-CONF-ENG-ET](#),56:4-57:10;[T-154-CONF-ENG-ET](#),7:8-8:11; [P-883:T-168-CONF-ENG-ET](#),11:2-11,18:2-19:24,20:4-6;[T-170-CONF-ENG-ET](#),6:1-16; [P-290:T-65-CONF-ENG-CT](#),32:21-33:23,38:3-40:05,42:13-43:3,52:3-11,60:13-61:18; [P-190:T-97-CONF-ENG-CT](#),44:1-25;[T-97-CONF-ENG-CT](#),46:16-23; [P-46:T-100-CONF-ENG-CT](#),73:10-75:16,81:17-84:22 (see: [DRC-OTP-0208-0284](#),p.0287(ref.11),p.0307(ref.70),p.0310,para.91);[T-101-CONF-ENG-ET](#),78:8-17; [P-116:T-195-CONF-ENG-ET](#),28:5-29:9;[T-196-CONF-ENG-ET](#),6:8-9:24; [DRC-OTP-0120-0293](#).

<sup>1952</sup> [P-758:T-161-CONF-ENG-ET](#),13:20-17:17; [P-55:T-71-CONF-ENG-CT](#),79:24-80:11; [P-10:T-47-CONF-ENG-CT](#),4:14-5:8.

deploy the children and selected children as his escorts.<sup>1953</sup>

#### *4. Children under the age of 15 were used to participate actively in hostilities*

651. While the Court's legal texts do not define "use to participate actively in hostilities,"<sup>1954</sup> the Appeals Chamber has held that the phrase "participate actively in armed hostilities" should not be limited to direct participation in armed hostilities.<sup>1955</sup> Rather, the crime of "use" requires a link between the activity for which the child is used and the combat in which the armed group of the perpetrator is engaged.<sup>1956</sup>

652. The phrase "participate actively in hostilities" imports a wide interpretation to the activities and roles covered by the war crime of "using" children.<sup>1957</sup> It is not limited to direct participation in combat, but also active participation in activities such as those set out in the ICRC commentary on the Additional Protocols and in the Preparatory Committee's Draft Statute as a guide,<sup>1958</sup> including: gathering information; transmitting orders and military information; transporting arms, ammunition and foodstuffs; provision of supplies; acts of sabotage; scouting; spying; and use as decoys, couriers, or at military checkpoints.<sup>1959</sup> In any event, whether a particular activity falls within the scope of "participate actively in hostilities" cannot be determined in the abstract; rather, it is a case-by-case assessment.<sup>1960</sup>

653. There is ample evidence proving that between 6 August 2002 and 30 May 2003 the UPC used children to participate actively in hostilities in a variety of combat-

<sup>1953</sup> **P-14**:[DRC-OTP-2054-0429](#),p.0490:21-p.0491:3;[T-136-CONF-ENG-ET](#),32:7-34:1,37:9-40:14; **P-55**:[T-71-CONF-ENG-CT](#),82:13-24,89:12-90:4; **P-901**:[T-29-CONF-ENG-CT](#),50:23-51:23,52:23-53:25; **P-901**:[T-27-CONF-ENG-CT](#),60:15-61:11,68:4-15;[T-29-CONF-ENG-CT](#),53:2-20; **P-768**:[T-34-CONF-ENG-CT](#),52:8-15; **P-907**:[T-89-CONF-ENG-CT](#),27:23-28:14.

<sup>1954</sup> *Lubanga AJ*, para.322-335.

<sup>1955</sup> *Lubanga AJ*, paras.328, 334. Also: *Brima TJ* ('AFRC Case'), para.737.

<sup>1956</sup> *Lubanga AJ*, paras.333, 335, 340.

<sup>1957</sup> *Lubanga AJ*, para.340.

<sup>1958</sup> *Lubanga AJ*, para.335.

<sup>1959</sup> *Lubanga AJ*, paras.334 (referring to fns.616-618).

<sup>1960</sup> *Lubanga AJ*, para.335.



related activities and roles, and that **NTAGANDA** himself used children under the age of 15 from 6 August 2002 until March 2003.

**a. UPC used children as military guards on patrols and at roadblocks**

654. The UPC used children under the age of 15 as guards on patrols and at roadblocks. While at a UPC camp [REDACTED], P-758 conducted nightly patrols, raiding homes and arresting the inhabitants and then extorting money for their release.<sup>1961</sup> She was also posted at roadblocks [REDACTED], where her fellow soldiers would rape Hema and Bira civilian women attempting to pass, sometimes taking them as 'wives'.<sup>1962</sup> P-883 was also used on patrols with other *kadogo*.<sup>1963</sup>

655. When detained [REDACTED], P-57 was guarded by children under the age of 15.<sup>1964</sup> P-976 worked [REDACTED] in child protection [REDACTED]. [REDACTED].<sup>1965</sup> P-22 was imprisoned by the UPC in Kilo and guarded by armed and uniformed children.<sup>1966</sup>

**b. UPC used children in reconnaissance missions or as informants**

656. Children under the age of 15 were used by the UPC to perform reconnaissance, gather intelligence and act as spies because they were able to move around without raising suspicion. P-14 observed children aged from 7 to 13 years entering UPC headquarters to give information to the leaders.<sup>1967</sup> P-55 also knew of *kadogo* being used for reconnaissance.<sup>1968</sup>

657. Girl soldiers were used for reconnaissance and to gather intelligence prior to

<sup>1961</sup> [P-758:T-161-CONF-ENG-ET](#),53:3-10.

<sup>1962</sup> [P-758:T-161-CONF-ENG-ET](#),21:19-23:24,56:10-57:7; [P-365:T-147-CONF-ENG-ET](#),48:18-50:13,51:20-52:2.

<sup>1963</sup> [P-883:T-168-CONF-ENG-ET](#),28:25-29:24;[T-170-CONF-ENG-ET](#),9:6-10:6.

<sup>1964</sup> [P-57:DRC-OTP-0150-0354](#),p.0368,paras.63-64.

<sup>1965</sup> [P-976:DRC-OTP-2054-2599](#),p.2674:1-25-p.2675:21;[T-153-CONF-ENG-ET](#),5:17-6:23.

<sup>1966</sup> [P-22:DRC-OTP-0104-0026](#),p.0032-0033,paras.30-36.

<sup>1967</sup> [P-14:DRC-OTP-2054-0816](#),p.0835:12-p.0839:5.

<sup>1968</sup> [P-55:T-71-CONF-ENG-CT](#),89:12-90:4. Also: [P-898:T-154-CONF-ENG-ET](#),27:2-27:8; [P-31:DRC-OTP-2054-4127](#),p.4195:2-11.



battles.<sup>1969</sup> So-called “IS girls” would be given civilian clothes and ordered to go near enemy camps and attract the attention of enemy soldiers, who would let them into the camp to have sex with them thereby allowing the girls to gather intelligence such as the number of soldiers and the types of weapons they had.<sup>1970</sup> In addition to being forced to have sex with enemy soldiers, IS girls risked being discovered and killed.

### c. UPC had a kadogo unit

658. Within the UPC there was an entire platoon of *kadogo* referred to as the “Kadogo Unit,” some of whom were as young as 12.<sup>1971</sup> [REDACTED], witness P-887 saw child soldiers in [REDACTED] during the time KISEMBO was based there.<sup>1972</sup> The kadogo unit had both boys and girls in it.<sup>1973</sup> These children were part of the general staff and were stationed with KISEMBO, usually at his residence with the rest of his bodyguards.<sup>1974</sup>

### d. UPC used children in combat

659. The UPC used children under the age of 15 to participate directly in combat. Troops were deployed without regard to age.<sup>1975</sup> The children were often given alcohol and drugs prior to combat so that they would not be afraid.<sup>1976</sup> Children were positioned around the heavy weapons to guard them.<sup>1977</sup> P-907 described the

<sup>1969</sup> [P-365:T-147-CONF-ENG-ET](#),31:10-33:11; [P-758:T-161-CONF-ENG-ET](#),36:12-37:1.

<sup>1970</sup> [P-10:T-47-CONF-ENG-CT](#),46:4-50:6; [P-758:T-161-CONF-ENG-ET](#),36:12-37-6.

<sup>1971</sup> [P-17:T-60-CONF-ENG-ET](#),31:10-32:11; [P-907:T-89-CONF-ENG-CT](#),29:13-22,55:8-19; [P-963:T-80-CONF-ENG-ET](#),31:9-17.

<sup>1972</sup> [P-887:T-93-CONF-ENG-CT](#),35:5-11,38:9-18,41:15-18,43:7-11.

<sup>1973</sup> [REDACTED].

<sup>1974</sup> [REDACTED]; [P-907:T-89-CONF-ENG-CT](#),29:13-22.

<sup>1975</sup> [P-16:DRC-OTP-2054-1447](#),p.1506:10-17; [DRC-OTP-0126-0422-R03](#),p.0465-0466,para.253; [P-55:T-71-CONF-ENG-CT](#),75:25-76:3; [P-963:T-80-CONF-ENG-ET](#),33:12-24; [P-290:T-65-CONF-ENG-CT](#),70:14-19;[T-67-CONF-ENG-CT](#),18:17-19:4; [P-887:T-93-CONF-ENG-CT](#),37:5-38:18; [P-768:T-34-CONF-ENG-CT](#),49:8-11,48:20-25,54:7-55:10; [P-41:DRC-OTP-0147-0002](#),p.0029,para.171; [P-901:T-29-CONF-ENG-CT](#),53:6-25; [P-46:T-100-CONF-ENG-CT](#),75:11-16;[T-101-CONF-ENG-ET](#),69:22-70:23; [P-14:DRC-OTP-2054-0816](#),p.0854:13-p.0857:2;[T-137-CONF-ENG-ET](#),9:1-24.

<sup>1976</sup> [P-758:T-161-CONF-ENG-ET](#),37:16-19; [P-976:DRC-OTP-2054-2801](#),p.2822:9-19; [P-877:T-109-CONF-ENG-ET](#),49:16-50:18[[T-109-CONF-FRA-ET](#),42:14-43:14]; [P-31:DRC-OTP-2054-4308](#),p.4313:6-12.

<sup>1977</sup> [P-898:T-154-CONF-ENG-ET](#),28:2-33:12 [REDACTED].

difficulty *kadogo* had if they needed to flee because of the ill-fitting uniforms they were wearing and heavy weapons they were carrying.<sup>1978</sup>

660. Individuals who fought in the First Attack saw children under the age of 15 directly participating in combat, including in **NTAGANDA's** unit.<sup>1979</sup> P-888 received orders from **NTAGANDA** to kill Lendu and Ngiti civilians.<sup>1980</sup> The UPC sent additional *kadogo* by plane from Bunia in October 2002, along with other troops, in preparation for the First Attack.<sup>1981</sup>
661. P-963, who participated in the assault on Kobu, confirmed that children under the age of 15 participated in direct combat during this assault.<sup>1982</sup> P-907, who fought in Komanda and Mongbwalu, testified about children fighting on the frontline in or around November 2002.<sup>1983</sup> P-888 and P-898 were taken with other children to fight in Songolo in August 2002 under **NTAGANDA's** command.<sup>1984</sup> The use of child soldiers in Songolo was also independently observed by P-190.<sup>1985</sup> P-888 also fought in Bunia in March 2003.<sup>1986</sup>
662. There were also children under the age of 15 fighting on the frontline in battles including in Bunia,<sup>1987</sup> Irumu,<sup>1988</sup> Nyankunde,<sup>1989</sup> Mabanga,<sup>1990</sup> Lonyo,<sup>1991</sup> Largu,<sup>1992</sup>

<sup>1978</sup> [P-907:T-89-CONF-ENG-CT](#),30:5-17.

<sup>1979</sup> [P-10:T-47-CONF-ENG-CT](#),5:18-7:25;10:19-11:2; [P-963:T-80-CONF-ENG-ET](#),33:19-35:4; [P-768:T-34-CONF-ENG-CT](#),48:20-25,54:25-55:10,54:7-55:10; [P-898:T-154-CONF-ENG-ET](#),2:10-13:5,23:3-23,24:25-25:9; [P-888:T-105-CONF-ENG-CT](#),73:24-74:21;75:12-77:15;81:23-82:1; [P-907:T-89-CONF-ENG-CT](#),53:22-54:16; [P-886:T-37-CONF-ENG-ET](#),9:3-11:7.

<sup>1980</sup> [P-888:T-105-CONF-ENG-CT](#),37:23-38:11,50:16-51:16.

<sup>1981</sup> [P-14:DRC-OTP-2054-0612](#),p.0693:13-p.0699:20.

<sup>1982</sup> [P-963:T-80-CONF-ENG-ET](#),12:9-13:23,33:12-18; [P-790:T-53-CONF-ENG-CT](#),56:2-57:1.

<sup>1983</sup> [P-907:T-89-CONF-ENG-CT](#),29:24-30:17,36:18-23,51:15-52:4,53:22-25; [DRC-OTP-0208-0284](#),p.0286(ref.9),p.0297(ref.42).

<sup>1984</sup> [P-888:T-105-CONF-ENG-CT](#),46:15-48:19;52:12-18; [P-898:T-154-CONF-ENG-ET](#),27:16-28:1.

<sup>1985</sup> [P-190:T-97-CONF-ENG-CT](#),45:9-13;[T-96-CONF-ENG-CT](#),88:8-25,89:24-90:21.

<sup>1986</sup> [P-888:T-105-CONF-ENG-CT](#),85:19-86:24;87:21-14.

<sup>1987</sup> [P-17:T-58-CONF-ENG-CT](#),19:12-20:16.

<sup>1988</sup> [P-898:T-154-CONF-ENG-ET](#),8:12-9:7,27:9-27:15; [DRC-OTP-0208-0284](#),p.0286(ref.9).

<sup>1989</sup> [P-901:T-29-CONF-ENG-CT](#),54:7-55:17.

<sup>1990</sup> [P-758:T-161-CONF-ENG-ET](#),44:12-47:13,48:25-49:14.

<sup>1991</sup> [P-758:T-161-CONF-ENG-ET](#),50:14-51:18.

<sup>1992</sup> [P-883:T-168-CONF-ENG-ET](#),36:17-23,37:6-38:11.

and Bule.<sup>1993</sup>

**e. UPC used children as bodyguards or escorts for commanders**

663. Children under the age of 15 were used as bodyguards and escorts for UPC commanders, tasked with providing their physical protection. Children were specifically chosen for this function because they were seen to be obedient, fearless and undemanding.<sup>1994</sup>

664. Many witnesses testified about seeing UPC officials and commanders using children under the age of 15 as bodyguards, including LUBANGA, KISEMBO, MULENDA and NTAGANDA, or to using children themselves.<sup>1995</sup> Commanders also used young girls as bodyguards,<sup>1996</sup> including NTAGANDA himself.<sup>1997</sup>

665. For instance, P-758 was chosen by a commander to be in his escort along with other girls.<sup>1998</sup> P-883 testified about having to carry the ammunition and weapons of adult soldiers and commanders both inside and outside of the camp, including during NTAGANDA's visit to Camp Bule.<sup>1999</sup> P-55 testified that he had a *kadogo*

<sup>1993</sup> [P-761:DRC-OTP-2054-8283-R05](#),p.8286,para.17;[T-162-CONF-ENG-ET](#),67:8-68:4,68:16-69:6; [DRC-OTP-0208-0284](#),p.0316; [DRC-OTP-0074-0422](#),p.0463,para.149.

<sup>1994</sup> [P-963:T-80-CONF-ENG-ET](#),32:11-17; [P-14:DRC-OTP-2054-0816](#),p.0835:12-p.0836:20,p.0854:13-18; [P-41:DRC-OTP-2054-5199](#),p.5254:17-25; [P-30:T-144-CONF-ENG-ET](#),35:21-36:10.

<sup>1995</sup> [P-768:T-34-CONF-ENG-CT](#),47:7-49:7; [P-963:T-78-CONF-ENG-ET](#),66:14-21;[T-80-CONF-ENG-ET](#),31:1-32:4,32:22-24,35:6-19; [P-190:T-97-CONF-ENG-CT](#),46:21-47:18; [P-10:T-47-CONF-ENG-CT](#),5:18-7:25,20:23-21:16,25:7-15; [P-14:T-136-CONF-ENG-ET](#),34:13-39:13,41:16-43:13,54:5-55:7;[DRC-OTP-2054-0816](#),p.0840:20-p.0841:7; [DRC-OTP-2054-1086-R03](#),p.1097:22-p.1098:6,p.1111:19-p.1112:10; [P-57:DRC-OTP-0150-0354](#),p.0364-0366,paras.51-52,p.0368,para.64; [P-41:DRC-OTP-2054-5199](#),p.5246:23-p.5248:21,p.5250:20-25, p.5251:8-18,p.5252:17-p.5255:7,p.5261:22-p.5262:20; [P-887:T-93-CONF-ENG-CT](#),37:5-38:18; [P-888:T-105-CONF-ENG-CT](#),63:9-19,66:20-67:5,67:15-22; [P-901:T-29-CONF-ENG-CT](#),53:21-56:10; [P-907:T-89-CONF-ENG-CT](#),29:13-22,52:14-53:3,55:8-19; [P-790:T-53-CONF-ENG-CT](#),56:11-57:1; [P-46:T-100-CONF-ENG-CT](#),56:6-59:2;[T-101-CONF-ENG-ET](#),15:29-17:24; [P-31:T-174-CONF-ENG-ET](#),42:19-43:12; [P-315:T-107-CONF-ENG-ET](#),81:17-82:12;88:3-92:23;[T-108-CONF-ENG-ET](#),88:5-89:24; [P-27:DRC-OTP-0096-0052-R04](#),p.0058-0059,paras.31-33; [P-30:DRC-OTP-2054-2951](#),p.2969:11-p.2974:12; [P-57:DRC-OTP-0150-0354](#),p.0365-0366,paras.51-52,p.0368,para.64.

<sup>1996</sup> [P-758:T-161-CONF-ENG-ET](#),32:11-34:2; [P-901:T-29-CONF-ENG-CT](#),58:9-15; [P-907:T-89-CONF-ENG-CT](#),52:21-22,55:8-14.

<sup>1997</sup> [P-907:T-89-CONF-ENG-CT](#),59:19-60:20; [P-55:T-71-CONF-ENG-CT](#),84:12-24; [P-901:T-29-CONF-ENG-CT](#),56:22-57:9; [P-10:T-47-CONF-ENG-CT](#),5:18-7:25,20:23-21:16; [P-190:T-97-CONF-ENG-CT](#),46:24-47:18; [P-41:DRC-OTP-0147-0002](#),p.0029,para.173; [P-30:T-144-CONF-ENG-ET](#),34:4-36:10;[T-146-CONF-ENG-ET](#),64:6-65:21.

<sup>1998</sup> [P-758:T-161-CONF-ENG-ET](#),32:11-34:2,49:18-50:13,52:22-53:2,76:1-77:11.

<sup>1999</sup> [P-883:T-168-CONF-ENG-ET](#),18:17-19:24,34:8-14;[T-170-CONF-ENG-ET](#),9:6-24.

in his escort, a Hema boy of 12 or 13 years of age.<sup>2000</sup> P-769 testified about seeing 12 or 13 year old *kadogos* with ABELANGA when he and others were conscripted.<sup>2001</sup> P-41 had several children assigned to him as escorts – none of whom had completed their fourth year of primary school; he personally selected one 14-year old, who trained at Mandro camp, as a bodyguard [REDACTED].<sup>2002</sup>

666. NTAGANDA also used children under the age of 15 in his escort, including during attacks.<sup>2003</sup> [REDACTED] was chosen by NTAGANDA personally to be in his escort, along with other *kadogo* who were all 14 years of age.<sup>2004</sup> Some of NTAGANDA's escorts travelled with him while others remained at his residence to guard it.<sup>2005</sup>

##### 5. NTAGANDA knew that there were children under the age of 15 in the UPC

667. The Prosecution presented a significant body of reliable evidence showing that children under the age of 15 were recruited and used in the UPC, including witness testimony, documentary evidence as well as videos and photographs. Witness testimony confirming the recruitment and use of children, including children under 15 years old, was consistent from UPC military and political witnesses, local and international human rights actors working on issues of child protection and demobilisation in Ituri, and journalists. This same evidence establishes that the perpetrators, including NTAGANDA, knew or should have known that these children were under the age of 15. The elements for these three crimes replace article 30 by specifically providing that a perpetrator's knowledge of the age of the victims is "knew or should have known". This *mens rea* standard

<sup>2000</sup> [P-55:T-71-CONF-ENG-CT](#),85:9-25,86:20-24.

<sup>2001</sup> [P-769:T-120-CONF-ENG-ET](#),24:18-26;8,27:18-28:1.

<sup>2002</sup> [P-41:DRC-OTP-2054-5199](#),p.5246:18-p.5248:21;[DRC-OTP-0147-0002](#),p.0027,paras.159-160.

<sup>2003</sup> [P-55:T-71-CONF-ENG-CT](#),83:4-84:11,86:4-7; [P-17:T-58-CONF-ENG-CT](#),25:20-26:14,33:8-34:6; [P-898:T-154-CONF-ENG-ET](#),5:4-6:18,21:22-23:2; [P-768:T-34-CONF-ENG-CT](#),54:20-24; [P-901:T-29-CONF-ENG-CT](#),53:15-56:10; [P-888:T-105-CONF-ENG-CT](#),73:24-74:21;81:23-82:1; [P-290:T-67-CONF-ENG-CT](#),12:25-14:20; [P-10:T-47-CONF-ENG-CT](#),5:18-7:25,20:23-21:16.

<sup>2004</sup> [REDACTED].

<sup>2005</sup> [REDACTED]; [P-290:T-67-CONF-ENG-CT](#),4:1-21,8:9-14,9:19-11:5,14:10-20; [P-963:T-80-CONF-ENG-ET](#),32:22-33:3; [P-55:T-71-CONF-ENG-CT](#),86:3-7; [REDACTED].

necessarily applies also to contexts of co-perpetration, be it direct or indirect. Thus, a co-perpetrator will be held accountable if as a result of the common plan, children under the age of 15 were recruited and used in hostilities if he: (i) intended that children under the age of 15 be recruited and used; (ii) knew that in the ordinary course of events children under the age of 15 would be recruited and used in hostilities; or (iii) should have known that the persons being recruited and used in hostilities were under the age of 15.

**a. Documentary evidence on the presence of child soldiers within the UPC**

668. There are numerous internal UPC documents that prove the recruitment and use of children under the age of 15 by the UPC throughout the period of the charges beyond reasonable doubt. When presented with several of these documents during his cross-examination, **NTAGANDA** provided implausible responses.

669. LUBANGA issued a decree to the FPLC Chief of Staff on 21 October 2002 stating: *“ces derniers jours, il se développe contrairement à notre idéologie, une pratique d’enrôlement des mineurs de deux sexes au sein des forces combattantes [...]”*<sup>2006</sup> referring to an existing practice of child soldier recruitment. **NTAGANDA**’s testimony that this was not a statement of an existing practice but a reminder of UPC policy not to have children under 18 is contradicted by the plain language of the document.<sup>2007</sup>

670. On 27 January 2003, the Presidency issued a further directive, referring to its previous decree and requesting a detailed report on the issue.<sup>2008</sup> On 1 June 2003, LUBANGA issued a decree about demobilising child soldiers in the UPC, which

<sup>2006</sup> [DRC-OTP-0029-0274](#).

<sup>2007</sup> [D-300:T-239-CONF-ENG-CT](#),17:6-10,19:9-17.

<sup>2008</sup> [DRC-OTP-0029-0275](#).

referred to both of these previous directives.<sup>2009</sup> These documents demonstrate that the UPC leadership was aware of, and openly discussed, the recruitment of children. On 30 October 2002, KISEMBO also issued an order to all commanders to disarm “*des enfants en armes*”, whom he defines as children under 18.<sup>2010</sup>

671. **NTAGANDA** was precisely aware of these decrees.<sup>2011</sup> He confirmed that these two directives were discussed during a meeting he attended on 8 February 2003.<sup>2012</sup> Further, a document entitled “*Rapport de Désarmement des Enfants Soldats*”,<sup>2013</sup> dated 16 February 2003 and signed by his secretary under his instruction,<sup>2014</sup> confirms his knowledge of the issue. **NTAGANDA** tried to distance himself from this document in testimony.<sup>2015</sup> He described LUBANGA’s directives as “reminders” of the UPC’s policy not to have children, and denied the meaning of the text’s plain language that a practice had already developed and that children were already in the UPC.<sup>2016</sup> Were there no children in the UPC, as **NTAGANDA** contends, there would be no need for such a communication.

672. In addition to these orders, a UPC report dated 6 November 2002, specifically refers to the recruitment of children in terms of the need to ensure they do not desert because of the impact on the UPC’s ability to recruit more: “*D’autre part, cette mauvaise gérance a pour conséquence: les deserteurs rentrent démoraliser ces amis et ces derniers se découragent. D’où il n’y a plus moyen d’avoir encore les enfants dans l’armée.*”<sup>2017</sup> It also advises of concerns over security at the village level due to too many children being recruited.<sup>2018</sup>

673. Another internal UPC document, dated 12 February 2003, addressed to the G5

---

<sup>2009</sup> [DRC-OTP-0151-0299](#).

<sup>2010</sup> [DRC-D01-0003-5894](#).

<sup>2011</sup> [D-300:T-223-CONF-ENG-ET](#),47:13-16.

<sup>2012</sup> [D-300:T-223-CONF-ENG-ET](#),47:17-48:1.

<sup>2013</sup> [DRC-D01-0003-5896](#).

<sup>2014</sup> [D-300:T-223-CONF-ENG-ET](#),47:5-10.

<sup>2015</sup> [D-300:T-239-CONF-ENG-CT](#),25:2-26:16. See Section V.A.

<sup>2016</sup> [D-300:T-239-CONF-ENG-CT](#),17:6-13,19:9-17,23:19-20,27:25-28:22.

<sup>2017</sup> [DRC-OTP-0109-0136](#),p.0137.

<sup>2018</sup> [DRC-OTP-0109-0136](#),p.0141.

commander of the FPLC from the UPC National Secretary for Education refers to the selection of 13 officers to be trained in a Disarmament, Demobilisation, Reintegration, Repatriation and Resettlement programme operated by Save the Children, and to the selection of children between the ages of 10 to 15 or 16 years from within the UPC who would be willing to return to civilian life.<sup>2019</sup> NTAGANDA sought to deny the facts described in the document, or shelter himself from any responsibility, by simply denying all knowledge of this document.<sup>2020</sup> He maintained that it was not possible that there were children in the UPC.<sup>2021</sup>

674. There are also messages in the UPC Logbook referring to “*mtoto*” (or the plural “*watoto*”) in Swahili,<sup>2022</sup> “*enfant*” in the French translation, within the UPC. Examples include: a 23 November 2002 situation report from Aru;<sup>2023</sup> a message of 8 December 2002 from NTAGANDA to SALONGO;<sup>2024</sup> a series of messages on 12 December 2002 involving NTAGANDA;<sup>2025</sup> a 5 January 2003 report on casualties on which NTAGANDA is copied;<sup>2026</sup> a message sent on 8 January 2003 on which NTAGANDA is copied;<sup>2027</sup> and a message on 18 February 2003 about training.<sup>2028</sup> When asked about one of these messages during his testimony, [REDACTED] responded that the word “*enfant*” in the Logbook referred to “*vrais enfants*”.<sup>2029</sup>

675. Furthermore, the UPC issued reports about the situation in various camps and maintained registers, including lists of recruits with names and ages.<sup>2030</sup> Both P-898 and P-963 recognised the names of several people who were with them at

<sup>2019</sup> [DRC-OTP-0113-0070](#).

<sup>2020</sup> [D-300:T-239-CONF-ENG-CT](#),9:24.

<sup>2021</sup> [D-300:T-239-CONF-ENG-CT](#),11:19-23,13:21-14:6.

<sup>2022</sup> See: [D-300:T-224-CONF-ENG-ET](#),75:20-76:18.

<sup>2023</sup> [DRC-OTP-0017-0003](#),p.0009; [DRC-OTP-2102-3828](#),p.3835)

<sup>2024</sup> [DRC-OTP-0017-0033](#),p.0208 (2<sup>nd</sup> message); [DRC-OTP-2102-3854](#),p.4030.

<sup>2025</sup> [DRC-OTP-0017-0033](#),p.0048; [DRC-OTP-2102-3854](#),p.3870.

<sup>2026</sup> [DRC-OTP-0017-0033](#),p.0093; [DRC-OTP-2102-3854](#),p.3915.

<sup>2027</sup> [DRC-OTP-0017-0033](#),p.0095; [DRC-OTP-2102-3854](#),p.3917 (bottom message).

<sup>2028</sup> [DRC-OTP-0017-0033](#),p.0167; [DRC-OTP-2102-3854](#),p.3989 (bottom message).

<sup>2029</sup> [REDACTED] [DRC-OTP-0017-0033](#),p.0208 (2<sup>nd</sup> message); [DRC-OTP-2102-3854](#),p.4030).

<sup>2030</sup> For example: [DRC-OTP-2081-0072](#); [DRC-OTP-2081-0003](#); [DRC-OTP-2081-0005](#); [DRC-OTP-0138-0027](#) p.0027-0029, p.0035-0038.



Mandro camp on the lists of recruits [REDACTED].<sup>2031</sup> D-172's name is also on one of these lists.<sup>2032</sup>

676. Other witnesses testified about the existence of such records within the UPC, indicating that there was knowledge and awareness of the presence of children in the ranks.<sup>2033</sup> P-55 testified that the names of recruits were recorded at training camps.<sup>2034</sup> Further, D-38 agreed that it was possible that one such list was the type prepared by the camp administrator and recognised the names of certain individuals.<sup>2035</sup> D-17 also confirmed there were lists of recruits made at Mandro camp.<sup>2036</sup> NTAGANDA himself testified that there was an enrollment process, where recruits were asked questions and the information was recorded.<sup>2037</sup>

677. Finally, during an interview with P-315 in November 2010, NTAGANDA acknowledged that there were children in the UPC.<sup>2038</sup> P-315 authenticated her notes from this interview and provided further details about the circumstance of the meeting.<sup>2039</sup> NTAGANDA's denial during his testimony that he said this to P-315 in 2010 is not credible.<sup>2040</sup> He conceded using the term *kadogo* to refer to himself during this interview, having joined the RPF at 16, but then implausibly explained this was in reference to his stature rather than his age.<sup>2041</sup>

#### b. Videos and photographs show the presence of child soldiers in the UPC

678. Video evidence shows the obvious presence of children under the age of 15

<sup>2031</sup> [REDACTED]; **P-963**:[T-78-CONF-ENG-ET](#),45:17-50:20; **P-898**:[T-153-CONF-ENG-ET](#),62:6-63:18,65:14-71:8;65:6-13.

<sup>2032</sup> **D-172**:[T-245-CONF-ENG-CT](#),36:5-37:18. *Also*:[T-245-CONF-ENG-CT](#),84:16-91:5.

<sup>2033</sup> **P-901**:[T-29-CONF-ENG-CT](#),62:9-13; **P-769**:[T-120-CONF-ENG-ET](#),42:25-43:5,44:4-14.

<sup>2034</sup> **P-55**:[T-71-CONF-ENG-CT](#),76:8-21.

<sup>2035</sup> **D-38**:[T-249-CONF-ENG-CT](#),65:2-71:5;[T-250-CONF-ENG-CT](#),74:6-86:6

<sup>2036</sup> **D-17**:[T-252-CONF-ENG-ET](#),51:12-20,52:20-53:6;54:18-55:3;[T-253-CONF-ENG-ET](#),65:16-23.

<sup>2037</sup> **D-300**,[T-213-CONF-ENG-CT](#),71:16-72:2,76:14-77:18. *Also*: **D-251**:[T-260-CONF-ENG-CT](#),11:15-12:1.

<sup>2038</sup> [DRC-OTP-2062-0363](#),p.0363.

<sup>2039</sup> **P-315**:[T-107-CONF-ENG-ET](#),75:7-79:13.

<sup>2040</sup> **D-300**:[T-239-CONF-ENG-CT](#),22:23-23:3.

<sup>2041</sup> **D-300**:[T-224-CONF-ENG-ET](#),70:15-75:19.

within the ranks of the UPC.<sup>2042</sup> NTAGANDA's visit to Rwampara training camp with other senior UPC commanders including LUBANGA, TINANZABO and RAFIKI, on 12 February 2003,<sup>2043</sup> [REDACTED],<sup>2044</sup> shows LUBANGA addressing recruits and soldiers and introducing NTAGANDA to them as the Chief of Staff.<sup>2045</sup> LUBANGA also tells the recruits that NTAGANDA will come visit them often.<sup>2046</sup> In the Defence's version of this videotaped visit, NTAGANDA introduces himself and greets the recruits.<sup>2047</sup>

679. P-10 [REDACTED] Rwampara on this day and [REDACTED].<sup>2048</sup> She identified herself in the video,<sup>2049</sup> as well as other children [REDACTED] who were under the age of 15.<sup>2050</sup> She also testified that she saw *kadogo* among the recruits who were 12 or 13 years old,<sup>2051</sup> explained how pieces of wood were used by recruits to simulate rifles<sup>2052</sup> and stated that civilians could not enter Rwampara camp, only recruits and soldiers.<sup>2053</sup>

680. The Defence attempt to discredit P-10's account of her presence in Rwampara [REDACTED] as evidenced by the Rwampara video should be disregarded. P-10 clearly and consistently identified herself in the video.<sup>2054</sup> She provided credible,

<sup>2042</sup> See: [DRC-OTP-0127-0058](#)(00:00:50; 00:02:42; 00:28:42); [DRC-OTP-0127-0061](#)(00:35:25-00:36:27; 01:52:56-01:54:38); [DRC-OTP-0080-0002](#)(00:36:20-00:36:30; 00:52:04-00:52:14); [DRC-OTP-0120-0294](#)(02:02:43-02:02:46; 02:22:49-52; 02:44:18-02:44:25; 02:47:14-02:47:20); [DRC-OTP-1008-0008](#)(00:11:35-00:11:58; 00:12:57-00:13:00; 00:32:33-43; 00:34:57-00:35:10); [DRC-OTP-1001-0010](#)(00:45:12-30; 00:46:28-30); [DRC-OTP-0102-0009](#)(01:00:54-01:01:02); [DRC-OTP-2058-0251](#)(00:13:49-00:13:52; 00:48:22-00:49:54), [REDACTED]; [DRC-OTP-0103-0008](#)(00:32:17,00:32:20,00:32:27, [REDACTED]); [DRC-OTP-0082-0016](#)(00:03:52-57); [DRC-OTP-0164-0910](#)(00:05:38-44).

<sup>2043</sup> [DRC-OTP-0120-0293](#).

<sup>2044</sup> [REDACTED].

<sup>2045</sup> [DRC-OTP-0120-0293](#)(00:10:40); [DRC-OTP-2101-2791](#),p.2799:175.

<sup>2046</sup> [DRC-OTP-0120-0293](#)(00:10:40-51); [DRC-OTP-2101-2791](#),p.2799:175-p.2800:181.

<sup>2047</sup> [D-300:T-220-CONF-ENG-ET](#),33:11-34:22; [DRC-D18-0001-0463](#)(00:00:00-00:02:45)(trans. [DRC-D18-0001-5576](#),p.5577:2-p.5578:30; [DRC-D18-0001-5587](#),p.5589:1-p.5590:39).

<sup>2048</sup> [P-10:T-47-CONF-ENG-CT](#),52:14-54:8;[T-48-CONF-ENG-CT](#),3:17-15:25.

<sup>2049</sup> [REDACTED].

<sup>2050</sup> [P-10:T-47-CONF-ENG-CT](#),62:14-16;[T-48-CONF-ENG-CT](#),11:4-12:7;15:1-25. Also [P-10:T-49-CONF-ENG-CT](#),38:22-39:11;[T-50-CONF-ENG-CT](#),4:18-5:14.

<sup>2051</sup> [P-10:T-47-CONF-ENG-CT](#),55:5-9.

<sup>2052</sup> [P-10:T-47-CONF-ENG-CT](#),54:18-55:4;[T-48-CONF-ENG-CT](#),9:25-10:8; [T-48-CONF-ENG-CT](#),9:16-18.

Also:[D-17:T-252-CONF-ENG-ET](#),61:9-11,70:16-19

<sup>2053</sup> [P-10:T-48-CONF-ENG-CT](#),5:21-6:2.

<sup>2054</sup> [P-10:T-49-CONF-ENG-CT](#),23:8-25:2,38:4-21.

detailed information about the event, even details about the [[REDACTED], without hesitation.<sup>2055</sup> The Defence opted not to call the individual they propose is actually the person in the video.<sup>2056</sup>

681. The video shows numerous children who are clearly under the age of 15.<sup>2057</sup> Even D-17 acknowledged that a person in the video appeared to be 13 years old, adding that they must have *“felt fit to do the training”*.<sup>2058</sup>

682. **NTAGANDA** conceded there were recruits at Rwampara who did not meet his *“criteria”*.<sup>2059</sup> According to him, during this visit he told ZIMULINDA [REDACTED] to *“take the small ones away and return them to their homes.”*<sup>2060</sup> His alleged discussion with ZIMULINDA is not recorded. But what is apparent from the video is that none of the UPC leaders who address the crowd and who look directly at these underage recruits, including **NTAGANDA**, say anything in their speeches to suggest that any recruit will be sent home because they are too young to join the UPC. Rather, all of the recruits listen attentively to the UPC leaders, respond when prompted during the various addresses by the UPC leaders, and know the words to the UPC songs; some even tap their wooden sticks to the rhythm of the songs. The young children are standing amongst the other recruits, not separated in any way, and some are in the front row.

683. **NTAGANDA** confirmed that civilians were not permitted at UPC military camps.<sup>2061</sup> His suggestion that the recruits were sent home because they were too young lacks any credibility. These children were recruited by the UPC and were

<sup>2055</sup> [P-10:T-49-CONF-ENG-CT](#),24:10-25:2.

<sup>2056</sup> [P-10:T-47-CONF-ENG-CT](#),59:20-23,60:17-22; [D-17:T-253-CONF-ENG-ET](#),59:20-60:4; [D-38:T-250-CONF-ENG-CT](#),7:9-9:15,93:21-95:22.

<sup>2057</sup> [DRC-OTP-0120-0293](#)(for instance: 00:0017-29; 00:04:12-28; 00:05:05-15; 00:06:39-00:07:02; 00:08:55-00:09:02; 00:11:20-30; 00:13:19-53; 00:15:05-00:16:20; 00:16:47-49; 00:18:03-20; 00:19:30-39; 00:23:07-00:41; 00:23:54-00:24:02; 00:30:14-27; 00:37:06-18; 00:37:25-34).

<sup>2058</sup> [D-17:T-253-CONF-ENG-ET](#),73:24-74:14.

<sup>2059</sup> [D-300:T-213-CONF-ENG-CT](#),80:16-81:3;[T-220-CONF-ENG-ET](#),36:16-24,37:24-38:7;[T-240-ENG-CT](#),40:21-41:1.

<sup>2060</sup> [D-300:T-220-CONF-ENG-ET](#),38:8-22.

<sup>2061</sup> [D-300:T-240-ENG-CT](#),33:25-34:6.

present at Rwampara for training to be UPC soldiers. The upper *cadres* of the movement were there to encourage them at a time when the UPC were in “*a difficult situation*”<sup>2062</sup> and needed troops. LUBANGA explains this to the recruits clearly.<sup>2063</sup>

684. P-768 testified about a photograph taken at the end of 2003 of children aged 10 to 12 years who attended military training with the UPC at Mandro camp before being moved to Mongbwalu, prior to the November 2002 attack.<sup>2064</sup> P-768 testified that they were mainly Hema and had been [REDACTED] from Bunia.<sup>2065</sup> NTAGANDA confirmed that UPC troops were [REDACTED].<sup>2066</sup> The children in this photo are patently under the age of 15.

### c. Age assessments

685. The Appeals Chamber has held that providing evidence of the precise age of the children recruited or used by an armed group is not required. Rather, it suffices to establish that a victim is within a certain age range, namely under the age of 15.<sup>2067</sup> Further, the Appeals Chamber held that it is feasible in principle for non-expert witnesses to differentiate between a child who is undoubtedly less than 15 years of age and a child who is over 15.<sup>2068</sup> This is a question of fact, to be decided on a case-by-case basis.

686. Several UPC military and political insiders testified about the criteria they used to assess the age of the children they regularly encountered within the ranks of the UPC.<sup>2069</sup> For example, P-907, who testified to having children under the age of

<sup>2062</sup> [D-300:T-238-CONF-ENG-CT](#),23:10-15.

<sup>2063</sup> [DRC-OTP-0120-0293](#)(00:09:55-00:11:31); [DRC-OTP-2101-2791](#),p.2799:166-p.2800:188.

<sup>2064</sup> [P-768:T-34-CONF-ENG-CT](#),57:8-59:12; [T-36-CONF-ENG-CT](#),46:7-13; [REDACTED].

<sup>2065</sup> [P-768:T-34-CONF-ENG-CT](#),58:1-9.

<sup>2066</sup> [REDACTED].

<sup>2067</sup> *Lubanga AJ*, paras.235, 240-241, 241, confirming findings at trial (*Lubanga TJ*, para.643); also: *Taylor TJ*, paras.1358-1361; *Sesay TJ* (‘RUF Case’), paras.1627-1628.

<sup>2068</sup> *Lubanga AJ*, paras.189-191,198.

<sup>2069</sup> [P-768:T-34-CONF-ENG-CT](#),49:4-7,58:19-21; [P-55:T-71-CONF-ENG-CT](#),70:9-14; [P-901:T-27-CONF-ENG-CT](#),66:9-23;[T-29-CONF-ENG-CT](#),52:2-14,56:3-10;[P-963:T-78-CONF-ENG-ET](#),35:18-36:2;[T-80-CONF-ENG-ET](#),13:18-14:3; [P-290:T-65-CONF-ENG-CT](#),42:13-43:3,[T-67-CONF-ENG-CT](#),12:6-24; [P-190:T-97-](#)

15 in his escort, explained that he assessed their age based on their behaviour, the size of their uniforms and the fact that it was difficult for them to carry their weapons as they were so small.<sup>2070</sup> P-17 testified to basing his assessment of the age of the UPC recruits he encountered on their mental development and behaviour as well as their size.<sup>2071</sup>

687. In addition to being able to assess the age of *kadogo* by their physical appearance and behaviour drawing on his experience [REDACTED], P-769 also asked the 13 and 14 year old *kadogo* in his unit about their level of schooling.<sup>2072</sup> P-14 [REDACTED] experience in assessing the age of the children he observed in the UPC.<sup>2073</sup> During his testimony, P-14 explained a practice of having a child attempt to extend his or her arm to the opposite ear as way to approximate the child's age for the purposes of admission to primary school,<sup>2074</sup> which in the DRC typically occurs when a child is 6 years old.<sup>2075</sup> D-17 described the use of this same test – intended to denote a child's physical readiness to start primary school – as the extent of the physical assessment applied to recruits to ensure they were capable of undertaking military training.<sup>2076</sup>

688. [REDACTED] was posted to Bunia in late 2002 to train UPC recruits [REDACTED].<sup>2077</sup> [REDACTED]<sup>2078</sup> and on the orders of NTAGANDA, who directed [REDACTED] to train the "*jeunes qui sont ici*".<sup>2079</sup> [REDACTED] testified that there were five students [REDACTED], two of whom he sent away because

---

[CONF-ENG-CT,47:11-18](#); [P-907:T-89-CONF-ENG-CT,57:1-9](#); [P-30:T-144-CONF-ENG-ET,34:22-36:10](#); [T-146-CONF-ENG-ET,65:12-21](#); [P-16:DRC-OTP-2054-1447](#),p.1462:23-p.1463:8,p.1472:18-p.1474:1.

<sup>2070</sup> [P-907:T-89-CONF-ENG-CT,52:14-53:21](#).

<sup>2071</sup> [P-17:T-58-CONF-ENG-CT,20:21-21:7,24:22-25:19](#); [T-59-CONF-ENG-CT,43:12-44:1](#).

<sup>2072</sup> [P-769:T-120-CONF-ENG-ET,24:18-25:6,38:1-39:12](#); [T-121-CONF-ENG-CT,7:3-8:3](#).

<sup>2073</sup> [P-14:T-136-CONF-ENG-ET,37:9-39:13](#).

<sup>2074</sup> [P-14:T-136-CONF-ENG-ET,41:2-16](#).

<sup>2075</sup> [P-551:T-197-CONF-ENG-ET,32:9-33:18](#).

<sup>2076</sup> [D-17:T-252-CONF-ENG-ET,53:2-54:24](#). Also: [T-253-CONF-ENG-ET,64:8-65:11](#).

<sup>2077</sup> [REDACTED].

<sup>2078</sup> [REDACTED].

<sup>2079</sup> [REDACTED].

they were under the age of 15 and too young and immature to understand.<sup>2080</sup>

There were also two children [REDACTED] resulting in [REDACTED] having to simplify the training because those attending were too young to understand and grasp everything.<sup>2081</sup>

689. P-190 recalls being ordered by **NTAGANDA** to place an order with [REDACTED] for the purchase of very small sized boots, suitable for children.<sup>2082</sup>

690. D-57, [REDACTED], confirmed [REDACTED] primary school in Mudzipela received approximately 10 children in 2002 or 2003 who had been recruited by the UPC.<sup>2083</sup> The children at his primary school ranged in age from 8-12 years old.<sup>2084</sup>

691. Neutral observers who were assisting in the demobilisation of children at the relevant period in Ituri, like P-31, P-46, P-116 and P-976, all attested to the presence of children in the UPC.<sup>2085</sup> These individuals had direct contact with such children for weeks and sometimes months as their very job was to monitor the presence of children in armed groups.<sup>2086</sup> They also testified about the methods they used to verify the ages of the children they interacted with and interviewed.<sup>2087</sup>

692. Several other witnesses credibly testified that they were able to assess the age of the children they saw within the ranks of the UPC as they were parents with

---

<sup>2080</sup> [REDACTED].

<sup>2081</sup> [REDACTED]. *Also:* **P-14:**[DRC-OTP-2054-0816](#),p.0833:16-p.0834:3.

<sup>2082</sup> **P-190:**[T-97-CONF-ENG-CT](#),47:19-48:9,76:25-77:14. *Also:* [DRC-OTP-0109-0136](#),p.0140.

<sup>2083</sup> **D-57:**[T-246-CONF-ENG-ET](#),6:10-25,31:18-24,33:25-35:11.

<sup>2084</sup> **D-57:**[T-246-CONF-ENG-ET](#),33:15-24.

<sup>2085</sup> **P-31:**[DRC-OTP-2054-3760](#),p.3765:21-p.3767:3,p.3777:7-p.3780:20;[T-174-CONF-ENG-ET](#),29:3-8; **P-46:**[T-100-CONF-ENG-CT](#),28:23-30:1,31:4-35:25,38:18-39:2,42:1-48:13,72:11-73:8; [DRC-OTP-0138-0106](#); **P-116:**[DRC-OTP-2054-4494](#),p.4589:2-24,[DRC-OTP-2054-6975](#),p.7035:15-p.7037:7; **P-976:**[DRC-OTP-2054-2599](#),p.2645:3-7,p.2648:13-p.2650:14.

<sup>2086</sup> **P-31:**[DRC-OTP-2054-3760](#),p.3783:6-p.3786:13; **P-116:**[DRC-OTP-0174-0025](#),p.0029,para.27;[DRC-OTP-2054-4494](#),p.4588:3-p.4589:12; **P-976:**[DRC-OTP-2054-2599](#),p.2635:14-p.2635:21,p.2640:10-p.2641:7; **P-46:**[T-100-CONF-ENG-CT](#),9:7-10:3; [T-100-CONF-ENG-CT](#),73:10-75:10. *Also:* **P-317:**[T-191-CONF-ENG-ET](#),22:7-25,63:14-64:7.

<sup>2087</sup> **P-46:**[T-100-CONF-ENG-CT](#),23:25-25:4,26:10-28:20,40:8-41:3; [T-101-CONF-ENG-ET](#),101:17-102:24; **P-116:**[DRC-OTP-2054-4494](#),p.4529:1-p.4531:1;[T-195-CONF-ENG-ET](#),17:11-19:10; **P-976:**[DRC-OTP-2054-2599](#),p.2634:23-p.2635:2,p.2645:3-25;[T-152-CONF-ENG-ET](#),19:3-17; **P-31:**[DRC-OTP-2054-4127](#),p.4191:15-24.

children that age or, in the case of P-912, that she was herself a child that age.<sup>2088</sup>

#### *6. NTAGANDA's denial of children in the UPC is implausible*

693. **NTAGANDA** strenuously maintained throughout his testimony that there were no children under the age of 18 in the UPC. His explanation on how the UPC determined the age of recruits shifted as time went on: **NTAGANDA** initially explained that the UPC's recruitment "criteria" was one of capability – whether the young person could carry a weapon and an ammunition box, or transport a fallen comrade – rather than age, as there were no identity documents to assess a recruit's actual age.<sup>2089</sup> Indeed, he conceded that recruits were not asked their age.<sup>2090</sup> However, later he stated that it was "obligatory" during recruitment to ask a recruit's age,<sup>2091</sup> and he began linking a person's physical ability to carry a weapon and ammunition with having reached the age of 18.<sup>2092</sup> This logic fails on all levels, since he accepted that in African culture, children typically carry their young siblings around on their backs.<sup>2093</sup>

694. What **NTAGANDA**'s evidence proves is that the only real criteria the UPC used when enlisting and conscripting youth is whether they could physically carry a weapon. Age did not matter.

#### *7. Witnesses testified credibly about their experience as child soldiers*

695. Four former child soldiers (P-898, P-883, P-758 and P-888) testified about their recruitment and use by the UPC. Their personal accounts provide illustrative examples of the crimes with which **NTAGANDA** is charged, containing vivid details of how the UPC recruited them and forced them to undergo military

<sup>2088</sup> **P-886:T-40-CONF-ENG-CT**,44:17-45:8; **P-113:T-118-CONF-ENG-CT**,51:13-19,57:7-13; **P-892:T-85-CONF-ENG-CT**,17:15-18:14; **P-912:T-148-CONF-ENG-ET**,53:14-55:10.

<sup>2089</sup> **D-300:T-213-CONF-ENG-CT**,73:7-22 ;**T-214-CONF-ENG-ET**,33:16-34:1.

<sup>2090</sup> **D-300:T-213-CONF-ENG-CT**,74:15-22.

<sup>2091</sup> **D-300:T-239-CONF-ENG-CT**,12:1-13:17;**T-240-ENG-CT**,22:23-23:3.

<sup>2092</sup> **D-300:T-214-CONF-ENG-ET**,32:3-33:11,54:25-55:8.

<sup>2093</sup> **D-300:T-240-ENG-CT**,25:9-26:14.



training, subjected them to harsh living conditions and strict discipline from which they were unable to escape, and eventually sent them out to the front lines to kill or be killed, and used them as bodyguards. Their accounts are credible, detailed, internally consistent and consistent with each other.

696. The Prosecution is not required to prove the exact date of birth of these particular victims/witnesses, but rather that they were within a certain age range, namely under the age of 15, at the time of their recruitment and use.<sup>2094</sup> A lack of identification documents (or the unreliability of such documents) should not undermine the accounts by the child victims, especially in view of the fact that few individuals in the DRC had identity documents of any kind.<sup>2095</sup> Indeed, even in the absence of an exact date of birth of the victim, a Chamber may, based on the entire record, reasonably reach a finding that the victim was under the age of 15 because this determination is “a question of fact and must be decided on a case-by-case basis taking into account the specific facts and circumstances of the case and the individual at issue”.<sup>2096</sup>

### Prosecution Witness P-898

#### *Recruitment, training and use by the UPC*

697. P-898 was enlisted by the UPC at the age of 13.<sup>2097</sup> He joined when his neighbourhood was attacked [REDACTED] as he believed “Thomas’ troops” were protecting the Hema population against the Lendu and their allies.<sup>2098</sup> He did not tell his parents before enlisting [REDACTED].<sup>2099</sup> He was not asked how old he was, he simply began to receive training along with other children

<sup>2094</sup> [Lubanga AJ](#), para.198.

<sup>2095</sup> [P-901:T-29-CONF-ENG-CT](#),61:4-62:8. See: [Taylor TJ](#), para.1361.

<sup>2096</sup> [Lubanga AJ](#), para.198.

<sup>2097</sup> [P-898:T-153-CONF-ENG-ET](#),29:11-12,30:15-20; [P-918:T-155-CONF-ENG-ET](#),76:21-77:2,77:21-78:1,80:17-82:1; [T-156-CONF-ENG-ET](#),15:23-25; [T-157-CONF-ENG-ET](#),79:10-80:25.

<sup>2098</sup> [P-898:T-153-CONF-ENG-ET](#),30:3-14,51:5-24; [T-154-CONF-ENG-ET](#),71:16-75:21; [P-918:T-155-CONF-ENG-ET](#),83:5-9.

<sup>2099</sup> [P-898:T-154-CONF-ENG-ET](#),79:6-9; [P-918:T-155-CONF-ENG-ET](#),83:5-9.

his age.<sup>2100</sup> There were about 40-50 recruits [REDACTED] with him and instructors AIMÉ, ROBO, PAPY and ROMEO CHARLIE.<sup>2101</sup> He trained there for several days, [REDACTED].<sup>2102</sup> Still a recruit, P-898 did not fight but was ordered to collect and bury bodies.<sup>2103</sup>

698. P-898 was then taken to Mandro camp for further training.<sup>2104</sup> There were about 300-400 recruits there, approximately 30-50 of whom were *kadogos* his age (boys and girls).<sup>2105</sup> Recruits were not permitted to leave Mandro camp, and those caught deserting were brought back to the camp and flogged.<sup>2106</sup> At the end of his training, P-898 was deployed in several battles where he shot at and killed “the enemy”.<sup>2107</sup> He also served as an escort to [REDACTED].<sup>2108</sup> P-898 left the UPC in [REDACTED] and was re-enrolled in school the following year, but did not consistently attend due to the conflict.<sup>2109</sup> In [REDACTED], he was re-recruited by the UPC to fight in Bunia.<sup>2110</sup>

### *Age and schooling*

699. P-898 was born on [REDACTED].<sup>2111</sup> His *carte d'électeur* and *attestation de nationalité* confirm this birthdate,<sup>2112</sup> [REDACTED].<sup>2113</sup> Numerous school records for P-898 [REDACTED] were admitted, showing his birthdate as well as his

<sup>2100</sup> [P-898:T-153-CONF-ENG-ET,51:25-53:7,59:1-60:8,T-154-CONF-ENG-ET,78:17-79:5,80:13-82:7,T-155-CONF-ENG-ET,17:25-19:20,59:11-60:25;](#) [P-918:T-155-CONF-ENG-ET,82:25-83:4,T-158-CONF-ENG-ET,37:23-39:1.](#)

<sup>2101</sup> [P-898:T-153-CONF-ENG-ET,53:8-54:6.](#)

<sup>2102</sup> [P-898:T-153-CONF-ENG-ET,54:7-11.](#) Also: [P-918:T-155-CONF-ENG-ET,84:20-85:20.](#)

<sup>2103</sup> [P-898:T-153-CONF-ENG-ET,54:12-55:22.](#)

<sup>2104</sup> [P-898:T-153-CONF-ENG-ET,55:23-56:24;](#) [P-918:T-155-CONF-ENG-ET,86:4-8,87:6-18.](#)

<sup>2105</sup> [P-898:T-153-CONF-ENG-ET,57:11-58:25.](#)

<sup>2106</sup> [P-898:T-154-CONF-ENG-ET,7:8-18.](#)

<sup>2107</sup> [P-898:T-153-CONF-ENG-ET,60:3-8,T-154-CONF-ENG-ET,8:12-25,T-154-CONF-ENG-ET,10:21-11:12,T-154-CONF-ENG-ET,24:25-25:9;](#) [P-918:T-157-CONF-ENG-ET,83:21-84:3.](#)

<sup>2108</sup> [P-898:T-154-CONF-ENG-ET,25:14-26:1;](#) [P-918:T-155-CONF-ENG-ET,90:13-91:9;](#) [REDACTED].

<sup>2109</sup> [P-898:T-153-CONF-ENG-ET,43:25-45:6,T-155-CONF-ENG-ET,44:1-45:20;](#) [P-918:T-155-CONF-ENG-ET,87:6-22,88:24-90:12,T-156-CONF-ENG-ET,14:25-15:7.](#) Also: [REDACTED].

<sup>2110</sup> [P-898:T-154-CONF-ENG-ET,29:11-20,33:5-12.](#) Also: [P-918:T-157-CONF-ENG-ET,86:14-22,T-158-CONF-ENG-ET,17:24-18:12.](#)

<sup>2111</sup> [P-898:T-153-CONF-ENG-ET,29:11-12.](#)

<sup>2112</sup> [DRC-OTP-2078-2318](#) (see: [P-898:T-153-CONF-ENG-ET,30:24-31:25](#)); [DRC-OTP-2078-2320](#) (see: [P-898:T-153-CONF-ENG-ET,32:17-34:8;](#) [DRC-OTP-2077-0264-R01](#) (see: [P-898:T-153-CONF-ENG-ET,34:9-36:3](#))).

<sup>2113</sup> [P-918:T-155-CONF-ENG-ET,76:21-77:2.](#)

progression through school.<sup>2114</sup>

700. During the 2002/2003 academic year, P-898's marks were averaged to compensate for his not attending school [REDACTED] due to his recruitment and use by the UPC.<sup>2115</sup> He was put in a "favourable position" given his willingness to return to his studies and, like other children, was advanced to the next grade level by teachers [REDACTED].<sup>2116</sup> Unlike his other [REDACTED] school records issued on 1 or 2 July,<sup>2117</sup> this record is dated [REDACTED], supporting the explanation that these were extraordinary times due to the conflict.<sup>2118</sup>

701. P-551 acknowledged that demobilised child soldiers were able to re-enter school, and that the falsification of school records became increasingly common during the conflict.<sup>2119</sup> While testifying that those children who returned to school would re-enter at the beginning of the next year,<sup>2120</sup> he also acknowledged that schools were not functioning normally during the conflict<sup>2121</sup> and that he had in fact fled Bunia during the war [REDACTED],<sup>2122</sup> such that he has no direct knowledge of what *actually* occurred in this regard. Further, P-551 testified that the process for re-joining school depended on the head teacher, and that "*si le chef d'établissement était un Hema et l'élève déserteur est Hema, vous comprenez qu'on accepte facilement.*"<sup>2123</sup> [REDACTED].<sup>2124</sup> [REDACTED].<sup>2125</sup>

<sup>2114</sup> **P-898:T-153-CONF-ENG-ET**,36:5-49:15 [REDACTED]; **P-918:T-155-CONF-ENG-ET**,92:21-93:23,95:12-96:11.

<sup>2115</sup> **P-898:T-153-CONF-ENG-ET**,42:16-45:6. Also:**P-918:T-155-CONF-ENG-ET**,94:23-95:10;**T-158-CONF-ENG-ET**,22:11-22:25; **P-551:DRC-OTP-2095-0376-R01**,p.0379,para.16.

<sup>2116</sup> **P-898:T-153-CONF-ENG-ET**,46:3-46:11;**T-155-CONF-ENG-ET**,47:18-48:21; **P-918:T-158-CONF-ENG-ET**,21:22-22:10.

<sup>2117</sup> See [REDACTED].

<sup>2118</sup> **P-898:T-155-CONF-ENG-ET**,49:16-50:8; [REDACTED].

<sup>2119</sup> **P-551:DRC-OTP-1054-0031-R01**,p.0038-0039,paras.43,44,46;**DRC-OTP-2095-0376-R01**,p.0384-0385,paras.39,43,47.

<sup>2120</sup> **P-551:T-197-CONF-ENG-ET**,72:13-72:21; **DRC-OTP-2095-0376-R01**,p.0384,paras.40.

<sup>2121</sup> **P-551:DRC-OTP-1054-0031-R01**,p.0033,para.13;

<sup>2122</sup> **P-551:DRC-OTP-2095-0376-R01**,p.0382,paras.26,30.

<sup>2123</sup> **P-551:T-197-CONF-ENG-ET**,71:15-25[**T-197-CONF-FRA-ET**,68:18-28].

<sup>2124</sup> [REDACTED].

<sup>2125</sup> [REDACTED].

## *Credibility*

702. P-898 provided detailed, specific information about his experience in the UPC, such as the names of those who enlisted with him [REDACTED],<sup>2126</sup> the precise location where he slept,<sup>2127</sup> the names of several of NTAGANDA's bodyguards,<sup>2128</sup> and he sang two UPC songs in Court in their original language and summarised their content.<sup>2129</sup> He also reacted candidly and with visible discomfort when asked to describe Commander ABELANGA raping a young female recruit.<sup>2130</sup>

703. He firmly maintained his testimony in response to Defence accusations that he fabricated his account,<sup>2131</sup> that he was never a recruit at Mandro camp,<sup>2132</sup> and that he was drawing on [REDACTED] rather than his lived experience.<sup>2133</sup> When asked which friends know he was a member of the UPC, P-898 responded: *"having been a member of the UPC isn't an honour [...] I've never told my friends that I was a member of the UPC, apart from those who know it."*<sup>2134</sup> He similarly disputed the suggestion that he was modifying his answers to conform with other evidence,<sup>2135</sup> or that he had been contaminated by [REDACTED].<sup>2136</sup> P-898 acknowledged when he no longer remembered specific details, such as the number of days he spent at [REDACTED].<sup>2137</sup> He also conceded that he could not confirm whether [REDACTED] appeared in a video of Mandro, contrary to his prior statement.<sup>2138</sup>

704. P-918 confirmed key aspects of P-898's testimony, including his age at the time

<sup>2126</sup> [P-898:T-154-CONF-ENG-ET](#),78:17-79:5.

<sup>2127</sup> [P-898:T-153-CONF-ENG-ET](#),53:19-24;[T-154-CONF-ENG-ET](#),79:17-83:8.

<sup>2128</sup> [P-898:T-154-CONF-ENG-ET](#),5:8-6:18,22:25-23:23.

<sup>2129</sup> [P-898:T-155-CONF-ENG-ET](#),55:1-57:1.

<sup>2130</sup> [P-898:T-153-CONF-ENG-ET](#),73:16-75:15;[T-155-CONF-ENG-ET](#),57:9-16. See: [D-300,T-214-CONF-ENG-ET](#),10:16-18.

<sup>2131</sup> [P-898:T-154-CONF-ENG-ET](#),67:14-69:11;[T-155-CONF-ENG-ET](#),52:13-53:20.

<sup>2132</sup> [P-898:T-155-CONF-ENG-ET](#),43:12-16.

<sup>2133</sup> [P-898:T-154-CONF-ENG-ET](#),42:18-43:1;59:7-62:11. Also:[P-898:T-155-CONF-ENG-ET](#),6:11-7:5.

<sup>2134</sup> [P-898:T-154-CONF-ENG-ET](#),67:16-20. Also:[T-154-CONF-ENG-ET](#),67:14-69:11; [REDACTED].

<sup>2135</sup> [P-898:T-155-CONF-ENG-ET](#),14:8-17:24.

<sup>2136</sup> [P-898:T-154-CONF-ENG-ET](#),62:21-64:11.

<sup>2137</sup> [P-898:T-155-CONF-ENG-ET](#),4:20-5:11.

<sup>2138</sup> [P-898:T-155-CONF-ENG-ET](#),29:25-34:6.

of his enlistment, the timing of his being in the UPC [REDACTED] when in the UPC.<sup>2139</sup> She maintained the truth of her testimony when directly challenged by the Defence.<sup>2140</sup> Her testimony was independent and not influenced by discussions with P-898.<sup>2141</sup> [REDACTED].<sup>2142</sup>

*The Defence evidence does not undermine P-898's account*

705. P-898 contested the Defence suggestion that he was not absent from school in 2002.<sup>2143</sup> D-201 acknowledged that in 2002/2003 schools [REDACTED] were not functioning properly as “*c’était une période de troubles.*”<sup>2144</sup> D-201 testified that he fled [REDACTED] during the conflict for weeks at a time<sup>2145</sup> and accepted that he could not account for the whereabouts of [REDACTED].<sup>2146</sup> Further, D-201 agreed it would have been possible for a student who was absent for several months during the conflict to resume schooling normally if the absence was justified.<sup>2147</sup> D-201 was unable to say what would justify an absence, testifying that this would be assessed by the *préfet*, after parents provided the justification.<sup>2148</sup> This testimony accords with the testimony of P-898 [REDACTED].

706. Nor does D-207's evidence undermine P-898's account. D-207 had very little connection to or knowledge of P-898. [REDACTED].<sup>2149</sup> [REDACTED].<sup>2150</sup> [REDACTED],<sup>2151</sup> and he conceded that he fled for months during the conflict.<sup>2152</sup>

707. P-898 was taken to Mandro camp for military training [REDACTED], and only

<sup>2139</sup> **P-918:**[T-155-CONF-ENG-ET](#),76:21-77:2,77:21-78:1,90:13-91:4;[T-156-CONF-ENG-ET](#),15:20-25.

<sup>2140</sup> **P-918:**[T-158-CONF-ENG-ET](#),43:5-9.

<sup>2141</sup> **P-918:**[T-157-CONF-ENG-ET](#),71:13-72:5;73:6-24. *Also:* **P-898:**[T-154-CONF-ENG-ET](#),70:21-71:15.

<sup>2142</sup> [REDACTED].

<sup>2143</sup> **P-898:**[T-155-CONF-ENG-ET](#),51:15-54:7. [REDACTED].

<sup>2144</sup> **D-201:**[T-246-CONF-ENG-ET](#),51:11-12[[T-246-CONF-FRA-ET](#),52:6-7],78:19-21.

<sup>2145</sup> **D-201:**[T-246-CONF-ENG-ET](#),83:5-84:13.

<sup>2146</sup> **D-201:**[T-246-CONF-ENG-ET](#),78:1-15,79:14-21,80:8-10,84:14-25,86:13-87:19.

<sup>2147</sup> **D-201:**[T-246-CONF-ENG-ET](#),73:9-13[[T-246-CONF-FRA-ET](#),74:17-23].

<sup>2148</sup> **D-201:**[T-246-CONF-ENG-ET](#),73:22-74:9;89:19-90:6.

<sup>2149</sup> **D-207:**[T-261-CONF-ENG-ET](#),33:17-34:10;53:19-54:13.

<sup>2150</sup> **D-207:**[T-261-CONF-ENG-ET](#),34:11-18.

<sup>2151</sup> **D-207:**[T-261-CONF-ENG-ET](#),34:19-37:6.

<sup>2152</sup> **D-207:**[T-261-CONF-ENG-ET](#),14:9-15:19,38:7-40:20.

returned to [REDACTED].<sup>2153</sup> He did not publicise his membership in the UPC<sup>2154</sup>, so it is unsurprising D-207 did not know P-898 was enlisted by the UPC<sup>2155</sup> or see him in uniform<sup>2156</sup> – especially as he testified to himself having no connection to the UPC.<sup>2157</sup> [REDACTED],<sup>2158</sup> [REDACTED].<sup>2159</sup> Further, D-207 was not forthright about his relationship to [REDACTED], referring to him as “*une vieille connaissance*”.<sup>2160</sup> Only when directly confronted about having been [REDACTED] did D-207 admit they had a closer connection.<sup>2161</sup> This should negatively impact on his reliability, especially where he contradicts other witness’s testimony.

### Prosecution Witness P-883

#### *Recruitment, training and use by the UPC*

708. On [REDACTED] 2002, when she was 12, P-883 was abducted by six UPC soldiers along with other children on her way home from primary school [REDACTED].<sup>2162</sup> She remembers the date of her abduction because there was [REDACTED].<sup>2163</sup> The soldiers were armed and threatened the children with their rifles.<sup>2164</sup> P-883 tried to run away but was forcefully caught and her school uniform ripped.<sup>2165</sup> She was taken to [REDACTED] and put in a house with many other children, some her age.<sup>2166</sup> They were beaten and raped by the soldiers.<sup>2167</sup> P-883 heard her mother outside pleading for her release, but she was chased

<sup>2153</sup> See above.

<sup>2154</sup> See above.

<sup>2155</sup> [D-207:T-261-CONF-ENG-ET](#),28:3-8.

<sup>2156</sup> [D-207:T-261-CONF-ENG-ET](#),28:19-24.

<sup>2157</sup> [D-207:T-261-CONF-ENG-ET](#),17:8-14,37:3-6.

<sup>2158</sup> [P-918:T-155-CONF-ENG-ET](#),89:16-18[[T-155-CONF-FRA-ET](#),88:20-23].

<sup>2159</sup> [D-207:T-261-CONF-ENG-ET](#),40:21-25,41:13-42:10.

<sup>2160</sup> [D-207:T-261-CONF-ENG-ET](#),29:15-22[[T-261-CONF-FRA-ET](#),29:16-19].

<sup>2161</sup> [D-207:T-261-CONF-ENG-ET](#),61:20-62:19. Also: [D-207:T-261-CONF-ENG-ET](#),62:22-63:6.

<sup>2162</sup> [P-883:T-167-CONF-ENG-ET](#),91:5-8,93:11-24,94:10-19,95:10-20;[T-168-CONF-ENG-ET](#),3:15-5:4. Also: [DRC-OTP-2074-0414](#)(see: [T-168-CONF-ENG-ET](#),7:17-10:15).

<sup>2163</sup> [P-883:T-167-CONF-ENG-ET](#),93:20-94:9. [REDACTED].

<sup>2164</sup> [P-883:T-168-CONF-ENG-ET](#),5:12-21.

<sup>2165</sup> [P-883:T-168-CONF-ENG-ET](#),5:5-6:16.

<sup>2166</sup> [P-883:T-168-CONF-ENG-ET](#),6:17-7:8;[T-170-CONF-ENG-ET](#),15:13-16:17.

<sup>2167</sup> [P-883:T-168-CONF-ENG-ET](#),12:3-14:21.

away.<sup>2168</sup>

709. The following day, P-883 and other children were given torn, ill-fitting military uniforms and taken to Bule camp for military training.<sup>2169</sup> She gave details of the route they took, the vehicle, and the names of the commanders: [REDACTED] and [REDACTED].<sup>2170</sup> At Bule camp, the commanders recorded her name so they would know if she escaped; no UPC soldier asked her age.<sup>2171</sup> It was impossible to leave the camp.<sup>2172</sup> She saw other children aged 12 or 13 there.<sup>2173</sup> She continued to be raped at Bule camp by many soldiers, as did the other girls, and by her commander.<sup>2174</sup> After training, P-883 was sent on night patrols with other *kadogos*.<sup>2175</sup> She was also sent to fight in [REDACTED], where she sustained a [REDACTED] injury [REDACTED] that required medical treatment.<sup>2176</sup> During treatment, she learnt she was pregnant.<sup>2177</sup>

### *Age and schooling*

710. P-883 was born in a hospital [REDACTED].<sup>2178</sup> Her parents told her which hospital and she knew her date of birth from when she attended school.<sup>2179</sup> Her name and date of birth were recorded in a birth card that was destroyed when her family's home burnt down during the conflict; she also lost both of her parents.<sup>2180</sup> P-883's electoral card, issued in 2011, contains her parents' names and the same place and date of birth.<sup>2181</sup>

<sup>2168</sup> [P-883:T-168-CONF-ENG-ET](#),26:6-18.

<sup>2169</sup> [P-883:T-168-CONF-ENG-ET](#),14:22-16:3.

<sup>2170</sup> [P-883:T-168-CONF-ENG-ET](#),16:6-17:14.

<sup>2171</sup> [P-883:T-168-CONF-ENG-ET](#),24:4-25:11.

<sup>2172</sup> [P-883:T-168-CONF-ENG-ET](#),25:14-26:2.

<sup>2173</sup> [P-883:T-168-CONF-ENG-ET](#),26:22-27:22. Also: [T-168-CONF-ENG-ET](#),31:7-21.

<sup>2174</sup> [P-883:T-168-CONF-ENG-ET](#),31:22-34:2,39:13-20;[T-169-CONF-ENG-ET](#),20:21-21:4.

<sup>2175</sup> [P-883:T-168-CONF-ENG-ET](#),28:25-29:24.

<sup>2176</sup> [P-883:T-168-CONF-ENG-ET](#),36:17-38:25;[DRC-OTP-2075-1005](#).

<sup>2177</sup> [P-883:T-168-CONF-ENG-ET](#),34:6-35:2.

<sup>2178</sup> [P-883:T-167-CONF-ENG-ET](#),91:9-16;[T-170-CONF-ENG-ET](#),18:6.

<sup>2179</sup> [P-883:T-167-CONF-ENG-ET](#),91:9-16,95:10-15;[T-168-CONF-ENG-ET](#),44:17-19;[T-169-CONF-ENG-ET](#),44:14-16.

<sup>2180</sup> [P-883:T-167-CONF-ENG-ET](#),93:5-10;[T-168-CONF-ENG-ET](#),44:12-17.

<sup>2181</sup> [P-883:DRC-OTP-2078-2736-R02](#),p.2736;[T-167-CONF-ENG-ET](#),92:5-10;[T-168-CONF-ENG-ET](#),49:19-20.



711. She testified that she attended [REDACTED], was in the [REDACTED] when she was abducted, and that she never returned to school.<sup>2182</sup> She remembered the names of her teachers for each year she attended school, some of which are corroborated by personnel records.<sup>2183</sup> P-883's baptismal name is [REDACTED], but she was called [REDACTED] at school and that name appears on school records.<sup>2184</sup> When shown *palmarès* for an individual with this name, she disputed information contained therein, such as the date of birth and certain teachers' names, and believed that there had been some "confusion" as the information did not accurately reflect which year she was in each grade.<sup>2185</sup> It is possible that these records belong to another student with a similar name.

### *Credibility*

712. Despite being a young child at the time,<sup>2186</sup> P-883 recalled many details of her experience in the UPC such as the names of children abducted with her,<sup>2187</sup> the soldier who repeatedly raped her,<sup>2188</sup> her itinerary while in the UPC,<sup>2189</sup> the daily routine,<sup>2190</sup> and NTAGANDA's visit to her camp.<sup>2191</sup> Throughout her testimony, she maintained that she was conscripted by the UPC, who were fighting against the APC.<sup>2192</sup> She did not waiver and explained repeatedly that inconsistencies in her VPAFs were in part due to her illiteracy.<sup>2193</sup>

713. The Defence challenged P-883's testimony that she became pregnant while in the UPC on the basis that if she gave birth to her child in [REDACTED] 2004 she

<sup>2182</sup> [P-883:T-167-CONF-ENG-ET](#),94:23-96:3;[T-169-CONF-ENG-ET](#),33:9-20,67:24-68:2,71:22-72:8.

<sup>2183</sup> [P-883:T-168-CONF-ENG-ET](#),53:11-25 [REDACTED].

<sup>2184</sup> [P-883:T-167-CONF-ENG-ET](#),90:24-91:3,54:4-55-10;[T-169-CONF-ENG-ET](#),39:13-21.

<sup>2185</sup> [P-883:T-168-CONF-ENG-ET](#),55:14-60:22.

<sup>2186</sup> [P-883:T-169-CONF-ENG-ET](#),74:10-75:10,76:16-77:24.

<sup>2187</sup> [P-883:T-168-CONF-ENG-ET](#),4:15-5:4;[T-170-CONF-ENG-ET](#),16:14-16.

<sup>2188</sup> [P-883:T-168-CONF-ENG-ET](#),13:1-8,32:19-22.

<sup>2189</sup> [P-883:T-167-CONF-ENG-ET](#),94:15-19;[T-168-CONF-ENG-ET](#),3:24-4:5;7:17-10:10,15:13-21,16:6-8;34:4-5,34:21-35:2,36:17-23;44:7-8.

<sup>2190</sup> [P-883:T-168-CONF-ENG-ET](#),15:22-16:3;28:1-11,28:20-30:9;35:4-14.

<sup>2191</sup> [P-883:T-168-CONF-ENG-ET](#),18:2-19:24.

<sup>2192</sup> [P-883:T-167-CONF-ENG-ET](#),93:17-19;[T-169-CONF-ENG-ET](#),9:18-10-2,11:11-12.

<sup>2193</sup> [P-883:T-169-CONF-ENG-ET](#),13:17-19,19:8-10.

could not have been pregnant when she left the UPC on [REDACTED] 2003.<sup>2194</sup> It is possible that, given the adverse circumstances she has faced since she left the UPC, P-883 is confused about the time that elapsed between her leaving the UPC and her child's birth, as is evidenced by her not disputing a date of birth in 2003 either, when it was put to her by her Legal Representative.<sup>2195</sup>

*The Defence evidence does not undermine P-883's account*

714. The Defence did not challenge P-883's knowledge of her date of birth, but rather focused on documents she obtained after becoming a Prosecution witness and on records from the school she said she attended. P-883 testified that in [REDACTED] .<sup>2196</sup> D-150, D-163, and D-148's statements each point to alleged flaws in the latter two documents and in the manner in which they were obtained. These witnesses' evidence ought to be given little or no weight because important aspects of their evidence were left open to speculation.
715. [REDACTED] D-148 does not know how birth certificates are in fact issued [REDACTED].<sup>2197</sup> [REDACTED].<sup>2198</sup> [REDACTED]<sup>2199</sup> [REDACTED]. This, along with the fact that D-148 was not shown her Prosecution statement during her Defence interview, and that her Prosecution statement was admitted without the required rule 68(2)(b)(ii) declaration,<sup>2200</sup> detracts from the weight that the Chamber can accord her evidence.
716. D-150 and D-163, [REDACTED], confirm that an *attestation de naissance* is based on the information provided by the person requesting it, without verification.<sup>2201</sup>

<sup>2194</sup> [P-883:T-169-CONF-ENG-ET](#),18:5-7;[T-170-CONF-ENG-ET](#),13:11-13,14:13-16.

<sup>2195</sup> [P-883:T-168-CONF-ENG-ET](#),64:22-24.

<sup>2196</sup> [P-883:DRC-OTP-2094-0656](#);[T-168-CONF-ENG-ET](#),44:20-45:2,46:7-9;[T-169-CONF-ENG-ET](#),67:2-5;[DRC-OTP-2094-0655](#);[T-168-CONF-ENG-ET](#),50:8-51:17.

<sup>2197</sup> [D-148: DRC-D18-0001-6141](#),para.15; [DRC-OTP-2097-0455-R01](#),para.19.

<sup>2198</sup> [D-148:DRC-OTP-2097-0455](#),paras.15,18.

<sup>2199</sup> [D-148:DRC-OTP-2097-0455](#),para.14, [DRC-D18-0001-6141](#),para.12.

<sup>2200</sup> [D-148:DRC-OTP-2097-0455](#).

<sup>2201</sup> [D-150:DRC-D18-0001-6146](#), para.15; [D-163:DRC-D18-0001-6159](#), para.15.

[REDACTED] on P-883's *attestation de naissance* [REDACTED],<sup>2202</sup> [REDACTED], as suggested by the letters "PO" – customarily "*par ordre*"<sup>2203</sup>– appearing before the signature.<sup>2204</sup> [REDACTED],<sup>2205</sup> [REDACTED].<sup>2206</sup> D-150 did not state whether he checked for variations of P-883's [REDACTED] name, nor the years for which he searched the *registres des actes de naissance*; indeed, he did not identify them beyond referring to them as "his".<sup>2207</sup> Despite the availability of a camera during D-150's interview, only two partial images of an unspecified *registre des actes de naissance* were tendered by the Defence.<sup>2208</sup>

717. P-883 was forthcoming about having supplied her year of birth and parents' names herself to the hospital<sup>2209</sup> and the *État-Civil*.<sup>2210</sup> P-883 was also transparent about the manner in which the documents were obtained, and about the fact that she received assistance from, and gave the documents to, a local association.<sup>2211</sup> The Defence witnesses do not, therefore, undermine P-883's credibility.

### Prosecution Witness P-758

#### *Recruitment, training and use by the UPC*

718. P-758 was abducted and conscripted by armed UPC soldiers at a roadblock on [REDACTED] during the school year in 2002, when she was 13.<sup>2212</sup> She was taken to Lingo camp along with other young boys and girls who had been arrested.<sup>2213</sup> According to P-758, "*we couldn't go because they had weapons and we had no means of leaving.*"<sup>2214</sup> She does not remember being asked how old she was.<sup>2215</sup> She was able

<sup>2202</sup> [D-150:DRC-D18-0001-6146](#), paras.18,20.

<sup>2203</sup> [D-300:T-239-CONF-ENG-CT](#),25:24-26:2.

<sup>2204</sup> [P-883:DRC-OTP-2094-0655](#).

<sup>2205</sup> [D-150:DRC-D18-0001-6146](#), paras.19-20.

<sup>2206</sup> [P-883:T-169-CONF-ENG-ET](#),51:1-6,56:4-19.

<sup>2207</sup> [D-150:DRC-D18-0001-6146](#), para.22.

<sup>2208</sup> [D-150:DRC-D18-0001-6146](#), para.21.

<sup>2209</sup> [P-883:T-168-CONF-ENG-ET](#),45:3-8,50:13-17;[T-169-CONF-ENG-ET](#),58:14-59:3,60:7-23,65:13-14.

<sup>2210</sup> [P-883:T-169-CONF-ENG-ET](#),67:2-5.

<sup>2211</sup> [P-883:T-169-CONF-ENG-ET](#),51:7-52:2.

<sup>2212</sup> [P-758:T-160-CONF-ENG-ET](#),77:20-80:4,71:2-3.

<sup>2213</sup> [P-758:T-160-CONF-ENG-ET](#),81:4-83:15,88:3-24,90:9-19,92:19-93:15.

<sup>2214</sup> [P-758:T-160-CONF-ENG-ET](#),80:8-13.

to recall in detail the route they took to Lingo camp<sup>2216</sup> and that she heard Commander [REDACTED]'s name.<sup>2217</sup>

719. At Lingo camp, P-758 was forced to engage in military training along with about 120 other recruits.<sup>2218</sup> She recalled two Gegere individuals called [REDACTED] and [REDACTED] who were trainers at Lingo camp, as was [REDACTED] (who provided weapons training).<sup>2219</sup> She and the other recruits were taught that the Lendu were the enemy.<sup>2220</sup> P-758 told the UPC soldiers that she was Gegere, fearing that if they knew [REDACTED] was Lendu they would kill her.<sup>2221</sup>

720. UPC soldiers brutally raped P-758 the day she was arrested, and she continued to be subjected to sexual abuse throughout her time in the UPC.<sup>2222</sup> Commander [REDACTED] chose P-758 for his escort<sup>2223</sup> and raped her and his other young female escorts.<sup>2224</sup> P-758 was taught to kill all Lendu, soldiers and civilians alike, even children.<sup>2225</sup> And she fought in several battles.<sup>2226</sup> She eventually fled Lingo camp and thereafter was used by UPC soldiers to conduct patrols and guard a [REDACTED].<sup>2227</sup> She also continued to be subjected to brutal sexual violence.<sup>2228</sup> When French soldiers arrived in Bunia to arrest Floribert KISEMBO she left the

---

<sup>2215</sup> **P-758:**[T-160-CONF-ENG-ET](#),88:22-24,90:9-11.

<sup>2216</sup> **P-758:**[T-160-CONF-ENG-ET](#),81:9-23.

<sup>2217</sup> **P-758:**[T-160-CONF-ENG-ET](#),80:19-81:3.

<sup>2218</sup> **P-758:**[T-161-CONF-ENG-ET](#),30:8-9,11:11-13.

<sup>2219</sup> **P-758:**[T-161-CONF-ENG-ET](#),9:6-24,30:8-21.

<sup>2220</sup> **P-758:**[T-161-CONF-ENG-ET](#),11:14-17,34:24-35:19.

<sup>2221</sup> **P-758:**[T-161-CONF-ENG-ET](#),8:22-9:5,37:20-23;[T-162-CONF-ENG-ET](#),4:14-25:,7:3-25.

<sup>2222</sup> **P-758:**[T-160-CONF-ENG-ET](#),83:16-85:1;[T-161-CONF-ENG-ET](#),4:19-6:8,7:13-8:21,34,3:13;[T-162-CONF-ENG-ET](#),47:9-48:13. *Also:* **P-761:**[DRC-OTP-2054-8283-R05](#),p.8286,paras.17-18;[T-163-CONF-ENG-ET](#),6:1-7:1.

<sup>2223</sup> **P-758:**[T-161-CONF-ENG-ET](#),32:11-25,76:1-77:11.

<sup>2224</sup> **P-758:**[T-161-CONF-ENG-ET](#),34:3-13.

<sup>2225</sup> **P-758:**[T-161-CONF-ENG-ET](#),11:14-17,34:14-36:3,47:2-13.

<sup>2226</sup> **P-758:**[T-161-CONF-ENG-ET](#),34:14-34:20. *Also:* **P-761:**[DRC-OTP-2054-8283-R05](#),p.8286,para.17;[T-162-CONF-ENG-ET](#),66:25-69:6.

<sup>2227</sup> **P-758:**[T-161-CONF-ENG-ET](#),53:3-10,56:9-57:9.

<sup>2228</sup> **P-758:**[T-161-CONF-ENG-ET](#),53:11-56:8.

UPC and went looking for her family.<sup>2229</sup>

### *Age and schooling*

721. P-758 was born in [REDACTED] on [REDACTED] 1989.<sup>2230</sup> [REDACTED] confirmed this birthdate,<sup>2231</sup> which is also consistent with her *carte d'électeur*<sup>2232</sup> and birth certificate.<sup>2233</sup> P-758 testified that the second birth certificate, issued in 2008, had the correct date of birth but incorrectly showed her place of birth as Bunia.<sup>2234</sup> She was not involved in obtaining either birth certificate.<sup>2235</sup>

722. P-758 testified that she attended [REDACTED] until [REDACTED] year [REDACTED].<sup>2236</sup> P-761 corroborates that she attended [REDACTED] until [REDACTED] and that she never attended secondary school.<sup>2237</sup> Her name is listed in two school records for the [REDACTED] school year.<sup>2238</sup> [DRC-OTP-2082-0124](#) shows that P-758 completed [REDACTED] year of primary school in [REDACTED].<sup>2239</sup> [DRC-OTP-0225-0064](#) provides her personal information, including her date of birth and parents' names.<sup>2240</sup> Both P-758 and P-761 noted that the day and month of birth listed in [DRC-OTP-0225-0064](#) is incorrect, but that it recorded the correct year of birth.<sup>2241</sup>

723. P-551, a school inspector, testified that a pupil's date of birth is typically given

<sup>2229</sup> [P-758:T-161-CONF-ENG-ET](#),57:12-58:18;[T-162-CONF-ENG-ET](#),54:10-55:5. Also:[P-761:DRC-OTP-2054-8283-R05](#),p.8286,paras.18-19,[T-163-CONF-ENG-ET](#),50:21-51:12; [P-773:DRC-OTP-0127](#),p.0129,para.17.

<sup>2230</sup> [P-758:T-160-CONF-ENG-ET](#),70:22-71:3.

<sup>2231</sup> [P-761:DRC-OTP-2054-8283-R05](#),p.8284,paras.7-8;[T-163-CONF-ENG-ET](#),3:12-5:21; [P-773:DRC-OTP-2057-0127](#),p.0128,para.9; [T-182-CONF-ENG-ET](#),38:4-39:10.

<sup>2232</sup> [DRC-OTP-2096-0776-R01](#) (see: [P-758:T-160-CONF-ENG-ET](#),71:20-74:7).

<sup>2233</sup> [DRC-OTP-2051-2066](#) (see: [P-758:T-160-CONF-ENG-ET](#),74:21-75:17).

<sup>2234</sup> [DRC-OTP-2054-8289](#) (see: [P-758:T-160-CONF-ENG-ET](#),75:20-77:3).

<sup>2235</sup> [P-758:T-160-CONF-ENG-ET](#),74:9-75:11,75:20-76:22.

<sup>2236</sup> [P-758:T-160-CONF-ENG-ET](#),77:5-77:19.

<sup>2237</sup> [P-761:T-162-CONF-ENG-ET](#),72:1-19;[T-163-CONF-ENG-ET](#),3:9-11. Also:[T-163-CONF-ENG-ET](#),57:25-58:23.

<sup>2238</sup> [DRC-OTP-0225-0064](#), [REDACTED] (see: [P-758:T-161-CONF-ENG-ET](#),60:17-61:24,62:14-19,66:14-18); [DRC-OTP-2082-0124](#), [REDACTED] (see:[P-758:T-161-CONF-ENG-ET](#),63:23-65:10,[T-161-CONF-ENG-ET](#),65:25-66:18). Also: [P-761:T-162-CONF-ENG-ET](#),73:5-75:24.

<sup>2239</sup> [DRC-OTP-2082-0124](#), [REDACTED].

<sup>2240</sup> [DRC-OTP-0225-0064](#), [REDACTED].

<sup>2241</sup> [P-758:T-161-CONF-ENG-ET](#),61:11-22; [P-761:T-162-CONF-ENG-ET](#),75:9-10.

orally by a parent, with no official documentation;<sup>2242</sup> he confirmed that errors occurred.<sup>2243</sup> Other information in P-758's record (in addition to the names of both her parents) is corroborated by external evidence, [REDACTED].<sup>2244</sup> The Defence put a different school record to P-758 showing that a person with the same name attended secondary school; P-758 maintained that she did not finish primary school and that the individual in the [REDACTED] register [REDACTED] was a different person.<sup>2245</sup>

### *Credibility*

724. P-758 provided a credible and detailed account of her traumatic experiences on events that took place more than 10 years ago when P-758 was a child. She provided vivid details of her abduction and rape by the UPC, without any motive to lie. During her testimony, she requested to break when overcome with emotion.<sup>2246</sup> P-758 testified candidly about her struggle to return to civilian life and admitted that she still thinks about the people she killed and the wrongs she caused.<sup>2247</sup>

725. P-758 readily acknowledged when she could not recall an event. When questioned about inconsistencies in VPAFs completed by third parties on her behalf, P-758 maintained her testimony about her abduction and use by the UPC, even though she did not remember every detail she discussed with different individuals.<sup>2248</sup> As discussed in section IV.B.,<sup>2249</sup> VPRS could not confirm the circumstances of completing victim application forms or if they were read-back,

<sup>2242</sup> [P-551:DRC-OTP-2095-0376-R01](#),p.0380,para.20;[T-197-CONF-ENG-ET](#),38:2-6[[T-197-CONF-FRA-ET](#),36:9-13].

<sup>2243</sup> [P-551:T-197-CONF-ENG-ET](#),38:11-14[[T-197-CONF-FRA-ET](#),36:19-22].

<sup>2244</sup> [DRC-OTP-2098-0117-R01](#); [DRC-OTP-0011-0476](#), para.2; [DRC-OTP-0009-0146-R01](#),p.0152,para.1.

<sup>2245</sup> [P-758:T-162-CONF-ENG-ET](#),14:4-15:6,14:13-15:6[[T-162-CONF-FRA-ET](#),15:4-27],12:15-19,13:25-14:3. [REDACTED].

<sup>2246</sup> [P-758:T-160-CONF-ENG-ET](#),85:8-16;[T-161-CONF-ENG-ET](#),58:19-25.

<sup>2247</sup> [P-758:T-161-CONF-ENG-ET](#),60:1-8,67:5-14. *Also:* [P-761:DRC-OTP-2054-8283-R05](#),p.8286, para.20;[T-163-CONF-ENG-ET](#),7:2-20.

<sup>2248</sup> [P-758:T-162-CONF-ENG-ET](#),5:18-6:3,20:17-21:8,22:13-23:17,25:24-25:29,18-25,34:5-7,34:14-15. *Also:* [P-758:T-162-CONF-ENG-ET](#),12:10-13:7,13:16-14:3,28:10-12,29:8-10,52:7-12.

<sup>2249</sup> *See* Section IV.B.

and had not even started training intermediaries until 2013.

726. At the time of her abduction, P-758 was not living with either of her parents [REDACTED].<sup>2250</sup> When she returned from the UPC, P-758 told [REDACTED] about her experience; P-773 [REDACTED] saw wounds and scars on P-758's body.<sup>2251</sup> P-758 told [REDACTED] that she had been raped and other details of her time in the UPC.<sup>2252</sup> P-761 [REDACTED] also learned about her sexual victimisation from an individual who was in the UPC.<sup>2253</sup> P-761 reported the abduction and rape [REDACTED] to the UN shortly after [REDACTED],<sup>2254</sup> and sought treatment for her [REDACTED].<sup>2255</sup> Both [REDACTED] observed signs of 758's mental and emotional trauma from her experience as a child soldier in the UPC, such as anger and physical insecurity, flashbacks to those she killed, feelings of alienation, stigmatisation, shame and social withdrawal.<sup>2256</sup>

727. Defence counsel played two excerpts of a video [REDACTED] to P-758 and read her prior statement in which she stated that she recognised certain people but did not remember their names or where she knew them from.<sup>2257</sup> While the Defence asserted that they would establish who *"the person in the video is,"*<sup>2258</sup> it was not authenticated by [REDACTED] or any other witness. Accordingly, the Chamber should disregard the Defence's challenge to P-758's credibility on this point.<sup>2259</sup>

728. Even if P-758 is mistaken about the exact timing of her abduction by UPC soldiers, which the Prosecution does not concede, she was still under the age of 15

---

<sup>2250</sup> [REDACTED].

<sup>2251</sup> **P-773:** [DRC-OTP-2057-0127](#), p.0129, para.17.

<sup>2252</sup> **P-761:** [DRC-OTP-2054-8283-R05](#), p.8286, paras.17,20.

<sup>2253</sup> **P-761:** [DRC-OTP-2054-8283-R05](#), p.8286, para.18; [T-163-CONF-ENG-ET](#), 6:7-7:1.

<sup>2254</sup> **P-761:** [T-163-CONF-ENG-ET](#), 14:10-23.

<sup>2255</sup> **P-761:** [DRC-OTP-2054-8283-R05](#), p.8287, para.25; [T-163-CONF-ENG-ET](#), 7:6-20.

<sup>2256</sup> **P-773:** [DRC-OTP-2057-0127](#), p.0130, paras.19,23; **P-761:** [DRC-OTP-2054-8283-R05](#), p.8286, para.20, p.8287, para.25; [T-163-CONF-ENG-ET](#), 7:2-20.

<sup>2257</sup> **P-758:** [T-161-CONF-ENG-ET](#), 71:13-73:21.

<sup>2258</sup> **P-758:** [T-161-CONF-ENG-ET](#), 74:19-23.

<sup>2259</sup> For instance: **P-758:** [T-161-CONF-ENG-ET](#), 77:12-17.



when she was conscripted and used by UPC forces as she only turned 15 in [REDACTED] 2004. These harrowing events occurred over a decade ago, when she was still a child, and they occurred in the context of a violent armed conflict. P-758 provided vivid details of her abduction, training and use by the UPC, and graphic descriptions of rape and sexual slavery. The Chamber can also assess her credibility through her demeanour when describing her rape, the songs she sang in the UPC, and her sense of lost identity.<sup>2260</sup> These are all are strong indicia of P-758's overall credibility.

### Prosecution Witness P-888

#### *Recruitment, training and use by the UPC*

729. P-888 was conscripted by the UPC in 2002 when he was 14, having finished the [REDACTED].<sup>2261</sup> While he and other children were on their way to fetch water, two trucks with armed UPC soldiers approached and forced them into the vehicles.<sup>2262</sup> P-888 knew the names of three of the boys abducted with him, one of whom was also 14.<sup>2263</sup> P-888 was told by the soldiers that **NTAGANDA** was in one of the trucks, although he acknowledged that he was scared and panicked at the time of his abduction.<sup>2264</sup> He and the other children were taken to Mandro camp for training where there were many recruits; he estimates about 50 were *kadogos*,<sup>2265</sup> (or very young soldiers<sup>2266</sup>). Following two weeks of grueling military training,<sup>2267</sup> P-888 fought in battles in Songolo,<sup>2268</sup> Mongbwalu<sup>2269</sup> and Bunia for the

<sup>2260</sup> P-758:[T-161-CONF-ENG-ET](#),60:1-8,67:5-14,70:6-10;[T-162-CONF-ENG-ET](#),56:25-57:12.

<sup>2261</sup> P-888:[T-105-CONF-ENG-CT](#),11:25-12:3;12:15-22,13:8-11;13:12-22;14:18-15:11. [REDACTED].

<sup>2262</sup> P-888:[T-105-CONF-ENG-CT](#),16:6-18,17:16-23,17:16-18:17;18:18-24;20:7-16;[T-106-CONF-ENG-CT](#),44:2-5;[T-107-CONF-ENG-ET](#),38:16-39:2.

<sup>2263</sup> P-888:[T-105-CONF-ENG-CT](#),20:20-21:11.

<sup>2264</sup> P-888:[T-105-CONF-ENG-CT](#),18:25-19:13;[T-106-CONF-ENG-CT](#),49:25-50:21.

<sup>2265</sup> P-888:[T-105-CONF-ENG-CT](#),15:12-17,16:15-17:5,19:14-20:3,26:25-27:23.

<sup>2266</sup> P-888:[T-105-CONF-ENG-CT](#),27:15.

<sup>2267</sup> P-888:[T-105-CONF-ENG-CT](#),16:19-17:5.

<sup>2268</sup> P-888:[T-105-CONF-ENG-CT](#),46:3-8.

<sup>2269</sup> P-888:[T-105-CONF-ENG-CT](#),73:24-74:21.

UPC.<sup>2270</sup> [REDACTED].<sup>2271</sup> After the UPC's defeat in Bunia, P-888 left the UPC and [REDACTED].<sup>2272</sup>

### *Age and schooling*

730. P-888 testified that his date of birth is [REDACTED] 1988,<sup>2273</sup> which he was told by his parents when he started school.<sup>2274</sup> P-888 was shown an identity card (obtained in [REDACTED], more than [REDACTED] prior to his meeting with investigators<sup>2275</sup>) that shows his date of birth as [REDACTED] 1988 (rather than [REDACTED]), which P-888 explained was an error by the person recording the information that he had not corrected.<sup>2276</sup> P-888's passport also indicates a date of birth of [REDACTED] 1988.<sup>2277</sup>

731. P-888 attended the [REDACTED] school at [REDACTED] and recognised his name in the [REDACTED] *palmarès*.<sup>2278</sup> In the handwritten [REDACTED] *registre scolaire*, P-888 was shown an entry with his name, his father's name and a partially legible birth date of [REDACTED], either 1984 or 1989.<sup>2279</sup> He testified that the month and date were correct, "*quant à l'année, je n'en suis pas sûr.*"<sup>2280</sup> P-888 then explained that he repeated his [REDACTED] school and that, as he recalls, he was abducted during this second year.<sup>2281</sup> He was unable to recall when he started school or when he finished primary school.<sup>2282</sup>

732. During his cross-examination, P-888 was shown a baptismal record dated

<sup>2270</sup> P-888:[T-105-CONF-ENG-CT](#),85:19-86:24.

<sup>2271</sup> P-888:[T-105-CONF-ENG-CT](#),62:3-22

<sup>2272</sup> P-888:[T-105-CONF-ENG-CT](#),88:15-89:4;[T-107-CONF-ENG-ET](#),40:12-24.

<sup>2273</sup> P-888:[T-105-CONF-ENG-CT](#),8:19-20,9:6-9[[T-105-CONF-FRA-CT](#),8:4-5].

<sup>2274</sup> P-888:[T-105-CONF-ENG-CT](#),8:21-9:4;[T-106-CONF-ENG-CT](#),68:1-4.

<sup>2275</sup> P-888:[T-106-CONF-ENG-CT](#),66:20-67:9;74:16-75:13;77:16-78:2.

<sup>2276</sup> P-888:[T-105-CONF-ENG-CT](#),9:10-10:20 ;[T-106-CONF-ENG-CT](#),60:8-61:12,65:14-66:2; [DRC-OTP-2075-0644-R02](#), [DRC-OTP-2075-0646-R02](#).

<sup>2277</sup> P-888:[T-106-CONF-ENG-CT](#),62:11-15;[T-107-CONF-ENG-ET](#),32:20-34:5.

<sup>2278</sup> P-888:[T-109-CONF-ENG-ET](#),14:11-17:19; [REDACTED].

<sup>2279</sup> P-888:[T-109-CONF-ENG-ET](#),19:15-21:1; [REDACTED].

<sup>2280</sup> P-888:[T-109-CONF-ENG-ET](#),21:2-6[[T-109-CONF-FRA-ET](#),17:4-8].

<sup>2281</sup> P-888:[T-109-CONF-ENG-ET](#),28:17-30:05.

<sup>2282</sup> P-888:[T-105-CONF-ENG-CT](#),12:15-16,[T-109-CONF-ENG-ET](#),32:2-7. Also:[T-109-CONF-ENG-ET](#),32:19-33:13.

[REDACTED] 1998 for an individual with a birthdate of [REDACTED] 1984.<sup>2283</sup> He confirmed he was baptised at [REDACTED] (when he was in [REDACTED] year primary school),<sup>2284</sup> but was confused by the date recorded, maintaining that his mother told him he was born on [REDACTED] 1988 and that he was “not familiar” with this other date.<sup>2285</sup>

733. D-134, who identified and described this register, has only [REDACTED] since [REDACTED], so his observations about the register are of limited relevance.<sup>2286</sup> According to his statement, D-134 was shown and commented upon photographs of the cover of the register and one page that lists baptisms from [REDACTED] 1998.<sup>2287</sup> D-134 refers only to these photographs and not to the register itself.<sup>2288</sup> The complete baptismal register was not commented upon by D-134 in his statement, nor was it disclosed or admitted into evidence – only the photograph of one page of the register and the cover are available for the Chamber.<sup>2289</sup> Without the complete register, the Chamber cannot evaluate whether there are other relevant entries. This failing significantly reduces the probative value of the register, as it is possible that this date was erroneously recorded or that another entry with P-888’s information and correct birth date appears elsewhere.

### *Credibility*

734. P-888 admitted he suffered severe headaches and nightmares following his interview with the Prosecution due to the emotion of recalling his experiences in the UPC, including of killing people.<sup>2290</sup> [REDACTED] that P-888 suffers from

<sup>2283</sup> [P-888:T-106-CONF-ENG-CT](#),68:6-69:17.

<sup>2284</sup> [P-888:T-106-CONF-ENG-CT](#),64:23-65:3;70:8-12.

<sup>2285</sup> [P-888:T-106-CONF-ENG-CT](#),69:13-70:7.

<sup>2286</sup> [D-134:DRC-D18-0001-5822](#),p.5823,para.9,p.5824,para.17.

<sup>2287</sup> [D-134:DRC-D18-0001-5822](#),p.5824,paras.13-16.

<sup>2288</sup> [D-134:DRC-D18-0001-5822](#),p.5823,para.9.

<sup>2289</sup> [P-888:T-106-CONF-ENG-CT](#),68:6-69:4,71:2-4.

<sup>2290</sup> [P-888:T-106-CONF-ENG-CT](#),78:16-79:1;[T-107-CONF-ENG-ET](#),27:8-17.

[ET](#),29:5-11.

Also: [T-107-CONF-ENG-](#)

trauma and that it has affected him mentally.<sup>2291</sup> P-888 also testified that he has forgotten certain details as he was young when he was recruited into the UPC.<sup>2292</sup>

735. Although P-888 had difficulty remembering specific dates, he attempted to place events in chronological order. For instance, he did not know the date of his abduction, but knew that the UPC were in control of Bunia at the time and believed that it was not long after LOMPONDO's forces had been driven out of Bunia.<sup>2293</sup> P-888 was able to provide detailed testimony about the circumstances of his abduction by UPC forces, the names of the other boys taken with him,<sup>2294</sup> the types of weapons he was trained to use at Mandro camp.<sup>2295</sup> He explained scars on his legs from beatings he received while in the UPC,<sup>2296</sup> provided details about the battle he fought in Songolo<sup>2297</sup> and specific information about **NTAGANDA**.<sup>2298</sup>

736. Throughout his testimony he remained calm and candid, and was not argumentative or defensive. He answered questions spontaneously and honestly, he accepted that he may have forgotten details over such a long period of time,<sup>2299</sup> but he maintained that he was abducted by the UPC and taken to Mandro camp.<sup>2300</sup> The Defence challenged P-888's account on the basis of information allegedly obtained from his mother.<sup>2301</sup> These challenges should be disregarded as the suggestions were not supported by evidence on the record: P-888's mother was not called as a witness.

---

<sup>2291</sup> [REDACTED].

<sup>2292</sup> [P-888:T-107-CONF-ENG-ET](#),31:7-10.

<sup>2293</sup> [P-888:T-105-CONF-ENG-CT](#),13:15-15:11.

<sup>2294</sup> [P-888:T-105-CONF-ENG-CT](#),16:6-18,17:16-23,18:18-24,20:20-21:11,21:12-22:3. Also: [P-888:T-107-CONF-ENG-ET](#),25:16-26:1.

<sup>2295</sup> [P-888:T-105-CONF-ENG-CT](#),24:15-26:5.

<sup>2296</sup> [P-888:T-105-CONF-ENG-CT](#),33:19-35:9,36:11-17;[T-107-CONF-ENG-ET](#),38:1-12 (see: [DRC-OTP-2075-0639](#) to [DRC-OTP-2075-0642](#)).

<sup>2297</sup> [P-888:T-105-CONF-ENG-CT](#),46:15-47:14,50:16-51:16.

<sup>2298</sup> [P-888:T-105-CONF-ENG-CT](#),68:20-69:5;70:11-19. Also:[P-888:T-105-CONF-ENG-CT](#),70:2-10;[T-106-CONF-ENG-CT](#),16:9-17.

<sup>2299</sup> For instance:[P-888:T-106-CONF-ENG-CT](#),38:6-24. Also:[P-888:T-107-CONF-ENG-ET](#),31:4-10.

<sup>2300</sup> [P-888:T-106-CONF-ENG-CT](#),70:22-71:1;[T-207-CONF-ENG-ET](#),24:15-19;[T-109-CONF-ENG-ET](#),34:7-16.

<sup>2301</sup> [P-888:T-106-CONF-ENG-CT](#),48:3-15;[T-107-CONF-ENG-ET](#),3:20-4:21.

737. While adamant that he never discussed his Prosecution interview with [REDACTED],<sup>2302</sup> P-888 confirmed that they did discuss his abduction and use by the UPC once they were both living [REDACTED].<sup>2303</sup> It is perfectly reasonable for former child soldiers to discuss their UPC experience with family members, [REDACTED]. This does not form a basis to conclude that P-888 fabricated his account, a suggestion he denied.<sup>2304</sup> The differences between [REDACTED] and P-888's account in respect of P-888's UPC activities<sup>2305</sup> demonstrate clearly that they did not collude to provide a false account.

### Prosecution Witness P-10

#### *Recruitment, training and use by the UPC*

738. P-10 was abducted at the age of 13 by UPC soldiers while fleeing the fighting in Bunia with her family.<sup>2306</sup> She knew they were UPC soldiers because they were fighting against the APC.<sup>2307</sup> P-10 was transported to Rwampara with other children under the age of 15<sup>2308</sup> and was forced to participate in military training.<sup>2309</sup> She also described being repeatedly raped by UPC commanders, like the other young girls.<sup>2310</sup>

739. [REDACTED].<sup>2311</sup> They were all armed and all performed the same tasks, regardless of age.<sup>2312</sup> She fought in battles in Mongbwalu,<sup>2313</sup> as well as in Libi,

<sup>2302</sup> [P-888:T-106-CONF-ENG-CT](#),80:20-81:7.

<sup>2303</sup> [P-888:T-106-CONF-ENG-CT](#),5:15-20;76,5-9,76:25-77:8;[T-107-CONF-ENG-ET](#),6:11,7:1-10.

[REDACTED].

<sup>2304</sup> [P-888:T-109-CONF-ENG-ET](#),34:7-16.

<sup>2305</sup> [P-888:T-106-CONF-ENG-CT](#),5:21-25;[T-107-CONF-ENG-ET](#),7:25-9:22,40:12-23.

<sup>2306</sup> [P-10:T-46-CONF-ENG-ET](#),28:15-29:1,29:12-30:24,31:13-18;[T-50-CONF-ENG-CT](#),59:16-60:8.

<sup>2307</sup> [P-10:T-46-CONF-ENG-ET](#),29:22-30:17.

<sup>2308</sup> [P-10:T-46-CONF-ENG-ET](#),30:25-31:21.

<sup>2309</sup> [P-10:T-46-CONF-ENG-ET](#),31:22-33:14,34:17-19,39:15-40:14,41:11-42:3;[T-48-CONF-ENG-CT](#),20:8-22;[T-49-CONF-ENG-CT](#),7:20-23.

<sup>2310</sup> [P-10:T-46-CONF-ENG-ET](#),35:4-25,38:9-39:2;[T-48-CONF-ENG-CT](#),20:23-21:7. Also:[T-47-CONF-ENG-CT](#),35:13-37:5.

<sup>2311</sup> [P-10:T-46-CONF-ENG-ET](#),47:22-48:9;[T-47-CONF-ENG-CT](#),5:18-8:3,20:23-21:4;[T-48-CONF-ENG-CT](#),43:7-14.

<sup>2312</sup> [P-10:T-47-CONF-ENG-CT](#),7:12-20,8:1-3.

<sup>2313</sup> [P-10:T-47-CONF-ENG-CT](#),21:5-7.

Mbau and Kpandroma.<sup>2314</sup> [REDACTED].<sup>2315</sup>

### *Credibility*

740. P-10 provided reliable, detailed evidence about her time in the UPC,<sup>2316</sup> including evidence corroborated by other witnesses.<sup>2317</sup> She also provided details about her time serving in [REDACTED] and she recounted in detail her rape by [REDACTED] UPC commanders.<sup>2318</sup> [REDACTED].<sup>2319</sup>

741. P-10 was visibly scared during the initial part of her testimony in NTAGANDA's presence, even with a screen to shield her from him. [REDACTED]<sup>2320</sup> [REDACTED]<sup>2321</sup> Her demeanour changed completely when NTAGANDA was no longer physically present in the Courtroom. She was noticeably more relaxed and gave her testimony freely and with greater ease. P-10's reactions and fears were palpable to all those in the Courtroom, [REDACTED].

742. While the Prosecution did not put P-10 forward as a former child soldier, it is open to the Chamber to make such a finding based on the evidence.

### *The Defence evidence does not undermine P-10's account*

743. For the reasons set out in paragraph 679 above, the Chamber should disregard the Defence challenges to P-10's presence at Rwampara camp during NTAGANDA's videotaped visit. Further, as the Defence chose not to call D-20 as a witness, any suggestions put to P-10 based on information allegedly obtained

<sup>2314</sup> [P-10:T-49-CONF-ENG-CT](#),56:24-57:17,58:21-24.

<sup>2315</sup> [P-10:T-47-CONF-ENG-CT](#),31:13-34:19,62:23-63:24.

<sup>2316</sup> [P-10:T-47-CONF-ENG-CT](#),9:10-10:5,11:3-12:9;[T-48-CONF-ENG-CT](#),44:11-20,45:15-17;[T-50-CONF-ENG-CT](#),15:3-23.

<sup>2317</sup> For instance: [P-10:T-46-CONF-ENG-ET](#),32:2-3,32:9-12.

<sup>2318</sup> [P-10:T-47-CONF-ENG-CT](#),8:4-9,10:22-24,21:12-22:17;[T-48-CONF-ENG-CT](#),47:10-48:8,49:10-50:12.

<sup>2319</sup> [REDACTED].

<sup>2320</sup> [P-10:T-46-CONF-ENG-ET](#),48:12.

<sup>2321</sup> [P-10:T-46-CONF-ENG-ET](#),52:16-18.

from him should not be relied upon to diminish her credibility in any way.<sup>2322</sup>

744. Rather than undermining P-10's account, D-17 confirmed that P-10 was [REDACTED] in the November 2002 attack on Mongbwalu.<sup>2323</sup> He spontaneously listed her as one of the PMF present at the November 2002 Mongbwalu attack and only retracted from this when guided by Defence Counsel.<sup>2324</sup>

745. The testimony of the two other Defence witnesses called to undermine P-10's credibility, D-211 and D-251, must be given no weight. They had such limited knowledge of P-10 that their testimony lacks probative value.

746. First, D-211's belief that P-10 was initially in the APC<sup>2325</sup> is unreliable. If true, it is based on what D-211 remembers learning when she was a 13-year old girl on a short visit to [REDACTED],<sup>2326</sup> when D-211 [REDACTED].<sup>2327</sup> D-211 never saw P-10 in an APC military uniform,<sup>2328</sup> nor could she provide any details of P-10's supposed time in that group. D-211 came to know P-10 better after P-10 had left the UPC [REDACTED] for a short period of time.<sup>2329</sup> D-211 testified that even during this period they were not close friends and P-10 did not share her "secrets", such as the circumstances [REDACTED]<sup>2330</sup> or whether she was raped.<sup>2331</sup> D-211 knew no details of P-10's time in the UPC,<sup>2332</sup> and she was not herself a UPC member.<sup>2333</sup> D-211 admitted she lied about having been in the APC in order to be admitted to a CTO [REDACTED].<sup>2334</sup> While she distanced herself from certain details in the record of her interview with MONUC,<sup>2335</sup> she accepted

<sup>2322</sup> See: [P-10;T-49-CONF-ENG-CT](#),33:4-24,44:8-14,48:13-16;[T-50-CONF-ENG-CT](#),48:15-19.

<sup>2323</sup> [D-17;T-253-CONF-ENG-ET](#),33:17-34:10.

<sup>2324</sup> [D-17;T-253-CONF-ENG-ET](#),34:13-14,38:8-24.

<sup>2325</sup> [D-211;T-247-CONF-ENG-CT](#),13:15-14:6.

<sup>2326</sup> [D-211;T-247-CONF-ENG-CT](#),77:11-24.

<sup>2327</sup> [D-211;T-247-CONF-ENG-CT](#),82:7,79:16;[T-248-CONF-ENG-ET](#),32:5-8.

<sup>2328</sup> [D-211;T-247-CONF-ENG-CT](#),13:25-26:2.

<sup>2329</sup> [D-211;T-247-CONF-ENG-CT](#),78:13-79:2,16:10-17:17.

<sup>2330</sup> [D-211;T-248-CONF-ENG-ET](#),31:8-21.

<sup>2331</sup> [D-211;T-247-CONF-ENG-CT](#),48:4-16.

<sup>2332</sup> [D-211;T-248-CONF-ENG-ET](#),32:2-19,34:15-35:1.

<sup>2333</sup> [D-211;T-247-CONF-ENG-CT](#),11:25-12:1,47:13-14.

<sup>2334</sup> [D-211;T-247-CONF-ENG-CT](#),17:10-25,19:18-25;[T-248-CONF-ENG-ET](#),19:3-4.

<sup>2335</sup> [REDACTED].



that she was interviewed<sup>2336</sup> and that several other details in the record of the interview were correct.<sup>2337</sup> By D-211's own account, it is entirely plausible that the record of this interview contains a mix of truth and untruth – for both D-211 and P-10, who was allegedly interviewed at the same time and the record of which includes a similar detail of being in the APC.<sup>2338</sup> Given D-211's extremely limited knowledge about P-10's experience as a soldier, her evidence is unreliable as an indicator of the credibility of P-10's testimony.

747. D-251 also has limited knowledge of P-10. Despite D-251's claim that P-10 was her "great friend,"<sup>2339</sup> D-251 knew very little about P-10: she was unable to say with any certainty when P-10 joined the UPC<sup>2340</sup> [REDACTED].<sup>2341</sup> She does not know P-10's age.<sup>2342</sup> D-251's account of P-10 '[REDACTED]' while she was in the UPC contradicts D-211's evidence.<sup>2343</sup> D-251 also incorrectly asserted that P-10 has [REDACTED].<sup>2344</sup> The Chamber must give no weight to D-251's bald claim that P-10 had previously been in the APC.<sup>2345</sup> She provided no further details in support.

748. D-251's testimony confirmed the evidence of P-10 on some points: [REDACTED],<sup>2346</sup> [REDACTED].<sup>2347</sup> In other places, D-251 contradicted NTAGANDA's evidence. For instance, D-251 joined the UPC when she was only 17<sup>2348</sup> and [REDACTED] who was either 16 or 17,<sup>2349</sup> contrary to NTAGANDA's assertion that all [REDACTED] were over 18.<sup>2350</sup> She stated that [REDACTED],

<sup>2336</sup> [D-211:T-248-CONF-ENG-ET](#),5:13-6:4,7:14-8:18.

<sup>2337</sup> [D-211:T-248-CONF-ENG-ET](#),6:5-7:11,7:12-13; cf. [T-247-CONF-ENG-CT](#),44:13-46:11,47:4-20.

<sup>2338</sup> [REDACTED].

<sup>2339</sup> [D-251:T-260-CONF-ENG-CT](#),36:14-19

<sup>2340</sup> [D-251:T-260-CONF-ENG-CT](#),70:19-20.

<sup>2341</sup> [D-251:T-260-CONF-ENG-CT](#),71:9-10.

<sup>2342</sup> [D-251:T-260-CONF-ENG-CT](#),23:2-5.

<sup>2343</sup> [D-251:T-260-CONF-ENG-CT](#),36:14-19,72:2-20,77:13-78:2; *contra* [D-211:T-248-CONF-ENG-ET](#),32:20-33:5.

<sup>2344</sup> [D-251:T-260-CONF-ENG-CT](#),78:1-2; *contra* [P-10:T-50-CONF-ENG-CT](#),56:7-9.

<sup>2345</sup> [D-251:T-260-CONF-ENG-CT](#),19:19-25.

<sup>2346</sup> [D-251:T-260-CONF-ENG-CT](#),18:4-11.

<sup>2347</sup> [D-251:T-260-CONF-ENG-CT](#),14:11-12,18:4-11. *See*: [P-10,T-47-CONF-ENG-CT](#),5:25-6:1.

<sup>2348</sup> [D-251:T-260-CONF-ENG-CT](#),8:2-3,80:19-81:8.

<sup>2349</sup> [D-251:T-260-CONF-ENG-CT](#),16:10-13.

<sup>2350</sup> [D-300:T-214-CONF-ENG-ET](#),32:2-9,55:3-8;[T-239-CONF-ENG-CT](#),40:19-20.

NTAGANDA did not ask her age, such that her contention that NTAGANDA did not accept young people is also not credible.<sup>2351</sup>

749. [REDACTED]<sup>2352</sup> [REDACTED].<sup>2353</sup> [REDACTED]. Moreover, D-251's testimony must be treated with caution given her personal relationship to NTAGANDA, her financial indebtedness to him, and her obedience to his orders.<sup>2354</sup>

750. Lastly, the Defence challenged P-10 on the timing of her disclosure that she had been raped [REDACTED].<sup>2355</sup> P-10 explained that she did not disclose all details of her sexual victimisation in early interviews with the Prosecution [REDACTED] because she had just met them and "*didn't want to say everything.*"<sup>2356</sup> [REDACTED].<sup>2357</sup> [REDACTED].<sup>2358</sup>

#### *8. There was no genuine demobilisation by the UPC*

751. NTAGANDA stated that he knew of only one instance of demobilisation in the UPC, of children whom KISEMBO handed over to an NGO.<sup>2359</sup> NTAGANDA denies, however, that these children were part of the UPC, claiming that they were from the RCD-K/ML and followed KISEMBO to Bunia.<sup>2360</sup>

752. As witnesses confirm, the three internal UPC documents<sup>2361</sup> that purport to be orders to demobilise children are not genuine because they were either never circulated,<sup>2362</sup> were not discussed during Executive meetings,<sup>2363</sup> or were prepared

<sup>2351</sup> [D-251:T-260-CONF-ENG-CT](#),11:19-12:20,27:5-6,65:4-24.

<sup>2352</sup> [D-251:T-260-CONF-ENG-CT](#),33:23-24.

<sup>2353</sup> [D-251:T-260-CONF-ENG-CT](#),70:8-15.

<sup>2354</sup> [D-251:T-260-CONF-ENG-CT](#),84:1-12,35:3-4,66:24,67:23-24,85:4-5,39:7-11,84:13-85:13,66:4-7.

<sup>2355</sup> [P-10:T-49-CONF-ENG-CT](#),46:1-20.

<sup>2356</sup> [P-10:T-49-CONF-ENG-CT](#),46:16-20.

<sup>2357</sup> [REDACTED].

<sup>2358</sup> [REDACTED].

<sup>2359</sup> [D-300:T-239-CONF-ENG-CT](#),15:12-16:7;30:16-24,[T-242-CONF-ENG-ET](#),29:7-18..

<sup>2360</sup> [D-300:T-239-CONF-ENG-CT](#),15:18-16:1,16:4-7.

<sup>2361</sup> [DRC-OTP-0029-0274](#) ; [DRC-OTP-0029-0275](#); [DRC-OTP-0151-0299](#).

<sup>2362</sup> [REDACTED].

<sup>2363</sup> [REDACTED].

as a result of pressure from international actors.<sup>2364</sup> The co-perpetrators never intended for the orders to be implemented, as evidenced by the fact that the recruitment (and re-recruitment) and use of children continued unabated.<sup>2365</sup> What these orders do establish, just like the internal UPC documents set out above, is that there were children under the age of 15 in the ranks of the UPC and its leadership, including **NTAGANDA**, knew of and condoned their membership.

753. When asked about demobilisation efforts by the UPC in 2002 and 2003, **NTAGANDA** responded that he does not remember if there were any when he was there.<sup>2366</sup> He was shown the first order, dated October 2002, which refers to the UPC receiving assistance from the NGO SOS Grands-Lacs to demobilise the children within the UPC.<sup>2367</sup> **NTAGANDA** maintained that it was not possible that there were children in the UPC and that this letter was not referring to a continuing practice, but simply a “reminder” that having children under 18 in their forces was not part the UPC’s policy as they had been told from the beginning.<sup>2368</sup>

754. [REDACTED].<sup>2369</sup> [REDACTED].<sup>2370</sup> When asked about this same document during his testimony, P-31 recognised the name of Adubango BIRI, but was not familiar with the letter.<sup>2371</sup> He observed that this letter confirms that there were

<sup>2364</sup> [P-17:T-60-CONF-ENG-ET](#),33:9-35:7;[P-46:T-101-CONF-ENG-ET](#),13:15-15:22;[T-102-CONF-ENG-CT](#),33:16-34:10,38:4-39:6; [P-116](#):12:23-15:14; [P-31:DRC-OTP-2054-3939](#),p.3971:20-3975:13;[P-41:DRC-OTP-2054-5199](#),p.5240:1-p.5241:10;[DRC-OTP-0147-0002](#),p.0018,para96,p.0082,para.168; [DRC-OTP-0074-0797](#),p.0851.

<sup>2365</sup> [P-5:T-185-CONF-ENG-ET](#),15:14-16:22;[T-189-CONF-ENG-ET](#),20:13-19,23:5-19; [P-31:T-174-CONF-ENG-ET](#),25:23-26:1,45:9-17[[T-174-CONF-FRA-ET](#),42:26-43:6];[T-175-CONF-ENG-ET](#),61:3-62:11;[DRC-OTP-2054-3760](#),p.3803:4-p.3807:25;[DRC-OTP-2054-3939](#),p.3971:11-p.3975:13; [P-46:T-101-CONF-ENG-ET](#),20:18-27:2); [DRC-OTP-0001-0033](#),p.0033,0035-p0037.

<sup>2366</sup> [D-300:T-239-CONF-ENG-CT](#),15:12-16:7.

<sup>2367</sup> [DRC-OTP-0029-0274](#).

<sup>2368</sup> [D-300:T-239-CONF-ENG-CT](#),11:19-23,15:7-11,17:6-13,19:3-17.

<sup>2369</sup> [REDACTED].

<sup>2370</sup> [REDACTED]. *Also*:[P-46:T-102-CONF-ENG-CT](#),32:9-33:7.

<sup>2371</sup> [P-31:T-174-CONF-ENG-ET](#),43:13-45:8.

children in the UPC.<sup>2372</sup> P-5 stated that this initiative was never discussed and that: *“le 12 février 2003, vous voyez, c’est juste la période où il y avait beaucoup d’insécurité et que quelques semaines après, deux ou trois semaines après, l’UPC était chassée de Bunia”*.<sup>2373</sup> Under such circumstances, it is highly unlikely that the UPC executive were contemplating demobilising its child soldiers.

755. **NTAGANDA** also denied meeting with MONUC representatives in October 2002 to discuss the presence of underage children in the UPC when shown documentation about this meeting.<sup>2374</sup>

756. A second order was issued by LUBANGA on 27 January 2003 – a “follow up” to his previous letter – which shows that there were still children in the ranks of the UPC and that the previous order had been ineffective.<sup>2375</sup> UPC military commanders and political ministers testified that they were not aware of this order to demobilise children.<sup>2376</sup> **NTAGANDA** reported to RAFIKI on 16 February 2003 that he relayed LUBANGA’s instructions about *“enfants soldats”* in all FPLC units to demobilise.<sup>2377</sup>

757. This order to demobilise children from the UPC is wholly contradicted by **NTAGANDA**’s visit to the Rwampara training camp on 12 February 2003, along with other co-perpetrators, where there were children patently under the age of 15 present.<sup>2378</sup> This visit by senior UPC leaders in which they encouraged recruits and boosted morale is incompatible with any genuine intention to demobilise children within its ranks.

<sup>2372</sup> [P-31:T-174-CONF-ENG-ET](#),44:13-25.

<sup>2373</sup> [P-5:T-185-CONF-ENG-ET](#),16:23-19:20[[T-185-CONF-ENG-ET](#),18:25-27].

<sup>2374</sup> [D-300:T-239-CONF-ENG-CT](#),20:2-22:5; [REDACTED].

<sup>2375</sup> [DRC-OTP-0029-0275](#).

<sup>2376</sup> [P-768:T-36-CONF-ENG-CT](#),47:19-24;[P-55:T-71-CONF-ENG-CT](#),95:2-13;[T-72-CONF-ENG-CT](#),16:13-17:11; [P-5:T-185-CONF-ENG-ET](#),12:5-19:13;[T-189-CONF-ENG-ET](#),20:13-19,21:9-23:3[[T-189-CONF-FRA-ET](#),23:10-25:14]. Also :[P-976:T-152-CONF-ENG-ET](#),95:11-21.

<sup>2377</sup> [DRC-D01-0003-5896](#).

<sup>2378</sup> [DRC-OTP-0120-0293](#).

758. The third purported demobilisation order was issued in June 2003.<sup>2379</sup>

NTAGANDA testified that he was not familiar with this order.<sup>2380</sup> He was then shown an order from KISEMBO to all brigade commanders, dated 5 June 2003, which refers to LUBANGA's June 2003 decree and the need to demobilise any troops under the age of 18.<sup>2381</sup> He confirmed that this letter repeated the instruction to demobilise any troops under 18, but disputed that it showed there were, in fact, children under 18 in the UPC.<sup>2382</sup>

759. P-17 testified that he recalls an order from KISEMBO to disarm the children in the UPC in June or July 2003; however, very shortly thereafter he saw these children re-armed to participate in fighting in Bunia.<sup>2383</sup> [REDACTED].<sup>2384</sup> D-13's evidence is that at the time of the June 2003 demobilisation decree, there was a *"présence abondante des militaires de... en fait, des enfants soldats dans les FPLC"*.<sup>2385</sup>

760. A June 2003 [REDACTED] report notes that despite reports of Radio Candip broadcasting about a UPC initiative to demobilise 70 children (as a result of meeting with MONUC), there is still a presence of UPC troops, including child soldiers, in Bunia.<sup>2386</sup> Similarly, a [REDACTED] report for the week of 2-8 June 2003 refers to:

[REDACTED].<sup>2387</sup>

761. According to individuals who were based in Ituri at the relevant period and assisting with the demobilisation of children, there was no sustained

<sup>2379</sup> [DRC-OTP-0151-0299](#); [DRC-OTP-0014-0253](#).

<sup>2380</sup> [D-300:T-239-CONF-ENG-CT](#),26:17-28:13.

<sup>2381</sup> [DRC-OTP-0014-0254](#).

<sup>2382</sup> [D-300:T-239-CONF-ENG-CT](#),29:3-30:8.

<sup>2383</sup> [P-17:T-60-CONF-ENG-ET](#),32:12-25. Also: [P-901:T-29-CONF-ENG-CT](#),59:18-60:19; [P-31:T-176-CONF-ENG-ET](#),85:6-86:6.

<sup>2384</sup> [REDACTED].

<sup>2385</sup> [D-13:DRC-D18-0001-6475](#),p.6505:8-10[[DRC-D18-0001-6178](#),p.6198:14-16].

<sup>2386</sup> [DRC-OTP-0005-0041](#),p.0041,para.3. Also:[P-46:T-101-CONF-ENG-ET](#),19:11-20:17,65:25-66:20; [DRC-OTP-0001-0033](#),p.0037; [DRC-OTP-0203-0319](#),p.0323.

<sup>2387</sup> [REDACTED].

demobilisation programme within the UPC.<sup>2388</sup> In fact, P-31, [REDACTED], observed that after October 2002, the number of children in the UPC was rising rather than declining, and that nothing changed as a result of these purported demobilisation efforts.<sup>2389</sup> P-46 continued to meet with and interview children under the age of 15 who had been recruited and used by the UPC long after these orders were purportedly issued,<sup>2390</sup> and both P-31 and P-46 continued to see children at UPC camps.<sup>2391</sup>

762. Moreover, there is ample evidence from several witnesses that the UPC re-recruited previously demobilised children, sometimes by use of force or by threatening them or their families.<sup>2392</sup>

#### D. RAPE AND SEXUAL SLAVERY OF CHILDREN (ARTICLE 8(2)(E)(VI)) – COUNTS 6 AND 9

763. From on or about 6 August 2002 until 31 December 2003, UPC soldiers and commanders raped and sexually enslaved children under the age of 15 who were within the ranks of the UPC.<sup>2393</sup> The rape and enslavement of these children happened throughout Ituri and on a continuous basis over the course of the armed conflict. As such, the acts had a clear nexus to the armed conflict.

<sup>2388</sup> **P-46:** [T-100-CONF-ENG-CT](#),56:6-57:14;[T-101-CONF-ENG-ET](#),65:25-66:20;[T-102-CONF-ENG-CT](#),29:12-30:2;[T-103-CONF-ENG-ET](#),75:10-76:23; **P-116:** [DRC-OTP-2054-6975](#),p.7035:15-p.7036:24,p.7039:23-p.7042:21,p.7043:10-7044:16; **P-31:** [DRC-OTP-2054-4127](#),p.4189:22-p.4191:14,[T-174-CONF-ENG-ET](#),23:9-26:1,[T-176-CONF-ENG-ET](#),87:10-88:11. *Also:* **P-12:** [DRC-OTP-2054-0073](#),p.0154:3-0156:2,[DRC-OTP-2054-0274](#),p.0276:13-23; **P-317:** [T-191-CONF-ENG-ET](#),83:16-86:18[[T-191-CONF-FRA-ET](#),77:22-79:20],[T-193-CONF-ENG-ET](#),34:16-35:5; [DRC-OTP-0152-0286](#),p.0311,para.94.

<sup>2389</sup> **P-31:** [DRC-OTP-2054-3760](#),p.3801:10-p.3807:25.

<sup>2390</sup> **P-46:** [T-101-CONF-ENG-ET](#),39:3-40:17,44:20-46:4,51:4-61:1;[T-103-CONF-ENG-ET](#),76:13-23. *Also:* [DRC-OTP-0203-0324](#),p.0326; [DRC-OTP-0001-0067](#),p.0069; [DRC-OTP-0001-0090](#),p.0091.

<sup>2391</sup> **P-31:** [T-174-CONF-ENG-ET](#),23:9-24:11,25:12-26:1,[DRC-OTP-2054-4127](#),p.4189:22-p.4192:16; **P-46:** [T-100-CONF-ENG-CT](#),70:1-71:14;[T-101-CONF-ENG-ET](#),20:18-27:2); [DRC-OTP-0001-0033](#),p.0033,0035-p.0037.

<sup>2392</sup> **P-17:** [T-60-CONF-ENG-ET](#),32:12-25; **P-898:** [T-153-CONF-ENG-ET](#),42:16-45:6,[T-154-CONF-ENG-ET](#),41:17-42:17; **P-976:** [DRC-OTP-2054-2599](#),p.2648:13-p.2650:14,[T-152-CONF-ENG-ET](#),32:6-17,33:16-34:12; **P-116:** [T-195-CONF-ENG-ET](#),33:15-37:12,[DRC-OTP-2054-6975](#),p.7039:23-7044:16; **P-46:** [T-101-CONF-ENG-ET](#),41:14-43:20,84:4-9 (*see:* [DRC-OTP-0001-0055](#),p.0057); **P-31:** [DRC-OTP-2054-3760](#),p.3786:14-22,p.3807:20-24,[DRC-OTP-2054-3939](#),p.3971:20-3975:13,[DRC-OTP-2054-4308](#),p.4316:14-24,[DRC-OTP-2054-4494](#),p.4505:13-p.4507:9; [DRC-OTP-0152-0286](#),p.0313, para.101; [DRC-OTP-0061-0228](#),p.0232,para.16-17.

<sup>2393</sup> ICC-01/04-02/06-1962, para. 71.

764. Children are afforded special protection under IHL as they are particularly vulnerable.<sup>2394</sup> The rampant sexual abuse of the young girls recruited by the UPC is an obvious example. They suffered the compound harm of both being recruited and used to participate actively in hostilities, and being sexually violated. This sexual violence was perpetrated in such coercive circumstances there was no capacity for genuine consent.<sup>2395</sup> In any event, children are not capable of giving informed or genuine consent.<sup>2396</sup>

765. The evidence proves beyond reasonable doubt the prevalence of sexual violence against young girls recruited into the UPC. The personal accounts of child soldier witnesses illustrate the lasting effect of these brutal violations. P-758 [REDACTED].<sup>2397</sup> P-883 testified: *“Jusqu’aujourd’hui, je continue à souffrir la violence. Dans mon corps, il y a une souffrance atroce.”*<sup>2398</sup>

766. The evidence of UPC military witnesses and child protection workers is consistent on the highly coercive environment that existed and the sexual violations being committed against other soldiers, including children under the age of 15. NTAGANDA’s flat denial of any sexual violence, rape or pregnancy within the camps/UPC<sup>2399</sup> must be disregarded when viewed against the extensive, credible evidence to the contrary.

### *1. Children recruited into the UPC were raped*

767. The rape of girls within the ranks of the UPC was a common and widespread occurrence. Many former members of the UPC witnessed or knew that soldiers

<sup>2394</sup> Patricia Viseur Sellers, “Ntaganda: Re-Alignment of a Paradigm”, International Institute of Humanitarian Law (<http://www.iihl.org/wp-content/uploads/2018/04/Ntaganda-VI.pdf>).

<sup>2395</sup> See: Rules of Procedure of Evidence, rule 70; Elements of Crimes, article 8(2)(e)(vi)-1, para.2.

<sup>2396</sup> *Lubanga AJ*, paras.300-303.

<sup>2397</sup> **P-758:T-161-CONF-ENG-ET**,70:6-70:10;**T-162-CONF-ENG-ET**,56:25-57:12.

<sup>2398</sup> **P-883:T-167-CONF-ENG-ET**,96:6-7[**T-167-CONF-FRA-ET**,93:7-8].

<sup>2399</sup> **D-300:T-214-CONF-ENG-ET**,8:18-9:16;**T-228-CONF-ENG-CT**,20:18-22;**T-239-CONF-ENG-CT**,46:10-47:2.



and commanders sexually exploited these young girls during their training.<sup>2400</sup> PMF (*“personnel militaire femme”*) was a term used to describe girls within the ranks of the UPC.<sup>2401</sup> P-10 testified that raping PMFs was “a habit” for the commanders, and that *“when we went to bed and there were a few girls missing, we knew only too well that the commander had taken them.”*<sup>2402</sup>

768. UPC commanders and soldiers raped children systematically. P-758 testified that girls in the UPC were raped after battles rather than before because the soldiers and commanders believed that anyone who had sex before fighting would be killed on the battlefield.<sup>2403</sup>

769. Following the completion of their military training, commanders selected girls to be in their escort and then repeatedly raped them.<sup>2404</sup> Some girls were forced to perform domestic tasks, in addition to providing sexual services, and to live with their commanders as their ‘wife.’<sup>2405</sup> Given the inability for girls to genuinely consent, the notion of ‘wife’ was a lamentable euphemism.

770. NTAGANDA testified that soldiers could get ‘married’ in camps by declaring the arrangements to superiors; he was not aware of any situations of non-

<sup>2400</sup> [P-963:T-80-CONF-ENG-ET,27:23-29:10,41:5-12](#); [P-768:T-34-CONF-ENG-CT,55:18-60:13](#); [P-898:T-153-CONF-ENG-ET,71:20-72:19,72:20-75:21](#); [T-155-CONF-ENG-ET,57:9-16](#); [P-888:T-105-CONF-ENG-CT,39:3-40:2](#); [P-190:T-97-CONF-ENG-CT,41:3-6,48:10-49:7](#); [P-907:T-89-CONF-ENG-CT,55:8-25,61:7-17](#); [P-758:T-160-CONF-ENG-ET,86:23-87:5](#); [T-161-CONF-ENG-ET,6:13-22,20:13-23](#); [P-10:T-46-CONF-ENG-ET,35:4-25,38:9-39:2](#); [T-47-CONF-ENG-CT,31:13-34:19,36:18-22](#); [T-48-CONF-ENG-CT,20:23-21:7](#); [P-16:DRC-OTP-2054-1781-R02,p.1795:19-21,p.1810:4-19](#); [DRC-OTP-2054-1447,p.1472:11-p.1474:1](#). Also: [P-31:T-174-CONF-ENG-ET,39:17-42:18](#).

<sup>2401</sup> [P-758:T-161-CONF-ENG-ET,31:24-32:10](#); [P-901:T-29-CONF-ENG-CT,57:10-14](#); [P-963:T-80-CONF-ENG-ET,9:21-10:8](#); [P-17:T-59-CONF-ENG-CT,47:13-48:6](#); [T-59-CONF-FRA-CT,48:1-8](#); [P-55:T-70-CONF-ENG-CT,46:22-47:1](#); [P-30:T-144-CONF-ENG-ET,37:19-24](#); [P-907:T-89-CONF-ENG-CT,55:2-7](#); [P-16:DRC-OTP-2054-1447,p.1480:3-12](#).

<sup>2402</sup> [P-10:T-46-CONF-ENG-ET,38:15-39:2](#). Also: [P-10,T-47-CONF-ENG-CT,36:2-22](#).

<sup>2403</sup> [P-758:T-161-CONF-ENG-ET,68:12-69:2](#). Also: [P-31:T-174-CONF-ENG-ET,39:17-42:18](#).

<sup>2404</sup> [P-963:T-80-CONF-ENG-ET,33:4-11](#); [P-17:T-58-CONF-ENG-CT,51:12-52:23](#); [P-901:T-29-CONF-ENG-CT,56:22-58:15](#); [REDACTED]; [REDACTED]; [P-16:DRC-OTP-2054-1781-R02,p.1796:14-p.1797:12](#).

<sup>2405</sup> [P-963:T-80-CONF-ENG-ET,32:25-33:11](#); [P-898:T-153-CONF-ENG-ET,72:20-75:21](#); [T-155-CONF-ENG-ET,57:9-16](#); [P-190:T-97-CONF-ENG-CT,41:3-6,48:10-49:7](#); [P-901:T-29-CONF-ENG-CT,57:15-58:15,59:8-17](#); [P-907:T-89-CONF-ENG-CT,61:7-19,63:18-65:2](#); [P-31:T-174-CONF-ENG-ET,27:15-30:11](#); [P-46:T-101-CONF-ENG-ET,68:3-69:20](#). Also: [P-17:T-60-CONF-ENG-ET,28:3-29:6](#); [P-815:T-76-CONF-ENG-CT,42:18-51:7](#); [P-365:T-147-CONF-ENG-ET,31:10-33:11](#).

consent.<sup>2406</sup> He also testified that in the circumstances, it was not possible to ensure a dowry was paid to the girl before the couple lived together but that couples would come to agreements to pay later, which was sometimes enforced by the UPC.<sup>2407</sup> [REDACTED], however, testified that [REDACTED] never sought permission from superiors to be together and that **NTAGANDA** was only aware of their relationship when [REDACTED] was visibly pregnant.<sup>2408</sup> [REDACTED] testified that **NTAGANDA** was angry at her for being pregnant, telling her that she *“had come to do military service and not have children.”*<sup>2409</sup>

771. P-46 conducted numerous interviews with children associated with armed groups and documented the information.<sup>2410</sup> The majority of the girls from the UPC whom she interviewed had been raped (often by their commanders) in addition to being used in combat.<sup>2411</sup> P-365 assisted victims of the ethnic conflict in Ituri, including many girls who had been raped by their superiors in the UPC and taken by commanders as ‘wives’.<sup>2412</sup>

772. P-887, [REDACTED], saw UPC soldiers there frequently take a young child soldier named [REDACTED] and exploit her at will.<sup>2413</sup> She heard UPC soldiers discuss having had sex with [REDACTED].<sup>2414</sup> P-887 [REDACTED] felt sorry for [REDACTED] and would try to speak to her.<sup>2415</sup> P-887 observed that she *“looked like someone who had been traumatised.”*<sup>2416</sup>

773. P-907 also testified about [REDACTED] who was no more than 12, and who

<sup>2406</sup> [D-300:T-223-CONF-ENG-ET](#),34:19-35:8;[T-239-CONF-ENG-CT](#),43:16-20,47:5-49:18,50:15-19;[T-241-CONF-ENG-CT](#),40:1-19.

<sup>2407</sup> [D-300:T-239-CONF-ENG-CT](#),49:25-50:13.

<sup>2408</sup> [REDACTED].

<sup>2409</sup> [REDACTED].

<sup>2410</sup> [P-46:T-100-CONF-ENG-CT](#),14:8-21,15:6-24;[T-101-CONF-ENG-ET](#),69:4-8.

<sup>2411</sup> [P-46:T-101-CONF-ENG-ET](#),67:25-69:20; [DRC-OTP-0074-0422](#),p.0464,paras.151-152.

<sup>2412</sup> [P-365:T-147-CONF-ENG-ET](#),31:10-33:11,34:20-35:1,39:2-21,40:2-41:14,98:3-100:8.

<sup>2413</sup> [P-887:T-93-CONF-ENG-CT](#),39:23-40:22,41:2-14,50:3-8.

<sup>2414</sup> [P-887:T-93-CONF-ENG-CT](#),40:13-22.

<sup>2415</sup> [P-887:T-93-CONF-ENG-CT](#),41:4-11.

<sup>2416</sup> [P-887:T-93-CONF-ENG-CT](#),41:10.

had been raped by many UPC soldiers.<sup>2417</sup> It was “common knowledge” that due to being repeatedly raped [REDACTED], so KISEMBO gave a speech forbidding the soldiers from raping her anymore.<sup>2418</sup> P-907 testified that no soldiers were punished for having raped [REDACTED].<sup>2419</sup>

774. Both P-758 and P-883 were repeatedly raped by UPC soldiers and commanders, and also witnessed the rape of other girls. Their testimony illustrates the frequency and brutality of the sexual violence perpetrated against girls within the ranks of the UPC.

775. After her abduction by UPC forces, P-758 was taken to [REDACTED] where an armed soldier took her to a hut and ordered her to undress, threatening to kill her if she refused.<sup>2420</sup> She was afraid and did not try to escape.<sup>2421</sup> He tore off her clothes and raped her, [REDACTED].<sup>2422</sup> [REDACTED].<sup>2423</sup> He raped her more than once; she cannot remember how many times.<sup>2424</sup> She was in a great deal of pain.<sup>2425</sup> P-758 testified that many other girls at the camp were raped.<sup>2426</sup> P-758 was then taken to Lingo camp for military training and, [REDACTED], was dragged into a house by UPC soldiers and raped.<sup>2427</sup> She was raped repeatedly by UPC soldiers and commanders throughout her training and after.<sup>2428</sup> P-758 testified that all the girls at the camp were raped – she saw it with her own eyes.<sup>2429</sup> She testified about [REDACTED], a [REDACTED] girl in the UPC with her, who died from her injuries due to being raped by the soldiers.<sup>2430</sup> [REDACTED] chose P-758

<sup>2417</sup> [P-907:T-89-CONF-ENG-CT,55:8-25,57:1-9.](#)

<sup>2418</sup> [P-907:T-89-CONF-ENG-CT,55:20-56:24.](#)

<sup>2419</sup> [P-907:T-89-CONF-ENG-CT,56:4-7.](#)

<sup>2420</sup> [P-758:T-160-CONF-ENG-ET,83:16-84:8.](#)

<sup>2421</sup> [P-758:T-160-CONF-ENG-ET,83:23-84:5.](#)

<sup>2422</sup> [P-758:T-160-CONF-ENG-ET,84:1-12.](#)

<sup>2423</sup> [P-758:T-160-CONF-ENG-ET,84:16-21.](#)

<sup>2424</sup> [P-758:T-160-CONF-ENG-ET,84:22-85:1.](#)

<sup>2425</sup> [P-758:T-160-CONF-ENG-ET,87:6-9.](#)

<sup>2426</sup> [P-758:T-160-CONF-ENG-ET,86:23-87:5.](#)

<sup>2427</sup> [P-758:T-161-CONF-ENG-ET,4:19-6:8.](#)

<sup>2428</sup> [P-758:T-161-CONF-ENG-ET,7:13-8:1,68:12-18;](#) [T-162-CONF-ENG-ET,47:9-48:13.](#)

<sup>2429</sup> [P-758:T-161-CONF-ENG-ET,6:13-22,20:13-23.](#)

<sup>2430</sup> [P-758:T-160-CONF-ENG-ET,89:12-25.](#)

to be in his escort along with [REDACTED] other young girls, [REDACTED];<sup>2431</sup> according to P-758, he only chose girls.<sup>2432</sup> They all lived with him and were regularly raped by him.<sup>2433</sup> P-758 recalls also being raped by “[REDACTED]” and then returning to [REDACTED]’s house where she slept.<sup>2434</sup>

776. Following her abduction in [REDACTED], P-883 was taken to [REDACTED] where she was raped by several UPC soldiers.<sup>2435</sup> There were other girls in the house with her who were also repeatedly raped throughout the night.<sup>2436</sup> The soldiers threatened to shoot the girls if they resisted.<sup>2437</sup> P-883 was taken to camp Bule for military training, where she and the other girls continued to be raped.<sup>2438</sup> P-883 was raped by many soldiers and testified that: *“I am not even able to count the number of times, because, you see, whether you were sitting down or sleeping, anyone who wanted to do so could rape you.”*<sup>2439</sup> P-883 was injured in fighting and [REDACTED] for medical treatment, where she learned that she was pregnant.<sup>2440</sup> [REDACTED].<sup>2441</sup> [REDACTED].<sup>2442</sup>

777. While at Mandro camp, P-888 was told by many girls that UPC commanders raped them.<sup>2443</sup> P-10, [REDACTED],<sup>2444</sup> was repeatedly raped by UPC soldiers and commanders.<sup>2445</sup> She was also aware of other girls, including some younger than herself, being habitually raped by their commanders.<sup>2446</sup>

<sup>2431</sup> [P-758:T-161-CONF-ENG-ET](#),32:19-33:18.

<sup>2432</sup> [P-758:T-161-CONF-ENG-ET](#),34:11-13.

<sup>2433</sup> [P-758:T-161-CONF-ENG-ET](#),34:3-13.

<sup>2434</sup> [P-758:T-161-CONF-ENG-ET](#),7:13-8:21;[T-162-CONF-ENG-ET](#),47:9-48:13.

<sup>2435</sup> [P-883:T-168-CONF-ENG-ET](#),12:22-13:8.

<sup>2436</sup> [P-883:T-168-CONF-ENG-ET](#),13:15-14:21.

<sup>2437</sup> [P-883:T-168-CONF-ENG-ET](#),13:15-14:5.

<sup>2438</sup> [P-883:T-168-CONF-ENG-ET](#),31:22-24,39:13-17.

<sup>2439</sup> [P-883:T-168-CONF-ENG-ET](#),32:16-18.

<sup>2440</sup> [P-883:T-168-CONF-ENG-ET](#),34:6-35:2.

<sup>2441</sup> [P-883:T-167-CONF-ENG-ET](#),95:24-96:10[[T-167-CONF-FRA-ET](#),93:1-13];[T-168-CONF-ENG-ET](#),64:2-65:7.

<sup>2442</sup> [P-883:T-168-CONF-ENG-ET](#),13:18-25,14:10-11,34:15-17,35:21-36:16,65:2-20.

<sup>2443</sup> [P-888:T-105-CONF-ENG-CT](#),39:3-40:2

<sup>2444</sup> [P-10:T-47-CONF-ENG-CT](#),9:2-24,20:23-21:16.

<sup>2445</sup> [P-10:T-46-CONF-ENG-ET](#),35:4-25,38:9-39:2;[T-47-CONF-ENG-CT](#),35:13-36:1.

<sup>2446</sup> [P-10:T-47-CONF-ENG-CT](#),38:15-39:2,36:9-22;[T-50-CONF-ENG-CT](#),42:20-43:11.

778. P-10 also testified [REDACTED], and described the first time this happened in detail.<sup>2447</sup> [REDACTED].<sup>2448</sup> [REDACTED].<sup>2449</sup> NTAGANDA testified being offered a “girl” to take as a wife at a time when the girl was still in school, as he paid her school fees.<sup>2450</sup> Later in his testimony, NTAGANDA stated he considered it unlawful to marry a girl under 18.<sup>2451</sup> P-10 testified that [REDACTED] the young wife of NTAGANDA, [REDACTED] said she had been taken against her will.<sup>2452</sup> While NTAGANDA is not charged as a direct perpetrator of rape against girls within the UPC, this evidence is indicative of the pervasive sexual violence that existed, at the highest level.

## *2. Children recruited into the UPC were sexually enslaved*

779. In addition to the frequent, brutal and systematic rape of girls within the UPC, soldiers and commanders exercised powers of ownership over them by depriving them of their liberty and reducing them to servile status, to be exploited at will. These girls were deprived of their liberty through fear of punishment or death, and because they had nowhere else to go.<sup>2453</sup> The perpetrators exercised physical control over their victims.

780. P-758 fled Lingo camp, [REDACTED],<sup>2454</sup> and went to the UPC camp [REDACTED] where she was forced to perform domestic tasks and repeatedly raped by many different soldiers.<sup>2455</sup> She [REDACTED] would be forced to have sex with whichever commander demanded her on a given night.<sup>2456</sup>

<sup>2447</sup> [P-10:T-47-CONF-ENG-CT](#),31:13-32:24;[T-50-CONF-ENG-CT](#),40:22-41:5,62:23-63:24.

<sup>2448</sup> [P-10:T-47-CONF-ENG-CT](#),31:13-25,34:5-12;[T-48-CONF-ENG-CT](#),22:6-9.

<sup>2449</sup> [P-10:T-47-CONF-ENG-CT](#),32:15-34:19;[T-50-CONF-ENG-CT](#),42:20-43:11. Also:[P-901:T-29-CONF-ENG-CT](#),56:22-58:8,59:8-17; [P-190:T-97-CONF-ENG-CT](#),41:3-6,48:10-49:7.

<sup>2450</sup> [D-300:T-209-CONF-ENG-ET](#),43:9-20,45:6-8,[T-224-CONF-ENG-ET](#),13:2-15.

<sup>2451</sup> [D-300:T-243-CONF-ENG-ET](#),23:2-6.

<sup>2452</sup> [P-10:T-47-CONF-ENG-CT](#),37:12-22,[T-50-CONF-ENG-CT](#),49:1-7.

<sup>2453</sup> [P-758:T-160-CONF-ENG-ET](#),80:8-13,83:23-84:8;[T-161-CONF-ENG-ET](#),5:16-6:8,18:9-20:12,7:13-8:18;[T-162-CONF-ENG-ET](#),47:9-48:13; [P-883:T-168-CONF-ENG-ET](#),12:22-14:25,15:7-17,25:14-26:2,32:2-10; [P-963:T-80-CONF-ENG-ET](#),27:23-29:10.

<sup>2454</sup> [P-758:T-161-CONF-ENG-ET](#),51:13-52:18.

<sup>2455</sup> [P-758:T-161-CONF-ENG-ET](#),52:14-56:15.

<sup>2456</sup> [P-758:T-161-CONF-ENG-ET](#),54:9-20.

[REDACTED].<sup>2457</sup>

781. While interviewing former child soldiers, P-46 spoke to a young girl who was abducted at the age of 14 by the UPC in April 2002 and handed over to a commander of the Bule training camp as his “wife.”<sup>2458</sup> She also received information from an interviewee about the abduction of two girls (aged 14 and 15) in November 2003 by UPC soldiers to be used as sexual slaves.<sup>2459</sup>

782. P-46 also described patterns of sexual exploitation of girls within the UPC, where the girls slept in a separate area of the camp from the boys<sup>2460</sup> and were sexually exploited by different soldiers over an extended period of time.<sup>2461</sup> **NTAGANDA** acknowledged that girls were separated at night for ‘protection’,<sup>2462</sup> an acknowledgement of the coercive environment that prevailed at UPC military camps.

783. Girls in the UPC got pregnant and required hospitalisation for serious injuries caused by deplorable sexual violence inflicted by other UPC soldiers.<sup>2463</sup> Some were simply sent out of the UPC because they “*were of no use anymore*”.<sup>2464</sup>

784. UPC soldiers and commanders treated girls like objects from which to extract sexual and domestic services at will.<sup>2465</sup> P-10 remembers having to sing an offensive song mocking PMFs for being unmarriageable along with the other

<sup>2457</sup> [P-758:T-161-CONF-ENG-ET](#),55:7-56:5.

<sup>2458</sup> [DRC-OTP-0074-0422](#),p.0464-0465,para.153. Also: [P-815:T-76-CONF-ENG-CT](#),42:18-51:7.

<sup>2459</sup> [DRC-OTP-0074-0422](#),p.0464-0465,para.153.

<sup>2460</sup> [P-10:T-46-CONF-ENG-ET](#),32:2-3.

<sup>2461</sup> [P-898:T-153-CONF-ENG-ET](#),71:25-72:5,72:14-19; [P-46:T-101-CONF-ENG-ET](#),68:3-69:20; [DRC-OTP-0208-0284](#),p.0335,para.151; [DRC-OTP-0074-0422](#),p.0464-0465,paras.152-154.

<sup>2462</sup> [D-300:T-213-CONF-ENG-CT](#),73:24-74:4;[T-214-CONF-ENG-ET](#),8:6-15;[T-239-CONF-ENG-CT](#),42:21-43:12.

<sup>2463</sup> [P-46:T-101-CONF-ENG-ET](#),68:11-69:13; [P-963:T-80-CONF-ENG-ET](#),32:25-33:11; [P-907:T-89-CONF-ENG-CT](#),55:20-56:24; [P-758:T-161-CONF-ENG-ET](#),6:9-12; [P-883:T-168-CONF-ENG-ET](#),13:15-14:11,34:6-35:2,42:17-48:3; [P-31:DRC-OTP-2054-3760](#),p.3782:14-24; [DRC-OTP-0074-0422](#),p.0465, para.154.

<sup>2464</sup> [P-46:T-101-CONF-ENG-ET](#),68:13-16. Also: [P-901:T-29-CONF-ENG-CT](#),57:19-23.

<sup>2465</sup> [P-963:T-80-CONF-ENG-ET](#),27:23-29:10,32:25-33:11; [P-17:T-58-CONF-ENG-CT](#),51:12-52:23; [P-55:T-71-CONF-ENG-CT](#),89:8-11,95:14-22; [P-898:T-153-CONF-ENG-ET](#),72:20-75:21;[T-155-CONF-ENG-ET](#),57:9-16; [P-190:T-97-CONF-ENG-CT](#),48:10-49:7; [P-907:T-89-CONF-ENG-CT](#),61:7-19,63:18-65:2; [P-10:T-46-CONF-ENG-ET](#),35:4-25,38:9-39:2;[T-47-CONF-ENG-CT](#),31:13-34:19,35:13-36:1,36:18-22;[T-48-CONF-ENG-CT](#),20:23-21:7; [P-46:T-101-CONF-ENG-ET](#),68:3-69:20; [P-16:DRC-OTP-2054-1781-R02](#),p.1796:14-p.1797:12.

recruits:

*Misfortune, misfortune. In French, call malchance. Misfortune. Vaginas and penises have committed an error. They have had a child. The child then had difficulties, and we continued to shoot night and day. They went up into the bush. In Bunia we sought work and didn't find any. Mimi, why do I have to marry a military -- a female soldier, PMF. If I marry her, where will I take her? Mimi, why must I marry a PMF? If I marry her, what will I do with her?*<sup>2466</sup>

This song was an encouragement to rape girl child soldiers.

785. Girls were in a position of extreme vulnerability and lacked autonomy. The UPC also forced them to be sexually exploited as a means of gathering intelligence from enemy soldiers.<sup>2467</sup> P-883 was regarded as the property of different UPC soldiers: while one soldier wanted to be “*the only one to rape her*”, she found herself passed between them for sexual gratification.<sup>2468</sup> P-758 testified that she and the other girls were also referred to as “*guduria*” (a communal cooking pot) to signify that a soldier could use them for sex whenever he pleased.<sup>2469</sup>

786. P-907 saw that young girls taken as escorts by the commanders performed domestic labour and sexual services. It was not voluntary, it was an order and refusal resulted in punishment like being whipped.<sup>2470</sup> P-901 also saw commanders routinely use their “*influence to force*” girls within the ranks of the UPC to be their ‘wives’.<sup>2471</sup>

787. Sexual violence against children was so prevalent in UPC camps that UPC commanders, including **NTAGANDA**, had to know it was occurring.<sup>2472</sup>

<sup>2466</sup> [P-10:T-47-CONF-ENG-CT](#),37:25-39:5,40:25-41:19.

<sup>2467</sup> [P-10:T-47-CONF-ENG-CT](#),46:4-50:6; [P-758:T-161-CONF-ENG-ET](#),36:12-37:11.

<sup>2468</sup> [P-883:T-168-CONF-ENG-ET](#),32:2-25,33:5-11.

<sup>2469</sup> [P-758:T-161-CONF-ENG-ET](#),31:8-22,68:12-18.

<sup>2470</sup> [P-907:T-89-CONF-ENG-CT](#),64:9-13.

<sup>2471</sup> [P-901:T-29-CONF-ENG-CT](#),57:15-58:8,58:8-17.

<sup>2472</sup> [P-768:T-34-CONF-ENG-CT](#),55:18-60:13; [P-963:T-80-CONF-ENG-ET](#),38:4-41:12; [P-17:T-60-CONF-ENG-ET](#),28:3-29:6;[T-58-CONF-ENG-CT](#),51:12-52:23; [P-761:DRC-OTP-2054-8283-R05](#),p.8286,para.18; [P-907:T-89-CONF-ENG-CT](#),55:8-56:24; [P-901:T-29-CONF-ENG-CT](#),57:19-23; [P-10:T-46-CONF-ENG-](#)



788. P-758 did not report her repeated rapes because it was the commanders who were raping her, so there was no one to report it to.<sup>2473</sup> P-883 told the camp commanders that she was being raped by [REDACTED].<sup>2474</sup> [REDACTED] was disciplined but was able to continue to rape her and other girls at the camps.<sup>2475</sup> According to P-883, rape happened daily.<sup>2476</sup>

789. Some girls contracted venereal diseases and were given medical treatment, such that UPC commanders (including NTAGANDA) knew or should have known about the rampant sexual violence.<sup>2477</sup> Many girls at the camps were pregnant.<sup>2478</sup>

790. NTAGANDA admitted that he had several female escorts under his care<sup>2479</sup> and that they lived at his residence.<sup>2480</sup> [REDACTED].<sup>2481</sup>

## VIII. MODES OF LIABILITY

### A. ARTICLE 25(3)

791. As NTAGANDA acknowledges, in an army: *“[e]ach person will take care of, or will meet, his obligations following the example set by the superior.”*<sup>2482</sup> NTAGANDA – the real Army Chief of the FPLC<sup>2483</sup> - led by his negative example. His own

---

[ET](#),35:4-25,38:9-39:2;[T-47-CONF-ENG-CT](#),31:13-34:19,36:18-22; **P-16**:[DRC-OTP-2054-1781-R02](#),p.1810:4-p.1811:8.

<sup>2473</sup> **P-758**:[T-161-CONF-ENG-ET](#),7:13-8:21;54:15-18.

<sup>2474</sup> **P-883**:[T-168-CONF-ENG-ET](#),33:5-19.

<sup>2475</sup> **P-883**:[T-168-CONF-ENG-ET](#),33:20-34:2.

<sup>2476</sup> **P-883**:[T-168-CONF-ENG-ET](#),32:5-18

<sup>2477</sup> See above.

<sup>2478</sup> **P-55**:[T-71-CONF-ENG-CT](#),94:13-23,95:17-22; **P-901**:[T-29-CONF-ENG-CT](#),57:19-23;**P-10**:[T-47-CONF-ENG-CT](#),31:13-34:19.

<sup>2479</sup> **D-300**:[T-223-CONF-ENG-ET](#),34:14-18.

<sup>2480</sup> **D-300**:[T-214-CONF-ENG-ET](#),30:22-31:17; [T-239-CONF-ENG-CT](#),36:22-37:13.

<sup>2481</sup> **P-10**:[T-47-CONF-ENG-CT](#),31:13-34:19,36:23-37:24;[T-48-CONF-ENG-CT](#),42:25-43:3,47:10-48:1;[T-50-CONF-ENG-CT](#),42:20-43:11,62:23-63:24. Also: **P-190**:[T-97-CONF-ENG-CT](#),41:3-6,48:10-49:7; **P-901**:[T-29-CONF-ENG-CT](#),59:8-17.

<sup>2482</sup> **D-300**:[T-227-CONF-ENG-CT](#),17:11-20.

<sup>2483</sup> **P-14**:[T-136-CONF-ENG-ET](#),33:13-34:1; **P-16**:[DRC-OTP-0126-0422-R03](#),pp.0453-0454,para.181; **P-907**:[T-89-CONF-ENG-CT](#),14:25-15:13,16:23-18:8,20:23-22:2,22:16-23:19,78:8-79:4;[T-90-CONF-ENG-CT](#),4:5-9:5,5:5-23; **P-901**:[T-28-CONF-ENG-CT](#),9:11-10:14,54:3-55:6,60:6-24,62:17-64:4;[T-29-CONF-ENG-CT](#),13:6-22;[T-31-CONF-ENG-CT](#),8:4-25. See also **P-315**:[DRC-OTP-2058-0990](#),pp.1011-1013,paras.127-128; **P-55**:[T-70-CONF-ENG-CT](#),75:16-76:9; **P-14**:[T-136-CONF-ENG-ET](#),32:7-34:1; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0434,para.64,p.0457,para.201; **P-190**:[T-96-CONF-ENG-CT](#),49:5-51:12,53:12-54:25,91:24-92:2;[T-97-CONF-ENG-CT](#),18:16-19:3,52:7-19; **P-12**:[T-164-CONF-ENG-ET](#),25:12-25.

directly perpetrated crimes, his criminal orders to his troops, and his failure to punish or to take all necessary and reasonable measures to prevent crimes, set the UPC's criminal pattern of behaviour and commission of crimes. **NTAGANDA** positively encouraged criminal conduct in the UPC.

**1. NTAGANDA is individually criminally responsible**

**a. NTAGANDA participated in the crimes as a perpetrator (article 25(3)(a))**

792. During the First Attack, **NTAGANDA** directly perpetrated the crimes of intentionally directing attacks against the civilian population (Count 3), murder (Counts 1-2), intentionally directing attacks against protected objects (Count 17), pillage (Count 11), and persecution (Count 10).

793. In addition, **NTAGANDA** directly perpetrated the crimes of enlisting children under the age of 15 into an armed force or group between on or about 6 August 2002 and 31 December 2003 (Count 15) and using children under the age of 15 to participate actively in hostilities (Count 16) between on or about 6 August 2002 and March 2003.

794. Evidence of **NTAGANDA**'s direct perpetration of UPC crimes is also evidence of his direct and indirect co-perpetration, his ordering, soliciting or inducing of crimes, and contributions to the commission or attempted commission of crimes of the group acting with a common purpose.

**i. NTAGANDA directed attacks against civilians**

795. During the First Attack, **NTAGANDA** repeatedly ordered the elimination of the Lendu, without distinction between combatants and civilians.<sup>2484</sup> Civilians

<sup>2484</sup> See e.g. **P-768:T-33-CONF-ENG-CT**,37:2-16,41:8-17,41:21-42:12,43:18-46:5,47:22-48:19,53:3-18,54:18-56:9,58:22-59:4,64:21-65:10,65:11-67:10; **P-963:T-78-CONF-ENG-ET**,26:2-7,72:25-73:9,73:22-75:7,77:1-18,82:4-84:6; **P-10:T-47-CONF-ENG-CT**,10:6-18. UPC soldiers would primarily distinguish combatants by

were attacked,<sup>2485</sup> both young and old, those who fled<sup>2486</sup> and those who remained.<sup>2487</sup> NTAGANDA matched action to words, and fully participated in these crimes in or around Mongbwalu and Sayo.

796. NTAGANDA personally directed the attack on Sayo village.<sup>2488</sup> His forces, whose weapons included grenade launchers, B-10s, recoilless rifles, mortars, Kalashnikov guns, and 12.7mm and 7.5mm guns,<sup>2489</sup> fired systematically<sup>2490</sup> and indiscriminately.<sup>2491</sup> Civilians were killed as a result of the indiscriminate fire and targeted attack, and their bodies could be seen in their houses, some of which were destroyed. Other civilians' bodies were in the streets.<sup>2492</sup> NTAGANDA ordered [REDACTED] to fire at fleeing civilians.<sup>2493</sup>

797. Once the barrage was over, NTAGANDA and his bodyguards went to the church, which contained civilians, including women and the elderly wearing civilian clothing, who had sought sanctuary.<sup>2494</sup> NTAGANDA verbally abused the civilians sheltering in the church, saying in Kinyarwanda "*Gaswere Nyoko*" (meaning "*Go fuck your mother*").<sup>2495</sup> After NTAGANDA's verbal onslaught, one of his bodyguards, in his presence, shot an unarmed Lendu civilian as he tried to

---

whether they were carrying arms: [P-768:T-33-CONF-ENG-CT](#),36:18-37:1,47:22-48:9,48:16-25; [P-888:T-105-CONF-ENG-CT](#),50:16-52:18,54:19-58:14.

<sup>2485</sup> *E.g.* [P-963:T-78-CONF-ENG-ET](#),79:8-13,81:5-22,84:7-11,84:24-86:3. *See also* [P-768:T-33-CONF-ENG-CT](#),37:8-24,44:24-46:5,50:13-51:2,58:22-59:4 (civilian bodies were along the road to Sayo).

<sup>2486</sup> [P-963:T-78-CONF-ENG-ET](#),81:12-85:14; [P-768:T-33-CONF-ENG-CT](#),48:16-25.

<sup>2487</sup> [P-963:T-79-CONF-ENG-ET](#),13:18-16:9; [P-768:T-33-CONF-ENG-CT](#),44:24-46:5; [P-888:T-105-CONF-ENG-CT](#),75:12-76:16,79:13-81:8; [DRC-OTP-0074-0628](#),pp.0668-0670.

<sup>2488</sup> [P-17:T-58-CONF-ENG-CT](#),66:21-67:10,69:16-71:1; [P-963:T-79-CONF-ENG-ET](#),11:10-18; [P-768:T-33-CONF-ENG-CT](#),49:18-50:8. NTAGANDA directly commanded the heavy weapons unit: *e.g.* [P-768:T-33-CONF-ENG-CT](#),32:24-37:24,50:13-23. *See also* [P-315:DRC-OTP-2058-0990](#),p.1015,para.136; [DRC-OTP-0074-0797](#),p.0828 (describing the use of heavy weapons in the attack on Pluto); [P-22:DRC-OTP-0104-0026](#),p.0030,para.22 (civilians fleeing and hearing mortar fire).

<sup>2489</sup> [P-768:T-33-CONF-ENG-CT](#),34:22-35:10; [P-17:T-58-CONF-ENG-CT](#),59:15-61:2.

<sup>2490</sup> [P-768:T-33-CONF-ENG-CT](#),37:17-20,44:6-46:5,50:13-51:7.

<sup>2491</sup> [P-768:T-33-CONF-ENG-CT](#),37:2-16,44:6-51:7,53:3-54:13. [REDACTED].

<sup>2492</sup> *E.g.* [P-768:T-33-CONF-ENG-CT](#),42:16-24,44:6-48:19,50:13-51:25,54:18-55:7; [P-17:T-58-CONF-ENG-CT](#),62:21-63:14,67:20-69:6,68:6-20,80:4-19; [T-59-CONF-ENG-CT](#),3:20-4:17; [P-963:T-78-CONF-ENG-ET](#),79:8-13,81:5-22,84:7-86:9.

<sup>2493</sup> [REDACTED].

<sup>2494</sup> [REDACTED].

<sup>2495</sup> [REDACTED].

leave the church.<sup>2496</sup> P-17 subsequently learned from one of NTAGANDA's escorts that all of the civilians in the church were executed with bladed weapons by Hema civilian combatants who were following NTAGANDA's group. The UPC's control over the Hema civilian combatants during this attack is demonstrated, for example, by the fact that the T5 of MULENDA's brigade ordered Hema civilian combatants to bury the corpses at the church.<sup>2497</sup> At Sayo church, [REDACTED] saw NTAGANDA personally attack and kill four civilians, including two children.<sup>2498</sup>

798. NTAGANDA personally directed the attack against civilians in or around Mongbwalu. Once the town was taken, UPC soldiers implemented NTAGANDA's orders to search the surrounding area: their usual "*ratissage*" operations to hunt for Lendu. Lendu deemed to be "unimportant" prisoners or who tried to flee or resist were killed where they were found. Lendu community and military leaders, who might have valuable information, were brought to UPC commanders in Mongbwalu, interrogated and then killed.<sup>2499</sup> *Non-originaires* were also targeted and killed.<sup>2500</sup> NTAGANDA also ordered captured persons to be shot.<sup>2501</sup> Persons temporarily detained at NTAGANDA's residence or MULENDA's camp were also executed.<sup>2502</sup> NTAGANDA personally directed an attack against, and killed, Abbé BWANALONGA, and ordered the killing of three Lendu nuns detained with BWANALONGA, who were raped by NTAGANDA's guards.<sup>2503</sup> NTAGANDA instructed his escorts to execute two civilians in

<sup>2496</sup> [REDACTED].

<sup>2497</sup> [P-17:T-58-CONF-ENG-CT](#),77:16-79;18,5:25-6:23;[T-59-CONF-ENG-CT](#),7:24-8:8,9:5-15. See also [P-768:T-33-CONF-ENG-CT](#),37:2-16,41:8-17,41:21-42:12; [P-315:DRC-OTP-2058-0990](#),p.1015,para.136; [DRC-OTP-0074-0797](#),p.0829.

<sup>2498</sup> [REDACTED].

<sup>2499</sup> [P-963:T-79-CONF-ENG-ET](#),14:15-16:9,21:19-25:15. See also [P-907:T-90-CONF-ENG-CT](#),34:11-35:12; [P-894:DRC-OTP-2076-0194-R02](#),pp.0201-0202,para.38; [DRC-OTP-0074-0797](#),pp.0828-0829.

<sup>2500</sup> [P-894:DRC-OTP-2076-0194-R02](#),pp.0201-0202,para.38; [DRC-OTP-0074-0797](#),pp.0828-0829.

<sup>2501</sup> [P-768:T-33-CONF-ENG-CT](#),54:8-55:7. See also [P-963:T-79-CONF-ENG-ET](#),21:19-22:19.

<sup>2502</sup> [P-768:T-33-CONF-ENG-CT](#),55:8-57:20; [P-17:T-59-CONF-ENG-CT](#),21:5-25:3; [P-963:T-79-CONF-ENG-ET](#),21:19-25:15. See also [DRC-OTP-0074-0797](#),p.0829.

<sup>2503</sup> Although the execution did not occur, independent of NTAGANDA's intention: [REDACTED]

Nzebi.<sup>2504</sup>

ii. *NTAGANDA murdered Lendu and non-originares*

799. **NTAGANDA** was nicknamed “*the Terminator*” as he was viewed by others as all-powerful, very violent, and with a propensity to kill: “*He was probably the person who seemed to frighten the children [amongst the UPC child soldiers] the most*”.<sup>2505</sup>

800. After the First Attack, [REDACTED] **NTAGANDA** murder the Lendu priest, Abbé BWANALONGA, at **NTAGANDA**’s residence in Mongbwalu, one or two days after he had been detained. **NTAGANDA** interrogated and beat him, shot him dead, and then ordered his guards to throw his body in the bushes.<sup>2506</sup> Other witnesses concur that the Abbé was murdered.<sup>2507</sup> His body has subsequently been exhumed and buried by the Catholic Church.<sup>2508</sup>

801. Other witnesses saw **NTAGANDA** murder civilians in the aftermath of the First Attack. [REDACTED] witnessed murders committed by **NTAGANDA** at Sayo church. These included a “*mad man*” of Lulu ethnicity, as well as the man’s father and two of his two young nephews. **NTAGANDA** shot and killed all four,

<sup>2504</sup> [REDACTED].

<sup>2505</sup> **D-300:T-222-ENG-CT**,71:1-24;**T-212-CONF-ENG-ET**,24:20-25:3; **P-46:T-101-CONF-ENG-ET**,78:8-17;**T-100-CONF-ENG-CT**,91:3-21; **P-14:T-136-CONF-ENG-ET**,35:18-20; **P-31:T-174-CONF-ENG-ET**,31:6-32:2;**T-175-CONF-ENG-ET**,37:18-22; **P-901:T-28-CONF-ENG-CT**,99:1-19; **P-190:T-98-CONF-ENG-CT**,18:16-19:3. Prior to the First Attack, **NTAGANDA** was accused of murdering high-profile officials, such as the Nande-origin Commander Claude KIZA. *See e.g.* **NTAGANDA** concedes that he was widely viewed as the person who murdered Commander Claude KIZA, including amongst the public who supported him: **D-300:T-213-CONF-ENG-CT**,38:5-41:1;**T-222-ENG-CT**,71:1-24;**T-212-CONF-ENG-ET**,24:20-25:3; **P-769:T-120-CONF-ENG-ET**,11:15-13:10,19:7-10; **P-31:T-174-CONF-ENG-ET**,31:2-33:2. *See also e.g.* **P-16:DRC-OTP-0126-0422-R03**,pp.0468-0469,paras.271-273; **P-877:T-110-CONF-ENG-ET**,15:15-16:18; **P-894:DRC-OTP-2076-0194-R02**,para.62,**DRC-OTP-2076-0194-R02**,p.0209,para.68; **P-16:DRC-OTP-0126-0422-R03**,pp.0468-0469,paras.271-273.

<sup>2506</sup> [REDACTED].

<sup>2507</sup> **P-963:T-79-CONF-ENG-ET**,22:20-25:21; **P-41:DRC-OTP-0147-0002**,p.0015-0016,para.80; **P-315:DRC-OTP-2058-0990**,pp.1014-1015,paras.134-135; **P-901:T-28-CONF-ENG-CT**,56:8-57:24; **P-859:T-51-CONF-ENG-CT**,34:14-38:18;**T-52-CONF-ENG-CT**,24:8-26:15.

<sup>2508</sup> **P-901:T-28-CONF-ENG-CT**,56:8-57:24; **P-190:T-97-CONF-ENG-CT**,8:22-10:21; **P-894:DRC-OTP-2076-0194-R02**,p.0204,paras.48-50.

and ordered that the bodies be left unburied.<sup>2509</sup> NTAGANDA also killed a retired soldier, a non-Hema (Kongo), called Colonel LUSALA. NTAGANDA interrogated him accusing him of supporting Lendu, put out his eyes, and then shot him dead.<sup>2510</sup> Again, the body was initially left unburied. Subsequently, it was interred and has been exhumed by the Prosecution.<sup>2511</sup>

*iii. NTAGANDA attacked protected objects, and pillaged them*

802. During the First Attack, NTAGANDA participated in the systematic pillage of civilian houses and infrastructure, both personally and through his subordinates. NTAGANDA's pillage of the hospital in Mongbwalu,<sup>2512</sup> (and by his UPC forces of the churches in Sayo and Nzebi)<sup>2513</sup> constituted an attack on protected objects.

803. NTAGANDA ordered his troops to pillage in the First Attack.<sup>2514</sup> NTAGANDA and his subordinates, including MULENDA, pillaged from shops at Mongbwalu centre, and took goods including clothes and beer.<sup>2515</sup> There was chaos.<sup>2516</sup> NTAGANDA and other commanders used soldiers to pillage on his own behalf.<sup>2517</sup> They appropriated several vehicles and used them to transport the pillaged goods to NTAGANDA's residence nearby.<sup>2518</sup>

<sup>2509</sup> [REDACTED].

<sup>2510</sup> [REDACTED]; *See also* [P-800:T-68-CONF-ENG-ET](#),57:10-18,78:4-79:1.

<sup>2511</sup> [REDACTED].

<sup>2512</sup> [P-17:T-58-CONF-ENG-CT](#),80:20-82:17;[T-59-CONF-ENG-CT](#),17:22-20:23; [P-768:T-33-CONF-ENG-CT](#),59:7-21; [P-815:T-76-CONF-ENG-CT](#),60:2-21. NTAGANDA had previously pillaged from the hospital at Nyankunde. [P-55:T-72-CONF-ENG-CT](#),13:7-18; [P-768:T-33-CONF-ENG-CT](#),61:23-25,62:20-22,63:14-22.

<sup>2513</sup> [REDACTED].

<sup>2514</sup> *E.g.* [P-768:T-33-CONF-ENG-CT](#),35:11-37:25;[T-33-CONF-ENG-CT](#),64:21-65:10; [P-963:T-78-CONF-ENG-ET](#),70:7-25,72:25-73:9;[T-79-CONF-ENG-ET](#),14:15-23,20:3-21:18; [P-10:T-47-CONF-ENG-CT](#),14:16-15:16; [P-888:T-105-CONF-ENG-CT](#),77:7-15. NTAGANDA's orders were relayed by his subordinates to the forces attacking Mongbwalu. [P-17:T-58-CONF-ENG-CT](#),54:1-55:23;[T-61-CONF-ENG-ET](#),29:20-32:22.

<sup>2515</sup> [P-768:T-33-CONF-ENG-CT](#),64:6-20. *See also* [P-17:T-58-CONF-ENG-CT](#),79:19-82:17; [P-963:T-79-CONF-ENG-ET](#),20:3-21:18; [P-888:T-105-CONF-ENG-CT](#),77:7-15,82:14-84:19.

<sup>2516</sup> [P-768:T-33-CONF-ENG-CT](#),51:1-7. *See also* [P-17:T-59-CONF-ENG-CT](#),20:5-23; [P-315:DRC-OTP-2058-0990](#),p.1012,para.127(first and second bullet points).

<sup>2517</sup> *See* Section VII.A.1.a.; [P-963:T-79-CONF-ENG-ET](#),20:10-20; [P-768:T-33-CONF-ENG-CT](#),64:6-20.

<sup>2518</sup> [P-17:T-58-CONF-ENG-CT](#),80:24-82:17; [P-768:T-33-CONF-ENG-CT](#),59:22-61:5; [P-888:T-105-CONF-ENG-CT](#),82:14-84:19; [P-315:DRC-OTP-2058-0990](#),p.1012,para.127 (first bullet point).



804. NTAGANDA pillaged a vehicle from a Mongbwalu priest.<sup>2519</sup> Medical equipment and medication were plundered from Mongbwalu hospital on NTAGANDA's behalf; these goods were subsequently seen in NTAGANDA's possession.<sup>2520</sup>

805. From NTAGANDA's residence in Mongbwalu,<sup>2521</sup> his pillaged goods were transported back to Bunia by land (including in a stolen vehicle)<sup>2522</sup> and by air.<sup>2523</sup> At Mongbwalu airport, P-963 saw soldiers loading goods onto a small aircraft and was told that these were items that NTAGANDA had pillaged from Mongbwalu.<sup>2524</sup> P-16 saw a flight arriving in Bunia, delivering members of NTAGANDA's escort and "*war booty*" from Mongbwalu.<sup>2525</sup> NTAGANDA's escorts told P-16 that the goods were taken from Mongbwalu and were being delivered to NTAGANDA's residence in Bunia. They told P-16 that they were returning to Mongbwalu to collect more stolen property. The aircraft made more than one trip.<sup>2526</sup> After NTAGANDA's return from Mongbwalu, P-901 saw appliances at NTAGANDA's residence in Bunia, such as freezers, televisions, and radios, which had not been at NTAGANDA's residence before the Mongbwalu operation.<sup>2527</sup> The "*war booty*" flights also carried gold ore that were brought to NTAGANDA after it was extracted at Mongbwalu by gold diggers supervised by the UPC at NTAGANDA's order.<sup>2528</sup>

<sup>2519</sup> **P-768**:59:22-61:2; **P-859**:[T-51-CONF-ENG-CT](#),34:14-38:18;[T-52-CONF-ENG-CT](#),24:8-26:15.

<sup>2520</sup> **P-17**:[T-58-CONF-ENG-CT](#),81:14-82:17;[T-59-CONF-ENG-CT](#),19:9-13(medical equipment seen in a car with NTAGANDA); **P-768**:[T-33-CONF-ENG-CT](#),59:7-61:5 (medical equipment and medications seen at NTAGANDA's residence in Mongbwalu).

<sup>2521</sup> E.g. **P-17**:[T-58-CONF-ENG-CT](#),81:14-82:17;[T-59-CONF-ENG-CT](#),19:9-13; **P-768**:[T-33-CONF-ENG-CT](#),59:7-61:5.

<sup>2522</sup> **P-768**:[T-33-CONF-ENG-CT](#),59:13-60:4.

<sup>2523</sup> **P-963**:[T-79-CONF-ENG-ET](#),20:15-21:18; **P-16**:[DRC-OTP-2054-1625](#),p.1650:4-1651:8; [DRC-OTP-0126-0422-R03](#),pp.0445-0446,para.132.

<sup>2524</sup> **P-963**:[T-79-CONF-ENG-ET](#),20:3-21:18.

<sup>2525</sup> **P-16**:[DRC-OTP-2054-1625](#),p.1650:4-1651:8; [DRC-OTP-0126-0422-R03](#),pp.0445-0446,para.132.

<sup>2526</sup> **P-16**:[DRC-OTP-2054-1625](#),p.1650:4-1652:16.

<sup>2527</sup> **P-901**:[T-28-CONF-ENG-CT](#),57:19-58:23.

<sup>2528</sup> **P-768**:[T-33-CONF-ENG-CT](#),61:6-62:22; **P-55**:[T-70-CONF-ENG-CT](#),98:20-99:17; **P-886**:[T-37-CONF-ENG-ET](#),11:8-16,27:7-16; **P-190**:[T-97-CONF-ENG-CT](#),16:20-17:17.



*iv. NTAGANDA persecuted non-Hema civilians*

806. During the First Attack, **NTAGANDA** persecuted non-Hema civilians in Mongbwalu and Sayo through the acts set out in Section VII.A.10.

807. **NTAGANDA** demonstrated his persecutory intent by the orders he gave. In different briefings prior to the Mongbwalu attack, **NTAGANDA** consistently ordered the soldiers to eliminate or drive out the Lendu.<sup>2529</sup> Most of the child soldiers used for the Mongbwalu operation were Hema.<sup>2530</sup> **NTAGANDA** repeated that the Lendu were the enemy and that they should be eliminated or chased away.<sup>2531</sup> **NTAGANDA** carried out his own persecutory orders to kill Lendu, when he personally executed the Lendu Abbé BWANALONGA.<sup>2532</sup> **NTAGANDA**'s troops also implemented his persecutory orders during the usual *ratissage* operations by killing Lendu wherever they were found.<sup>2533</sup>

808. **NTAGANDA**'s persecutory intent, is also proven by the general orders he gave to UPC forces, including during military training. When giving orders to his troops, **NTAGANDA** constantly identified the enemy as "the Lendu", and the predominantly Nande-APC group, and ordered their victimisation as a group, stating that: "*you had to kill them and eliminate them*". "*[I]t was a tribal war, and the purpose was to drive out the Lendu or eliminate all of them, loot their possessions...[their] financial means, occupy their houses*".<sup>2534</sup>

<sup>2529</sup> **P-963:T-78-CONF-ENG-ET**,26:2-7,72:25-73:9; **P-768:T-33-CONF-ENG-CT**,54:7-13[T-33-CONF-FRA-ET,53:10-16],54:8-55:7;T-33-CONF-ENG-CT,37:2-16,41:8-17,53:3-18; **T-34-CONF-ENG-CT**,15:6-16:15; **P-10:T-47-CONF-ENG-CT**,10:6-18; **P-758:T-161-CONF-ENG-ET**,30:9-24,47:2-13; **P-190:T-97-CONF-ENG-CT**,32:15-33:7; **P-888:T-105-CONF-ENG-CT**,37:8-22,50:16-52:18,54:19-58:14; **P-41:DRC-OTP-0147-0002**,p.0017,para.92.

<sup>2530</sup> **P-768:T-34-CONF-ENG-CT**,57:20-59:5.

<sup>2531</sup> *E.g.* **P-768:T-33-CONF-ENG-CT**,54:18-56:25;T-35-CONF-ENG-CT,50:4-18,51:2-60:2,60:24-67:2; **P-898:T-154-CONF-ENG-ET**,10:1-11:12; **P-888:T-105-CONF-ENG-CT**,50:16-52:18,54:19-58:14.

<sup>2532</sup> [REDACTED].

<sup>2533</sup> *E.g.* **P-888:T-105-CONF-ENG-CT**,79:13-81:5; **DRC-OTP-0074-0628**,pp.0664-0666.

<sup>2534</sup> **P-963:T-78-CONF-ENG-ET**,26:2-7,72:25-73:9; **P-768:T-33-CONF-ENG-CT**,54:7-13[T-33-CONF-FRA-ET,53:10-16],54:8-55:7;T-33-CONF-ENG-CT,37:2-16,41:8-17,53:3-18; **T-34-CONF-ENG-CT**,15:6-16:15; **P-10:T-47-CONF-ENG-CT**,10:6-18; **P-758:T-161-CONF-ENG-ET**,30:9-24,47:2-13; **P-190:T-97-CONF-ENG-CT**,32:15-33:7; **P-888:T-105-CONF-ENG-CT**,37:8-22,50:16-52:18,54:19-58:14; **P-41:DRC-OTP-0147-0002**,p.0017,para.92.

809. During military training, **NTAGANDA** and other instructors taught recruits - including child soldiers - that the enemy was the Lendu.<sup>2535</sup> In **NTAGANDA**'s presence, the recruits at Mandro camp had to sing songs saying that the Lendu should be exterminated.<sup>2536</sup>

810. **NTAGANDA** expressly ordered his troops to kill all enemies – whom he identified as the Lendu - whether combatant or civilian.<sup>2537</sup> **NTAGANDA** repeated that order in pre-attack instructions.<sup>2538</sup>

811. **NTAGANDA**'s persecutory orders merely followed the persecutory and discriminatory political policies of the UPC, which were to take over Ituri and oust the Lendu, who were all viewed as being the "enemy". **NTAGANDA** concedes that he and his forces knew and adopted the UPC's political ideology, which **NTAGANDA** and other trainers taught UPC soldiers during military training. **NTAGANDA** further conceded that he reminded them of that ideology before all operations. In particular, he states: "*The military needs to know what their party's policy is ...they need to hear the ideas of the politicians*".<sup>2539</sup>

812. **NTAGANDA** acknowledges that part of that ideology was to fight for power and to kick out their enemies. In particular, **NTAGANDA** agreed with the contention that "*[i]f the UPC policy was to kick out once and for all the evil*" that was a policy the military had to follow, explaining that: "*when I talked about our ideology, I said that the army follows the line defined by the politicians.*"<sup>2540</sup> **NTAGANDA**

<sup>2535</sup> **P-190:T-97-CONF-ENG-CT**,31:12-33:7; **P-10:T-46-CONF-ENG-ET**,41:1-5;**T-47-CONF-ENG-CT**,10:6-18; **P-16:DRC-OTP-0126-0422-R03**,pp.0432-0433,paras.56-58; [DRC-OTP-2054-1447](#),pp.1465:8-1466:25; **P-888:T-105-CONF-ENG-CT**,37:8-22.

<sup>2536</sup> **P-10:T-47-CONF-ENG-CT**,10:6-18,41:20-43:10,43:15-44:15; **P-16:DRC-OTP-0126-0422-R03**,pp.0432-0433,paras.56-58; [DRC-OTP-2054-1447](#),pp.1465:8-1466:25.

<sup>2537</sup> **P-10:T-47-CONF-ENG-CT**,10:6-18; **P-888:T-105-CONF-ENG-CT**,37:8-22.

<sup>2538</sup> **P-10:T-47-CONF-ENG-CT**,10:6-18; **P-888:T-105-CONF-ENG-CT**,49:2-50:24.

<sup>2539</sup> **D-300:T-211-CONF-ENG-ET**,51:14-20;**T-213-CONF-ENG-CT**,64:11-20;**T-214-CONF-ENG-ET**,4:3-5:5;**T-215-ENG-ET**,58:22-59:9;**T-215-ENG-ET**,86:15-20;**T-216-ENG-CT**,17:16-25;**T-224-CONF-ENG-ET**,70:2-5;**T-230-ENG-CT**,48:1-8;**T-230-ENG-CT**,60:9-15;**T-232-CONF-ENG-CT**,36:22-39:22.

<sup>2540</sup> **D-300:T-211-CONF-ENG-ET**,51:14-20;**T-213-CONF-ENG-CT**,64:11-20;**T-214-CONF-ENG-ET**,4:3-5:5;**T-215-ENG-ET**,58:22-59:9;**T-215-ENG-ET**,86:15-20;**T-216-ENG-CT**,17:16-25;**T-224-CONF-ENG-ET**,70:2-5;**T-230-ENG-CT**,48:1-8;**T-230-ENG-CT**,60:9-15;**T-232-CONF-ENG-CT**,36:22-39:22.

further concedes that one of the UPC goals they discussed at every meeting was: “[w]e fight to have power in Congo”.<sup>2541</sup>

813. While **NTAGANDA** denied that the UPC ideology included targeting of Lendu, his denials are contradicted by the consistent evidence of witnesses, who heard him give these orders.<sup>2542</sup> Moreover, his denials are contradicted by various UPC documents that confirm that the UPC’s political ideology was indeed to take power or control over Ituri, and to “kick out once and for all the evil” of the “negative forces”, defined as including the Lendu and their allies, especially the APC and INTERAHAMWE.<sup>2543</sup>

814. Whilst it is not necessary for the Prosecution to prove **NTAGANDA**’s motivation, **NTAGANDA**’s own history explains his alliance with the Hema and his motivation to persecute Lendu and *non-originaires* (especially the Nande).

815. First, **NTAGANDA** conceded that he believed that there were links between the Lendu, Nande of the APC and – his bitter enemies – the INTERAHAMWE. **NTAGANDA** described how the INTERAHAMWE, whom he fought against in Rwanda, were part of the forces responsible for the genocide, including the murder of his sister and nephew.<sup>2544</sup> INTERAHAMWE, who fled to the DRC, had driven out members of **NTAGANDA**’s own family from northern Kivu, some who died; while many other Tutsi refugees fled to Rwanda.<sup>2545</sup> **NTAGANDA** conceded that he viewed both the Lendu and INTERAHAMWE as being mutual

<sup>2541</sup> [D-300:T-229-CONF-ENG-ET](#),50:3-52:25.

<sup>2542</sup> [P-963:T-78-CONF-ENG-ET](#),26:2-7,72:25-73:9; [P-768:T-33-CONF-ENG-CT](#),37:2-16,41:8-17,53:3-18,54:7-13[[T-33-CONF-FRA-ET](#),53:10-16],54:7-13,54:8-55:7; [T-34-CONF-ENG-CT](#),15:6-16:15; [P-10:T-47-CONF-ENG-CT](#),10:6-18; [P-758:T-161-CONF-ENG-ET](#),30:9-24,47:2-13; [P-190:T-97-CONF-ENG-CT](#),32:15-33:7; [P-888:T-105-CONF-ENG-CT](#),37:8-22,50:16-52:18,54:19-58:14; [P-41:DRC-OTP-0147-0002](#),p.0017,para.92.

<sup>2543</sup> See e.g. [DRC-OTP-0092-0436](#),pp.0437-0438; [DRC-OTP-0037-0264](#); [DRC-OTP-0214-0116](#),pp.0116-0119,0122-0124; [DRC-OTP-0074-0422](#),pp.0456-0457.

<sup>2544</sup> [D-300:T-209-CONF-ENG-ET](#),40:5-41:9;[T-211-CONF-ENG-ET](#),7:6-15,8:7-15;[T-224-CONF-ENG-ET](#),62:24-64:1.

<sup>2545</sup> [D-300:T-211-CONF-ENG-ET](#),17:16-22;[T-224-CONF-ENG-ET](#),62:24-64:1.

allies of the APC,<sup>2546</sup> whom he acknowledged was predominantly Nande and led by a Nande (NYAMWISI).<sup>2547</sup> NTAGANDA further conceded that the Lendu fighters, INTERAHAMWE, and other allies were considered by him to be negative forces.<sup>2548</sup>

816. Second, NTAGANDA acknowledged that the Tutsi and Hema communities shared the same discrimination and targeting by KABILA supporters. NTAGANDA described how Tutsi (including him) and Hema in the DRC were both discriminated against, and their lives were threatened, after KABILA issued a *communiqué* that called for all Tutsi, *and those resembling Tutsi*, to be killed.<sup>2549</sup> NTAGANDA confirmed that the Hema and Tutsi physically resemble one another, and that after KABILA's *communiqué* both groups were targeted.<sup>2550</sup> During NTAGANDA's speech to a group of largely Hema students, when he tried to encourage them to join the UPC, NTAGANDA compared the conflict between the Hema and Lendu with the Rwandan conflict between the Hutu and Tutsi.<sup>2551</sup>

817. Third, NTAGANDA has strong personal family ties with the Hema community, which may explain his bias in favour of Hema, against the Lendu: he was married to both a Hema South and a Hema-Gegere; and has Hema children.<sup>2552</sup>

818. In those few times NTAGANDA tried to get his troops to cooperate with the

<sup>2546</sup> **D-300:T-211-CONF-ENG-ET**,17:16-22;**T-229-CONF-ENG-ET**,57:13-58:4. UPC leaders, including LUBANGA stated that the INTERAHAMWE were allied to the Lendu. *E.g.* **DRC-OTP-0037-0264**.

<sup>2547</sup> **D-300:T-212-CONF-ENG-ET**,30:4-19;**T-230-ENG-CT**,54:13-56:22.

<sup>2548</sup> **D-300:T-229-CONF-ENG-ET**,61:8-15.

<sup>2549</sup> **D-300:T-209-CONF-ENG-ET**,37:13-20;**T-211-CONF-ENG-ET**,31:12-33:25;**T-211-CONF-ENG-ET**,50:13-25;**T-212-CONF-ENG-ET**,13:8-19;**T-211-CONF-ENG-ET**,42:24-43:6;**T-224-CONF-ENG-ET**,64:2-68:12.

<sup>2550</sup> **D-300:T-212-CONF-ENG-ET**,21:22-24;**T-211-CONF-ENG-ET**,42:24-43:6;**T-224-CONF-ENG-ET**,64:2-68:12.

<sup>2551</sup> **P-769:T-120-CONF-ENG-ET**,13:11-22:8(especially 16:1-21). NTAGANDA also testified that the Hema and Tutsi share a common background as cattle breeders: **D-300:T-212-CONF-ENG-ET**,21:20. In contrast, Lendu are farmers. **P-931:DRC-OTP-2083-0622**,p.0641:21-p.0642:21. Arguments regarding land and cattle herding were factors relevant to the conflict. **P-790:T-53-CONF-ENG-CT**,22:2-19.

<sup>2552</sup> **D-300:T-209-CONF-ENG-ET**,41:24-44:21.

Lendu, it was for self-serving reasons. For instance, in Mongbwalu, the UPC tried to convince Lendu and “*non-originaires*” to return to work at the mines, but this was because they were the most experienced gold diggers. Most Lendu refused to return. So the UPC troops forced others to do mining and other work for them in Mongbwalu and Sayo.<sup>2553</sup>

*v. NTAGANDA enlisted children under the age of 15 into the UPC*

819. **NTAGANDA** personally enlisted children under the age of 15 into the UPC. In 2002, he abducted boys and girls aged about 10 to 13 years old from Mudzipela boy’s primary school fifth grade and other locations, and marched them to Mandro for training.<sup>2554</sup> Amongst the children abducted by **NTAGANDA** and his troops was a group of children aged 14 and above, including P-888, who were abducted as they went to fetch water.<sup>2555</sup> **NTAGANDA** subsequently brought them, with the others recruited, to Mandro for training.<sup>2556</sup>

820. During a visit to Rwampara training camp in about June to August 2003, MONUC officials, accompanied by child protection officials from other agencies such as UNICEF and SAVE, complained to **NTAGANDA** about the UPC’s recruitment of children. **NTAGANDA** acknowledged that there were children in their ranks, claiming the children were all orphans and were voluntarily recruited. **NTAGANDA** further claimed he would deal with demobilisation.<sup>2557</sup> MONUC met with **NTAGANDA** in October 2002, at which they discussed with him: “[t]he recruitment by UPC is in progress and underage children are being recruited”. According to the MONUC report, **NTAGANDA**’s “justification given

<sup>2553</sup> **P-886:T-38-CONF-ENG-CT**,13:7-22,15:11-16:7; **DRC-OTP-0074-0797**,p.0830; **P-315:T-108-CONF-ENG-ET**,51:2-25.

<sup>2554</sup> **P-14:T-136-CONF-ENG-ET**,42:22-43:13; **P-190:T-97-CONF-ENG-CT**,31:2-39:8,39:9-41:16. See also **DRC-OTP-0074-0797**,p.0851; **P-315:T-107-CONF-ENG-ET**,88:3-92:23;**T-108-CONF-ENG-ET**,66:6-8; **P-46:T-100-CONF-ENG-CT**,50:14-52:25.

<sup>2555</sup> **P-888:T-105-CONF-ENG-CT**,18:5-20:16; **P-190:T-97-CONF-ENG-CT**,30:21-41:23.

<sup>2556</sup> **P-888:T-105-CONF-ENG-CT**,19:14-20:3

<sup>2557</sup> **DRC-OTP-0074-0797**,p.0851; **P-768:T-34-CONF-ENG-CT**,49:16-21; **P-31:T-174-CONF-ENG-ET**,23:9-25:22; **P-315:T-108-CONF-ENG-ET**,66:6-8.

was that they are orphans being cared for in the UPC". **NTAGANDA** denied meeting any UN official in Bunia in October 2002. His denials must be considered against his own evidence of the leading role he played in setting up the Mandro training camp and in instruction of recruits and the role he played in recruitment.<sup>2558</sup>

821. **NTAGANDA** admitted to P-315 that he knew there were children within the UPC.<sup>2559</sup>

822. **NTAGANDA** gave speeches exhorting the Hema community to give their children to the UPC to protect themselves against the Lendu.<sup>2560</sup> **NTAGANDA** went to Mabanga with **KAHWA** and spoke to the authorities to sensitise the population to join the UPC. At an initial meeting in Mabanga that **NTAGANDA** attended, but at which he did not address the crowd, **KAHWA** insisted that the welfare of the Mabanga population depended on joining the UPC and that each family should give a child for training; children under the age of 15 were recruited as a result.<sup>2561</sup> At a later visit to Mabanga, **NTAGANDA** addressed the local population and called upon them to enrol to fight for their country. He did not set any age limits.<sup>2562</sup> **NTAGANDA** and other UPC commanders likewise demanded children from Hema community leaders from other villages. The leaders did not refuse.<sup>2563</sup> Similarly, **NTAGANDA**, together with other UPC leaders and key figures of the Hema community like **KAMARAGI**, addressed a largely Hema group of school and university students to encourage them to join the UPC.<sup>2564</sup>

<sup>2558</sup> [DRC-OTP-2067-1914](#), pp.1914 and 1916, para.10; **D-300:T-239-CONF-ENG-CT**, 21:18-22:1. See also e.g. **P-769:T-120-CONF-ENG-ET**, 13:11-22:8 (especially 16:1-21); **P-31:T-174-CONF-ENG-ET**, 26:13-27:14, 23:9-26:1; **P-888:T-105-CONF-ENG-CT**, 18:5-20:16; **P-190:T-97-CONF-ENG-CT**, 30:21-41:23.

<sup>2559</sup> **P-315:T-107-CONF-ENG-ET**, 88:3-92:23; **T-108-CONF-ENG-ET**, 66:6-8.

<sup>2560</sup> **P-918:T-155-CONF-ENG-ET**, 79:18-81:14.

<sup>2561</sup> [REDACTED]. See also **P-768:T-34-CONF-ENG-CT**, 56:14-57:6; [DRC-OTP-2058-0667-R02](#).

<sup>2562</sup> **P-10:T-47-CONF-ENG-CT**, 51:6-52:5.

<sup>2563</sup> **P-901:T-27-CONF-ENG-CT**, 60:15-69:17. See also **P-190:T-96-CONF-ENG-CT**, 18:21-20:6, 35:15-37:8; **T-97-CONF-ENG-CT**, 35:15-36:20; **P-10:T-47-CONF-ENG-CT**, 51:6-52:13; **P-41:DRC-OTP-2054-5199**, p.5262:25-p.5264:6.

<sup>2564</sup> **P-769:T-120-CONF-ENG-ET**, 13:11-22:8.



*vi. NTAGANDA used children under the age of 15 to participate actively in hostilities*

823. NTAGANDA used children under the age of 15 to participate actively in hostilities; the tasks he assigned were linked to the hostilities.<sup>2565</sup> This use of children included, but was not limited to, deployment in combat.

824. NTAGANDA used children under the age of 15 to serve in his personal bodyguard,<sup>2566</sup> participating alongside him in hostilities<sup>2567</sup> where some were injured or died.<sup>2568</sup> Some were as young as nine years old.<sup>2569</sup> Indeed, NTAGANDA and other UPC commanders liked, even preferred, to have young children amongst their escorts.<sup>2570</sup> The children were seen as more obedient.<sup>2571</sup> P-10's story further illustrates the dangers to which soldiers around NTAGANDA were exposed. Taking her from a training camp, NTAGANDA led P-10 and others into combat at Libi and Mbau,<sup>2572</sup> exposing them to live fire.<sup>2573</sup> When NTAGANDA later [REDACTED]<sup>2574</sup> [REDACTED],<sup>2575</sup> including in and around Mongbwalu in November 2002<sup>2576</sup> and around Bunia in 2003.<sup>2577</sup> Prior to the battle

<sup>2565</sup> *Lubanga AJ*, paras.333-335,340.

<sup>2566</sup> E.g. **P-768:T-34-CONF-ENG-CT**,47:5-49:11,54:20-24; **P-17:T-58-CONF-ENG-CT**,25:20-26:24,33:11-34:8; **P-55:T-71-CONF-ENG-CT**,83:13-84:16; **P-290:T-67-CONF-ENG-CT**,12:25-14:20; **P-963:T-80-CONF-ENG-ET**,31:18-32:4; **P-901:T-29-CONF-ENG-CT**,53:21-56:6; **P-14:T-136-CONF-ENG-ET**,36:10-40:14; **P-41:DRC-OTP-0147-0002**,p.0029,para.173; **P-41:DRC-OTP-2054-5199**,p.5261:22-p.5262:20; **P-30:DRC-OTP-2054-2951**,p.2974:1-12; **P-16:DRC-OTP-2054-1447**,p.1461:10-1464:14,1478:4-11,p.1466:7-20; **P-888:T-105-CONF-ENG-CT**,62:3-20; **P-898:T-154-CONF-ENG-ET**,5:2-17,22:25-23:23; **P-10:T-47-CONF-ENG-CT**,5:18-7:20;**T-48-CONF-ENG-CT**,15:1-20; **P-190:T-97-CONF-ENG-CT**,46:24-47:18; **P-46:T-100-CONF-ENG-CT**,75:11-16; **DRC-OTP-0152-0286**,pp.0310-0311,para.92; **P-30:DRC-OTP-2054-2951**,19:11-24:12; **DRC-OTP-0208-0284**,p.0290,p.321,p.0325.

<sup>2567</sup> Concerning child soldiers in the First Attack: **P-768:T-34-CONF-ENG-CT**,52:8-18,54:2-55:14; **P-898:T-154-CONF-ENG-ET**,8:12-9:12; **P-10:T-47-CONF-ENG-CT**,10:6-18,13:3-21,21:5-7. See also **P-46:T-100-CONF-ENG-CT**,75:11-16;**T-103-CONF-ENG-ET**,11:9-12:8,14:22-15:17,29:3-33:21 (concerning Zumbe, Komanda, Mongbwalu and Kilo, Kobu, Bambu, Iga-Barrière). Further **DRC-OTP-0208-0284**,p.0290,p.0321,p.0325.

<sup>2568</sup> **P-768:T-34-CONF-ENG-CT**,54:25-55:14.

<sup>2569</sup> **P-10:T-47-CONF-ENG-CT**,6:1-24.

<sup>2570</sup> **P-190:T-97-CONF-ENG-CT**,46:24-47:18.

<sup>2571</sup> **P-963:T-80-CONF-ENG-ET**,32:11-17.

<sup>2572</sup> **P-10:T-48-CONF-ENG-CT**,26:3-27:1;**T-49-CONF-ENG-CT**,58:15-63:12.

<sup>2573</sup> **P-10:T-48-CONF-ENG-CT**,26:3-20;**T-47-CONF-ENG-CT**,10:6-18

<sup>2574</sup> **P-10:T-46-CONF-ENG-ET**,47:22-48:10;**T-47-CONF-ENG-CT**,4:14-8:14,20:23-21:4;**T-48-CONF-ENG-CT**,43:7-14.

<sup>2575</sup> **P-10:T-47-CONF-ENG-CT**,9:2-13.

<sup>2576</sup> **P-10:T-47-CONF-ENG-CT**,9:2-13,10:25-11:2,21:3-7; **P-898:T-153-CONF-ENG-ET**,29:11-12,30:1-20;**T-154-CONF-ENG-ET**,8:12; **P-888:T-105-CONF-ENG-CT**,74:1-5; **P-768:T-34-CONF-ENG-CT**,54:20-55:10.



in Mongbwalu P-10 and others were ordered to kill without distinction.<sup>2578</sup>

825. **NTAGANDA** issued specific orders for the deployment of children under the age of 15 to UPC units,<sup>2579</sup> including young people trained as radio operators.<sup>2580</sup> **NTAGANDA** used children under the age of 15 to gather intelligence. [REDACTED], was ordered to have sexual relations with the enemy to find out what weapons they had.<sup>2581</sup>

*b. NTAGANDA participated in the crimes as a co-perpetrator  
(article 25(3)(a))*

826. **NTAGANDA** participated as a co-perpetrator in the charged crimes with and through other UPC members. This encompasses liability as a direct as well as an indirect co-perpetrator.

827. In both the First and Second Attacks, **NTAGANDA**, with others, directly or indirectly, perpetrated the crimes of murder and attempted murder (Counts 1-2), intentionally directing attacks against the civilian population (Count 3), rape of civilians (Counts 4-5), persecution (Count 10), pillage (Count 11), forcible transfer (Counts 12-13), and wanton destruction of enemy property (Count 18).

828. In addition, in the First Attack only, **NTAGANDA**, with others, directly or indirectly, perpetrated the crime of intentionally directing attacks against protected objects (Count 17).

829. In the Second Attack only, **NTAGANDA**, with others, directly or indirectly, perpetrated the crime of sexual slavery of civilians (Counts 7-8).

---

<sup>2577</sup> [P-10:T-47-CONF-ENG-CT](#),28:19-29:9.

<sup>2578</sup> [P-10:T-47-CONF-ENG-CT](#),10:6-18.

<sup>2579</sup> [P-901:T-29-CONF-ENG-CT](#),52:23-53:14; [P-290:T-65-CONF-ENG-CT](#),70:4-19;[T-67-CONF-ENG-CT](#),18:17-19:4;[T-65-CONF-ENG-CT](#),33:8-23,37:13-39:22,41:2-42:19,59:19-61:18.

<sup>2580</sup> [REDACTED].

<sup>2581</sup> [P-55:T-71-CONF-ENG-CT](#),89:12-90:4; [P-10:T-47-CONF-ENG-CT](#),46:2-49:25; [P-758:T-161-CONF-ENG-ET](#),36:15-37:1; [P-46:T-100-CONF-ENG-CT](#),75:11-76:12;[T-101-CONF-ENG-ET](#),42:3-15,47:1-11,53:8-54:25,85:1-9.

830. During the course of the conflict in Ituri, between on or about 6 August 2002 and 31 December 2003, **NTAGANDA**, with others, directly or indirectly, perpetrated the crimes of rape of child soldiers under 15 (Count 6), sexual slavery of child soldiers under 15 (Count 9), conscripting children under the age of 15 into an armed force or group (Count 14), enlisting children under the age of 15 into an armed force or group (Count 15). The UPC used children under the age of 15 to participate actively in hostilities, between on or about 6 August 2002 and 30 May 2003, including **NTAGANDA** himself between on or about 6 August 2002 and March 2003 (Count 16).

*i. NTAGANDA and others shared a common plan to control Ituri*

831. **NTAGANDA** participated in a common plan or agreement which, in the ordinary course of events, included the commission of the crimes charged. The co-perpetrators, leading members of the UPC, agreed to take military and political control of Ituri. As part of the common plan, **NTAGANDA** and others sought to drive out members of the non-Hema population (Lendu and *non-originaires*) from the areas they took over. In so doing, the co-perpetrators used child soldiers, mainly of Hema ethnicity, as part of the UPC forces. The common plan or agreement existed at least from on or about 6 August 2002 until 31 December 2003.

832. The common plan's existence is demonstrated by the ethnic and political context of the conflict in which the UPC was created, the statements and conduct of the co-perpetrators and the UPC, the conduct of the First and Second Attacks, the conduct of other attacks launched by the UPC, and the practices employed by the UPC during the armed conflict.<sup>2582</sup>

---

<sup>2582</sup> The existence of the common plan can be inferred. *See e.g.* ICC-01/04-01/06-2842,p.427,para.988. “[C]o-perpetration does not require that the agreement or the common plan is explicit in order for the individual conduct of each co-perpetrator to be connected....[A]lthough direct evidence of the plan is likely to assist in demonstrating its existence, this is not a legal requirement.. The agreement can be inferred from circumstantial evidence.”

The co-perpetrators

833. In addition to NTAGANDA, the co-perpetrators<sup>2583</sup> included:

- LUBANGA, the President, Commander-in-Chief and Minister of Defence of the UPC;<sup>2584</sup>
- KISEMBO, the Chief of Staff of the UPC (until early December 2003);<sup>2585</sup>
- Chief KAHWA, the customary chief of Mandro and the UPC's Deputy Defence "Minister" (until end November 2002);<sup>2586</sup>
- RAFIKI SABA, LUBANGA's administrator of the *Administrateur Générale de Sécurité* (the UPC's Chief of civilian security and intelligence);<sup>2587</sup>
- BAGONZA KASORO, a UPC brigade commander;<sup>2588</sup>

<sup>2583</sup> NTAGANDA acknowledged when testifying that the functions of his various co-perpetrators within the UPC are as described herein.

<sup>2584</sup> E.g. [D-300:T-213-CONF-ENG-CT](#),52:8-11;[T-214-CONF-ENG-ET](#),58:1-2;[T-215-ENG-ET](#),21:20-24,35:4-24;[T-225-CONF-ENG-CT](#),73:23-24; [P-901:T-28-CONF-ENG-CT](#),9:11-20; [P-55:T-70-CONF-ENG-CT](#),42:6-13,61:17-62:1; [P-768:T-33-CONF-ENG-CT](#),28:21-29:3; [P-963:T-78-CONF-ENG-ET](#),26:15-20,27:15-17,28:2-18,34:13-20,38:8-39:1,63:15-64:7; [P-16:DRC-OTP-0126-0422-R03](#),p.0434,para.63; [P-16:DRC-OTP-2054-1447](#),p.1450:10-24; [P-12:DRC-OTP-2054-0073](#),p.0089:1-p.0090:24,p.0134:19-20; [P-5:T-183-CONF-ENG-ET](#),16:1-9;[T-184-CONF-ENG-ET](#),15:18-19:24,24:12-25:1,32:23-25; [DRC-OTP-0089-0069](#) (signed by LUBANGA as "President").

<sup>2585</sup> E.g. [D-300:T-215-ENG-ET](#),35:4-24,37:18-25; [T-225-CONF-ENG-CT](#),82:14-25; [P-901:T-28-CONF-ENG-CT](#),9:11-10:14;[T-225-CONF-ENG-CT](#),82:14-25; [P-55:T-70-CONF-ENG-CT](#),75:7-76:9; [P-768:T-33-CONF-ENG-CT](#),28:21-29:3; [P-12:DRC-OTP-2054-0073](#),p.0118:5-8; [P-16:DRC-OTP-0126-0422-R03](#),p.0434,para.63; [P-17:T-58-CONF-ENG-CT](#),18:13-19:5; [P-963:T-78-CONF-ENG-ET](#),6:15-20,27:15-17,34:13-20,60:14-25,63:15-64:7,67:12-19;[T-81-CONF-ENG-ET](#),55:4-14,10:2-7; [P-290:T-67-CONF-ENG-CT](#),21:8-18,46:11-21.

<sup>2586</sup> [D-300:T-213-CONF-ENG-CT](#),52:4-7,59:8-15;[T-215-ENG-ET](#),35:4-24,37:18-25; [P-901:T-28-CONF-ENG-CT](#),9:11-20; [P-55:T-70-CONF-ENG-CT](#),79:10-80:8; [P-963:T-78-CONF-ENG-ET](#),26:15-20,27:15-17,29:4-30:22,31:21-32:1,34:13-20,38:8-39:1,54:22-55:7,63:15-64:7,67:12-19;[T-81-CONF-ENG-ET](#),55:4-14; [P-12:DRC-OTP-2054-0073](#),p.0118:1-8; [DRC-OTP-0113-0055](#); [DRC-OTP-0089-0057](#).

<sup>2587</sup> E.g. [D-300:T-217-CONF-ENG-ET](#),76:21-77:2;[T-218-CONF-ENG-CT](#),76:4-8;[T-221-CONF-ENG-ET](#),62:20;[T-229-CONF-ENG-ET](#),39:3-13,43:13-15;[T-231-CONF-ENG-ET](#),61:2-62:7,78:19-79:21;[T-239-CONF-ENG-CT](#),24:2-26:16,87:12-88:2;[T-242-CONF-ENG-ET](#),81:17-18; [DRC-OTP-0093-0359](#); [P-55:T-70-CONF-ENG-CT](#),41:19-42:7; [P-5:T-184-CONF-ENG-ET](#),19:10-20:8,28:22-29:3,31:18-32:18,34:4-35:7;[DRC-OTP-0174-0126](#),p.0126;[DRC-OTP-0174-0128](#),p.0128; [P-901:T-28-CONF-ENG-CT](#),9:11-20; [P-55:T-70-CONF-ENG-CT](#),42:6-13,61:17-62:1.

<sup>2588</sup> E.g. [D-300:T-218-CONF-ENG-CT](#),40:19-20;[T-213-CONF-ENG-CT](#),50:4-11; [P-190:T-96-CONF-ENG-CT](#),87:3-88:4. BAGONZA was a UPC brigade commander. See e.g. [P-16:DRC-OTP-0126-0422-R03](#),p.0436,paras.77-79. BAGONZA and TCHALIGONZA were amongst the most influential commanders within the FPLC. E.g. [P-16:DRC-OTP-0126-0422-R03](#),pp.0435-0436,paras.76-79,pp.0453-0454,paras.178-183

- TCHALIGONZA, a UPC brigade commander,<sup>2589</sup> and second-in-command of UPC Sector Bunia South East;<sup>2590</sup> and
- KASANGAKI, intelligence officer<sup>2591</sup> and operations officer<sup>2592</sup> in the UPC Brigade commanded by MULENDA and following the Mongbwalu operation, the deputy to the G2.<sup>2593</sup>

*The historical origins of the common plan*

834. The common plan was born out of an intense ethnic conflict and struggle for control of Ituri.<sup>2594</sup> This is why the UPC and its goals had such deep ethnic dimensions.<sup>2595</sup> The co-perpetrators, mainly Hema and Tutsi, aligned with the Hema population in the ethnic divide.<sup>2596</sup>

*2000: The first mutiny and birth of the common plan*

835. In 2000, NTAGANDA was a high-ranking officer in the RCD-K/ML.<sup>2597</sup> He

<sup>2589</sup> **D-300:T-213-CONF-ENG-CT**,50:4-11;**T-218-CONF-ENG-CT**,30:2-17;**T-219-CONF-ENG-ET**,42:10-43:10; **P-17:T-58-CONF-ENG-CT**,36:18-37:2; **P-55:T-74-CONF-ENG-CT**,42:6-24; **P-16:DRC-OTP-0126-0422-R03**,pp.0435-0436,paras.76-79.

<sup>2590</sup> **P-901:T-28-CONF-ENG-CT**,12:22-13:17; **D-300:T-218-CONF-ENG-CT**,30:2-17;**T-220-CONF-ENG-ET**,10:5-15,19:15-20:7;**T-227-CONF-ENG-CT**,13:16-14:11;**T-228-CONF-ENG-CT**,70:16-71:2; **DRC-OTP-0017-0033**,p.0184(third),p.0183(first)(transl.**DRC-OTP-2102-3854**,pp.4005-4006); **P-55:T-70-CONF-ENG-CT**,80:9-81:2; **P-16:DRC-OTP-0126-0422-R03**,p.0436,paras.77-79; **P-17:T-59-CONF-ENG-CT**,59:20-61:22.

<sup>2591</sup> KASANGAKI appears to have exercised both functions as an operations officer and intelligence officer within MULENDA's brigade. NTAGANDA and Prosecution witness P-17 refer to KASANGAKI as the operations officer in MULENDA's brigade at the time of the attack. Moreover, NTAGANDA and Prosecution witnesses [REDACTED] describes his functions as an intelligence officer. *E.g.* **D-300:T-213-CONF-ENG-CT**,34:20;**T-212-CONF-ENG-ET**,37:6-38:2,42:14-43:24;**T-237-CONF-ENG-ET**,2:22-3-24;**T-238-CONF-ENG-CT**,11:3-12; [REDACTED]; **P-907:T-90-CONF-ENG-CT**,34:25,43:7-44:13; [REDACTED]; **P-315:T-108-CONF-ENG-ET**,59:19-60:24.

<sup>2592</sup> *E.g.* **D-300:T-216-ENG-CT**,43:7-25;**T-217-CONF-ENG-ET**,36:16-38:21,39:1-11,45:1-11,52:4-7;**T-242-CONF-ENG-ET**,3:19-4:3; **P-17:T-58-CONF-ENG-CT**,18:13-19:5,45:12-23,65:21-67:10;**T-59-CONF-ENG-CT**,21:5-17;**T-61-CONF-ENG-ET**,19:19-20:23.

<sup>2593</sup> **P-55:T-71-CONF-ENG-CT**,17:24-18:5;**T-74-CONF-ENG-CT**,56:14-58:1; **P-907:T-89-CONF-ENG-CT**,39:23-41:7.

<sup>2594</sup> See Section VI. In *Bemba et al.*, the Appeals Chamber held that “*there is no bar to a trial chamber using evidence to infer, either backwards or forward [sic] in time, an accused's involvement in a common plan. The appropriateness of doing so must be determined on a case-by-case basis*”, *Bemba et al. TJ*, para.1306.

<sup>2595</sup> **P-5:T-183-CONF-ENG-ET**,28:6-18.

<sup>2596</sup> **P-55:T-70-CONF-ENG-CT**,60:8-62:10; **P-901:T-27-CONF-ENG-CT**,30:20-31:17; **P-901:T-27-CONF-ENG-CT**,37:16-38:5; **D-251:T-260-CONF-ENG-CT**,78:13-79:13; **P-16:DRC-OTP-2054-1447**,p.1467:21-p.1468:3; **P-12:DRC-OTP-2054-0073**,p.0118:19-p.0119:8; **P-5:T-183-CONF-ENG-ET**,12:1,28:1-18; **P-901:T-27-CONF-ENG-CT**,p.20:7-25:13; **D-300:T-224-CONF-ENG-ET**,64:16-65:15,66:13-67:24;**T-212-CONF-ENG-ET**,21:14-24,34:19-24.

<sup>2597</sup> **D-300:T-211-CONF-ENG-ET**,47:8.

stated that he arrived in Bunia in July ready to assume a promotion,<sup>2598</sup> but WAMBA had replaced him.<sup>2599</sup> His replacement, CÉSAR, was soon killed, as was PATRICK, a man NTAGANDA alleged was sent to kill him.<sup>2600</sup> NTAGANDA was called a murderer and people wanted him to leave Bunia.<sup>2601</sup>

836. Many of the co-perpetrators were APC soldiers.<sup>2602</sup> NTAGANDA spoke to KISEMBO<sup>2603</sup> and together they enlisted support from BAGONZA and TCHALIGONZA, also APC commanders.<sup>2604</sup> The co-perpetrators became known as the “mutineers”.<sup>2605</sup>

837. The mutineers claimed that the APC discriminated against Hema.<sup>2606</sup> Angered, the co-perpetrators decided to assemble an army of mainly Hema soldiers to protect Hema interests and to take charge of the governance of Ituri.<sup>2607</sup> As with all rebel movements in their early stages, however, they had no realistic prospect of achieving this goal without a trained and structured military force and a political front.

838. NTAGANDA’s military leadership shone from the outset. He motivated the mutineers to unite.<sup>2608</sup> He named them “Chui Mobile Force”(CHUI).<sup>2609</sup> He gave them a military structure.<sup>2610</sup> He was their leader.<sup>2611</sup> He initially named

<sup>2598</sup> [D-300:T-211-CONF-ENG-ET](#),45:23-25,47:19-25,65:24-25.

<sup>2599</sup> [D-300:T-211-CONF-ENG-ET](#),66:9-12,67:6-68:2.

<sup>2600</sup> [D-300:T-212-CONF-ENG-ET](#),24:20-25.

<sup>2601</sup> [D-300:T-212-CONF-ENG-ET](#),32:4-9. **P-901** heard that NTAGANDA attacked CÉSAR: [T-30-CONF-ENG-CT](#),61:18-25; **P-12** stated that “Bosco at that time had killed two people at Bunia”, [DRC-OTP-2054-0073](#),p.0093:14-15.

<sup>2602</sup> [P-901:T-30-CONF-ENG-CT](#),57:24-58:2.

<sup>2603</sup> [D-300:T-212-CONF-ENG-ET](#),34:24.

<sup>2604</sup> [D-300:T-212-CONF-ENG-ET](#),34:19-24.

<sup>2605</sup> [D-300:T-213-CONF-ENG-CT](#),27:11-12.

<sup>2606</sup> [D-300:T-224-CONF-ENG-ET](#),66:21-24,[T-212-CONF-ENG-ET](#),21:8-22:9; **P-901:T-27-CONF-ENG-CT**,25:21-26:2,30:20-31:17; **P-55:T-70-CONF-ENG-CT**,60:8-62:10; [DRC-OTP-0033-0044-R02](#); **P-12:DRC-OTP-2054-0073**,p.0088:22-p.0089:14.

<sup>2607</sup> NTAGANDA claims that LONEMA and [REDACTED], [D-300:T-212-CONF-ENG-ET](#),32:2-33:18. [REDACTED].

<sup>2608</sup> [D-300:T-212-CONF-ENG-ET](#),38:5-39:3. BAGONZA wanted to band together “*but he didn’t have the strength of mind*”; NTAGANDA “*reinforced [his] determination*”,[D-300:T-212-CONF-ENG-ET](#),18:14-19.

<sup>2609</sup> [D-300:T-212-CONF-ENG-ET](#),38:23-39:3; **P-190:T-96-CONF-ENG-CT**,19:9-14.

<sup>2610</sup> [D-300:T-212-CONF-ENG-ET](#),39:1-16.

<sup>2611</sup> [D-300:T-212-CONF-ENG-ET](#),38:22; **P-901:T-27-CONF-ENG-CT**,25:16-20.

BAGONZA his Deputy and KISEMBO the “admin”;<sup>2612</sup> later he made KISEMBO his Deputy.<sup>2613</sup> He put KASANGAKI in charge of intelligence<sup>2614</sup> - a role similar to that he would continue with the UPC in 2002-2003.<sup>2615</sup> TCHALIGONZA was a company commander.<sup>2616</sup> KAHWA, not an APC soldier but part of the group, provided CHUI with Motorolas and NTAGANDA distributed them.<sup>2617</sup> ABELANGA, a military instructor, joined CHUI.<sup>2618</sup>

839. NTAGANDA led about 200 men, mainly Hema.<sup>2619</sup> Their base was Sota,<sup>2620</sup> a predominantly Hema village.<sup>2621</sup> CHUI defended the Hema community;<sup>2622</sup> its popularity was limited to the Hema population.<sup>2623</sup>

840. NTAGANDA planned and commanded CHUI’s successful operation against the APC.<sup>2624</sup> He intended to attack WAMBA’s troops,<sup>2625</sup> confirming that 200 men was enough to do harm “to the entire APC of Wamba dia Wamba”, because “despite the small number of men [...] I knew how to defeat an enemy in large number. [...] I knew that with 200 men I could do harm to a large army”.<sup>2626</sup>

841. LUBANGA became the CHUI spokesperson.<sup>2627</sup> NTAGANDA, LUBANGA, KAHWA and KISEMBO with others met Ugandan officials where it was arranged

<sup>2612</sup> [D-300:T-212-CONF-ENG-ET](#),39:3-4.

<sup>2613</sup> [D-300:T-212-CONF-ENG-ET](#),47:3. NTAGANDA confirmed that he was a more senior-ranked officer than KISEMBO at this time, [D-300:T-212-CONF-ENG-ET](#),26:3-8.

<sup>2614</sup> [D-300:T-212-CONF-ENG-ET](#),43:19-24.

<sup>2615</sup> [P-55:T-74-CONF-ENG-CT](#),56:14-58:1.

<sup>2616</sup> [D-300:T-212-CONF-ENG-ET](#),16:3-5.

<sup>2617</sup> [D-300:T-212-CONF-ENG-ET](#),46:12-22.

<sup>2618</sup> [D-300:T-211-CONF-ENG-ET](#),69:8-11. ABELANGA continued as an instructor in the UPC in 2002-2003.

<sup>2619</sup> [D-300:T-212-CONF-ENG-ET](#),62:3-5; [P-12:DRC-OTP-2054-0073](#),p.0091:3-14,p.0093:7-13.

<sup>2620</sup> [D-300:T-212-CONF-ENG-ET](#),41:1-7.

<sup>2621</sup> [D-300:T-225-CONF-ENG-CT](#),22:10-20.

<sup>2622</sup> [P-901:T-27-CONF-ENG-CT](#),30:20-31:17,37:16-38:5,[T-30-CONF-ENG-CT](#),57:10-13; [P-55:T-70-CONF-ENG-CT](#),60:8-62:10; [D-300:T-225-CONF-ENG-CT](#),33:22-34:15,[P-5:T-187-CONF-ENG-ET](#),13:12-19.

<sup>2623</sup> [P-901:T-30-CONF-ENG-CT](#),58:24-59:19. [REDACTED], [P-5:T-187-CONF-ENG-ET](#),13:12-19 *contra* NTAGANDA’s claim that all populations supported the CHUI, [D-300:T-212-CONF-ENG-ET](#),46:2-8.

<sup>2624</sup> [D-300:T-212-CONF-ENG-ET](#),42:6-13,43:19-24,44:4-45:8 (“People were saying: Why is this man so successful in all his operations? Is he receiving help from God, or is he using some kind of fetish?”).

<sup>2625</sup> [D-300:T-212-CONF-ENG-ET](#),38:14-19.

<sup>2626</sup> [D-300:T-212-CONF-ENG-ET](#),42:6-13 *contra* NTAGANDA’s subsequent testimony that CHUI could not have launched a *coup* attempt against WAMBA for lack of troops, [D-300:T-231-CONF-ENG-ET](#),25:12-18.

<sup>2627</sup> [P-901:T-27-CONF-ENG-CT](#),40:5-20; [P-190:T-96-CONF-ENG-CT](#),26:4-8; [P-12:DRC-OTP-2054-0073](#),p.0088:22-p.0089:14.



that Uganda would provide military training.<sup>2628</sup>

842. Two photographs illustrate the close association of the co-perpetrators back in 2000 and signal their intention to use military force.<sup>2629</sup> The photographs, taken at LUBANGA's house in the days before they left for training,<sup>2630</sup> show NTAGANDA, KISEMBO, KASANGAKI, ABELANGA, LUBANGA and RAFIKI<sup>2631</sup> with uniforms, weapons and Motorolas.<sup>2632</sup>

843. NTAGANDA's leadership role in 2000, and his superior military skills, remained exactly the same in 2002 and 2003: he was the UPC's top military leader, tactician,<sup>2633</sup> instructor, and motivator.<sup>2634</sup> NTAGANDA later told P-55 that he created the UPC movement with the Hema.<sup>2635</sup>

844. NTAGANDA acknowledged the progression of CHUI to FPLC: *"[w]hen we were with Chui mobile force we went into the bush and each individual had his own particular problems. We met, and since we were moving forward and once the group became the FPLC, the problems no longer existed..."*<sup>2636</sup>

#### *Recruitment for training in Uganda*

<sup>2628</sup> **P-901:T-30-CONF-ENG-CT**,69:16-21,71:1-5; **D-300:T-212-CONF-ENG-ET**,59:21-61:7,**T-231-CONF-ENG-ET**,64:15-65:20. NTAGANDA stated that LUBANGA "had come to defend the interests of the members of their community", **D-300:T-231-CONF-ENG-ET**,63:24-25; **T-212-CONF-ENG-ET**,67:23-25; **D-300:T-212-CONF-ENG-ET**,60:10-62:5.

<sup>2629</sup> **DRC-OTP-0137-0711**. LUBANGA and the Hema community were clearly behind CHUI. **P-116** testified that this militia was "managed by Mr Thomas" to "set up an army" to defend LUBANGA's ethnic group, **DRC-OTP-2054-4494**,p.4536:5-7,**DRC-OTP-2054-6975**,p.7059:2-16. **P-14** recalled that "the Ugandan government continued to help the Hema-Gegere group by training their soldiers, [...] they were organised based on their tribe and they were headed up by Thomas Lubanga",**T-137-CONF-ENG-ET**,34:20-25.

<sup>2630</sup> **DRC-OTP-0137-0711**; **DRC-OTP-0137-0713**; **P-901:T-27-CONF-ENG-CT**,41:19-45:14,46:1-48:4; **D-300:T-212-CONF-ENG-ET**,67:17-68:2,70:2-6. NTAGANDA's later attempt in cross-examination to downplay LUBANGA's role with CHUI is not supported by his own evidence of LUBANGA's role as cited above, see **D-300:T-231-CONF-ENG-ET**,63:18-66:9.

<sup>2631</sup> **D-300:T-212-CONF-ENG-ET**,70:3-72:3.

<sup>2632</sup> **P-901:T-27-CONF-ENG-CT**,41:19-45:14,46:1-48:4; **DRC-OTP-0137-0713**.

<sup>2633</sup> **D-300:T-225-CONF-ENG-CT**,46:1-49:12("Q.It's true, isn't it, that many within the UPC/FPLC viewed you as the real operational leader of the army? A: In the army one has successes per times. I was a tactician, I certainly accept that. I commanded a very disciplined army and we had a reputation for discipline. My role was chief of general staff and that was also a well-known fact – deputy chief of staff").

<sup>2634</sup> **D-300:T-227-CONF-ENG-CT**,17:13-20,26:14-25.

<sup>2635</sup> **P-55:T-70-CONF-ENG-CT**,60:8-62:10.

<sup>2636</sup> **D-300:T-230-ENG-CT**,64:25-65:3.



845. When the opportunity arose to receive military training in Uganda in 2000, NTAGANDA and the co-perpetrators launched the first wave of recruitment for what would officially become the armed wing of the UPC.<sup>2637</sup> NTAGANDA viewed the training in Uganda as an opportunity to increase their skills.<sup>2638</sup> From this time onwards, NTAGANDA's name and that of the co-perpetrators became synonymous with the UPC / the Hema militia.

846. There was a "two-tiered recruitment exercise": first, sensitise Hema parents and community leaders to give their children to the army; second, forcibly recruit.<sup>2639</sup> The UPC continued the very same recruitment system in 2002-2003. P-190 recalled seeing children aged 11-14 when CHUI returned to Bunia from the bush.<sup>2640</sup> D-38 - a Hema - recalled that the village "peace committee" in [REDACTED] sensitised youth to attend the military training.<sup>2641</sup>

847. As a result of this recruitment, the CHUI troops swelled to more than 700 recruits, mainly Hema.<sup>2642</sup> P-12 stated that at any age they were allowed to join the army.<sup>2643</sup>

#### *Formal creation of the UPC – 15 September 2000*

848. On 15 September 2000, LUBANGA, RAFIKI, LONEMA, LITSHA with others created the UPC.<sup>2644</sup> The UPC Statute<sup>2645</sup> and Programme<sup>2646</sup> refer to the need for

<sup>2637</sup> **P-901:**[T-27-CONF-ENG-CT](#),38:22-39:14,[T-30-CONF-ENG-CT](#),72:8-20; **D-38:**[T-249-CONF-ENG-CT](#),17:6-18:2.

<sup>2638</sup> **D-300:**[T-212-CONF-ENG-ET](#),63:5-9.

<sup>2639</sup> **P-190:**[T-96-CONF-ENG-CT](#),19:17-20:3; **P-12:**[DRC-OTP-2054-0073](#),p.0094:20-p.0095:5; **P-14:**[DRC-OTP-2054-0429](#),p.0481:7-p.0482:6,p.0484:24-p.0486:10.

<sup>2640</sup> **P-190:**[T-96-CONF-ENG-CT](#),21:8-15,23:25-24:14.

<sup>2641</sup> **D-38:**[T-249-CONF-ENG-CT](#),13:1-14:8; *See also* **P-116:**[T-195-CONF-ENG-ET](#),14:25-16:6.

<sup>2642</sup> **P-901:**[T-27-CONF-ENG-CT](#),39:15-18; **P-12:**[DRC-OTP-2054-0073](#),p.0094:1-8("They were all Hemas. You have to understand that this was an ethnic conflict, and to save themselves everyone had to become soldiers and get military training.") NTAGANDA's claim that he found out only later that there were 700 trainees is not believable, **D-300:**[T-212-CONF-ENG-ET](#),82:18-22,84:4-85:7.

<sup>2643</sup> **P-12:**[DRC-OTP-2054-0073](#),p.0095:14-15.

<sup>2644</sup> [DRC-OTP-0147-0320](#); [DRC-OTP-0091-0039](#). LUBANGA, RAFIKI, LONEMA, LITSHA and others continued to have formal functions in the UPC in 2002-2003.

<sup>2645</sup> [DRC-OTP-0091-0039](#),p.0040,para.12:"Former une Armée Nationale capable d'assurer la protection et la défense de l'intégrité du territoire".

<sup>2646</sup> [DRC-OTP-0113-0060](#),p.0062.

an army, revealing its intention to use military force to achieve its goal. As foreshadowed, in September 2002, the UPC declared that the FPLC was to be a national army.<sup>2647</sup>

*CHUI Training in Jinja and Tchankwanzi, Uganda*

849. Officers including **NTAGANDA**, **KISEMBO**, **TCHALIGONZA**, **BAGONZA** and **KASANGAKI**<sup>2648</sup> went to Jinja and soldiers to Tchankwanzi.<sup>2649</sup>

850. Children under the age of 15, predominantly Hema, were recruited and sent to Tchankwanzi for training.<sup>2650</sup> UNICEF demobilised 165 children from these troops in 2001.<sup>2651</sup> **LUBANGA** acknowledged that these children were part of his armed group.<sup>2652</sup> **NTAGANDA**'s claim that he heard about the demobilisation of children from these troops but only "in 2010 or after I arrived here in The Hague",<sup>2653</sup> is not credible given his leadership of the group sent to be trained, his role in negotiating the training and the publicity surrounding the demobilisation at the time.<sup>2654</sup> Nor is it reasonable that he had little information or interest in the massive numbers of additional recruits sent to be trained in Tchankwanzi.<sup>2655</sup> Further, **P-901**, who had not been part of CHUI in Sota, attended training in Tchankwanzi with children under the age of 15.<sup>2656</sup> **P-901** recalled that **NTAGANDA** visited the recruits in Tchankwanzi early on to boost morale, a fact **NTAGANDA** conceded.<sup>2657</sup> The recruits sang songs with **NTAGANDA**'s name in

<sup>2647</sup> [DRC-OTP-0164-0447](#),p.0449.

<sup>2648</sup> [D-300:T-225-CONF-ENG-CT](#),50:3-11.

<sup>2649</sup> [P-901:T-27-CONF-ENG-CT](#),40:21-41:6; [D-300:T-212-CONF-ENG-ET](#),86:5-9.

<sup>2650</sup> [P-901:T-27-CONF-ENG-CT](#),39:15-40:2,52:53:21.

<sup>2651</sup> [P-116:T-195-CONF-ENG-ET](#),19:11-19,42:1-43:6;[DRC-OTP-0174-0025](#),pp.0028-0030,paras.19-20,23,29-32; [P-46:T-100-CONF-ENG-CT](#),17:17-18:4; [P-976:DRC-OTP-2054-2599](#),p.2635:14-21; [D-172:T-245-CONF-ENG-CT](#),78:11-80:1; [P-31:DRC-OTP-2054-3939](#),p.3949:1-14; [DRC-OTP-0074-0797](#),p.0851; [DRC-OTP-0074-0422](#), p.0462, para.145, p.0463, para.148; [DRC-OTP-2103-0390](#),p.0390.

<sup>2652</sup> [P-116:T-195-CONF-ENG-ET](#),21:20-22:3.

<sup>2653</sup> [D-300:T-231-CONF-ENG-ET](#),54:12-20.

<sup>2654</sup> See [DRC-OTP-0134-0626](#),p.0638.

<sup>2655</sup> [D-300:T-212-CONF-ENG-ET](#),83:25-84:21.

<sup>2656</sup> [P-901:T-27-CONF-ENG-CT](#),39:15-40:2.

<sup>2657</sup> [P-901:T-27-CONF-ENG-CT](#),41:7-18; [D-300:T-212-CONF-ENG-ET](#),88:9 and 16-17,[T-213-CONF-ENG-CT](#),4:13-5:15.

it “to say that he was our leader”; “he was the one who we thought of as our chief”.<sup>2658</sup>

*The co-perpetrators met regularly in Uganda*

851. NTAGANDA and the co-perpetrators used a house on Gaba Road, in Kampala, as a safe house while they were training.<sup>2659</sup> NTAGANDA’s denial that LUBANGA, RAFIKI or KAHWA ever visited or stayed at this house<sup>2660</sup> is a clear attempt to distance himself from the close interaction he and his co-perpetrators had at this time. The credibility of this denial must be considered against the contradictory evidence shown to him: [REDACTED] purporting that [REDACTED] on Gaba Road and that LUBANGA and RAFIKI came to introduce the UPC Statutes to the co-perpetrators.<sup>2661</sup>

*The co-perpetrators use their position of power and influence to further the plan*

852. By February 2001, LUBANGA’s influence was such that he was invited to serve as a National Secretary in the FLC, a short-lived political alliance between the RCD-K/ML and BEMBA’s MLC.<sup>2662</sup> When the FLC collapsed, NYAMWISI<sup>2663</sup> assumed the RCD leadership in Ituri;<sup>2664</sup> LUBANGA became RCD-K/ML Minister of Defence.<sup>2665</sup> The co-perpetrators had bigger plans: control of Ituri.<sup>2666</sup>

<sup>2658</sup> [P-901:T-31-CONF-ENG-CT](#),8:10-25.

<sup>2659</sup> [D-300:T-225-CONF-ENG-CT](#),40:8-17,[T-212-CONF-ENG-ET](#),85:15-25.

<sup>2660</sup> [D-300:T-225-CONF-ENG-CT](#),40:18-41:3,[T-231-CONF-ENG-ET](#),66:10-16.

<sup>2661</sup> [D-300:T-231-CONF-ENG-ET](#),67:1-72:3. NTAGANDA added “when [LUBANGA] came he stayed in a hotel”: [D-300:T-225-CONF-ENG-CT](#),40:18-19.

<sup>2662</sup> [DRC-OTP-0147-0212](#): LUBANGA explains in a speech on 11 September 2002: “Après négociation, devant la justesse de notre cause, nous avons été versé dans le Front de Libération du Congo, F.L.C., en sigle, avec Monsieur BEMBA [...] Une fois de plus, nous avons combattu cette plate forme politique [FLC] pour conclure et sceller le mariage d’honneur et de raison avec le RCD de Monsieur MBUSA, mariage que nous avons cru salutaire pour l’Ituri”; See also [P-116:T-195-CONF-ENG-ET](#),14:8-17; [DRC-OTP-0113-0135](#),pp.0136-0137: Speaking of the UPC’s creation, LUBANGA writes: “A ce niveau, la puissance de notre base nous fera signer un accord de partenariat avec le RCD de MBUSA NYAMWISI pour gérer cette contrée après la dislocation du FLC. Pour ce faire, nous mettrons en commun toutes nos ressources en vue d’une gestion harmonieuse. C’est du reste la justification du portefeuille de la Défense qu’il nous concédera dans l’exécutif”; LUBANGA explains the UPC history in his September 2002 public speech: [P-190:T-96-CONF-ENG-CT](#),28:22-23; [P-12:DRC-OTP-2054-0073](#),p.0098:2-10, p.0110:5-9; [P-41:DRC-OTP-0147-0002](#),p.0005,paras.20-21.

<sup>2663</sup> [P-5:T-187-CONF-ENG-ET](#),15:7-12.

<sup>2664</sup> [P-901:T-27-CONF-ENG-CT](#),19:12-14,55:13-22; [DRC-OTP-0113-0135](#),p.0136; [P-12:DRC-OTP-2054-0073](#),p.0098:2-13; [P-41:DRC-OTP-0147-0002](#),p.0005,para.21.

<sup>2665</sup> [DRC-OTP-0137-0034](#); [P-12:DRC-OTP-2054-0073](#),p.0098:10-13.

*The co-perpetrators unite in Bunia in early 2002*

853. When NTAGANDA was arrested in Uganda after training,<sup>2667</sup> LUBANGA secured his release.<sup>2668</sup> In early 2002, NTAGANDA returned to Bunia; he stayed two to three months at LUBANGA's residence.<sup>2669</sup> LUBANGA, still RCD-K/ML Minister of Defence, proposed military appointments for NTAGANDA, KISEMBO, TCHALIGONZA, BAGONZA and others<sup>2670</sup> in the APC, but NYAMWISI blocked the proposal, making LUBANGA furious.<sup>2671</sup> NYAMWISI rejected LUBANGA's proposed appointments because of "*son caractère ethnique et surtout qu'elle avait repris deux commandants réputés dans le milieu comme assassins. Il s'agit de Monsieur BOSCO NTAGANA [sic] comme commandant second 1er Zone Opérationnelle et CHIALIGONDJA [sic]*".<sup>2672</sup>

*March-August 2002: the co-perpetrators prepare to assume power in Ituri*

854. When KISEMBO returned to Bunia in March/April 2002,<sup>2673</sup> NTAGANDA was already at LUBANGA's residence.<sup>2674</sup> KISEMBO set up just beside LUBANGA's home.<sup>2675</sup> RAFIKI, LONEMA, LITSHA and MBUNA would all come to LUBANGA's residence.<sup>2676</sup> Their group did not yet have enough soldiers to oust NYAMWISI,<sup>2677</sup> they needed to build a bigger force.

---

<sup>2666</sup> [DRC-OTP-0147-0212](#),p.0213. In this radio speech in September 2002, LUBANGA confirmed that the UPC's plan was to oust the RCD: "*Nous nous sommes alors décidé à rompre notre mariage avec le RCD-Kis-ML et à nous lancer dans une lutte sans merci afin de le bouter hors de l'Ituri*".

<sup>2667</sup> [D-300:T-225-CONF-ENG-CT](#),38:1-7. The arrest was for alleged contact with Rwanda.

<sup>2668</sup> [D-300:T-213-CONF-ENG-CT](#),27:16-18,30:6-9.

<sup>2669</sup> [D-300:T-213-CONF-ENG-CT](#),26:20-23,28:20-22.

<sup>2670</sup> [D-300:T-213-CONF-ENG-CT](#),34:16-22.

<sup>2671</sup> [D-300:T-213-CONF-ENG-CT](#),30:6-21,32:10-22; [P-12:DRC-OTP-2054-0073](#),p.0098:23-p.0101:7. [P-901:T-31-CONF-ENG-CT](#),23:11-24:24, as P-901 recalled, "*when these appointments were made by Thomas Lubanga, I know that the relationship between him and Mbusa was not good and Mbusa realised that Lubanga was appointing his right-hand men to key positions*", see also, [P-14:T-137-CONF-ENG-ET](#),40:12-21.

<sup>2672</sup> [DRC-OTP-0055-0484](#), letter from LOMPONDO dated 1 June 2002.

<sup>2673</sup> [P-901:T-27-CONF-ENG-CT](#),57:3-58:25.

<sup>2674</sup> [P-901:T-30-CONF-ENG-CT](#),22:4-9; [D-300:T-213-CONF-ENG-CT](#),28:20-22.

<sup>2675</sup> [P-901:T-30-CONF-ENG-CT](#),22:11-13,[T-31-CONF-ENG-CT](#),23:2-10; [P-190](#) confirms that NTAGANDA, KISEMBO, BAGONZA, TCHALIGONZA, KASANGAKI stayed 50 metres from LUBANGA's residence, [T-96-CONF-ENG-CT](#),33:25-34:6.

<sup>2676</sup> [D-300:T-213-CONF-ENG-CT](#),36:25-37:17.

<sup>2677</sup> [P-901:T-31-CONF-ENG-CT](#),29:14-22.

855. The conflict was not merely political at this time, it was deeply ethnic. In March and May 2002, Hema community leaders, including KAMARAGI and DHETCHUVI (individuals with UPC links)<sup>2678</sup> complained of attacks by Lendu and of the complicity of the Nande community.<sup>2679</sup>

*The second mutiny: April 2002*

856. On 17 April 2002, LUBANGA issued a declaration demanding the departure of the RCD-K/ML leaders from Ituri.<sup>2680</sup> The 17 April 2002 declaration (and another dated 11 August 2002) were part of the UPC's history and were both referenced at the top of official UPC decrees after September 2002.<sup>2681</sup> The co-perpetrators' activities at this time were integrally connected to the UPC.

857. Hema soldiers loyal to LUBANGA joined him against the RCD/APC.<sup>2682</sup> This group included the very same persons who had orchestrated the first mutiny in 2000 (including NTAGANDA, KISEMBO, TCHALIGONZA, BAGONZA and KASANGAKI).<sup>2683</sup> [REDACTED], P-57 recalled that LUBANGA was engaged in *"un processus d'autonomisation. A l'époque il avait ses hommes qu'on appelait les 'mutins' et sa résidence à Bunia était connue comme la 'maison des mutins'"*.<sup>2684</sup> The co-perpetrators used the former APC buildings for their own group, not as part of the APC.<sup>2685</sup>

<sup>2678</sup> [DRC-OTP-0113-0141](#); **P-43**:[DRC-OTP-0126-0086](#),p.0093,para.37; **P-14**:[DRC-OTP-2054-1086](#),p.1099:4-18.

<sup>2679</sup> [DRC-OTP-0037-0512](#); [DRC-OTP-0033-0038](#); [DRC-OTP-0033-0041](#); [DRC-OTP-0033-0044-R02](#).

<sup>2680</sup> [DRC-OTP-0127-0110](#).

<sup>2681</sup> See, e.g. [DRC-OTP-0147-0204](#); [DRC-OTP-0091-0016](#); [DRC-OTP-0089-0093](#); [DRC-OTP-0132-0237](#).

<sup>2682</sup> [DRC-OTP-0064-0463](#). The former mutineers and others joined NTAGANDA, LUBANGA and KISEMBO at or near LUBANGA's residence, including Commander Papy, Commander Didier, Eric MBABAZI, Peter MUGISA, MULEKE, KASANGAKI, TCHALINGONZA and MUSA: **D-300**:[T-213-CONF-ENG-CT](#),34:23-35:19.

<sup>2683</sup> **P-901**:[T-27-CONF-ENG-CT](#),57:3-58:25: P-901 stated that they were considered "*Lubanga supporters*"<sup>2683</sup> and that following KISEMBO's return from Watsa in March/ April 2002, they "*left the armed group of the APC*".

<sup>2684</sup> **P-57**:[DRC-OTP-0150-0354](#),pp.0358-0359,para.27; see also [DRC-OTP-0055-0476](#): "*tous les mutins sous commandement du Commissaire a la Defense [...] sont rentrés avec votre benediction à la residence de Monsieur Thomas LUBANGA*".

<sup>2685</sup> [DRC-OTP-0055-0476](#),p.0477: "*ils ont réoccupé l'ancien bureau de l'Etat-Major de l'APC*". Contra, **D-300**:[T-212-CONF-ENG-ET](#),9:16-21,[T-213-CONF-ENG-CT](#),63:3-8

*UPC-APC clashes: the killing of Claude KIZA*

858. [REDACTED] was “quite close by” when KIZA, who led NYAMWISI’s Presidential Protection Unit, was killed.<sup>2686</sup> KIZA did not get along with NTAGANDA, KISEMBO or TCHALIGONZA,<sup>2687</sup> whom P-901 referred to at the time as “our commanders who were based in Bunia”.<sup>2688</sup> They “were called Thomas Lubanga’s soldiers” and they “reported to the three commanders.”<sup>2689</sup> All three remained the most senior commanders of the UPC.

859. Bunia was divided in two at this time: LUBANGA and his men on one side and NYAMWISI’s troops on the other.<sup>2690</sup> Hema civilians moved to the north of the city where LUBANGA and NTAGANDA were; other civilians moved out of the zone occupied by LUBANGA’s men, concerned about their security.<sup>2691</sup> The ethnic divide was clear: civilians were confined to one zone.<sup>2692</sup>

860. The APC ordered LUBANGA, NTAGANDA, KISEMBO and their men to put down their weapons but they refused,<sup>2693</sup> further showing that they no longer considered themselves under the authority of the APC. The Ugandans became involved to ease the fighting; LUBANGA’s men were disarmed and afterwards there was a negotiating meeting “between Thomas Lubanga’s group and the APC group [...]”.<sup>2694</sup>

*The co-perpetrators attend a meeting in Kasese, Uganda in April 2002*

861. LUBANGA headed his group in meetings in Kasese<sup>2695</sup> with NTAGANDA,

---

<sup>2686</sup> [REDACTED].

<sup>2687</sup> P-901:T-27-CONF-ENG-CT,59:15-18.

<sup>2688</sup> P-901:T-27-CONF-ENG-CT,59:1-18.

<sup>2689</sup> P-901:T-27-CONF-ENG-CT,59:23-60:2.

<sup>2690</sup> P-901:T-31-CONF-ENG-CT,33:1-5; P-14:T-137-CONF-ENG-ET,41:16-19, referring to “the militia of Thomas Lubanga”.

<sup>2691</sup> P-901:T-31-CONF-ENG-CT,33:6-13.

<sup>2692</sup> P-901:T-31-CONF-ENG-CT,33:18-34:2.

<sup>2693</sup> P-901:T-31-CONF-ENG-CT,31:5-12.

<sup>2694</sup> P-901:T-31-CONF-ENG-CT,32:24-33:1.

<sup>2695</sup> P-41:DRC-OTP-0147-0002,pp.0008-0009,para.39,DRC-OTP-2054-5030,p.5109:17-18.



KISEMBO, KAHWA, [REDACTED], LONEMA<sup>2696</sup> and others who had signed the 17 April 2002 declaration.<sup>2697</sup> [REDACTED] confirms that they participated in the meeting as the “FRP”,<sup>2698</sup> and that NTAGANDA and KISEMBO attended.<sup>2699</sup> He also confirmed that the FRP wanted Ituri to be managed by Iturians and not by the RCD-K/ML;<sup>2700</sup> its objective was to oust the RCD-K/ML from power.<sup>2701</sup> In reality, the FRP and the UPC were one and the same.

862. RCD-K/ML was represented separately; [REDACTED] is clear that LUBANGA’s group participated as the FRP, not as the RCD-K/ML,<sup>2702</sup> contradicting NTAGANDA’s claim that he had never heard of the FRP and that they attended the meeting as part of the APC in order to reintegrate.<sup>2703</sup>

*The 16 May 2002 declaration*

863. [REDACTED] also recalled that the initial outcome of the Kasese meeting was that LUBANGA’s group would manage Ituri.<sup>2704</sup> NTAGANDA’s claim that this was not the initial outcome<sup>2705</sup> is further contradicted by a declaration signed by LUBANGA and others on 16 May 2002, days after the Kasese meeting, to the Kinshasa government: “[...] nous portons à votre connaissance ce qui suit: [...] Son mouvement le RCD/KIS-ML est remplacé par le FRP (Front pour la Réconciliation et la Paix) en Ituri”.<sup>2706</sup>

<sup>2696</sup> A Hema-Gegere notable, **P-5:T-187-CONF-ENG-ET**,12:20-22.

<sup>2697</sup> [REDACTED].

<sup>2698</sup> [REDACTED].

<sup>2699</sup> [REDACTED]. Photograph of Kasese delegation: [DRC-OTP-0127-0115](#).

<sup>2700</sup> [REDACTED].

<sup>2701</sup> [REDACTED].

<sup>2702</sup> [REDACTED].

<sup>2703</sup> **D-300:T-232-CONF-ENG-CT**,36:8-15.

<sup>2704</sup> [REDACTED]. See also, **P-901:T-30-CONF-ENG-CT**,22:15-24 who states that the group “went to negotiate in Uganda and once again they were members of the UPC who were supposed to negotiate with the APC people from Beni [...] [REDACTED]. They negotiated and a few days after that they came back with an answer saying that the soldiers were supposed to go to Mbusa and the soldiers of Lubanga were supposed to go with Lubanga. So that is how it came to be that we went back to the town”.

<sup>2705</sup> **D-300:T-232-CONF-ENG-CT**,28:7-16.

<sup>2706</sup> [DRC-OTP-0194-0328](#),p.0329.



864. [REDACTED] 16 May 2002 declaration;<sup>2707</sup> 11 of the 13 signatories, [REDACTED],<sup>2708</sup> held official UPC positions by September 2002.<sup>2709</sup> It is plain that there was a continuum between the activities of the group who signed this declaration and the UPC. [REDACTED] about the 13 signatories to the 16 May 2002 declaration: *“that’s the executive committee of the UPC prior to the creation of a government in the month of October and the appointment of a government. Those are the committee members of the UPC.”*<sup>2710</sup>

*The start of the Mandro military training camp*

865. The co-perpetrators needed to use force to implement their common plan to control Ituri.<sup>2711</sup> **NTAGANDA** set up a military training camp in Mandro.<sup>2712</sup> Hema “peace committees” transported recruits to the camp.<sup>2713</sup> D-38 took others there to be trained.<sup>2714</sup> While D-38 claimed that none of the demobilised children from Tchankwanzi could have been re-recruited for training in Mandro in 2002,<sup>2715</sup> D-172 confirmed that some of the recruits who had trained in Tchankwanzi went with him to the Mandro military training camp for separate military training between June and August 2002.<sup>2716</sup>

866. [REDACTED] visited the recruits in Mandro with RAFIKI and saw children aged 12-13 being trained.<sup>2717</sup> [REDACTED] stated that *“[w]e asked the parents to provide their children to us so that they could be trained and thus ensure the safety of*

<sup>2707</sup> [DRC-OTP-0194-0328](#); [REDACTED].

<sup>2708</sup> [DRC-OTP-0091-0016](#); [REDACTED].

<sup>2709</sup> [DRC-OTP-0147-0204](#); [DRC-OTP-0113-0055](#); [DRC-OTP-0151-0111](#); [DRC-OTP-0091-0016](#); [DRC-OTP-0024-0788](#).

<sup>2710</sup> [REDACTED].

<sup>2711</sup> [P-41:DRC-OTP-0147-0002](#),p.0009,para.43.

<sup>2712</sup> [P-901:T-27-CONF-ENG-CT](#),60:15-61:11,62:11-63:3. KAHWA proposed that they use Mandro to set up their group to counter LOMPONDO; **NTAGANDA** went with KAHWA to set up the training camp and begin recruitment, [P-190:T-96-CONF-ENG-CT](#),36:1-18. D-38 recalled going to the Mandro military training camp when the APC was still in power: [D-38:T-249-CONF-ENG-CT](#),50:25-51:5.

<sup>2713</sup> [D-38:T-249-CONF-ENG-CT](#),51:25-52:7. Outreach campaigns occurred in many villages: [P-901:T-27-CONF-ENG-CT](#),66:24-67:3,68:4-69-17.

<sup>2714</sup> [D-38:T-249-CONF-ENG-CT](#),53:20-22.

<sup>2715</sup> [D-38:T-250-CONF-ENG-CT](#),75:18-76:5,77:9-18.

<sup>2716</sup> [D-172:T-245-CONF-ENG-CT](#),80:2-82:2.

<sup>2717</sup> [REDACTED].

*their villages*".<sup>2718</sup> KISEMBO and NTAGANDA convened community leaders to send children for training.<sup>2719</sup>

867. On 6 June 2002, LOMPONDO wrote to NYAMWISI copying national and international actors: "*Monsieur Thomas LUBANGA et son mouvement l'UPC sont à pieds d'oeuvre pour organiser une milice tribale Gegere à MANDRO avec comme objectif principal: proclamer l'Etat Autonome de l'Ituri, chasser toutes les autorités du RCD/KIS-ML, les non-originaires voire les prêtres étrangers.*"<sup>2720</sup>

*LUBANGA heads a second delegation in meetings in June 2002 and is arrested*

868. In June 2002, LUBANGA headed a delegation in a second round of meetings in Kampala.<sup>2721</sup> KAHWA, LONEMA, NDUKUTE, NEMBE, BAMARAKI, SAVO and MBUNA were part of LUBANGA's delegation.<sup>2722</sup> [REDACTED] was there and referred to the group as the UPC.<sup>2723</sup> [REDACTED] was also present; he explained that the group discussed future key appointments: "*we talked about organisation of the group, how we could manage Ituri if we took control back of Ituri [...] we tried to organise ourselves. We tried to co-opt the governor, for example*".<sup>2724</sup>

869. LUBANGA and certain delegates were detained and transferred to Kinshasa in June 2002.<sup>2725</sup> LUBANGA assigned military and political tasks to members of his delegation furthering the plan to oust NYAMWISI:<sup>2726</sup> he appointed LONEMA as

<sup>2718</sup> [REDACTED].

<sup>2719</sup> [REDACTED].

<sup>2720</sup> [DRC-OTP-0055-0472](#). LOMPONDO also wrote: "*Pour gonfler l'effectif de ses miliciens Monsieur Thomas LUBANGA 'LE PEN CONGOLAIS' recrute même des jeunes gens de 9 à 13 ans*".

<sup>2721</sup> [REDACTED].

<sup>2722</sup> [REDACTED].

<sup>2723</sup> [REDACTED].

<sup>2724</sup> [REDACTED].

<sup>2725</sup> [REDACTED].

<sup>2726</sup> [REDACTED]. P-14 confirmed that "*the only way to deal with soldiers is to fight with other military soldiers. So right from the start Thomas Lubanga [...] referred to the fact that there needed to be an organised army in order to fight against NYAMWISI's military resistance*": P-14:[DRC-OTP-2054-0429](#),p.0473:14-24. See also, LUBANGA told P-14 that they had to chase out MBUSA: P-14:[DRC-OTP-2054-0429](#),p.0467:8-25,p.0471:5-8. LUBANGA criticised MBUSA for tribalism; the message was that it was necessary to drive out the "jajambo"/foreigners: P-14:[DRC-OTP-2054-0429](#),p.0478:2-p.0479:13,p.0480:6-p.0481:6.

interim president,<sup>2727</sup> sending him and MBUNA to Bunia to mobilise the population; [REDACTED].<sup>2728</sup> **NTAGANDA** and **KISEMBO** led the army.<sup>2729</sup> The ethnic conflict raged.<sup>2730</sup>

*Large-scale recruitment of youth, including children under the age of 15*

870. The co-perpetrators undertook large-scale recruitment, voluntary and forcible, to train recruits in advance of the August 2002 takeover of Bunia. **KAHWA** and **NTAGANDA** recruited youth from Hema villages to undergo military training “to defend our villages”.<sup>2731</sup> P-46 learned of Hema community recruitment campaigns in July-August 2002.<sup>2732</sup> The recruits<sup>2733</sup> trained at UPC headquarters<sup>2734</sup> were being trained to fight the RCD-K/ML and the Lendu.<sup>2735</sup>

*Weapons and ammunition came from Rwanda*

871. [REDACTED] sought and obtained weapons from Rwanda in the summer of 2002.<sup>2736</sup> [REDACTED] military stocks, including weapons and ammunition<sup>2737</sup> and, in summer 2002, saw many weapons in Mandro on the same day they were

<sup>2727</sup> [REDACTED]..

<sup>2728</sup> [REDACTED]. On community awareness-raising efforts, see [REDACTED].

<sup>2729</sup> **P-5:T-184-CONF-ENG-ET**,5:13-15.

<sup>2730</sup> **DRC-OTP-0033-0058**: On 5 June 2002, DHETCHUVI wrote on behalf of the Hema community that the conflict had become one between “Nande-lendu-Hema”. In early July 2002, the Hema community repeated complaints about its enemies - the “Lendu detractors and their allies/ negative forces (ADF, NALU, MAI MAI, INTERAHAMWE)” - who were conducting “propaganda machination[s]”<sup>2730</sup> against the Hema community: **DRC-OTP-0214-0116**,p.0122. In the same letter, the Hema community described any reports of Hema “criminal facts” as “disinformation and falsification”, but acknowledge Hema forces in “village after village”. The letter targeted journalists who reported Hema criminality and foreign missionaries, including Father DENECKER and Jan MOL, claiming they “are actively inciting the Lendu to massacre the Hema”. The Hema community also claimed that the Nande and the RCD-ML were killing Hema. It is telling that several months later, the UPC expelled both these priests from Ituri along with others it accused of assisting the Lendu: **DRC-OTP-0113-0014** (Father DENECKER) and **DRC-OTP-0136-0173** (Father Jean MOTTOUL); **DRC-OTP-0159-0436** and **DRC-OTP-0159-0438**; **P-5** recalled that these missionaries were expelled because they assisted Lendu who had fled by giving them shelter: **P-5:T-185-CONF-ENG-ET**,35:7-15.

<sup>2731</sup> **P-963:T-78-CONF-ENG-ET**,29:6-31:17.

<sup>2732</sup> **P-46:T-100-CONF-ENG-CT**,49:14-52:16.

<sup>2733</sup> **P-14:DRC-OTP-2054-0429**,p.0512:1-2,p.0513:6-17.

<sup>2734</sup> **P-14:DRC-OTP-2054-0429**,p.0490:21-24,p.0493:13-p.0495:11,p.0502:3-7;**DRC-OTP-0165-0861**;**DRC-OTP-0165-0862**.

<sup>2735</sup> **P-14:DRC-OTP-2054-0961**,p.1020:8-13.

<sup>2736</sup> [REDACTED].

<sup>2737</sup> [REDACTED].

airdropped from Rwanda.<sup>2738</sup> NTAGANDA was in charge of training, weapons and ammunition at the time.<sup>2739</sup> P-901 received orders from his two hierarchical superiors: NTAGANDA and KISEMBO.<sup>2740</sup> P-963 and P-12, and others, testified that weapons and ammunition came from Rwanda.<sup>2741</sup>

872. NTAGANDA's denial that weapons came from Rwanda, a previously agreed fact,<sup>2742</sup> is not genuine in light of the admitted evidence.

*The UPC takes control of Bunia in August 2002*

873. In August 2002, the UPC cooperated with Ugandan forces to drive the RCD-K/ML out of Bunia.<sup>2743</sup> UPC soldiers cleansed Bunia of non-Hema who were perceived to have supported the RCD-K/ML.<sup>2744</sup> This cleansing set the pattern for much of the UPC's subsequent unlawful conduct, and was a clear demonstration of the co-perpetrators' criminal intent.

*The co-perpetrators proclaim victory on 11 August 2002*

874. Although LUBANGA remained in Kinshasa until the end of August 2002, he was able to communicate with those in Bunia.<sup>2745</sup> On 11 August 2002, two days after the takeover of Bunia, LUBANGA and others [REDACTED], signed a declaration pronouncing themselves in charge of Ituri.<sup>2746</sup> P-5 confirmed this "*is a UPC document*".<sup>2747</sup>

<sup>2738</sup> [REDACTED].

<sup>2739</sup> [P-901:T-28-CONF-ENG-CT](#),81:1-4.

<sup>2740</sup> [P-901:T-28-CONF-ENG-CT](#),81:5-14.

<sup>2741</sup> [P-963:T-82-CONF-ENG-ET](#),47:7-20; [P-12:DRC-OTP-2054-0073](#),p.0116:9-25,p.0136:7-p.0137:20.

<sup>2742</sup> See ICC-01/04-02/06-2046-Conf; [D-300:T-214-CONF-ENG-ET](#),45:14-21,[T-232-CONF-ENG-CT](#),49:10-51:22

<sup>2743</sup> [P-31:T-174-CONF-ENG-ET](#),36:16-37:25,[T-175-CONF-ENG-ET](#),47:21-48:12; [DRC-OTP-0074-0422](#),p.0439,para.49; [P-12:DRC-OTP-0105-0085](#),p.0104,paras.125-126,p.0109,para.134.

<sup>2744</sup> See Section VI.B.2.a.

<sup>2745</sup> [P-14:DRC-OTP-2054-0429](#),p.0503:20-p.0505:9: [REDACTED], confirming that "*there had necessarily been communication with Bunia and that is how [LUBANGA] would have learnt at that time that Bunia had been occupied by the RCD/ML dissidents*", [REDACTED].

<sup>2746</sup> [DRC-OTP-0113-0117](#); [DRC-OTP-0113-0133](#). [REDACTED].

<sup>2747</sup> [P-5:T-183-CONF-ENG-ET](#),18:9-20:18. [P-5](#) confirms that the signatories held official UPC positions, [T-183-CONF-ENG-ET](#),19:16-21. They signed in the temporary guise of the "FRP: *Front pour la Réconciliation et la*

875. In the 11 August 2002 declaration, LUBANGA expressly aligned himself with the armed units who took control of Bunia and ousted the RCD/ML.<sup>2748</sup> The RCD-K/ML “dissidents” referred to as supporting LUBANGA include NTAGANDA and KISEMBO.<sup>2749</sup> LUBANGA could act in concert with these military men, notwithstanding the physical separation from them, because each co-perpetrator already knew what he had to accomplish in order to further the group’s common goals. The 11 August 2002 declaration set out the common plan’s objectives: to take charge of Ituri following the ousting, by force, of the RCD-K/ML and its non-Hema allies. As of this date, and plainly before, LUBANGA was no longer the Minister of Defence of the RCD-K/ML, as was evident in his own declarations<sup>2750</sup> and by his conduct since April 2002.<sup>2751</sup>

876. On 13 August 2002, LUBANGA issued a press release explaining the UPC and FRP creation.<sup>2752</sup> He was already defending the UPC against reports that they were a Hema organisation, that they were supported by Rwanda and that they intended to chase out *non-originaires*.<sup>2753</sup>

877. LUBANGA confirmed the UPC’s common plan to take control of Ituri in a letter to the Belgian government penned in July 2003, “*l’UPC/RP est un Mouvement politico-militaire qui est né en 2000 avec comme finalité de militer pour un ordre politique*

---

*Paix*” but this was no different than the UPC: same people and same name UPC/RP (“*Réconciliation et Paix*”): Nearly all held positions in the UPC: [DRC-OTP-0147-0204](#); [DRC-OTP-0113-0055](#); [DRC-OTP-0151-0111](#); [DRC-OTP-0091-0016](#). NTAGANDA himself linked the FRP to the UPC: “*Q Did you at any time participate in this so-called platform? A. No, not at all. I was never invited into political debates, as mentioned in this document, where it concerns the UPC*”, **D-300:T-241-CONF-ENG-CT**,20:3-17 [REDACTED].

<sup>2748</sup> [DRC-OTP-0113-0117](#): “*nos éléments armés dissidents du RCD/ML alignés derrière l’Ex-Ministre de la Défense du RCD/ML, Monsieur Thomas Lubanga ont pris le contrôle effectif de Bunia et ses environs, et cela au terme des affrontement du 09 août 2002*”. The same declaration further states that “*le FRP appuyé par les dissidents de l’APC alignés derrière Monsieur Thomas LUBANGA, ont pris le contrôle de la ville de Bunia*”.

<sup>2749</sup> [REDACTED].

<sup>2750</sup> [DRC-OTP-0113-0133](#): On 11 August 2002, LUBANGA declares himself “*L’Ex-Ministre de la Défense du RCD/ML*” contra NTAGANDA’s evidence that LUBANGA remained the RCD-K/ML Minister of Defence, **D-300:T-213-CONF-ENG-CT**,50:21-22,**T-214-CONF-ENG-ET**,58:1-2,**T-215-ENG-ET**,12:24:13:3.

<sup>2751</sup> NTAGANDA conceded that around April 2002 LUBANGA “*could not discharge his duties because he was blocked. I never saw him perform the duties of minister of defence*”, **D-300:T-213-CONF-ENG-CT**,36:17-23.

<sup>2752</sup> [DRC-OTP-0113-0135](#),pp.0136-0137.

<sup>2753</sup> [DRC-OTP-0113-0135](#).

*et militaire nouveau en RD Congo*".<sup>2754</sup>

*The co-perpetrators plan a hostage-taking to release LUBANGA and UPC members*

878. In August 2002, key UPC members including LUBANGA were in Kinshasa ostensibly under house arrest.<sup>2755</sup> [REDACTED], [REDACTED] asked LUBANGA to designate "*des membres influents politiquement et surtout militairement pour représenter leur mouvement*", confirming that LUBANGA was head of a politico-military group at that time.<sup>2756</sup>

879. The co-perpetrators, with Hema community leaders,<sup>2757</sup> orchestrated the hostage-taking [REDACTED] to negotiate LUBANGA's release.<sup>2758</sup> [REDACTED] LUBANGA, was detained and taken to Mandro on 29 August 2002.<sup>2759</sup> LUBANGA, NTAGANDA, KAHWA, LOTSOVE, LONEMA and LITSHA held meetings each day [REDACTED].<sup>2760</sup> LUBANGA had a Motorola radio, KAHWA had a Thuraya and NTAGANDA often had two communication devices.<sup>2761</sup> NTAGANDA viewed LUBANGA as his superior at that time;<sup>2762</sup> LUBANGA ordered him to deploy troops to Mabanga.<sup>2763</sup>

880. [REDACTED].<sup>2764</sup> On 2 and 3 September 2002, just weeks after the takeover and a few days after his return to Bunia, LUBANGA, as President and Commander-in-Chief, officially established his government. On official UPC letterhead, with official UPC stamps and seals, he appointed KISEMBO and NTAGANDA as Chief of Staff and Deputy Chief of Staff in charge of operations and organisation,

---

<sup>2754</sup> [DRC-OTP-0029-0294](#).

<sup>2755</sup> [REDACTED].

<sup>2756</sup> [REDACTED].

<sup>2757</sup> **P-16:** [DRC-OTP-0126-0422-R03](#),p.0427,para.34.

<sup>2758</sup> [REDACTED]; **P-41:** [DRC-OTP-0147-0002](#),p.0014,para.71; **D-300:** [T-215-ENG-ET](#),13:15-16:1.

<sup>2759</sup> [REDACTED].

<sup>2760</sup> [REDACTED].

<sup>2761</sup> [REDACTED]; **P-17:** [T-58-CONF-ENG-CT](#),25:15-19.

<sup>2762</sup> **D-300:** [T-215-ENG-ET](#),21:16-24.

<sup>2763</sup> **D-300:** [T-215-ENG-ET](#),21:16-24.

<sup>2764</sup> [REDACTED].



respectively.<sup>2765</sup> KISEMBO was chosen as Chief of Staff above NTAGANDA because he was Hema,<sup>2766</sup> even though LUBANGA had more confidence in NTAGANDA.<sup>2767</sup> In practice, NTAGANDA's power was greater than his formal title implied, because of his more extensive military experience.<sup>2768</sup>

881. LUBANGA appointed KAHWA as Deputy Minister of Defence,<sup>2769</sup> and placed RAFIKI in charge of security.<sup>2770</sup> He appointed his full Executive as well as the Governor and Vice Governors of Ituri.<sup>2771</sup> The fact that LUBANGA could make these arrangements days after his return provides final confirmation that this plan with these people had been in the making long before. As P-14 explained: *“there was the creation of the UPC officially and the UPC which developed for a certain time. And to make it clear for you, the UPC was born of a tribal Gegere-Hema movement and the idea of the UPC was already born long before its official creation. You don't just go into a café and say, 'Now we've got the UPC. That doesn't happen anywhere like that.’”*<sup>2772</sup>

*UPC documents expressly confirm the common plan*

882. On 11 September 2002, LUBANGA delivered a public speech<sup>2773</sup> explaining the UPC's history, starting with the mutiny of 2000:

*Le combat que nous menons depuis l'an 2000 a toujours été mal compris, soit par mauvaise foi soit par ignorance tout simplement. Après un timide début dans l'UDPS, les choses sérieuses ont vraiment commencé au temps du professeur WAMBA DIA WAMBA, à cette époque où le conflit de leadership a débouché sur une politique meurtrière caractérisée par la division, l'insémination de la haine et la destruction massive de vies*

<sup>2765</sup> [D-300:T-215-ENG-ET](#),35:4-24; [DRC-OTP-0113-0055](#); [P-14:DRC-OTP-2054-0612](#),p.0664:10-p.0666:15; [P-5:T-183-CONF-ENG-ET](#),18:9-20:18.

<sup>2766</sup> [P-907:T-90-CONF-ENG-CT](#),70:18-71:4; [P-16:DRC-OTP-0126-0422-R03](#),p.0434,paras.63-66.

<sup>2767</sup> [P-16:DRC-OTP-0126-0422-R03](#),p.0434,paras.63-66; [P-55:T-70-CONF-ENG-CT](#),76:2-9.

<sup>2768</sup> [P-16:DRC-OTP-0126-0422-R03](#),p.0434,paras.63-66; [P-55:T-70-CONF-ENG-CT](#),76:2-9; [D-300:T-225-CONF-ENG-CT](#),46:1-49:12.

<sup>2769</sup> [P-901:T-28-CONF-ENG-CT](#),17:25.

<sup>2770</sup> [P-5:T-184-CONF-ENG-ET](#),20:3-25:19,28:22-32:11;[DRC-OTP-0174-0126](#);[DRC-OTP-0174-0128](#).

<sup>2771</sup> [DRC-OTP-0151-0111](#).

<sup>2772</sup> [P-14:T-137-CONF-ENG-ET](#),25:22-26:2.

<sup>2773</sup> [DRC-OTP-0147-0212](#).



*innocentes. Nous avons réagi en nous mutinant, et nous avons créé l'Union des Patriotes Congolais, U.P.C. en sigle.*<sup>2774</sup>

883. The message is clear: the mutineers and the UPC were one group, fighting together since 2000 for control of Ituri.

884. On 14 September 2002, LUBANGA officially declared that the UPC forcibly ousted the RCD-K/ML: *“l'UPC-RP a pris les armes pour éloigner toutes les forces qui contribuent à détruire l'Ituri et le Congo et salissent notre image. L'UPC-RP a mis fin à la gestion de l'Ituri par le RCD-ML.”*<sup>2775</sup>

885. LUBANGA and the UPC often proudly repeated these same facts.<sup>2776</sup> On 26 September 2002, TINAZABO described the UPC's decision to use force in its military offensive on 9 August 2002 to end the RCD-K/ML's power.<sup>2777</sup> On 22 October 2002, LUBANGA again described the UPC as a political-military movement that existed since 2000.<sup>2778</sup> On the same date, DHETCHUVI confirmed that the UPC ousted the RCD-K/ML and, since 9 August 2002, controlled Ituri.<sup>2779</sup>

886. In January 2003, in an official address in Goma, LUBANGA described the UPC's history. He specifically linked his group's June 2002 detention to the UPC:

*L'Union des Patriotes Congolais pour la Réconciliation et la Paix, UPC/RP en sigle, est un Mouvement politico-militaire qui est né dans la clandestinité le 15 September 2000 [...] Comme tout Mouvement*

<sup>2774</sup> [DRC-OTP-0147-0212](#),p.0212 (emphasis added).

<sup>2775</sup> [DRC-OTP-0037-0264](#),p.0265.

<sup>2776</sup> 26 September 2002: [DRC-OTP-0164-0447](#),p.0447: “[L]UPC/RP [...] a décidé de combattre par les armes. C'est cela qui justifiera notre offensive militaire en date du 9 août 2002 au quartier général de ces forces négatives dirigé à l'époque par J.P. MOLONDO LOMPONDO, laquelle offensive a mis fin au pouvoir RCD en Ituri”.

<sup>2777</sup> [DRC-OTP-0092-0436](#),p.0437. TINANZABO confirmed that the UPC was conceived “two years ago” as a political and military movement, that it “decided to fight [the APC] by arms”, referring to “our military offensive on 9<sup>th</sup> of August 2002 to the headquarter of these negative forces headed then by Mr J.P. MOLONDO LOMPONDO. This offensive had put an end to the power of RCD/ML in Ituri”.<sup>2777</sup> The program explains its goals: “That's why UPC/RP, holding the power, has firmly decided to kick out once for all the evil” referencing, among others, the “APC army helped by the Ngiti fighters”.

<sup>2778</sup> [DRC-OTP-0164-0452](#),p.0452.

<sup>2779</sup> [DRC-OTP-0037-0271-R02](#),p.272: “Depuis le 9/08/2002, l'UPC/RP a le contrôle politique, administrative et militaire de l'Ituri”. In the same document, DHETCHUVI refers to a UPC letter and meeting with the facilitator of the inter-Congolese dialogue on 1 April 2001 demonstrating it was functioning in 2001, with ambitions. DHETCHUVI confirms that the UPC has “une armée organisée, disciplinée et équipée”.

*révolutionnaire, l'UPC/RP a connu une évolution très difficile [...]. Par la force des choses, elle a été finalement associée au pouvoir en 2001 avant que son chef, en la personne de celui qui vous parle, ne soit arrêté en Ouganda, avec la bénédiction de ce pays, et déporté en captivité à Kinshasa. Etant donné que le Mouvement avait déjà des racines [...] L'UPC/RP a pris le pouvoir le 9 août 2002 en chassant le RCD-Kis-ML de M. Mbusa NYAMWISI [...].*<sup>2780</sup>

#### Assessment of NTAGANDA's testimony

887. These official UPC declarations and witness testimony<sup>2781</sup> contradict NTAGANDA's statement that the UPC did not exist or function before September 2002,<sup>2782</sup> and that the co-perpetrators were not involved in the takeover of Bunia.<sup>2783</sup> A UN Daily Report dated 26 August 2002 refers to a "former UPC minister" and a report that the "UPC had recaptured Komanda",<sup>2784</sup> an operation led by NTAGANDA, and list of recruits at Mandro military training camp at end August 2002 refers to the "FPLC".<sup>2785</sup> Both documents contradict NTAGANDA's account.<sup>2786</sup>

888. In any event, the details of NTAGANDA's own testimony plainly show that the co-perpetrators were operating under a clear and defined political and military structure before September of 2002, with agreed objectives. They were recruiting for the army, conducting military training, communicating political platforms, obtaining weapons and ammunition, and launching attacks.

<sup>2780</sup> [DRC-OTP-0113-0156](#),p.156-157 [emphasis added]. See also, [DRC-OTP-0037-0312](#),p.312: In May 2003, LUBANGA re-confirmed the UPC's military origins since 2000: "L'UPC est un Mouvement politico-militaire, à caractère national, né le 15 septembre 2000, sur l'initiative d'un groupe de patriotes Congolais réunis autour de son actuel Président, S.E.M. Thomas LUBANGA". In the same document, LUBANGA repeats the events of August 2002 and that it took up arms to chase the RCD-K/ML from Ituri: "L'UPC s'est dressée contre la megestion et l'irresponsabilité qui ont caractérisé le pouvoir decadent de l'époque en Ituri, le RCD/Kis-ML, surtout sous la gestion calamiteuse de M. MBUSA NYAMWISI, contre lequel elle a été contrainte par les circonstances à prendre les armes et qu'elle a chassé de l'Ituri à partir du 9 août 2002."

<sup>2781</sup> [P-12:DRC-OTP-2054-0073](#),p.0115:1-9,19-22; [P-963:T-78-CONF-ENG-ET](#),28:11-18.

<sup>2782</sup> [D-300:T-233-CONF-ENG-CT](#),24:21-25:6: "I didn't know what was going to happen afterwards."

<sup>2783</sup> [D-300:T-214-CONF-ENG-ET](#),64:11-4 ; [T-232-CONF-ENG-CT](#),88:5-15,[T-233-CONF-ENG-CT](#),12:23-25.

[P-31:T-174-CONF-ENG-ET](#),36:16-37:25,[T-175-CONF-ENG-ET](#),47:21-48:12; [DRC-OTP-0074-0422](#),p.0439,para.49; [P-12:DRC-OTP-0105-0085](#),p.0104,paras.125-126,p.0109, para.134.

<sup>2784</sup> [DRC-OTP-0056-0761](#),p.0764.

<sup>2785</sup> [DRC-OTP-2081-0072](#); [REDACTED].

<sup>2786</sup> [D-300:T-213-CONF-ENG-CT](#),13:9-10.

LUBANGA allegedly gave orders in the summer of 2002 about the age of recruits at Mandro military training camp.<sup>2787</sup> When LUBANGA returned to Bunia in August 2002 he was giving orders to deploy troops; NTAGANDA referred to him as “our superior”.<sup>2788</sup>

889. Indeed, KISEMBO ordered NTAGANDA to command an attack on 26 August 2002. NTAGANDA emphasised that he was receiving orders from his superior within a structure that could only be the UPC: “when my direct superior gives me orders, I comply with it. My position was one of a person who carries out orders”.<sup>2789</sup> During that operation on 26 August 2002, NTAGANDA discharged the duties of the Deputy Chief of Staff in charge of operations and organisation: he supplied mortars, rockets and troops from Mandro military training camp to GERMAIN and BYARUHANGA and ordered them not to lose weapons.<sup>2790</sup> He issued operational orders for the attack:<sup>2791</sup> “Soyez là-bas très tôt à 5h00 du matin, attaquez et posez des pièges, puis repliez-vous”; he signed as “Comdr Bosco NTAGANDA”.<sup>2792</sup>

890. Numerous witnesses testified that the UPC military existed before September 2002. P-12 described the UPC as a military organisation from 2000 until 2002 rather than as a political one,<sup>2793</sup> linking the UPC’s origins to the military men who rebelled in 2000 to defend the Hema community.<sup>2794</sup> P-769 described events such as the death of Commander Claude (April 2002) or the release of KAHWA in 2000 as key UPC events.<sup>2795</sup>

<sup>2787</sup> [D-300:T-243-CONF-ENG-ET](#),29:22-30:4.

<sup>2788</sup> [D-300:T-233-CONF-ENG-CT](#),18:24-19:18,22:25.

<sup>2789</sup> [D-300:T-226-ENG-CT](#),63:22-64:10.

<sup>2790</sup> [D-300:T-226-ENG-CT](#),64:2-5.

<sup>2791</sup> [D-300:T-226-ENG-CT](#),50:7-9.

<sup>2792</sup> [DRC-OTP-0029-0255](#); [DRC-OTP-2061-0715](#); [D-300:T-226-ENG-CT](#),50:1-56:11.

<sup>2793</sup> [P-12:DRC-OTP-2054-0073](#),p.0086:16-24.

<sup>2794</sup> [P-12:DRC-OTP-2054-0073](#),p.0091:3-14,p.0088:16-p.0089:6,p.0091:3-8,p.0092:3. P-12 stated that “we had no reason to refuse Thomas Lubanga, because we were within an ethnical organisation, and ethnicity came first. We needed someone who could speak for the ethnic group [...] and as an ethnical organisation soldiers at the time were valued more because they were able to defend the population”, [DRC-OTP-2054-0073](#),p.0097:11-p.0098:1; see also [P-245:T-142-CONF-ENG-ET](#),65:7-66:25,67:19.

<sup>2795</sup> [P-769](#) confirmed that “it was those type of events that made the UPC a well-known force and, if you like, were triggering events”, [T-120-CONF-ENG-ET](#),12:15-13:5; See also [P-116:T-195-CONF-ENG-ET](#),22:10-23

891. P-16 described the training at the Mandro military training camp before the ousting of LOMPONDO as “*la force qui deviendra les FPLC*” and confirmed that NTAGANDA directed the training centre.<sup>2796</sup> P-14 aligned the UPC before June 2002 with a Hema-Gegere militia.<sup>2797</sup> Various witnesses joined the UPC in a political or military role prior to September 2002 or knew others who had.<sup>2798</sup> When asked whether the FPLC had training centres in Katoto, NTAGANDA responded about their use of Katoto as a training centre in June/July 2002.<sup>2799</sup>

892. P-5 explained the UPC’s origins: “*in order to better structure and organise the ethnic group, it was necessary to have something that would bring together the Hema in a party [...] In 2000, the Hema were organising themselves into the UPC.*”<sup>2800</sup>

893. P-901 referred to the existence of the name the FPLC “on paper” after the training of recruits in Mandro.<sup>2801</sup> Much as the UPC commanders had certain functions or duties but were all called “Afande” until official ranks were introduced,<sup>2802</sup> so too did the UPC army exist and operate effectively in the summer of 2002 before it received any official status “on paper”. Ranks were assigned in the UPC when troops were still in the bush,<sup>2803</sup> but the Presidential decree officialising the rank assignments was issued later, in June 2003.<sup>2804</sup>

894. Another illustration of NTAGANDA’s shifting evidence related to his denial

---

(“*The UPC existed, it was armed, it had soldiers, it had headquarters and there were people carrying out propaganda to recruit to the UPC [...] the UPC was certainly present, it had means, it had power, it had an entire organisation, but one didn’t see the UPC in the streets*”).

<sup>2796</sup> [P-16:DRC-OTP-0126-0422-R03](#),p.0427,para.34.

<sup>2797</sup> [P-14:T-137-CONF-ENG-ET](#),21:5-10,22:19-20,23:11-24:11.

<sup>2798</sup> [P-16:DRC-OTP-2054-1255](#),p.1348:9-11,[DRC-OTP-2054-1447](#),p.1449:5-11; [P-14:DRC-OTP-2054-0429](#),p.0490:21-24,p.0493:13-24; [P-41:DRC-OTP-2054-5199](#),p.5222:6-p.5223:18; [P-17:T-58-CONF-ENG-CT](#),16:13-19:19; [D-172:T-245-CONF-ENG-CT](#),80:18-81:9; [P-12:DRC-OTP-0105-0085](#),p.0104,paras.125-126,p.0109,para.134; [P-5:T-184-CONF-ENG-ET](#),5:7-15; [P-888:T-105-CONF-ENG-CT](#),46:3-47:14; [D-38:T-250-CONF-ENG-CT](#),50:19-52:13,59:25-61:3; [P-963:T-78-CONF-ENG-ET](#),28:2-29:5.

<sup>2799</sup> [D-300:T-239-CONF-ENG-CT](#),51:16-21.

<sup>2800</sup> [P-5:T-183-CONF-ENG-ET](#),28:6-18.

<sup>2801</sup> [P-901:T-30-CONF-ENG-CT](#),23:7-9.

<sup>2802</sup> [P-901:T-30-CONF-ENG-CT](#),24:16-25:1.

<sup>2803</sup> [P-901:T-30-CONF-ENG-CT](#),24:16-25.

<sup>2804</sup> [P-901:T-30-CONF-ENG-CT](#),29:24-30:4.

that he and the co-perpetrators had plans to take control of Bunia and Ituri.<sup>2805</sup> He claimed that he first heard on the radio in September 2002 that LUBANGA created a group and called it the UPC and the FPLC.<sup>2806</sup> “it was only once [LUBANGA] created [the UPC/RP] that I became aware of it and joined”.<sup>2807</sup> He spoke to LUBANGA when they were at Mandro together (between 29 August and early September 2002) but solely about LUBANGA’s order for NTAGANDA to deploy troops to Mabanga, on no other subjects.<sup>2808</sup> They did not discuss the group’s future, he claimed, or the structure they fell under at that time in end August, the UPC’s ideology or any military appointments.<sup>2809</sup> However, at the beginning of his testimony, NTAGANDA proudly stated that he personally proposed a different name than FPLC to LUBANGA, but that LUBANGA went on to choose the name “FPLC” instead.<sup>2810</sup> This proposal must have pre-dated the radio announcement, according to NTAGANDA’s account. When asked about it, NTAGANDA shifted and stated that he had discussed it with LUBANGA in advance.<sup>2811</sup>

*Use of propaganda to conceal the existence of the common plan*

895. Contrary to the image that it desperately sought to portray, the UPC leadership had no genuine interest in peaceful co-existence in Ituri.<sup>2812</sup> Early public statements of the UPC’s desire for a peace-loving, multi-ethnic society and government were a smokescreen – while LUBANGA and other UPC leaders at least initially wished to present their party as being for all Congolese, in fact they

<sup>2805</sup> [D-300:T-214-CONF-ENG-ET](#),64:11-14.

<sup>2806</sup> [D-300:T-215-ENG-ET](#),21:16-24 ; [T-233-CONF-ENG-CT](#),17:10-19:18,22:18-24,25:7-12.

<sup>2807</sup> [D-300:T-233-CONF-ENG-CT](#),15:13-16:8.

<sup>2808</sup> [D-300:T-233-CONF-ENG-CT](#),23:12-13,23:22-24:1.

<sup>2809</sup> [D-300:T-233-CONF-ENG-CT](#),23:22-24:1,24:21-25:12,31:8-11.

<sup>2810</sup> [D-300:T-215-ENG-ET](#),39:11-17; *See also* [D-300,T-233-CONF-ENG-CT](#),26:23-27:3.

<sup>2811</sup> [D-300:T-233-CONF-ENG-CT](#),25:15-19,26:1-27:4.

<sup>2812</sup> *E.g.* [P-12:T-165-CONF-ENG-ET](#),85:2-98:1; [P-57:DRC-OTP-0150-0354](#),pp.0378-0379,paras.103,106; [P-41:DRC-OTP-0147-0002](#),p.0018,para.94; [P-768:T-33-CONF-ENG-CT](#),23:7-25:11,28:2-25:11,37:2-16;[T-36-CONF-ENG-CT](#),10:18-11:12; [P-55:T-70-CONF-ENG-CT](#),60:8-61:16,73:25-75:2; [P-14:DRC-OTP-2054-0429](#),p.0478:3-p.0479:13. By June 2003, LUBANGA made open statements describing the Lendu as the enemy, whom he blamed for a “tribal war”: *e.g.* [DRC-OTP-0102-0003](#),00:21:30-00:24:05(transl.[DRC-OTP-2102-3433](#),p.3443:223-p.3444:241).

considered the Lendu and Nande to be the enemy.<sup>2813</sup>

896. The reality was very different: Lendu and Nande civilians were deliberately targeted and hunted down during and after UPC assaults; and off-camera, orders were given to kill Lendu civilians to military recruits and others prior to assaults.<sup>2814</sup>

897. And far from being a peaceful organisation – the UPC wanted to oust the RCD-K/ML and its allies, including the Lendu, to ensure their exclusive control over Ituri.<sup>2815</sup> The UPC took over military, political and economic control of Ituri district for their own benefit and that of the Hema community and their allies, whose interests they promoted and protected.<sup>2816</sup>

898. The co-perpetrators sought to control Ituri because controlling a large and wealthy territory gave them access to rich resources and positioned them well for national recognition and higher positions.<sup>2817</sup> LUBANGA had personal aspirations

<sup>2813</sup> See Section VI. *E.g.* **P-16:**[DRC-OTP-0126-0422-R03](#),p.0436,paras.82-83; **P-14:**[DRC-OTP-2054-0429](#),p.0478:3-p.0479:13(LUBANGA wished *non-originaires* to be driven out);[T-136-CONF-ENG-ET](#),46:2-47:14.

<sup>2814</sup> See *e.g.* **P-14:**[T-138-CONF-ENG-ET](#),26:8-15,99:3-100:4; **P-245:**[T-141-CONF-ENG-ET](#),43:16-44:20,47:10-48:5; **P-30:**[T-146-CONF-ENG-ET](#),28:19-31:13; **P-12:**[T-165-CONF-ENG-ET](#),49:6-20; **DRC-OTP-0081-0012**,00:23:46-00:25:31; **P-2:**[T-171-CONF-ENG-ET](#),83:3-84:1; **P-863:**[T-180-CONF-ENG-ET](#),23:8-14,31:17-32:1; **P-5:**[T-187-CONF-ENG-ET](#),5:2-9:5;[T-189-CONF-ENG-ET](#),44:15-45:7; **DRC-OTP-0127-0110**; **DRC-OTP-0074-0422**,paras.37,47; **P-317:**[T-192-CONF-ENG-ET](#),11:14-14:18,15:11-16:20; **P-113:**[T-118-CONF-ENG-CT](#),18:24-19:19; **P-19:**[T-115-CONF-ENG-CT](#),17:20-18:2; **P-898:**[T-154-CONF-ENG-ET](#),13:6-14:22; **DRC-OTP-0017-0033**,p.0113(Second),p.0037(First)(transl.[DRC-OTP-2102-3854](#),p.3859,p.3935).

<sup>2815</sup> *E.g.* **P-14:**[T-137-CONF-ENG-ET](#),36:25-37:5;[T-136-CONF-ENG-ET](#),46:2-47:14; **DRC-OTP-0037-0271-R02**,p.0272; **DRC-OTP-0037-0266**. A stated aim of the UPC was to form "une armée nationale capable d'assurer la protection et la défense de l'intégrité du territoire". See **DRC-OTP-0093-0359**,p.0360; **P-963:**[T-79-CONF-ENG-ET](#),40:17-20; **P-901:**[T-32-CONF-ENG-CT](#),6:19-21. A logbook message from the North East Sector commander to the Minister of Defence complains of a Hema meeting occurring without UPC authorisation and undermining UPC/RP policy. This demonstrates the extent of UPC controls over Ituri: **DRC-OTP-0017-0033**,pp.0159(All),p.0160(First) (transl.[DRC-OTP-2102-3854](#),p.3981-3982).

<sup>2816</sup> By October 2002, the UPC stated that it enjoyed full control over Ituri including over all of its key economic resources *E.g.* **DRC-OTP-0037-0271-R02**,p.0272-0273; **DRC-OTP-0113-0133**; **P-5:**[T-183-CONF-ENG-ET](#),9:11-13:13,28:3-29:2;[T-187-CONF-ENG-ET](#),34:2-19; **P-245:**[T-142-CONF-ENG-ET](#),19:11-22; **DRC-OTP-0092-0436**,pp.0437-0438; **DRC-OTP-0093-0121**.

<sup>2817</sup> **D-300:**[T-217-CONF-ENG-ET](#),84:10-21; **P-57:**[DRC-OTP-0150-0354](#),p.0379,para.104; **DRC-OTP-0091-0016**; **P-5:**[T-183-CONF-ENG-ET](#),9:11-13:13;[T-187-CONF-ENG-ET](#),34:2-19; **P-12:**[T-164-CONF-ENG-ET](#),21:21-22:6;[T-165-CONF-ENG-ET](#),83:17-84:13; **DRC-OTP-0037-0271-R02**; **P-41:**[DRC-OTP-0147-0002](#),p.0024,paras.132-133; **P-245:**[T-142-CONF-ENG-ET](#),21:19-22:12; **P-190:**[T-97-CONF-ENG-CT](#),17:9-20:3;[T-99-CONF-ENG-CT](#),104:7-19; **P-16:**[DRC-OTP-0126-0422-R03](#),pp.0454-0455,paras.187-193.



to be a National Minister in the central government.<sup>2818</sup>

899. Even from its conception in 2000, the UPC spoke of its plans to create a national army with control over the whole of Ituri.<sup>2819</sup> Although the UPC initially espoused principles of pacification and reconciliation in the interests of all Iturians, its leaders became increasingly extremist and “betrayed” their stated goals.<sup>2820</sup> On 1 October 2002, the UPC’s National Secretary for “Reconciliation and Peace”, TINANZABO, revealed the UPC’s true views about peace when he said that the UPC had decided to fight by arms the “terrorist and murderous coalition” of the RCD-K/ML and its allies – who included the Lendu-Ngiti – “... to kick out once and for all the evil”.<sup>2821</sup>

900. The UPC’s alliance with RCD-Goma from January 2003 was not used for genuine peace efforts as suggested in their joint *communiqué*. Instead, the UPC allied with RCD-Goma to further the common plan to take over Ituri, by ousting the “*forces négatives*”,<sup>2822</sup> which included the Lendu and Nande. Indeed, NTAGANDA claims that RCD-Goma provided weapons to the UPC. NTAGANDA concedes that the RCD-Goma and the UPC were motivated by grander power-sharing plans – with their eyes set beyond Ituri and Goma- to powerful positions at national government-level in Kinshasa.<sup>2823</sup>

901. The evidence shows instead that LUBANGA and the UPC were widely, and correctly, viewed as an *obstacle to peace negotiations*;<sup>2824</sup> and would not tolerate criticism: “You couldn’t say anything against the UPC. If you said anything against the

<sup>2818</sup> P-57:DRC-OTP-0150-0354,p.25,para.104. Compare e.g. P-12:T-165-CONF-ENG-ET,83:17-84:13.

<sup>2819</sup> See DRC-OTP-0093-0359,p.0360 A stated aim of the UPC was: “une armée nationale capable d’assurer la protection et la défense de l’intégrité du territoire”.

<sup>2820</sup> E.g. P-41:DRC-OTP-0147-0002,p.0017,para.89.

<sup>2821</sup> DRC-OTP-0092-0436,pp.0437-0438.

<sup>2822</sup> E.g. DRC-OTP-0132-0252.

<sup>2823</sup> D-300:T-217-CONF-ENG-ET,84:10-21.

<sup>2824</sup> P-57:DRC-OTP-0150-0354,p.0378,para.104; P-12:T-165-CONF-ENG-ET,83:17-84:13,85:2-98:1; DRC-OTP-0074-0797,pp.0822-0823,p.0826; DRC-OTP-0134-0094,p.0122.



UPC, it was finished for you, You could be sure that you were no longer safe".<sup>2825</sup> LUBANGA and the UPC, were seen as trying to defend Hema interests against those of the Lendu.<sup>2826</sup> For instance, LUBANGA refused to allow the UPC to sign a peace agreement with Lendu in December 2002. P-5 explains that "[T]he UPC thought that it was the only movement [...] in the Ituri".<sup>2827</sup> LUBANGA revoked UPC membership of national secretary MATHESO, because he signed the CPI agreement on behalf of the UPC.<sup>2828</sup> LUBANGA tried to convince other armed groups to sign an agreement for MONUC to leave and for the annulment, and amendment, of all the CPI resolutions.<sup>2829</sup> LUBANGA did not attend the CPI meetings. He was viewed as solely interested in militarily conquering Ituri.<sup>2830</sup> KISEMBO confirmed on radio that pacification would only take place through weapons.<sup>2831</sup>

902. Again, in mid-2003, the UPC was an obstacle to peace, when it undermined efforts of the new Interim Administration to stop military rule and establish a civilian leadership in Ituri. UPC members threatened and bypassed key Interim Administration leaders. Moreover, while the UPC leadership publicly paid lip-service to supporting the Interim Administration, it actively tried to establish its own administration of Ituri.<sup>2832</sup>

903. Various witnesses attest to the use of propaganda by the UPC,<sup>2833</sup> including

<sup>2825</sup> **P-12:**[DRC-OTP-2054-0073](#),0127:2-0128:1.

<sup>2826</sup> **P-57:**[DRC-OTP-0150-0354](#),pp.0376-0377,paras.99-101; **P-5:**[T-183-CONF-ENG-ET](#),9:11-13:13.

<sup>2827</sup> **P-5:**[T-186-CONF-ENG-ET](#),31:20-33:2; **P-12:**[T-165-CONF-ENG-ET](#),83:17-84:13.

<sup>2828</sup> **P-12:**[T-165-CONF-ENG-ET](#),85:13-87:25.

<sup>2829</sup> **P-12:**[T-165-CONF-ENG-ET](#),83:17-84:13,85:13-87:25.

<sup>2830</sup> **P-57:**[DRC-OTP-0150-0354](#),pp.0378-0379,para.103,para.106; **P-12:**[T-165-CONF-ENG-ET](#),83:17-84:13,85:13-87:25.

<sup>2831</sup> **P-41:**[DRC-OTP-0147-0002](#),p.0018,para.94.

<sup>2832</sup> E.g. **P-46:**[T-101-CONF-ENG-ET](#),7:24-9:9,9:22-11:25;[T-103-CONF-ENG-ET](#),60:10-24; **P-245:**[T-142-CONF-ENG-ET](#),17:11-20:19; **P-365:**[T-147-CONF-ENG-ET](#),38:1-9; **P-12:**[T-164-CONF-ENG-ET](#),38:39-13; **P-300:**[T-166-CONF-ENG-ET](#),66:10-70:14,73:13-74:24; **P-31:**[T-175-CONF-ENG-ET](#),54:17-55:11,56:16-57:10; **P-5:**[T-183-CONF-ENG-ET](#),23:6-24:25,25:1-26:21; [DRC-OTP-0089-0093](#); [DRC-OTP-0014-0183](#).

<sup>2833</sup> E.g. **P-190:**[T-96-CONF-ENG-CT](#),74:22-75:10; **P-30:**[DRC-OTP-2054-2951](#),p.2960,10:14-23;[T-144-CONF-ENG-ET](#),26:17-27:13;[T-145-CONF-ENG-ET](#),17:16-18:3;[T-146-CONF-ENG-ET](#),6:25-14:16,36:2-9,88:16-90:4; **P-976:**[T-152-CONF-ENG-ET](#),91:10-94:1; **P-14:**[T-136-CONF-ENG-ET](#),46:17-47:7,63:20-64:22;[T-137-CONF-ENG-ET](#),21:5-17,23:22-24:25,78:1-4; [DRC-OTP-0029-0274](#); [DRC-OTP-0005-0041](#),p.0041,para.3; [DRC-](#)

through the local television network and radio stations.<sup>2834</sup>

904. The UPC and LUBANGA were under intense pressure from the international community, as early as September 2002, regarding UPC crimes, including recruitment and use of child soldiers. P-46 and another MONUC officer met with LUBANGA and raised their concerns about reported UPC crimes including killings, rapes, disappearances and use of child soldiers: all consequences of implementation of the common plan.<sup>2835</sup> Accordingly, the UPC increasingly used propaganda at a national and international level, to fend off increasing criticism.

905. **NTAGANDA** concedes that LUBANGA lied when it suited the UPC, for political reasons. He described LUBANGA's suggestion on Radio Candip that the UPC was linked to the mutineers in 2000 – as *“the language of politicians [...], which is not always reality”*.<sup>2836</sup> Most Lendu did not believe LUBANGA when he said on Radio Candip that the UPC was created to bring peace in the region and to solve the ancient conflict between Hema and Lendu.<sup>2837</sup> LUBANGA's propaganda speeches were seen for what they were.

906. **NTAGANDA** admits that he also lied when speaking on media if it suited him. He claimed that his statement for a public broadcast that the UPC had taken many prisoners in Mongbwalu was untrue: *“...I took the opportunity to spread the news to intimidate APC soldiers, saying that we arrested a lot of their troops. Other than that, to say that we had a lot of prisoners, that was not the reality of the situation. There*

---

[OTP-0151-0299](#); The FPLC list of UPC former soldiers being integrated into the FARDC in 2005 shows that even by 2005 there were children within the UPC under the age of 15 in 2002 to 2003. See [DRC-OTP-0138-0027](#), pp.0027-0029,0035-0036; See also [P-43:DRC-OTP-0126-0086](#), p.0095, para.47.

<sup>2834</sup> E.g. [P-46:T-101-CONF-ENG-ET](#), 19:14-20:17,31:4-12; [DRC-OTP-0203-0319](#); [P-41:DRC-OTP-2054-5199](#), p.5222:1-5; [P-14:T-136-CONF-ENG-ET](#), 46:17-47:7,63:20-64:22; [T-137-CONF-ENG-ET](#), 21:5-17,23:22-24:25,78:1-4; [P-31:T-176-CONF-ENG-ET](#), 87:17-88:11; [P-105:T-133-CONF-ENG-ET](#), 64:16-67:1; [T-134-CONF-ENG-ET](#), 19:8-19,56:7-57:17; [T-135-CONF-ENG-ET](#), 39:18-40:6. See also [P-16:DRC-OTP-0126-0422-R03](#), p.0438, para.90; [DRC-OTP-2054-1447](#), p.1458:8-10.

<sup>2835</sup> See e.g. [P-46:T-101-CONF-ENG-ET](#), 13:6-20:1; [DRC-OTP-0152-0286](#), p.0312, para.97.

<sup>2836</sup> [D-300:T-231-CONF-ENG-ET](#), 79:22-84:4; [DRC-OTP-0147-0212](#), p.0212.

<sup>2837</sup> [P-27:DRC-OTP-0096-0052](#), p.0055, para.17.

*weren't...any*".<sup>2838</sup> Accordingly, both the senior UPC political and military leaders lied in their public statements, when it suited the UPC's interests.

907. Propaganda had been used by the UPC leaders when they were still part of the Chui Mobile Force;<sup>2839</sup> so they were resorting to past practices.

908. The UPC's propaganda videos were not produced by neutral media, but by cameramen and journalists pressured to provide commissioned work for the UPC, [REDACTED].<sup>2840</sup> [REDACTED].<sup>2841</sup> [REDACTED]. [REDACTED].<sup>2842</sup> [REDACTED]. [REDACTED], including KISEMBO.<sup>2843</sup> Both [REDACTED] the UPC after they were ousted from Bunia in March 2003.<sup>2844</sup> [REDACTED].<sup>2845</sup> Mike ARERENG,<sup>2846</sup> who appears in the Mongbwalu video, was a freelance journalist who also worked for the UPC, and for various media.<sup>2847</sup> RTNC<sup>2848</sup>, and Radio Candip,<sup>2849</sup> were used by the UPC to broadcast its propaganda.

909. The contrast between the public UPC propaganda statements and the reality on the ground is also exemplified by a number of videos.

910. First, [REDACTED] describes how a UPC video [REDACTED] in May 2003 in Bunia showing UPC commanders telling people to stop pillaging was a "masquerade" and that in reality, UPC soldiers and UPC supporters pillaged

<sup>2838</sup> [D-300:T-235-CONF-ENG-CT](#),84:17-85:1.

<sup>2839</sup> [P-901:T-30-CONF-ENG-CT](#),58:24-59:19.

<sup>2840</sup> [REDACTED].

<sup>2841</sup> [REDACTED].

<sup>2842</sup> [REDACTED].

<sup>2843</sup> [REDACTED].

<sup>2844</sup> [REDACTED].

<sup>2845</sup> [REDACTED].

<sup>2846</sup> [DRC-OTP-2058-0251](#),00:18:56-00:20:13(Transl.[DRC-OTP-2102-3766](#),p.3777:319-321); [REDACTED].

<sup>2847</sup> [DRC-OTP-2058-0251](#),00:18:56-00:20:13(Transl.[DRC-OTP-2102-3766](#),p.3777:319-321); [P-768:T-34-CONF-ENG-CT](#),43:12-18[[T-34-CONF-FRA-ET](#),34:20-22],36:1-9; [P-2:DRC-OTP-2055-1037](#),1043:23-1046:4; [DRC-OTP-0147-0212](#),p.0212.

<sup>2848</sup> [P-245:T-142-CONF-ENG-ET](#),21:19-22:12; [P-30:DRC-OTP-2054-2951](#),2956:13-2961:23.

<sup>2849</sup> [DRC-OTP-0089-0059](#); [P-46:T-101-CONF-ENG-ET](#),19:14-19; [P-14:T-136-CONF-ENG-ET](#),46:17-47:7; [P-41:DRC-OTP-2054-5199](#),p.5222:1-5; [DRC-OTP-0147-0212](#),pp.0212-0215; [P-105:T-133-CONF-ENG-ET](#),66:4-19; [DRC-OTP-0005-0041](#),p.0041,para.3; [DRC-OTP-0005-0027](#),pp.0027-0028,paras.2-5.

[REDACTED].<sup>2850</sup>

911. Second, there is a video dated 14 January 2003 that was filmed in Ngongo, near Lipri.<sup>2851</sup> Only weeks after a meeting between Lendu and UPC, allegedly to discuss peace, UPC forces started their assault on Walendu-Djatsi, attacking the predominantly Lendu areas<sup>2852</sup> of Nyangaray, Lipri, Kobu and Bambu, and surrounding areas and targeting civilians.<sup>2853</sup>

912. In the January 2003 video, the *Chef de groupement's* spokesman [REDACTED] referred to public statements made on Radio Candip by UPC Commander SALONGO, who had attacked Nyangaray, that the UPC must “*chase the Lendu wherever they are*” and complained that there cannot be peace discussions at gunpoint.<sup>2854</sup> [REDACTED] informed LUBANGA that SALONGO had made these comments.<sup>2855</sup> When the UPC executive, [REDACTED] went to Lipri after the Lendu complained of an attack on their centre and a massacre, [REDACTED] gave the information to LUBANGA. The Lendu within the UPC executive, [REDACTED], could not speak out about the killing of their fellow Lendu, because they were too afraid.<sup>2856</sup>

913. Third, in a UPC video filmed in Mandro in 2002, KAHWA stated on-camera that recruits should not commit crimes against civilians, including against the Lendu.<sup>2857</sup> The statements were UPC propaganda filmed for the public and the international

<sup>2850</sup> [REDACTED].

<sup>2851</sup> [REDACTED]; [DRC-OTP-0127-0058](#),00:00:00-00:10:06,00:27:15-00:28:54(Transl.[DRC-OTP-2102-3675](#)),00:04:55-00:10:06 (Transl.[DRC-OTP-2102-3675](#),pp.3682-3685),00:09:17(“*Rencontre à Ngongo*”),00:09:26 (“*UPC/RP & Lendu*”).

<sup>2852</sup> [P-55:T-71-CONF-ENG-CT](#),30:16-17; [P-963:T-79-CONF-ENG-ET](#),16:16-25; [P-790:T-53-CONF-ENG-CT](#),20:1-12; [P-301:T-149-CONF-ENG-ET](#),30:23-31:3; [P-127:T-139-CONF-ENG-ET](#),11:20-12:1,13:1-11; [P-17:T-63-CONF-ENG-ET](#),40:24-41:17;[T-59-CONF-ENG-CT](#),74:3-16; [P-121:T-172-CONF-ENG-ET](#),61:15-17; [P-108:T-185-CONF-ENG-ET](#),44:19-20; [P-768:T-34-CONF-ENG-CT](#),61:2-3.

<sup>2853</sup> [P-55:T-70-CONF-ENG-CT](#),73:21-75:2,88:15-89:2;[T-71-CONF-ENG-CT](#),24:19-31:7; [DRC-OTP-0065-0003](#).

<sup>2854</sup> [REDACTED]; [DRC-OTP-0127-0058](#),00:04:55-00:10:06(Transl.[DRC-OTP-2102-3675](#),pp.3682-3685),00:09:17(“*Rencontre à Ngongo*”),00:09:26(“*UPC/RP & Lendu*”); [REDACTED].

<sup>2855</sup> [REDACTED].

<sup>2856</sup> [REDACTED].

<sup>2857</sup> [DRC-OTP-0082-0016](#),00:11:42-00:21:27(transl.[DRC-OTP-0164-0710](#),pp.0718:198-0720:262).

community –rather than for the recruits - and did not reflect reality.

914. Indeed, two ‘journalists’ are seen in the video. **NTAGANDA** acknowledges that the person standing next to KAHWA with a recorder, was a journalist audio-recording KAHWA’s speech.<sup>2858</sup> During the speech, when the cameraman asks where “the journalist” is, another man, who is taking notes, acknowledges it is him by raising his hand. He is clearly a UPC soldier; he wears a UPC military uniform.<sup>2859</sup> This demonstrates that the UPC had its own ‘journalists’ to propagate UPC propaganda, and they also invited other journalists to particular events. P-769 describes how the UPC movement sought to recruit “intellectuals”, whom they considered “*would be good in politics, who would be negotiators, journalists, spokespersons for the movement, if you like, the diplomats of the movement*”.<sup>2860</sup>

915. **NTAGANDA**’s claim that journalists simply arrived at MANDRO UPC military camp unannounced and uninvited – and that the UPC “*did not ask any journalists to come along*” with them – is not credible.<sup>2861</sup> Given **NTAGANDA**’s own evidence that civilians could not access military camps for important reasons, including safety and confidentiality of military matters, his testimony that the UPC would allow journalists to roam UPC camps, freely film and broadcast pre-attack briefings is utterly implausible.<sup>2862</sup> Journalists were invited by the UPC to travel with them to other locations to film other UPC propaganda videos: for instance, at Mongbwalu.<sup>2863</sup>

916. Not long after this video was filmed the UPC attacked civilians in Zumbe, Komanda, Mongbwalu and other places, raped and killed them, and pillaged and destroyed their property.<sup>2864</sup> This was the reality of the UPC’s attitude towards the

<sup>2858</sup> [D-300:T-216-ENG-CT](#),16:8-17:14

<sup>2859</sup> [DRC-OTP-0082-0016](#),00:11:42-00:21:27(transl.[DRC-OTP-0164-0710](#),p.0721:311).

<sup>2860</sup> [P-769:T-120-CONF-ENG-ET](#),14:9-16.

<sup>2861</sup> [D-300:T-216-ENG-CT](#),16:8-17:14.

<sup>2862</sup> [D-300:T-238-CONF-ENG-CT](#),74:6-75:20.

<sup>2863</sup> [REDACTED].

<sup>2864</sup> See Sections VI and VII.A.

Lendu and *non-originaires*.

917. Fourth, the UPC filmed a propaganda video days after its takeover of Mongbwalu in November 2002,<sup>2865</sup> that contains segments exposing the reality: in the days following the take-over, the UPC conducted house-to-house searches for Lendu and executed those they found. In that video, **NTAGANDA** can be seen on the phone with a journalist trying to refute allegations already being made of UPC killings.<sup>2866</sup>

918. In other public UPC political declarations and speeches it is apparent that Lendu and Nande were perceived and treated by the UPC and Hema leadership as both tribal and political enemies – plotting genocide.

919. The most senior political UPC leaders gave consistent messages, using almost identical language when identifying the UPC's "enemies", as including Lendu, and when blaming them for planning a genocide of the Hema. These speeches revealed the UPC's political ideology as promulgated and propagated by the upper echelon. President LUBANGA declared on 14 September 2002 that the "*negative forces*" or "*forces génocidaires*" of Lendu and their allies – including the INTERAHAMWE and RCD-K/ML - were engaged in a planned genocide. LUBANGA complained that the political actors had "*grafted*" themselves into the local inter-ethnic conflict between the Hema and Lendu. LUBANGA claimed that the massacres of Hema were falsely presented as a result of the Hema-Lendu conflict when they were a planned genocide.<sup>2867</sup>

920. The UPC's National Secretary for so-called "Peace and Reconciliation", TINANZABO, repeated these allegations on 1 October 2002 using the same terms. He referred to the Lendu and their allies as "*negative forces*" engaged in "*unimaginable complicity*". He complained that "*the Lendu were firstly set against the*

<sup>2865</sup> [DRC-OTP-2058-0251](#).

<sup>2866</sup> [DRC-OTP-2058-0251](#),00:23:03-00:26:18(Transl.[DRC-OTP-2102-3766](#),pp.3778-3779:363-379).

<sup>2867</sup> [DRC-OTP-0037-0264](#).



Hema” by the Kinshasa government and their allies the RCD-K/ML of NYAMWISI,<sup>2868</sup> who were secretly arming “the interethnic Hema-Lendu war in Ituri”, putting their soldiers “on the side of the Lendu fighters and their INTERAHAMWE, NALU, ADF allies”. He concluded that as a result “[t]he traditional Hema-Lendu conflict” took on a different dimension.<sup>2869</sup>

921. KAMARAGI, speaking on behalf of the Hema community (and associated with the UPC),<sup>2870</sup> used strikingly similar language, when he denounced the “war of the Lendu” stating that “the Lendu” with their allied “negative forces”, including the INTERAHAMWE and Nande from North Kivu (i.e. *non-originaires*), had “conceived and planned the genocide and ethnic purification targeting the Hema of Congo in Ituri” with the “blessing” of RCD-K/ML.<sup>2871</sup> KAMARAGI’s more detailed denunciation of the Lendu ‘enemy’, revealed the depth of the discriminatory attitudes underlying the UPC’s political ideology.

922. In another political speech given in about April 2003 - and while brandishing a gun - LUBANGA called for UPC supporters to take up arms to avoid being exterminated and said that the Kinshasa government will not help them as: “ils étaient ici et ils nous menaçaient avec les Lendu”. He said he told Joseph Kabila at Dar es Salaam: “je serais heureux de signer avec toi, parce que c’est toi qui nous fais massacrer par l’intermédiaire des Lendu, plutôt que de signer avec ces illétrés qui n’ont pas d’intelligence.”<sup>2872</sup>

923. UPC assertions that it was a multi-ethnic organisation were propaganda and

<sup>2868</sup> Other UPC leaders and the Hema perceived the Lendu as being allied with the RCD-K/ML of Mbusa NYAMWISI and its military wing the APC. E.g. [DRC-OTP-0037-0264](#); [DRC-OTP-0092-0436](#),p.0441; [DRC-OTP-0214-0116](#),p.120; [D-300:T-225-CONF-ENG-CT](#),35:20-36:22; [P-5:T-184-CONF-ENG-ET](#),4:19-24; The Lendu and APC carried out joint military operations. See e.g. [D-300:T-225-CONF-ENG-CT](#),35:20-36:22; [P-5:T-185-CONF-ENG-ET](#),20:20-21:20; [DRC-OTP-0074-0797](#),pp.0823-0824.

<sup>2869</sup> [DRC-OTP-0092-0436](#),p.0441.

<sup>2870</sup> [P-245:T-142-CONF-ENG-ET](#),18:13-19; [P-14:T-138-CONF-ENG-ET](#),75:22-79:10; [P-30:T-146-CONF-ENG-ET](#),18:10-21,74:25-75:16; [P-245:T-141-CONF-ENG-ET](#),25:16-21,29:21-24; [P-769:T-120-CONF-ENG-ET](#),10:23-23:6.

<sup>2871</sup> E.g. [DRC-OTP-0214-0116](#),pp.0116-0119,0122-0124. See also [DRC-OTP-0033-0044-R02](#).

<sup>2872</sup> [DRC-OTP-0102-0003](#),00:21:30-00:24:05(transl.[DRC-OTP-2102-3433](#),pp.3443-3444:220-270).



untrue.<sup>2873</sup> In reality, most of the UPC promoted Hema interests. While LUBANGA spoke of creating a political party or army including all ethnicities – the UPC’s army and the lower-level political party members were predominantly Hema.<sup>2874</sup> The composition of the UPC’s leadership reflected its alignment with the Hema community. Whereas some non-Hema were appointed to positions on the UPC executive and FPLC leadership,<sup>2875</sup> this was no more than propaganda<sup>2876</sup> or practical expediency.<sup>2877</sup> These non-Hema were usually pressured to join<sup>2878</sup> and remained a minority with little influence.<sup>2879</sup> Non-Hema in the FPLC leadership were brought in because of their military experience.<sup>2880</sup> However, it was the ethnic Hema and Tutsi who had the power within the UPC.<sup>2881</sup> Only LUBANGA of the UPC Executive had any contact with, or influence upon the FPLC, along with RAFIKI.<sup>2882</sup> Important matters were discussed and decisions taken in restricted “*mono-ethnic*” meetings, and the non-Hema Executive members had no influence

<sup>2873</sup> [DRC-OTP-0151-0665](#),00:11:12-;00:23:54(transl.[DRC-OTP-1050-0298](#):382-742); **P-30**:[DRC-OTP-2054-2951](#),10:14-23;[T-144-CONF-ENG-ET](#),26:17-27:13;[T-145-CONF-ENG-ET](#),17:16-18:3;[T-146-CONF-ENG-ET](#),6:25-21:11,36:2-9,88:16-90:4; [DRC-OTP-0127-0058](#),00:04:55-00:10:06(Transl.[DRC-OTP-2102-3675](#),pp.3682-3685),00:09:17(“*Rencontre à Ngongo*”),00:09:26 (“*UPC/RP & Lendu*”); **P-105**:[T-133-CONF-ENG-ET](#),64:16-67:1.

<sup>2874</sup> **P-5**:[T-183-CONF-ENG-ET](#),11:24-12:1,28:1-11;[T-184-CONF-ENG-ET](#),14:18-19; [T-186-CONF-ENG-ET](#),33:9-34:5; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0432,para.56,p.0436,paras.80,82,83; **P-17**:[T-58-CONF-ENG-CT](#),38:21-39:21; **P-55**:[T-70-CONF-ENG-CT](#),60:18-61:16; [DRC-OTP-0093-0121](#); **P-245**:[T-141-CONF-ENG-ET](#),47:21-22; **P-859**:[T-51-CONF-ENG-CT](#),11:7-8; **P-14**:[DRC-OTP-2054-0612](#),p.0657:21-p.0658:3; **P-12**:[DRC-OTP-2054-0073](#),p.0097:11-p.0098:1; **P-31**:[T-177-CONF-ENG-ET](#),3:17-4:1; **P-907**:[T-89-CONF-ENG-CT](#),66:12-19. A logbook message from the North East Sector commander to the Minister of Defence referred to the UPC/RP as a “tribe”, when complaining of Hema meeting without UPC authorisation: [DRC-OTP-0017-0033](#),pp.0159(All)-0160(First)(transl.[DRC-OTP-2102-3854](#),p.3981-3982).

<sup>2875</sup> This was short-lived. By February 2003, it had been decided to eliminate non-Hema from the UPC: **P-41**:[DRC-OTP-0147-0002](#),p.0017,para.92.

<sup>2876</sup> E.g. **P-5**:[T-183-CONF-ENG-ET](#),8:8-12:1;[T-184-CONF-ENG-ET](#),13:23-15:17; **P-41**:[DRC-OTP-0147-0002](#),p.0019,para.103,p.0026,para.150; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0438,para.90; **P-14**:[DRC-OTP-2054-0612](#),p.0667:11-p.0668:8,p.0686:10-p.0687:9;[T-136-CONF-ENG-ET](#),63:5-7; **P-31**:[T-177-CONF-ENG-ET](#),3:17-4:1; [DRC-OTP-0074-0797](#),p.0825.

<sup>2877</sup> E.g. **P-16**:[DRC-OTP-0126-0422-R03](#),pp.0430-0434,paras.47,56,62,p.0436,para.80,pp.0439-0440,para.97,p.0452,para.174(some non-Hema were initially recruited to the UPC out of necessity and were gradually replaced; at all times, they were excluded from significant meetings; it was generally difficult to be Lendu in the UPC, and not possible to be a Lendu in the FPLC).

<sup>2878</sup> [REDACTED]; **P-31**:[T-177-CONF-ENG-ET](#),3:17-4:1.

<sup>2879</sup> **P-43**:[T-190-CONF-ENG-ET](#),31:13-32:1,[DRC-OTP-0126-0086](#),pp.0090-0091,para.26; [REDACTED]; **P-14**:[DRC-OTP-2054-0612](#),p.0667:11-p.0668:8,p.0686:10-p.0687:9;[T-136-CONF-ENG-ET](#),63:5-7; [DRC-OTP-0074-0797](#),pp.0825-0826.

<sup>2880</sup> [REDACTED].

<sup>2881</sup> [REDACTED].

<sup>2882</sup> **P-5**:[T-184-CONF-ENG-ET](#),13:23-15:17,15:18-18:4,19:16-18.

within the UPC Executive and they were shut out of military matters.<sup>2883</sup> The Lendu UPC Executive members were fearful, so they could not raise concerns about attacks on Lendu with the Executive branch.<sup>2884</sup> Adriko JOHNSON, a non-Hema (Lugbara) UPC Executive member, who was unhappy with the UPC's attacks and killings, disappeared, and the UPC was accused of his murder.<sup>2885</sup>

924. Conversely, Hema businessmen who were not formally part of the UPC executive were nonetheless highly influential.<sup>2886</sup>

925. The UPC similarly sought to deflect criticism from UPC criminal conduct by pretending it was addressing the issue: for example, LUBANGA issued so-called demobilisation orders, allegedly transmitted by **NTAGANDA**<sup>2887</sup> and **KISEMBO**,<sup>2888</sup> while in reality the UPC was actively recruiting children.<sup>2889</sup>

926. The UPC's use of propaganda instead demonstrates the existence of the common plan:

- attempts to portray the UPC as a multi-ethnic organisation was a disguise for the reality that it was a Hema organisation protecting Hema interests;
- the language of peace was a cover for the UPC's true goals to oust the Lendu and *non-originaires* from Ituri so the UPC and Hema could take over those areas they occupied.

<sup>2883</sup> [REDACTED]; **P-43**:[T-190-CONF-ENG-ET](#),31:13-32:1;[DRC-OTP-0126-0086](#),pp.0090-0091,para.26; [REDACTED]; **P-14**:[DRC-OTP-2054-0612](#),p.0667:11-p.0668:8,p.0686:10-p.0687:9;[T-136-CONF-ENG-ET](#),63:5-7; **P-12**:[DRC-OTP-2054-0073](#),p.0118:19-p.0119:8; **P-31**:[T-177-CONF-ENG-ET](#),3:17-4:1.

<sup>2884</sup> E.g. [REDACTED].

<sup>2885</sup> E.g. **P-190**:[T-96-CONF-ENG-CT](#),68:1-70:16; **P-5**:[T-185-CONF-ENG-ET](#),27:7-28:5[[T-185-CONF-FRA-ET](#),27:26-28:21]; **P-317**:[T-192-CONF-ENG-ET](#),30:17-31:6; [DRC-OTP-0074-0422](#),pp.0456-0457; **P-41**:[DRC-OTP-0147-0002](#),pp.0016-0017,paras.82-87.

<sup>2886</sup> E.g. **P-41**:[DRC-OTP-0147-0002](#),p.0018,para.94,pp.0020-0021,para.111; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0439,para.97; **P-12**:[DRC-OTP-2054-0274](#),0280:4-0289:10.

<sup>2887</sup> **D-300**:[T-223-CONF-ENG-ET](#),47:5-10.

<sup>2888</sup> [DRC-OTP-0014-0254](#).

<sup>2889</sup> E.g. **P-43**:[DRC-OTP-0126-0086](#),p.0095,para.47; **P-17**:[T-60-CONF-ENG-ET](#),32:12-25; **P-901**:[T-29-CONF-ENG-CT](#),59:18-60:19; **P-31**:[T-176-CONF-ENG-ET](#),85:6-86:6; [DRC-OTP-0005-0041](#),p.0041,para.3

*Discriminatory nature of the UPC and targeting of Lendu and non-originares*

927. The discriminatory nature of the UPC, further demonstrating the plain criminal implications of the co-perpetrators' plan,<sup>2890</sup> is indicated by various factors, singly and/or in combination. These include: (i) the domination of the UPC by the Hema and Gegere ethnic groups;<sup>2891</sup> (ii) the disproportionate and deliberate targeting of other ethnic groups (especially the Lendu and Nande) by the UPC;<sup>2892</sup> (iii) the demonising of the Nande by identifying the RCD-K/ML-APC enemy as a Nande tribal group;<sup>2893</sup> (iv) standard orders to eliminate or drive out the Lendu,<sup>2894</sup> or "to do their work" (understood to mean to do what they wanted with the enemy: in

<sup>2890</sup> The Prosecution is not obliged to prove that the common plan contained a discriminatory element, except insofar as the plan relates to the crime of persecution. As a matter of fact, however, the common plan was discriminatory, and its discriminatory nature is additional evidence of its existence and nature.

<sup>2891</sup> E.g. **P-2:T-171-CONF-ENG-ET**,16:22-17:23,18:25-20:17 ; **P-5:T-183-CONF-ENG-ET**,12:1;**T-184-CONF-ENG-ET**,14:18-19,13:23-15:17;**T-186-CONF-ENG-ET**,33:9-34:5; **P-55:T-70-CONF-ENG-CT**,61:8-16; **P-16:DRC-OTP-2054-1447**,p.1464:21-1465:3;**DRC-OTP-0126-0422-R03**,p.0432,para.56; **P-14:DRC-OTP-2054-0612**,p.0657:21-p.0658:3; **P-245:T-141-CONF-ENG-ET**,28:24-29:8,43:17-44:7,47:12-48:5;**T-142-CONF-ENG-ET**,9:13-10:12,66:14-25; **DRC-OTP-0109-0136**,pp.0136-0137,0141; **P-17:T-58-CONF-ENG-CT**,38:21-39:21; **P-859:T-51-CONF-ENG-CT**,11:7-8; **P-12:DRC-OTP-2054-0073**,p.0097:11-p.0098:1; **P-31:T-177-CONF-ENG-ET**,3:17-4:1; **DRC-OTP-2102-3854**,p.3981; **P-907:T-89-CONF-ENG-CT**,66:12-19. See e.g. **D-300:T-209-CONF-ENG-ET**,37:13-20;**T-211-CONF-ENG-ET**,31:12-33:25;**T-211-CONF-ENG-ET**,50:13-25;**T-212-CONF-ENG-ET**,13:8-19;**T-211-CONF-ENG-ET**,42:24-43:6;**T-224-CONF-ENG-ET**,64:2-68:12;**T-212-CONF-ENG-ET**,21:22-24; **T-224-CONF-ENG-ET**,64:2-68:12; **P-769:T-120-CONF-ENG-ET**,13:11-22:8. (Tutsi were seen by some to be identified with Hema).

<sup>2892</sup> E.g. **P-963:T-79-CONF-ENG-ET**,15:11-16:9; **P-315:DRC-OTP-2058-0990**,p.1014,para.131; **P-886:T-37-CONF-ENG-ET**,33:15-24; **P-39:DRC-OTP-2062-0244-R02**,p.0249,para.19,p.0252-0253,para.35; **P-912:T-148-CONF-ENG-ET**,52:3-20; **P-190:T-96-CONF-ENG-CT**,78:11-80:19;**T-97-CONF-ENG-CT**,10:22-11:17; **P-16:DRC-OTP-0126-0422-R03**,p.0428,para.39,pp.0458-0459,para.210,pp.0460-0462,paras.216-230,p.0464,paras.240-241,243; **P-55:T-70-CONF-ENG-CT**,60:8-61:16; **P-769:T-120-CONF-ENG-ET**,19:7-10; **P-14:T-138-CONF-ENG-ET**,99:3-100:4;**DRC-OTP-2054-0429**,p.0478:11-p.0481:6,p.0480:16-p.0481:6; **DRC-OTP-0127-0110**; **P-245:T-142-CONF-ENG-ET**,9:16-10:12; **P-12:DRC-OTP-0105-0085**,p.0148,para.343; **P-43:DRC-OTP-0126-0086**,p.0092,para.34; **DRC-OTP-0074-0422**,p.0453,para.109; **P-317:T-192-CONF-ENG-ET**,13:15-14:8; **P-5:T-185-CONF-ENG-ET**,28:10-29:18,**T-187-CONF-ENG-ET**,4:25-9:15,14:15-15:2; **DRC-OTP-0164-0447**,p.0448. Whereas Hema or Gegere civilians would be warned of attacks in advance, Lendu civilians were not: **P-758:T-161-CONF-ENG-ET**,8:22-9:5,11:11-22,35:1-8,39:9-24,43:9-44:2,47:8-13,50:14-17,40:18-25;**T-191-CONF-ENG-ET**,113:4-15;**T-192-CONF-ENG-ET**,11:14-12:6; **DRC-OTP-0074-0422**,p.0439,para.47.

<sup>2893</sup> E.g. **DRC-OTP-0037-0271-R02**,pp.0272-0273; **D-300:T-212-CONF-ENG-ET**,22:22-23:13,30:4-16;**T-230-CONF-ENG-CT**,54:13-60:15; **DRC-OTP-0127-0110**; **P-901:T-27-CONF-ENG-CT**,19:12-21; **P-12:DRC-OTP-0105-0085**,p.0108,para.129; **P-43:DRC-OTP-0126-0086**,p.0092,para.34; **P-5:T-189-CONF-ENG-ET**,45:3-5;**T-185-CONF-ENG-ET**,30:16-31:9(witness accused of collaborating with the Hema to target the Nande); **DRC-OTP-0074-0422**,pp.0436-0437,para.37; **P-894:DRC-OTP-2076-0194**,pp.0201-0202,para.38; **P-886:T-38-CONF-ENG-CT**,83:16-18; **T-40-CONF-ENG-CT**,50:19-51:3; **P-190:T-96-CONF-ENG-CT**,78:11-80:19.

<sup>2894</sup> **P-963:T-78-CONF-ENG-ET**,26:2-7,72:25-73:9; **P-768:T-33-CONF-ENG-CT**,37:2-16,41:8-17,53:3-18,54:7-13[**T-33-CONF-FRA-ET**,53:10-16],54:8-55:7; **T-34-CONF-ENG-CT**,15:6-16:15; **P-10:T-47-CONF-ENG-CT**,10:6-18; **P-758:T-161-CONF-ENG-ET**,30:9-24,47:2-13; **P-190:T-97-CONF-ENG-CT**,32:15-33:7; **P-888:T-105-CONF-ENG-CT**,37:8-22,50:16-52:18,54:19-58:14; **P-41:DRC-OTP-0147-0002**,p.0017,para.92.

particular rape then kill);<sup>2895</sup> (v) the UPC and Hema community leadership accusing “the Nande people [of having] given concrete expression to their old Machiavellian dream for domination and exploitation of Ituri”;<sup>2896</sup> (vi) accusing both Nande and Lendu – with their allied “*forces négatives*” – of planning a genocide of the Hema to justify “kick[ing] out once for all the evil”;<sup>2897</sup> (vii) the discriminatory rhetoric and ideology instilled in UPC recruits during training;<sup>2898</sup> (viii) UPC ideology instilled at schools by Hema-Gegere teachers brought in to replace *non-originaires* teachers;<sup>2899</sup> (ix) and the UPC’s verbal abuse of identified ethnic groups during the commission of crimes.<sup>2900</sup>

928. The co-perpetrators’ coordinated effort to secure UPC control of Ituri, and to drive out the Lendu, is further demonstrated by the targeting of other groups or individuals perceived as opposing them or supporting the Lendu. From the outset, during the take-over of Bunia,<sup>2901</sup> this included *non-originaires*, especially the Nande and Bira.<sup>2902</sup> The pattern continued throughout the armed conflict, including at Komanda,<sup>2903</sup> during the First and Second Attacks,<sup>2904</sup> and at Bunia in 2003.<sup>2905</sup> Ethnic Hema and foreigners who tried to assist the Lendu and Ngiti were also targeted for retribution (such as a UN OCHA staff member and two Belgian priests helping displaced Lendu),<sup>2906</sup> including by NTAGANDA himself, who

<sup>2895</sup> [P-10:T-47-CONF-ENG-CT](#),16:17-17:21; [P-768:T-33-CONF-ENG-CT](#),57:1-58:19,54:18-56:9; [P-907:T-90-CONF-ENG-CT](#),34:11-35:12.

<sup>2896</sup> E.g. [DRC-OTP-0127-0110](#). See also [DRC-OTP-0214-0116](#),p.0124; [DRC-OTP-0164-0447](#),pp.0047-0448.

<sup>2897</sup> E.g. [DRC-OTP-0092-0436](#),pp.0437-0438.

<sup>2898</sup> E.g. [P-10:T-47-CONF-ENG-CT](#),41:3-42:3; [P-16:DRC-OTP-0126-0422-R03](#),pp.0432-0433,paras.56-58;[DRC-OTP-2054-1447](#),p.1465:20-1466:6.

<sup>2899</sup> E.g. [P-14:T-136-CONF-ENG-ET](#),61:21-62:25.

<sup>2900</sup> E.g. [P-315:DRC-OTP-2058-0990](#),p.1012,para.127(Lendu “pigs” to be “exterminate[d]”); [P-19:T-115-CONF-ENG-CT](#),38:18-39:1 (Lendu “are not human beings”, they are “beasts or animals”); [P-19:T-115-CONF-ENG-CT](#),31:12-16,50:22-51:9 (“Lendu are useless wild animals and we can do with them anything we want. They are not humans”; “We are going to exterminate you in three days”).

<sup>2901</sup> See Section VI. E.g. [P-16:DRC-OTP-0126-0422-R03](#),p.0428para.39; [P-12:DRC-OTP-0105-0085](#),p.0108,para.129; [DRC-OTP-0074-0422](#),p.0439,para.47.

<sup>2902</sup> See Section VI. E.g. [P-190:T-96-CONF-ENG-CT](#),79:1-80:19. See also [DRC-OTP-0113-0135](#); [DRC-OTP-0074-0422](#),p.0439,para.47.

<sup>2903</sup> See Section VI.B.d.

<sup>2904</sup> See Section VII.A and B.

<sup>2905</sup> See Sections VI.B.2.f and g.

<sup>2906</sup> E.g. [DRC-OTP-0074-0422](#),pp.0458-0459,paras.129-132; [P-46:T-100-CONF-ENG-CT](#),49:14-50:13;[T-101-CONF-ENG-ET](#),8:14-9:21; [DRC-OTP-0074-0797](#),pp.0843-0844; [P-14:DRC-OTP-0147-0002](#),para.234. See

ordered the arrest of a white Catholic priest who had been in contact with Lendu,<sup>2907</sup> and targeted other foreigners involved in the peace process.<sup>2908</sup>

929. While the UPC's goals were to dislodge all Lendu and *non-originaires* from Ituri; their sinister aims went further in their bid to control Ituri: they "*sought to eliminate or subjugate their enemies, along with other enemies*".<sup>2909</sup>

*ii. The UPC was used for the commission of crimes*

930. The UPC was sufficiently organised, disciplined and large in scale to be used by NTAGANDA and the other co-perpetrators to commit crimes.

*iii. The UPC was an organised and hierarchical structure of power*

931. The UPC was not the military of a nation state, and its internal arrangements were not always regularised or strictly regimented. For instance, NTAGANDA had greater autonomy and power within the UPC than his formal title implied.<sup>2910</sup> Yet those arrangements were effective. The UPC was highly organised and hierarchical, and functioned to execute the will of its leaders. NTAGANDA acknowledges that the UPC was an organised<sup>2911</sup> and hierarchical structure of power. NTAGANDA confirmed that in the FPLC no officer could refuse to carry out an order from his hierarchical superior.<sup>2912</sup> The formalisation of the UPC in September 2002 did not fundamentally change the leadership's control over its

---

also [P-317:T-192-CONF-ENG-ET](#),29:25-31:19; [DRC-OTP-0159-0438](#); [DRC-OTP-0159-0436](#); [P-5:T-183-CONF-ENG-ET](#),32:25-33:10;[T-185-CONF-ENG-ET](#),31:10-34:18; [DRC-OTP-0113-0014](#); [DRC-OTP-0136-0173](#); [P-365:T-147-CONF-ENG-ET](#),72:13-75:12.

<sup>2907</sup> [D-300:T-222-ENG-CT](#),51:6-52:10,56:17-57:20; [DRC-OTP-0017-0033](#), pp.0087(Second), p.0088(Second), p.0180 (transl.[DRC-OTP-2102-3854](#),pp.3909-3910,p.3983); [DRC-OTP-0074-0422](#),pp.0458-0459,paras.129-132; [DRC-OTP-0074-0797](#),p.0844.

<sup>2908</sup> [DRC-OTP-0074-0422](#),p.0458,para.129; [P-190:T-96-CONF-ENG-CT](#),74:10-18.

<sup>2909</sup> [P-14:T-137-CONF-ENG-ET](#),36:25-37:5.

<sup>2910</sup> [P-901:T-28-CONF-ENG-CT](#),60:6-24,62:17-64:4; [P-16:DRC-OTP-2054-1447](#),p.1530:13-24; [P-190:T-96-CONF-ENG-CT](#),39:14-41:10,43:18-24,45:5-9,49:5-51:12,52:21-54:25;[T-97-CONF-ENG-CT](#),16:1-7,18:16-19:3,52:7-19.

<sup>2911</sup> [D-300:T-218-CONF-ENG-CT](#),33:10-13;[T-225-CONF-ENG-CT](#),49:7-12. See also e.g. [P-963:T-79-CONF-ENG-ET](#),24:24-25:1: "[T]he UPC was a perfectly coordinated unit and there was due respect for hierarchy, ordre ninatoka juu, that was that the expression we used to mean that orders come from above...".

<sup>2912</sup> [D-300:T-213-CONF-ENG-CT](#),57:19-24;[T-214-CONF-ENG-ET](#),57:21-58:5;[T-220-CONF-ENG-ET](#),30:7-9,74:7-20; [DRC-OTP-0017-0033](#),p.0176(Third message, stating no commander has the power "*de refuser un order venant d'en haut*") (transl.[DRC-OTP-2102-3854](#),p.3998).



soldiers,<sup>2913</sup> which emanated not only from its organisation but also indoctrination, harsh discipline to ensure obedience, and control over access to key resources and opportunities for enrichment.

932. The UPC was organised to mimic conventional military structures, with orders transmitted and carried out by hierarchically organised units, situated throughout Ituri.<sup>2914</sup> NTAGANDA and KISEMBO were in charge of appointing commanders in the UPC.<sup>2915</sup> NTAGANDA also had the authority to replace or remove,<sup>2916</sup> and promote officers and soldiers<sup>2917</sup> within the UPC.<sup>2918</sup>

933. As Commander-in-Chief, supreme authority was meant to emanate from LUBANGA. However, in reality, day-to-day leadership of the UPC forces came from KISEMBO and NTAGANDA, assisted by the UPC General Staff, headquartered in Bunia.<sup>2919</sup> The General Staff addressed matters including Personnel (G1), Intelligence (G2), Operations (G3), Logistics (G4), and Civil-Military Cooperation (G5).<sup>2920</sup> NTAGANDA required the deference and

<sup>2913</sup> [P-901:T-27-CONF-ENG-CT](#),59:16-61:5,62:11-63:3,68:4-15;[T-28-CONF-ENG-CT](#),7:10-10:1.

<sup>2914</sup> *E.g.* [P-901:T-30-CONF-ENG-CT](#),31:23-32:6;[T-28-CONF-ENG-CT](#),7:10-10:1; [P-17:T-58-CONF-ENG-CT](#),18:21-19:22,22:23-23:15,36:22-37:6,38:7-20,50:22-51:11,53:21-54:11,58:10-59:6,66:21-67:10;[T-59-CONF-ENG-CT](#),79:3-23; [P-55:T-70-CONF-ENG-CT](#),43:17-45:1,56:5-12,65:9-66:23,73:10-13,75:3-79:17,80:9-81:4; [P-963:T-78-CONF-ENG-ET](#),25:5-17,26:15-20,34:13-20,37:17-39:5,60:14-61:2,63:15-67:23,70:4-15;[T-79-CONF-ENG-ET](#),24:22-25:4,45:4-15,45:19-46:14;[T-80-CONF-ENG-ET](#),10:17-11:2,35:20-36:25;[T-81-CONF-ENG-ET](#),83:17-85:4; [P-5:T-183-CONF-ENG-ET](#),28:1-11;[T-184-CONF-ENG-ET](#),16:24-17:4,18:5-13,19:10-20:8,31:18-32:25; [P-16:DRC-OTP-0126-0422-R03](#),pp.0435-0436,paras.76-79; Message from NTAGANDA to subordinates detailing some aspects of UPC command structure: [DRC-OTP-0017-0033](#),p.0184(Third),p.0182(First)(transl.[DRC-OTP-2102-3854](#),p.4006,p.4004).

<sup>2915</sup> *E.g.* [P-55:T-70-CONF-ENG-CT](#),65:9-22,80:9-16; [P-901:T-29-CONF-ENG-CT](#),9:11-22; [DRC-OTP-2102-3854](#),pp.3999(second,third),4004-4006(all messages),4007(third).

<sup>2916</sup> *E.g.* [P-55:T-70-CONF-ENG-CT](#),65:9-22; [P-901:T-29-CONF-ENG-CT](#),9:11-22. *See also e.g.* [DRC-OTP-0016-0098](#)(transl.[DRC-OTP-2052-0162](#)); [DRC-OTP-0017-0033](#),p.0185(first)(transl.[DRC-OTP-2102-3854](#),p.4007).

<sup>2917</sup> *E.g.* [P-901:T-29-CONF-ENG-CT](#),9:11-22. *See also e.g.* [DRC-OTP-2102-3854](#),p.4020(first).

<sup>2918</sup> *See* Section IX.

<sup>2919</sup> *See* Section IX. *E.g.* [P-963:T-78-CONF-ENG-ET](#),26:15-20,28:2-9,63:15-64:14,67:9-19,86:13-23.

<sup>2920</sup> *E.g.* [P-901:T-28-CONF-ENG-CT](#),7:1-13,9:1-14:25; [P-963:T-78-CONF-ENG-ET](#),25:5-17,26:15-20,34:13-20,37:17-39:5,60:14-61:2,63:15-67:23; [P-55:T-70-CONF-ENG-CT](#),65:9-66:23,73:10-13,75:3-13,78:14-79:9;[T-72-CONF-ENG-CT](#),57:6-22; [P-16:DRC-OTP-2054-1447](#),p.1507:1-15; [P-16:DRC-OTP-0126-0422-R03](#),pp.0433-0435,paras.62-75; [DRC-OTP-0091-0769](#). Both P-16 and P-17 confirm that NTAGANDA exercised the role of the G3 in charge of operations. [REDACTED]. P-17, as a soldier on the ground, was candid that he did not know who was the deputy chief of staff. This is not surprising bearing in mind the unconventional nature of the structure and role NTAGANDA played by acting as both G3 and deputy chief of staff in charge of operations. [P-17:T-59-CONF-ENG-CT](#),7:24-8:4;[T-60-CONF-ENG-ET](#),7:8-22,37:12-18,72:1-13.

obedience consistent with his position,<sup>2921</sup> and demanded compliance with his orders.<sup>2922</sup> When necessary, punishment was inflicted to maintain obedience to the UPC leadership. NTAGANDA acknowledged the controls he exercised over his subordinates, in terms of his ability to punish:

*I could even detain [sector commanders] without hesitation. It was not possible, of course, for me to detain Kisembo or Thomas, but all my subordinates I could punish them because our objective was to liberate the population.*<sup>2923</sup>

934. NTAGANDA also acknowledged that throughout the period he was the Deputy Chief of Staff in charge of operations and organisation, in particular from September 2002 until December 2003, there was no problem or obstacle to him exercising his role.<sup>2924</sup>

935. UPC soldiers received basic training in the use of arms and tactics, and crude indoctrination to obey the UPC hierarchy. NTAGANDA confirmed that he was one of those training recruits on the UPC ideology, which was based on their political ideology.<sup>2925</sup> Soldiers were not trained to obey humanitarian or criminal law, or to be disciplined vis-à-vis civilians.<sup>2926</sup> This training was located at specific

<sup>2921</sup> E.g. [DRC-OTP-0017-0033](#),p.0181(First)(transl.[DRC-OTP-2102-3854](#),p.4003); [DRC-OTP-2058-0251](#),00:06:06-00:06:50/[DRC-OTP-2101-2829](#),p.2833:82-103 (NTAGANDA clarifying “I am not a sector commander. I am Chief of Staff of the UPC”, and the video-cameraman calls him the operations commander. The interview re-starts with the journalist referring to NTAGANDA as Chief of Staff of UPC....”).

<sup>2922</sup> [DRC-OTP-0017-0033](#),p.0176(Third message, stating no commander has the power “*de refuser un order venant d’en haut*”),p.0213(Second message, ordering MULENDA and SEYI to advance)(transl.[DRC-OTP-2102-3854](#),p.3998,p.4035); [DRC-OTP-0017-0003](#),p.0010(second)(transl.[DRC-OTP-2102-3828](#),p.3836); See also [P-768:T-33-CONF-ENG-CT](#),28:21-29:15;[T-35-CONF-ENG-CT](#),61:2-16; [P-963:T-78-CONF-ENG-ET](#),67:9-19.

<sup>2923</sup> [D-300:T-211-CONF-ENG-ET](#),52:6-9.

<sup>2924</sup> [D-300:T-225-CONF-ENG-CT](#),82:14-83:16.

<sup>2925</sup> [D-300:T-211-CONF-ENG-ET](#),51:14-20;[T-213-CONF-ENG-CT](#),64:11-20;[T-214-CONF-ENG-ET](#),4:3-5:5;[T-215-ENG-ET](#),58:22-59:9,86:15-20;[T-216-ENG-CT](#),17:16-25;[T-224-CONF-ENG-ET](#),70:2-5;[T-230-ENG-CT](#),48:1-8;[T-230-ENG-CT](#),60:9-15;[T-232-CONF-ENG-CT](#),36:22-39:22; See also [P-16:DRC-OTP-0126-0422-R03](#),p.0431,paras.51-52;[DRC-OTP-2054-1447](#),p.1486:19-p.1488:14,p.1490:10-1495:19; [P-963:T-78-CONF-ENG-ET](#),28:11-32:8,37:17-40:8,52:12-15;[T-80-CONF-ENG-ET](#),23:6-24:7,26:12-27:9,37:14-38:12; [P-55:T-71-CONF-ENG-CT](#),77:2-78:11,79:8-80:11,81:14-82:12; [P-768:T-33-CONF-ENG-CT](#),30:11-18; [P-190:T-97-CONF-ENG-CT](#),32:15-33:7,45:23-46:5; [P-911:T-157-CONF-ENG-ET](#),15:2-9,16:22-17:19; [T-159-CONF-ENG-ET](#),54:7-25.

<sup>2926</sup> E.g. [P-963:T-80-CONF-ENG-ET](#),30:20-25; [P-17:T-58-CONF-ENG-CT](#),32:3-8; [P-16:DRC-OTP-0126-0422-R03](#),pp.0431-0432,paras.51-52,55,pp.0436-0437,para.85; [P-16:DRC-OTP-2054-1447](#),p.1487:4-13; [P-190:T-97-CONF-ENG-CT](#),55:7-56:3.



camps such as Mandro, Mongbwalu, Bule, and Rwampara.<sup>2927</sup>

936. UPC operations were planned at a high level.<sup>2928</sup> Although the General Staff included a G3, who would ordinarily have responsibility for operational planning, in practice **NTAGANDA** took this responsibility for himself because the G3 was a *non-originaire* and not permitted to join planning meetings.<sup>2929</sup> **NTAGANDA** regularly involved himself in conceiving, planning, and coordinating major attacks.<sup>2930</sup> Indeed, he organised some operations entirely on his own initiative.<sup>2931</sup> **NTAGANDA** took the ultimate decisions concerning the deployment of troops.<sup>2932</sup> He planned and directly commanded and participated in the First Attack,<sup>2933</sup> and planned, coordinated and commanded with others the Second Attack,<sup>2934</sup> as well as other operations.<sup>2935</sup>

937. The UPC required and ensured regular communication between its forces, and subordinates were required to report regularly up the chain of command.

<sup>2927</sup> E.g. **P-963:T-78-CONF-ENG-ET**,28:11-32:8,39:17-18,55:10-21;**T-80-CONF-ENG-ET**,11:3-12:16,37:3-13;**P-17:T-58-CONF-ENG-CT**,22:9-25:1,36:14-17;**T-59-CONF-ENG-CT**,44:9-13;**T-60-CONF-ENG-ET**,36:7-37:18; **P-55:T-71-CONF-ENG-CT**,62:18-66:2;**T-74-CONF-ENG-CT**,65:12-66:2; **P-5:T-185-CONF-ENG-ET**,11:10-12:4.

<sup>2928</sup> E.g. **P-55:T-70-CONF-ENG-CT**,55:22-56:12;**T-71-CONF-ENG-CT**,29:20-35:10,43:9-19;**T-72-CONF-ENG-CT**,4:21-5:2,7:16-22;**T-74-CONF-ENG-CT**,29:5-34:22. See also **P-16:DRC-OTP-0126-0422-R03**,p.0467,para.259.

<sup>2929</sup> [REDACTED]. See also **P-55:T-70-CONF-ENG-CT**,75:16-76:9;**T-71-CONF-ENG-CT**,4:13-5:1,6:25-7:4;**P-17:T-58-CONF-ENG-CT**,18:23-19:11,23:7-15,43:15-22;**T-60-CONF-ENG-ET**,37:4-18,72:1-13; **P-907:T-89-CONF-ENG-CT**,40:5-41:7.

<sup>2930</sup> E.g. **P-16:DRC-OTP-2054-1447**,p.1513:1-10(operations were planned taking into account the planners' personal interests); **P-55:T-70-CONF-ENG-CT**,43:3-45:1,48:6-52:18,55:1-56:12;**T-71-CONF-ENG-CT**,13:7-14:11,18:1-15,31:8-35:10,42:9-44:8;**T-72-CONF-ENG-CT**,4:21-5:2,7:16-22;**T-74-CONF-ENG-CT**,29:5-31:8; **P-768:T-33-CONF-ENG-CT**,28:1-29:21,32:24-34:3,36:6-37:24,40:16-41:17,45:10-18,50:13-23,65:24-66:14; **T-34-CONF-ENG-CT**,7:19-21,31:24-32:6; **P-901:T-28-CONF-ENG-CT**,32:14-24,53:18-55:6,57:19-24,60:6-24,62:17-64:4;**T-29-CONF-ENG-CT**,13:6-22; **P-907:T-89-CONF-ENG-CT**,20:23-23:19,74:23-75:14,78:8-80:8;**T-90-CONF-ENG-CT**,4:5-5:23,9:9-19,23:13-25,37:10-38:1,57:23-58:15,60:19-61:17,62:9-15,70:18-71:4; **P-190:T-96-CONF-ENG-CT**,49:5-50:11,74:19-74:10,76:17-77:10,81:8-84:4,84:13-24,87:3-88:12,93:16-95:11;**T-97-CONF-ENG-CT**,5:23-7:4,22:1-24:7,24:13-25:5,52:7-19; **DRC-OTP-0029-0255**,p.0255(transl.**DRC-OTP-2061-0715**,p.0716).

<sup>2931</sup> **P-55:T-70-CONF-ENG-CT**,75:3-76:9; **P-16:DRC-OTP-0126-0422-R03**,pp.0433-0434,paras.62-65; **P-907:T-89-CONF-ENG-CT**,20:23-23:19; **P-190:T-96-CONF-ENG-CT**,49:5-51:12,52:21-54:25.

<sup>2932</sup> E.g. **P-55:T-71-CONF-ENG-CT**,82:13-24; **P-768:T-34-CONF-ENG-CT**,52:8-15; **P-907:T-89-CONF-ENG-CT**,20:23-23:19; **P-17:T-59-CONF-ENG-CT**,16:5-17:4; **P-16:DRC-OTP-0126-0422-R03**,p.0465,para.250. See also **DRC-OTP-0017-0033**,p.0212(Third)(transl.**DRC-OTP-2102-3854**,p.4034); **P-901:T-29-CONF-ENG-CT**,53:2-5; **P-14:T-136-CONF-ENG-ET**,41:5-6.

<sup>2933</sup> See Section VII.A.2.b.

<sup>2934</sup> See Section VII.B.1.

<sup>2935</sup> See Section VI.B.2.

NTAGANDA and other senior leaders regularly received both oral and written reports.<sup>2936</sup> UPC commanders were issued ‘Motorola’ short-range radios, and more senior UPC commanders were issued, additionally, long-range radios (“radio-phonie” or “manpacks”).<sup>2937</sup> The UPC commanders were identified by unique radio call-signs.<sup>2938</sup> Very senior or important individuals, including NTAGANDA, were also provided Thuraya satellite telephones.<sup>2939</sup> NTAGANDA and other commanders also had mobile phones.<sup>2940</sup>

938. Logistics were well organised to enable the UPC to conduct sustained operations. The UPC was funded by Hema businessmen,<sup>2941</sup> the exploitation of natural resources,<sup>2942</sup> and taxation.<sup>2943</sup> Soldiers were well armed and supplied, with small arms and light and heavy weapons such as RPGs, grenade launchers,

<sup>2936</sup> For instance: [DRC-OTP-0109-0136](#), the monthly report of G5 MBABAZI to KISEMBO and other senior leaders, that speaks of general criminality amongst the UPC forces. See: **P-16:**[DRC-OTP-2054-1625](#),p.1662:6-p.1663:25;[DRC-OTP-0126-0422-R03](#),p.0463,paras.235-239;[DRC-OTP-2054-1447](#),p.1528:18-p.1530:12; **P-901:**[T-28-CONF-ENG-CT](#),27:21-28:20,29:21:30:8,29:14-20; **P-768:**[T-33-CONF-ENG-CT](#),32:24-33:18,37:17-24,60:20-61:2,65:24-66:14; [T-34-CONF-ENG-CT](#),7:19-21,61:4-9; **P-55:**[T-70-CONF-ENG-CT](#),66:20-68:12,72:3-20,73:10-13,75:3-15;[T-71-CONF-ENG-CT](#),5:15-23,7:17-8:1,51:5-22,52:7-53:4;[T-72-CONF-ENG-CT](#),52:16-24; **P-290:**[T-65-CONF-ENG-CT](#),62:4-63:25,68:8-18,74:2-11;[T-66-CONF-ENG-CT](#),8:20-9:21; [DRC-OTP-0017-0025](#).

<sup>2937</sup> **P-17:**[T-58-CONF-ENG-CT](#),26:5-19,39:22-40:22,41:20-43:14,45:8-23,46:12-19;[T-59-CONF-ENG-CT](#),64:12-65:6,79:6-23;[T-60-CONF-ENG-ET](#),17:1-5; **P-55:**[T-70-CONF-ENG-CT](#),66:24-68:12,70:15-71:1,72:5-20,83:17-86:21,89:1-92:20; **P-16:**[DRC-OTP-0126-0422-R03](#),p.0452,para.173,p.0467,paras.260-264;[DRC-OTP-2054-1625](#),p.1641:24-p.1642:16,p.1646:1-p.1649:17; **P-963:**[T-78-CONF-ENG-ET](#),66:22-67:6;[T-79-CONF-ENG-ET](#),45:8-14,90:6-8;[T-82-CONF-ENG-ET](#),18:16-22; **P-290:**[T-65-CONF-ENG-CT](#),62:4-63:25,68:8-18,74:2-11; **P-758:**[T-161-CONF-ENG-ET](#),38:2-16; **P-768:**[T-33-CONF-ENG-CT](#),32:24-33:18; [T-34-CONF-ENG-CT](#),61:4-9;[T-35-CONF-ENG-CT](#),18:17-19:24; **P-901:**[T-28-CONF-ENG-CT](#),15:1-6; **P-907:**[T-90-CONF-ENG-CT](#),60:22-62:15; [DRC-OTP-0017-0033](#).

<sup>2938</sup> **P-55:**[T-70-CONF-ENG-CT](#),81:6-83:16; **P-290:**[T-66-CONF-ENG-CT](#),30:8-17,[T-67-CONF-ENG-CT](#),21:4-18; **P-17:**[T-58-CONF-ENG-CT](#),19:6-9,45:8-23; **P-901:**[T-28-CONF-ENG-CT](#),24:2-25:11; **P-55:**[T-70-CONF-ENG-CT](#),81:17-18.

<sup>2939</sup> **D-300:**[T-222-ENG-CT](#),32:19-33:1; **P-17:**[T-58-CONF-ENG-CT](#),26:5-19,39:22-40:22; **P-16:**[DRC-OTP-0126-0422-R03](#),p.0467,para.264; **P-55:**[T-70-CONF-ENG-CT](#),91:11-92:20;[T-71-CONF-ENG-CT](#),97:18-98:20; **P-768:**[T-35-CONF-ENG-CT](#),20:24-21:11; **P-963:**[T-78-CONF-ENG-ET](#),66:22-67:6;[T-79-CONF-ENG-ET](#),45:8-14; **P-901:**[T-28-CONF-ENG-CT](#),15:1-6; **P-290:**[T-66-CONF-ENG-CT](#),14:22-16:10 [REDACTED];[DRC-OTP-2102-3828](#),p.3836; [DRC-OTP-0017-0033](#),p.0213(first message);[DRC-OTP-2102-3854](#),p.4035); [DRC-OTP-0185-0810](#).

<sup>2940</sup> **D-300:**[T-222-ENG-CT](#),32:19-33:1.

<sup>2941</sup> **P-12:**[DRC-OTP-2054-0274](#),p.7,II.1-12; [DRC-OTP-0074-0797](#),p.0825; **P-16:**[DRC-OTP-0126-0422-R03](#),pp.0439-0440,paras.97,100; **P-41:**[DRC-OTP-0147-0002](#),p.0017,para.89,p.0018,para.94,pp.0020-0021,para.111,[DRC-OTP-2054-5199](#),p.5231:22-p.5232:10; **P-43:**[DRC-OTP-0126-0086](#),pp.0092-0093,para.35.

<sup>2942</sup> **P-41:**[DRC-OTP-0147-0002](#),p.0024,paras.132-133; **P-190:**[T-97-CONF-ENG-CT](#),17:9-20:3,[T-99-CONF-ENG-CT](#),104:7-19; **P-16:**[DRC-OTP-0126-0422-R03](#),pp.0454-0455,paras.187-193.

<sup>2943</sup> **P-55:**[T-71-CONF-ENG-CT](#),33:20-34:2; **P-976:**[T-153-CONF-ENG-ET](#),5:6-16; **P-41:**[DRC-OTP-2054-5199](#),p.5231,I.22- p.5232, I.10,p.5235,I.18- p.5238,I.11.

recoilless guns, and mortars of various calibres.<sup>2944</sup> These weapons were mostly obtained from Rwanda<sup>2945</sup> or, during the earlier in the conflict, Uganda.<sup>2946</sup> Access to weapons and supplies for UPC soldiers was controlled by the leadership, including NTAGANDA.<sup>2947</sup> NTAGANDA concedes that he had a role in the distribution of weapons.<sup>2948</sup>

939. In what constituted a system to support war efforts, sanctioned by both LUBANGA and NTAGANDA,<sup>2949</sup> the UPC employed a civilian levy to assist its soldiers in operations such as the First and Second Attacks. The levy was specifically assembled for each assault,<sup>2950</sup> either voluntarily or by compulsion,<sup>2951</sup> and UPC commanders were expected to ensure that this occurred.<sup>2952</sup> Civilians carried arms and ammunition for soldiers, assisted in house-to-house searches to find and kill survivors of the attack, buried the dead, and assisted in pillaging.<sup>2953</sup> Hema civilians who participated in successful operations would receive a share of

<sup>2944</sup> **P-17:**[T-58-CONF-ENG-CT](#),24:1-17,32:9-33:10,34:14-36:5,59:15-60:9,62:7-20;**T-59-CONF-ENG-CT**,63:12-20,65:17-25;**T-61-CONF-ENG-ET**,24:1-19; **P-758:**[T-161-CONF-ENG-ET](#),36:1-11,40:21-41:4; **P-16:**[DRC-OTP-0126-0422-R03](#),p.0455,paras.194-195; **P-768:**[T-33-CONF-ENG-CT](#),34:22-35:10; [T-34-CONF-ENG-CT](#),6:16-20; [T-34-CONF-ENG-CT](#),11:23-14:22 (referring to [DRC-OTP-2058-0669-R02](#), [DRC-OTP-2058-0671-R02](#), [DRC-OTP-2058-0673-R02](#)).

<sup>2945</sup> **P-963:**[T-82-CONF-ENG-ET](#),47:2-20; **P-12:**[DRC-OTP-0105-0085](#),pp.0104-0107,paras.110-122; [DRC-OTP-2054-0073](#),p.0116,ll.9-25; **P-16:**[DRC-OTP-0126-0422-R03](#),p.0446,para.130,pp.0455-0457,paras.194,197,201; **P-55:**[T-70-CONF-ENG-CT](#),55:22-56:4;**T-71-CONF-ENG-CT**,7:5-13,8:16-9:17; [DRC-OTP-0074-0628](#),p.0662; **P-768:**[T-34-CONF-ENG-CT](#),7:19-8:18,13:14-22; **P-901:**[T-28-CONF-ENG-CT](#),4:14-6:1,21:3-14.

<sup>2946</sup> **P-12:**[DRC-OTP-0105-0085](#),pp.0104-0105,para.110;[DRC-OTP-2054-0073](#),p.0116,ll.20-23; **P-16:**[DRC-OTP-0126-0422-R03](#),p.0456,para.196; **P-55:**[T-71-CONF-ENG-CT](#),7:5-13; **D-38:**[T-249-CONF-ENG-CT](#),42:1-2.

<sup>2947</sup> *E.g.* **D-300:**[T-214-CONF-ENG-ET](#),44:6-24; **P-16:**[DRC-OTP-0126-0422-R03](#),pp.0453-0454,para.181; **P-907:**[T-89-CONF-ENG-CT](#),22:16-23:19; **P-901:**[T-28-CONF-ENG-CT](#),54:3-55:6; **P-768:**[T-33-CONF-ENG-CT](#),41:21-42:12.

<sup>2948</sup> **D-300:**[T-214-CONF-ENG-ET](#),44:6-24.

<sup>2949</sup> **P-55:**[T-71-CONF-ENG-CT](#),33:15-34:2. In the First Attack, NTAGANDA armed civilians and included them in his instruction to “*eliminate all the Lendu*”: **P-768:**[T-33-CONF-ENG-CT](#),34:18-35:5,41:21-42:21; [T-34-CONF-ENG-CT](#),16:3-10,[T-33-CONF-ENG-CT](#),53:3-54:13.

<sup>2950</sup> **P-768:**[T-33-CONF-ENG-CT](#),34:18-35:5,41:21-42:14; **P-55:**[T-71-CONF-ENG-CT](#),46:13-47:24,48:10-50:6; **P-907:**[T-90-CONF-ENG-CT](#),54:3-22,56:5-17; **P-963:**[T-78-CONF-ENG-ET](#),86:1-12; **P-190:**[T-97-CONF-ENG-CT](#),19:5-20:3.

<sup>2951</sup> **P-963:**[T-78-CONF-ENG-ET](#),86:1-12; **P-190:**[T-97-CONF-ENG-CT](#),19:5-20:3; **P-17:**[T-59-CONF-ENG-CT](#),7:19-10:13,11:20-12:15.

<sup>2952</sup> **P-55:**[T-71-CONF-ENG-CT](#),47:11-25; **P-963:**[T-78-CONF-ENG-ET](#),86:1-12; **P-17:**[T-59-CONF-ENG-CT](#),7:19-10:13,11:20-13:6; **P-907:**[T-90-CONF-ENG-CT](#),54:3-22,56:5-17.

<sup>2953</sup> **P-17:**[T-58-CONF-ENG-CT](#),77:15-80:3,[T-59-CONF-ENG-CT](#),7:19-10:13,11:20-12:15,[T-62-CONF-ENG-ET](#),61:20-23; **P-963:**[T-78-CONF-ENG-ET](#),85:17-86:12; **P-55:**[T-70-CONF-ENG-CT](#),95:17-96:11;[T-71-CONF-ENG-CT](#),46:13-47:24,48:10-50:6; **P-190:**[T-97-CONF-ENG-CT](#),19:5-20:3; **P-317:**[T-191-CONF-ENG-ET](#),51:8-13.

the booty.<sup>2954</sup>

*iv. The UPC leadership, including NTAGANDA, ensured almost automatic compliance with their orders*

940. The UPC leadership ensured almost automatic compliance with their orders by the use of harsh discipline, the indoctrination of recruits, the large number of soldiers at their disposal, and the active recruitment policy by which these numbers were maintained. No fighter within the UPC could effectively resist the co-perpetrators' criminal intentions.

941. Although there was no formal disciplinary system (in the sense of a military justice system),<sup>2955</sup> harsh punishment was inflicted on UPC soldiers to maintain obedience to the UPC leadership. UPC soldiers could be disciplined for offences such as desertion loss of a weapon, and for refusing to execute orders.<sup>2956</sup> Wasting bullets could be punished with incarceration.<sup>2957</sup> Desertion risked execution.<sup>2958</sup> NTAGANDA concedes that he had the power to issue orders to discipline and intervened himself to discipline deserters.<sup>2959</sup> He had various means of communication,<sup>2960</sup> which enabled him to issue orders quickly, and for his subordinates to comply immediately. Corporal punishment was brutal.<sup>2961</sup> The

<sup>2954</sup> [P-963:T-78-CONF-ENG-ET](#),86:1-12; [P-17:T-58-CONF-ENG-CT](#),79:16-81:7.

<sup>2955</sup> *E.g.* [P-190:T-97-CONF-ENG-CT](#),55:7-56:3; [P-16:DRC-OTP-2054-1447](#),p.1490,l.10- p.1492,l.3.

<sup>2956</sup> *E.g.* [P-17:T-58-CONF-ENG-CT](#),63:15-64:14; [P-10:T-46-CONF-ENG-ET](#),40:4-14,[T-48-CONF-ENG-CT](#),20:17-22; [P-758:T-161-CONF-ENG-ET](#),18:9-20:12; [P-963:T-80-CONF-ENG-ET](#),27:6-9;[T-79-CONF-ENG-ET](#),42:8-14; [P-16:DRC-OTP-0126-0422-R03](#),p.0432,para.55; [P-290:T-67-CONF-ENG-CT](#),20:1-9 (discussing [DRC-OTP-0017-0033](#),p.0058 (First) (transl.[DRC-OTP-2102-3854](#),p.3880) in which an undisciplined soldier who fired three bullets is reported to senior leadership including NTAGANDA);[T-66-CONF-ENG-CT](#),49:10-50:13 (discussing [DRC-OTP-0017-0033](#),p.0176(Third) (transl.[DRC-OTP-2102-3854](#),p.3998) in which NTAGANDA states that no commander can refuse the order of a superior).

<sup>2957</sup> *E.g.* [DRC-OTP-0018-0170](#),p.0170(transl.[DRC-OTP-0173-0517](#),p.0518).

<sup>2958</sup> *E.g.* [D-300:T-227-CONF-ENG-CT](#),49:2-6,55:19-23; [DRC-OTP-0109-0136](#); [P-907:T-89-CONF-ENG-CT](#),28:18-29:2;[T-90-CONF-ENG-CT](#),77:3-78:19; [P-10:T-46-CONF-ENG-ET](#),39:15-40:1; [P-769:T-121-CONF-ENG-CT](#),10:7-11:19.

<sup>2959</sup> [D-300:T-227-CONF-ENG-CT](#),80:20-83:5.

<sup>2960</sup> [D-300:T-226-ENG-CT](#),21:10-22:15.

<sup>2961</sup> [DRC-OTP-0109-0136](#); [P-769:T-121-CONF-ENG-CT](#),10:7-11:19; [P-16:DRC-OTP-0126-0422-R03](#),p.0432,para.55; [P-16:DRC-OTP-2054-1447](#),p.1490,l.10-p.1492,l.3; [P-10:T-46-CONF-ENG-ET](#),40:4-14;[T-48-CONF-ENG-CT](#),13:18-14:4,20:17-22; [P-758:T-161-CONF-ENG-ET](#),18:9-20:12; [P-963:T-79-CONF-ENG-ET](#),42:8-14;[T-80-CONF-ENG-ET](#),26:17-27:16; [P-907:T-90-CONF-ENG-CT](#),27:6-9,76:9-78:19; [P-758:T-161-CONF-ENG-ET](#),18:9-20:12.

slightest so-called ‘infraction’ was punished, such as failing to march properly.<sup>2962</sup>

942. Despite harsh internal military discipline, crimes against Lendu civilians were not punishable offences.<sup>2963</sup> Moreover, offences against other civilians were rarely punished, or were only punished when the UPC had a link to the victim.<sup>2964</sup>

943. Children under the age of 15 recruited into the UPC were subject to the same training and punishment as adults.<sup>2965</sup> Child recruits under the age of 15 would have been particularly impressionable, and therefore particularly susceptible to the conditioning effects of this treatment. They accepted the compulsions to obedience and unthinking violence against the Lendu without question.<sup>2966</sup> The use of collective<sup>2967</sup> and individual punishment, at times administered publicly,<sup>2968</sup> only enhanced these effects. Recruits were frequently told that NTAGANDA was an important leader of the UPC.<sup>2969</sup>

944. The UPC launched many attacks, and its leadership could draw on a numerous supply of armed soldiers.<sup>2970</sup> Each brigade contained approximately 1,000-1,500

<sup>2962</sup> [P-10:T-46-CONF-ENG-ET,40:4-14](#); [T-48-CONF-ENG-CT,20:17-22](#); [P-758:T-161-CONF-ENG-ET,18:9-20:12](#); [P-16:DRC-OTP-0126-0422-R03,p.0432,para.55](#); [P-907:T-89-CONF-ENG-CT,15:24-16:7](#); [P-907:T-90-CONF-ENG-CT,76:9-78:19](#).

<sup>2963</sup> *E.g.* [P-963:T-79-CONF-ENG-ET,22:16-19](#); [P-907:T-90-CONF-ENG-CT,51:19-23](#); [P-768:T-34-CONF-ENG-CT,16:11-15](#); [P-10:T-47-CONF-ENG-CT,36,6-8](#); [P-55:T-71-CONF-ENG-CT,56:18-58:7](#); [P-16:DRC-OTP-0126-0422-R03,p.0463,para.235](#); [P-963:T-79-CONF-ENG-ET,22:16-19](#).

<sup>2964</sup> *E.g.* [DRC-OTP-0109-0136](#). NTAGANDA testified that he punished one of his bodyguards for stealing from the Nande community; but admits that the Nande victim of theft was one of his nearby neighbours. [D-300:T-215-ENG-ET,42:9-43:13](#); [T-227-CONF-ENG-CT,47:4-14,83:7-84:3](#); [P-55:T-71-CONF-ENG-CT,56:18-58:7,93:21-94:12](#).

<sup>2965</sup> [P-963:T-80-CONF-ENG-ET,26:17-27:16](#); [P-16:DRC-OTP-0126-0422-R03,pp.0465-0466,paras.253,257](#); [P-768:T-34-CONF-ENG-CT,50:17-51:10](#); [P-907:T-89-CONF-ENG-CT,28:18-29:2](#); [P-883:T-168-CONF-ENG-ET,15:1-16-8,17:18-18:1,30:19-31:22](#).

<sup>2966</sup> *E.g.* [P-190:T-97-CONF-ENG-CT,31:23-33:7](#); [P-10:T-46-CONF-ENG-ET,41:1-42:15](#).

<sup>2967</sup> [P-907:T-90-CONF-ENG-CT,76:9-78:19](#).

<sup>2968</sup> [P-10:T-47-CONF-ENG-CT,54:18-55:21](#); [T-48-CONF-ENG-CT,13:18-14:4,20:17-23](#); [P-758:T-161-CONF-ENG-ET,18:9-20:12](#).

<sup>2969</sup> [DRC-OTP-0120-0293,00:08:43-00:12:00\(transl.DRC-OTP-0120-0298,p.0305:144-p.0307:194\)](#); *Also* [P-30:DRC-OTP-2054-2951,p.2974,1.23-p.2999,1.14, especially p.2987,1.5-22,2993,11.12-18](#)(which provides a fuller Court translation of the relevant video excerpts); [P-883:T-168-CONF-ENG-ET,18:2-19:4](#).

<sup>2970</sup> *E.g.* [P-768:T-34-CONF-ENG-CT,54:2-55:10](#); [P-963:T-78-CONF-ENG-ET,39:12-18,64:16-66:6](#); [P-290:T-66-CONF-ENG-CT,10:8-11:8](#); [DRC-OTP-0017-0003,p.0020\(First and Fourth\)](#) (transl.[DRC-OTP-2102-3828,p.3846](#)); [DRC-OTP-0074-0797,p.0851](#); [P-907:T-89-CONF-ENG-CT,19:23-24:18](#); [P-17:T-58-CONF-ENG-CT,36:22-38:11](#).



soldiers.<sup>2971</sup> If a fighter refused an order, they were readily replaced. The active recruitment policy, and the targeting of children for recruitment,<sup>2972</sup> ensured that there were always soldiers who would reliably execute the co-perpetrators' will.

*v. NTAGANDA's essential contribution to the realisation of the common plan resulted in the crimes charged*

945. Each of the co-perpetrators, including **NTAGANDA**, made coordinated contributions to the realisation of their common plan. **LUBANGA** exercised an overall coordinating role over the UPC's activities and provided political direction. **KAHWA** ensured that the UPC had a solid base in Mandro, participated in recruitment drives, and participated in negotiations for supplies and support with the Rwandan authorities. **KISEMBO** participated in military operations, including the take-over of Bunia, in August 2002 and served as Chief of Staff of the UPC. **BAGONZA**, **TCHALIGONZA** and **KASANGAKI** commanded UPC soldiers in the field and participated in pre-planning operational meetings. Moreover, **KASANGAKI** had an intelligence role, as the Deputy to the G2. **LUBANGA**, **KISEMBO**, and **NTAGANDA** – the key co-perpetrators - worked closely together, and met frequently.<sup>2973</sup>

946. More specifically, **NTAGANDA** contributed to the realisation of the common plan in multiple ways, including by:

- recruiting, training and using children under the age of 15 and other persons as soldiers in the UPC;

<sup>2971</sup> *E.g.* **P-963**:[T-78-CONF-ENG-ET](#),64:16-66:6; **P-907**:[T-90-CONF-ENG-CT](#),10:14-23; **P-17**:[T-58-CONF-ENG-CT](#),36:22-38:11.

<sup>2972</sup> **P-963**:[T-80-CONF-ENG-ET](#),12:9-13:22; **P-55**:[T-71-CONF-ENG-CT](#),63:1-67:18; **P-17**:[T-58-CONF-ENG-CT](#),24:14-27:14; **P-14**:[DRC-OTP-2054-0816](#),p.0827,l.14-p.0834,l.3; **P-768**:[T-34-CONF-ENG-CT](#),48:20-49:23; **P-116**:[T-195-CONF-ENG-ET](#),14:23-15:13; [DRC-OTP-0074-0797](#),p.0851; **P-245**:[T-142-CONF-ENG-ET](#),66:8-67:3.

<sup>2973</sup> *E.g.* **P-41**:[DRC-OTP-2054-5384](#),p.5450, ll.3-24; **P-41**:[DRC-OTP-0147-0002](#),p.0017,para.91; **P-16**:[DRC-OTP-2054-1447](#),p.1530,l.7-p.1532,l.14; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0434,para.65,pp.0439-0441,paras.97-101; **P-10**:[T-47-CONF-ENG-CT](#),22:6-14; **P-55**:[T-70-CONF-ENG-CT](#),65:9-16,[T-72-CONF-ENG-CT](#),4:21-5:5,[T-74-CONF-ENG-CT](#),29:18-30:13; **P-57**:[DRC-OTP-0150-0354](#),p.0370,paras.72-73,pp.0376-0378,paras.100-102. On certain military matters, **NTAGANDA** acted independently of **KISEMBO** and **LUBANGA**: *e.g.* **P-190**:[T-96-CONF-ENG-CT](#),49:25-51:12,54:1-19; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0441,para.103,p.0446,paras.130-131; **P-16**:[DRC-OTP-2054-1447](#),p.1510,ll.3-20.

- obtaining, and distributing weapons and ammunition for the UPC;
- planning, directing, commanding and coordinating UPC attacks, and personally participating in them;
- directing, controlling and facilitating the commission of UPC crimes, and personally engaging in their commission; and
- coordinating and liaising between the co-perpetrators and with others.

947. **NTAGANDA**'s contributions, individually and/or cumulatively, were essential to the success of the common plan and purpose leading to the commission of the crimes charged. By virtue of their essential contributions, the co-perpetrators—including **NTAGANDA**—exercised control over the crimes committed as a consequence of the common plan. **NTAGANDA**'s power to frustrate the commission of crimes if he so wished – which he did not – derives from his control.<sup>2974</sup>

948. **NTAGANDA** was the pre-eminent military figure in the UPC's military organisation.<sup>2975</sup> Matters of military strategy<sup>2976</sup> and military supply were his domain.<sup>2977</sup> He was seen as the UPC's most experienced soldier.<sup>2978</sup> **NTAGANDA** acknowledges that he: "*was a tactician*" and that he "*commanded a very disciplined*

<sup>2974</sup> [Lubanga AJ](#), para.473.

<sup>2975</sup> There is no legal requirement to show this personal dominance over the organisation since it suffices that the co-perpetrators jointly exercise control over the crimes. As a matter of evidence in this case, however, **NTAGANDA**'s authority and influence characterise and distinguish many of his contributions to the common purpose.

<sup>2976</sup> **P-55**:[T-70-CONF-ENG-CT](#),43:7-45:1,75:16-76:9;[T-71-CONF-ENG-CT](#),43:9-19;[T-71-CONF-ENG-CT](#),4:21-5:5; **P-17**:[T-58-CONF-ENG-CT](#),23:7-15;[T-60-CONF-ENG-ET](#),6:25-7:22; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0434 para.65; **P-315**:[DRC-OTP-2058-0990](#),p.1013,para.128; **P-907**:[T-89-CONF-ENG-CT](#),21:3-13.

<sup>2977</sup> **P-55**:[T-70-CONF-ENG-CT](#),43:3-45:1,40:4-22,43:3-16,43:23-25,44:12-21,45:12-23,48:25-49:10,50:9-51:13,56:13-57:16;[T-71-CONF-ENG-CT](#),5:24-7:4;[T-74-CONF-ENG-CT](#),85:16-86:15; **P-16**:[DRC-OTP-0126-0422-R03](#),pp.0455-0457,paras.194-206; **P-768**:[T-34-CONF-ENG-CT](#),6:12-7:8,[T-33-CONF-ENG-CT](#),29:16-30:10; [T-34-CONF-ENG-CT](#),10:15-14:1; [DRC-OTP-2058-0669-R02](#); [DRC-OTP-2058-0671-R02](#); [DRC-OTP-2058-0673-R02](#).

<sup>2978</sup> E.g. **D-300**:[T-225-CONF-ENG-CT](#),49:7-12,46:1-49:12; **P-315**:[DRC-OTP-2058-0990](#),p.1013,para.128; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0434,para.63; **P-901**:[T-31-CONF-ENG-CT](#),8:4-25; **P-190**:[T-96-CONF-ENG-CT](#),49:5-51:12,53:12-21,54:1-25;[T-97-CONF-ENG-CT](#),18:16-19:3.



army”.<sup>2979</sup> His dealings with Rwanda gave him yet further influence.<sup>2980</sup> Although KISEMBO technically held a superior position (Chief of Staff), in practice NTAGANDA acted with autonomy and was known to be the “*real chief*” and decision-maker of the FPLC. NTAGANDA could decide on operations on his own, and conversely, no operations could occur without his involvement.<sup>2981</sup> LUBANGA appointed KISEMBO as Chief of Staff over NTAGANDA, because he was local; optically, it was not viewed as wise to appoint a Rwandan for the position.<sup>2982</sup> But NTAGANDA retained authority over operations and organisation and he was “*responsible for everything*” – from training and deployments, to weapons and operations.<sup>2983</sup> He was the true operational brain and “*tactician*”<sup>2984</sup> of this army: the “*most present and influential*” commander in operations.<sup>2985</sup> Nicknamed the “*strong man*” of the FPLC, NTAGANDA could not be disobeyed or opposed, not even by the Chief of Staff or the UPC President.<sup>2986</sup> NTAGANDA’s continuing status within the UPC throughout the armed conflict is demonstrated by his appointment as Chief of Staff in December 2003,<sup>2987</sup> as well as his eventual integration into the FARDC.<sup>2988</sup>

*vi. NTAGANDA recruited, trained, and used children and other persons to participate in hostilities as members of the UPC*

949. NTAGANDA oversaw and was involved in all aspects of the UPC’s

<sup>2979</sup> [D-300:T-225-CONF-ENG-CT](#),49:7-12.

<sup>2980</sup> See Section VIII.A.1.b.i. (Weapons and ammunition came from Rwanda).

<sup>2981</sup> [P-14:T-136-CONF-ENG-ET](#),33:13-34:1; [P-16:DRC-OTP-0126-0422-R03](#),pp.0453-0454,para.181; [P-907:T-89-CONF-ENG-CT](#),14:25-15:13; [P-907:T-89-CONF-ENG-CT](#),16:23-18:8,20:23-22:2,22:16-23:19,78:8-79:4;[T-90-CONF-ENG-CT](#),4:5-9,5:5-23; [P-901:T-28-CONF-ENG-CT](#),9:11-10:14,54:3-55:6,60:6-24,62:17-64:4;[T-29-CONF-ENG-CT](#),13:6-22;[T-31-CONF-ENG-CT](#),8:4-25; Also [P-315:DRC-OTP-2058-0990](#),pp.1011-1013,paras.127-128; [P-55:T-70-CONF-ENG-CT](#),75:16-76:9; [P-14:T-136-CONF-ENG-ET](#),32:7-34:1; [P-16:DRC-OTP-0126-0422-R03](#),p.0434,para.64,p.0457,para.201; [P-190:T-96-CONF-ENG-CT](#),49:5-51:12,53:12-54:25,91:24-92:2;[T-97-CONF-ENG-CT](#),18:16-19:3,52:7-19.

<sup>2982</sup> [P-16:DRC-OTP-0126-0422-R03](#),p.0434,para.63; [P-12:DRC-OTP-2054-0073](#),p.0118, ll.5-8; [P-55:T-71-CONF-ENG-CT](#),4:13-5:1; [P-907:T-90-CONF-ENG-CT](#),70:18-71:4; [P-190:T-96-CONF-ENG-CT](#),49:25-51:1.

<sup>2983</sup> [P-768:T-34-CONF-ENG-CT](#),51:24-52:15; [P-907:T-89-CONF-ENG-CT](#),21:3-13.

<sup>2984</sup> [D-300:T-225-CONF-ENG-CT](#),49:7-12.

<sup>2985</sup> [P-768:T-33-CONF-ENG-CT](#),29:4-15. Also [P-16:DRC-OTP-2054-1447](#),p.1454,ll.17-20; [P-907:T-89-CONF-ENG-CT](#),21:3-13.

<sup>2986</sup> [P-14:T-136-CONF-ENG-ET](#),33:13-34:1,36:6-9; [P-190:T-96-CONF-ENG-CT](#),49:5-51:12,53:12-54:25;[T-97-CONF-ENG-CT](#),18:16-19:3,52:7-19; [P-963:T-78-CONF-ENG-ET](#),67:9-19.

<sup>2987</sup> [DRC-OTP-0016-0133](#),pp0133-0134.

<sup>2988</sup> [D-300:T-223-CONF-ENG-ET](#),7:10-11.

recruitment and use of children under the age of 15. Without the reliable stream of recruits which the system under **NTAGANDA** provided, many of whom were deployed to hostilities almost immediately, the UPC could not have functioned as it did.

950. **NTAGANDA** personally recruited children under the age of 15 into the UPC.

This included his personal recruitment of children from Mudzipela primary school in 2002, and his urging of the Hema civilian population to send their children for military training. He also used a significant number of children under the age of 15 in his personal escort and to participate actively in hostilities,<sup>2989</sup> thus facilitating and permitting this conduct among other UPC leaders, as well as enhancing the UPC's combat power.

951. **NTAGANDA** oversaw and administered the network of training camps which

received, trained and indoctrinated the children who were recruited into the UPC. **LUBANGA** acknowledged **NTAGANDA**'s significant role with recruits, describing him as the "Chief of Staff" and "High commander of the FPLC soldiers".<sup>2990</sup> **NTAGANDA** had overall responsibility over all of the UPC's training and training camps,<sup>2991</sup> and helped to establish and controlled the UPC's first and most important training camp at Mandro.<sup>2992</sup> **NTAGANDA** regularly inspected the training centres and camps,<sup>2993</sup> including Mandro,<sup>2994</sup> Bule,<sup>2995</sup> and

<sup>2989</sup> See Section VII.C.4.e.

<sup>2990</sup> [DRC-OTP-0120-0293](#),00:08:43-00:12:00(transl.[DRC-OTP-0120-0298](#),p.0305:144-p.0307:194); Also **P-30**:[DRC-OTP-2054-2951](#),p.2974:23-p.2999:14,p.2987:5-22,2993:12-18 (which provides a fuller Court translation of the relevant video excerpts).

<sup>2991</sup> E.g. **P-768**:[T-34-CONF-ENG-CT](#),48:20-52:18; **P-55**:[T-71-CONF-ENG-CT](#),68:25-70:21,75:20-77:6; **P-17**:[T-58-CONF-ENG-CT](#),36:14-17;[T-60-CONF-ENG-ET](#),36:7-37:18; **P-883**:[T-168-CONF-ENG-ET](#),15:12-19:24; **P-14**:[T-136-CONF-ENG-ET](#),32:7-34:1.

<sup>2992</sup> **D-300**:[T-213-CONF-ENG-CT](#),59:6-24; **P-901**:[T-27-CONF-ENG-CT](#),60:15-61:11;[T-28-CONF-ENG-CT](#),7:24-8:14,26:7-18; **P-768**:[T-34-CONF-ENG-CT](#),48:20-52:18; **P-898**:[T-153-CONF-ENG-ET](#),55:23-57:10;[T-154-CONF-ENG-ET](#),7:22-8:11; **P-16**:[DRC-OTP-0126-0422-R03](#),p.0427,para.34; **P-16**:[DRC-OTP-2054-1447](#),p.1460,l.12-1461,l.25,p.1463,ll.15-20; **P-190**:[T-96-CONF-ENG-CT](#),36:1-18; **P-911**:[T-157-CONF-ENG-ET](#),20:3-21:8; **P-14**:[T-137-CONF-ENG-ET](#),88:1-89:23.

<sup>2993</sup> **P-16**:[DRC-OTP-0126-0422-R03](#),p.0465,paras.251-252; **P-16**:[DRC-OTP-2054-1447](#),p.1466,l.7-p.1467,l.20; **P-963**:[T-78-CONF-ENG-ET](#),38:8-39:1; **P-55**:[T-71-CONF-ENG-CT](#),68:25-70:21,75:20-77:6; **P-768**:[T-34-CONF-ENG-CT](#),48:20-49:21,50:17-52:18. **NTAGANDA** also frequently attended the UPC headquarters in Bunia, where child recruits were posted and trained: **P-14**:[T-136-CONF-ENG-ET](#),34:13-24,38:15-39:13.

Rwampara.<sup>2996</sup> He verified the recruits' progress,<sup>2997</sup> helped to instil key UPC messages and lessons about the UPC political ideology,<sup>2998</sup> and provided weapons, ammunition and uniforms.<sup>2999</sup> His presence and approval marked the completion of recruits' training and their new status as UPC soldiers.

952. **NTAGANDA** set the pattern for the crude but effective indoctrination of UPC recruits. UPC recruits were taught to kill indiscriminately,<sup>3000</sup> and to view Lendu as their enemy. **NTAGANDA** himself gave such instructions during training,<sup>3001</sup> consistently repeated and reinforced by his subordinates. Recruits were taught and required to sing battle songs,<sup>3002</sup> calling for the elimination of the Lendu and to "*catch hold of the enemy with your hands*".<sup>3003</sup> These instructions were repeated before military operations.<sup>3004</sup> **NTAGANDA** knew and encouraged these

<sup>2994</sup> E.g. **P-16:DRC-OTP-2054-1447**,p.1457,ll.4-24,p.1466,l.7- p.1467,l.14; **P-911:T-157-CONF-ENG-ET**,16:13-21,20:3-22:16.

<sup>2995</sup> **P-883:T-168-CONF-ENG-ET**,15:12-19:24; **P-963:T-80-CONF-ENG-ET**,36:25-37:13.

<sup>2996</sup> E.g. **P-31:DRC-OTP-2054-4127**,p.4190,l.13-p.4191,l.24; **DRC-OTP-0120-0293**,00:08:43-00:12:00(transl.**DRC-OTP-0120-0298**,p.0305:144-p.0307:194); Also **P-30:DRC-OTP-2054-2951**,p.2974:23-p.2999:14, especially p.2987,15-22,2993,ll.12-18(which provides a fuller Court translation of the relevant video excerpts).

<sup>2997</sup> E.g. **P-14:T-136-CONF-ENG-ET**,32:7-34:1.

<sup>2998</sup> E.g. **D-300:T-211-CONF-ENG-ET**,51:14-20;**T-213-CONF-ENG-CT**,64:11-20;**T-214-CONF-ENG-ET**,4:3-5:5;**T-215-ENG-ET**,58:22-59:9;**T-215-ENG-ET**,86:15-20;**T-216-ENG-CT**,17:16-25;**T-224-CONF-ENG-ET**,70:2-5;**T-230-ENG-CT**,48:1-8,60:9-15;**T-232-CONF-ENG-CT**,36:22-39:22; **NTAGANDA** also addressed the troops and gave morale boosting speeches. See e.g. **D-300:T-220-CONF-ENG-ET**,33:11-34:22; **DRC-D18-0001-0463**(00:00:00-00:02:45)(trans.**DRC-D18-0001-5576**,5577:2-5578:30; transl.DRC-D18-0001-5587,5589:1-5590:39); **DRC-OTP-0120-0293**,00:09:55-00:11:31(transl.**DRC-OTP-0120-0298**,pp.0306-0307). Also **P-10:T-46-CONF-ENG-ET**,34:2-13;**T-47-CONF-ENG-CT**,52:20-55:21; **P-55:T-71-CONF-ENG-CT**,68:25-70:21,75:20-77:6. **NTAGANDA** addressed the troops at other times. Also e.g. **P-768:T-33-CONF-ENG-CT**,52:9-54:17,52:9-16,53:3-19,54:8-17; **P-10:T-47-CONF-ENG-CT**,21:12-22:5; **P-55:T-70-CONF-ENG-CT**,51:17-55:19. Also **P-769:T-120-CONF-ENG-ET**,13:11-22:8.

<sup>2999</sup> E.g. **P-55:T-71-CONF-ENG-CT**,80:5-11; **P-10:T-47-CONF-ENG-CT**,4:23-5:4; **P-758:T-161-CONF-ENG-ET**,30:24-31:7; **P-888:T-105-CONF-ENG-CT**,23:24-24:14,31:2-23.

<sup>3000</sup> **P-758:T-161-CONF-ENG-ET**,39:9-24,47:2-13;

<sup>3001</sup> E.g. **P-888:T-105-CONF-ENG-CT**,37:8-22; **P-190:T-97-CONF-ENG-CT**,32:15-33:7.

<sup>3002</sup> During one visit to Rwampara, **NTAGANDA** gave the troops a morale boosting song. In the presence of LUBANGA and **NTAGANDA** the recruits were led to sing a song about how even if the enemy wore their "*gris gris*" (fetishes) this would not protect them as the UPC would win. See **D-300:T-220-CONF-ENG-ET**,33:11-34:22; **DRC-D18-0001-0463**(00:00:00-00:02:45)(trans.**DRC-D18-0001-5576**,p.5577:2-p.5578:30;transl.DRC-D18-0001-5587,5589:1-5590:39);(Lendu were known to wear "*gris gris*" (fetishes) in battle):**P-768:T-33-CONF-ENG-CT**,47:22-48:19; **D-17:T-254-CONF-ENG-ET**,23:11-19.

<sup>3003</sup> **P-10:T-47-CONF-ENG-CT**,41:3-42:3,43:6-44:7; **P-888:T-105-CONF-ENG-CT**,37:8-22.

<sup>3004</sup> **P-10:T-47-CONF-ENG-CT**,41:3-42:3,43:6-44:7; **P-963:T-78-CONF-ENG-ET**,26:2-7,72:25-73:9; **P-768:T-33-CONF-ENG-CT**,54:7-13[**T-33-CONF-FRA-ET**,53:10-16],54:8-55:7;**T-33-CONF-ENG-CT**,37:2-16,41:8-17; **T-34-CONF-ENG-CT**,15:6-16:15; **P-10:T-47-CONF-ENG-CT**,10:6-18; **P-758:T-161-CONF-ENG-ET**,39:9-24,47:2-13; **P-888:T-105-CONF-ENG-CT**,50:16-52:18,54:19-58:14; **P-41:DRC-OTP-0147-0002**,p.0017,para.92; **P-888:T-105-CONF-ENG-CT**,37:8-22.

songs,<sup>3005</sup> some of which he featured in.<sup>3006</sup> This indoctrination helped to ensure the widespread and systematic commission of crimes against the UPC's enemies.

953. **NTAGANDA** oversaw and set the tone for the brutal discipline of UPC recruits, which enabled and characterised the whole training process. He ordered that a recruit be killed after losing a weapon.<sup>3007</sup> The use of sexual violence prior to and during recruits' training,<sup>3008</sup> also furthered the brutality, as did punishments of the victims of sexual violence.<sup>3009</sup> After training was done, he warned graduates that nobody could desert from the UPC.<sup>3010</sup>

954. Once they had completed their training, **NTAGANDA** decided on the deployment of new UPC recruits (including children under the age of 15).<sup>3011</sup> This not only ensured the continued combat power of the UPC but also led directly to the use by **NTAGANDA**'s subordinates of children to participate actively in hostilities.

*vii. NTAGANDA directed, commanded, coordinated, and participated in UPC attacks*

955. As one of the most experienced soldiers in the UPC, **NTAGANDA** played an essential role in ensuring that the UPC functioned as an effective fighting force. Even without his further conduct to ensure that UPC soldiers committed crimes (addressed separately below), it was his participation which enabled the co-perpetrators to mount the attacks that they did.

<sup>3005</sup> E.g. **P-10** [T-47-CONF-ENG-CT](#),41:3-44:3; **P-16**:[DRC-OTP-0126-0422-R03](#),pp.0432-0433,paras.56-58; [DRC-OTP-2054-1447](#),p.1465, 1.24-p.1466, 1.6. See e.g. **D-300**:[T-220-CONF-ENG-ET](#),33:11-34:22; **DRC-D18-0001-0463**(00:00:00-00:02:45)(trans.**DRC-D18-0001-5576**,p.5577:2-p.5578:30;transl.DRC-D18-0001-5587,5589:1-5590:39).

<sup>3006</sup> E.g. **D-300**:[T-213-CONF-ENG-CT](#),40:12-41:1; **P-901**:[T-31-CONF-ENG-CT](#),8:4-25.

<sup>3007</sup> E.g. **P-888**:[T-105-CONF-ENG-CT](#),16:6-17:5,22:10-23:6,33:19-34:17,40:10-42:5.

<sup>3008</sup> E.g. **P-963**:[T-80-CONF-ENG-ET](#),27:23-29:10.

<sup>3009</sup> E.g. **P-963**:[T-80-CONF-ENG-ET](#),27:23-29:10.

<sup>3010</sup> **P-907**:[T-89-CONF-ENG-CT](#),17:1-18:8.

<sup>3011</sup> E.g. **P-55**:[T-71-CONF-ENG-CT](#),82:13-24; **P-907**:[T-89-CONF-ENG-CT](#),17:1-18:8.

956. NTAGANDA was in charge of UPC operational planning and organisation<sup>3012</sup> and deployments, and directly participated in combat. He was seen as a battle winner.<sup>3013</sup> He frequently travelled to inspect his recruits and his soldiers, to check on their progress and congratulate them “for their work”.<sup>3014</sup> “There was no operation that could be planned without Ntaganda. And even when Kisembo planned an operation, Ntaganda had to be aware. ...Wherever he was positioned, Ntaganda had to have information through Motorola or Manpack....He had a communication equipment, and he was able to follow operations on a regular basis.”<sup>3015</sup>

957. NTAGANDA facilitated and directed the provision of military supplies and materiel to UPC soldiers.<sup>3016</sup> NTAGANDA was involved in obtaining arms shipments,<sup>3017</sup> including from Rwanda,<sup>3018</sup> and was seen as crucial to the UPC for that reason alone.<sup>3019</sup> He exercised personal control over access to some caches of weapons, including one stored at his own residence at Bunia, at Mandro and in

<sup>3012</sup> E.g. **P-16:DRC-OTP-0126-0422-R03**,p.0434 para.65;**DRC-OTP-2054-1447**,p.1513,II.1-10; **P-55:T-70-CONF-ENG-CT**,43:7-45:1,52:11-53:23,55:11-19,75:16-76:9;**T-71-CONF-ENG-CT**,4:21-5:5,5:24-7:4,43:9-19; **P-901:T-28-CONF-ENG-CT**,9:11-10:14,54:3-55:6,60:6-24,62:17-64:4;**T-29-CONF-ENG-CT**,13:6-22;**T-31-CONF-ENG-CT**,8:4-25; **P-768:T-33-CONF-ENG-CT**,29:4-15; **T-34-CONF-ENG-CT**,51:24-52:15; **P-907:T-90-CONF-ENG-CT**,3:19-4:9; **P-963:T-78-CONF-ENG-ET**,67:9-19; **P-190:T-96-CONF-ENG-CT**,49:5-51:12,53:12-21,54:1-25;**T-97-CONF-ENG-CT**,18:16-19:3; **P-315:DRC-OTP-2058-0990**,pp.1011-1013,paras.127-128; **P-14:T-136-CONF-ENG-ET**,32:7-34:1; E.g. **DRC-OTP-0017-0033**,p.0171(First),p.0176(All messages),p.0213(Second) (transl.**DRC-OTP-2102-3854**,pp.3993,3998,4035).

<sup>3013</sup> **D-300:T-212-CONF-ENG-ET**,45:2-8; **P-769:T-120-CONF-ENG-ET**,10:23-23:6.

<sup>3014</sup> **P-768:T-33-CONF-ENG-CT**,52:9-54:17,52:9-16,53:3-19,54:8-17. Also **P-10:T-47-CONF-ENG-CT**,21:12-22:5;**T-46-CONF-ENG-ET**,34:2-13;**T-47-CONF-ENG-CT**,52:20-55:21; **P-55:T-70-CONF-ENG-CT**,51:17-55:19,56:13-57:16;**T-71-CONF-ENG-CT**,68:25-70:21,75:20-77:6.

<sup>3015</sup> **P-55:T-71-CONF-ENG-CT**,43:9-19; **D-300:T-213-CONF-ENG-CT**,10:21-12:1;**T-234-CONF-ENG-CT**,56:23-57:7. Also e.g. **P-10:T-47-CONF-ENG-CT**,12:10-18; **P-768:T-33-CONF-ENG-CT**,32:24-33:18,37:17-24; **P-963:T-78-CONF-ENG-ET**,77:19-24;**T-79-CONF-ENG-ET**,11:10-12:8.

<sup>3016</sup> E.g. **P-55:T-70-CONF-ENG-CT**,43:3-45:1,40:4-22,43:3-16,43:23-25,44:1-5,44:12-21,45:12-23,48:25-49:10,50:9-51:13,56:13-57:16;**T-71-CONF-ENG-CT**,5:24-7:4;**T-74-CONF-ENG-CT**,85:16-86:15; **P-768:T-33-CONF-ENG-CT**,29:16-30:10,34:22-36:1; **T-34-CONF-ENG-CT**,6:12-7:8; **T-34-CONF-ENG-CT**,10:15-14:1;**DRC-OTP-2058-0669-R02**;**DRC-OTP-2058-0671-R02**;**DRC-OTP-2058-0673-R02**; **P-901:T-28-CONF-ENG-CT**,53:18-54:2,102:14-20; **P-17:T-58-CONF-ENG-CT**,62:7-17,63:15-64:14.

<sup>3017</sup> **P-55:T-70-CONF-ENG-CT**,55:22-56:4;**T-71-CONF-ENG-CT**,7:5-13,8:16-9:17; **DRC-OTP-0074-0628**,p.0662; **P-768:T-34-CONF-ENG-CT**,7:19-8:18,13:14-22; **P-290:T-66-CONF-ENG-CT**,65:1-3,29:19-22 (discussing **DRC-OTP-0017-0033**,p.0211(First) (transl.**DRC-OTP-2102-3854**,p.4033); **P-16:DRC-OTP-0126-0422-R03**,p.0446,para.130,p.0455,para.194; **P-16:DRC-OTP-2054-1447**,p.1489,1.25- p.1490,1.5.

<sup>3018</sup> **P-55:T-70-CONF-ENG-CT**,55:22-56:4;**T-71-CONF-ENG-CT**,7:5-13,8:16-9:17; **P-12:T-164-CONF-ENG-ET**,22:5-6,31:1-4,92:5-25;**DRC-OTP-0105-0085**,0104:110-0107:122;**DRC-OTP-2054-0073**,0116:9-25. But also **P-16:DRC-OTP-0126-0422-R03**,0446:130,0455-0457:194,197,201;**DRC-OTP-0074-0628**,p.0662; **P-768:T-34-CONF-ENG-CT**,7:19-8:18,13:14-22; **P-901:T-28-CONF-ENG-CT**,4:14-6:1,21:3-14; **P-963:T-78-CONF-ENG-ET**,10:1-8,69:24-70:6,70:18-72:20.

<sup>3019</sup> **P-16:DRC-OTP-0126-0422-R03**,p.0455:194-0458:204.

Mongbwalu.<sup>3020</sup> On occasion, he collected weapons and distributed them himself, including for the First Attack.<sup>3021</sup>

958. **NTAGANDA** directly commanded and participated in a number of UPC attacks in the field, including Bunia, Songolo, Zumbe, and Komanda, as well as the First Attack.

959. In preparation for the First Attack, **NTAGANDA**:

- participated in planning meetings to organise the attack;<sup>3022</sup>
- arranged for transportation of arms by aircraft from Bunia to Aru and personally distributed them to UPC soldiers;<sup>3023</sup>
- liaised with UPC subordinates;<sup>3024</sup> and
- briefed UPC subordinates on the battle plan for the First Attack.<sup>3025</sup>

960. During the First Attack, **NTAGANDA**:

- directly commanded the UPC soldiers participating in the operation;<sup>3026</sup>

<sup>3020</sup> **P-17:T-58-CONF-ENG-CT**,32:25-33:10,34:14-35:9,36:1-5;**T-61-CONF-ENG-ET**,11:15-23; **P-55:T-71-CONF-ENG-CT**,8:14-10:10,11:11-12:10; **P-190:T-97-CONF-ENG-CT**,45:4-8; **P-768:T-34-CONF-ENG-CT**,7:9-18,10:1-8,43:19-21,46:14-16 and **DRC-OTP-2058-0251**, at 00:46:23.

<sup>3021</sup> **P-55:T-70-CONF-ENG-CT**,40:4-22,43:3-16,43:23-25,44:12-21,45:12-23,49:7-17,50:20-51:16,51:17-55:19,56:13-57:16;**T-73-CONF-ENG-CT**,89:21-90:4;**T-74-CONF-ENG-CT**,85:16-86:15; **P-768:T-34-CONF-ENG-CT**,6:12-7:8,29:16-30:10; **T-34-CONF-ENG-CT**,10:15-14:1; **DRC-OTP-2058-0669-R02**; **DRC-OTP-2058-0671-R02**; **DRC-OTP-2058-0673-R02**.

<sup>3022</sup> *E.g.* **P-768:T-33-CONF-ENG-CT**,23:11-25:11,28:1-25,35:14-23; **T-34-CONF-ENG-CT**,52:8-15; **P-55:T-70-CONF-ENG-CT**,48:14-49:10; **P-190:T-96-CONF-ENG-CT**,93:4-95:11; **P-907:T-90-CONF-ENG-CT**,3:19-4:9;**T-90-CONF-ENG-CT**,5:5-15,23:10-25,26:20-27:2;**T-92-CONF-ENG-CT**,58:14-23.

<sup>3023</sup> *E.g.* **P-768:T-34-CONF-ENG-CT**,6:12-7:8,29:16-30:10; **T-34-CONF-ENG-CT**,10:15-14:1; **P-55:T-70-CONF-ENG-CT**,40:4-22,43:3-16,43:23-25,44:1-5,44:12-21,45:12-23,49:7-17,50:20-51:16,51:17-55:19,56:13-57:16;**T-71-CONF-ENG-CT**,5:24-7:4;**T-73-CONF-ENG-CT**,89:21-90:4;**T-74-CONF-ENG-CT**,85:16-86:15; **P-17:T-61-CONF-ENG-ET**,23:24-24:19;**T-58-CONF-ENG-CT**,62:7-62:17; **P-901:T-28-CONF-ENG-CT**,53:18-54:2.

<sup>3024</sup> **P-768:T-33-CONF-ENG-CT**,30:9-33:15.

<sup>3025</sup> **P-963:T-78-CONF-ENG-ET**,69:16-73:9; **P-768:T-33-CONF-ENG-CT**,28:1-29:6,31:20-32:23; **P-55:T-70-CONF-ENG-CT**,48:14-49:10,50:9-25.

<sup>3026</sup> *E.g.* **P-901:T-28-CONF-ENG-CT**,40:13-22; **P-898:T-154-CONF-ENG-ET**,15:24-13:5; **P-315:DRC-OTP-2058-0990**,p.1005,paras.88-89,p.1006,para.95,pp.1011-1013,para.127; **P-768:T-33-CONF-ENG-CT**,35:11-36:8,29:4-15,77:19-78:4; **P-963:T-79-CONF-ENG-ET**,11:10-21; **P-55:T-71-CONF-ENG-CT**,18:6-15; **P-16:DRC-OTP-0126-0422-R03**,p.0445,paras.123,128; **P-190:T-96-CONF-ENG-CT**,48:25-49:20; **P-17:T-58-**



- received reports on the operation;<sup>3027</sup>
- directly participated in the fighting;<sup>3028</sup>
- provided operational instructions to UPC soldiers;<sup>3029</sup> and
- liaised with UPC subordinates and others.<sup>3030</sup>

961. **NTAGANDA** played a leading role in planning and coordinating the Second Attack.<sup>3031</sup> It was agreed among the UPC leadership that **NTAGANDA** command the Second Attack and report to KISEMBO and LUBANGA.<sup>3032</sup> To this end, **NTAGANDA**:

- attended planning meetings;<sup>3033</sup>
- provided weapons and ammunition and decided on deployments;<sup>3034</sup>
- maintained contact with UPC soldiers participating in the Second Attack by different forms of communication available including by radio, manpack and Thuraya;<sup>3035</sup>

---

[CONF-ENG-CT](#),65:24-66:1,67:2-10,69:16-74:1970:12-73:7;[T-61-CONF-ENG-ET](#),99:14-100:23; **V-3**:[T-203-CONF-ENG-ET](#),39:23-45:5,48:9-49:3.

<sup>3027</sup> *E.g.* **D-300**:[T-217-CONF-ENG-ET](#),36:16-23,37:6-38:15,37:17-24; **P-768**:[T-33-CONF-ENG-CT](#),29:4-15;[T-33-CONF-ENG-CT](#),33:25-34:2; **P-17**:[T-58-CONF-ENG-CT](#),65:24-66:1,67:1-10; **P-907**:[T-90-CONF-ENG-CT](#),5:11-15; **P-963**:[T-78-CONF-ENG-ET](#),77:19-24;[T-79-CONF-ENG-ET](#),11:10-12:8; **P-10**:[T-47-CONF-ENG-CT](#),12:10-18.

<sup>3028</sup> **P-768**:[T-33-CONF-ENG-CT](#),33:19-36:3,37:17-20;[T-33-CONF-ENG-CT](#),37:17-20; **P-17**:[T-58-CONF-ENG-CT](#),62:7-12,63:15-64:14,69:16-74:19; **P-963**:[T-78-CONF-ENG-ET](#),77:1-12;[T-81-CONF-ENG-ET](#),90:18-25; **P-55**:[T-70-CONF-ENG-CT](#),95:1-98:19;[T-74-CONF-ENG-CT](#),91:3-92:23; **P-2**:[T-170-CONF-ENG-ET](#),61:2-67:1.

<sup>3029</sup> **P-768**:[T-33-CONF-ENG-CT](#),35:11-37:25;[T-33-CONF-ENG-CT](#),64:21-65:10,32:24-33:18,37:17-24; **P-17**:[T-58-CONF-ENG-CT](#),69:16-74:19; **P-963**:[T-78-CONF-ENG-ET](#),77:1-12,81:23-84:6;[T-79-CONF-ENG-ET](#),11:19-12:8.

<sup>3030</sup> **P-768**:[T-33-CONF-ENG-CT](#),37:17-24; **P-17**:[T-58-CONF-ENG-CT](#),65:24-66:1,67:1-10; **P-10**:[T-47-CONF-ENG-CT](#),12:10-18; **P-963**:[T-78-CONF-ENG-ET](#),77:19-24;[T-79-CONF-ENG-ET](#),11:9-12:8.

<sup>3031</sup> *E.g.* **P-55**:[T-71-CONF-ENG-CT](#),43:9-44:8;[T-72-CONF-ENG-CT](#),4:13- 5:10;[T-72-CONF-ENG-CT](#),6:16-6:21; **P-290**:[T-66-CONF-ENG-CT](#),51:15-20,54:8-13 (referring to [DRC-OTP-0017-0033](#),p.0176(All messages) (transl.[DRC-OTP-2102-3854](#),p.3998). *Also* [DRC-OTP-0017-0033](#),p.0171(First) (transl.[DRC-OTP-2102-3854](#),p.3993); **P-901**:[T-29-CONF-ENG-CT](#),13:6-13.

<sup>3032</sup> *E.g.* [DRC-OTP-0017-0033](#),p.0176(Fourth) (transl.[DRC-OTP-2102-3854](#),p.3998); **P-55**:[T-71-CONF-ENG-CT](#),43:9-44:8; **P-17**:[T-60-CONF-ENG-ET](#),7:1-22; **P-190**:[T-97-CONF-ENG-CT](#),22:1-22:22.

<sup>3033</sup> *E.g.* **P-55**:[T-71-CONF-ENG-CT](#),31:16-33:3;[T-72-CONF-ENG-CT](#),4:13- 5:10;[T-72-CONF-ENG-CT](#),9:8-24;[T-74-CONF-ENG-CT](#),29:22-31:1; **P-901**:[T-29-CONF-ENG-CT](#),13:6-13.

<sup>3034</sup> *E.g.* **P-55**:[T-71-CONF-ENG-CT](#),43:9-44:8;[T-72-CONF-ENG-CT](#),4:13- 5:10;[T-72-CONF-ENG-CT](#),6:16-6:21. *E.g.* [DRC-OTP-0017-0033](#),p.0176(All messages)/p.3998,p.0168(First)/p.3990.



- received updates and reports on the situation in the field;<sup>3036</sup> and
- issued operational orders concerning the Second Attack.<sup>3037</sup>

962. **NTAGANDA** closely monitored the execution of the Second Attack, intervening on the same day when **MULENDA** informed his direct superior, **SALONGO**, that a battalion commander was refusing to advance to Lipri and threatening to desert.<sup>3038</sup> UPC soldiers among **MULENDA**'s troops at Kobu considered that **NTAGANDA** had command authority over them for this battle.<sup>3039</sup>

*viii. NTAGANDA directed, controlled, facilitated and participated in the commission of crimes by UPC soldiers*

963. **NTAGANDA** played an essential role in ensuring that UPC soldiers committed the crimes which formed part of the common plan. He did this not only by setting a personal and conspicuous example of criminal violence, but also by the orders and objectives he set, and the climate of impunity that he permitted and encouraged.

964. **NTAGANDA** played a key role in implementing the plan to kill and drive out the Lendu.<sup>3040</sup>

965. Prior to and during the First Attack, which he commanded, **NTAGANDA** gave

<sup>3035</sup> E.g. **P-55:T-71-CONF-ENG-CT**,43:9-44:8; **P-901:T-29-CONF-ENG-CT**,13:6-13:16; **P-857:T-194-CONF-ENG-ET**,16:21-19:2.

<sup>3036</sup> **P-55:T-71-CONF-ENG-CT**,43:9-44:8,52:9-53:1,56:21;**T-72-CONF-ENG-CT**,6:16-21; **P-907:T-90-CONF-ENG-CT**,62:9-15;**T-92-CONF-ENG-CT**,63:3-21; **P-901:T-29-CONF-ENG-CT**,13:6-13; **P-17:T-60-CONF-ENG-ET**,7:1-22; **DRC-OTP-0017-0033**(transl.**DRC-OTP-2102-3854**).

<sup>3037</sup> **P-290:T-66-CONF-ENG-CT**,51:15-20,54:8-13; **DRC-OTP-0017-0033**,p.180(First and second)/**DRC-OTP-2102-3854**,p.4002;p.0161(First)/p.3983;p.0176(All messages),/ p.3998,p.0168(First)/p.3990;**P-901:T-29-CONF-ENG-CT**,13:6-16;**P-17:T-60-CONF-ENG-ET**,7:1-22;**P-963:T-79-CONF-ENG-ET**,43:23-44:7.

<sup>3038</sup> **P-290:T-66-CONF-ENG-CT**,51:15-20,54:8-13 (discussing **DRC-OTP-0017-0033**,p.0176(Third) (transl.**DRC-OTP-2102-3854**,p.3998); **P-907:T-90-CONF-ENG-CT**,62:17-25; **P-963:T-79-CONF-ENG-ET**,43:6-44:7; **P-17:T-59-CONF-ENG-CT**,58:15-17,66:16-21;**T-60-CONF-ENG-ET**,57:13-17.

<sup>3039</sup> **P-46:T-100-CONF-ENG-CT**,76:20-77:14. Also **P-768:T-33-CONF-ENG-CT**,28:9-29:21.

<sup>3040</sup> **P-14:T-136-CONF-ENG-ET**,44:7-47:20; **P-758:T-161-CONF-ENG-ET**,17:1-7,34:24-35:19,39:9-24.

instructions for the commission of crimes by UPC forces.<sup>3041</sup> These instructions were both given directly by him to combatants and indirectly through the chain of command including, among others, his subordinate MULENDA. UPC soldiers and Hema civilian supporters were instructed that everyone they would encounter in Mongbwalu was the enemy, and that they should all be killed. NTAGANDA also used the Swahili expression “*kupiga na kuchaji*”,<sup>3042</sup> to signify that UPC soldiers should attack anybody they found (which they implemented by raping and/or killing), and to take anything they found in Mongbwalu,<sup>3043</sup> including not only property but also women as “war booty”.<sup>3044</sup>

966. By his personal conduct and orders in the course of the First Attack, NTAGANDA further committed, directed, facilitated, controlled and encouraged the commission of crimes. His manifestly criminal conduct included:

- killing prominent individuals such as Abbé BWANALONGA and Colonel LUSALA in Mongbwalu;<sup>3045</sup>
- instructing P-17 to deliberately shoot at fleeing civilians;<sup>3046</sup>
- instructing UPC soldiers to take goods from Mongbwalu,<sup>3047</sup> which also led to the looting of Mongbwalu church;<sup>3048</sup>

<sup>3041</sup> [P-963:T-78-CONF-ENG-ET](#),70:7-17,72:25-73:9,70:18-73:9,74:17-75:7,77:15-17,81:12-81:22; [P-768:T-33-CONF-ENG-CT](#),55:17-22,57:1-58:7;[T-35-CONF-ENG-CT](#),66:6-71:5;[T-33-CONF-ENG-CT](#),36:18-37:16,52:9-54:17;[T-33-CONF-ENG-CT](#),54:18-55:7;[T-35-CONF-ENG-CT](#),50:18-60:7; [P-17:T-58-CONF-ENG-CT](#),70:12-74:19;[T-59-CONF-ENG-CT](#),21:5-25:3.

<sup>3042</sup> [P-768:T-33-CONF-ENG-CT](#),35:11-37:25;[T-33-CONF-ENG-CT](#),64:21-65:10; [P-963:T-78-CONF-ENG-ET](#),72:8-73:9,81:5-22,81:23-82:8,84:7-11;[T-79-CONF-ENG-ET](#),77:7-79:7,18:6-13; [P-10:T-47-CONF-ENG-CT](#),14:16-15:16. MULENDA also used this phrase in describing how the attack on Mongbwalu would be carried out: [P-17:T-58-CONF-ENG-CT](#),54:10-23.

<sup>3043</sup> [P-55:T-72-CONF-ENG-CT](#),9:25-11:14; [P-888:T-105-CONF-ENG-CT](#),77:1-78:8; [P-901:T-27-CONF-ENG-CT](#),27:14-28:20;[T-29-CONF-ENG-CT](#),18:20-22:25; [P-898:T-154-CONF-ENG-ET](#),10:21-11:3; [P-10:T-47-CONF-ENG-CT](#),14:16-15:16; [P-16:DRC-OTP-0126-0422-R03](#),pp.0464-0465,para.247; [P-963:T-78-CONF-ENG-ET](#),70:8-17,72:25-73:9; [P-907:T-90-CONF-ENG-CT](#),8:1-11,8:21-10:13.

<sup>3044</sup> [P-17:T-58-CONF-ENG-CT](#),54:1-55:23;[T-61-CONF-ENG-ET](#),29:20-32:22;[T-59-CONF-ENG-CT](#),33:2-34:1,32:7-22,25:4-7,27:10-28:2-12,30:24-31:16; [P-365:T-147-CONF-ENG-ET](#),30:18-33:11. Also [P-887:T-93-CONF-ENG-CT](#),19:17-20,22:17-19,24:10-25:14,31:14-32:23; [P-963:T-79-CONF-ENG-ET](#),31:23-36:7,33:22-35:4,35:10-11; [P-898:T-154-CONF-ENG-ET](#),16:4-17; [P-907:T-90-CONF-ENG-CT](#),39:15-40:6; [P-888:T-105-CONF-ENG-CT](#),81:9-22.

<sup>3045</sup> See Section VII.A.5.b. and c.

<sup>3046</sup> [P-17:T-58-CONF-ENG-CT](#),70:12-73:7;[T-59-CONF-ENG-CT](#),4:18-5:9.

- pillaging goods from Mongbwalu hospital, including medicine;<sup>3049</sup>
- ordering the murder of three nuns detained at his residence, who were raped by his bodyguards;<sup>3050</sup>
- instructing UPC soldiers to execute two prisoners at his residence;<sup>3051</sup>
- instructing UPC soldiers to execute two Lendu civilians returning to their homes in Nzebi;<sup>3052</sup> and
- instructing his soldiers to “*kupiga na kuchaji*” that meant to attack and plunder war booty from civilians, including property and women - which led to the rape and sexual enslavement of civilians in Mongbwalu.<sup>3053</sup>

967. **NTAGANDA** with others commanded the Second Attack. He ensured that UPC soldiers knew the Second Attack was to follow the pattern of, and the instructions applicable to, the First Attack.<sup>3054</sup> **NTAGANDA**’s subordinate **MULENDA** had been present at Mabanga when **NTAGANDA** issued the criminal orders for the First Attack.<sup>3055</sup> **MULENDA** issued almost identical instructions for the Second Attack, both regarding the need to kill

<sup>3047</sup> E.g. **P-768:T-33-CONF-ENG-CT**,64:21-65:10. Also **P-963:T-78-CONF-ENG-ET**,70:7-17,72:25-73:9; **P-907:T-90-CONF-ENG-CT**,5:16-7:1,8:1-11,8:21-10:13.

<sup>3048</sup> E.g. **P-768:T-33-CONF-ENG-CT**,50:4-51:14.

<sup>3049</sup> **P-768:T-33-CONF-ENG-CT**,59:5-61:19.

<sup>3050</sup> E.g. **P-768:T-33-CONF-ENG-CT**,55:17-22,57:1-58:7;**T-35-CONF-ENG-CT**,66:6-71:5.

<sup>3051</sup> E.g. **P-17:T-59-CONF-ENG-CT**,23:15-24:11.

<sup>3052</sup> E.g. [REDACTED].

<sup>3053</sup> **P-17:T-58-CONF-ENG-CT**,53:21-55:17;**T-59-CONF-ENG-CT**,25:4-7,27:10-25,28:2-12,30:24-31:16; **P-887:T-93-CONF-ENG-CT**,19:17-20,22:17-19,24:10-25:14; **P-963:T-79-CONF-ENG-ET**,31:23-36:7,33:22-35:4,35:10-11; **P-898:T-154-CONF-ENG-ET**,16:4-17; **P-907:T-90-CONF-ENG-CT**,39:15-40:6; **P-888:T-105-CONF-ENG-CT**,81:9-82:13.

<sup>3054</sup> E.g. **P-963:T-79-CONF-ENG-ET**,43:23-44:7,45:19-46:25 (explaining that everyone knew Kobu should be treated in the same way as Mongbwalu and that they were to “[d]rive the Lendu out of that place; push them out”);**T-79-CONF-ENG-ET**,47:1-8 (“And we were fighting the Lendu. The orders were clear: Shoot at everyone”). In Kobu, **MULENDA** also ordered P-17 to [REDACTED] nearby groups of women and children and other civilians: **P-17:T-59-CONF-ENG-CT**,72:10-74:16 (**MULENDA**’s order for the Second Attack was consistent with prior instructions in other attacks).

<sup>3055</sup> **P-963:T-78-CONF-ENG-ET**,69:18-70:25,72:25-73:9.

indiscriminately<sup>3056</sup> and with respect to the “*kupiga na kuchaji*” order.<sup>3057</sup> More generally, UPC soldiers in the Second Attack were instructed that the Lipri-Kobu-Bambu road had to be cleansed of Lendu;<sup>3058</sup> all Lendu were to be treated as the enemy, without distinction.<sup>3059</sup> Orders were passed down the chain of command to flatten the villages and to chase the population away.<sup>3060</sup> “*Ratissage*” operations were to be carried out to find and kill Lendu.<sup>3061</sup>

968. **NTAGANDA** took no action to punish any of the perpetrators of the crimes committed in either the *First* or *Second* Attack,<sup>3062</sup> further consolidating and confirming his orders for the commission of crimes. Such was his power and authority that a firm intervention by him would have altered the course of the criminal campaign. Likewise, by his personal conduct concerning children recruited to the UPC,<sup>3063</sup> **NTAGANDA** legitimised their use, rape and sexual enslavement by others.

*ix. NTAGANDA enabled communication and coordination between his co-perpetrators as well as with other actors*

969. **NTAGANDA**’s position at the heart of the UPC, closely associated with LUBANGA and the other co-perpetrators yet holding a firm grip on the reins of the UPC, meant that he played a vital liaison role. He translated intent into action. Furthermore, by his close connections with Rwanda, he translated UPC promises into guns, bullets and access to Rwandan trainers and advisers.

<sup>3056</sup> E.g. **P-963:T-79-CONF-ENG-ET**,47:1-8; **P-55:T-71-CONF-ENG-CT**,50:7-15,51:5-52:6; **P-17:T-59-CONF-ENG-CT**,46:4-12, **T-63-CONF-ENG-ET**,56:11-57:6.

<sup>3057</sup> E.g. **P-963:T-79-CONF-ENG-ET**,47:1-8.

<sup>3058</sup> E.g. **P-963:T-79-CONF-ENG-ET**,43:1-5,45:19-46:25,47:1-8; **P-55:T-71-CONF-ENG-CT**,28:25-30:22,50:7-15; **P-17:T-59-CONF-ENG-CT**,46:4-12;**T-63-CONF-ENG-ET**,56:11-57:6.

<sup>3059</sup> E.g. **P-963:T-79-CONF-ENG-ET**,43:1-5,47:1-8; **P-17:T-59-CONF-ENG-CT**,62:6-25.

<sup>3060</sup> **P-17:T-59-CONF-ENG-CT**,46:4-12,62:6-25;**T-63-CONF-ENG-ET**,56:11-57:6; **P-963:T-79-CONF-ENG-ET**,43:1-5,45:19-46:25,47:1-8.

<sup>3061</sup> E.g. **P-17:T-59-CONF-ENG-CT**,74:20-76:14; **P-963:T-79-CONF-ENG-ET**,14:15-16:9.

<sup>3062</sup> See Section IX.4.

<sup>3063</sup> **P-901 T-29-CONF-ENG-CT**,56:11-58:17; **P-10:T-47-CONF-ENG-CT**,36:23-37:24; **P-888:T-105-CONF-ENG-CT**,82:5-13; **P-17:T-59-CONF-ENG-CT**,27:10-28:12,30:24-31:16; **P-190:T-97-CONF-ENG-CT**,18:1-24,48:10-49:10; **P-14:T-136-CONF-ENG-ET**,57:13-58:5;**T-136-CONF-ENG-ET**,58:13-61:10.

970. NTAGANDA's key liaison role is demonstrated by the frequency of his meetings with other co-perpetrators, including LUBANGA and KISEMBO, and his finger-tight control of both strategic and day-to-day issues with UPC subordinates. The importance he attributed to communications further corroborates this—NTAGANDA had access to his own long range Motorola radio, Thuraya, manpack and signaller, and was never separated from his short range radio.<sup>3064</sup> He was always accessible through the UPC communication system.<sup>3065</sup> Likewise, his tight grip on operational planning—and his self-appointed role as the enforcer of rules of the UPC—ensured that the UPC remained obedient to his instructions and, through him, to the co-perpetrators. NTAGANDA was also a key interlocutor with Rwanda, which was a key supplier of weapons and training for the UPC.

*c. NTAGANDA participated in the crimes by ordering or inducing their commission (article 25(3)(b))*

971. NTAGANDA's unique position of power and influence in the UPC is also reflected by the specific crimes in which he participated by either ordering or inducing their commission.

972. In both the First Attack and the Second Attack, NTAGANDA ordered or induced the commission of the crimes of murder and attempted murder (Counts 1-2), intentionally directing attacks against the civilian population (Count 3), rape of civilians (Counts 4-5), and persecution (Count 10).

973. In addition, in the First Attack only, NTAGANDA ordered or induced the

---

<sup>3064</sup> [D-300:T-226-ENG-CT](#),21:10-22:15; [P-55:T-71-CONF-ENG-CT](#),43:9-19; [P-290:T-65-CONF-ENG-CT](#),51:5-12,68:8-14. Also e.g. [P-17:T-58-CONF-ENG-CT](#),39:22-40:11; [P-10:T-47-CONF-ENG-CT](#),12:10-18; [P-901:T.28,15:3-19](#).

<sup>3065</sup> E.g. [P-768:T-33-CONF-ENG-CT](#),32:24-33:18,37:17-24,65:24-66:14; [T-34-CONF-ENG-CT](#),7:19-21; [P-16:DRC-OTP-2054-1625](#),p.1646, 1.6- p.1649,1.17; [P-17:T-58-CONF-ENG-CT](#),67:2-10; [P-290:T-65-CONF-ENG-CT](#),74:1-17; [DRC-OTP-0017-0033](#)(transl.[DRC-OTP-2102-3854](#)). (This logbook alone shows that in the period 19 November 2002 to 22 February 2003, NTAGANDA sent at least 86 messages, received 61 messages directed specifically to him, and was copied to 115 further messages). See also [DRC-OTP-0017-0003](#).

commission of the crimes of forcible transfer (Counts 12-13) and intentionally directing attacks against protected objects (Count 17).

974. In the Second Attack only, **NTAGANDA** ordered or induced the commission of the crimes of sexual slavery of civilians (Counts 7-8).

975. Between on or about 6 August 2003 and 30 May 2003, **NTAGANDA** ordered or induced the use of children under the age of 15 to participate actively in hostilities (Count 16).

*i. NTAGANDA held a position of authority in the UPC*

976. **NTAGANDA** held a position of authority in the UPC, both formally as the Deputy Chief of Staff and informally as the “*real chief*” of the UPC, whose authority on military and operational matters was unchallenged.<sup>3066</sup> Nobody was above his military authority;<sup>3067</sup> he made the law in the UPC.<sup>3068</sup> He routinely issued orders to subordinates,<sup>3069</sup> and insisted on compliance with them. He took active and extreme steps to ensure disciplined obedience to his own instructions, including by ordering subordinates’ arrest and imprisonment,<sup>3070</sup> or execution.<sup>3071</sup> An example of his strict control over, and knowledge of, every aspect of his troops is when he reprimanded a commander for failing to discipline a subordinate who accidentally fired bullets.<sup>3072</sup> Others, including children, he

<sup>3066</sup> **P-16:DRC-OTP-0126-0422-R03**,pp.0453-0454,para.181.

<sup>3067</sup> *E.g.* **P-16:DRC-OTP-0126-0422-R03**,p.0453,para.181; **P-907:T-89-CONF-ENG-CT**,14:25-15:13; **P-907:T-89-CONF-ENG-CT**,16:23-18:8,20:23-22:2,22:16-23:19,78:8-79:4;**T-90-CONF-ENG-CT**,4:5-9,5:5-23.

<sup>3068</sup> *E.g.* **P-190:T-97-CONF-ENG-CT**,36:15-20,52:7-19; **P-901:T-28-CONF-ENG-CT**,57:19-24,60:6-24,62:17-64:4;**T-29-CONF-ENG-CT**,13:6-22.

<sup>3069</sup> *E.g.* **P-55:T-70-CONF-ENG-CT**,75:16-76:9;**T-71-CONF-ENG-CT**,4:13-5:1,**T-71-CONF-ENG-CT**,6:25-7:4;**DRC-OTP-0017-0033**, p.0176(Third), p.0205(Second and Third), p.0212(All messages), p.0213(Second) (transl.**DRC-OTP-2102-3854**, p.3998, p.4027, p.4034, p.4035).

<sup>3070</sup> *E.g.* **DRC-OTP-0017-0033**,p.0205(First two messages); **DRC-OTP-2102-3854**,p. 4027; **DRC-OTP-0018-0170**,p.0170(transl.**DRC-OTP-0173-0517**,p.0518) (inviting the addressee to send anyone who disobeys him to **NTAGANDA** for punishment and warning him if he does not deal with the problems he will go there to do it himself).

<sup>3071</sup> **P-963:T-80-CONF-ENG-ET**,38:4-39:7; **P-16:DRC-OTP-0126-0422-R03**,p.0432,para.55,pp.0461-0462,para.227. *Also* **P-859:T-51-CONF-ENG-CT**,45:7-28 ([REDACTED] **NTAGANDA** had ordered the execution of a UPC fighter who had, while drunk, killed [REDACTED]); **P-888:T-105-CONF-ENG-CT**,40:10-41:3;**T-105-CONF-ENG-CT**,41:4-42:5 (P-888 was told that **NTAGANDA** ordered the execution of a person who lost his weapon so either slept whilst on duty or sold it to the enemy).

<sup>3072</sup> **DRC-OTP-0018-0170**,p.0170 (transl.**DRC-OTP-0173-0517**,p.0518).



simply whipped or shot himself.<sup>3073</sup> He intervened personally to instruct his subordinates to make an example of UPC soldiers seeking to desert.<sup>3074</sup> NTAGANDA was also notorious for the killings he had committed with impunity,<sup>3075</sup> only enhancing the fear which he widely engendered.<sup>3076</sup> When his enemies saw NTAGANDA, it was said, they would tremble.<sup>3077</sup>

ii. *NTAGANDA instructed others to commit crimes, or to perform acts or omissions that facilitated the crimes*

977. NTAGANDA issued a multitude of instructions to UPC soldiers which directly contemplated the commission of crimes, or in the context of which crimes were carried out. He issued these instructions at every moment relevant to UPC soldiers' conduct: when they were trained, prior to and during operations, and in their aftermath.

978. From the outset of their training and throughout, NTAGANDA expressly instructed UPC soldiers, including children under the age of 15, to kill Lendu without distinction.<sup>3078</sup> These instructions effectively constituted standing orders,

<sup>3073</sup> [P-46:T-100-CONF-ENG-CT](#),89:21-91:24; [DRC-OTP-0208-0284](#),p.0290. Also [P-963:T-80-CONF-ENG-ET](#),38:4-39:7.

<sup>3074</sup> [DRC-OTP-0017-0033](#),p.0205 (first two messages) (transl.[DRC-OTP-2102-3854](#),p.4027,p.4030).

<sup>3075</sup> [P-901:T-30-CONF-ENG-CT](#),61:18-62:8; [P-16:DRC-OTP-0126-0422-R03](#),p.0454,para.184. Also [P-894:DRC-OTP-2076-0194-R02](#),pp.0208-0209,paras.63-68; [P-190:T-97-CONF-ENG-CT](#),36:15-20,[T-97-CONF-ENG-CT](#),52:7-19; [D-300:T-213-CONF-ENG-CT](#),38:5-41:1;[T-222-ENG-CT](#),71:1-24;[T-212-CONF-ENG-ET](#),24:20-25:3; [P-769:T-120-CONF-ENG-ET](#),11:15-13:10,19:7-10; [P-31:T-174-CONF-ENG-ET](#),31:2-33:2. Also e.g. [P-16:DRC-OTP-0126-0422-R03](#),pp.0468-0469,paras.271-273; [P-877:T-110-CONF-ENG-ET](#),15:15-16:18; [P-894:DRC-OTP-2076-0194-R02](#),para.62,p.0209,para.68; [P-16:DRC-OTP-0126-0422-R03](#),pp.0468-0469,paras.271-273 (concerning the killing of NGWENE in Bunia); [P-901:T-27-CONF-ENG-CT](#),59:14-18 (concerning the attack on senior RCD-K/ML member Claude KIZA).

<sup>3076</sup> [P-901:T-31-CONF-ENG-CT](#),8:4-25; [P-888:T-105-CONF-ENG-CT](#),23:24-24:14,31:2-23,41:4-42:5; [P-16:DRC-OTP-0126-0422-R03](#),p.0434,para.64; [D-300:T-222-ENG-CT](#),71:1-24;[T-212-CONF-ENG-ET](#),24:20-25:3; [P-46:T-101-CONF-ENG-ET](#),78:8-17;[T-100-CONF-ENG-CT](#),91:3-21; [P-14:T-136-CONF-ENG-ET](#),35:18-20; [P-31:T-174-CONF-ENG-ET](#),31:6-32:2;[T-175-CONF-ENG-ET](#),37:18-22; [P-901:T-28-CONF-ENG-CT](#),26:2-18; [P-190:T-97-CONF-ENG-CT](#),18:16-19:3. Prior to the First Attack, NTAGANDA was accused of murdering high-profile officials, such as the Nande-origin Commander Claude KIZA. See e.g. NTAGANDA concedes that he was widely viewed as the person who murdered Commander Claude KIZA, including amongst the public who supported him: [D-300:T-213-CONF-ENG-CT](#),38:5-41:1;[T-222-ENG-CT](#),71:1-24;[T-212-CONF-ENG-ET](#),24:20-25:3; [P-769:T-120-CONF-ENG-ET](#),11:15-13:10,19:7-10; [P-31:T-174-CONF-ENG-ET](#),31:2-33:2. Also e.g. [P-16:DRC-OTP-0126-0422-R03](#),pp.0468-0469,paras.271-273; [P-877:T-110-CONF-ENG-ET](#),15:15-16:18; [P-894:DRC-OTP-2076-0194-R02](#),p.0208,para.62,p.0209,para.68.

<sup>3077</sup> [D-300:T-213-CONF-ENG-CT](#),38:5-41:1; [P-901:T-31-CONF-ENG-CT](#),8:4-25. Also [P-190:T-97-CONF-ENG-CT](#),36:15-20,[T-97-CONF-ENG-CT](#),52:7-19.

<sup>3078</sup> E.g. [P-768:T-33-CONF-FRA-ET](#),53:10-16/[T-33-CONF-ENG-CT](#),54:7-13,54:8-55:7;[T-33-CONF-ENG-CT](#),37:2-16,41:8-17,53:3-18; [T-34-CONF-ENG-CT](#),15:6-16:15; (calling all Lendu - without distinguishing



further reinforced by their specific repetition prior to operations, as well as the climate of impunity which NTAGANDA maintained. Repeated description of the Lendu as the enemy further encouraged and normalised persecutory conduct.

979. NTAGANDA's failure to issue certain instructions during training, or at other times, also materially induced the commission of crimes. For example, UPC soldiers were ordered to attack (rape and kill), loot, financially devastate the enemy, and burn buildings during operations so enemy civilians could not return to the areas the UPC occupied.<sup>3079</sup> NTAGANDA was aware of this; yet, he issued no instruction to the contrary. Likewise, UPC soldiers could do anything they wanted with captured Lendu – including rape and murder. Moreover, no instructions were issued to forbid sexual violence – it was not a crime to rape in the UPC,<sup>3080</sup> which was also seen as a conventional part of the inter-ethnic warfare,<sup>3081</sup> and a means of waging war.<sup>3082</sup>

980. Prior to the First Attack, NTAGANDA issued express orders for UPC soldiers to kill Lendu indiscriminately. He also used the phrase “*kupiga na kuchaji*”, meaning to attack and plunder. They attacked by raping and/or killing, and taking whatever they wanted, including women. Subordinate commanders, such as MULENDA, further repeated these instructions to UPC soldiers under their command.

981. In the First Attack and its immediate aftermath, NTAGANDA ordered the commission of crimes against specific victims or objects:

---

between combatants and civilians - the enemies, and instructing soldiers and commanders to kill and exterminate the Lendu and APC). The purpose was to drive out the Lendu or eliminate them: *E.g.* **P-963:T-78-CONF-ENG-ET**,26:2-7,72:25-73:9,73:22-75:7,77:1-18,82:4-84:6. *Also e.g.* **P-10:T-47-CONF-ENG-CT**,10:6-18; **P-758:T-161-CONF-ENG-ET**,39:9-24,47:2-13; **P-190:T-97-CONF-ENG-CT**,32:15-33:7; **P-963:T-78-CONF-ENG-ET**,81:5-22; **T-79-CONF-ENG-ET**,43:1-5; **P-888:T-105-CONF-ENG-CT**,50:16-52:18,54:19-58:14; **P-41:DRC-OTP-0147-0002**,p.0017,para.92; **DRC-OTP-0074-0797**,pp.0825-0826.

<sup>3079</sup> *E.g.* **P-963:T-78-CONF-ENG-ET**,72:8-73:9.

<sup>3080</sup> *E.g.* **P-963:T-79-CONF-ENG-ET**,31:23-32:16,35:7-11,36:4-7.

<sup>3081</sup> *E.g.* **P-963:T-79-CONF-ENG-ET**,31:23-32:16,35:7-11,36:4-7; **P-768:T-34-CONF-ENG-CT**,55:18-56:13.

<sup>3082</sup> **P-14:T-136-CONF-ENG-ET**,57:13-58:5.

- NTAGANDA ordered UPC soldiers to kill every person they would find in Mongbwalu<sup>3083</sup>
- NTAGANDA ordered UPC soldiers to “*kupiga na kuchaji*”, which meant to attack and plunder. The soldiers implemented the order to ‘attack and drive out’ by raping and/or killing civilians, and burning their homes; and taking war booty that included women.<sup>3084</sup>
- NTAGANDA ordered the execution of Lendu captured during the attack, including two civilians seeking to return home to Nzebi.<sup>3085</sup>
- NTAGANDA ordered his bodyguards to kill three Lendu nuns held in his residence in Mongbwalu; these nuns were first raped by NTAGANDA’s bodyguards [REDACTED].<sup>3086</sup>
- NTAGANDA ordered UPC soldiers to shoot at fleeing civilians in Sayo.<sup>3087</sup>
- As part of the usual “*ratissage*” or “search” operations that happened after every defeat of an enemy,<sup>3088</sup> NTAGANDA’s orders to eliminate or drive out Lendu were implemented as UPC soldiers killed Lendu wherever they were found.<sup>3089</sup>

<sup>3083</sup> E.g. **P-963**:[T-78-CONF-ENG-ET](#),72:8-73:9,81:5-22,81:23-82:8;[T-79-CONF-ENG-ET](#),77:7-79:7,18:6-13.

<sup>3084</sup> **P-963**:[T-78-CONF-ENG-ET](#),72:8-73:9,70:8-17,72:25-73:9,81:5-22;[T-79-CONF-ENG-ET](#),77:7-79:7;[T-80-CONF-ENG-ET](#),17:2-18:14; **P-17**:[T-58-CONF-ENG-CT](#),54:1-55:23;[T-61-CONF-ENG-ET](#),29:20-32:22; **P-768**:[T-33-CONF-ENG-CT](#),64:21-65:10; **P-10**:[T-47-CONF-ENG-CT](#),14:16-15:16; **P-907**:[T-90-CONF-ENG-CT](#),8:1-11,8:21-10:13; **P-888**:[T-105-CONF-ENG-CT](#),77:1-78:8.

<sup>3085</sup> E.g. [REDACTED].

<sup>3086</sup> E.g. [REDACTED].

<sup>3087</sup> **P-17**:[T-58-CONF-ENG-CT](#),70:12-73:7;[T-59-CONF-ENG-CT](#),4:18-5:19;[T-61-CONF-ENG-ET](#),70:16-24.

*Also e.g.* **P-800**:[T-68-CONF-ENG-ET](#),21:16-22:24,26:13-29:17,31:7-24; **P-877**:[DRC-OTP-2077-0118-R03](#),p.0121,para.19. [DRC-OTP-2058-0251](#),00:46:00-00:48:20(transl.[DRC-OTP-2102-3766](#),p.3786:666-3787:698), where KASANGAKI (see D-300:[T-235-CONF-ENG-CT](#),77:18-22) explains: “[*quand les gens prenaient la fuite, on tirait sur eux, ils se couchaient par terre, et puis ils se relevaient et continuaient à s’enfuir*”].

<sup>3088</sup> E.g. **P-963**:[T-79-CONF-ENG-ET](#),15:4-16:9; **P-888**:[T-105-CONF-ENG-CT](#),54:19-56:9.

<sup>3089</sup> E.g. **P-888**:[T-105-CONF-ENG-CT](#),79:13-81:5; [DRC-OTP-0074-0628](#),pp.0664-0666.

- **NTAGANDA** ordered UPC soldiers to attack Sayo and Nzebi and to “*kupiga na kuchaji*” . In Sayo and Nzebi his soldiers killed civilians, and attacked and pillaged the church at Sayo, a protected object.<sup>3090</sup>

982. **NTAGANDA**’s personal conduct during the First Attack clearly communicated not only his tolerance of crimes committed against Lendu but his approval. He personally murdered prominent local non-Hema,<sup>3091</sup> while other civilians were brought to his local headquarters, detained, and then interrogated and executed by his subordinates.<sup>3092</sup> He was a silent spectator when KISEMBO ordered two Lendu prisoners to be shot.<sup>3093</sup> **NTAGANDA** brought women back to his residence, who were visibly intimidated.<sup>3094</sup> **NTAGANDA** also participated in the pillage of Mongbwalu, as did other UPC commanders. He ordered his subordinates to stop pillaging, only when UPC soldiers began fighting one another over pillaged goods. However, the order to stop pillaging did not apply to **NTAGANDA** himself or other senior commanders like MULENDA, who continued to pillage at this time.<sup>3095</sup> Such conspicuous personal criminal acts were seen as equivalent to an express order.<sup>3096</sup>

983. **NTAGANDA** ensured that it was understood among the UPC soldiers that his orders concerning the First Attack applied equally to the Second Attack. **NTAGANDA**’s subordinates repeated these instructions, in similar terms to those used by **NTAGANDA**.

<sup>3090</sup> E.g. [REDACTED].

<sup>3091</sup> See Section VII.A.5.b. and c.

<sup>3092</sup> E.g. **P-768:T-33-CONF-ENG-CT**,55:8-56:25; **P-17:T-59-CONF-ENG-CT**,21:5-23:8,23:15-24:11,35:15-36:16; **P-963:T-79-CONF-ENG-ET**,21:19-22:19; **P-315:DRC-OTP-2058-0990**,p.1014,para.132.

<sup>3093</sup> **P-315:DRC-OTP-2058-0990**,p.1012;para.127.

<sup>3094</sup> **P-17:T-59-CONF-ENG-CT**,27:10-28:12,30:24-31:16. See also **P-14:T-136-CONF-ENG-ET**,57:13-61:10

<sup>3095</sup> E.g. **P-17:T-59-CONF-ENG-CT**,19:14-19;**T-58-CONF-ENG-CT**,54:1-55:23;**T-61-CONF-ENG-ET**,29:20-32:22; **P-963:T-78-CONF-ENG-ET**,70:7-17,72:25-73:9; **P-768:T-33-CONF-ENG-CT**,64:6-65:10; **P-16:DRC-OTP-0126-0422-R03**,p.0446,para.132,pp.0464-0465,paras.247-250; **P-16:DRC-OTP-2054-1625**,p.1650,1.4-1651.1.8. Also e.g. **P-190:T-97-CONF-ENG-CT**,16:20-17:8; **P-907:T-90-CONF-ENG-CT**,5:16-7:1,8:1-11,8:21-10:13,33:21-34:10,36:8-16; **P-10:T-47-CONF-ENG-CT**,14:16-15:16; **P-888:T-105-CONF-ENG-CT**,77:1-78:8,82:14-83:9.

<sup>3096</sup> **P-16:DRC-OTP-0126-0422-R03**,pp.0464-0465,para.247.

984. In the aftermath of the First and Second Attacks, **NTAGANDA** took no action to punish notorious UPC crimes against the Lendu or *non-originaires*,<sup>3097</sup> further communicating that such crimes were expected, condoned, and encouraged. Senior UPC commanders were known to have taken part in rapes during both the First and Second Attacks,<sup>3098</sup> a crime so widespread as to be considered normal. Yet, in the UPC rape was not considered a crime.<sup>3099</sup>

985. **NTAGANDA**'s personal conduct in recruiting children under the age of 15 as UPC soldiers, his use of them to participate actively in hostilities and in his escort, and his rape and sexual slavery of girls in the UPC likewise conveyed the clear message that this was acceptable and normal behaviour for the UPC leadership.

*iii. NTAGANDA's instructions had a direct effect on the commission of crimes*

986. **NTAGANDA**'s instructions, express and implied, had a direct effect on the commission of crimes. As shown in the sections above, UPC troops under **NTAGANDA**'s command in fact committed the crimes charged in counts 1-5, 7-8, 10-13 and 16-17. In some cases, such as when he issued specific orders, those orders were directly carried out. For example, the persons he ordered to be executed were killed, Lendu were indiscriminately attacked as he wished, and goods were stolen at his command.

*d. NTAGANDA contributed to the crimes committed by a group acting with a common purpose (article 25(3)(d))*

987. **NTAGANDA** additionally, or alternatively, remains responsible, for the

<sup>3097</sup> E.g. **P-17:T-59-CONF-ENG-CT**,33:2-34:1; **P-963:T-79-CONF-ENG-ET**,35:7-11,36:4-7; **P-888:T-105-CONF-ENG-CT**,81:6-8;**T-106-CONF-ENG-CT**,8:19-9:3.

<sup>3098</sup> In the First Attack, e.g. **P-963:T-79-CONF-ENG-ET**,31:24-32:16; **P-17:T-59-CONF-ENG-CT**,32:7-22; **P-888:T-105-CONF-ENG-CT**,81:9-22; **P-907:T-90-CONF-ENG-CT**,39:15-40:6. In the Second Attack, senior UPC perpetrators included MULENDA (**P-113:T-118-CONF-ENG-CT**,50:23-51:12), LINGANGA (**P-19:T-115-CONF-ENG-CT**,38:14-39:5,39:18-29), and SIMBA (**P-963:T-79-CONF-ENG-ET**,76:3-14).

<sup>3099</sup> **P-963:T-79-CONF-ENG-ET**,35:9-11; *Hadžihasanović & Kubura AJ*, para.30: "[...]the Appeals Chamber stresses that a superior's failure to punish a crime of which he has actual knowledge is likely to be understood by his subordinates at least as acceptance, if not encouragement, of such conduct with the effect of increasing the risk of new crimes being committed."

charged crimes committed by a group acting with a common purpose. Again, the evidence shows that **NTAGANDA** contributed to each of the crimes charged.

988. As set out above, in both the First Attack in November-December 2002 and the Second Attack in February 2003, **NTAGANDA** contributed to the crimes of murder and attempted murder (Counts 1-2), intentionally directing attacks against the civilian population (Count 3), rape of civilians (Counts 4-5), persecution (Count 10), pillage (Count 11), forcible transfer (Counts 12-13), intentionally directing attacks against protected objects (Count 17), and wanton destruction of enemy property (Count 18).

989. In addition, **NTAGANDA** contributed to the crime of sexual slavery of civilians (Counts 7-8).

990. Between on or about 6 August 2002 and 31 December 2003, **NTAGANDA** contributed to the crimes of rape of child soldiers under 15 (Count 6), sexual slavery of child soldiers under 15 (Count 9), conscripting children under the age of 15 into an armed force or group (Count 14), enlisting children under the age of 15 into an armed force or group (Count 15), and, between on or about 6 August 2003 and in or about March 2003, using children under the age of 15 to participate actively in hostilities (Count 16).

991. The evidence shows that the charged crimes were committed by a group, including but not limited to LUBANGA, KISEMBO, and others such as their subordinate UPC troops, acting with a common purpose. **NTAGANDA** intentionally contributed to the commission of these crimes by means including his participation in recruitment and training, his role in directing, coordinating, controlling, facilitating and commanding attacks and crimes, and his liaison between members of the group. He did so with the aim of furthering the crimes and criminal purpose of the group or, at least, knowing of the group's intention to commit the crimes.

*e. NTAGANDA participated as a co-perpetrator or accessory in attempted murder (article 25(3)(a), (b), (d), (f))*

992. On some occasions, murders resulting from the implementation of the co-perpetrators' common plan, and/or NTAGANDA's orders, were not fully carried out because of circumstances independent of NTAGANDA's intentions. These comprised acts of attempted murder. UPC soldiers commenced the crime by means of the substantial step of attacking the victim, but the victim did not die. Thus, for example, P-18 and P-22 were violently attacked at close range and left for dead, but survived;<sup>3100</sup> P-800 and P-19 were shot at as they fled.<sup>3101</sup> As with the other modes of liability, and as it will be shown below, the evidence is clear that NTAGANDA possessed the necessary knowledge and intent for these crimes.

*2. NTAGANDA acted with intent and knowledge*

993. At all material times, NTAGANDA committed the crimes charged pursuant to article 25 with the necessary intent and knowledge in the meaning of article 30(2)(a) and/or (b) and 30(3).<sup>3102</sup>

994. The Prosecution is mindful that the *Lubanga* Appeal Judgment interpreted articles 30(2)(b) and 30(3)—requiring that the accused is aware that a consequence “will occur in the ordinary course of events”—to mean that the accused was aware of a “virtual certainty”.<sup>3103</sup> Yet in the *Bemba* appeal proceedings, which are currently pending before the Appeals Chamber and likely to be decided in the near future, the Prosecution expressed concerns as to the correctness of the interpretation in *Lubanga*.<sup>3104</sup>

995. Accordingly, while recognising the existence of the *Lubanga* jurisprudence, the

<sup>3100</sup> **P-18:**[T-111-CONF-ENG-CT](#),10:1-21; **P-22:**[DRC-OTP-0104-0026](#),p.0034,paras.41-42.

<sup>3101</sup> **P-800:**[T-68-CONF-ENG-ET](#),31:10-24; **P-19:**[T-115-CONF-ENG-CT](#),50:6-52:25.

<sup>3102</sup> The knowledge required by article 28 is discussed in Section V.B.3 below.

<sup>3103</sup> See e.g. *Lubanga AJ*, para.447.

<sup>3104</sup> See e.g. *Bemba AH*, pp.13:5-15:17,15:24-16:4,18:7-19:6,38:4-39:4,48:2-51:15; *Bemba Appeal Response*, para. 183.

Prosecution respectfully reserves its position on the correct interpretation of article 30, beyond its plain terms, until such time as a judgment is rendered in the *Bemba* appeal. If that occurs before this Trial Chamber adjourns for its final deliberations, the Prosecution will seek leave to address that new jurisprudence in an appropriate forum.

996. In any event, the Prosecution stresses its view that the evidence proves the required elements beyond reasonable doubt, no matter how the standards in article 30 might be properly characterised.

997. **NTAGANDA** is liable for the crimes charged pursuant to articles 25(3)(a), (b) and/or (d), and (f). When necessary, as with the crime of persecution, he acted with the specific intent to discriminate on political, national, ethnic, or cultural grounds. As specified elsewhere, at all times **NTAGANDA** knew that his conduct formed part of a widespread or systematic attack against the non-Hema civilian population, and that circumstances existed establishing a non-international armed conflict in Ituri. **NTAGANDA** espoused the common plan and purpose, and consistently acted towards its implementation. This in itself demonstrates his intent to commit the crimes.

998. **NTAGANDA** conceded that he was an active commander, who kept himself apprised of the situation of UPC forces while conducting operations:<sup>3105</sup>

*[T]he troops realised that I was aware of what was happening, that I was monitoring them and that showed the commanders that I was*

<sup>3105</sup> E.g. D-17 spontaneously confirmed in the first instance that **NTAGANDA** received reports from the field about what was happening even if he was not present, including for the operation in KOMANDA, and that “*this was what enabled them to plan*”, It was only after an intervention from Defence to clarify whether the response related only to Komanda did D-17 seek to retract his clear prior response and claim rather implausibly that “*I have absolutely no idea if he was receiving reports or not*”. **D-17**:[T-254-CONF-ENG-ET](#),92:19:93:2,94:6-24,96:11-17; **P-17**:[T-58-CONF-ENG-CT](#),23:7-15,66:21-67:10,70:12-71:23;[T-60-CONF-ENG-ET](#),6:25-7:22; **P-768**:[T-33-CONF-ENG-CT](#),33:6-11,66:4-14; [T-34-CONF-ENG-CT](#),6:18-8:11; **P-963**:[T-78-CONF-ENG-ET](#),70:9-19;[T-78-CONF-ENG-ET](#),77:1-78:4;[T-79-CONF-ENG-ET](#),11:14-12:1;[T-80-CONF-ENG-ET](#),33:25-36:2; **P-55**:[T-70-CONF-ENG-CT](#),66:20-67:16,72:3-13,73:10-13,75:3-15;[T-71-CONF-ENG-CT](#),31:21-35:10,43:9-19;[T-72-CONF-ENG-CT](#),4:21-5:5,7:16-22,52:16-24;[T-74-CONF-ENG-CT](#),29:18-30:13. See also e.g. **P-888**:[T-105-CONF-ENG-CT](#),46:3-47:14,49:2-13,50:16-51:16,52:5-14,55:1-6,56:2-9.



*up to speed with all the offences being committed in our forces, that I was really aware of everything that was going on at all times.*<sup>3106</sup>

999. **NTAGANDA** needed to maintain operational awareness, so that he could effectively command the troops, maintain control over them, ensure compliance with his orders, ensure proper troop functioning and to report to LUBANGA and, where necessary, to KISEMBO.<sup>3107</sup> Not only did he use and rely upon the UPC's well established communications and reporting system, he made regular trips to see UPC recruits and soldiers in the field.<sup>3108</sup>

1000. **NTAGANDA** had broad awareness of all aspects of his troops' behaviour affecting his duties as a military commander. As much as he was aware of information coming from his G2 intelligence staff, which he admitted in his testimony,<sup>3109</sup> he was equally aware of seemingly minute details such as the unnecessary wasting of bullets, the comings and goings of simple soldiers,<sup>3110</sup> and the delivery of sugar.<sup>3111</sup> **NTAGANDA** did not only rely on information from his G2 for his operational decision-making, he actively learnt about information from multiple sources.<sup>3112</sup>

1001. His personal conduct and intent must therefore be interpreted in the context of his significant knowledge of the activities of the UPC and its soldiers.

1002. It is abundantly clear from his weeks of (at times detailed) testimony that **NTAGANDA** was broadly aware of events, and a great many details, throughout

<sup>3106</sup> **D-300:T-222-ENG-CT**,67:25-68:3.

<sup>3107</sup> **DRC-OTP-0017-0033**,p.0176(Fourth)(transl.**DRC-OTP-2102-3854**,p.3998); **P-16:DRC-OTP-0126-0422-R03**,p.0441,para.103,p.0464,para.241; **P-16:DRC-OTP-2054-1447**,p.1530:7-p.1532:14; *See also* **P-5:T-184-CONF-ENG-ET**,19:10-24.

<sup>3108</sup> **P-10:T-47-CONF-ENG-CT**,21:12-22:5,52:20-55:21; **P-768:T-33-CONF-ENG-CT**,52:9-16,53:3-19,54:8-17; **P-55:T-70-CONF-ENG-CT**,51:17-55:19,56:13-57:16;**T-71-CONF-ENG-CT**,68:25-70:21,75:20-77:6.

<sup>3109</sup> **D-300:T-233-CONF-ENG-CT**,57:21-58:25.

<sup>3110</sup> **DRC-OTP-0018-0170**,p.0170(transl.**DRC-OTP-0173-0517**,p.0518)(inviting the addressee to send anyone who disobeys him to **NTAGANDA** for punishment and warning him if he does not deal with the problems he will go there to do it himself).

<sup>3111</sup> **DRC-OTP-0017-0033**,p.0210(Second)(transl.**DRC-OTP-2102-3854**,p.4032).

<sup>3112</sup> [REDACTED].

the charged period.<sup>3113</sup> **NTAGANDA** admitted possessing the general and specific knowledge (awareness) of events, including crimes committed by the RCD-K/ML and Lendu combatants that one would expect a military commander in his position to have. However, when it came to the charged crimes, where he knew that admissions as to his knowledge would trigger his own criminal responsibility, he categorically denied having any knowledge. This is not credible or consistent with the rest of his testimony establishing his broad awareness of tactical, operational, strategic, and disciplinary details of his military operations. Neither can it be considered credible when considered against the overwhelming evidence from other sources concerning his knowledge. The Chamber should consider his denials of knowledge as self-serving, insincere attempts to escape criminal responsibility for his own decisions and actions; and the actions of those he led.

1003. **NTAGANDA** maintained tight controls over the military. He conceded that no problems or obstacles impeded the exercise of his role as Deputy Chief of Staff in charge of operations and organisation from September 2002 to December 2003.<sup>3114</sup> This critical admission undermines his later evidence that he was not given information about crimes allegedly committed by the UPC in Sangi and Kobu, until 2004 and only *via* the media. It is plain that if he could exercise his duties without obstacles in 2002 to 2003, which by his own admission was the case, it is implausible that such critical information would have been kept from him.

1004. When confronted with his prior testimony on the point, **NTAGANDA** suggested that he thought the earlier question was related to any problems in his relationship with **KISEMBO** or any other person that could affect his proper

---

<sup>3113</sup> See e.g. **D-300**, [T-215-ENG-ET](#), 30:13-22 (stating he was aware of the casualties caused by the RCD-K/ML at Komanda); [T-215-ENG-ET](#), 45:23-46-9 (stating he and all of Congo were aware of the massacres in Nyankunde); [T-215-ENG-ET](#), 68:24-69:10 (stating he was aware of KAKWAVU's operational situation); [T-216-ENG-CT](#), 53:8-16 (stating that he was aware of the ethnicity of the houses in the area where the APC military was located); [T-218-CONF-ENG-CT](#), 55:11-19; [T-219-CONF-ENG-ET](#), 18:22-19:4 (stating that he was aware of the enemy digging trenches and moving troops for an attack).

<sup>3114</sup> **D-300**: [T-225-CONF-ENG-CT](#), 82:14-83:16.

functioning. This is not believable, particularly as the scope of the earlier question, was clearly explained to **NTAGANDA**.

1005. Equally implausible was **NTAGANDA**'s reply that he did not know of the killings following the Second Attack because *"we didn't have enough communications' equipment", "we had road problems", "it was difficult to get to a place a hundred kilometres away"*.<sup>3115</sup>

1006. First, **NTAGANDA**'s claim that he or the UPC lacked communications' equipment contradicts his own testimony about the extensive means of communication at his disposal. Witnesses confirmed that during operations **NTAGANDA** could communicate and receive information at all times.<sup>3116</sup>

1007. Second, **NTAGANDA** concedes that in 2002 to 2003, he could use various means of communication to reach **KISEMBO**, **LUBANGA**, and sector and brigade commanders, as far away as Aru and Mahagi including by Motorola, Manpack, relay messages, Thuraya, written communications or in person.<sup>3117</sup> **NTAGANDA** acknowledged that before the Mongbwalu operation,<sup>3118</sup> he had a Thuraya and could communicate directly with **KISEMBO** without the need to send messages through the Manpack.<sup>3119</sup> **NTAGANDA** accepts that Thurayas allow you to communicate between continents.<sup>3120</sup> Both **NTAGANDA** and **KISEMBO** had a Manpack and a signaller, to communicate long distances.<sup>3121</sup> Moreover, the UPC commanders could communicate up to 75 or 80 kilometres as well by using an

<sup>3115</sup> **D-300:T-243-CONF-ENG-ET**,31:20-25,32:1-25,33:1-25,34:1.

<sup>3116</sup> E.g. **P-55:T-71-CONF-ENG-CT**,43:9-19; **P-768:T-33-CONF-ENG-CT**,32:24-33:18,37:17-24,65:24-66:14; **T-34-CONF-ENG-CT**,7:19-21; **P-16:DRC-OTP-2054-1625**,p.1646:6- p.1649:17; **P-17:T-58-CONF-ENG-CT**,67:2-10; **P-290:T-65-CONF-ENG-CT**,74:1-17.

<sup>3117</sup> **D-300:T-226-ENG-CT**,21:10-22:15.

<sup>3118</sup> **D-300:T-216-ENG-CT**,85:1-5,24-25. Although witnesses states that **NTAGANDA** had a Thuraya by August 2002: **P-57:DRC-OTP-0150-0354**,p.0370,para.72 and **P-17:T-58-CONF-ENG-CT**,26:15-19.

<sup>3119</sup> **D-300:T-226-ENG-CT**,88:17-89:12;**T-215-ENG-ET**,85:13-85:5;**T-215-ENG-ET**,85:13-85:5.

<sup>3120</sup> **D-300:T-235-CONF-ENG-CT**,59:15-17.

<sup>3121</sup> **D-300:T-226-ENG-CT**,88:17-89:12.

extended-range or base Motorola.<sup>3122</sup>

1008. **NTAGANDA** states that at times there were network difficulties.<sup>3123</sup> However, no network difficulties ever presented an obstacle to his smooth handling of operations in the past, and he provides no plausible explanation as to why it did so in this instance. **NTAGANDA** conceded that even when a commander is not at the battlefield, it is possible to follow the attack as it unfolds by other means of communication such as Motorolas.<sup>3124</sup>

1009. **NTAGANDA**'s claims that he did not or could not monitor the Second Attack and did not know of what happened at Sangi and Kobu, are simply unsustainable. The reality was, as **NTAGANDA** spontaneously first conceded: there were never any obstacles preventing him from performing his duties as Deputy Chief of Staff in charge of operations and organisation.<sup>3125</sup> He knew of everything that transpired before, during, and after, the Second Attack.

1010. **NTAGANDA**'s tight controls over the UPC military side, mirrored LUBANGA's tight controls over its political side: LUBANGA instructed all UPC national secretaries that he had to be informed of all correspondence and be consulted before all important decisions that engaged the movement.<sup>3126</sup> KISEMBO, LUBANGA and **NTAGANDA** met and communicated regularly to maintain their total control over the organisation.<sup>3127</sup>

<sup>3122</sup> **P-901:T-27-CONF-ENG-CT**,54:4-19;**T-28-CONF-ENG-CT**,15:8-19,37:22-38:20,36:25-37:4,39:1-7; **P-17:T-59-CONF-ENG-CT**,79:3-23;**T-63-CONF-ENG-ET**,30:17-32:18.

<sup>3123</sup> **D-300:T-226-ENG-CT**,21:10-22:15.

<sup>3124</sup> **D-300:T-213-CONF-ENG-CT**,10:1-12:1. See also e.g. **P-901:T-28-CONF-ENG-CT**,18:10-19:15; **P-17:T-62-CONF-ENG-ET**,10:15-22.

<sup>3125</sup> **D-300:T-225-CONF-ENG-CT**,82:14-83:16.

<sup>3126</sup> E.g. **DRC-OTP-0089-0069**.

<sup>3127</sup> E.g. **P-901:T-28-CONF-ENG-CT**,63:17-20; **P-41:DRC-OTP-2054-5384**, p.5450:3-24; **P-41:DRC-OTP-0147-0002**,p.0017,para.91; **P-16:DRC-OTP-2054-1447**,p.1530:7-p.1532,114; **P-16:DRC-OTP-0126-0422-R03**,p.0434,para.65,pp.0439-0441, paras.97-101; **P-10:T-47-CONF-ENG-CT**,22:6-14; **P-55:T-70-CONF-ENG-CT**,65:9-16;**T-72-CONF-ENG-CT**,4:21-5:5;**T-74-CONF-ENG-CT**,29:18-30:13; **P-57:DRC-OTP-0150-0354**,p.0370,paras.72-73,pp.0376-0378, paras.100-102. On certain military matters, **NTAGANDA** acted independently of KISEMBO and LUBANGA: e.g. **P-190:T-96-CONF-ENG-CT**,49:25-51:12; **P-16:DRC-OTP-0126-0422-R03**,p.0441,para.103,p.0446,paras.130-131; **P-16:DRC-OTP-2054-1447**,p.1510:3-20.

1011. The evidence of **NTAGANDA**'s participation in the common plan or purpose is clear.<sup>3128</sup> Given the prolonged nature of his participation, his knowledge of all UPC operations and everything related to the organisation of the military, and his central role, this participation cannot have been inadvertent or uninformed. He manifestly accepted the objectives of the common plan, and the framework of conduct by which those objectives would be achieved.<sup>3129</sup> He knew of the means by which he participated in that common plan. He knew of the coordinated contributions of his co-perpetrators, and the joint control that they exercised. And he intended the commission of each of the crimes resulting from the common plan. This is apparent not only from his express words and deeds, as described above, but also by necessary implication from his broad knowledge and conduct—including his conspicuous omissions to act—throughout the material period.

1012. In the alternative, **NTAGANDA** shared or at least knew of the common criminal purpose of the group of perpetrators. In any event, the evidence shows that **NTAGANDA** knew that UPC soldiers would carry out crimes in accordance with his instructions, and that he intended their commission.

**a. NTAGANDA knew of the factual circumstances relevant to his liability**

1013. **NTAGANDA** knew of all the relevant factors enabling his joint control over the crimes in 2002 and 2003. He could not have failed to have been aware of his personal authority within the UPC<sup>3130</sup> (and acknowledged the authority he

---

<sup>3128</sup> See Section V.A.1.b.i.

<sup>3129</sup> It was not necessary for **NTAGANDA** to share the ideology of his co-perpetrators; his personal motives for adopting the common plan are irrelevant. Furthermore, isolated incidents in which **NTAGANDA** may have acted pragmatically to preserve the integrity of the common plan overall—which included territorial control—do not undermine the evidence of his criminal intent: *e.g.* **P-16:DRC-OTP-0126-0422-R03**, pp.0448-0449, para.149.

<sup>3130</sup> See Section VII.A.1, 2.b. and VII.B.1 and 2.

wielded within the UPC),<sup>3131</sup> his role in planning and participating in operations,<sup>3132</sup> his role in providing weapons and expertise,<sup>3133</sup> and his personal notoriety.<sup>3134</sup> This evidence equally demonstrates that **NTAGANDA** knew of the existence of the group acting with a common criminal purpose, and his contributions to that purpose. For the same reasons, **NTAGANDA** expected that UPC soldiers would carry out his orders when they were given.<sup>3135</sup>

**b. NTAGANDA intended the crimes concerning child soldiers committed throughout the armed conflict**

1014. **NTAGANDA** knew and intended that crimes against children—rape, sexual enslavement, conscripting and enlisting children under the age of 15 into an armed group, and using children under the age of 15 to participate actively in hostilities—would occur throughout the armed conflict. He not only directly participated in these crimes but also endorsed their occurrence throughout the UPC and at all times material to this case.

- i. NTAGANDA intended to enlist and to conscript children under the age of 15 into the UPC, and to use them to participate actively in hostilities*

1015. From the outset, **NTAGANDA** knew and intended that the UPC would conscript, enlist, and use children under the age of 15 as UPC soldiers. Indeed, he had done these very things before the period of the charges, both when the Mandro camp was set up in the summer of 2002, and even when leading the Chui Mobile Force in the bush in 2000. At this time, he knew that children under the age of 15 were amongst his forces, and were subsequently transferred to Uganda

---

<sup>3131</sup> E.g. **D-300:T-211-CONF-ENG-ET**,52:6-9: “I could even detain [sector commanders] without hesitation. It was not possible, of course, for me to detain Kisémbó or Thomas but all my subordinates I could punish them because our objective was to liberate the population.”

<sup>3132</sup> See Section VII.A.2.b and B.1, and VIII.A.1.b.vii.

<sup>3133</sup> See Section VIII.A.1.b.i.

<sup>3134</sup> See Section VIII.A.1.b.i.

<sup>3135</sup> See Section VIII.A.1.b.iii. and iv.

with the Chui Mobile Force for military training.<sup>3136</sup>

1016. **NTAGANDA**'s continuing knowledge and intent that children under the age of 15 were being enlisted, conscripted, and used to participate actively in hostilities within the UPC in 2002-2003 is amply demonstrated by his own conduct. Not only was it his job to know exactly what was going on with regard to UPC training and recruitment,<sup>3137</sup> he directly involved himself in such matters pertaining to children in the time period of the charges:

- **NTAGANDA** abducted boys and girls aged about 10 to 13 years old from Mudzipela, including the Mudzipela boys' Primary School in the summer of 2002, and took them to Mandro.<sup>3138</sup>
- **NTAGANDA** was primarily responsible for dealing with the training of all recruits. He concedes that he helped to establish the Mandro training camp.<sup>3139</sup>
- Recruits were considered as "FPLC soldiers" once their training was completed.<sup>3140</sup> **NTAGANDA** visited UPC camps at which children were trained, and marked their transition from trainees to soldiers by providing uniforms and weapons.<sup>3141</sup> **NTAGANDA** executed soldiers who refused to enter battle, including in the presence of child soldiers.<sup>3142</sup>

<sup>3136</sup> E.g. [P-190:T-96-CONF-ENG-CT](#),18:21-20:6,21:8-22:4,25:12-20; [P-901:T-27-CONF-ENG-CT](#),20:6-16,25:14-26:4,30:3-25,36:15-23,38:20-41:18; [P-769:T-120-CONF-ENG-ET](#),13:11-22:8.

<sup>3137</sup> [P-55:T-70-CONF-ENG-CT](#),43:17-18;[T-71-CONF-ENG-CT](#),69:7-70:14,77:2-6 (**NTAGANDA** "was the Chief of Staff in charge of operations". **NTAGANDA** frequently visited the UPC training camps as "that was part of his duties"; "[h]e spoke to the recruits [...] he wanted to know what their situation was").

<sup>3138</sup> See Section VIII.A.1.a.v.

<sup>3139</sup> [D-300:T-213-CONF-ENG-CT](#),59:6-24.

<sup>3140</sup> E.g. [P-16:DRC-OTP-2054-1447](#), p.1467:15-18; [P-55:T-71-CONF-ENG-CT](#),82:13-18. Each recruit was presented with a weapon at the end of training: [P-963:T-78-CONF-ENG-ET](#),52:12-53:10; [P-55:T-71-CONF-ENG-CT](#),80:5-11.

<sup>3141</sup> E.g. [P-55:T-71-CONF-ENG-CT](#),80:5-11; [P-10:T-47-CONF-ENG-CT](#),4:23-5:4; See also [P-758:T-161-CONF-ENG-ET](#),30:24-31:7; [P-888:T-105-CONF-ENG-CT](#),23:24-24:14,31:2-23.

<sup>3142</sup> [P-46:T-100-CONF-ENG-CT](#),89:21-91:24; [DRC-OTP-0152-0256](#),pp.0264-0265.



- NTAGANDA ordered the purchase of very small sized boots,<sup>3143</sup> suitable only for children.
- NTAGANDA visited Mandro and other camps, where children under the age of 15 were being trained.<sup>3144</sup> On 12 February 2003, he was present when LUBANGA told recruits—some of whom were manifestly under 15—that they would be useful soldiers.<sup>3145</sup>
- NTAGANDA included a number of children under the age of 15 in his personal escort, and sent them into battle.<sup>3146</sup>
- NTAGANDA ordered children under the age of 15 to be trained as radio operators at his residence (and subsequently ordered their deployment to UPC units).<sup>3147</sup>
- Children under the age of 15, who had been recruited in the summer of 2002, were visibly present at the UPC headquarters in Bunia, which NTAGANDA regularly attended,<sup>3148</sup>
- NTAGANDA was present [REDACTED] child demobilisation organisations spoke to UPC leaders calling for the demobilisation of UPC child soldiers. The children were not demobilised.<sup>3149</sup>

1017. The UPC issued sham orders purporting to demobilise child soldiers.<sup>3150</sup> To the

<sup>3143</sup> [P-190:T-97-CONF-ENG-CT](#),47:19-48:9,76:24-77:14. See also [DRC-OTP-0109-0136](#),p.0140.

<sup>3144</sup> See Section VII.C.3.

<sup>3145</sup> [P-10:T-47-CONF-ENG-CT](#),58:17-60:15,62:2-19;[T-48-CONF-ENG-CT](#),3:13-17:8. Also [DRC-OTP-0120-0293](#),00:08:43-00:12:00(transl.[DRC-OTP-0120-0298](#),p.0305:144-p.0307:194),00:23:07-00:24:34(transl.[DRC-OTP-0120-0298](#),p.0311:297-308); Also [P-30:DRC-OTP-2054-2951](#),p.2974:23-p.2999:14, especially p.2987:5-p.2993:22,p.2998:11-16(which provides a fuller Court translation of the relevant video excerpts); [P-16:DRC-OTP-0126-0422-R03](#),p.0465,para.252; [P-16:DRC-OTP-2054-1447](#),p.1466:7-p.1467:20.

<sup>3146</sup> See Sections VII.C.

<sup>3147</sup> [REDACTED].

<sup>3148</sup> E.g. [P-14:DRC-OTP-2054-0429](#),p.0490:21-24,p.0493:13-20,p.0511:4-p.0516:15; [P-16:DRC-OTP-2054-1447](#), p.1504:15-19, p.1506:10-17. See also [P-46:T-100-CONF-ENG-CT](#),56:6-57:17,58:12-59:2; [P-918:T-155-CONF-ENG-ET](#),79:18-83:24; [P-898:T-153-CONF-ENG-ET](#),53:19-24;[T-154-CONF-ENG-ET](#),79:17-83:8.

<sup>3149</sup> [REDACTED].

contrary, the recruitment of child soldiers increased at times during this period<sup>3151</sup> and did not “cool down” until the end of 2003.<sup>3152</sup> Given his role and pre-eminence in the UPC, NTAGANDA must have been aware not only of the active recruitment policy but also the sham nature of the demobilisation.

ii. *NTAGANDA intended to rape and to sexually enslave children under the age of 15 recruited into the UPC*

1018. NTAGANDA knew and intended that UPC soldiers, including children under the age of 15, were subject to rape and sexual enslavement by their commanders or other soldiers. These practices would have been well known to him,<sup>3153</sup> as these are practices so common that they entered the language of the UPC. Women soldiers were “*guduria*”, a pot used by anybody for anything;<sup>3154</sup> a female escort was a commander’s sex slave. Everyone knew that, if someone was the escort of a commander, the commander slept with them.<sup>3155</sup>

1019. Senior UPC commanders commonly and conspicuously raped UPC soldiers, especially during training.<sup>3156</sup> NTAGANDA cannot have failed to have known this in the course of his ordinary activities. Even from the number of pregnancies among the recruits, it was easy to infer what was going on.<sup>3157</sup> It was so widely known – and as senior commanders themselves were raping them - the recruits

<sup>3150</sup> E.g. **P-46**:[T-101-CONF-ENG-ET](#),19:14-20;1,36:1-37:21,41:14-43:20,69:12-25,75:23-76:12; **P-976**:[DRC-OTP-2054-2599](#), p.2650:15, to p.2652:17. See also **P-768**:[T-36-CONF-ENG-CT](#),46:7-16,36,47:19-24; **P-55**:[T-71-CONF-ENG-CT](#),95:2-13;[T-72-CONF-ENG-CT](#),16:13-17:11; **P-365**:[T-147-CONF-ENG-ET](#),52:21-54:14.

<sup>3151</sup> **P-31**:[DRC-OTP-2054-3760](#),p.3796:21-3810:16, p.3807:20-25.

<sup>3152</sup> E.g. **P-918**:[T-155-CONF-ENG-ET](#),79:18-81:14,81:15-83:24,88:24-90:12.

<sup>3153</sup> E.g. **P-963**:[T-80-CONF-ENG-ET](#),27:23-29:10,32:22-33:11,41:5-12;[T-82-CONF-ENG-ET](#),19:19-24; **P-769**:[T-120-CONF-ENG-ET](#),56:21-58:24;**P-888**:[T-105-CONF-ENG-CT](#),39:3-40:9.

<sup>3154</sup> **P-758**:[T-161-CONF-ENG-ET](#),31:8-22; **P-10**:[T-47-CONF-ENG-CT](#),38:8-39:5,41:3-19.

<sup>3155</sup> **P-10**:[T-46-CONF-ENG-ET](#),38:9-39:2;[T-47-CONF-ENG-CT](#),31:13-34:19,36:6-22;[T-48-CONF-ENG-CT](#),20:23-21:7,27:18-28:9;[T-49-CONF-ENG-CT](#),40:12-41:8,46:16-20;[T-50-CONF-ENG-CT](#),40:14-42:5,43:19-44:4,62:23-63:24; **P-190**:[T-97-CONF-ENG-CT](#),48:10-49:7; **P-963**:[T-80-CONF-ENG-ET](#),27:23-29:10,32:22-33:11,41:5-12;[T-82-CONF-ENG-ET](#),19:19-24; **P-907**:[T-89-CONF-ENG-CT](#),55:2-66:9.

<sup>3156</sup> E.g. **P-888**:[T-105-CONF-ENG-CT](#),39:3-40:9; **P-769**:[T-120-CONF-ENG-ET](#),56:21-58:24,60:11-18; **P-963**:[T-80-CONF-ENG-ET](#),27:23-29:10,32:22-33:11,41:5-12;[T-82-CONF-ENG-ET](#),19:19-24; **P-17**:[T-58-CONF-ENG-CT](#),51:18-52:23; **P-10**:[T-46-CONF-ENG-ET](#),35:4-25,38:9-39:2;[T-47-CONF-ENG-CT](#),36:6-22,41:3-19;[T-48-CONF-ENG-CT](#),20:23-21:7;[T-49-CONF-ENG-CT](#),40:12-41:8,46:16-20; **P-758**:[T-160-CONF-ENG-ET](#),83:10-85:3,86:20-87:12,89:12-25;[T-161-CONF-ENG-ET](#),4:19-8:21.

<sup>3157</sup> **P-190**:[T-97-CONF-ENG-CT](#),48:10-49:7; **P-758**:[T-161-CONF-ENG-ET](#),31:23-24.

never bothered to complain. There was nobody to whom they could complain.<sup>3158</sup> Even if an order may have been given, at one point, to protect girls at Rwampara (in the interests of securing UPC recruitment),<sup>3159</sup> it only shows that widespread rape of recruits was a known problem. And even that order was no more than lip service. [REDACTED].<sup>3160</sup>

1020. NTAGANDA's knowledge and intent is further demonstrated by the fact that he personally raped and sexually enslaved UPC soldiers, including members of his escort.<sup>3161</sup> When NTAGANDA or other UPC leaders raped, it did not make a difference if the woman was a child or not.<sup>3162</sup> [REDACTED] was one of NTAGANDA's victims,<sup>3163</sup> as were his escorts [REDACTED],<sup>3164</sup> [REDACTED],<sup>3165</sup> [REDACTED],<sup>3166</sup> [REDACTED],<sup>3167</sup> [REDACTED],<sup>3168</sup> [REDACTED],<sup>3169</sup> and [REDACTED].<sup>3170</sup> Other male bodyguards described NTAGANDA's female escorts whom he called to have sex with him, as "*the Commander's prey*".<sup>3171</sup> For the escorts, there was no choice, there were no rules: NTAGANDA's escorts "*could not complain to him because it was a habit.*"<sup>3172</sup> BAGONZA, another commander who raped his escorts, was known to shoot girl escorts who tried to resist him.<sup>3173</sup> By his dominant role, and the continuing and highly coercive

<sup>3158</sup> [P-758:T-161-CONF-ENG-ET](#),4:19-8:21.

<sup>3159</sup> [P-10:DRC-OTP-0126-0122](#),pp.0130-0131, para.38. Admitted for impeachment purposes only.

<sup>3160</sup> [REDACTED].

<sup>3161</sup> [P-907:T-89-CONF-ENG-CT](#),55:2-66:9; [P-963:T-80-CONF-ENG-ET](#),32:22-33:11,41:5-12; [T-82-CONF-ENG-ET](#),19:19-24; [P-888:T-105-CONF-ENG-CT](#),39:3-40:9; [P-190:T-97-CONF-ENG-CT](#),48:10-49:7.

<sup>3162</sup> [P-10:T-46-CONF-ENG-ET](#),38:9-39:2;[T-47-CONF-ENG-CT](#),6:1-16,31:13-34:19,6:13-16,36:6-22;[T-48-CONF-ENG-CT](#),20:23-21:7,27:18-28:9;[T-49-CONF-ENG-CT](#),40:12-41:8,46:16-20;[T-50-CONF-ENG-CT](#),40:14-42:5,43:19-44:4,62:23-63:24; [P-907:T-89-CONF-ENG-CT](#),55:2-66:9; [P-190:T-97-CONF-ENG-CT](#),48:10-49:7; [P-17:T-58-CONF-ENG-CT](#),51:12-52:23; [P-883:T-167-CONF-ENG-ET](#),95:14-96:3;[T-168-CONF-ENG-ET](#),4:1-5:4,12:4-14:21.

<sup>3163</sup> [REDACTED].

<sup>3164</sup> [REDACTED].

<sup>3165</sup> [REDACTED].

<sup>3166</sup> [REDACTED].

<sup>3167</sup> [P-907:T-89-CONF-ENG-CT](#),55:2-66:9; [REDACTED].

<sup>3168</sup> [REDACTED].

<sup>3169</sup> [REDACTED].

<sup>3170</sup> [P-907:T-89-CONF-ENG-CT](#),55:2-66:9; [REDACTED].

<sup>3171</sup> [REDACTED].

<sup>3172</sup> [REDACTED].

<sup>3173</sup> [REDACTED].

context, **NTAGANDA** plainly intended the exercise of total power over escorts and UPC recruits, including children under the age of 15.

1021. **NTAGANDA** was likewise personally confronted with the rape of UPC recruits by his subordinates. His chief of security, **MUSEVENI**, was commonly known to have violently raped one of **NTAGANDA**'s escorts,<sup>3174</sup> but **NTAGANDA** took no action.<sup>3175</sup> **NTAGANDA** also participated in operations with other senior members of the UPC who slept with their bodyguards,<sup>3176</sup> and so must have been in a position to draw the same common sense inferences as everyone else.<sup>3177</sup> Indeed, it is probable that **NTAGANDA** would have seen such incidents with his own eyes.<sup>3178</sup>

### c. **NTAGANDA intended the crimes in the First and Second Attacks**

1022. **NTAGANDA** knew and intended that the crimes of murder, rape, sexual slavery, persecution, pillage, unlawful attacks on civilians and protected objects, forcible transfer, and wanton destruction would occur in the First and/or Second Attacks. Manifestly, **NTAGANDA** saw the commission of violent crime against civilians as an integral part of warfare.

1023. Corroborating the obvious evidence (based on his own conduct) of his knowledge and intent regarding crimes in the First and Second Attacks, **NTAGANDA** knew of and accepted very similar patterns of criminal behaviour in preceding attacks—including Bunia, Songolo, Zumbe, and in *Operation Effacer le Tableau*. In all of the UPC's attacks, the UPC committed the same crimes (namely murder or attempted murder, rape and sexual slavery, attacks on

<sup>3174</sup> **P-768:T-34-CONF-ENG-CT**,55:18-56:13.

<sup>3175</sup> **P-768:T-34-CONF-ENG-CT**,55:18-56:13; **P-10:T-47-CONF-ENG-CT**,36:2-22.

<sup>3176</sup> E.g. **P-963:T-80-CONF-ENG-ET**,32:22-33:11,41:5-12; **T-82-CONF-ENG-ET**,19:19-24.

<sup>3177</sup> E.g. **P-17:T-58-CONF-ENG-CT**,51:12-52:23; **P-10:T-46-CONF-ENG-ET**,38:9-39:2;**T-47-CONF-ENG-CT**,31:13-34:19,36:2-22;**T-48-CONF-ENG-CT**,20:23-21:7,27:18-28:9;**T-49-CONF-ENG-CT**,40:12-41:8,46:16-20;**T-50-CONF-ENG-CT**,40:14-42:5,43:19-44:4,62:23-63:24..

<sup>3178</sup> **P-10:T-46-CONF-ENG-ET**,38:9-39:2;**T-47-CONF-ENG-CT**,31:13-34:19,36:2-22;**T-48-CONF-ENG-CT**,20:23-21:7,27:18-28:9;**T-49-CONF-ENG-CT**,40:12-41:8,46:16-20;**T-50-CONF-ENG-CT**,40:14-42:5,43:19-44:4,62:23-63:24.

civilians and protected objects, pillaging and property destruction, persecution, and forced displacement and transfer). The intentional nature of the crimes is proven by the fact that individuals were the victim of multiple UPC crimes during the same attack, not just one crime.

1024. Even after the fighting was over, the UPC routinely hunted for non-Hema civilians during standard *ratissage* operations – and raped, killed, stole and destroyed their property. As P-907 explained ‘*ratissage*’ means: “*clean up everything you find across your path, clean everything, insects, birds, animals, men, hit everything, spare nothing, nothing at all*”.<sup>3179</sup> None of the crimes were random or isolated acts. All of the crimes were a consistent, strategic, means of achieving the common plan, or the group’s common purpose, of taking over Ituri and ousting non-Hema from the areas they took over so they would not return.

1025. In the preceding and subsequent attacks, again, **NTAGANDA** not only failed to restrain such behaviour, but actively perpetuated and encouraged it. Some soldiers deployed in the First and/or Second Attacks were veterans of the previous attacks.<sup>3180</sup> Thus:

- **NTAGANDA** planned and took a leading role in the August 2002 attack on Bunia,<sup>3181</sup> in which UPC soldiers were ordered to kill everyone.<sup>3182</sup> UPC soldiers hunted down Lendu and *non-originaires*. Civilians were killed, raped, expelled, and their property destroyed.

<sup>3179</sup> E.g. **P-301:T-150-CONF-FRA-ET**,58:1-15; **P-898:T-154-CONF-ENG-ET**,13:3-14:22; **T-154-CONF-FRA-ET**,25:21-26:1; **P-17:T-59-CONF-FRA-CT**,76:19-77:26;**T-60-CONF-ENG-ET**,27:23-29:19; **P-907:T-89-CONF-ENG-CT**,42:20-46:2,73:9-74:22;**T-90-CONF-ENG-CT**,79:7-82:11; **T-90-CONF-FRA-CT**,11:20-28,35:14-39:4; **P-190,T-97-CONF-ENG-CT**,42:4-43:21.

<sup>3180</sup> For example, TCHALIGONZA, BAGONZA, KASANGAKI, and NDAHURA participated in the attack on Songolo: **P-12:DRC-OTP-0105-0085**,p.0107,para.124,p.0148,para.346.

<sup>3181</sup> **P-901:T-29-CONF-ENG-CT**,43:17-49:15; **P-46:T-100-CONF-ENG-CT**,49:14-50:13,75:11-16; **P-12:DRC-OTP-0105-0085**,p.0106,para.118,p.0107,paras.123-124,p.0109,para.136.

<sup>3182</sup> **P-758:T-161-CONF-ENG-ET**,39:9-24,35:1-8,39:9-24,43:9-44:2,47:8-13.

- NTAGANDA attacked Songolo on or about 31 August 2002.<sup>3183</sup> He gave the orders to attack and provided mortars and rockets used during the operation.<sup>3184</sup> Again, non-Hema civilians were killed without distinction, at NTAGANDA's order.<sup>3185</sup> UPC forces targeted civilian objects; they laid mines before withdrawing. Civilians were raped, and taken as sex slaves, property pillaged, and homes destroyed.<sup>3186</sup> NTAGANDA returned with no consequences for failing to tell KISEMBO and LUBANGA in advance of his attack.<sup>3187</sup>
- NTAGANDA led the October 2002 Zumbe attack. Like Songolo, the area was mined, non-Hema civilians were killed and raped, property pillaged, and many buildings destroyed.<sup>3188</sup>
- NTAGANDA participated in the attacks in October to December 2002 known as *Operation Effacer le Tableau*.<sup>3189</sup> Again, they led to the expulsion of non-Hema civilians, killings, rape, and pillage.<sup>3190</sup>

1026. NTAGANDA's personal conduct during the First and Second Attacks demonstrates his intent and knowledge that the charged crimes would take place. Even without his further express orders, the commission of crimes against civilians in these attacks would occur in the ordinary course of events.<sup>3191</sup> Yet, despite this knowledge, NTAGANDA's conduct remained exactly the same. It can only be inferred that he accepted and embraced the crimes which were being

<sup>3183</sup> See section VI.B.2.b. E.g. **P-190:T-96-CONF-ENG-CT**,49:5-50:11,84:13-88:4; **P-901:T-29-CONF-ENG-CT**,43:17-44:8; **P-888:T-105-CONF-ENG-CT**,46:3-47:14; **P-898:T-154-CONF-ENG-ET**,27:16-28:1.

<sup>3184</sup> **DRC-OTP-2061-0715**,p.0716.

<sup>3185</sup> **P-190:T-96-CONF-ENG-CT**,49:14-20,84:13-86:5,92:5-17; **P-888:T-105-CONF-ENG-CT**,46:3-47:14,49:2-13,50:16-51:16,52:5-14,55:1-6,56:2-9; **P-315:DRC-OTP-2058-0990**,p.1016,para.141; **P-901:T-29-CONF-ENG-CT**,43:17-45:2,48:9-50:8.

<sup>3186</sup> See Section VI.B.2.b.

<sup>3187</sup> **P-190:T-96-CONF-ENG-CT**,49:5-51:12;**T-96-CONF-ENG-CT**,91:24-92:2;**T-97-CONF-ENG-CT**,18:16-19:3

<sup>3188</sup> See Section VI.B.2.c.

<sup>3189</sup> See Section VI.B.2.d.

<sup>3190</sup> See Section VI.B.2.d.

<sup>3191</sup> **P-16:DRC-OTP-0126-0422-R03**,p.0464,para.242.

committed.

1027. Moreover, in the First Attack, which **NTAGANDA** commanded,<sup>3192</sup> he expressly ordered the elimination of the Lendu without distinction, as well as unrestrained pillage.<sup>3193</sup> Not only was he present when forces under his command attacked civilians and civilian objects, and not only did he order the killing or rape of detained civilians, but he also personally murdered prominent local individuals and engaged in pillage himself.

1028. During this period, **NTAGANDA** repeated orders to attack civilians, to murder, to forcibly displace, to pillage and to burn prior to and during specific operations, such as those at Libi and Mbau,<sup>3194</sup> and Mongbwalu. He repeated these orders not only to UPC soldiers but also to the UPC's civilian Hema supporters.<sup>3195</sup> **NTAGANDA** was present and/or was informed when crimes were committed by UPC soldiers and Hema civilian supporters.<sup>3196</sup>

1029. In the course of the Second Attack, which **NTAGANDA** commanded with others, his express orders to eliminate the Lendu without distinction, attack them (by raping and/or killing them), and to pillage their goods, remained in full force and effect. These orders were relayed to the troops through commander MULENDA and others. **NTAGANDA** directly commanded the troops, ordered reinforcements and was in communication with troops on the ground during the attack.

1030. **NTAGANDA** also failed to adequately punish his subordinate MULENDA for the treacherous murder of Lendu community leaders who had been invited to a

---

<sup>3192</sup> See Section VII.A.b.

<sup>3193</sup> *E.g.* **P-963:T-78-CONF-ENG-ET**,69:18-70:25; **P-10:T-47-CONF-ENG-CT**,10:6-18,13:3-21,21:5-7. *See also:* **NTAGANDA**'s subordinates also passed on the orders to pillage, including MULENDA **P-17:T-58-CONF-ENG-CT**,53:21-54:24,80:24-82:17.

<sup>3194</sup> *E.g.* **P-10:T-48-CONF-ENG-CT**,26:3-27:1;**T-49-CONF-ENG-CT**,58:15-63:12.

<sup>3195</sup> *E.g.* **P-768:T-33-CONF-ENG-CT**,41:21-44:2.

<sup>3196</sup> *E.g.* **P-768:T-33-CONF-ENG-CT**,41:21-44:2; **P-17:T-58-CONF-ENG-CT**,73:18-79:18;**T-59-CONF-ENG-CT**,5:20-6:23.



“pacification” meeting.<sup>3197</sup> NTAGANDA knew of MULENDA’s crimes<sup>3198</sup>—and may even have briefly viewed the massacre as reflecting badly on the UPC’s political interests at the time<sup>3199</sup>—but no action was taken against MULENDA.<sup>3200</sup> NTAGANDA described him as a “*real man*” for the killings of the civilians in Kobu.<sup>3201</sup> This inaction demonstrates NTAGANDA’s callous attitude to such violence; not only did he not care, but the incident was also consistent with his standing orders to kill the Lendu.<sup>3202</sup> Moreover, MULENDA remained in close contact with UPC leadership while the massacre took place and received orders directly from KISEMBO to carry out the executions.<sup>3203</sup> NTAGANDA was regularly in contact with the forces in the field during the operation.<sup>3204</sup>

1031. NTAGANDA’s approval of the widespread violent crimes committed by his UPC soldiers during the First and Second Attacks is demonstrated by their repetition in further UPC operations, such as at Bunia in March and May 2003<sup>3205</sup> (where NTAGANDA was again in command<sup>3206</sup> and/or provided weapons and ammunition<sup>3207</sup>), at Tchomia in October 2003,<sup>3208</sup> as well as in sporadic individual

<sup>3197</sup> E.g. [DRC-OTP-0065-0003](#) (excerpt: [DRC-OTP-2055-0364](#)); [P-792:T-150-CONF-ENG-ET](#),48:9-52:24,56:15-20; [P-105:T-134-CONF-ENG-ET](#),8:17-18:15; [P-19:T-115-CONF-ENG-CT](#),16:16-17:1,27:15-30:15; [P-106:T-44-CONF-ENG-CT](#),29:23-30:2,31:2-16,34:13-37:17,38:22-39:23;[T-45-CONF-ENG-CT](#),39:7-41:7,46:18-53:8; [P-55:T-71-CONF-ENG-CT](#),56:18-58:4; [P-768:T-34-CONF-ENG-CT](#),60:24-61:13; [P-317:T-191-CONF-ENG-ET](#),30:19-22,47:1-16,76:23-77:11; [P-963:T-79-CONF-ENG-ET](#),74:6-22; [P-17:T-60-CONF-ENG-ET](#),16:5-17:2,26:25-27:5; [P-46:T-100-CONF-ENG-CT](#),63:19-65:5.

<sup>3198</sup> [D-300:T-238-CONF-ENG-CT](#),72:2-73:10. E.g. [P-55:T-71-CONF-ENG-CT](#),56:18-58:4; [P-16:DRC-OTP-0126-0422-R03](#),pp.0434-0435,para.68 [REDACTED].

<sup>3199</sup> E.g. [P-16:DRC-OTP-0126-0422-R03](#),pp.0450-0451,paras.163,168.

<sup>3200</sup> [D-300:T-238-CONF-ENG-CT](#),72:2-73:10.

<sup>3201</sup> [REDACTED].

<sup>3202</sup> [P-963:T-78-CONF-ENG-ET](#),70:7-73:9,74:17-75:7,77:15-17,81:12-81:22;[T-79-CONF-ENG-ET](#),43:1-44:7.

<sup>3203</sup> [P-768:T-34-CONF-ENG-CT](#),60:9-61:13; [P-17:T-60-CONF-ENG-ET](#),11:14-19:2,19:3-21:6,26:25-27:5.

<sup>3204</sup> [P-55:T-71-CONF-ENG-CT](#),43:9-44:8; [P-901:T-29-CONF-ENG-CT](#),13:6-13; [P-907:T-90-CONF-ENG-CT](#),59:4-61:6,62:9-15;[T-92-CONF-ENG-CT](#),64:3-21.

<sup>3205</sup> [P-46:T-100-CONF-ENG-CT](#),49:20-50:13,52:6-9;[T-101-CONF-ENG-ET](#),8:14-9:21,12:1-13:21,14:5-9,14:10-23;[T-103-CONF-ENG-ET](#),51:11-22; [DRC-OTP-0074-0422](#),pp.0436-0437,para.37,p.0447,paras.78,80; [DRC-OTP-1061-0212](#),pp.0458-0459,paras.423-424; [DRC-OTP-2003-0497](#),pp.0517-0518.

<sup>3206</sup> E.g. [D-300:T-221-CONF-ENG-ET](#),32:2-13; See also [P-190:T-97-CONF-ENG-CT](#),24:13-26:9; [P-963:T-80-CONF-ENG-ET](#),35:20-37:2; [P-888:T-105-CONF-ENG-CT](#),85:19-88:21.

<sup>3207</sup> [DRC-OTP-0074-0422](#),pp.0434-0435,para.29.

<sup>3208</sup> E.g. [D-300:T-222-ENG-CT](#),32:6-8; [P-12:DRC-OTP-0105-0085](#),pp.0149-0150,paras.349-354; [DRC-OTP-0006-0221](#),pp.0221-0222.

incidents.<sup>3209</sup>

1032. Finally, NTAGANDA's embrace of criminal conduct as a means of waging war is demonstrated by the repetition of the same pattern of crimes in the years following the events charged in this case.<sup>3210</sup> Although NTAGANDA's political masters may have changed during this period, his *modus operandi* never did. Soldiers under NTAGANDA's command were implicated in crimes against civilians when he fought with CNDP,<sup>3211</sup> with FARDC,<sup>3212</sup> and with M23.<sup>3213</sup>

*i. NTAGANDA intended to kill, to attack civilians, and to destroy property*

1033. NTAGANDA knew and intended that acts of murder, and attacks against civilians and the destruction of property, would occur in the First and Second Attacks. So much is plain from his direct orders for UPC soldiers to shoot indiscriminately at civilians and civilian objects,<sup>3214</sup> to execute or to "do their work" with those captured or detained (understood to mean to rape then kill),<sup>3215</sup> and to eliminate all Lendu whom he described as the enemy – making no distinction between civilians and soldiers,<sup>3216</sup> as well as his personal involvement in murdering prominent civilians himself. He knew and understood that attacks would be followed up with widespread destruction. He never punished the

<sup>3209</sup> E.g. [DRC-OTP-2066-0406](#),p.0408.

<sup>3210</sup> Such pattern evidence is admissible to show elements such as NTAGANDA's intent: e.g. [Lubanga DCC](#), para.152; [Katanga DCC](#), paras.225-228; [Dorđević AJ](#), paras.293,295,297; [Nahimana AJ](#), paras.315-316; [Stakić AJ](#), paras.122-123,135,128; [Simba Temporal Jurisdiction](#), at pp.3-4; [Mladić Admission](#), para.20; [Taylor TJ](#), paras.92,98-111; [Karemera and Ngirumpatse TJ](#), paras.13-14; [Ngirabatware Temporal Jurisdiction](#), 3 February 2011, paras.1-5,8-12,15-16.

<sup>3211</sup> [P-315:DRC-OTP-2058-0990](#),p.1017,paras.142-146.

<sup>3212</sup> [P-315:DRC-OTP-2058-0990](#),pp.1017-1018,paras.142,147

<sup>3213</sup> [P-315:DRC-OTP-2058-0990](#),pp.1017-1018, paras.142,148-150.

<sup>3214</sup> [P-888:T-105-CONF-ENG-CT](#),50:16-52:18,54:19-58:14; [P-768:T-33-CONF-ENG-CT](#),37:2-16,41:8-17,41:21-42:12,43:18-46:5,47:22-48:25,47:22-48:19,44:6-51:7,53:3-18,54:18-56:9,58:22-59:4,64:21-65:10,65:11-67:10;[T-33-CONF-ENG-CT](#),53:3-54:17[[T-33-CONF-FRA-ET](#),52:6-53:15]; [P-190:T-97-CONF-ENG-CT](#),32:15-33:7; [P-10:T-47-CONF-ENG-CT](#),10:6-18;[DRC-OTP-0126-0122](#),0131-0134:43-49; [P-16:DRC-OTP-0126-0422-R03](#), paras.56-58;[DRC-OTP-2054-1447](#),pp.19-20; [P-963:T-78-CONF-ENG-ET](#),26:2-7,72:25-73:9,73:22-75:7,77:1-18,82:4-84:6,81:12-22; [P-17:T-58-CONF-ENG-CT](#),69:16-74:19.

<sup>3215</sup> [P-10:T-47-CONF-ENG-CT](#),16:17-17:21; [P-768:T-33-CONF-ENG-CT](#),57:1-58:19,54:18-56:9; [P-907:T-90-CONF-ENG-CT](#),34:11-35:12.

<sup>3216</sup> [P-963:T-78-CONF-ENG-ET](#),26:2-7,72:25-73:9,73:22-75:7,77:1-18; [P-768:T-33-CONF-ENG-CT](#),53:3-54:17[[T-33-CONF-FRA-ET](#),52:6-53:15]; [P-190:T-97-CONF-ENG-CT](#),32:17-33:13.

killing of Lendu or *non-originaires*,<sup>3217</sup> but rather he provoked and ordered it. NTAGANDA's tolerance and perpetuation of a climate in which killing was treated as the norm is consistent only with his intent for such killings to occur.<sup>3218</sup> So too is the evidence of NTAGANDA's own continued predilection for murder, exemplified not only by the killings preceding these charges but also his killing of the senior MONUC peacekeeper in 2004.<sup>3219</sup>

ii. *NTAGANDA intended to persecute non-Hema civilians and to forcibly displace them*

1034. The co-perpetrators' common plan contained a clear discriminatory element in its goal to drive out the Lendu and *non-originaires* from Ituri, reflected *inter alia* by the domination of the Hema within the UPC, the disproportionate targeting of Lendu and *non-originaires*, and the discriminatory rhetoric employed throughout the UPC. NTAGANDA's participation in this plan is cogent evidence that he shared the discriminatory intent which it included. Indeed, it was NTAGANDA who played a significant role in targeting Lendu and *non-originaires*, and who led many attacks against Lendu settlements resulting in crimes. Even the UPC's rudimentary disciplinary system, which depended so much on the leadership's inclinations and which followed NTAGANDA's personal example, reflected the discriminatory intent. UPC crimes against Hema civilians might be punished; crimes against Lendu and *non-originaires* were not only ignored but embraced.

1035. Specific aspects of NTAGANDA's conduct further confirm his discriminatory intent.

1036. NTAGANDA was known to be hostile to the Lendu,<sup>3220</sup> and frequently

<sup>3217</sup> *E.g.* [P-963:T-79-CONF-ENG-ET](#),14:15-16:9,21:19-25:15; [P-16:DRC-OTP-0126-0422-R03](#), p.0461, paras.222,224, p.0453,para.236.

<sup>3218</sup> [P-16:DRC-OTP-0126-0422-R03](#), pp.0460-0461, paras.219,225.

<sup>3219</sup> [P-190:T-96-CONF-ENG-CT](#),70:18-20;[T-98-CONF-ENG-CT](#),18:16-19:3; [T-98-CONF-ENG-CT](#),96:7-18.

<sup>3220</sup> [P-768:T-33-CONF-ENG-CT](#),44:6-48:19,50:13-51:7,54:18-55:7;[T-33-CONF-ENG-CT](#),42:16-24.

described Lendu and *non-originaires* in hostile terms.<sup>3221</sup> NTAGANDA repeatedly and expressly instructed UPC soldiers to murder and to forcibly displace the Lendu.<sup>3222</sup> Likewise, in training, NTAGANDA instructed UPC recruits to kill all the enemies, meaning the Lendu, that they encountered, without distinction.<sup>3223</sup>

1037. NTAGANDA killed Lendu or those he believed to have assisted Lendu. In the First Attack, he killed prominent individuals such as Ngiti Abbé BWANALONGA and Colonel LUSALA, who was accused of training Lendu fighters. He also ordered his bodyguards to kill Lendu civilian women because he said the UPDF, an enemy force, were bringing women into their camps and “*they are all considered to be our enemy*”.<sup>3224</sup>

1038. The conduct of the First Attack under NTAGANDA’s command was also consistent with a discriminatory, and not purely military, purpose. Houses and the area surrounding Mongbwalu were searched—as the UPC had done previously, such as in Bunia, Songolo, and Zumbe—in order to locate Lendu and *non-originaires*, including the very old and the very young, and to kill them.<sup>3225</sup> Important members of the Lendu and non-Hema communities were rounded up and detained at NTAGANDA’s local headquarters, where they were subsequently killed.<sup>3226</sup>

1039. Such conduct also reflects NTAGANDA’s knowledge and intent for civilians to be forcibly displaced. The widespread use of violence which he ordered and encouraged, together with the use of specific techniques (such as house-to-house

<sup>3221</sup> E.g. [P-963:T-78-CONF-ENG-ET](#),26:2-7,72:25-73:9,73:22-75:7,77:1-18; [P-768:T-33-CONF-FRA-ET](#),52:6-53:15;[T-33-CONF-ENG-CT](#),53:3-54:17.

<sup>3222</sup> [P-768:T-33-CONF-ENG-CT](#),37:2-16,52:9-16,53:3-19,54:8-17; [P-963:T-78-CONF-ENG-ET](#),81:12-22,70:18-73:9,74:17-75:7,77:15-17.

<sup>3223</sup> E.g. [P-10:T-47-CONF-ENG-CT](#),10:6-18; [P-768:T-33-CONF-ENG-CT](#),36:18-37:16,52:9-54:17,37:2-16; [P-190:T-97-CONF-ENG-CT](#),32:15-33:7; [P-907:T-90-CONF-ENG-CT](#),36:17-24.

<sup>3224</sup> [P-55:T-71-CONF-ENG-CT](#),21:8-24:18.

<sup>3225</sup> E.g. [P-963:T-78-CONF-ENG-ET](#),79:5-13,14:15-16:8; [P-315:DRC-OTP-2058-0990](#),p.1013, paras.129-130 (comparing the UPC methodology to a “polio vaccine campaign”); [P-190:T-96-CONF-ENG-CT](#),78:11-79:19; [P-888:T-105-CONF-ENG-CT](#),79:13-81:5.

<sup>3226</sup> E.g. [P-963:T-79-CONF-ENG-ET](#),14:15-16:9,21:19-25:21; *Also* [P-907:T-90-CONF-ENG-CT](#),34:11-35:12;-[P-894:DRC-OTP-2076-0194-R02](#), pp.0201-0202, para.38; [DRC-OTP-0074-0797](#), pp.0828-0829.

searches) to ensure that no individual was overlooked, obviously ensured the flight of any civilian able to do so, and the physical removal of any civilian unable to do so. The destruction and pillage resulting from UPC attacks further removed the possibility for the displaced population to return. NTAGANDA's instructions to the UPC included exhortations not only to kill the Lendu but also to drive all the Lendu out.<sup>3227</sup>

*iii. NTAGANDA intended to pillage and to attack protected objects*

1040. NTAGANDA knew that pillage was a vital pillar upon which the UPC rested, and therefore intended it to be an integral part of UPC operations. UPC soldiers were not paid,<sup>3228</sup> and pillage was a key means by which they were motivated and sustained.<sup>3229</sup> NTAGANDA always intended his troops to have the opportunity to pillage during the conflict.

1041. NTAGANDA's intent to pillage is demonstrated by his express instructions to UPC soldiers to pillage during the First Attack (and at other times), using the phrase "*kupiga na kuchaji*".<sup>3230</sup> The meaning of the phrase was taught to UPC soldiers during training,<sup>3231</sup> and NTAGANDA knew it. Furthermore, during the First Attack, NTAGANDA personally and conspicuously participated in the pillage of Mongbwalu.<sup>3232</sup>

1042. NTAGANDA, like other UPC leaders, also sought his own profit,<sup>3233</sup> corroborating his intent. The attack on Mongbwalu was motivated at least in part

<sup>3227</sup> **P-768:T-33-CONF-ENG-CT**,54:7-17,64:21-65:10,41:21-42:25,54:18-55:7; **P-963:T-78-CONF-ENG-ET**,73:3-9.

<sup>3228</sup> *E.g.* **D-300:T-211-CONF-ENG-ET**,19:24-20:5; **D-17:T-254-CONF-ENG-ET**,18:2-11; **P-55:T-74-CONF-ENG-CT**,98:11-18; **P-963:T-78-CONF-ENG-ET**,66:7-8; **P-190:T-97-CONF-ENG-CT**,43:1-9.

<sup>3229</sup> **P-16:DRC-OTP-0126-0422-R03**,pp.0464-0465, paras.247,249 ;**DRC-OTP-2054-1447**,p.1513:7-10; **P-190:T-97-CONF-ENG-CT**,16:20-17:8.

<sup>3230</sup> **P-963:T-78-CONF-ENG-ET**,70:7-25,72:25-73:9; **P-888:T-105-CONF-ENG-CT**,77:7-15; **P-10:T-47-CONF-ENG-CT**,14:16-15:16.

<sup>3231</sup> **P-55:T-72-CONF-ENG-CT**,9:25-12:1; **P-901:T-29-CONF-ENG-CT**,18:20-22:25.

<sup>3232</sup> **P-10:T-50-CONF-ENG-CT**,21:4-13.

<sup>3233</sup> *E.g.* **P-16:DRC-OTP-0126-0422-R03**, p.0464, paras.248-250.

by the opportunities for enrichment,<sup>3234</sup> as well as its strategic location. NTAGANDA and his co-perpetrators also took money from Hema traders to support the UPC operations in driving out Lendu.<sup>3235</sup> On other occasions, NTAGANDA received goods from senior UPC members.<sup>3236</sup>

1043. NTAGANDA's intent to attack protected objects is apparent from his direct and personal participation in pillaging the church and hospital in Sayo.

*iv. NTAGANDA intended to rape and to sexually enslave*

1044. NTAGANDA knew that rape of civilians was seen as an ordinary part of warfare among UPC soldiers. Sexual violence was merely another weapon to be used during attacks on civilians,<sup>3237</sup> and the UPC leadership—including NTAGANDA, like everyone else—knew this and considered it a normal part of each operation.<sup>3238</sup> Although some women were raped clandestinely, others were raped openly and overtly.<sup>3239</sup> UPC soldiers would openly tell the stories of rapes they had committed,<sup>3240</sup> or sing songs about it.<sup>3241</sup> Stories of rape circulated frequently among the wider community.<sup>3242</sup> UPC soldiers also raped women and girls at military checkpoints.<sup>3243</sup> UPC troops perpetrated rape and sexual slavery

<sup>3234</sup> *E.g.* **P-190:T-97-CONF-ENG-CT**,6:19-7:4; **P-17:T-58-CONF-ENG-CT**,54:1-56:2;**T-61-CONF-ENG-ET**,29:20-32:22; **P-963:T-78-CONF-ENG-ET**,70:8-17,72:25-73:9; **P-16:DRC-OTP-0126-0422-R03**,p.0444:119-121;**DRC-OTP-2054-1625**,1641:10-23. The Accused provides an implausible explanation that he had never heard anything about the gold in Mongbwalu and that was not the motivation for the UPC's operation there: **D-300:T-217-CONF-ENG-ET**,82:11-24,83:3-14,83:24-84:6;**T-234-CONF-ENG-CT**,30:13-43:4.

<sup>3235</sup> **P-16:DRC-OTP-0126-0422-R03**,0439-0440:97,100; **P-41:DRC-OTP-0147-0002**,p.0017,para.89,p.0018,para.94,pp.0020-0021:111; **P-41:DRC-OTP-2054-5199**,p.5231:22-p.5232:10; **P-43:DRC-OTP-0126-0086**,pp.0092-0093,para.35; **DRC-OTP-0074-0797**,p.0825.

<sup>3236</sup> **P-10:T-47-CONF-ENG-CT**,13:9-15:16.

<sup>3237</sup> **P-14:T-136-CONF-ENG-ET**,57:13-61:10; **T-138-CONF-ENG-ET**,100:19-102:7; **P-46:T-101-CONF-ENG-ET**,12:1-13:21,14:5-9; **DRC-OTP-0074-0422**,0436-0437:37,0447:78,80; **DRC-OTP-1061-0212**,p.0458-0459:423-424; **DRC-OTP-2003-0497**:0517-0518; **P-963:T-79-CONF-ENG-ET**,74:23-75:9,77:7-9.

<sup>3238</sup> **P-963:T-79-CONF-ENG-ET**,31:23-36:7,33:22-35:4,35:10-11,36:4-7; **P-16:DRC-OTP-0126-0422-R03**,pp.0463-0464, paras.235-243; **P-10:T-47-CONF-ENG-CT**,15:24-18:11,16:17-17:21; **P-907:T-89-CONF-ENG-CT**,52:12-13; **P-365:T-147-CONF-ENG-ET**,31:10-33:11;**T-148-CONF-ENG-ET**,19:3-22; **P-317:T-192-CONF-ENG-ET**,15:11-16:20,20:25-21:14,37:20-39:5.

<sup>3239</sup> **P-16:DRC-OTP-0126-0422-R03**,p.0463,paras.237,239.

<sup>3240</sup> **P-963:T-79-CONF-ENG-ET**,31:23-36:7,35:7-11,36:4-7; **P-10:T-47-CONF-ENG-CT**,36:9-17.

<sup>3241</sup> **P-10:T-47-CONF-ENG-CT**,41:20-43:10.

<sup>3242</sup> **P-190:T-97-CONF-ENG-CT**,8:22-9:7,10:24-11:6,11:18-14:3,18:2-9.

<sup>3243</sup> **P-901:T-29-CONF-ENG-CT**,25:23-26:13



during or after every UPC operation.<sup>3244</sup>

1045. As Deputy Chief of Staff in charge of operations, NTAGANDA's level of control was such that he was informed of, or aware of every aspect of his troops' behaviour.<sup>3245</sup> When informed of the rape of his own guard by his Chief Escort MUSEVENI, NTAGANDA failed to punish: sending another clear message of acceptance and encouragement to rape.<sup>3246</sup> His troops understood - rape was not a crime in the UPC. UPC perpetrators of rape and sexual slavery of non-Hema civilians were not punished<sup>3247</sup> Some were even promoted.<sup>3248</sup> NTAGANDA as well as his close associates and subordinate commanders, including co-perpetrators such as BAGONZA, were notorious rapists, who kept sex slaves.<sup>3249</sup> NTAGANDA accepted and intended that rape would occur during and after UPC attacks.

1046. NTAGANDA's intent for rape and sexual enslavement to occur is further demonstrated by his own conduct. He ordered and authorised rape and sexual slavery. First, he gave the "*kupiga na kuchaji*" order in the First Attack and as a standing order, meaning to attack and plunder, it was understood by the troops

<sup>3244</sup> [V-2:T-202-CONF-ENG-CT](#),16:10-18:9,21:23-22:23,24:16-27:2,32:6-13,32:17-34:20; [P-887:T-93-CONF-ENG-CT](#),19:17-20,24:10-25:14; [P-963:T-79-CONF-ENG-ET](#),31:23-36:7,33:22-35:4,35:10-11,36:4-7; [P-898:T-154-CONF-ENG-ET](#),16:4-17; [P-907:T-90-CONF-ENG-CT](#),39:15-40:6; [P-888:T-105-CONF-ENG-CT](#),81:9-22; [P-16:DRC-OTP-0126-0422-R03](#),p.0463-0464,paras.235-240; [P-10:T-47-CONF-ENG-CT](#),36:23-37:24; [P-907:T-90-CONF-ENG-CT](#),79:3-19,80:8-15; [P-907:T-90-CONF-ENG-CT](#),80:25-81:9; [P-17:T-59-CONF-ENG-CT](#),32:7-22.

<sup>3245</sup> See Section IX. *E.g.* [P-16:DRC-OTP-0126-0422-R03](#),p.0464,paras.241-242.

<sup>3246</sup> [P-768:T-34-CONF-ENG-CT](#),55:18-56:13; [REDACTED].

<sup>3247</sup> [P-963:T-79-CONF-ENG-ET](#),35:9-11; [P-31:T-174-CONF-ENG-ET](#),39:17-42:18.

<sup>3248</sup> [P-16:DRC-OTP-0126-0422-R03](#),p.0463,para.235; LINGANGA:[P-19:T-115-CONF-ENG-CT](#),38:14-39:5,39:18-29; [DRC-OTP-0141-0009](#); [DRC-OTP-0016-0133](#),pp.0133-0134; [D-300:T-222-ENG-CT](#),23:14-24;[T-226-ENG-CT](#),17:22-20:19; [D-300:T-228-CONF-ENG-CT](#),77:14-80:17.

<sup>3249</sup> NTAGANDA: [REDACTED]; [P-888:T-105-CONF-ENG-CT](#),82:5-13; [P-17:T-59-CONF-ENG-CT](#),27:10-28:12,30:24-31:16; [P-190:T-97-CONF-ENG-CT](#),18:1-24,48:10-49:10; [P-14:T-136-CONF-ENG-ET](#),57:13-58:5;[T-136-CONF-ENG-ET](#),58:13-61:10; MULENDA: [P-113:T-118-CONF-ENG-CT](#),50:23-51:12;[T-119-CONF-ENG-CT](#),63:4-64:7; [P-17:T-59-CONF-ENG-CT](#),32:7-22; [P-14:T-136-CONF-ENG-ET](#),57:13-58:5;[T-136-CONF-ENG-ET](#),58:13-61:10; ABELANGA: [P-10:T-49-CONF-ENG-CT](#),47:16-18; [P-769:T-120-CONF-ENG-ET](#),56:21-58:24,60:11-18; [P-17:T-58-CONF-ENG-CT](#),51:18-52:23; [D-17:T-254-CONF-ENG-ET](#),31:6-33:6;[T-255-CONF-ENG-ET](#),51:24-53:21; SIMBA: [P-17:T-60-CONF-ENG-ET](#),27:23-29:6; [P-963:T-79-CONF-ENG-ET](#),76:3-14; LINGANGA: [P-19:T-115-CONF-ENG-CT](#),38:14-40:23; INNOCENT: [REDACTED];BAGONZA: [P-10:T-47-CONF-ENG-CT](#),36:9-17;[T-45-CONF-ENG-CT](#),35:4-25;[T-46-CONF-ENG-ET](#),38:9-39:2; [P-14:T-136-CONF-ENG-ET](#),57:13-58:5;[T-136-CONF-ENG-ET](#),58:13-61:10. It was a known common practice that female escorts would be raped by commanders. *See e.g.* [P-888:T-105-CONF-ENG-CT](#),39:7-40:2,82:7-13.



as allowing them to take women as ‘war booty’ and to use rape as a means to attack their Lendu enemy. Moreover, NTAGANDA gave instructions to his own escorts and guards to “do their work” that was a standard order widely understood in the UPC to mean – “kill them or do everything that you want to do”.<sup>3250</sup> For instance, during the June 2003 attack on Mongbwalu, when NTAGANDA’s bodyguards came across Lendu civilian women NTAGANDA ordered them to “do their work”. Following this order, his soldiers first raped, then killed several women.<sup>3251</sup> Similarly, after NTAGANDA instructed his bodyguards to kill Lendu nuns at his residence during the First Attack, they first raped them.<sup>3252</sup>

1047. Furthermore, rape was widespread after the fall of Mongbwalu,<sup>3253</sup> and NTAGANDA cannot have failed to know of it.<sup>3254</sup> Indeed, he personally brought women back to his residence in Mongbwalu, whom P-17 described as “intimidated”.<sup>3255</sup> Women were raped at the military camps or wherever they were found in Mongbwalu-Sayo<sup>3256</sup> As usual, NTAGANDA took no action to investigate or to punish rape.<sup>3257</sup>

1048. NTAGANDA’s demonstrable intent to commit rape, combined with his callous disregard for the lives of the victims, demand the inference that NTAGANDA also knew and intended that women were taken and used as sexual slaves as his soldiers wished.

<sup>3250</sup> [P-10:T-47-CONF-ENG-CT](#),16:17-17:21.

<sup>3251</sup> [P-10:T-47-CONF-ENG-CT](#),16:17-17:21.

<sup>3252</sup> [REDACTED].

<sup>3253</sup> [P-190:T-97-CONF-ENG-CT](#),8:22-9:7,10:24-11:6,11:18-14:3,18:2-9; [P-907:T-90-CONF-ENG-CT](#),39:15-41:14; [P-963:T-79-CONF-ENG-ET](#),31:23-36:7,33:22-35:4,36:4-7; [P-888:T-105-CONF-ENG-CT](#),81:9-22,82:5-13.

<sup>3254</sup> [P-190:T-97-CONF-ENG-CT](#),18:1-24.

<sup>3255</sup> [P-17:T-59-CONF-ENG-CT](#),25:4-7,27:10-25,28:2-12,30:24-31:16; [P-888:T-105-CONF-ENG-CT](#),39:7-40:2,82:7-13.

<sup>3256</sup> [P-17:T-58-CONF-ENG-CT](#),54:1-55:23;[T-61-CONF-ENG-ET](#),29:20-32:22;[T-59-CONF-ENG-CT](#),33:2-34,32:7-22,25:4-7,27:10-25,28:2-12,30:24-31:16; [P-10:T-47-CONF-ENG-CT](#),18:12-19:7; [P-365:T-147-CONF-ENG-ET](#),30:18-33:11; [P-887:T-93-CONF-ENG-CT](#),19:17-20,22:17-19,24:10-25:14,31:14-32:23; [P-963:T-79-CONF-ENG-ET](#),31:23-36:7,33:22-35:4,35:10-11; [P-898:T-154-CONF-ENG-ET](#),16:4-17; [P-907:T-90-CONF-ENG-CT](#),39:15-40:6; [P-888:T-105-CONF-ENG-CT](#),81:23-82:13.

<sup>3257</sup> [P-190:T-97-CONF-ENG-CT](#),18:1-24; [P-907:T-90-CONF-ENG-CT](#),52:11-13; [P-963:T-79-CONF-ENG-ET](#),35:9-11,36:4-7; [P-10:T-47-CONF-ENG-CT](#),15:24-18:11.

## IX. COMMAND RESPONSIBILITY – ARTICLE 28(a)

1049. **NTAGANDA** is criminally responsible as a commander under article 28(a) of the Statute for the crimes set forth in: (i) counts 1 to 5, 10 to 13, 17 and 18 during the *First Attack*; (ii) counts 1 to 5, 7, 8, 10 to 13, 17 and 18 during the *Second Attack*; and (iii) counts 6, 9 and 14 to 16, during the Non-International Armed Conflict.

1050. The Prosecution has proven each of the constituent elements under Article 28(a) of the Statute necessary to establish **NTAGANDA**'s individual criminal responsibility beyond reasonable doubt:

- a. **NTAGANDA** was a military commander or effectively acting as a military commander;
- b. The forces that committed the charged crimes were under **NTAGANDA**'s effective command and control or authority and control;
- c. **NTAGANDA** either knew or, owing to circumstances at the time, should have known that his forces were committing or about to commit such crimes; and
- d. **NTAGANDA** failed to take all necessary and reasonable measures within his power to prevent or repress the commission of crimes or to submit the matter to the competent authorities for investigation and prosecution.

1051. In addition, although the Prosecution does not consider it necessary to prove that **NTAGANDA**'s failure to exercise control properly 'resulted' in his forces' crimes (as explained below), the evidence likewise establishes that this was the case, to any extent necessary.

1052. As a military commander or person effectively acting as such, **NTAGANDA** had effective command and control over the UPC forces and the Hema civilians

who participated in UPC assaults against non-Hema civilians in Banyali-Kilo and Walendu-Djatsi *collectivités*. He knew, or owing to the circumstances at the time should have known, that the forces under his effective command and control were committing or were about to commit crimes. By virtue of his command and control over these forces, **NTAGANDA** could have ordered them to stop their crimes. He did not. At all times relevant to the charges he had the authority to prevent crimes and means to punish the troops for their crimes, but he failed to take all necessary and reasonable measures to do so.

### 1. *NTAGANDA was a military commander*

1053. At all times relevant to the charges, **NTAGANDA** was a military commander.<sup>3258</sup> **NTAGANDA** was formally appointed Deputy Chief of Staff of the UPC in charge of operations and organisation in September 2002.<sup>3259</sup> He was promoted to Chief of Staff by December 2003.<sup>3260</sup> Several witnesses independently and credibly explained that **NTAGANDA**'s role was that of an operational commander whose authority included the power to issue orders that were followed by subordinates.<sup>3261</sup> The Logbooks confirm this power.<sup>3262</sup>

1054. **NTAGANDA**'s own words, on video and during testimony, demonstrate his position of authority. First, in a video filmed in November 2002 **NTAGANDA** refers to himself as the Chief of Staff,<sup>3263</sup> and in another video from February

<sup>3258</sup> *Bemba TJ*, para. 176 (“a person who is formally or legally appointed to carry out a military command function”, including “individuals appointed as military commanders in non-governmental irregular forces, in accordance with their internal practices or regulations, whether written or unwritten.”).

<sup>3259</sup> **D-300:T-215-ENG-ET**,35:4-11; **P-55:T-70-CONF-ENG-CT**,43:17-18; **P-963:T-78-CONF-ENG-ET**,26:15-19; **P-315:DRC-OTP-2058-0990**,p.1013,para.128.

<sup>3260</sup> **DRC-OTP-0132-0237**,p.0238; **DRC-OTP-0016-0131**; **DRC-OTP-0016-0133**; **P-901:T-28-CONF-ENG-CT**,62:17-64:4,65:6-20; **D-300:T-225-CONF-ENG-CT**,82:14-25.

<sup>3261</sup> **P-963:T-78-CONF-ENG-ET**,67:9-14; **P-190:T-96-CONF-ENG-CT**,49:6-20; **P-55:T-70-CONF-ENG-CT**,43:17-25; **P-14:T-136-CONF-ENG-ET**,33:15-34:1; **P-898:T-153-CONF-ENG-ET**,56:18-22; **P-888:T-105-CONF-ENG-CT**,46:3-47:14,52:5-14; **P-17:T-58-CONF-ENG-CT**,18:9-20:13; **P-901:T-32-CONF-ENG-CT**,34:23-35:5; **P-963:T-78-CONF-ENG-ET**,67:9-19; **P-768:T-33-CONF-ENG-CT**,28:21-29:15; **DRC-OTP-2102-3854**,p.3998.

<sup>3262</sup> See e.g. **DRC-OTP-2102-3854**,p.4003(first); The UPC logbook and supplementary pages contain more than 92 messages originating from **NTAGANDA** on, *inter alia*, operational orders, appointments, and discipline.

<sup>3263</sup> **DRC-OTP-2058-0251**,00:05:50-00:06:09(transl.**DRC-OTP-2102-3766**,p.3771:86-100).

2003, LUBANGA refers to NTAGANDA as “*le chef d’état major, Commandant Bosco*”.<sup>3264</sup>

1055. NTAGANDA’s testimony further establishes his position as a military commander. He at first went to great pains to deny his authority to issue orders,<sup>3265</sup> but eventually conceded that he had the authority to issue orders, or, in other words – to command.<sup>3266</sup> Indeed, he described his role as an “*implementer or executer*.”<sup>3267</sup>

1056. In fact, NTAGANDA had a position at the pinnacle of the UPC’s military leadership and “the army was basically run by [him].”<sup>3268</sup> He was appointed to this position by LUBANGA and had his full support and backing.<sup>3269</sup> Although it is not necessary to prove that NTAGANDA had an even more senior role within the UPC than his official title, high-level military insiders identify NTAGANDA as effectively being the number two in the UPC below LUBANGA – who had little to no military experience<sup>3270</sup> – as he was more powerful than Chief of Staff, KISEMBO.<sup>3271</sup> LUBANGA had more confidence in NTAGANDA than he did in KISEMBO.<sup>3272</sup> NTAGANDA’s position of authority was such that he did not even inform KISEMBO or LUBANGA about the attack on Songolo in August 2002 until after he and his troops had carried it out.<sup>3273</sup>

1057. NTAGANDA took the lead in military matters because he was considered an

<sup>3264</sup> [DRC-OTP-0120-0293](#),00:10:42-00:10:46(transl.[DRC-OTP-2101-2810](#),p.0343:180-182).

<sup>3265</sup> [D-300:T-215-ENG-ET](#),37:5-25.

<sup>3266</sup> [D-300:T-226-ENG-CT](#),3:1-6,50:21-52:14.

<sup>3267</sup> [D-300:T-215-ENG-ET](#),36:21-37:4.

<sup>3268</sup> [P-14:T-136-CONF-ENG-ET](#),33:24.

<sup>3269</sup> [P-12:T-164-CONF-ENG-ET](#),25:9-25; [P-768:T-33-CONF-ENG-CT](#),29:1-15; [P-55:T-70-CONF-ENG-CT](#),75:16-76:9; [P-901:T-28-CONF-ENG-CT](#),63:4-16.

<sup>3270</sup> [D-300:T-225-CONF-ENG-CT](#),37:19-21.

<sup>3271</sup> [P-768:T-33-CONF-ENG-CT](#),29:1-15; [P-55:T-70-CONF-ENG-CT](#),75:16-76:9; [P-901:T-28-CONF-ENG-CT](#),62:17-63:16; [P-14:T-136-CONF-ENG-ET](#),33:13-34:1; [P-16:DRC-OTP-0126-0422](#),pp.0453-0454,para.181.

<sup>3272</sup> [P-16:DRC-OTP-0126-0422](#),p.0434,paras.63-66; [P-55:T-70-CONF-ENG-CT](#),76:2-9.

<sup>3273</sup> [P-190:T-96-CONF-ENG-CT](#),50:8-11,91:10-92:2; *see also* [P-16:DRC-OTP-0126-0422](#),p.0434,para.64(stating that NTAGANDA overruled KISEMBO’s orders) and [P-901:T-28-CONF-ENG-CT](#),63:4-16(implying that NTAGANDA was making decisions without consulting KISEMBO).

expert on military operations by the UPC leadership.<sup>3274</sup> **NTAGANDA** had more military experience than **KISEMBO** and played a leading role in developing the strategy for and conducting the UPC's attacks.<sup>3275</sup> **NTAGANDA**'s specific role was to command the UPC's military operations and shape the organisation of the military wing. In his role as Deputy Chief of Staff in charge of operations and organisation he was the UPC's main military strategist. It was his role to plan all military operations,<sup>3276</sup> together with his co-perpetrators. It was a role that he was extensively prepared for, given his prior military experience.<sup>3277</sup>

1058. The evidence establishes beyond reasonable doubt that **NTAGANDA** was a military commander. However, should the Chamber find instead that **NTAGANDA** was not a military commander, the Prosecution relies on the same evidence to establish that **NTAGANDA** was effectively acting as military commander.

1059. The section below on **NTAGANDA**'s effective command and control discusses in detail the evidence of **NTAGANDA**'s effective control and his military command over the UPC troops. That evidence further establishes **NTAGANDA**'s position as a military commander of the UPC troops.<sup>3278</sup>

<sup>3274</sup> **P-907:T-89-CONF-ENG-CT**,20:23-22:2; **P-55:T-70-CONF-ENG-CT**,75:16-76:9; **P-901:T-28-CONF-ENG-CT**,54:3-9;**T-31-CONF-ENG-CT**,8:4-25; **P-190:T-96-CONF-ENG-CT**,49:5-51:12; **P-315:DRC-OTP-2058-0990**,p.1013,para.128; **P-16:DRC-OTP-0126-0422**,p.0434,paras.63,65,p.0440,para.101, p.0441,para.103;**DRC-OTP-2054-1447**,p.1451:17-19,p.1531:2-24;**DRC-OTP-2054-1625**,p.1629:17-25,p.1630:1-6.

<sup>3275</sup> **P-55:T-70-CONF-ENG-CT**,76:2-9; **T-71-CONF-ENG-CT**,43:9-44:5; **P-17:T-58-CONF-ENG-CT**,23:7-15;**T-60-CONF-ENG-ET**,6:25-7:22; **P-907:T-89-CONF-ENG-CT**,21:3-13; **P-31:T-174-CONF-ENG-ET**,26:13-27:14; **P-190:T-96-CONF-ENG-CT**,92:1-2; **P-315:DRC-OTP-2058-0990**,pp.1011-1013,paras.127-128; **P-16:DRC-OTP-0126-0422**,p.0434,paras.63-64.

<sup>3276</sup> **P-963:T-78-CONF-ENG-ET**,67:9-14; **P-190:T-96-CONF-ENG-CT**,49:6-20; **P-55:T-70-CONF-ENG-CT**,43:17-25; **P-14:T-136-CONF-ENG-ET**,33:15-34:1; **P-898:T-153-CONF-ENG-ET**,56:18-22; **P-888:T-105-CONF-ENG-CT**,46:3-47:14,52:5-14; **P-17:T-58-CONF-ENG-CT**,18:9-20:13; **P-901:T-28-CONF-ENG-CT**,9:11-10:14;**T-29-CONF-ENG-CT**,13:6-22;**T-32-CONF-ENG-CT**,34:23-35:5; **P-963:T-78-CONF-ENG-ET**,67:9-19; **P-907:T-89-CONF-ENG-CT**,21:3-13; **P-768:T-34-CONF-ENG-CT**,51:24-52:15; **DRC-OTP-2102-3854**,p.4034(third).

<sup>3277</sup> See generally **D-300:T-211-CONF-ENG-ET**, (devoting almost an entire day of testimony to his prior military accolades); **P-41:DRC-OTP-0147-0002**,p.0020,para.110.

<sup>3278</sup> See *Bemba TJ*, para. 178.

**2. NTAGANDA had effective command and control over the forces who committed the crimes**

1060. As the UPC commander over all military operations, **NTAGANDA** had effective command and control<sup>3279</sup> over all his subordinate UPC commanders and troops, including those who perpetrated crimes in the First and Second Attacks, as well as over UPC commanders and troops who recruited and used children under the age of 15 to participate actively in hostilities, and over those who raped and sexually enslaved girls in the ranks of the UPC.<sup>3280</sup> **NTAGANDA** also had authority over the UPC's Hema civilian supporters to the extent they participated in UPC operations.<sup>3281</sup>

**a. NTAGANDA's material ability to prevent and punish crimes**

1061. **NTAGANDA** had effective control through his material ability to prevent and punish crimes committed by UPC forces throughout the time period covered by the charges, and specifically during the operations in Banyali-Kilo and Walendu-Djatsi *collectivités*. This is demonstrated by various "case specific" indicators.<sup>3282</sup>

1062. In particular, **NTAGANDA** had the material ability to prevent crimes through his powers to train his forces; to command or order his forces, and to ensure their compliance with those orders; to deploy and resubordinate his forces; to

<sup>3279</sup> See *Bemba TJ*, paras. 180-181, 183-184 ("effective control" requires that the commander have the material ability to prevent or repress the commission of the crimes or to submit the matter to the competent authorities).

<sup>3280</sup> **P-768:T-34-CONF-ENG-CT**,51:24-52:15;**T-36-CONF-ENG-CT**,49:16-21;**T-33-CONF-ENG-CT**,29:1-15;**DRC-OTP-2058-0251**,00:05:50-00:06:09(transl.**DRC-OTP-2102-3766**,p.3771:86-100); **DRC-OTP-0120-0293**,00:10:42-00:10:46,(transl.**DRC-OTP-2101-2810**,p.0343:180-182); **P-963:T-78-CONF-ENG-ET**,67:9-19;**T-78-CONF-ENG-ET**,76:22-77:14; **P-55:T-70-CONF-ENG-CT**,43:17-25 ;**T-71-CONF-ENG-CT**,43:9-19 ; **P-17:T-58-CONF-ENG-CT**,23:7-15; **P-16:DRC-OTP-0126-0422**,pp.434,441,453,paras.63-65,103,181;**DRC-OTP-2054-1447**,p.1451:17-19,p.1531:1-24; **P-290:T-65-CONF-ENG-CT**,36:14-22; **DRC-OTP-2102-3854**,p.4000(first), 4002(second), 4003(first), 4004-4006(all messages), 4007(third), 4010(all messages), 4012(second), 4013(first), 4015(first,second), 4016(second,third), 4020 (first,third), 4024 (third), 4027(all messages) and 4030(all messages); **P-315:DRC-OTP-2058-0990**,pp.1005-1006,paras.88-89, 95.

<sup>3281</sup> **P-55:T-71-CONF-ENG-CT**,47:6-21; **P-768:T-33-CONF-ENG-CT**,41:18-42:15. See Section VI.B.4.a.

<sup>3282</sup> See *Bemba TJ*, para. 188 (listing ten such possible factors, although nothing that "these have been properly considered as 'more a matter of evidence than of substantive law'").

reward them; and to publicly punish his forces thereby deterring and preventing future crimes. He also controlled access to, and the use of, the means to wage war. Further, **NTAGANDA** testified that he had no problems or obstacles in exercising his role as the Deputy Chief of Staff.<sup>3283</sup>

1063. **NTAGANDA** was responsible for setting up and carrying out UPC military training.<sup>3284</sup> He designed the training and “*decided which topics would be taught, based on [his] experience and in view of the situation [they] were going through.*”<sup>3285</sup> P-907, who was trained at Mandro, explained that **NTAGANDA** was the “*top gun*” in the training camp hierarchy.<sup>3286</sup> P-963 explained that **NTAGANDA** was the “*chief*” in charge of training.<sup>3287</sup> **NTAGANDA** would officiate over the training graduation ceremonies of his forces<sup>3288</sup> and then decide where his troops would be deployed.<sup>3289</sup>

1064. The powers to design the training and then train his forces meant that **NTAGANDA** could shape, influence, and direct the nature of the training. **NTAGANDA** had the material ability to prevent crimes primarily through his control over the training received by new UPC recruits and by his ability to give orders that his subordinates followed. Additionally, his ability to punish crimes already committed enhanced his ability to prevent crimes as a matter of deterrence, as well as illustrating his ability to ensure compliance with his orders.

1065. **NTAGANDA** routinely issued orders for military operations, which provided

<sup>3283</sup> [D-300:T-225-CONF-ENG-CT](#),82:13-83:17.

<sup>3284</sup> [D-300:T-213-CONF-ENG-CT](#),51:25-52:3,59:8-15; [P-768:T-34-CONF-ENG-CT](#),51:24-52:15; [P-14:T-136-CONF-ENG-ET](#),32:10-11.

<sup>3285</sup> [D-300:T-213-CONF-ENG-CT](#),64:13-14.

<sup>3286</sup> [P-907:T-89-CONF-ENG-CT](#),16:23-17:9.

<sup>3287</sup> [P-963:T-78-CONF-ENG-ET](#),67:9-19; *see also* [P-901:T-28-CONF-ENG-CT](#),8:1-2.

<sup>3288</sup> [P-55:T-71-CONF-ENG-CT](#),79:24-80:11.

<sup>3289</sup> [P-55:T-71-CONF-ENG-CT](#),82:13-24; [P-901:T-29-CONF-ENG-CT](#),53:2-5; [P-14:T-136-CONF-ENG-ET](#),41:5-6.



him with opportunities to ensure the prevention of crimes.<sup>3290</sup> Several Logbook entries show **NTAGANDA** issuing orders to all units.<sup>3291</sup> In a message dated 24 November 2002, **NTAGANDA** ordered all units to carry out operations in their areas of responsibility.<sup>3292</sup> In another Logbook message, dated 24 December 2002, **NTAGANDA** ordered all units to be on “*stand-by*”.<sup>3293</sup> In a further Logbook message, dated 13 February 2003, **NTAGANDA** sent a message to Sector Commander Jérôme KAKWAVU, copying “*All Stations*”, in which he ordered KAKWAVU to instruct his subordinates not to write to **NTAGANDA** directly, but only through the chain of command:

*Tu es informé que tu dois dire aux [COMMANDANTS DE BATAILLION] Comder (BN) la chaine de commandement. Je ne veux plus voir un [COMMANDANT DE BATAILLION] BN Comder m'envoyer un message. Moi je ne suis pas un militaire d'une personne. Moi je suis Chef EMG Adjoint OPS & ORG.*<sup>3294</sup>

1066. Section VIII.A.1.c. on ordering refers to evidence of **NTAGANDA**'s orders,<sup>3295</sup> which directed his troops to attack and displace civilians; kill and pillage during military operations. That same evidence of **NTAGANDA**'s orders, and the evidence that he was obeyed, demonstrates that **NTAGANDA** had effective command and control over the forces who committed the crimes, knowledge of the commission of crimes, and failure to take all necessary and reasonable measures to prevent or repress the commission of crimes.

1067. **NTAGANDA** could order his troops to engage in hostilities, as he did in the

<sup>3290</sup> [DRC-OTP-2102-3828](#),p.3839(second); [DRC-OTP-2102-3854](#),p.3990(first),p.4034 (first).

<sup>3291</sup> [DRC-OTP-2102-3854](#),pp.4003(both messages),4024(third),4034(third).

<sup>3292</sup> [DRC-OTP-2102-3854](#),p.4034(third).

<sup>3293</sup> [DRC-OTP-2102-3854](#),p.4024(third).

<sup>3294</sup> [DRC-OTP-2102-3854](#),p.4003 (first).

<sup>3295</sup> See Section VIII.A.1.c.

First and Second Attacks.<sup>3296</sup> He could withdraw them from the areas of hostilities.<sup>3297</sup> NTAGANDA had the means to ensure that his orders were carried out; and his orders were obeyed.<sup>3298</sup> He used the UPC's means of communication to transmit his orders and receive reports and information from his subordinates concerning the implementation of his orders.<sup>3299</sup> A sequence of Logbook messages dated 19 and 21 November 2002 show NTAGANDA receiving confirmation of the deployment of his troops consistent with his orders; establishing that NTAGANDA was seized of operational matters such as logistics and reinforcements.<sup>3300</sup>

1068. The Logbook message dated 19 February 2003, shows NTAGANDA as the UPC commander in a position to inform his superiors, LUBANGA and KISEMBO, of the progress of the attack on Walendu-Djatsi *collectivité*: "*Le travail de OPS de rester à Lipri, Bambu et Kobu – Les troupes sont déjà arrivées dans chaque zone. Vous serez informés de la suite*".<sup>3301</sup>

**b. Material ability to punish subordinates for their commission of crimes**

1069. NTAGANDA openly acknowledged his material ability to punish crimes during his testimony:

*I could even detain [sector commanders] without hesitation. It was not possible, of course, for me to detain Kisembo or Thomas, but all*

<sup>3296</sup> [DRC-OTP-2102-3854](#), pp.4035,3998; [P-898:T-154-CONF-ENG-ET](#), 12:24-13:5; [P-901:T-29-CONF-ENG-CT](#), 49:3-15; [P-768:T-33-CONF-ENG-CT](#), 28:9-14,37:2-7.

<sup>3297</sup> [D-300:T-221-CONF-ENG-ET](#), 33:1-7; [P-888:T-105-CONF-ENG-CT](#), 85:19-88:21.

<sup>3298</sup> [D-251:T-260-CONF-ENG-CT](#), 10:20-11:12; [D-17:T-254-CONF-ENG-ET](#), 36:12-21; [P-963:T-79-CONF-ENG-ET](#), 24:24-25:1: "[T]he UPC was a perfectly coordinated unit and there was due respect for hierarchy, ordre ninatoka juu, that was that the expression we used to mean that orders come from above...".

<sup>3299</sup> [P-901:T-28-CONF-ENG-CT](#), 15:20-16:11; [T-29-CONF-ENG-CT](#), 13:6-16.

<sup>3300</sup> [DRC-OTP-2102-3828](#), p.3831(all messages), p.3836(second), p.3846(all messages); [DRC-OTP-2102-3854](#), p.4035(second).

<sup>3301</sup> [DRC-OTP-2102-3854](#), p.3993(first), 3998(fourth).

*my subordinates I could punish them because our objective was to liberate the population.*<sup>3302</sup>

1070. NTAGANDA had supervisory and disciplinary powers including the power to arrest.<sup>3303</sup> NTAGANDA was well aware of this power and threatened to use it against UPC commanders.<sup>3304</sup> NTAGANDA was also able to carry out harsh summary punishments on his troops.<sup>3305</sup>

1071. P-963 observed that NTAGANDA could take disciplinary measures against his troops.<sup>3306</sup> He witnessed NTAGANDA whipping a soldier who had discharged his weapon while cleaning it during training.<sup>3307</sup> There were disciplinary measures within the UPC for crimes committed against Hema civilians. In one instance, a UPC soldier was publicly executed, on NTAGANDA's orders, because he had allegedly stolen items from Hema civilians.<sup>3308</sup>

1072. NTAGANDA's command and control extended to the UPC's Hema civilian supporters, to the extent they participated in UPC operations.<sup>3309</sup> P-55 saw people pillaging and destroying houses in [REDACTED] in November 2002. Fearing they could be enemy forces, P-55 inquired with NTAGANDA, who told him not to worry about them, because they were "combatants" on the UPC's side.<sup>3310</sup>

<sup>3302</sup> [D-300:T-211-CONF-ENG-ET](#),52:6-9 (emphasis added).

<sup>3303</sup> [D-300:T-222-ENG-CT](#),66:21-67:4; [P-55:T-72-CONF-ENG-CT](#),14:20-23; [DRC-OTP-2102-3854](#),p.4015(second), p.4022(second), p.4025(third).

<sup>3304</sup> [DRC-OTP-2102-3854](#),p.4016(second); [DRC-OTP-0018-0170](#),p.0170 (transl.[DRC-OTP-0173-0517](#),p.0518)(inviting the addressee to send anyone who disobeys him to NTAGANDA for punishment and warning him if he does not deal with the problems he will go there to do it himself).

<sup>3305</sup> [D-300:T-215-ENG-ET](#),42:9-43:10; [P-888:T-105-CONF-ENG-CT](#),41:4-43:43:13.

<sup>3306</sup> [P-963:T-80-CONF-ENG-ET](#),37:14-16.

<sup>3307</sup> [P-963:T-80-CONF-ENG-ET](#),37:14-38:3.

<sup>3308</sup> [P-963:T-80-CONF-ENG-ET](#),38:4-24.

<sup>3309</sup> [P-768:T-33-CONF-ENG-CT](#),41:18-44:2; [P-907:T-90-CONF-ENG-CT](#),12:2-12,17:13-16.

<sup>3310</sup> [P-55:T-71-CONF-ENG-CT](#),48:10-50:6.

**c. NTAGANDA's authority over the distribution of weapons, ammunition, and supplies**

1073. NTAGANDA controlled access to weapons and ammunition and by extension his troops' ability to use such material to commit crimes.<sup>3311</sup> There was a weapons depot near Mandro and one in his residence in Bunia.<sup>3312</sup> NTAGANDA provided weapons and uniforms to recruits when they finished their training.<sup>3313</sup> He arranged for the delivery of weapons and ammunitions to UPC troops,<sup>3314</sup> and controlled his subordinates' access to them during military operations, as shown by various Logbook messages dating from about the time of the operation in the Banyali-Kilo *collectivité*.<sup>3315</sup>

**d. Power to appoint, promote, replace or remove**

1074. NTAGANDA had the authority to appoint, promote, replace, or remove officers and soldiers within the UPC.<sup>3316</sup> As the Deputy Chief of Staff in charge of operations and organisation NTAGANDA shaped the military wing of the UPC. He changed the FPLC's command structure.<sup>3317</sup> He created a new sector after the operation in the Banyali-Kilo *collectivité* and installed SALONGO as its commander.<sup>3318</sup> He promoted subordinates, as shown by a Logbook message dated 11 January 2003 concerning the promotion of commanders INNOCENT

<sup>3311</sup> [P-55:T-70-CONF-ENG-CT](#),43:3-45:1; [P-901:T-28-CONF-ENG-CT](#),8:1-4,53:18-54:2,102:14-20; [P-17:T-58-CONF-ENG-CT](#),62:7-17,63:15-64:14; [P-768:T-34-CONF-ENG-CT](#),6:12-7:8,10:15-14:1,29:16-30:10;[DRC-OTP-2058-0669](#);[DRC-OTP-2058-0671](#);[DRC-OTP-2058-0673](#).

<sup>3312</sup> [P-901:T-28-CONF-ENG-CT](#),5:21-6:23; [P-190:T-97-CONF-ENG-CT](#),45:4-8; [P-17:T-58-CONF-ENG-CT](#),32:25-33:10; [P-55:T-71-CONF-ENG-CT](#),9:7-13.

<sup>3313</sup> [P-10:T-47-CONF-ENG-CT](#),4:23-5:8; [DRC-OTP-2102-3854](#),p.4016(third).

<sup>3314</sup> [DRC-OTP-2102-3854](#),p.3930 (first),3956(first),3969(second),4015(third),4035(second); [P-55:T-71-CONF-ENG-CT](#),6:25-7:4;[T-72-CONF-ENG-CT](#),6:16-21; [P-963:T-78-CONF-ENG-ET](#),77:19-24.

<sup>3315</sup> [DRC-OTP-2102-3854](#),p.3863(first),4031(first),4035(first).

<sup>3316</sup> See e.g. [DRC-OTP-0016-0098](#)(transl.[DRC-OTP-2052-0162](#)); [DRC-OTP-2102-3854](#),p.4007(first),p.4020(first)

<sup>3317</sup> [DRC-OTP-2102-3854](#),pp.3999(second,third),4004-4006(all messages),4007(third).

<sup>3318</sup> [P-55:T-70-CONF-ENG-CT](#),80:9-16 ; [P-16:DRC-OTP-0126-0422](#),p.0436,para.78; [P-17:T-58-CONF-ENG-CT](#),65:13-14; [DRC-OTP-2102-3854](#),p.4004(first)(explaining the compliance mechanisms: "NB : 1/CHAQUE COMD DOIT RESPECTER SON DEPLOIEMENT ET ORGANISER SON BATAILLON DU STAFF BN JUSQU'A LA SECTION (-) 2/UN CONTROLE SERA ORGANISE POUR TOUTES LES UNITES (-) SUR CE, LES COMDS UNITES DOIVENT FAIRE MONTRE DE LEUR SAVOIR (-) (-)").

and SEYI, among others.<sup>3319</sup>

1075. **NTAGANDA** was an exceptionally controlling individual who told his forces what to do, how to do it, and when to do it. **NTAGANDA** was the ultimate authority on military operations and training. Clearly **NTAGANDA** had effective command and control, a point he all but conceded in his own testimony.<sup>3320</sup>

1076. As is the case above regarding evidence establishing that **NTAGANDA** was a “military commander” under art. 28(a), the evidence establishes beyond reasonable doubt that **NTAGANDA** had effective command and control as military commander. However, should the Chamber find instead that **NTAGANDA** was not a military commander, the Prosecution relies on the above evidence to establish that **NTAGANDA** had effective authority and control as a person effectively acting as military commander.<sup>3321</sup>

### 3. *NTAGANDA knew that the UPC forces were committing or about to commit the charged crimes*

1077. The evidence has established beyond reasonable doubt that **NTAGANDA** knew of the crimes which had been, or were about to be, committed by his forces.<sup>3322</sup> **NTAGANDA** surpassed the cognitive requirements of article 28 since he had “awareness that a circumstance exists” or that “a consequence will occur in the ordinary course of events”.<sup>3323</sup> The following facts prove **NTAGANDA**’s knowledge of the commission of the charged crimes by his subordinates:

<sup>3319</sup> [DRC-OTP-2102-3854](#), pp.4020(first),4018(third),4019(second),4026(second).

<sup>3320</sup> [D-300:T-211-CONF-ENG-ET](#),52:6-9.

<sup>3321</sup> See *Bemba TJ*, para. 181.

<sup>3322</sup> See *Bemba TJ*, paras. 191-195.

<sup>3323</sup> See Article 30, Statute. In the Prosecution’s submission, as explained in the *Bemba* appeal, “knowledge” for the purpose of article 28 must be interpreted differently from the default standard in article 30(3), if that has been correctly understood to require foresight of a “virtual certainty”: see above Section VIII.A.2. This is due to the specific object and purpose of article 28, and its origins in international humanitarian law, which are inconsistent with any notion that the duties to prevent and punish subordinates’ crimes are conditional on a *mens rea* standard functionally equivalent to the superior’s intent for those crimes: see article 30(2)(b); *Lubanga* Appeal Judgment, para. 447.

NTAGANDA's orders to commit crimes; NTAGANDA's direct perpetration of crimes; NTAGANDA's location at the time of the crimes; specific reports by NTAGANDA's subordinates of his troops' crimes, and the general reporting and monitoring systems in place; NTAGANDA's communication system; NTAGANDA's position in the UPC; and the numerous, widespread, and notorious nature of his troops' crimes.

1078. First and most importantly, NTAGANDA knew of his forces' crimes since his orders were directed at the commission of those crimes, including attacking and displacing Ituri's non-Hema civilian population, and committing murder, rape, persecution, pillaging, and destruction of property, the recruitment and use of children under the age of 15 and their rape and sexual slavery, among other crimes.<sup>3324</sup> NTAGANDA committed these crimes himself, in his subordinates' plain view, and ordered and actively encouraged them to emulate his own behaviour. Being physically present at many of the locations where crimes were committed, NTAGANDA could see first-hand the effects of his crimes, *i.e.* physical destruction, civilian corpses, and his own troops carrying items obviously pillaged from civilians.

1079. Secondly, NTAGANDA openly conceded that he knew everything his forces did because he took proactive steps to monitor them:

*[T]he troops realised that I was aware of what was happening, that I was monitoring them and that showed the commanders that I was up to speed with all the offences being committed in our forces, that I was really aware of everything that was going on at all times.*<sup>3325</sup>

1080. Owing to his direct contact with UPC soldiers and commanders, as well as his own orders, NTAGANDA knew that he and his subordinate commanders

<sup>3324</sup> See e.g. P-963:T-78-CONF-ENG-ET,75:4-7.

<sup>3325</sup> D-300:T-222-ENG-CT,67:25-68:3(emphasis added).

instructed troops to “attack and plunder” (*kupiga na kuchaji*) an order which signalled them to commit crimes.<sup>3326</sup> NTAGANDA’s presence during military operations, including the *First Attack*, allowed him to observe first-hand the commission of such crimes. He was present during this operation when his troops attacked, murdered and otherwise victimised the civilian population. He can be seen on a video recording confirming that the UPC had taken prisoners.<sup>3327</sup>

1081. NTAGANDA had first-hand knowledge of his own and his subordinates’ criminal acts. For instance, NTAGANDA launched the attack on civilians in the Banyali-Kilo *collectivité* with MULENDA and knew of MULENDA’s methods.<sup>3328</sup> Several people were killed in MULENDA’s camp in Mongbwalu, where, for example, MULENDA’s troops tortured then killed a Lendu woman during MULENDA’s interrogation of her.<sup>3329</sup> NTAGANDA not only knew about but approved of MULENDA’s role in the murder of civilians at Kobu—when questioned about the incident by P-55, NTAGANDA stated that, “*Salumu is a gentleman. He’s a brave, a fine person.*”<sup>3330</sup> Additionally, NTAGANDA certainly knew of his own crimes. For instance, in full view of his own troops he murdered a priest, Abbé BWANALONGA, after beating him during an interrogation.<sup>3331</sup>

1082. Likewise, NTAGANDA and his co-perpetrators planned the assault on the Walendu-Djatsi *collectivité* while in Bunia, [REDACTED].<sup>3332</sup> As Deputy Chief of Staff in charge of operations and organisation, NTAGANDA issued orders to

<sup>3326</sup> P-55:T-72-CONF-ENG-CT,11:1-8 ; P-16:DRC-OTP-0126-0422,pp.0464-0465,paras.247-250; P-17:T-58-CONF-ENG-CT,54:12-55:17.

<sup>3327</sup> DRC-OTP-2058-0251,00:08:15-00:08:26,00:12:04-00:12:40,00:23:03-00:23:08(transl.DRC-OTP-2102-3766,p.3772:131-139,p.3774:198-207,p.3778:360-364).

<sup>3328</sup> P-963:T-78-CONF-ENG-ET,69:18-70:25; P-16:DRC-OTP-0126-0422,pp.0449-0451,paras.153-163; P-768:T-33-CONF-ENG-CT,35:14-23.

<sup>3329</sup> P-17:T-59-CONF-ENG-CT,35:15-36:16.

<sup>3330</sup> P-55:T-71-CONF-ENG-CT,52:7-53:19.

<sup>3331</sup> [REDACTED].

<sup>3332</sup> [REDACTED].



his subordinate staff and assigned them with specific tasks for the purposes of that assault.<sup>3333</sup> According to several witnesses, **NTAGANDA** was in charge of the operations in Lipri, Bambu and Kobu.<sup>3334</sup>

1083. Supporting the direct evidence of **NTAGANDA**'s actual knowledge is evidence of his ability to stay constantly informed of his subordinates' activities. The UPC had various communication means at its disposal and used them during military operations. All General Staff officers, all high-level commanders, including **NTAGANDA** and **KISEMBO**, had Thuraya satellite phones and used them to exchange operational information from areas where there was no network for Motorola radios.<sup>3335</sup> The UPC used the "Man-pack" (long distance radio), Thuraya satellite phones, and Motorolas during the attack on Lipri, Bambu and Kobu.<sup>3336</sup> **NTAGANDA** must have known about the massacre in Kobu, because there were reports coming in over the long-range radio system.<sup>3337</sup> When **NTAGANDA** did not receive information from subordinates he would actively seek out and require information about situations within operations.<sup>3338</sup>

1084. Likewise, the functioning UPC chain of command supplied **NTAGANDA** with specific information of his subordinates' crimes. [REDACTED] testified that he received numerous reports [REDACTED], some of which detailed crimes committed by **NTAGANDA**'s subordinates.<sup>3339</sup> [REDACTED] recalled that he received reports of murders in Kobu,<sup>3340</sup> and he received several reports about

<sup>3333</sup> **P-55:T-71-CONF-ENG-CT**,31:16-34:14;**T-72-CONF-ENG-CT**,4:13-5:10; **P-907:T-90-CONF-ENG-CT**,62:9-15.

<sup>3334</sup> **P-55:T-71-CONF-ENG-CT**,43:9-44:8;**T-72-CONF-ENG-CT**,4:13-5:10,6:16-21,9:14-24; **P-901:T-29-CONF-ENG-CT**,13:6-13; **P-17:T-60-CONF-ENG-ET**,7:1-22.

<sup>3335</sup> **P-55:T-70-CONF-ENG-CT**,91:11-92:20.

<sup>3336</sup> **P-55:T-71-CONF-ENG-CT**,42:9-15,43:9-44:8; **P-963:T-79-CONF-ENG-ET**,53:19-24; **D-300:T-221-CONF-ENG-ET**,5:1(confirming his use of the satellite phone during the period).

<sup>3337</sup> **P-55:T-71-CONF-ENG-CT**,43:9-44:8; **P-907:T-90-CONF-ENG-CT**,62:9-15;**T-92-CONF-ENG-CT**,64:3-21; **P-901:T-29-CONF-ENG-CT**,13:6-16.

<sup>3338</sup> **P-768:T-33-CONF-ENG-CT**,32:24-33:15.

<sup>3339</sup> [REDACTED].

<sup>3340</sup> [REDACTED].

UPC pillaging, rape, and other crimes against civilians on a regular basis.<sup>3341</sup> [REDACTED] sent his [REDACTED] reports, including reports of crimes to **NTAGANDA**, among others.<sup>3342</sup> [REDACTED] provided further credible evidence of **NTAGANDA**'s knowledge of crimes, and more broadly, events that had occurred during the attack on Walendu-Djatsi.

1085. **NTAGANDA** knew the information contained in [REDACTED]'s [REDACTED] reports. **NTAGANDA** reluctantly acknowledged that he received [REDACTED] reports from [REDACTED]'s office but claims that he immediately reacted to them.<sup>3343</sup> Despite acknowledging receipt of [REDACTED]'s reports, when shown a specific report providing information about UPC soldiers and escorts raping young girls,<sup>3344</sup> **NTAGANDA** professed ignorance, pressing a fantastical claim that he would have reacted to such information.<sup>3345</sup> **NTAGANDA**'s testimony on this point is not credible. The [REDACTED] reports sent by [REDACTED]'s office, as evidenced by [REDACTED], primarily contained not information on crimes, but [REDACTED], which was critical to **NTAGANDA**'s ability to know current information about his enemy's [REDACTED]. Without such information **NTAGANDA** would have been incapable of conducting offensive and defensive military operations. Belief of his denial of having received such messages would require the belief that he routinely failed to read [REDACTED] reports vital to his military success, a doubtful occurrence considering **NTAGANDA**'s high level of military awareness and his control over events.<sup>3346</sup>

1086. Additionally, **NTAGANDA**'s Logbook also indicates that **NTAGANDA** was receiving reports from the troops in the field through the radio positioned at his

---

<sup>3341</sup> [REDACTED].

<sup>3342</sup> [REDACTED]; [DRC-OTP-0109-0136](#).

<sup>3343</sup> [REDACTED].

<sup>3344</sup> [REDACTED].

<sup>3345</sup> [REDACTED].

<sup>3346</sup> [REDACTED].

residence in Bunia. A message transmitted on 13 February 2003 shows MULENDA reporting on the hostilities from Kobu and requesting additional weapons for the attack.<sup>3347</sup> Logbook entries for 18 and 19 February 2003 show NTAGANDA receiving a report from MULENDA stating that one of his subordinates, AMÉRICAIN, was threatening to desert because he was scared of the way in which the enemy seized a weapon from the UPC.<sup>3348</sup> Within hours NTAGANDA reacted, reinforcing the orders to advance.<sup>3349</sup>

1087. NTAGANDA and high-level UPC commanders, such as KISEMBO and MULENDA, and many others also knew about the crimes being committed during the Second Attack.<sup>3350</sup> The UPC Logbook shows that NTAGANDA reported to his superiors on the status of the Second Attack in the afternoon of 19 February 2003 and undertook to keep them informed. In the Logbook entry from 19 February 2003, NTAGANDA confirmed the arrival of the troops at Lipri, Bambu and Kobu, and undertook to keep his superiors informed.<sup>3351</sup>

1088. NTAGANDA knew specifically that the UPC recruited and used children under the age of 15 to participate actively in hostilities.<sup>3352</sup> He regularly visited training camps and could see the *kadogos* who were manifestly under the age of 15 for himself.<sup>3353</sup> He trained the recruits, and used children in battle.<sup>3354</sup> NTAGANDA had children under the age of 15 among his bodyguards and used them during battles in which he commanded the UPC troops himself.<sup>3355</sup>

<sup>3347</sup> [DRC-OTP-2102-3854](#),p.3982(second).

<sup>3348</sup> [DRC-OTP-2102-3854](#),p.3990(second).

<sup>3349</sup> [DRC-OTP-2102-3854](#),p.3998(third).

<sup>3350</sup> [P-768:T-34-CONF-ENG-CT](#),60:11-61:13; [P-17:T-60-CONF-ENG-ET](#),21:1-24:20; [P-963:T-79-CONF-ENG-ET](#),74:23-76:19; [P-41:DRC-OTP-0147-0002](#),p.0016,paras.82-85; [P-16:DRC-OTP-0126-0422](#),p.450,para.155-161; [P-55:T-71-CONF-ENG-CT](#),50:7-52:6; [T-74-CONF-ENG-CT](#),61:1; [P-976:T-152-CONF-ENG-ET](#),22:5-23:8.

<sup>3351</sup> [DRC-OTP-2102-3854](#),p.3993(first).

<sup>3352</sup> See Section VII.C.

<sup>3353</sup> [P-55:T-71-CONF-ENG-CT](#),68:25-70:14; [P-898:T-153-CONF-ENG-ET](#),56:13-15; [P-10:T-47-CONF-ENG-CT](#),52:14-55:9;[T-47-CONF-ENG-CT](#),58:17-62:18;[T-49-CONF-ENG-CT](#),38:4-39:11.

<sup>3354</sup> [P-16:DRC-OTP-0126-0422](#),pp.0465-0466,para.253; [P-41:DRC-OTP-0147-0002](#),p.0029,para.171; [P-10:T-47-CONF-ENG-CT](#),5:18-8:3;[T-47-CONF-ENG-CT](#),20:23-21:16,52:14-55:9;

<sup>3355</sup> [P-901:T-29-CONF-ENG-CT](#),53:21-56:10; [P-768:T-34-CONF-ENG-CT](#),48:20-49:15.

**NTAGANDA** was so intimately familiar with the fact that he recruited and used children under the age of 15 that he ordered boots in children's sizes to fit their tiny feet.<sup>3356</sup>

1089. The high level commanders in the UPC, including **NTAGANDA**, were aware of the sexual exploitation of women and girl soldiers in the UPC.<sup>3357</sup> **NTAGANDA** and members of the high command themselves sexually exploited the UPC's female military personnel.<sup>3358</sup> Specifically, **NTAGANDA** knew that UPC commanders and soldiers raped and sexually enslaved girls under the age of 15.<sup>3359</sup>

1090. The direct and circumstantial evidence in this case proves beyond reasonable doubt that **NTAGANDA** actually knew of the crimes perpetrated by his forces. Alternatively, the same evidence proves that **NTAGANDA** should have known that his forces were committing or about to commit these crimes. Given all of the means to obtain information at his disposal, and owing to the circumstances at the time, his failure to acquire knowledge of his subordinates' crimes was unjustifiable.<sup>3360</sup>

1091. Finally, given the circumstances as a whole and **NTAGANDA**'s knowledge both of the circumstances and the specific crimes of his subordinates, the evidence also shows that **NTAGANDA** knew to any extent necessary that the crimes were committed in the context of and associated with a widespread and/or systematic attack upon a civilian population, as well as a non-international armed conflict.

<sup>3356</sup> [P-190:T-97-CONF-ENG-CT](#),76:25-77:14.

<sup>3357</sup> See Section VII.D.1.: "Children recruited into the UPC were raped"; [P-963:T-80-CONF-ENG-ET](#),32:22-33:11; [P-907:T-89-CONF-ENG-CT](#),55:2-66:9; [P-16:DRC-OTP-0126-0422](#),p.0463,paras.235-239; [P-31:T-174-CONF-ENG-ET](#),39:17-42:18.

<sup>3358</sup> [REDACTED]

<sup>3359</sup> See Sections VII.D.1 and 2: "Children recruited into the UPC were raped." and "Children recruited into the UPC were sexually enslaved."; [P-31:T-174-CONF-ENG-ET](#),39:17-42:18; [P-10:T-47-CONF-ENG-CT](#),41:20-43:5; [P-16:DRC-OTP-2054-1781](#),pp.1809-1811.

<sup>3360</sup> See further *Bemba AH*,pp.13:9-13:16,16:5-17:13,46:20-47:10. See also *Bemba DCC*,paras.429,432-434; *Lubanga DCC*,para.358.

4. *NTAGANDA failed to take all necessary and reasonable measures within his power to prevent or repress the commission of crimes by his subordinates.*

1092. Despite his material ability to act, **NTAGANDA** failed to take all necessary and reasonable measures within his power to: 1) prevent the crimes; 2) repress the crimes; and 3) submit matters to competent authorities for investigation and prosecution. Article 28 (a)(ii) provides “[t]hat the military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to competent authorities for investigation and prosecution.”<sup>3361</sup> Thus, the Statute makes clear that the Prosecution need not prove a breach of all three duties of prevention, repression, and submission in order for the Chamber to find a breach of any single duty.<sup>3362</sup>

1093. To prove any one of these breaches of duty, it suffices to show that **NTAGANDA** failed to take *all* necessary and reasonable measures. As this Court has previously recalled, “‘necessary’ measures are those appropriate for the commander to discharge his obligation, and ‘reasonable’ measures are those reasonably falling within the commander’s material power”; this must be established on a “case-by-case basis”.<sup>3363</sup>

1094. **NTAGANDA**'s position of authority was such that he could have ensured that his subordinates' actions conformed with international humanitarian law. Nonetheless, he failed to use those powers. Contrary to his basic legal duties as a commander, **NTAGANDA** did not take all necessary and reasonable measures to mitigate the risk of crimes about to be committed from materializing, stop ongoing crimes, punish crimes already committed, or submit the matters to the competent authorities for investigation and prosecution.

---

<sup>3361</sup> Emphasis added.

<sup>3362</sup> See *Bemba TJ*, para. 201.

<sup>3363</sup> *Bemba TJ*, paras. 197-199.

*a. NTAGANDA failed to prevent the commission of his subordinates' crimes*

1095. A military commander must take all necessary and reasonable measures within his or her power to prevent the commission of subordinates' crimes. Factors which may be relevant to this assessment include *inter alia* whether the superior: i) ensured adequate training of their forces in international humanitarian law ("IHL"); ii) ensured that their orders and their subordinate commanders' orders complied with IHL, and were calculated to ensure compliance with IHL by subordinate forces; iii) took effective disciplinary measures as required; iv) required reports from subordinates that military actions were carried out in accordance with IHL.<sup>3364</sup>

1096. In stark contrast, the evidence shows beyond reasonable doubt that NTAGANDA failed to: i) adequately train his forces in IHL;<sup>3365</sup> ii) provide clear orders aimed at ensuring compliance with IHL;<sup>3366</sup> iii) take disciplinary measures when aware of previous reported crimes;<sup>3367</sup> and iv) require reports from subordinates that military actions were carried out in accordance with IHL.<sup>3368</sup> NTAGANDA likewise failed to exercise proper control over the supply of arms and ammunition to his forces, or to prevent crimes by remunerating his forces adequately and properly, or rewarding behaviour compliant with IHL. Since these measures were all within his material capabilities, as previously demonstrated, this alone suffices to establish his responsibility. Yet, although causation is not a legal condition for assessing "necessary" measures,<sup>3369</sup> these failures did in fact create a climate of tolerance for the misconduct of his forces

<sup>3364</sup> *Bemba TJ, Bemba Appeal Response*, paras. 202-204.

<sup>3365</sup> [P-901:T-30-CONF-ENG-CT](#),75:10-15; [P-17:T-58-CONF-ENG-CT](#),31:23-35:4.

<sup>3366</sup> [P-55:T-71-CONF-ENG-CT](#),40:1-7.

<sup>3367</sup> [P-55:T-71-CONF-ENG-CT](#),57:23-58:4,59:11-23; [P-963:T-79-CONF-ENG-ET](#),35:9-36:7;[T-80-CONF-ENG-ET](#),38:4-41:12.

<sup>3368</sup> [DRC-OTP-2102-3854](#),p.4030 (all messages show NTAGANDA's willingness and his authority to require his subordinates to take certain actions).

<sup>3369</sup> See *Hadžihasanović & Kubura AJ*, para. 38; *Kordić AJ*, para. 832; *Blaškić AJ*, para. 77.

and emboldened them in perpetrating the charged crimes. As such, NTAGANDA's conduct exacerbated the scale of crimes; rather than preventing them, he causally contributed to them.

1097. During the conflict in Ituri, NTAGANDA had many opportunities to change course and put in place measures to prevent additional crimes from occurring. However, NTAGANDA failed to do so even after he knew crimes were being committed or were about to be committed. The duty to prevent crimes is inherently related to the duty to punish them. Indeed, while claiming that "*no [crimes] went unpunished*",<sup>3370</sup> NTAGANDA categorically and implausibly denied that his troops committed the charged crimes at all.<sup>3371</sup> Several insider witnesses were in a position to know whether any measures were taken. Consistently and independently, they all testified that NTAGANDA did not punish his troops for the charged crimes.<sup>3372</sup>

1098. NTAGANDA failed to ensure adequate training of UPC forces.<sup>3373</sup> Training soldiers in IHL is indispensable for compliance with IHL and required in order to prevent soldiers from violating IHL. Compliance with IHL does not happen by accident – commanders must ensure that their forces are trained.<sup>3374</sup> There is no credible indication at all in the evidence that UPC forces received sufficient training in IHL even though NTAGANDA was fully capable of ensuring that his forces received training.<sup>3375</sup> Entirely to the contrary, by imbuing the recruits

<sup>3370</sup> [D-300:T-222-ENG-CT](#),67:12-13.

<sup>3371</sup> [D-300:T-237-CONF-ENG-ET](#),10:3-24.

<sup>3372</sup> [P-963:T-79-CONF-ENG-ET](#),22:16-19; [P-907:T-90-CONF-ENG-CT](#),51:19-23; [P-768:T-34-CONF-ENG-CT](#),16:11-15; [P-10:T-47-CONF-ENG-CT](#),36:6-8; [P-55:T-71-CONF-ENG-CT](#),57:23-58:4; [P-17:T-60-CONF-ENG-ET](#),27:4-5;[T-63-CONF-ENG-ET](#),15:9-22; [P-888:T-106-CONF-ENG-CT](#),8:5-9:23; [P-901:T-32-CONF-ENG-CT](#),34:23-35:5; [P-16:DRC-OTP-0126-0422](#),p.450,para.163.

<sup>3373</sup> [P-901:T-30-CONF-ENG-CT](#),75:10-15.

<sup>3374</sup> Additional Protocol II to the Geneva Conventions of 1949, art. 19; Rule 142, ICRC Customary International Humanitarian Law Study.

<sup>3375</sup> [P-190:T-97-CONF-ENG-CT](#),56:1-3; [P-901:T-30-CONF-ENG-CT](#),75:10-15.



with hatred towards Lendu without distinction,<sup>3376</sup> UPC training under NTAGANDA *promoted* the violation of fundamental principles of IHL.

1099. NTAGANDA failed to take measures to ensure that his forces distinguished between combatants and civilians, ordering an attack on all RCD-K/ML soldiers and the Lendu, *“he didn’t make a difference between civilians – Lendu civilians and the militia.”*<sup>3377</sup>

1100. In relation to the assault on the Banyali-Kilo *collectivité*, for example, NTAGANDA’s order, repeated by other commanders, was *“kupiga na kuchaji”*, therefore there was not going to be any punishment or discipline for fulfilling that order.<sup>3378</sup> By definition, this was the very antithesis of an order to prevent crimes, which he could have issued but chose not to.<sup>3379</sup> In fact, none of the UPC leadership, including NTAGANDA, attempted to prevent or repress crimes against civilians committed by their subordinates.<sup>3380</sup> The command climate created by NTAGANDA and his subordinate commanders was such that UPC troops considered crimes committed, especially against Lendu to be “normal” behaviour.<sup>3381</sup> Crimes against Lendu were specifically countenanced and encouraged, for example by having their troops sing songs about Lendu extermination.<sup>3382</sup>

1101. NTAGANDA’s training on “ideology” was likewise entirely insufficient to prevent crimes because his training ordered and encouraged crimes. Assuming,

<sup>3376</sup> **P-10:T-46-CONF-ENG-ET**,41:1-5;**T-47-CONF-ENG-CT**,48:12-13; **P-888:T-105-CONF-ENG-CT**,37:8-38:11; **P-963:T-78-CONF-ENG-ET**,74:18-24;**T-80-CONF-ENG-ET**,30:20-25; **P-907:T-90-CONF-ENG-CT**,36:20-24.

<sup>3377</sup> **P-768:T-33-CONF-ENG-CT**,36:6-37:16; *see also* **P-10:T-47-CONF-ENG-CT**,15:7-16; **P-963:T-79-CONF-ENG-ET**,16:9; **P-17:T-59-CONF-ENG-CT**,7:10,62:17-63:3.

<sup>3378</sup> **P-907:T-90-CONF-ENG-CT**,8:1-11; **P-963:T-78-CONF-ENG-ET**,70:7-17.

<sup>3379</sup> **P-963:T-79-CONF-ENG-ET**,22:16-19; **P-907:T-90-CONF-ENG-CT**,51:19-23; **P-768:T-34-CONF-ENG-CT**,16:11-15; **P-10:T-47-CONF-ENG-CT**,36:6-8; **P-55:T-71-CONF-ENG-CT**,57:23-58:4; **P-16:DRC-OTP-0126-0422**,p.0461,para.224.

<sup>3380</sup> **P-16:DRC-OTP-0126-0422**,p.0461,para.224; **P-963:T-79-CONF-ENG-ET**,22:16-19.

<sup>3381</sup> **P-963:T-79-CONF-ENG-ET**,22:16-19.

<sup>3382</sup> **P-769:T-120-CONF-ENG-ET**,32:8-24; **P-16:DRC-OTP-0126-0422**,pp.0432-0433,paras.55-58;**DRC-OTP-2054-1447**,pp.1464-1466.

*arguendo*, that the training on “ideology” had included training on the fundamentals of IHL, it was insufficient since NTAGANDA failed to support such training with orders meant to respect IHL and with punishments for breaches of IHL. Telling someone to refrain from certain conduct but then tolerating, or even ordering, the commission of such conduct is tantamount to condoning the conduct. Further, as NTAGANDA acknowledged, in an army: “[e]ach person will take care of, or will meet, his obligations following the example set by the superior.”<sup>3383</sup> The example NTAGANDA set, however, was one of criminality.

*b. NTAGANDA failed to repress the commission of his subordinates' crimes, or to submit them to competent authorities for investigation and prosecution*

1102. NTAGANDA was fully and personally capable of carrying out harsh punishments on members of the UPC, including summary executions and was, himself, an authority competent to punish with no need to refer matters to others.<sup>3384</sup> NTAGANDA even had prisons at his disposal, either as a punishment in themselves or to enforce other measures, had he chosen to take them.<sup>3385</sup> The UPC lacked a formal military justice system but individual UPC commanders meted out arbitrary punishments for misconduct impacting military discipline such as desertion or refusing to execute orders.<sup>3386</sup> NTAGANDA failed to take any similar measures or submit matters to competent authorities for investigation and prosecution for the crimes charged in these proceedings.

1103. Members of the UPC's *état-major*, including NTAGANDA, knew of the sexual exploitation of women at Kobu, because it was the *état-major*'s practice to sexually exploit women and girls.<sup>3387</sup> NTAGANDA had girls among his military

<sup>3383</sup> [D-300:T-227-CONF-ENG-CT](#),17:11-20.

<sup>3384</sup> [D-300:T-215-ENG-ET](#),42:9-43:13; [P-769:T-121-CONF-ENG-CT](#),10:10-11:19.

<sup>3385</sup> [P-55:T-72-CONF-ENG-CT](#),54:19-55:3.

<sup>3386</sup> [P-898:T-154-CONF-ENG-ET](#),7:8-8:11.

<sup>3387</sup> [P-10:T-47-CONF-ENG-CT](#),31:13-34:19; [P-963:T-79-CONF-ENG-ET](#),74:23-76:9

staff, and they were sexually exploited.<sup>3388</sup> The *état-major* took no disciplinary sanctions against the officers who committed sexual violence, *particularly* where the victims were Lendu girls, but also where they were part of the UPC's own troops.<sup>3389</sup>

1104. Though NTAGANDA knew of the crimes committed by MULENDA in Kobu he failed to take any measures to punish MULENDA for his actions.<sup>3390</sup> In fact, none of the soldiers who participated in the UPC attacks in Kobu, Lipri or Bambu were disciplined.<sup>3391</sup> Instead, shortly after the massacre in Kobu, P-55 heard NTAGANDA praise MULENDA for being a "real man" in relation to that attack.<sup>3392</sup>

1105. NTAGANDA's Chief of Security, MUSEVENI, raped NTAGANDA's 12 or 13 year old bodyguard but faced no disciplinary action whatsoever. According to P-768, in fact, NTAGANDA was aware of MUSEVENI's rape of the child and failed to take any measures to investigate or punish MUSEVENI – "*... similar cases were frequent. [Rape] was considered as a normal act.*"<sup>3393</sup>

1106. Members of the UPC knew that they would not be punished for crimes of sexual violence because such misconduct had become routine: after every operation there were crimes committed.<sup>3394</sup> UPC commanders never faced the risk of being punished as long as they were pursuing UPC goals.<sup>3395</sup> Their unchecked criminality and breakdown of discipline encouraged rather than

<sup>3388</sup> [REDACTED].

<sup>3389</sup> [P-768:T-34-CONF-ENG-CT,55:18-60:13](#); [P-963:T-80-CONF-ENG-ET,33:12-15,38:4-41:12](#); [P-10:T-47-CONF-ENG-CT,36,6-8](#); [P-190:T-97-CONF-ENG-CT,48:13-49:10](#).

<sup>3390</sup> [P-55:T-71-CONF-ENG-CT,56:18-57:21](#); [P-768:T-34-CONF-ENG-CT,61:10-13](#); [P-16:DRC-OTP-0126-0422,p.0451,para.168](#).

<sup>3391</sup> [P-768:T-34-CONF-ENG-CT,61:10-13](#); [P-55:T-71-CONF-ENG-CT,57:24-58:4](#); [P-17:T-60-CONF-ENG-ET,27:4-5](#); [T-63-CONF-ENG-ET,15:9-22](#); [P-963:T-79-CONF-ENG-ET,74:12-22](#); [P-16:DRC-OTP-0126-0422,p.450,para.163](#).

<sup>3392</sup> [P-55:T-71-CONF-ENG-CT,56:18-57:21](#).

<sup>3393</sup> [P-768:T-34-CONF-ENG-CT,55:18-56:13](#).

<sup>3394</sup> See Section VI.

<sup>3395</sup> [P-16:DRC-OTP-0126-0422,p.0461,paras.221-223](#); [P-963:T-79-CONF-ENG-ET,22:16-19](#); [P-907:T-90-CONF-ENG-CT,51:19-23](#); [P-768:T-34-CONF-ENG-CT,16:11-15](#); [P-10:T-47-CONF-ENG-CT,36:6-8](#); [P-55:T-71-CONF-ENG-CT,57:23-58:4](#); [P-17:T-60-CONF-ENG-ET,27:4-5](#); [T-63-CONF-ENG-ET,15:9-22](#).

repressed crimes.

1107. A sequence of Logbook messages shows that **NTAGANDA** refused to take necessary measures to repress crimes and instead fostered an environment in which the perpetrators of crimes could thrive. A message dated 21 December 2002 shows a subordinate commander reporting up the chain of command that Commander YUDA and others were accused of attempting to rape civilian women and that YUDA had fled.<sup>3396</sup> **NTAGANDA** replied to the message within roughly 2 hours and ordered YUDA's arrest for alleged rape of civilian women.<sup>3397</sup> **NTAGANDA**'s order to arrest YUDA was diligently carried out and reported back to **NTAGANDA** in less than 24 hours.<sup>3398</sup> Yet, less than two months later, shortly prior to the attack on the Walendu-Djatsi *collectivité*, **NTAGANDA** presented Commander YUDA for a promotion to a new post.<sup>3399</sup> These messages illustrate, first, that **NTAGANDA** had effective control of his troops, as he was directly able, within 2 hours of the initial report, to order and, within 24 hours, to effectuate the arrests; second, that he was aware of criminal behaviour in the UPC; and third, rather than taking necessary measures to address allegations of rape, **NTAGANDA** further encouraged and emboldened perpetrators by promoting Commander YUDA. Taken together, the arrest and subsequent promotion of YUDA amount to a failure to take "all necessary and reasonable measures" as required by **NTAGANDA**'s duty as a commander.

1108. **NTAGANDA**'s attempt to explain away his promotion of the accused rapist Commander Koko YUDA of Mahagi falls flat. **NTAGANDA** incredibly offered alternate facts for his promotion of the accused rapist Koko YUDA by claiming he promoted a *different* Commander YUDA of Mahagi and that "[t]hese are two different people", but despite knowing the "two different individuals very well",

<sup>3396</sup> [DRC-OTP-2102-3854](#),p.3888(second).

<sup>3397</sup> [DRC-OTP-2102-3854](#),p.4025(third).

<sup>3398</sup> [DRC-OTP-2102-3854](#),p.3890(second).

<sup>3399</sup> [DRC-OTP-2102-3854](#),p.4007(first).

NTAGANDA stated that he “forget[s]” what other Commander YUDA’s – the one who was not a rapist – other name was.<sup>3400</sup> NTAGANDA also implausibly stated that Commander Koko YUDA the rapist and “other Commander YUDA” were both at Mahagi and Koko YUDA was the “OC” or commander of the unit at Mahagi and the other Commander YUDA was his “2IC” or the deputy commander.<sup>3401</sup> NTAGANDA’s alternative version was incoherent, internally inconsistent, and illogical: had Koko YUDA been in detention at the time of “the other” YUDA’s selection for promotion, “the other” YUDA would not have been the “2IC”, he would have been the commander in the absence of any other commander. NTAGANDA’s story does not withstand scrutiny.

**5. *The crimes committed by the UPC forces resulted from NTAGANDA’s failure to exercise control over them properly***

1109. Article 28(a) provides for the criminal *responsibility* of commanders “as a result of his or her failure to exercise control properly over [his or her] forces”, which committed crimes. Consequently, when properly interpreted, command responsibility under the Statute does not require causation in the sense that the superior’s failure must have contributed (in some degree) to the occurrence of the crimes themselves. This is because command responsibility is liability for failing to fulfil a commander’s duties to prevent and punish their subordinates’ crimes; it is not a form of participation in those crimes themselves, which is separately regulated in article 25. Causation is therefore not necessary to establish the required personal culpability of the commander.<sup>3402</sup>

1110. Nonetheless, if the Chamber were to decide that article 28 does require some form of causal link between the commander’s breach of duty and their subordinate’s crimes, this standard can be no higher than that the commander’s

<sup>3400</sup> [D-300:T-228-CONF-ENG-CT,74:16-79:11.](#)

<sup>3401</sup> [D-300:T-228-CONF-ENG-CT,74:16-79:11.](#)

<sup>3402</sup> See further [Bemba Final Submissions](#), paras.4-5; [Bemba Appeal Response](#), paras. 230-234,237-241,243-253.

conduct “increased the risk” of the commission of the subordinate’s crimes.<sup>3403</sup> Moreover, this standard may only apply to the commander’s failure to prevent since it cannot logically apply to a commander’s failure to punish.<sup>3404</sup> For the reasons set out in the arguments advanced in the *Bemba* appeal, the Prosecution submits that an attempt to read a broader ‘general duty to exercise control properly’ into article 28, as a basis for a causation analysis, is inconsistent with the ordinary meaning of its terms, its context, and object and purpose.<sup>3405</sup>

1111. **NTAGANDA**’s failure to exercise control properly over his forces and the link between this failure and the crimes charged is already addressed by the facts and evidence described above. **NTAGANDA** exercised a high degree of control over his forces and failed to take measures within his material ability through which he could have prevented the charged crimes, had he chosen to take appropriate action. Accordingly, to any extent the Chamber finds that proof of causation is required for article 28, the Prosecution has met this burden beyond reasonable doubt.

1112. **NTAGANDA** increased the risk that his forces would commit crimes by failing to take measures to ensure compliance with IHL, by sending forces that had previously been accused of committing similar crimes, and by failing to punish forces who committed crimes during the initial stages of the armed conflict to create an atmosphere of general deterrence within the UPC.

## X. CONCLUSION

1113. The evidence before the Chamber, considered and weighed in its totality, establishes **NTAGANDA**’s guilt of each of the confirmed charges beyond reasonable doubt.

---

<sup>3403</sup> *Bemba AH*,81:10-82:1.

<sup>3404</sup> *Bemba DCC*, para. 424.

<sup>3405</sup> See further *Bemba Appeal Response*, paras. 235-236, 242.

1114. **NTAGANDA** and his UPC soldiers attacked non-Hema civilians; they raped, sexually enslaved, murdered, and persecuted them. They forced them to flee, and pillaged and destroyed their homes and villages. **NTAGANDA** and his UPC forces recruited children under the age of 15 into their ranks, trained them in harsh conditions, and deployed them to the battlefield or used them as escorts. These children were also raped and sexually enslaved by the very commanders and soldiers who recruited them and used them actively in hostilities. **NTAGANDA**'s criminal conduct deprived innocent victims of their lives. For survivors of his crimes, they live with enormous physical and psychological pain.

1115. **NTAGANDA** perpetrated these crimes himself. He committed them directly, jointly with, or through, others by virtue of an agreed common plan and purpose. He ordered them. By his own criminal conduct and orders, he induced the commission of these crimes. He committed them with intent and knowledge. As a military commander, he knew or should have known that his forces were committing the crimes and he failed to take all necessary and reasonable measures to prevent or repress their commission.

1116. On the basis of the totality of the evidence, the Chamber must convict **NTAGANDA** for all charged crimes.



**PROSECUTION TEAM**

1117. The Prosecution team in the case *The Prosecutor v. Bosco Ntaganda* is composed of Nicole Samson, Dianne Luping, Julieta Solano, Eric Iverson, Marion Rabanit, Laura Morris, James Pace, Kristy Sim, Rens van der Werf, Paola Sacchi, Marie Claudine Umurungi, Selamawit Yirgou and Alexandre Gargam.

---

**Fatou Bensouda**  
**Prosecutor**

Dated this 7<sup>th</sup> day of November 2018  
At The Hague, The Netherlands