

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04  
Date: 14 May 2012

**PRE-TRIAL CHAMBER I**

**Before:** Judge Ekaterina Trendafilova, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Cuno Tarfusser

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

**Public Redacted Version of  
Prosecutor's Application under Article 58 filed on 14 May 2012**

**Source:** 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**

Mr Luis Moreno- Ocampo  
Ms Fatou Bensouda

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of 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**

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**Registrar**

Ms Silvana Arbia

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

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## I. INTRODUCTION

Pursuant to Article 58(1) of the Rome Statute (Statute), the Prosecutor applies to Pre-Trial Chamber I for the issuance of a second arrest warrant against **Bosco NTAGANDA**, the former (Deputy) Chief of the General Staff of the UPC/FPLC for his individual criminal responsibility for the following crimes:

- (1) crimes against humanity of murder, persecution based on ethnic grounds, and rape/sexual slavery, and
- (2) war crimes of intentional attacks against civilians, murder, rape/ sexual slavery and pillaging.

These crimes occurred in the context of military attacks by the UPC/FPLC forces against the Lendu and the other non-Hema civilian population in several towns and villages in Ituri, a district of the Province Orientale of the Democratic Republic of the Congo (DRC) during the period September 2002 to September 2003.<sup>1</sup>

The Prosecution alleges that, as Deputy Chief of Staff and commander of all UPC/FPLC military operations, **Bosco NTAGANDA** implemented the UPC/FPLC organisational policy of military and political dominance over Ituri that involved widespread and systematic attacks against the Lendu and other non-Hema civilian population. These attacks followed a consistent pattern: UPC/FPLC forces encircled the towns and villages of the Lendu and other non-Hema tribes, shelled them, and then ethnically cleansed the areas by killing and raping civilians, forcing their displacement to the surrounding forests and eventually looting their property. These attacks were carried out over a large geographical area within Ituri and continued for approximately one year from September 2002 to September 2003.

**Bosco NTAGANDA** committed the crimes alleged in this Application, jointly with others, under Article 25(3)(a) of the Statute. The Prosecution does not exclude, however, the possibility of adding other modes of liability in the later stages of the case.

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<sup>1</sup> There is already an outstanding Arrest Warrant for **Bosco NTAGANDA** issued by the Pre-Trial Chamber on 22 August 2006, ICC-01/04-02/06-1-Red-tENG, for the war crimes of crimes of enlisting and conscripting children under 15 into the UPC and using them to participate actively in hostilities (NTAGANDA AWA Decision).

The Prosecution notes that for many of the factual assertions in this Application, reliance is placed on the numerous relevant factual findings of Pre-Trial Chamber in the NTAGANDA AWA Decision, and Trial Chamber's Judgment pursuant to Article 74 of the Statute in the *Prosecutor v Thomas Lubanga Dyilo*<sup>2</sup> (*Lubanga Judgement*).<sup>3</sup> In most of the instances, however, the Application also references the underlying evidence supporting the factual findings, allowing this Chamber to make its own independent determinations.

## II. CONCISE STATEMENT OF FACTS

1. During the period September 2002 to September 2003, **Bosco NTAGANDA**, along with the President of UPC/FPLC and other co-perpetrators, executed a plan and policy to dominate Ituri militarily and politically through the commission of massive crimes. This policy had been devised during the previous two years.

2. On 15 September 2000, Thomas Lubanga, together with **Bosco NTAGANDA**,<sup>4</sup> amongst others, formed the *Union des Patriotes Congolais* (UPC) in Bunia. Thomas Lubanga became the organisation's President from its inception.<sup>5</sup> The organisation was created to protect and serve the interests of the ethnic Hema population in Ituri from members of the Lendu and other non-Hema tribes, whom the Hema had perceived as their enemy since 1998/1999.

3. The UPC aspired to assume power in Ituri through military force. The policy, agreed upon by **Bosco NTAGANDA**, and his co-perpetrators, was to take territorial and political control of Ituri through a calibrated campaign of attacks, including the commission of crimes, against the Lendu and other non-Hema population.

4. This policy of Hema ethnic domination in Ituri through the commission of crimes was starkly outlined in a proclamation on 5 May 2002. Entitled "Provisions for the proclamation of the independent State of Ituri or Hema-Land by the Hema in coalition

<sup>2</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 14 March 2012 (*Lubanga Judgement*).

<sup>3</sup> For past similar practice of adopting findings, see ICC-02/05-03/09-121-Corr-Red, para.23; ICC-02/05-01/12-1-Red, paras 5, 12-19, 33-35.

<sup>4</sup> [REDACTED].

<sup>5</sup> *Lubanga Judgement*, para.81, referring to EVD-OTP-00621 (DRC-OTP-0092-0378), EVD-OTP-00661 (DRC-OTP-0091-0039), EVD-OTP-00662 (DRC-OTP-0106-0169) and EVD-OTP-00726 (DRC-OTP-0091-0182).

with the UPDF” the document advocated, amongst other things, “*the systematic pillage and destruction of properties of non-originares, especially the nande*” and “*the massacre of non-originares*” – simply, the removal of the non-Hema and the non-natives from Ituri (*Hema Proclamation*).<sup>6</sup> The proclamation also lists the members of the Hema government, and **Bosco NTAGANDA**’s name is mentioned as the Chief of Staff, along with that of Thomas Lubanga.

5. As the Chamber found in the Lubanga Judgement, **Bosco NTAGANDA**, along with other co-perpetrators, was one of the key players in shaping the UPC, and later the FPLC, into an organised, efficient and robust fighting military force.<sup>7</sup> **Bosco NTAGANDA** and other co-perpetrators (Hema officers of the then APC – the military wing of the *Rassemblement Congolais pour la Démocratie–Mouvement de Libération (RCD-ML)*<sup>8</sup>) – Floribert Kisembo, Chief Kahwa, commanders Tchaligonza, Bagonza and Kasangaki – were instrumental in organising military training for Hema youths, including young children during the summer of 2000.<sup>9</sup> They undertook the training after organising a mutiny against the leader of the RCD-ML.<sup>10</sup> This first wave of recruitment and training of young Hema persons was the precursor to what would later officially become the *Force Patriotique pour la Libération du Congo (FPLC)*, the armed wing of the UPC.

6. The UPC/FPLC gained control over Bunia by September 2002. **Bosco NTAGANDA** commanded the operation that wrested control from Governor Loponde and resulted in the killing of some 100 civilians.<sup>11</sup> It portended what was to follow.

7. The final phase of the lead up to the execution of the common plan and policy to take over Ituri through military means was the formal establishment of the UPC’s military wing, the FPLC, in September 2002. The UPC/FPLC was a structured organisation that had the capacity to implement the policy of Iturian domination through the commission of widespread and systematic crimes and war crimes. Its headquarters in Bunia controlled three sectors, and several brigades of approximately one thousand soldiers each. The UPC/FPLC had an efficient chain of command system that used state of art

<sup>6</sup> Hema Proclamation, DRC-OTP-0126-0065.

<sup>7</sup> [REDACTED].

<sup>8</sup> The group that controlled Bunia at the time.

<sup>9</sup> *Lubanga* Judgement, para. 1043, [REDACTED].

<sup>10</sup> *Lubanga* Judgement, para 82, [REDACTED].

<sup>11</sup> [REDACTED].

communication systems available at the time.<sup>12</sup> Indeed, the “*FPLC was a typical military command structure, which resembled the structure of traditional armies*”.<sup>13</sup>

8. **Bosco NTAGANDA** was third in the FPLC hierarchy under the President and Commander-in-chief Thomas Lubanga and the Chief of Staff, Floribert Kisembo.<sup>14</sup> NTAGANDA was the FPLC’s *de jure* and *de facto* Deputy Chief of Staff, responsible for all military operations. **Bosco NTAGANDA** planned and commanded all military operations in the field with direct authority over the FPLC brigade commanders.<sup>15</sup> He was in constant communication with his two superiors and his subordinates, whether at HQ or in the field.<sup>16</sup>

9. During the period September 2002 to September 2003, **Bosco NTAGANDA** planned and commanded scores of co-ordinated military attacks against the Lendu and other non-Hema tribes. UPC/FPLC troops overran and ransacked their villages and towns, killing and raping civilians across Ituri, including in Mongbwalu in November 2002 and Kobu, Bambu, Lipri and surrounding villages in February/March 2003.<sup>17</sup>

10. The military operations - planned and commanded by **Bosco NTAGANDA**<sup>18</sup> - followed the same pattern and method: i) the targets of the attacks were Lendu and other non-Hema villages; (ii) UPC/FPLC surrounded the villages in an attempt to close off escape routes; (iii) the villages were then shelled with heavy artillery; (iv) the UPC/FPLC soldiers infiltrated the villages, killing everyone perceived as being the enemy by small arms fire, machetes and knives; (v) UPC/FPLC soldiers subsequently pillaged and burnt the villages; (vi) UPC/FPLC soldiers abducted women and raped them; and (vii) the UPC/FPLC attempted to capture and round up any Lendu or other non-Hema persons that remained and often tortured and/or executed them.

11. As a result of the attacks, at least 800 Lendu and other non-Hema civilians were killed by the UPC/FPLC in late 2002 and early 2003 in Mongbwalu, Kilo, Kobu, Lipri, Bambu and surrounding Lendu villages. In addition, thousands of civilians, mostly Lendus, were injured and mutilated. The attacks were so frequent that the population was

<sup>12</sup> *Lubanga* Judgement, paras 1190, 1218, 1219; [REDACTED] and UPC/FPLC logbook DRC-OTP-0171-0926.

<sup>13</sup> NTAGANDA AWA Decision, para.49.

<sup>14</sup> NTAGANDA AWA Decision, para.51.

<sup>15</sup> NTAGANDA AWA Decision, para.52.

<sup>16</sup> *Lubanga* Judgement, para.1194 [REDACTED]; UPC/FPLC logbook, DRC-OTP-0171-0926.

<sup>17</sup> The attacks in Mongbwalu and Kobu, Bambu, Lipri are examples of the widespread and systematic crimes committed throughout Ituri over a period of almost one year.

<sup>18</sup> *Lubanga* Judgement, paras 1172 and 1208, [REDACTED].

forced to live in the bush on a semi-permanent basis. Over 140,000 people were reportedly displaced by the series of attacks. Many were dispossessed due to the looting or destruction.

12. One of the illustrative examples of the attacks in which crimes were committed was the operation in Mongbwalu. It sought to re-take control over the area from the Lendu. Not only did **Bosco NTAGANDA** command this operation in the field – deploying the brigade of his direct subordinate and co-perpetrator, Salumu, for the operation – he also personally ordered the killing of civilians during a pre-briefing with his soldiers.<sup>19</sup> **Bosco NTAGANDA**'s order was echoed by brigade commander Salumu.<sup>20</sup> The operation lasted 6 days and some 200 civilians were killed during the attack.

13. Further, throughout the period, Lendu and other non-Hema female civilians were abducted, systematically raped, and subjected to other forms of sexual violence as part of the UPC/FPLC policy to gain control over Ituri and to purge Ituri of the so-called “*non-originaires*”. “*Countless women*” were reportedly abducted and became “*war wives*”.<sup>21</sup> The UPC/FPLC soldiers typically raped and sexually abused Lendu and other non-Hema women during and after battle and while they were being held captive in several UPC/FPLC camps throughout Ituri.

### III. IDENTIFICATION OF THE PERSON AGAINST WHOM A WARRANT OF ARREST IS BEING SOUGHT

14. **Bosco NTAGANDA** is believed to be about 41 years old.

15. In 2000 and 2001, **Bosco NTAGANDA** went to Uganda several times to receive military training in various military training camps such as Jinja, Kyankwanzi and Sota. He was also trained in Rwanda. From 2000 onwards, **Bosco NTAGANDA** was involved in training soldiers supporting the UPC.

16. On the 2 or 3 September 2002, **Bosco NTAGANDA** was appointed the FPLC Deputy Chief of the General Staff in charge of military operations.<sup>22</sup> **Bosco NTAGANDA**

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<sup>19</sup> [REDACTED].

<sup>20</sup> [REDACTED].

<sup>21</sup> UNSC Letter dated 16 July 2004 containing the Special Report on the events in Ituri, January 2002-December 2003 (UNSC Letter), DRC-OTP-0074-0422, para.1; [REDACTED].

<sup>22</sup> NTAGANDA AWA Decision, paras 50-51; *Lubanga* Judgement, para.1116.

served in this capacity until December 2003 when President Lubanga promoted him to UPC/FPLC Chief of the General Staff.<sup>23</sup>

17. As Deputy Chief of Staff, **Bosco NTAGANDA** had a key role within the inner circle of the UPC and met with the Chief of Staff and the President on an almost daily basis.<sup>24</sup>

18. During his tenure, **Bosco NTAGANDA** commanded numerous UPC/FPLC military operations, including in Mongbwalu in November 2002, Lipri and surrounding villages in February and March 2003, and the attack on Bunia in March 2003 and operations in early summer 2003.

19. On 11 December 2004, the President of the DRC nominated, amongst others, **Bosco NTAGANDA** to be a Brigadier General of the *Forces Armées de la République Démocratique du Congo* (FARDC), the official armed forces of the DRC. **Bosco NTAGANDA** did not take up the appointment. Instead, in early 2005 he founded a new militia group, the *Mouvement Révolutionnaire Congolais* (MRC), and began fighting the FARDC.<sup>25</sup>

20. In late 2006, **Bosco NTAGANDA** reportedly moved to the Masisi area, North Kivu province. He became Chief of Staff of the political-military group *Congrès National pour la Défense du Peuple* (CNDP) under the command of Laurent Nkunda.<sup>26</sup> The CNDP has been accused by NGOs and UN sources of being responsible for massive human rights violations in the Kivu provinces in recent years.<sup>27</sup>

21. As the new leader of the CNDP following the arrest of Laurent Nkunda on 22 January 2009, **Bosco NTAGANDA** announced a ceasefire with the FARDC.<sup>28</sup> A peace agreement was subsequently signed and a process began of integrating CNDP forces into

<sup>23</sup> UPC/FPLC Declaration, DRC-OTP- 0016-0133.

<sup>24</sup> *Lubanga* Judgement, para.1200, [REDACTED].

<sup>25</sup> NTAGANDA AWA Decision.

<sup>26</sup> Twenty-seventh report of the Secretary-General on the UN Organization Mission in the Democratic Republic of the Congo, S/2009/160, 18 September 2009, para.4, at <http://www.un.org/Docs/sc/sgrep09.htm>. (27th Report).

<sup>27</sup> Joint OHCHR/MONUC Human Rights Office in the DRC on *Grave Human Rights Abuses Committed in Kiwanja, North Kivu, in November 2008*, 7 September 2009; DRC-OTP-0236-0015; HRW, *DR Congo: Arrest Bosco Ntaganda*, 2 February 2009, DRC-OTP-0236-0013.

<sup>28</sup> 27th Report; ICG, *Congo: No Stability in Kivu despite Rapprochement with Rwanda*, Africa Report No 165, 16 November 2010, at <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/165-congo-pas-de-stabilite-au-kivu-malgre-le-rapprochement-avec-le-rwanda.aspx>

the FARDC. **Bosco NTAGANDA** was reportedly then officially integrated into the FARDC with the rank of General.<sup>29</sup>

22. The DRC authorities appointed him deputy commander of joint military operations conducted by the FARDC against foreign militia groups active in Eastern DRC, such as the *Forces Démocratiques pour la Libération du Rwanda* (FDLR).<sup>30</sup> These operations were conducted with the Rwanda Defence Forces (RDF), the Rwandan official army, with the support of MONUC/MONUSCO. **Bosco NTAGANDA** was directly involved in the joint FARDC-RDF operations against the FDLR named “Operation *Umoja Wetu*” that started in January 2009.<sup>31</sup> He was similarly involved in the planning and implementation of the subsequent “Operation *Kimia II*” as well as in “Operation *Amani Leo*” which lasted from January 2010 until April 2012.<sup>32</sup>

23. In late 2011, the United Nations Group of Experts on the DRC reported the existence of FARDC parallel command structures in eastern DRC, with **Bosco NTAGANDA** playing an increasingly important role.<sup>33</sup> **Bosco NTAGANDA** told the Group that he was Deputy Commander of Operation *Amani Leo* and claimed that he and his colleagues had planned every operation carried out in North and South Kivu since the army integration in 2009.<sup>34</sup> Two FARDC officers and a Government official have confirmed that after the departure of the Commander of Operation *Amani Leo* in July 2011, “every FARDC mission and operation in North and South Kivu had had to be endorsed by *NTAGANDA*”.<sup>35</sup> On 4 April 2012, **Bosco NTAGANDA** deserted from the FARDC, together with other ex-CNDP officers and moved to Masisi, North Kivu<sup>36</sup>, where he is still reported to be hiding.<sup>37</sup>

<sup>29</sup> Open Letter from National Organisations to DRC President re arrest of Bosco NTAGANDA, 19 February 2009, at <http://www.hrw.org/news/2009/02/19/letter-national-organisations-president-dr-congo-arrest-bosco-ntaganda>; HRW report, *You will be Punished*, 13 December 2009 (13 December 2009 HRW Report), at <http://www.hrw.org/reports/2009/12/14/you-will-be-punished>.

<sup>30</sup> 13 December 2009 HRW Report.

<sup>31</sup> [www.hrw.org/news/2012/04/13/dr-congo-arrest-bosco-ntaganda-icc-trial](http://www.hrw.org/news/2012/04/13/dr-congo-arrest-bosco-ntaganda-icc-trial).

<sup>32</sup> Thierry Vircoulon, ICG report, *After MONUC, Should MONUSCO Continue to Support Congolese Military Campaigns?*, 19 July 2010, DRC-OTP-0236-0007;

<sup>33</sup> UN Security Council, Letter dated 29 November 2011, DRC-OTP-0236-0040; DRC-OTP-0236-0005.

<sup>34</sup> UN Group of Experts, Final Report, 2 December 2011, DRC-OTP-2045-0800, para.298.

<sup>35</sup> *Idem*.

<sup>36</sup> RNW, *President Kabila hot to nab General Ntaganda*, 12 April 2012, at <http://www.rnw.nl/africa/article/drc-hot-nab-general-ntaganda>.

<sup>37</sup> RNW, *General Ntaganda's loyalists desert DRC armed forces*, 4 April 2012, at <http://www.rnw.nl/africa/article/general-ntaganda-and-loyalists-desert-drc-armed-forces>; RNW, *President Kabila hot to nab General Ntaganda*, 12 April 2012, at <http://www.rnw.nl/africa/article/drc-hot-nab-general-ntaganda>;

#### **IV. CRIMES ALLEGED TO HAVE BEEN COMMITTED - COUNTS**

**Count One**  
**(Murder Constituting Crimes Against Humanity)**  
 (Article 7(1)(a) and Article 25 (3) (a) of the Statute)

From 1 September 2002 until 30 September 2003, **Bosco NTAGANDA**, as a co-perpetrator committed crimes against humanity in the form of murder in the district of Ituri, Province Orientale, Democratic Republic of Congo, including the murder of at least two hundred civilian residents in Mongbwalu town and Sayo village between 18 and 23 November 2002 and of at least three hundred and fifty civilian residents in Lipri, Bambu, Kobu and surrounding villages between 17 February 2003 and 2 March 2003 by the UPC/FPLC forces in violation of Article 7(1)(a) and Article 25(3)(a) of the Statute.

**Count Two**  
**(Murder Constituting War Crimes)**  
 (Article 8(2)(c)(i) and Article 25 (3)(a) of the Statute)

From 1 September 2002 until 30 September 2003, **Bosco NTAGANDA**, as a co-perpetrator committed war crimes in the form of murder in the district of Ituri, Province Orientale, Democratic Republic of Congo, including the murder of at least two hundred civilian residents in Mongbwalu town and Sayo village between 18 and 23 November 2002 and of at least three hundred and fifty civilian residents in Lipri, Bambu, Kobu and surrounding villages between 17 February 2003 and 2 March 2003 by the UPC/FPLC forces in violation of Article 8(2)(c)(i) and Article 25(3)(a) of the Statute.

**Count Three**  
**(Attack against a Civilian Population Constituting War Crimes)**  
 (Article 8(2)(e)(i) and Article 25 (3) (a) of the Statute)

From 1 September 2002 until 30 September 2003, **Bosco NTAGANDA**, as a co-perpetrator committed war crimes in the form of intentionally directing attacks against the civilian population in the district of Ituri, Province Orientale, Democratic Republic of Congo, including in Mongbwalu town and Sayo village between 18 and 23 November 2002 and Lipri, Bambu, Kobu and surrounding villages between 17 February 2003 and 2 March 2003 by the UPC/FPLC forces in violation of Article 8(2)(e)(i) and Article 25(3)(a) of the Statute.

**Count Four**  
**(Rape And Sexual Slavery Constituting Crimes Against Humanity)**  
 (Article 7(1)(g) and Article 25 (3)(a))

From 1 September 2002 until 30 September 2003, **Bosco NTAGANDA**, as a co-perpetrator committed crimes against humanity in the form of rape and sexual

enslavement in the district of Ituri, Province Orientale, Democratic Republic of Congo, including in Mongbwalu town and Sayo village between 18 and 23 November 2002 and Lipri, Bambu, Kobu and surrounding villages between 17 February 2003 and 2 March 2003 by the UPC/FPLC forces in violation of Article 7(1)(g) and Article 25(3)(a) of the Statute.

**Count Five**  
**(Rape And Sexual Slavery Constituting War Crimes)**  
 (Article 8(2)(e)(vi) and Article 25 (3)(a))

From 1 September 2002 until 30 September 2003, **Bosco NTAGANDA**, as a co-perpetrator committed war crimes in the form of 8(2)(e)(vi) in the district of Ituri, Province Orientale, Democratic Republic of Congo, in, *inter alia*, Mongbwalu town and Sayo village between 18 and 23 November 2002 and Lipri, Bambu, Kobu and surrounding villages between 17 February 2003 and 2 March 2003 by the UPC/FPLC forces in violation of 8(2)(e)(vi) and Article 25(3)(a) of the Statute.

**Count Six**  
**(Persecution Constituting Crimes Against Humanity)**  
 (Article 7(1)(h) and Article 25(3)(a) of the Statute)

From 1 September 2002 until 30 September 2003, **Bosco NTAGANDA**, as a co-perpetrator committed crimes against humanity in the form of persecution of the non-Hema population, primarily Lendu, in the district of Ituri, Province Orientale, Democratic Republic of Congo, in, *inter alia*, Mongbwalu town and Sayo village between 18 and 23 November 2002 and Lipri, Bambu, Kobu and surrounding villages between 17 February 2003 and 2 March 2003 by the UPC/FPLC forces in violation of Article 7(1)(h) and Article 25(3)(a) of the Statute.

**Count Seven**  
**(Pillaging Constituting War Crimes)**  
 (Article 8(2)(e)(v) and Article 25(3)(a) of the Statute)

From 1 September 2002 until 30 September 2003, **Bosco NTAGANDA**, as a co-perpetrator committed war crimes in the form of pillaging in the district of Ituri, Province Orientale, Democratic Republic of Congo, in, *inter alia*, Mongbwalu town and Sayo village between 18 and 23 November 2002 and Lipri, Bambu, Kobu and surrounding villages between 17 February 2003 and 2 March 2003 by the UPC/FPLC forces in violation of Article 8(2)(e)(v) and Article 25(3)(a) of the Statute.

**V. SUMMARY OF THE EVIDENCE AND OTHER INFORMATION ESTABLISHING REASONABLE GROUNDS TO BELIEVE THAT BOSCO NTAGANDA COMMITTED CRIMES WITHIN THE JURISDICTION OF THE COURT PURSUANT TO ARTICLE 58(2)(d) OF THE STATUTE**

**(A) THE PROSECUTION'S INVESTIGATION AND JUSTIFICATION FOR *EX PARTE* FILING**

24. Pursuant to Article 58(2)(d) of the Statute, the Prosecution relies on the following categories of evidence and information:

- (i) (a) Prosecution witness statements and court testimony of [REDACTED], victims of alleged UPC/FPLC crimes and non-victim witnesses; (b) UPC/FPLC documents and documents from other political organisations that existed at the time; (c) reports, document and other underlying material from a variety of sources, including the United Nations, national and international non-governmental organisations (NGOs), witnesses, and private persons, and (d) factual findings of the Trial Chamber and Pre-Trial Chamber in the *Lubanga* Article 74 Judgment and Decision on the Prosecution Application for a Warrant for Arrest against **Bosco NTAGANDA**, respectively.
- (ii) [REDACTED]<sup>38</sup> - [REDACTED]<sup>39</sup>, [REDACTED].

**(B) ORGANISATIONAL POLICY**

25. The element of an organisational policy contains three requirements: (i) there must be an organisation with the capacity to commit the crimes; (ii) the organisation must have an implicit or explicit policy to attack a civilian population; and (iii) the organisation must conduct the attack pursuant to or in furtherance of its policy to commit such attack.<sup>40</sup>

26. The Prosecution submits that the requirement in Article 7(2)(a) that the crimes be committed pursuant to or in furtherance of a State or organisational policy is met.

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<sup>38</sup> [REDACTED].

<sup>39</sup> [REDACTED].

<sup>40</sup> Decision on the Confirmation of Charges, ICC-01/04-01/07-717, para.396, and ICC-01/05-01/08-424, para.81.

***(a) UPC/FPLC Structure – Capacity to Commit the Crimes***

27. By September 2002, the UPC/FPLC had evolved into a sophisticated and structured political-military organisation. As its President and commander-in-chief, Thomas Lubanga set about establishing clear lines of hierarchy and cabinet-executive secretariats, appointing members of his party to these positions. Ministries of foreign affairs, finance, interior, education were set up and filled.<sup>41</sup> The administration of Ituri was akin to a government of a country, with the national secretaries working directly with the office of the UPC President.<sup>42</sup>

28. The UPC's military wing, the FPLC, was simultaneously established in September 2002.<sup>43</sup> Its Chief of Staff and direct military head was Floribert Kisembo<sup>44</sup> - who reported directly to the President and exercised authority of the Main Staff<sup>45</sup> - and the Deputy Chief of Staff was **Bosco NTAGANDA**<sup>46</sup>. It rapidly evolved into a fully-functioning army comprising a main staff headquarters in Bunia.<sup>47</sup> It was intricately structured with sectors, brigades, battalions, companies, platoons and sections throughout Ituri.<sup>48</sup> Each brigade or sector could contain between 400 and 2000 soldiers.<sup>49</sup> It operated according to a chain of command where reports and orders were relayed down from headquarters to the field,<sup>50</sup> and up the chain of command.<sup>51</sup> It had an effective communications system that used satellite communications and radio-phonies (manpacks)<sup>52</sup> and most officers and commanders had individual military call signs for their Motorola communications.<sup>53</sup>

29. The Prosecution submits that the Chamber's findings on the structure, leadership and efficiency of the UPC/FPLC in the *Lubanga* Judgement demonstrate that there are reasonable grounds to believe that the UPC/FPLC was an organisation through which **Bosco NTAGANDA** was able to commit crimes against humanity. Specifically, several

<sup>41</sup> *Lubanga* Judgement, paras 1172, 1309, referring to EVD-OTP-00721 (DRC-OTP-0113-0055).

<sup>42</sup> *Lubanga* Judgement, para.1171, [REDACTED].

<sup>43</sup> [REDACTED].

<sup>44</sup> [REDACTED].

<sup>45</sup> *Lubanga* Judgement, para.1175.

<sup>46</sup> *Lubanga* Judgement, para.1172, [REDACTED].

<sup>47</sup> [REDACTED]; [REDACTED].

<sup>48</sup> [REDACTED]; UPC/FPCL logbook, DRC-OTP-0171-0926.

<sup>49</sup> [REDACTED]; [REDACTED].

<sup>50</sup> DRC-OTP-0148-0377.

<sup>51</sup> [REDACTED].

<sup>52</sup> [REDACTED].

<sup>53</sup> [REDACTED].

critical findings of the Chamber demonstrate the following facts related to the UPC/FPLC's organisation and structure:

- i. The UPC/FPLC was a well structured organisation in which **Bosco NTAGANDA** discharged significant functions.<sup>54</sup>
- ii. The UPC/FPLC had structured and efficient reporting mechanisms, where even the President, let alone the Deputy Chief-of-Staff **Bosco NTAGANDA**, was informed of all critical developments.<sup>55</sup>
- iii. The UPC/FPLC had the technical means to ensure that information and orders were effectively communicated up and down the established hierarchy between FPLC staff and its President, which would also include **Bosco NTAGANDA**.<sup>56</sup>
- iv. The UPC/FPLC's hierarchy and structure permitted an appropriate degree of delegation, in particular in respect of military operations and that such operations were carried out by FPLC officials, such as **Bosco NTAGANDA**.<sup>57</sup>

***(b) Existence of an Organisational Policy to Commit Attacks against the Civilian Population***

30. The Prosecution submits that in the period of September 2002 to September 2003 the UPC/FPLC executed its policy of attacking the civilian population of the ethnic Lendu and other non-Hema throughout the territory of Ituri.

***i) Conception - Events before September 2002 that show the development of a policy to attack the Lendu and other non-Hema/Gegere civilians***

31. Although espousing peace, from the outset the UPC was essentially a Hema organisation, set up to further the Hema cause through Thomas Lubanga and to seek

<sup>54</sup> *Lubanga* Judgement, paras 1131-1134 and 1174-1176, [REDACTED].

<sup>55</sup> *Lubanga* Judgement, para. 1190; [REDACTED].

<sup>56</sup> *Lubanga* Judgement, paras 1191-1197; UPC/FPLC logbook, DRC-OTP-0171-0926.

<sup>57</sup> *Lubanga* Judgement, para. 1219.

political and military domination over Ituri. It was established against the backdrop of the inter-ethnic fighting between the Hema and the Lendu.<sup>58</sup>

32. Just prior to the creation of the UPC, **Bosco NTAGANDA** and Hema military officers, including co-perpetrators Kisembo and Chief Kawha, broke away from the armed wing of the then group in control in Ituri, the RCD-K-ML.<sup>59</sup>

33. **Bosco NTAGANDA** and his other co-perpetrators set about preparing for the eventual military onslaught over Ituri by engaging in robust recruitment activities so that Hema youth could be trained and recruited for the army. These Hema youth were sent to Uganda in the summer of 2000.<sup>60</sup>

34. The UN also reported that there were Hema community recruitment campaigns in March and April 2002 in Boga and Marabo and in July 2002 in Bunia.<sup>61</sup> Prominent Hema or UPC persons were involved in the mobilisation of the Hema community to join the UPC army.<sup>62</sup>

35. On 5 May 2002, the intended criminal policy of the Hema UPC was made unequivocally clear in a declaration listing **Bosco NTAGANDA** and Thomas Lubanga as contributors. Entitled “Provisions for the proclamation of the independent State of Ituri or Hema-Land by the Hema in coalition with the UPDF”, the document promulgated the following decisions:<sup>63</sup>

- a. The systematic pillage and destruction of properties of “*non-originaires*” especially the nande;
- b. The massacre of “*non-originaires*”;
- c. The physical elimination of *Son Excellence Monsieur le Gouverneur de Province de l’Ituri* ;
- d. The military occupation of the city of Bunia and the neighbourhood following by the effective proclamation of the Independent State of Ituri or Hema-Land.

<sup>58</sup> *Lubanga* Judgement, para.75, referring to UNSC Letter, DRC-OTP-0074-0422, paras 4, 5, 17, 18-26.

<sup>59</sup> *Lubanga* judgement, para.82 [REDACTED].

<sup>60</sup> *Lubanga* Judgement, para.1043, [REDACTED].

<sup>61</sup> [REDACTED].

<sup>62</sup> [REDACTED].

<sup>63</sup> Hema Proclamation, DRC-OTP-0126-0065.

36. By the summer of the 2002, **Bosco NTAGANDA** and other co-perpetrators advanced the policy of Ituri domination by organising recruitment drives in several villages and setting up military training camps, such as the Mandro training camp, where young people were trained after being recruited.<sup>64</sup> **Bosco NTAGANDA** was integrally involved in setting up the Mandro training camp.<sup>65</sup>

37. During the recruitment drives, the increasingly alarmist messages emanating from the co-perpetrators, such as Chief Kawha, was that the Lendu were threatening the villages and that the children must be sent for training to protect the villages if attacked.<sup>66</sup>

38. By 2002, a rivalry and rift had grown between Thomas Lubanga, the UPC President, along with his loyal base of Hema soldiers (including **Bosco NTAGANDA**) and President Mbusa Nyamwisi of the RCD-ML.<sup>67</sup> This latter organisation and its President held power in Bunia at the time. Ituri could not be dominated and controlled unless Bunia were conquered and, by 9 August 2002, Thomas Lubanga, acting with the key military leaders at that time – **Bosco NTAGANDA**, Floribert Kisembo and Chief Kahwa – had decided to take control of Bunia.<sup>68</sup>

39. Bunia was taken over by 1 September 2002 through a military campaign, carried out by **Bosco NTAGANDA**<sup>69</sup> and the other co-perpetrators.<sup>70</sup> The manner in which the attack occurred established the pattern of future crimes. [REDACTED].<sup>71</sup> The targets of the attacks by the Hema and Gegere were the Nande and Lendu.<sup>72</sup> A UN Report states that over 110 civilians were killed during the takeover.<sup>73</sup>

<sup>64</sup> *Lubanga* Judgement, para.1074, [REDACTED].

<sup>65</sup> [REDACTED]; *Lubanga* Judgement, para.1111.

<sup>66</sup> [REDACTED].

<sup>67</sup> [REDACTED].

<sup>68</sup> *Lubanga* Judgement, paras 1108, 1109, 1111; [REDACTED].

<sup>69</sup> *Lubanga* Judgement, para.1099.

<sup>70</sup> *Lubanga* Judgement, paras 1110 and 1112, referring to two *Déclarations Politiques* from 4 April 2002, DRC-OTP-0127-0110, and 11 August 2002, DRC-OTP-0113-0133.

<sup>71</sup> [REDACTED].

<sup>72</sup> [REDACTED].

<sup>73</sup> UNSC Letter, DRC-OTP-0074-0422, para.47-49; HRW, *ITURI: "Covered in blood"*, July 2003, DRC-OTP-0074-0797, p.0824-0825; UN OHCHR, *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003 (August 2010)* (UN OHCHR Report), DRC-OTP-1061-0793, para.411; [REDACTED].

*ii) Events from September 2002 that further show a policy to attack the Lendu and other non-Hema civilians*

40. On 2 and 3 September, Thomas Lubanga was appointed President and Commander-in-chief of the FPLC and he appointed **Bosco NTAGANDA** and Floribert Kisembo as Deputy and Chief of Staff respectively.<sup>74</sup>

41. The UPC/FPLC set about developing and implementing its policy to ensure its domination of Ituri with **Bosco NTAGANDA** playing a critical role.<sup>75</sup> [REDACTED]<sup>76</sup>

42. Training programmes at the camps for new recruits drummed in the UPC ideology of the Lendu being the enemy.<sup>77</sup>

43. In Bunia, the UPC/FPLC took over the radio airwaves through Radio Candip and exclusively broadcast its propaganda messages regarding its military goals. The Chief of Staff, Kisembo, delivered messages that suggested that the only way to peace was through force, intimating that the enemy was the Lendu.<sup>78</sup>

44. To implement its policy, the UPC/FPLC had to consolidate, expand and structure its military as rapidly as possible. **Bosco NTAGANDA** and Floribert Kisembo were primarily responsible for the plans concerning the structure of the army, including sectors and brigades.<sup>79</sup> The FPLC's structure resembled traditional armies.<sup>80</sup> There was a Main Staff headquartered in Bunia where officers (G staff) were appointed to key military briefs, including administration, intelligence/surveillance, operations, food and logistics and external relations.<sup>81</sup> The staff were subordinated to the Deputy Chief of Staff, **Bosco NTAGANDA**,<sup>82</sup> and Chief of Staff Kisembo.

45. In the field, sectors and brigades were established ensuring substantial military presence throughout Ituri and providing sufficient means for the policy to be effectively implemented.

<sup>74</sup> *Lubanga* Judgement, para.1116, [REDACTED].

<sup>75</sup> *Lubanga* Judgement, paras 1130-1132, 1134-1135.

<sup>76</sup> [REDACTED].

<sup>77</sup> [REDACTED].

<sup>78</sup> *Lubanga* Judgement, para.1124, [REDACTED].

<sup>79</sup> *Lubanga* Judgement, paras 1145 and 1175, [REDACTED].

<sup>80</sup> NTAGANDA AWA, Decision, para.49.

<sup>81</sup> *Lubanga* Judgement, para.1174 (where the G staff are identified) [REDACTED].

<sup>82</sup> NTAGANDA AWA Decision, para.52.

46. Four sectors were created in Ituri, one of them established after the Mongbwalu battles.<sup>83</sup> The A sector was further structured into brigades,<sup>84</sup> each with three battalions, a commander, and an administration, operations and intelligence division,<sup>85</sup> mirroring to a great extent the structure at the Main Staff.<sup>86</sup> [REDACTED]<sup>87</sup> [REDACTED],<sup>88</sup> stated that each brigade had its own staff at Brigade Headquarters (T1 to T5) and was further divided into battalions, three companies per battalion, three platoons per company and finally three sections per platoon.<sup>89</sup> He said that there would be 11 soldiers per section, 45 per platoon, 120 per company, 380 per battalion and up to 2000 soldiers per brigade.<sup>90</sup>

47. Together, **Bosco NTAGANDA** and Kisembo were in charge of the sectors and brigades in the field.<sup>91</sup> The UPC/FPLC developed the technical means to ensure that effective communication between the Main Staff and the sectors and brigades in the field was possible.

48. With a fully functioning military, **Bosco NTAGANDA** together with President Lubanga and Kisembo planned military operations in the field to extend the UPC/FPLC's area of responsibility. They met on an almost daily basis.<sup>92</sup> **Bosco NTAGANDA**, as head of the all UPC/FPLC operations, conceived and planned military operations and informed the President of various logistical requirements for the implementation of the plan.<sup>93</sup> Of critical importance to this Application, **Bosco NTAGANDA**<sup>94</sup>, with Kisembo and the President, planned the major military operations to take Mongbwalu and the Lendu villages of Kobu, Bambu and Lipri.

49. The carefully planned *modus operandi* of the attacks followed the same pattern and method each time, as outlined in paragraph 10 above. They were executed over a large geographical area in some 30 localities and resulted in a high number of civilian deaths and casualties. For example, at least 800 Lendu and other non-Hema civilians were killed by the UPC/FPLC in late 2002 and early 2003 in Mongbwalu, Kilo, Kobu, Lipri, Bambu

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<sup>83</sup> [REDACTED].

<sup>84</sup> [REDACTED].

<sup>85</sup> [REDACTED].

<sup>86</sup> [REDACTED].

<sup>87</sup> [REDACTED].

<sup>88</sup> [REDACTED].

<sup>89</sup> [REDACTED].

<sup>90</sup> [REDACTED].

<sup>91</sup> *Lubanga* Judgement, paras 1175, 1180 and 1181, [REDACTED].

<sup>92</sup> *Lubanga* Judgement, para.1200, [REDACTED].

<sup>93</sup> *Lubanga* Judgement, para.1151, [REDACTED].

<sup>94</sup> [REDACTED].

and surrounding Lendu villages.<sup>95</sup> Thousands of civilians were injured. The attacks were so frequent that the population was forced to live in the bush on a semi -permanent basis.<sup>96</sup> Over 140,000 people were reportedly displaced by the series of attacks. Many were dispossessed due to the looting or destruction.<sup>97</sup>

50. Attacks of this magnitude further show that a policy to commit the crimes existed.

**(C) THE CRIMES - WIDESPREAD AND SYSTEMATIC ATTACKS  
AND WAR CRIMES PURSUANT TO ARTICLES 7(1) AND 8 (2)(C)  
AND (E) OF THE STATUTE**

51. From September 2002 through to September 2003, the UPC/FPLC conducted large-scale military operations in Ituri in furtherance of the organisational policy to assume military control of Ituri through the killing, persecution and rape of hundreds of civilians. The military operations included, *inter alia*, attacks on Zumbe on 15 and 16 October 2002; Mongbwalu between 18 and 24 November 2002; Lipri, Bambu, Kobu and surrounding villages and settlements between 17 February and 6 March 2003; and again Bunia between 6 and 27 May 2003.<sup>98</sup>

52. The purpose of these large-scale operations launched throughout Ituri was to erase the Lendu and other non-Hema villages by pillaging their homes, occupying their lands, burning down their villages and chasing and/or killing their population. [REDACTED] stated: “*Because it was a tribal ... it was necessary ... we always had to burn down houses*”.<sup>99</sup> Questioned on one of the battles, [REDACTED] “*chase out all the Lendu and to occupy their territories*”.<sup>100</sup> UPC/FPLC soldiers were ordered to kill without making distinction between combatants and civilians.<sup>101</sup>

53. Those that fled to the bush did not find sanctuary. In “cleaning up” operations, the UPC/FPLC routinely attacked and slaughtered those persons in hiding<sup>102</sup>. During the attacks, UPC/FPLC also arbitrarily arrested civilians who had been identified as Lendus.

<sup>95</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0668.

<sup>96</sup> [REDACTED].

<sup>97</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0660.

<sup>98</sup> *Lubanga* Judgement, para.547, referring to UNSC Letter, DRC-OTP-0074-0422.

<sup>99</sup> [REDACTED].

<sup>100</sup> [REDACTED].

<sup>101</sup> [REDACTED].

<sup>102</sup> [REDACTED].

Some of those captured were executed<sup>103</sup>; others were subjected to sexual abuse.<sup>104</sup> The soldiers raped and tortured the women and men because of their ethnic origin. Forced rapes between victims, public rapes and gang rapes were committed to inflict more humiliation and suffering.<sup>105</sup> Men and boys were also subjected to sexual violence.<sup>106</sup>

*a) MONGBWALU Attack 18 – 23 November 2002*

54. In November 2002, **Bosco NTAGANDA** planned and commanded his UPC/FPLC soldiers in the field<sup>107</sup> to carry out a two-pronged attack on the town of Mongbwalu,<sup>108</sup> located some 85 km northwest of Bunia.<sup>109</sup> The purpose of the attack was to gain control over this strategic position, to expel its Lendu occupants, and establish a UPC/FPLC base there.<sup>110</sup> The operation represented one of the bloodiest episodes in the conflict in Ituri. More than 200 people, mostly Lendus, were killed in and around Mongbwalu during a six-day military attack.<sup>111</sup> UPC/FPLC forces shot and killed Lendu civilians with edged weapons, such as machetes and knives. Some survived but were badly mutilated. Others fled to the surrounding bush where they were chased down, captured or executed.<sup>112</sup>

55. The operation was launched on around 18 November 2002, ten days after a first failed assault where the UPC/FPLC had been repelled by the Lendu combatants. In between the two attacks, the UPC/FPLC re-grouped and was strengthened with forces from Commander JEROME's brigade.<sup>113</sup>

56. **Bosco NTAGANDA** supplied the troops with weapons.<sup>114</sup> [REDACTED] seeing crates of ammunition being offloaded from his vehicle.<sup>115</sup> Before the launching of the

<sup>103</sup> [REDACTED].

<sup>104</sup> UNSC Letter, DRC-OTP-0074-0422, para.1; [REDACTED].

<sup>105</sup> UN OHCHR Report, DRC-OTP-1061-0793, pp.1121-1122, paras 633-636.

<sup>106</sup> HRW, *En quête de justice - Poursuivre les auteurs de violences sexuelles commises pendant la guerre au Congo*, Mars 2005 ("*En quête de justice*"), DRC-OTP-0163-0611, p.0639-0640.

<sup>107</sup> [REDACTED].

<sup>108</sup> [REDACTED].

<sup>109</sup> [REDACTED].

<sup>110</sup> [REDACTED].

<sup>111</sup> UNSC Letter, DRC-OTP-0074-0422, p.0452, para.102.

<sup>112</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0664.

<sup>113</sup> [REDACTED]; HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0664-0665.

<sup>114</sup> [REDACTED].

<sup>115</sup> [REDACTED].

attack, **Bosco NTAGANDA** ordered and encouraged the soldiers to kill every Lendu in Mongbwalu. He did not caution them to distinguish between civilians and combatants.<sup>116</sup>

57. **Bosco NTAGANDA**'s instructions to the troops to engage in criminal activity were replicated by his immediate subordinate, brigade commander Salumu.<sup>117</sup> [REDACTED]<sup>118</sup>

58. The strategy was to attack from two directions in order to surround the population and push them to the centre of the town before commencing the clearing operation.

59. In co-ordinated fashion, the troops based in Aru under Commander JEROME's command attacked to the north of Mongbwalu in the villages of Pili Pili and Pluto, while the troops from Lalo led by **Bosco NTAGANDA** and Commander Salumu attacked to the south at the airport, where at least 30 people were killed, with machetes and guns.<sup>119</sup>

60. The troops converged towards the centre of Mongbwalu, which soon became the scene of a massacre. Witnesses testified hearing mortar sounds, followed by gunshots.<sup>120</sup> One eyewitness [REDACTED] recounted that 14 members of his own family, including 10 children, were massacred.<sup>121</sup> Those that could not flee were murdered by machetes, knives, hammers and spears.<sup>122</sup>

61. The attackers worked systematically, going from house to house searching for Lendus, slaughtering them with machetes in a particularly cruel manner.<sup>123</sup>

62. The Lendu were killed simply because of their ethnicity. One person recounted: "*They killed the ones who were Lendu. ... The UPC would shout so everyone could hear, 'We are going to exterminate you – the government won't help you now.'*"<sup>124</sup>

63. Some civilians were captured during the operation and imprisoned in a military camp. Most of them were eventually killed. A man who was imprisoned explained how he saw the UPC/FPLC men picking prisoners to kill, especially Lendus. Some were shot at, others had their heads slashed with knives. He witnessed the killing of about twenty people and saw more than ten other bodies outside the prison during his escape.<sup>125</sup> An

<sup>116</sup> [REDACTED].

<sup>117</sup> [REDACTED].

<sup>118</sup> [REDACTED].

<sup>119</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0664; HRW, *ITURI: "Covered in Blood"*, 2003, DRC-OTP-0074-0797, p.0828; [REDACTED].

<sup>120</sup> [REDACTED].

<sup>121</sup> [REDACTED].

<sup>122</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0847.

<sup>123</sup> HRW, *ITURI: "Covered in Blood"*, 2003, DRC-OTP-0074-0797, p.0828.

<sup>124</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0664.

<sup>125</sup> HRW, *ITURI: "Covered in Blood"*, 2003, DRC-OTP-0074-0797, p.0829; [REDACTED].

[REDACTED], was among the captured and was never seen thereafter.<sup>126</sup> [REDACTED].<sup>127</sup> **Bosco NTAGANDA** allegedly questioned him.<sup>128</sup> He explained that the prisoners were executed with knives and that the officers were present when it happened, such as Abelanga (“Américain”) and **Bosco NTAGANDA** himself. [REDACTED].<sup>129</sup> **Bosco NTAGANDA**’s bodyguards were specifically designated to carry out the executions.<sup>130</sup> The bodies were eventually thrown in mass graves.<sup>131</sup> Mass graves covered with fresh earth were seen on the edge of the town. A witness stated that there were “many” mass graves in Mongbwalu.<sup>132</sup>

64. UPC/FPLC soldiers also pillaged the town. Witnesses saw **Bosco Ntaganda**’s bodyguards bringing war booty to his office which had been taken from the population that had fled the town because of the attack.<sup>133</sup> The UPC/FPLC finally took control of Mongbwalu on 24 November 2002. The town had been completely looted.<sup>134</sup>

65. Those who returned to the town said they saw numerous corpses of civilians lying on the side of the road and many houses burnt or looted.<sup>135</sup> They reported that Lendu people were not welcome in Mongbwalu: “*You couldn’t be Lendu in Mongbwalu or you would be eliminated.*”<sup>136</sup>

66. The UPC/FPLC pursued the fleeing Lendu combatants and thousands of civilians as they fled to the bush. During this clearing operation, scores of civilians died, particularly children and the weak. Those who tried to flee by road were caught at roadblocks and many of them were killed.<sup>137</sup>

67. During the operations, officers used Motorola radios to coordinate the operation and to report back to HQ in Bunia.<sup>138</sup> **Bosco NTAGANDA** had one during the attack, [REDACTED].<sup>139</sup>

<sup>126</sup> HRW, *ITURI: “Covered in Blood”*, 2003, DRC-OTP-0074-0797, p0829.

<sup>127</sup> [REDACTED].

<sup>128</sup> [REDACTED].

<sup>129</sup> [REDACTED].

<sup>130</sup> [REDACTED].

<sup>131</sup> [REDACTED].

<sup>132</sup> [REDACTED].

<sup>133</sup> [REDACTED].

<sup>134</sup> [REDACTED].

<sup>135</sup> HRW, *ITURI: “Covered in Blood”*, 2003, DRC-OTP-0074-0797, p.0829.

<sup>136</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0666.

<sup>137</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0666.

<sup>138</sup> [REDACTED].

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

**b) SAYO Massacre**

68. In an attempt to escape from the attacks on Mongbwalu, some civilians hid in a church called *Mungu Sarnaki* located in Sayo, a Lendu village some seven kilometres from Mongbwalu. Those who hid in the church were slaughtered and “many more” in the village were killed.<sup>140</sup> UPC/FPLC soldiers looted the houses in the village before burning them down.<sup>141</sup> In some of the burned houses, people were still inside, [REDACTED].<sup>142</sup>

69. **Bosco NTAGANDA** personally led the operation on Sayo and it was alleged that it was with his participation that the UPC/FPLC was able to recover the village.<sup>143</sup>

70. [REDACTED]. Soldiers started shelling the town with heavy weapons in order to terrorise the population. On the advance to Sayo, [REDACTED] saw a woman with a child who had been killed.<sup>144</sup> [REDACTED], **Bosco NTAGANDA** ordered [REDACTED] to fire in the direction in which people were fleeing.<sup>145</sup>

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

72. Chilling accounts of the crimes by eye-witnesses were provided [REDACTED]. One such account referred to horrific attacks on Lendu families: “[REDACTED] *was a Lendu who couldn't flee. He had lots of children and was trying to carry them. They shot at him. He fell on one of his children and died. Another woman [...] they cut her up with machetes and killed her. They cut the baby up as well.*”<sup>147</sup>

**c) LIPRI, KOBU, BAMBU attacks**

73. Between 17 February 2003 and 2 March 2003, the UPC/FPLC carried out another large-scale operation against the Lendu villages of Lipri, Bambu, Kobu and more than 25 other surrounding settlements and villages, all located within a perimeter of about 25km

<sup>140</sup> HRW, *ITURI: “Covered in Blood”*, 2003, DRC-OTP-0074-0797, p.0829; [REDACTED].

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

<sup>142</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0665-0666.

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

<sup>144</sup> [REDACTED].

<sup>145</sup> [REDACTED].

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

<sup>147</sup> HRW, *The Curse of Gold*, 2005, DRC-OTP-0074-0628, p.0666.

north and northeast of Bunia.<sup>148</sup> These villages were a safe haven for thousands of Lendus that had fled the UPC/FPLC attacks in other parts of Ituri.<sup>149</sup> In Lipri for example, approximately one third of the population was composed of internally displaced persons (IDPs).<sup>150</sup> The operation followed the same pattern as the one on Mongbwalu.

74. The Lendu population living within this area became the object of “*terrible exactions*”.<sup>151</sup> More than 350 people were killed during this military operation, including at least 47 unarmed civilian and civil representatives of the Lendu community.<sup>152</sup> Tens of thousands were displaced from their homes,<sup>153</sup> and entire localities completely destroyed.<sup>154</sup>

75. To carry out this operation, a large contingent of UPC/FPLC soldiers was deployed [REDACTED], in accordance with the plan.<sup>155</sup> One witness describes Hema militiamen coming from different fronts and encircling the Lendu villages.<sup>156</sup> Over a thousand soldiers were deployed from the brigade commanded by Salumu.<sup>157</sup>

76. The attacks were [REDACTED], and carried out under the responsibility of Kisembo and **Bosco NTAGANDA** down the chain of command.<sup>158</sup>

77. Kisembo was based in Mongbwalu and **Bosco NTAGANDA** in Bunia; [REDACTED].<sup>159</sup> Prior to the attack, ammunition and heavy weapons were sent to Bunia and other bases, such as Mongbwalu and Kilo, in preparation of the military operation.<sup>160</sup> Brigades, battalions, companies, platoons, and sections were all represented and armed with weapons such as machine-guns, AK-47s or Twelves.<sup>161</sup>

<sup>148</sup> Buli, Nyangaraye, Kayala, Liso, Atube, Thudja, Petsy, Tsele, Ndre Chupka, Dhepka, Ndjaza, Mbidjo, Ngbachulu, Kpaki, Bukba, Djuba, Brnu, Nduy, Ngaru, Ndalul, Thali, Jicho, Ngabuti, Goy, Langa, Sangi, Pili, Dyalo, Wadda.

<sup>149</sup> [REDACTED].

<sup>150</sup> [REDACTED].

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

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

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

<sup>154</sup> UNSC Letter, DRC-OTP-0074-0422, para. 70.

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

<sup>156</sup> [REDACTED].

<sup>157</sup> [REDACTED].

<sup>158</sup> [REDACTED].

<sup>159</sup> [REDACTED].

<sup>160</sup> [REDACTED].

<sup>161</sup> [REDACTED].

78. After having secured the strategic high ground over the villages, UPC/FPLC soldiers shelled the villages.<sup>162</sup> An eyewitness in Lipri saw a large mortar pointing at the city.<sup>163</sup>

79. The attacks were launched simultaneously on the localities of Lipri, Kobu and Bambu and other Lendu villages in the morning of Tuesday 18 February 2003, at around 5:00 am.<sup>164</sup> UPC/FPLC troops were deployed from Kilo to enter Kobu, from Nizi to enter Bambu and from Bunia to enter Lipri,<sup>165</sup> and advanced in a coordinated fashion.<sup>166</sup> Motorola devices were used to coordinate the different attacks.<sup>167</sup>

80. The Lendu side offered “*little resistance*”.<sup>168</sup> Consequently, and according to plan,<sup>169</sup> Kobu fell to the UPC/FPLC within a few hours. There was no counter-attack, and heavy weapons were used to clear a way into the town by destroying the houses<sup>170</sup>

81. UPC/FPLC knew that they killed civilians. [REDACTED].<sup>171</sup> The attacks were indiscriminate with no distinction between civilians and combatants. [REDACTED]: “*we drove everyone away .... Everyone we found there*”.<sup>172</sup> He could not recount the number of victims but said that common graves were dug to bury them.<sup>173</sup>

82. On 18 and 19 February 2003, the UPC/FPLC attacked other Lendu localities such as Buli, Kayala, Liso, Atube, Thudja, Petsy, Tsele, Ndre Chupka, Dhepka, Ndjaza, Mbidjo, Ngbachulu, Kpaki, Bukba, Djuba, Brnu, Nduy, Ngaru, Ndal, Thali. The attacks followed the same pattern: shelling villages with heavy ammunition, attacking them with light weapons, and finally looting and burning them. All villages on the Lipri-Bambu road were completely burnt.<sup>174</sup> In Lipri, the only structure spared was the Catholic Church because it was made out of corrugated iron.<sup>175</sup>

83. The first attacks on the Lendu villages lasted until 23 February; most of their inhabitants were killed,<sup>176</sup> and an unknown number of civilians reportedly raped.<sup>177</sup>

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

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

<sup>164</sup> [REDACTED].

<sup>165</sup> [REDACTED].

<sup>166</sup> [REDACTED].

<sup>167</sup> [REDACTED].

<sup>168</sup> [REDACTED].

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

<sup>170</sup> [REDACTED].

<sup>171</sup> [REDACTED].

<sup>172</sup> [REDACTED].

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

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

<sup>175</sup> [REDACTED].

<sup>176</sup> UNSC Letter, DRC-OTP-0074-0422, para.69; [REDACTED].

84. As the attacks were taking place, UPC/FPLC soldiers scoured the bush where the fleeing population were hiding. Intercepted radio communications indicated that orders were given by UPC/FPLC commanders to shoot at the people fleeing towards the valleys. The code name “Romeo”, used by **Bosco NTAGANDA**, was overheard in radio communications.<sup>178</sup> UPC/FPLC soldiers terrorised the Lendu population in hiding by firing into the air at nightfall.<sup>179</sup>

85. [REDACTED]. He said that when people were captured, some were tied up and kept as prisoners while others were killed on the spot and their bodies discarded in the bush. All of them were Lendus and civilians, mainly women “*because they were slower*”. All were killed with knives.<sup>180</sup> [REDACTED] sexual violence had been committed against some of the hostages.<sup>181</sup> No punishment was meted out by the UPC/FPLC commanders.<sup>182</sup>

86. During the operations, Commander Salumu remained in regular contact with the Chief of Staff, Kisembo, [REDACTED], not only to submit situation reports and receive orders, but also to make requests, such as for reinforcements or for ammunition.<sup>183</sup>

*d) Killing of 47 Lendu who attended the so-called “pacification meeting” in SANGI and execution of prisoners*

87. On 22 February 2003, as the population converged around Buli, the Brigade Commander Salumu, based in Kobu, invited Lendu dignitaries from different localities to attend a meeting with the UPC/FPLC on an alleged cease-fire and pacification plan. After discussion, the Lendu leaders drafted a response accepting the invitation on the condition that the UPC/FPLC would withdraw its forces from the area. They proposed to hold the meeting on 25 February 2003 in Sangi. The conditions were accepted.<sup>184</sup>

88. A day before the meeting was scheduled to take place, [REDACTED] radio communications between UPC/FPLC commanders in Kobu and in Kilo, which revealed their intention to deceive the population by pretending that the President Lubanga would

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<sup>177</sup> UN OHCHR Report, DRC-OTP-1061-0793, para.420.

<sup>178</sup> [REDACTED].

<sup>179</sup> [REDACTED].

<sup>180</sup> [REDACTED];

<sup>181</sup> [REDACTED].

<sup>182</sup> [REDACTED].

<sup>183</sup> [REDACTED].

<sup>184</sup> [REDACTED].

be present and to arrest as many Lendu dignitaries as possible. Some Lendu leaders, aware of those communications, decided to not attend the meeting.<sup>185</sup>

89. On the day of the meeting in Sangi, UPC/FPLC soldiers encircled the city.<sup>186</sup> A delegation of about 10 notables from Buli accompanied by a crowd of around 40 civilians came from the different Lendu localities. They were all unarmed. [REDACTED]. They were met by some 500 UPC/FPLC soldiers.<sup>187</sup>

90. Commander Salumu, who had convened the pacification meeting, verbally assaulted the Lendu delegation for being late and scarce in number. He asked for the return of the “*saba saba*” weapon that was captured by Lendu combatants in Lipri on 17 February 2003 and demanded to talk to a Lendu combatant. [REDACTED], were allowed to leave. Shortly after they left, Commander Salumu accused the other Lendu representatives of working with the Ugandans and arrested all of the participants, tied them up with their shirts, and said that they would be tried in Kobu.<sup>188</sup>

91. All the men who attended the delegations, [REDACTED], were massacred together during the night. [REDACTED] was taken to the place where the victims were buried, a mass grave located behind the building where the UPC/FPLC had established its military camp, the Paradiso Hotel, in a banana grove. Forty-seven victims were reportedly found in the same place.<sup>189</sup>

92. [REDACTED] who had managed to escape went to the place where the bodies were found and recognised the three Lendu dignitaries who headed the delegation. He recounted a horrific scene when he arrived there.<sup>190</sup> Other witnesses testified seeing similar mutilations on the dead bodies, including of women and children.<sup>191</sup> Amongst the victims were [REDACTED].<sup>192</sup>

93. On the same day of the pacification meeting, UPC/FPLC soldiers further brutally attacked Sangi’s inhabitants. Mortar sounds and gunshots were heard and soldiers started descending down the hill, chasing those who tried to run away in order to capture them.<sup>193</sup>

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<sup>185</sup> [REDACTED].

<sup>186</sup> [REDACTED].

<sup>187</sup> [REDACTED].

<sup>188</sup> [REDACTED].

<sup>189</sup> [REDACTED].

<sup>190</sup> [REDACTED].

<sup>191</sup> [REDACTED].

<sup>192</sup> [REDACTED].

<sup>193</sup> [REDACTED].

Many people were arrested, tied up, stripped and mutilated in various ways. Some women were raped and at least seven people were killed.<sup>194</sup>

94. More bodies were found in a mass grave and in the bushes around Kobu. According to [REDACTED], about 53 additional bodies were found, including one of a pregnant woman whose body had been mutilated.<sup>195</sup> A witness stated that about 75 bodies were found in a banana grove near the commercial centre in Kobu, where the victims also showed marks of mutilation. The bodies of his wife, son, grand-son and sister were found in the banana grove.<sup>196</sup>

95. The orders for the crimes emanated from the highest echelons of the UPC/FPLC, including its President.<sup>197</sup>

*e) Other linked incidents to the Kobu attacks*

96. Other villages were burnt that day, including Sangi, Buli, Pili, Jutcho, Mindjo, Goy, Langa, Dyalo and Wadda.<sup>198</sup> The UPC/FPLC attacked Buli with heavy weapons, resulting in the deaths of many civilians as thousands of refugees had settled in the town. After the attack and prior to leaving, UPC/FPLC forces ransacked and burned the village.<sup>199</sup> [REDACTED].<sup>200</sup>

97. On 26 February 2003, after looting and occupying the villages of Buli, Jicho and Ngabulo, UPC/FPLC forces allegedly chased down the civilians who were hiding in the Jicho forest.<sup>201</sup> Some 92 persons were reportedly killed in the bush, the majority chopped with machetes. A witness saw the bodies of two Lendu men and a Lendu woman, all civilians, on the side of the road in Jicho centre.<sup>202</sup> The women who were captured were mass raped by UPC/FPLC soldiers.<sup>203</sup> One woman who was taken to perform sexual acts

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<sup>194</sup> [REDACTED].

<sup>195</sup> [REDACTED].

<sup>196</sup> [REDACTED].

<sup>197</sup> [REDACTED].

<sup>198</sup> [REDACTED].

<sup>199</sup> [REDACTED].

<sup>200</sup> [REDACTED].

<sup>201</sup> [REDACTED].

<sup>202</sup> [REDACTED].

<sup>203</sup> [REDACTED].

never returned. Two others were executed as they showed resistance or attempted to flee.<sup>204</sup>

98. On the same day, UPC/FPLC troops carried out a massive attack against the villages of Pili, Athe, Bakpa Lambi, Widde using the same method of killing the civilians, looting and burning all buildings.<sup>205</sup>

99. [REDACTED].<sup>206</sup>

*f) Rape/ Sexual Violence and Sexual Slavery*

100. As demonstrated above, from September 2002 until September 2003, Lendu and other non-Hema female civilians were abducted, systematically raped, and subjected to other forms of sexual violence as part of the UPC/FPLC policy to gain control over Ituri and to purge Ituri of the so-called “*non-originaires*”. Between January 2002 and December 2003, “*countless women*” were reportedly abducted and became “*war wives*”.<sup>207</sup>

101. Sexual crimes were committed based on ethnicity. Several victims clearly linked their abduction, and subsequent rape, to the fact they were Lendus.<sup>208</sup> One victim recounted having been insulted based on their origin during the commission of the rape.<sup>209</sup> [REDACTED].<sup>210</sup>

102. Rape and sexual violence was used as a weapon of war during the attacks. For example, during the Zumbe battle on 15 and 16 October 2002, more than 50 women were allegedly raped by the UPC/FPLC.<sup>211</sup> Abusing women was part of the spoils of war for the UPC/FPLC soldiers. It was an integral part of the discourse given to the troops prior to the attacks, and thus a component of the UPC/FPLC military strategy.

103. Commanding officers offered rape as a reward to their troops.<sup>212</sup> [REDACTED].<sup>213</sup>

<sup>204</sup> [REDACTED].

<sup>205</sup> [REDACTED].

<sup>206</sup> [REDACTED].

<sup>207</sup> UNSC Letter, DRC-OTP-0074-0422, para.1; [REDACTED].

<sup>208</sup> [REDACTED].

<sup>209</sup> [REDACTED].

<sup>210</sup> Amnesty International, *Democratic Republic of Congo, Ituri: a need for protection, a thirst for justice*, 21 October 2003 (AI Report), DRC-OTP-0019-0153, p.0160.

<sup>211</sup> UN OHCHR Report, DRC-OTP-1061-0793, para.414.

<sup>212</sup> UN OHCHR Report, DRC-OTP-1061-0793, para.639.

<sup>213</sup> [REDACTED].

104. One UPC/FPLC female soldier testified that “*systematic rapes*” went on when they were on the Nizi frontlines. The soldiers entered into civilian houses, one by one, and raped the women inside. She added that this occurred under the direction of the commander in charge.<sup>214</sup>

105. Women were abducted in their houses, in the street or in the bush where they were hiding.<sup>215</sup> A few were arrested at checkpoints.<sup>216</sup> They were all civilians and unarmed. One victim recounted how UPC/FPLC soldiers first surrounded her village, looted and burned the houses. They then chased her and other civilians in the bush where they were hiding, arrested them and eventually imprisoned them in an “*underground dungeon*” where they were eventually raped.<sup>217</sup>

106. Some victims were even raped at the place of abduction.<sup>218</sup> [REDACTED].<sup>219</sup> Other women were raped in nearby houses abandoned by their occupants, in the bush or other vacant locations.<sup>220</sup>

#### *Sexual Slavery*

107. The evidence reveals that throughout the period, women were subjected to extreme depravity by the UPC/FPLC, in sight of commanders and with complete impunity.

108. Many victims were brought to one of the several UPC/FPLC camps established in Ituri where they could be kept captive for several months, becoming the sexual slaves of the soldiers.<sup>221</sup> There, UPC/FPLC soldiers could rape them “*at will*”, day and night.<sup>222</sup> One victim recalls being raped by “*everyone in the militia*” while held captive.<sup>223</sup>

109. Some women were raped or gang-raped<sup>224</sup> in front of everyone<sup>225</sup>. Some were forced to remain naked throughout their time in the camp.<sup>226</sup> Others were forced into marriage.<sup>227</sup>

<sup>214</sup> [REDACTED].

<sup>215</sup> [REDACTED].

<sup>216</sup> [REDACTED]; AI Report, DRC-OTP-0019-0153, p.0161.

<sup>217</sup> [REDACTED].

<sup>218</sup> [REDACTED].

<sup>219</sup> HRW, *En quête de justice*, DRC-OTP-0163-0611, pp.0638-0639 [REDACTED].

<sup>220</sup> HRW, *En quête de justice*, DRC-OTP-0163-0611, p.0639 [REDACTED].

<sup>221</sup> [REDACTED].

<sup>222</sup> [REDACTED].

<sup>223</sup> [REDACTED].

<sup>224</sup> Figures reported: 20 UPC/FPLC soldiers ([REDACTED]); 6 UPC/FPLC soldiers ([REDACTED]); 15 UPC/FPLC soldiers (AI Report, DRC-OTP-0019-0153, p.0160).

<sup>225</sup> [REDACTED].

<sup>226</sup> [REDACTED].

<sup>227</sup> [REDACTED].

110. Some victims were under age. [REDACTED].<sup>228</sup> [REDACTED].<sup>229</sup> [REDACTED].<sup>230</sup>

111. Acts of rape would mostly go unpunished. In Largo camp, women were held captive for several months as sexual slaves, forced to remain undressed. **Bosco NTAGANDA** was said to be the commander of this camp and also failed to take any measure.<sup>231</sup> Persons recall that President Lubanga visited the military camps where they were detained, but did not take any disciplinary action against the responsible UPC/FPLC soldiers or officers.<sup>232</sup>

112. Rape was sometimes ordered by the commander of the camp. [REDACTED].<sup>233</sup> Commanding officers themselves also allegedly raped the abducted civilians.<sup>234</sup>

113. In many instances, the soldiers employed particular cruelty when inflicting sexual violence on their victims. They would insert objects into the genitals or otherwise torture them.<sup>235</sup> Men and boys were also subjected to sexual violence.<sup>236</sup>

114. Forced rapes between victims, public rapes and gang rapes were committed to inflict more humiliation and suffering.<sup>237</sup> [REDACTED], was sexually penetrated by another prisoner who had been forced to do so by threats made by UPC/FPLC child soldiers. There were two other Lendu women detained with her. [REDACTED].<sup>238</sup>

115. The UPC/FPLC continued to rape and sexually abuse victims after they re-took Bunia in May 2003.<sup>239</sup> One report produced by an Italian NGO refers to approximately 125 incidents of rape taking place that month.<sup>240</sup> Similarly, [REDACTED] reports of 18 cases of rapes, some victims being as young as 11, committed by UPC/FPLC soldiers after the ceasefire was signed. It indicated that most victims were abducted while they were out to look for food or water and were taken to military places or private houses for sexual abuse.<sup>241</sup> Further cases of rape were reported in the following months.<sup>242</sup>

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<sup>228</sup> [REDACTED].

<sup>229</sup> [REDACTED].

<sup>230</sup> [REDACTED].

<sup>231</sup> [REDACTED].

<sup>232</sup> [REDACTED].

<sup>233</sup> [REDACTED].

<sup>234</sup> [REDACTED].

<sup>235</sup> [REDACTED].

<sup>236</sup> HRW, *En quête de justice*, DRC-OTP-0163-0611, pp.0639-0640.

<sup>237</sup> UN OHCHR Report, DRC-OTP-1061-0793, para.633-636.

<sup>238</sup> [REDACTED].

<sup>239</sup> [REDACTED].

<sup>240</sup> Statistiques fournies par *Cooperazione Italiano* (COOPI) cited in HRW, *En quête de justice*, DRC-OTP-0163-0611, p.0638.

<sup>241</sup> UNSC Letter, DRC-OTP-0074-0422, para.80.

*Nexus between the incidents charged and the attacks*

116. The nexus between the incidents charged in this Application and the attacks referred to above can be inferred from the fact that they were committed under the direction of **Bosco NTAGANDA** and other co-perpetrators, the same group of persons implementing the UPC policy, during the same period of time, in the same geographical area.

**(D) THE CRIMINAL RESPONSIBILITY OF BOSCO NTAGANDA -  
INDIVIDUAL RESPONSIBILITY UNDER ARTICLE 25(3)(A) OF  
THE STATUTE**

117. Without excluding any other applicable mode of liability, **Bosco NTAGANDA** is criminally responsible for the crimes set forth in this Application as a co-perpetrator pursuant to Article 25(3)(a). The Pre-Trial Chamber has already found that there are reasonable grounds to believe that **Bosco NTAGANDA** is criminally liable under Article 25(3)(a) for the war crimes of enlistment, conscription of children under the age of 15 and using them actively in hostilities by virtue of his authority within the FPLC,<sup>243</sup> and the fact that he visited training camps where children under 15 were being trained.<sup>244</sup>

118. **Bosco NTAGANDA**'s role as Deputy Chief of Staff and commander of all UPC/FPLC operations remained the same during the period in which the crimes listed in this Application were committed. Given that all the crimes listed were committed in the course of UPC/FPLC military operations, operations for which **Bosco NTAGANDA** was in law and in fact responsible, the Prosecution submits that there are reasonable grounds to believe that **Bosco NTAGANDA** is criminally responsible for their commission pursuant to Article 25 (3)(a).

119. In the Lubanga Judgement, the Chamber found that **Bosco NTAGANDA**, as a co-perpetrator, entered into an agreement and thereafter participated in a common plan to build an effective army so that the UPC/FPLC could wield political and military control

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<sup>242</sup> See for example the victims identified by the FIDH during its investigation conducted between 12 and 27 July 2003 in its report, *Mission d'Enquête: République démocratique du Congo*, October 2003, DRC-OTP-0022-0075, pp.0089-0090.

<sup>243</sup> Ntaganda AWA Decision, paras 53-54; *Lubanga* Judgement, para.1271.

<sup>244</sup> Ntaganda AWA Decision, para.56.

over Ituri.<sup>245</sup> The Prosecution argues that just as with the crimes of enlistment, conscription and use of children in hostilities, the crimes of murder, rape, sexual slavery, pillaging and persecution, were also a part and consequence of this plan, ones which occurred in the ordinary course of events.

*(a) Bosco Ntaganda's Contribution to the Implementation of the Policy*

120. **Bosco NTAGANDA** was one of the original mutineers. He helped devise and implement the UPC's policy to conquer the Itruri region through military means and was aware that the inevitable result would be the killing and rape of civilians. **Bosco NTAGANDA** intended the commission of the crimes and was instrumental to their commission.

121. He was part of the President's inner circle. He commanded all the FPLC sectors and brigades, and all military operations. The evidence shows the role of **Bosco NTAGANDA** as commander of the UPC/FPLC before, during and after the military operations were carried out. **Bosco NTAGANDA** recruited soldiers, visited and inspected the troops at the training camps, procured and distributed weapons and ammunition, and was in constant communication up and down the chain of command. **Bosco NTAGANDA** was "really absolutely necessary for the UPC or within the FPLC".<sup>246</sup>

*i) Inner circle of the President*

122. **Bosco NTAGANDA** ranked third in the hierarchy of the UPC/FPLC.<sup>247</sup> It was no surprise that he was a trusted officer and adviser of the President. He had been loyal to President Lubanga and shared the same goals of the UPC Hema movement ever since 2000. **Bosco NTAGANDA** commanded the take-over of Bunia that paved the way for President Lubanga to return victorious to the city.

<sup>245</sup> *Lubanga* Judgement, para.1136.

<sup>246</sup> [REDACTED]. The Prosecution does not necessarily agree that an "essential" contribution is required to incur liability as a co-perpetrator, (see Judge Fulford's dissenting opinion to the *Lubanga* Judgment, para.15) but in this case it alleges that the contribution amounted to an essential one, so it is unnecessary to decide this issue.

<sup>247</sup> Ntaganda AWA Decision, para 51.

123. During the period of the crimes, **Bosco NTAGANDA** treated the residence of the President as his own – he came and went as he pleased.<sup>248</sup> He travelled with the President to the training camps and for high level military meetings.<sup>249</sup> At the visit to Rwampara training camp on 12 February 2003, Thomas Lubanga gave a speech to the recruits in which he described **Bosco NTAGANDA** as the “*chief of staff, commander*”.<sup>250</sup> Although other commanders were present, only **Bosco NTAGANDA** was mentioned. Indeed, by December 2003 **Bosco NTAGANDA** had replaced Kisembo as the UPC/FPLC Chief of Staff.<sup>251</sup> It demonstrated **Bosco NTAGANDA**’s indispensable role within the UPC/FPLC.

124. As one witness put it, “[t]he person who was head of training, who was at the core of Lubanga’s army, was a certain Bosco Ntaganda.”<sup>252</sup>

*ii) Deputy Chief of Staff and Commander of all military operations and deployed troops*

125. **Bosco NTAGANDA** was *de jure* and *de facto* commander of all FPLC officers and troops in the Main Staff in Bunia<sup>253</sup>, and in the sectors and brigades. As Deputy Chief of Staff, he was responsible for military operations.<sup>254</sup> He conceived and planned all military operations<sup>255</sup>. He also controlled intelligence.<sup>256</sup> As commander of all operations, **Bosco NTAGANDA** was responsible for deploying the troops to the field.<sup>257</sup>

126. **Bosco NTAGANDA**’s role as Deputy Chief of Staff also meant that he had authority over the UPC/FPLC training camp commanders and UPC/FPLC field commanders.<sup>258</sup> He exercised this authority by visiting training camps to explain the UPC’s need for soldiers to the new recruits.<sup>259</sup>

<sup>248</sup> [REDACTED].

<sup>249</sup> *Lubanga* Judgement, paragraph 1210; video material, DRC-ICC-0001-0050 at time 00:38:35; 00:38:40; and 00:38:47.

<sup>250</sup> *Lubanga* Judgement, para. 1242, referring to EVD-OTP-00570 (referring to DRC-OTP-0120-0293).

<sup>251</sup> Ntaganda AWA Decision, para.53; DRC-OTP-0016-0133.

<sup>252</sup> [REDACTED].

<sup>253</sup> [REDACTED].

<sup>254</sup> *Lubanga* Judgement, para.1172, [REDACTED].

<sup>255</sup> *Lubanga* Judgement, para.1208, [REDACTED].

<sup>256</sup> *Lubanga* Judgement, para.1173.

<sup>257</sup> *Lubanga* Judgement, para.1175, [REDACTED].

<sup>258</sup> Ntaganda AWA Decision, para.52.

<sup>259</sup> [REDACTED].

127. As demonstrated above, although a Main Staff officer, **Bosco NTAGANDA** personally deployed to the field in order to oversee and rally his troops in strategic military operations. For example, during the Mongbwalu operation in November 2002, he deployed troops, briefed them and gave specific instructions to carry out criminal activities.<sup>260</sup> Before the soldiers were deployed to the field for the operation, **Bosco NTAGANDA** was first present at a briefing in Bunia when the President and Chief of Staff addressed the troops.<sup>261</sup> Once in the field, **Bosco NTAGANDA** briefed the soldiers of their task ahead; he told them to attack Mongbwalu and retake it. [REDACTED].<sup>262</sup> [REDACTED]<sup>263</sup>

128. Thereafter, during the operation, some of the civilians in the town fled the area and sought sanctuary in the church at Sayo where they were subsequently massacred by the UPC/FPLC. [REDACTED].<sup>264</sup>

*iii) Bosco NTAGANDA recruited and mobilised new recruits and officers into the UPC/FPLC*

129. The Pre-Trial Chamber has already found that there are reasonable grounds to believe that **Bosco NTAGANDA** used his authority within the UPC/FPLC to implement policies and activities adopted at the top echelons of the UPC/FPLC related to recruitment and mobilisation<sup>265</sup>. This finding is echoed by the Trial Chamber in Lubanga Judgement that recruitment and training fell within the “jurisdiction of the military authorities”<sup>266</sup> and that **Bosco NTAGANDA** and Floribert Kisembo were “*more involved in the day-to-day recruitment and training soldiers.*”<sup>267</sup>

130. Concerning **Bosco NTAGANDA**’s recruitment activities, [REDACTED] in the region at the relevant time explained that **Bosco NTAGANDA** was notorious for his particular violent recruitment or combat methods.<sup>268</sup>

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<sup>260</sup> [REDACTED].

<sup>261</sup> [REDACTED].

<sup>262</sup> [REDACTED].

<sup>263</sup> [REDACTED].

<sup>264</sup> [REDACTED].

<sup>265</sup> Ntaganda AWA Decision, para.54. The Chamber found that **Bosco NTAGANDA** was involved in relation to the recruitment of children under 15 and therefore by implication, the Prosecution submits this would extend to recruitment generally within the UPC/FPLC.

<sup>266</sup> *Lubanga Judgement*, para.1266.

<sup>267</sup> *Lubanga Judgement*, para.1270.

<sup>268</sup> [REDACTED].

*iv) Bosco NTAGANDA procured and distributed weapons to the field in preparation for the attacks*

131. In his capacity of Deputy Chief of Staff for operations, **Bosco NTAGANDA** was responsible for acquisition, and more directly, for the distribution of the weapons and ammunition within the UPC/FPLC.<sup>269</sup> [REDACTED].<sup>270</sup>

132. He ensured that his troops were sufficiently armed and prepared for the military operations described above that resulted in numerous civilian casualties. [REDACTED].<sup>271</sup> [REDACTED].<sup>272</sup>

133. He also negotiated the procurement of weapons that were eventually stored at the weapons depot near the Mandro training camp.<sup>273</sup>

*v) Bosco NTAGANDA was in constant communication with his superiors and subordinates in the field.*

134. As demonstrated above, the UPC/FPLC was an efficient military organisation with effective communication channels that enabled the Main Staff HQ in Bunia to be continually apprised as to what was taking place in the field.<sup>274</sup>

135. When he was in the field **Bosco NTAGANDA** constantly communicated with his soldiers by Motorola, the standard method of communication in the UPC/FPLC<sup>275</sup>. His call sign was “Tango-Romeo”.<sup>276</sup> [REDACTED].<sup>277</sup>

136. The UPC/FPLC had devices called “manpacks” and “phonies” which were radios that could be used for long distance communication and which were used at brigade level in addition to the Main Staff. **Bosco NTAGANDA** had one. During military operations, the phonies and motorolas were used in the field to relay orders up and down the chain of command. In one UPC logbook covering the period of December 2002 to February 2003,

<sup>269</sup> [REDACTED].

<sup>270</sup> [REDACTED].

<sup>271</sup> [REDACTED].

<sup>272</sup> [REDACTED].

<sup>273</sup> [REDACTED].

<sup>274</sup> *Lubanga* Judgement, paras 1191 to 1197, in particular, UPC/FPLC logbook, DRC-OTP-0171-0926, containing messages from the field to Main Staff.

<sup>275</sup> *Lubanga* Judgement, para.1192, [REDACTED].

<sup>276</sup> [REDACTED].

<sup>277</sup> [REDACTED]; UPC/FPCL logbook, DRC-OTP-0171-0926, p.1107.

**Bosco NTAGANDA** (“*chef emg adjt opn*”) is recorded as having sent and received numerous messages from the field.<sup>278</sup>

137. The evidence above demonstrates, *inter alia*, **Bosco NTAGANDA**’s contribution to the commission of the crimes as a co-perpetrator under Article 25(3(a).

***(b) Bosco NTAGANDA Intended the Crimes or Knew They Would Occur in the Ordinary Course of Events***

138. The evidence reveals that **Bosco NTAGANDA** intended the commission of the crimes, or was aware that the objective elements of the crimes would occur in the ordinary course of events.<sup>279</sup> He also knew that his conduct was part of a widespread and systematic attack against a civilian population pursuant to or in furtherance of the common plan and policy that he shared/devised with Thomas Lubanga and other co-perpetrators.<sup>280</sup> Due to the nature of this policy he intended that such attacks would be conducted against civilians whom he targeted on ethnic grounds.<sup>281</sup>

139. **Bosco NTAGANDA**’s intention to commit the crimes and his knowledge of their commission is established by the following facts: i) **Bosco NTAGANDA** was a co-architect of the policy for a Hema dominated Ituri<sup>282</sup> which he knew would result in the commission of crimes; ii) he is listed in the proclamation letter of 5 May 2002 containing specific criminal objectives;<sup>283</sup> iii) he commanded the attack on Bunia in August 2002 during which numerous crimes were committed against the non-Hema,<sup>284</sup> the same kind of crimes that were committed thereafter; iv) he knew that crimes were being committed through his position as Deputy Chief of Staff and commander of all operations, coupled with his receipt of daily reports from the field; v) he briefed and provided orders to his troops to attack civilians on the eve of the Mongbwalu attack; vi) he directly ordered his troops to shoot at persons [REDACTED] at Mongbwalu; vii) he directly supervised Salumu who, before the Mongbwalu attack, encouraged soldiers of his brigade to commit crimes; viii) [REDACTED].

<sup>278</sup> UPC/FPCL logbook, DRC-OTP-0171-0926.

<sup>279</sup> *Lubanga* Judgement, para.1351.

<sup>280</sup> See paras 1-7 above.

<sup>281</sup> See paras 30 *et seq.* above.

<sup>282</sup> *Lubanga* Judgement, para.1043; Hema Proclamation, DRC-OTP-0126-0065.

<sup>283</sup> Hema Proclamation, DRC-OTP-0126-0065.

<sup>284</sup> [REDACTED].

### (E) CHARACTER OF THE CONFLICT

140. The war crimes under Article 8 (2) (c) and (e) require the acts to have been committed in an armed conflict not of an international character. The Prosecution submits that there are reasonable grounds to believe that an armed conflict not of an international character took place in Ituri during the period covered by the charges, relying on the finding of the Trial Chamber in its Judgment of 14 March 2012 at paragraphs 543 and 567.<sup>285</sup>

### VI. ADMISSIBILITY ASSESSMENT

141. Pre-Trial Chamber I and Trial-Chamber I already found that the crimes committed by the UPC/FPLC in Ituri during the period September 2002 to December 2003 fall within the jurisdiction of the Court, based on the DRC's referral of the situation.<sup>286</sup>

142. The Prosecution refers to its submission on admissibility in its Application for a Warrant of Arrest for **Bosco NTAGANDA** filed on 13 January 2006<sup>287</sup> and submits that there has been no change in relation to the admissibility of the case against **Bosco NTAGANDA** since then. The information available to the Prosecution indicates that there have been no investigations or prosecutions open in the meantime by any State in relation to the conduct that forms the subject of the Prosecution's application against **Bosco NTAGANDA**.

### VII. ENSURING THE APPEARANCE OF BOSCO NTAGANDA

143. The Prosecution submits that the circumstances that led the Pre-Trial Chamber to issue a warrant of arrest on 22 August 2006<sup>288</sup> still subsist.<sup>289</sup> Accordingly, the Prosecution

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<sup>285</sup> *Lubanga* Judgement.

<sup>286</sup> Letter of Referral sent by the President of the DRC to the Court, 3 March 2004.

<sup>287</sup> ICC-01/04-98.

<sup>288</sup> ICC-01/04-02/06-2-Anx-tENG.

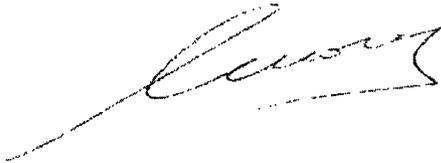
<sup>289</sup> [REDACTED].

contends that the arrest of **Bosco NTAGANDA** is necessary at this stage within the meaning of Article 58(1)(b) of the Statute, both to ensure his appearance at trial and to ensure that he does not obstruct or endanger the investigation,<sup>290</sup> and further to seek compliance with the arrest warrant already in force.

### VIII. CONCLUSION

144. For the above explained reasons, the Prosecution requests that a second arrest warrant be issued for **Bosco NTAGANDA**.

145. It further requests that the Pre-Trial Chamber state in the body of the warrant(s) that the Prosecution will be the organ of the Court responsible for the making and the transmission of the request(s) for cooperation seeking arrest and surrender to the relevant State authorities.



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Luis Moreno-Ocampo  
Prosecutor

Dated this 14<sup>th</sup> day of May, 2012  
The Hague, The Netherlands

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<sup>290</sup> ICC-01/04-02/06-2-Anx-tENG, page 4.