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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

IN THE CASE OF THE PROSECUTOR v. BOSCO NTAGANDA

Public

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A. INTRODUCTION

1. From 2 July 2002 to 31 December 2003, **Bosco NTAGANDA** contributed to a plan to assume the military and political control of Ituri, occupy the non-Hema dominated areas in Ituri and expel the non-Hema civilian population, particularly the Lendu, Ngiti and *non-originaires* (the “non-Hema civilian population”),¹ by means which included the commission of the following crimes: murder or attempted murder, attacks against a civilian population, rape, sexual slavery, persecution, pillaging, forcible transfer of the population, enlistment and conscription of children under the age of 15 and their use to participate actively in hostilities, attacks against protected objects and, destruction of property (the “Common Plan”).
2. In addition, **Bosco NTAGANDA** personally committed the crimes of murder and attempted murder, attacks against a civilian population, persecution, pillaging, forcible transfer of the population, enlistment and conscription of children under the age of 15 and their use to participate actively in hostilities, attacks against protected objects and destruction of property. Through his direct commission of these crimes, in the presence and with the knowledge of his subordinates, **Bosco NTAGANDA** set an example for his subordinates and led them to commit crimes of the same kind. His behaviour as a criminal “role model” for his subordinates constituted a further and significant contribution to the Common Plan.
3. The Common Plan comprised different aspects of victimisation and intent: the deliberate targeting of the non-Hema civilians of Ituri to expel

¹ This term includes persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause (article 8(2)(c)).

them and occupy their areas and the deliberate use of child soldiers, mainly Hema, to build the army and launch attacks.

4. From at least 2 July 2002 to 31 December 2003, an armed conflict not of an international character existed in Ituri, Democratic Republic of the Congo (“DRC”). **Bosco NTAGANDA** is charged with the war crimes of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities within the region of Ituri during the entire period of the charges. He is also charged with rape and sexual slavery of child soldiers within his own group during this same geographic and temporal scope.
5. From at least 2 July 2002 to 31 December 2003, **Bosco NTAGANDA** with his co-perpetrators, and using the troops of the *Forces Patriotiques pour la Libération du Congo* (“FPLC”), the military wing of the *Union des Patriotes Congolais* (“UPC”) and/or Hema civilians who provided support to the UPC/FPLC (the “Hema civilian supporters”), committed a widespread or systematic attack against a civilian population. **Bosco NTAGANDA** is charged in this DCC with the crimes committed by his acts or omissions during or after the attack in the Banyali-Kilo *collectivité* in November and December 2002 and during or after the attack in the Walendu-Djatsi *collectivité* in February and March 2003. These two attacks were part of the overall widespread or systematic attack directed against the non-Hema population and further to an organisational policy. Indeed, these two attacks in and of themselves constitute an attack against a civilian population. **Bosco NTAGANDA** is furthermore charged with acts and

omissions constituting war crimes committed during these two specific attacks.²

6. **Bosco NTAGANDA** was the key military operations commander in the FPLC since September 2002, appointed Deputy Chief of Staff in charge of operations and organisation.³ Prior to the FPLC's official creation in September 2002, he was a key military operations commander of the forces that came to be known as the FPLC. As the key military operations commander, he devised the attack strategy in planning meetings with his co-perpetrators and directly participated in attacks by commanding troops in the field, giving orders before and during attacks and actively participating in combat. He also secured and distributed weapons and ammunition to the troops.
7. **Bosco NTAGANDA** had effective command and control over these troops,⁴ who were organised, hierarchical, well-equipped and well-trained. He gave instructions and orders to the UPC/FPLC troops and had the authority to discipline and punish. The execution of the crimes was

² References to the UPC/FPLC commission of crimes during the overall attack against a civilian population (2 July 2002 to 31 December 2003) but that are not related to the crimes committed by **Bosco NTAGANDA**'s acts or omissions during and after the attack in the Banyali-Kilo *collectivité* in November to December 2002 and the attack in the Walendu-Djatsi *collectivité* in February to March 2003 are relied upon by the Prosecution to prove the contextual elements of war crimes and crimes against humanity as well as **Bosco NTAGANDA**'s intent and knowledge, pursuant to article 30. The sole exception relates to the war crimes of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities and the crimes of rape and sexual slavery of UPC/FPLC child soldiers, for which acts **Bosco NTAGANDA** is charged throughout the period 2 July 2002 to 31 December 2003.

³ The UPC/FPLC is a political-military group. The UPC is the political branch and the FPLC is the military branch. The group was often referred to simply as the "UPC". In this DCC, the Prosecution has used interchangeably UPC/FPLC, UPC and FPLC.

⁴ The senior commanders in the UPC/FPLC were LUBANGA, KISEMBO and **Bosco NTAGANDA**. As such, **Bosco NTAGANDA** did not have *exclusive* command and control over the troops. This has no impact on **Bosco NTAGANDA**'s criminal responsibility and in any event, the crimes charged relate to conduct and operations falling within his sphere of effective command and control.

secured by almost automatic compliance with the orders of **Bosco NTAGANDA** and his co-perpetrators, including Thomas LUBANGA (“LUBANGA”) and Floribert KISEMBO (“KISEMBO”). By December 2003, LUBANGA promoted **Bosco NTAGANDA** to Chief of Staff of the FPLC, an acknowledgement of his military services.

8. From at least April 2002 onwards, **Bosco NTAGANDA** either personally committed crimes or made a contribution resulting in the fulfilment of the material elements of the crimes: he recruited and trained youth including children under the age of 15 and used them to participate actively in hostilities; he visited training camps, encouraged recruits and presided at ceremonies to mark the beginning of their use as soldiers; he supplied weapons, uniforms and ammunition to the troops; and he planned, organised, ordered, coordinated and commanded attacks, including attacks against civilians, all in furtherance of the Common Plan.
9. **Bosco NTAGANDA** ordered and/or induced the commission of crimes. His position of influence, his personal commission of crimes and his failure to prevent and punish constituted a clear message to the troops of official tolerance for the commission of crimes. **Bosco NTAGANDA** further is also criminally responsible for attempted murders committed by the UPC/FPLC troops acting under his orders or instigation, pursuant to the Common Plan.
10. In the alternative, **Bosco NTAGANDA** contributed to the commission or attempted commission of crimes by persons acting with a common purpose with the aim of furthering the criminal activity or purpose of the group, or with knowledge of the intention of the group to commit the crimes. In the further alternative, **Bosco NTAGANDA** failed to take all

necessary and reasonable measures to prevent, repress and punish the commission of crimes.

11. **Bosco NTAGANDA** is individually criminally responsible for the crimes alleged in this DCC pursuant to articles 25(3)(a) as a direct perpetrator, a direct co-perpetrator and/or an indirect co-perpetrator, 25(3)(b), 25(3)(d) and/or 25(3)(f) of the Rome Statute. In the further alternative, **Bosco NTAGANDA** is responsible for the alleged crimes as a commander pursuant to article 28(a).
12. **Bosco NTAGANDA** either intended the commission of each of the crimes or was aware that the crimes would occur in the ordinary course of events.

B. BACKGROUND FACTS

13. Ituri is located in the north-east of the DRC within *Province Orientale*. It is comprised of five territories: Mambasa, Aru, Mahagi, Irumu and Djugu. Each territory is divided into several *collectivités*. Containing a pastoral and agriculturalist populace, it is made up of at least 14 ethnic groups including Hema, Lendu, Alur, Nyali and Bira among others, with a total population of between 3.5 and 5.5 million people spread across a surface area of more than 65,000 square kilometres. Geographically, Lake Albert and the Republic of Uganda lay to the east and the Republic of South Sudan is to the north.
14. There has long been conflict between the Hema and Lendu-Ngiti⁵ communities in Ituri. This conflict intensified in 1998 due to a land dispute between these two ethnic communities, reaching a greater level of

⁵ The Lendu ethnic group includes the Lendu in the south, also known as “Ngiti”. Throughout the DCC, reference to Lendu is meant in the broad and inclusive sense.

intensity from the end of 2001, with ethnically-targeted attacks from all sides, including Hema attacks on predominantly Lendu villages and the commission of murders, rape, pillaging and destruction of homes and civilian infrastructure.

15. On 15 September 2000, LUBANGA, Aimable RAFIKI SABA (“RAFIKI”) and others created the UPC. At that time, the political-military movement in control of Ituri was the *Rassemblement Congolais pour la Démocratie-Kisangani* (“RCD-Kis”), with its armed wing known as the *Armée du Peuple Congolais* (“APC”). Ernest WAMBA DIA WAMBA was its President. He was later ousted and in November 2000, Mbusa NYAMWISI (“NYAMWISI”) took power in Ituri, sitting at the head of the *Rassemblement Congolais pour la Démocratie-Kisangani/Mouvement de Libération* (“RCD-K/ML”) and its armed wing, the APC. In August 2002, **Bosco NTAGANDA** with his co-perpetrators took control of the District’s capital, Bunia, by force. On 2 and 3 September 2002, LUBANGA appointed the political executive of the UPC and the military command within its armed wing, the FPLC. Thereafter, the UPC/FPLC was the governing political-military group in Ituri.
16. **Bosco NTAGANDA** acted in concert with other co-perpetrators including: LUBANGA, KISEMBO (until early December 2003), Chief KAHWA PANGA MANDRO (“KAHWA”) (until end November 2002), RAFIKI, Abdul BAGONZA KASORO (“BAGONZA”) (until 2 December 2002), TCHALIGONZA and KASANGAKI. Each of these individuals, by his acts or omissions, contributed to achieving the Common Plan.
17. LUBANGA, President and Commander in Chief of the UPC/FPLC, exercised an overall coordinating role over the activities of the UPC/FPLC. He planned military operations and provided logistical

support including as regards weapons, ammunition, food, uniforms, military rations, and other general supplies for FPLC troops. He made decisions on recruitment policy and actively supported recruitment initiatives.

18. KAHWA, the customary chief of Mandro, used his position and influence to recruit for the army, to secure weapons from Rwanda, to establish a training camp near Mandro, and to oversee training.
19. KISEMBO trained recruits and other senior FPLC commanders and participated in military operations, including the takeover of Bunia in August 2002. KISEMBO was the UPC/FPLC Chief of Staff.
20. RAFIKI was one of the co-founders of the UPC and was in charge of the personal security for LUBANGA. He was the head of the *Administration Générale de Sécurité* ("AGS").
21. TCHALIGONZA, BAGONZA and KASANGAKI were senior commanders in the UPC/FPLC. They commanded military operations and were involved in organising military training for Hema youths both in camps in Ituri and in Uganda during the summer of 2000.
22. LUBANGA was the President of the UPC from its creation on 15 September 2000.
23. **Bosco NTAGANDA** and his co-perpetrators were allied since at least September 2000. At this time, **Bosco NTAGANDA** and other co-perpetrators had revolted from the APC, the armed wing of the then ruling rebel group, the RCD-Kis. LUBANGA was their spokesperson.
24. **Bosco NTAGANDA** was a key player in shaping the FPLC into an organised, efficient and robust military force, starting with the troops

who would eventually be incorporated into the FPLC. He along with LUBANGA, KISEMBO, KAHWA and other co-perpetrators began organising military training for Hema youth, including young children, in 2000. **Bosco NTAGANDA**, KISEMBO, TCHALIGONZA, KASANGAKI and BAGONZA attended military training in Uganda. This first wave of recruitment and the training of young Hema persons was the precursor to what would later officially become the FPLC.

C. THE PERSON CHARGED

25. **Bosco NTAGANDA** was born on 5 November 1973 in Rwanda. In or about 1990, he fled to the DRC. He holds Congolese nationality and is of Tutsi ethnicity. **Bosco NTAGANDA** is married.
26. Between 1991 and 1996, **Bosco NTAGANDA** was in Rwandan military formations. He returned to the DRC and was a military instructor in the rebel group named the *Alliance des Forces Démocratiques pour la Libération du Congo-Zaire* (“AFDL”). When the second Congo rebellion broke out in 1998, he joined the military wing of the RCD-Kis, revolting from it in the summer of 2000. **Bosco NTAGANDA** went to Uganda to receive military training at camps such as Jinja and Kyankwanzi. While in Uganda, **Bosco NTAGANDA** was arrested by the Ugandan authorities. When he returned to Bunia, he obtained a military position in the APC.
27. **Bosco NTAGANDA** was officially appointed Deputy Chief of Staff in the UPC/FPLC in charge of military operations and organisation on 2 or 3 September 2002 by LUBANGA. As Deputy Chief of Staff, **Bosco NTAGANDA** had a key role within the UPC/FPLC as *de facto* number two of the FPLC army and met with his co-perpetrators, including the Chief of Staff and the President, on a frequent and regular basis.

28. In December 2003, **Bosco NTAGANDA** was promoted by LUBANGA to Chief of Staff.
29. On 11 December 2004, President KABILA nominated **Bosco NTAGANDA** to the position of 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, throughout 2004 and into 2005, **Bosco NTAGANDA** continued to play a commanding role in the UPC/FPLC by leading military operations, issuing orders, attending the graduation of UPC soldiers, signing troop manifests, and approving financial agreements entered into by the UPC/FPLC. In early 2005 **Bosco NTAGANDA**, together with others, formed part of a new militia group, the *Mouvement Révolutionnaire Congolais* ("MRC") and continued fighting the FARDC.
30. In late 2006, when the MRC was dismantled following military pressure from the FARDC, **Bosco NTAGANDA** 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. The CNDP allegedly committed crimes against civilians.
31. On 22 January 2009, **Bosco NTAGANDA** announced a ceasefire with the FARDC. A peace agreement was subsequently signed and the process of integrating CNDP forces into the FARDC began. **Bosco NTAGANDA** was integrated into the FARDC with the rank of General. Members of the FARDC reportedly under his command allegedly committed crimes against civilians.
32. **Bosco NTAGANDA** defected from the FARDC in mid-April 2012. Shortly thereafter, in May 2012, **Bosco NTAGANDA** became a *de facto* commander in the *Mouvement du 23-Mars* ("M23"). From May 2012 until

early November 2013, M23 conducted significant and targeted military operations against FARDC and MONUSCO peacekeeping forces in eastern DRC and occupied strategically located towns such as Rutshuru and Goma. Furthermore, during this period under **Bosco NTAGANDA**'s command, M23 soldiers are alleged to have committed crimes against civilians, including murder, sexual violence, recruitment of children and the destruction of property.

33. In February-March 2013, leadership struggles between the leaders of M23, **Bosco NTAGANDA** and his deputy, Sultani MAKENGA, led to a split in M23 and, ultimately, to military confrontations between these factions. MAKENGA's troops defeated troops loyal to **Bosco NTAGANDA** on 15 March 2013.
34. On 20 March 2013, **Bosco NTAGANDA** handed himself in at the United States Embassy in Kigali, Rwanda, and asked to be surrendered to the Court. On 22 March 2013, **Bosco NTAGANDA** arrived at the detention centre of the Court.

D. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

35. The DRC became a State party on 11 April 2002 and, pursuant to article 14 of the Rome Statute, President KABILA referred the situation in the DRC to the Prosecutor in March 2004. The Statute entered into force for the DRC on 1 July 2002. Pre-Trial Chambers I and II have held that the case, as set out in the applications for warrant of arrest, falls within the Court's jurisdiction.
36. All crimes alleged in the DCC occurred between 2 July 2002 and 31 December 2003 in Ituri, DRC. At all times relevant to the conduct charged as war crimes, an armed conflict not of an international character existed

in the DRC. A nexus existed between this state of armed conflict and the crimes committed by the UPC/FPLC in the DRC. The crimes with which **Bosco NTAGANDA** is charged are war crimes as defined in article 8 of the Statute.

37. The conduct charged as crimes against humanity was part of a widespread or systematic attack directed against the DRC civilian population. The crimes with which **Bosco NTAGANDA** is charged are crimes against humanity as defined in article 7 of the Statute.

E. FACTS RELEVANT TO CONTEXTUAL ELEMENTS OF ARTICLE 7 AND ARTICLE 8

Contextual Elements of Article 7

38. From 2 July 2002 to 31 December 2003, the UPC/FPLC committed a widespread or systematic attack directed against the non-Hema civilian population. It engaged in a course of conduct that involved the multiple commission of acts against a civilian population in Ituri, including under **Bosco NTAGANDA**'s command pursuant to an organisational policy.
39. Examples of the UPC/FPLC acts that together constitute an attack against a civilian population include an attack on Bunia on or about 6-9 August 2002, on Songolo on or about 31 August 2002, on Zumbe on or about 15-16 October 2002, a series of attacks on Mambasa, Eringeti and Komanda between October and December 2002, on Mongbwalu (and the Banyali-Kilo *collectivité*) on or about 15 November to on or about 15 December 2002, on the Walendu-Djatsi *collectivité* in January 2003 and again on or about 16 February to on or about 3 March 2003, and further attacks on Bunia on or about 6 March 2003 and between 6 and 27 May 2003.

40. While **Bosco NTAGANDA** is charged with crimes committed during the attacks on Mongbwalu (and the Banyali-Kilo *collectivité*) on or about 15 November to on or about 15 December 2002, and on the Walendu-Djatsi *collectivité* on or about 16 February to on or about 3 March 2003, the course of conduct prior to and after these two attacks is evidence of: (a) the overall '*attack*' by the UPC/FPLC against the non-Hema civilian population; (b) the organisational policy of the UPC/FPLC to attack a civilian population; (c) the protracted nature of the armed conflict between the UPC/FPLC and other parties to the conflict, including Lendu militia and its allied APC forces relevant to article 8; and (d) **Bosco NTAGANDA**'s intent and knowledge, pursuant to article 30.
41. As a result of the UPC/FPLC attack on the non-Hema civilian population in Banyali-Kilo *collectivité* from November to December 2002 and in Walendu-Ndjatsi *collectivité* from February to March 2003, at least 240 Lendu and other non-Hema civilians were killed; civilians were raped and abducted and kept as sex slaves; hundreds of civilian structures were damaged or destroyed (including private homes, and protected civilian objects such as hospitals, health centres, churches and schools) and/or pillaged. In addition, civilians, mostly Lendu, were injured. The attacks by the UPC/FPLC were so frequent during these periods that the non-Hema civilian population was forced to leave their homes and to live in the bush on a semi-permanent basis. Thousands of people were displaced by the series of attacks.
42. These two charged attacks themselves constitute attacks against the civilian population under article 7.

i. Attacks by the UPC/FPLC against the non-Hema Civilian Population

43. The UPC/FPLC launched frequent attacks against the non-Hema civilian population, predominantly targeting the Lendu. **Bosco NTAGANDA** commanded several of these attacks.
44. From July 2002, **Bosco NTAGANDA** and his co-perpetrators planned the takeover of Bunia and the expulsion of the non-Hema civilian population from Bunia. On or about 6-9 August 2002, the UPC, allied with elements of the Ugandan People's Defence Force ("UPDF"), attacked Bunia. **Bosco NTAGANDA** was a key military commander in this attack. The UPC hunted down the Lendu, Nande and Bira inhabitants in public areas and in their homes. The UPC forces killed at least 100 non-Hema civilians (some by *armes blanches*⁶) including those attempting to flee at roadblocks, arbitrarily arrested civilians, raped non-Hema women, forcibly expelled the non-Hema civilian population from their homes and destroyed their property.
45. As a result of this attack, thousands of non-Hema fled Bunia, the APC forces were defeated and the UPC took control of the town. On 31 August 2002, the UPC armed forces commanded by **Bosco NTAGANDA** attacked Songolo, a predominantly Lendu village, and intentionally targeted the non-Hema civilian population. The UPC surrounded the village and posted themselves on footpaths to cut off escape routes; they killed at least 140 non-Hema civilians, some while they were attempting to flee. Bodies of civilians were found on the road and in the forest in Songolo. Anyone found was killed, including in their homes. No distinction was made between civilians and fighters. Women and girls were raped, and some taken away to be kept as sex slaves. UPC soldiers pillaged the village, including the health centre, church and school, and

⁶ "Armes blanches" refers to bladed weapons as opposed to firearms.

destroyed civilian property by setting fire to many homes. The UPC used *armes blanches* and heavy weapons, including mortars and rockets, targeting houses and fleeing civilians. Some survivors who later returned to Songolo were killed by landmines that had been laid by the UPC/FPLC.

46. On 15 and 16 October 2002, the UPC/FPLC, with the support of the UPDF and the Hema civilian supporters, attacked the Zumbe locality, which had a predominantly Lendu population and was a headquarters of the Lendu militia. **Bosco NTAGANDA** led this attack.
47. The UPC/FPLC occupied Zumbe village for two days, killed over 180 civilians (including by *armes blanches*) and planted anti-personnel mines. The UPC/FPLC pillaged and burnt the village, including a health centre, church, school and homes; they also burnt surrounding villages. At least 50 females were raped by UPC soldiers. Some survivors who returned to Zumbe were injured or killed by landmines.
48. Between October and December 2002, the UPC/FPLC carried out a series of joint attacks with the *Mouvement de Libération du Congo* ("MLC") and *Rassemblement Congolais pour la Démocratie/National* ("RCD-N") on Mambasa, Komanda and Eringeti, sometimes referred to as *Opération Effacer le Tableau*. These attacks, aimed at ousting the non-Hema civilian population from the area and expelling the RCD-K/ML forces, involved rape, the mutilation of corpses that were left in public places to terrorise the population, cannibalism and murder of the non-Hema civilian population. UPC/FPLC forces, including **Bosco NTAGANDA**, took over Komanda and Eringeti together with the joint MLC and RCD-N forces. The UPC/FPLC's allies then advanced towards Mambasa. The UPC/FPLC forces were responsible for the majority of crimes committed in

Komanda, which included targeted acts of murder, rape, and pillaging against the non-Hema civilian population.

49. As set out in greater detail in paragraphs 63-91, the UPC/FPLC led by **Bosco NTAGANDA**, launched an attack in Mongbwalu and the Banyali-Kilo *collectivité* in November and December 2002 and thereafter in the Walendu-Djatsi *collectivité* in February and March 2003.
50. On 6 March 2003, the same UPC/FPLC forces sought to oust the UPDF forces and their Lendu allies from Bunia, while at the same time intentionally targeting the non-Hema civilian population. The Hema civilian population was warned to leave Bunia or be considered the enemy. **Bosco NTAGANDA** together with his co-perpetrators LUBANGA and KISEMBO planned this attack. **Bosco NTAGANDA** assisted in the preparation of the attack, ordered UPC/FPLC troops to take position and directed the attack. He also personally participated in the attack. The UPC/FPLC forces deliberately destroyed homes, pillaged, killed at least 25 civilians and injured others (some through the heavy artillery shelling of homes).
51. On 6 May 2003, the UPC/FPLC (this time allied with PUSIC forces)⁷ fought for control of Bunia once again. **Bosco NTAGANDA** together with his co-perpetrators planned this attack. **Bosco NTAGANDA** assisted in obtaining weapons and ammunition prior to the attack and commanded UPC/FPLC forces. During the attack, UPC/FPLC forces intentionally targeted the non-Hema civilian population, in particular, Lendu, Bira and Nande. The UPC/FPLC threatened, abducted and raped the non-Hema civilians. The UPC/FPLC killed at least 100 non-Hema civilians and pillaged homes and businesses.

⁷ *Parti pour l'Unité et la Sauvegarde de l'Intégrité du Congo.*

52. After the UPC/FPLC took over Bunia, they continued to systematically target the non-Hema civilian population. Many non-Hema civilians were raped and killed. The UPC/FPLC forces threatened, intimidated and summarily executed non-Hemas. There were instances of torture and pillaging. The threats and level of violence forced approximately 200,000 people to flee from Bunia and surrounding villages. Even after the ceasefire agreement between the UPC/FPLC and FNI-FRPI⁸ forces was signed, the UPC/FPLC continued to commit acts of rape, pillaging, torture, abductions and executions.

ii. Widespread or Systematic Nature of the Attack

53. The attack against the non-Hema civilian population was widespread or systematic. The widespread nature of the attack is demonstrated by the following:

- (a) the lengthy duration of the multiple commission of acts against a civilian population (from July 2002 until December 2003);
- (b) the high intensity of attacks perpetrated by the UPC/FPLC during this time period;
- (c) the large number of victims of murder (at least 680), rape pillaging, property destruction, and large-scale forcible displacement (at least 260,000 persons);
- (d) the number of individual attacks within the overall attack; and
- (e) the broad geographic distribution of the attack throughout Ituri including in the densely populated area of Bunia, in the *collectivité* of Walendu Bindi (Songolo) in Irumu territory and in the

⁸ The *Front des nationalistes et intégrationnistes* ("FNI") and *Force de résistance patriotique en Ituri* ("FRPI") are armed groups.

collectivités of Walendu Tatsi (Zumbe), Walendu Djatsi (villages including Lipri, Kobu, Bambu and others) and Banyali-Kilo (towns and villages such as Pluto, Nzebi, Mongbwalu, Sayo and Kilo) in Djugu territory.

54. The systematic nature of the attack is demonstrated by the following factors:

(a) the UPC/FPLC forces carried out numerous attacks, in some instances acting jointly with allied armed forces and the Hema civilian supporters;

(b) the violence perpetrated by the UPC/FPLC was not random, but rather victims were targeted because of their non-Hema ethnicity, in particular the Lendu population who were perceived to be the enemy;

(c) the individual attacks followed a regular pattern in that they contained one or more of the following elements:

(i) villages with a predominantly non-Hema population were targeted;

(ii) villages were surrounded to prevent individuals from being able to escape, including by closing off exit routes, shooting at fleeing civilians and setting up of roadblocks to capture and rape and/or kill the non-Hema civilian population;

(iii) heavy and indiscriminate shelling, and deliberate targeting of civilians with heavy weapons;

(iv) incursions on foot using *armes blanches* and other small weapons to kill all, including civilians, without distinction;

- (v) deliberate attempts to identify the non-Hema civilian population and to rape and/or kill them;
- (vi) sexual violence used to persecute non-Hema civilians and boost the UPC/FPLC troops' morale;
- (vii) 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/FPLC occupied areas; and
- (viii) killing survivors who returned.

iii. Organisational Policy

55. The crimes alleged in the DCC were committed pursuant to or in furtherance of an organisational policy to commit the attack against the non-Hema civilian population, in particular the Lendu.

The UPC/FPLC constituted an organisation

56. As set out in paragraphs 121-125 below, the UPC/FPLC constituted an organisation within the terms of article 7(2)(a). The UPC/FPLC had the capability to commit a widespread or systematic attack against a civilian population. The UPC/FPLC had an established hierarchy wherein its senior leadership jointly held *de jure* and *de facto* authority, command and control over the organisation, with LUBANGA as the President, KISEMBO as the Chief of Staff, and **Bosco NTAGANDA** as the Deputy Chief of Staff in charge of operations. The UPC/FPLC operated with an established structure, with a communication system where orders to UPC/FPLC forces and information about events on the ground were

transmitted and received. The UPC/FPLC had the means to carry out the overall attack, including access to financing, weapons and ammunition.

The Policy to attack the non-Hema Civilian Population

57. The UPC/FPLC adopted a policy to attack the non-Hema civilian population and expel them from their areas. The existence and nature of this policy can be inferred from several factors.
58. Between 2 July 2002 and 31 December 2003, the UPC/FPLC committed multiple, coordinated attacks against the non-Hema civilian population. These attacks intentionally targeted non-Hema civilians and followed a regular pattern and *modus operandi* that included forcible transfer of civilians, large-scale killings (often employing the same means), sexual violence, pillaging and the destruction of civilian property and protected objects. The attacks covered a broad geographic area within Ituri.
59. **Bosco NTAGANDA** and his co-perpetrators planned and implemented multiple attacks aimed at taking over areas where the non-Hema civilian population lived and, with the use of UPC/FPLC forces, gaining control of Ituri. These attacks involved recruiting and training armed forces, deploying of a significant number of troops and transporting weapons, ammunition and other supplies in a coordinated fashion.
60. In addition to UPC/FPLC troops, the Hema civilian supporters who accompanied and assisted the UPC/FPLC forces committed crimes in a structured and systematic fashion. Typically, after the UPC/FPLC cleared an area following combat, the Hema civilian supporters that followed behind would commit further crimes, such as pillaging and destruction of property. They also committed murder. **Bosco NTAGANDA** incited and ordered Hema youths to kill Lendu. Commonly referred to as *combattants*

or *cadres*, this cohort of Hema civilian supporters were not actively participating in combat but were committing crimes in concert with the UPC/FPLC, both in the course of the UPC/FPLC attack on the non-Hema civilian population and in its armed conflict with Lendu forces.

Contextual Elements of Article 8

61. At all times relevant to the DCC, an armed conflict not of an international character existed between the UPC/FPLC and other organised armed groups in Ituri, as evidenced by the various attacks perpetrated by the UPC/FPLC in predominantly non-Hema civilian areas as described in paragraphs 43-52 and 63-91. Various parties to the conflict in Ituri, including the UPC/FPLC, APC, PUSIC, and the Lendu militia were organised armed groups that demonstrated the ability to carry out protracted armed violence.
62. A nexus existed between this state of armed conflict and the crimes committed by the UPC/FPLC in the DRC. At all times relevant to the DCC, **Bosco NTAGANDA** was aware of the existence of an armed conflict in the DRC.

F. FACTS RELEVANT TO THE INDIVIDUAL CRIMES CHARGED

i. Attack in the Banyali-Kilo collectivité in November and December 2002

63. In June 2002, Lendu fighters and their APC allies ousted most of the Hema civilian population from Mongbwalu. Accordingly, as of November 2002, Mongbwalu had a predominantly non-Hema civilian population. The UPC/FPLC intentionally targeted the non-Hema civilian population during an attack in November and December 2002 on various

locations in Banyali-Kilo *collectivité*, including Pluto, Nzebi, Mongbwalu, Sayo⁹ and Kilo. The UPC/FPLC killed at least 28 non-Hema civilians during this attack.

64. **Bosco NTAGANDA** commanded the UPC/FPLC's takeover of Mongbwalu, a strategic gold-mining location with an airfield. The UPC/FPLC's objective was to capture the town and to expel non-Hema civilians from the area, specifically the Lendu. Prior to the attack, **Bosco NTAGANDA** travelled to Aru to distribute weapons and ammunition and to brief his commanders and troops who would attack Mongbwalu from the north.
65. The UPC/FPLC actively recruited children under the age of 15 in Kilo prior to the attack on Mongbwalu and surrounding villages. UPC/FPLC child soldiers participated in this attack. UPC/FPLC commanders, including **Bosco NTAGANDA**, used child soldiers in their escort and to participate actively in hostilities during the attack on Mongbwalu and surrounding villages.
66. On or about 21 November 2002, the UPC/FPLC attacked Pluto and then Mongbwalu, where they captured the airfield and most of the enemy positions. On or about 22 November 2002, the UPC/FPLC set up a roadblock on the road to Bunia and completed the occupation of the hills surrounding Mongbwalu.
67. **Bosco NTAGANDA** was present in Mongbwalu as overall operational commander, participating in the battle and instructing two UPC brigades led by his subordinates Salumu MULENDA and Emmanuel NDUNGUTSE. UPC/FPLC forces killed and displaced civilians, raped,

⁹ Spelled "Saio" or "Sayo".

- pillaged and destroyed property. **Bosco NTAGANDA** instructed the troops to advance and fire heavy weapons into civilian areas.
68. The UPC/FPLC's attack targeted the non-Hema civilian population. **Bosco NTAGANDA** ordered UPC/FPLC troops to target civilians, including those attempting to flee. A heavy weapons unit commanded and manned personally by **Bosco NTAGANDA** fired on those fleeing the attack, killing civilians. The UPC/FPLC victimised individuals perceived to be Lendu supporters. **Bosco NTAGANDA** instructed UPC/FPLC forces to eliminate the Lendu, civilians and fighting forces alike.
69. The UPC/FPLC's attack forced the transfer of the civilian population out of Pluto and Mongbwalu. Many persons fled to the neighbourhood of Sayo and other villages surrounding Mongbwalu. On or about 23 November 2002 the UPC/FPLC took Sayo and killed many civilians, including men, women and children. Civilians sought refuge in Sayo church and were killed, including in **Bosco NTAGANDA's** presence. At Nzebi, **Bosco NTAGANDA** ordered the execution of two civilians.
70. After taking over Mongbwalu and Sayo, the UPC/FPLC went door-to-door to identify Lendu and other non-Hema. A building in **Bosco NTAGANDA's** compound in Mongbwalu was used as a prison. Some prisoners were questioned before being executed by the UPC/FPLC. The bodies of other executed prisoners were put into mass graves and latrines.
71. UPC/FPLC soldiers killed one civilian as he returned to Sayo, having fled the fighting. The UPC/FPLC killed workers of the Kilo-Moto company in Mongbwalu. The UPC/FPLC also targeted civilians and injured Lendu fighters who were not taking part in hostilities and who sought medical attention in a health clinic in Sayo. On or about 25 November 2002, **Bosco NTAGANDA** personally arrested and detained the priest of the

Mongbwalu parish and three nuns. **Bosco NTAGANDA** personally shot and killed the priest.

72. After the takeover of Mongbwalu and Sayo, UPC/FPLC troops committed rape. UPC/FPLC commanders used the Swahili phrase “*kupiga na kuchaji*”¹⁰ to encourage UPC/FPLC troops to rape and pillage; women were seen as part of the spoils of war. UPC/FPLC soldiers conducted daily patrols where they would capture women to rape them. Women prisoners held captive at **Bosco NTAGANDA**’s apartment in Mongbwalu were raped by his troops. UPC/FPLC commanders had ‘concubines’ at their camp in Mongbwalu. **Bosco NTAGANDA** ordered troops to pillage and he engaged in pillaging himself. The UPC/FPLC pillaged the hospital in Mongbwalu and the health centre in Sayo, as well as the church in Sayo.
73. UPC/FPLC troops destroyed civilian houses in Mongbwalu and Sayo by deliberately targeting them with heavy weapons.
74. On or about 6 December 2002, the UPC/FPLC attacked Kilo, where many civilians had fled following the attack on Sayo. The UPC/FPLC detained, killed and beat prisoners there. UPC/FPLC forces also perpetrated rape against the Nyali population in Kilo on a grand scale. Many UPC/FPLC commanders kept women and girls as sexual slaves.
75. The UPC/FPLC retained control of Mongbwalu until at least February 2003.

ii. Attack on the Walendu-Djatsi collectivité in February and March 2003

¹⁰ This is a Swahili term that translates as “to strike and plunder”.

76. In January 2003, UPC/FPLC troops from Mongbwalu attacked Nyangaray, a village south of Kilo on the western road to Bunia. From there and from Mwanga (a village south of Lipri and north of Bunia which the UPC/FPLC had taken in December 2002), the UPC/FPLC carried out several attacks on villages in the Walendu-Djatsi *collectivité*. This included two attacks on Lipri, where the civilian population from Nyangaray and Mwanga had taken refuge, between 21 and 25 January 2003.
77. On or about 16 February to on or about 3 March 2003, **Bosco NTAGANDA** and his co-perpetrators launched a coordinated, large-scale attack on the civilian population in over 40 villages¹¹ in the Walendu-Djatsi *collectivité* including but not limited to Lipri, Kobu and Bambu. The attack, perpetrated to occupy the non-Hema dominated areas in Ituri and expel non-Hema civilians from those areas, was planned by **Bosco NTAGANDA**, LUBANGA, KISEMBO and other co-perpetrators in Bunia. They distributed tasks and performed their respective roles in close coordination with each other and with the troops in the field. **Bosco NTAGANDA** was the overall operational commander and coordinated the attack on Lipri. UPC/FPLC commanders ordered the soldiers and the Hema civilian supporters to occupy the area, to pillage and shoot at everything that moved, including the civilian population and induced them to rape. The orders to destroy property were implicit.

¹¹ The attack took place in a 15 kilometre radius around Lipri, Kobu and Bambu, including in the villages of: Avetso, Bambu/Bambu Mines, Buli/Bule, Camp P.M., Dala, Dhekpa/Dr'kpa, Djuba, Dyalo/Dyaro, Gogo/Ngogo, Gola/Gula, Goy, Gutsi/Guti, Jeaku/Jicho/Jichu/Jitcho/Jitchu/ Jitsu, Katho/Kato, Lipri, Kobu, Nyangaray, Tchudja/Chuja, Pili, Sangi, Thali, Mindjo/Mindju/Minju/Minju-Dhelo, Mpetsi/Petsi/Mpety/Peti/Petsy, Langa, Mbidjo, Ngabuli/Ngabulo/Ngabuleu, Tsili/Tsele and Wadda/Wadha.

78. During the attack, known as "*shika na mukono*", a Swahili expression meaning "take with the hands," UPC/FPLC troops coming from Kilo, Bunia and Nyangaray forced the transfer of up to 60,000 civilians into the bush surrounding Kobu. UPC/FPLC troops swept the bush, hunting down the displaced population. They killed between 210 and 350 non-Hema civilians, raped and sexually enslaved, carried out widespread pillaging, and destroyed civilian houses, administrative buildings and protected objects (including the hospital at Bambu), which were not military objectives, along the main road and in over 25 villages.
79. On or about 18 February 2003, UPC troops attacked Lipri and nearby villages including Tsili, killing at least 30 civilians, as well as one person in Ngongo. The UPC/FPLC set Lipri on fire. The population fled towards Petsy, Buli and Goy. In the immediate aftermath of the Lipri attack, UPC/FPLC soldiers captured Lendu women, detained and raped them.
80. On or about 18 February 2003 the UPC/FPLC attacked Kobu, committing murder and burning houses.
81. On or about 19 February 2003, the UPC/FPLC attacked Bambu, killing at least 12 civilians, looting the orphanage, health facilities, schools, religious structures, and the headquarters of the Kilo Moto gold mining company; they pillaged and destroyed the hospital. The same day the UPC/FPLC also attacked Petsy and several other villages, causing the population that had taken refuge there to flee further into the bush surrounding Buli, Gola, Gutsi and Jitchu. On or about 20 February 2003 the UPC/FPLC attacked Gutsi.
82. On or about 22 February 2003, UPC/FPLC Commander MULENDA, who had set up a base at Kobu, invited Lendu dignitaries and militia leaders to a "pacification meeting" at Sangi. Lendu community leaders and

villagers, tired of living in difficult conditions in the bush, accepted his invitation.

83. On or about 25 February 2003, a delegation comprised of nearly 50 Lendu dignitaries and civilians left unarmed for the meeting and convened at Sangi. Upon arrival in Sangi, MULENDA's soldiers detained the delegation. UPC/FPLC soldiers verbally abused the prisoners because of their ethnicity; they subjected them to heavy beatings and murder. More prisoners were brought to Sangi that day, as the UPC/FPLC soldiers captured civilians in the surrounding forests.
84. UPC/FPLC soldiers committed rape and sexually enslaved women during this attack. UPC/FPLC soldiers captured Lendu women in Sangi, Jitchu and the surrounding bush. They were held captive, including at Kobu. UPC/FPLC soldiers committed multiple gang rapes on the prisoners under threat of death, heavy beatings and at gun point. Some prisoners were shot because they resisted. The UPC/FPLC verbally abused the victims on ethnic grounds during the assaults. Some victims were killed as they attempted to escape. The UPC/FPLC repeatedly raped women who were held captive and forced them to carry looted goods as well as to cook for the commanders.
85. That same day, the UPC/FPLC attacked Buli and Jitchu. UPC/FPLC troops forced the captured civilians to carry looted goods from Jitchu, Sangi and Buli to Kobu, where the UPC/FPLC had set up its base. Further pillaging took place at Kobu. The UPC/FPLC set Sangi, Buli, Pili, Jitchu, Mindjo, Goy, Langa, Dyalo and Wadda on fire.
86. The UPC/FPLC attacked the areas to which the non-Hema population had fled. The UPC/FPLC descended upon Gola, Buli, Jitchu, Gogo and the surrounding forest areas, seeking out those in hiding, and shooting or

arresting those who eventually came out. UPC/FPLC troops shouted “*shika na mukono*” as encouragement to kill with *armes blanches* to avoid “wasting” ammunition.

87. The UPC/FPLC forces trapped the displaced civilian population in an area of approximately six kilometres that forms a triangle between Lipri, Kobu and Bambu. Trapped, the population could not leave the area and fled from hill to hill.
88. The UPC/FPLC continued its *ratissage* operation on or about 26 February 2003, capturing and killing up to 92 civilians in Jitchu forest and setting the bush on fire.
89. On or about 26 February 2003, MULENDA’s brigade brought the “pacification meeting” prisoners from Sangi to Kobu-Wadza. MULENDA was in regular radio contact with KISEMBO to decide the fate of the prisoners because the brigade was needed urgently in Bunia. That night, UPC/FPLC soldiers, including Commander SIMBA, executed the prisoners because of their ethnicity and raped them. After they killed the Lendu prisoners in Kobu, the UPC/FPLC soldiers burnt the village down.
90. When the UPC/FPLC left Kobu on or about 27 February 2003, the surviving Lendu and other non-Hema population came out of the bush. They discovered that approximately 50 individuals had been murdered in a banana fields. There were corpses of men, women and children, some with hands bound and partially naked. Among the corpses were Lendu dignitaries such as BUROMBI as well as other Lendu civilians who were taken prisoner at the “pacification meeting”.
91. This incident was widely known within the UPC/FPLC. Under pressure from MONUC, LUBANGA asked the UPC Chief of Intelligence to report

on the matter. MULENDA, and other UPC/FPLC commanders, and the soldiers involved in the attack on the Walendu-Djatsi *collectivité* were never punished for their crimes.

iii. Enlisting and Conscripting Children under the age of 15 and Using them to Participate Actively in the Hostilities

92. The UPC/FPLC required a constant supply of soldiers to fill its ranks. To meet this need, the UPC/FPLC implemented a campaign of conscripting and enlisting soldiers in large numbers, including men, women and children without regard to their age. The co-perpetrators used emissaries and propaganda to pressure Hema youth to join the UPC/FPLC military.
93. From the time of its foundation, the UPC enlisted children under the age of 15 into their ranks. This included children who by their physical appearance were manifestly under the age of 15 and were referred to as *kadogos*, a Swahili word meaning “small”. **Bosco NTAGANDA** was in charge of their recruitment. Between 2 July 2002 and 31 December 2003, throughout Ituri, **Bosco NTAGANDA** and his co-perpetrators, both personally and through the UPC/FPLC, forcibly recruited and enlisted children, including those manifestly under the age of 15. UPC/FPLC forces abducted mainly boys, but also girls, and forcibly incorporated them into the ranks of the UPC/FPLC. These recruitment drives were directly or indirectly targeted at youth, including those under the age of 15.
94. The UPC/FPLC and **Bosco NTAGANDA** pressured Hema families to contribute to the war effort by providing children to the Hema militia. For those children under the age of 15 who joined ‘voluntarily’, their enlistment was determined by, *inter alia*, the desire for revenge of orphans whose families were killed or allegedly killed by the militias opposing the

FPLC, the effects of social and community pressures, the desire to protect their family, the allure of a military role and/or the coercive circumstances in which the children found themselves, such as urgent needs for protection and food.

95. Immediately after their recruitment, UPC/FPLC child soldiers were taken to various training camps in Ituri. Camps were located on sites including Centrale, Mandro, Mahabusu, Lingo, Rwampara, Bule, Bogoro, Sota, Mongbwalu, Bunia, Fataki, Khari and Kilo. **Bosco NTAGANDA** visited and inspected the training camps. He saw the children being trained and encouraged them in training.
96. The aim of the training was to prepare the children for active participation in hostilities. Training lasted up to two months and included basic military training such as discipline, saluting, drill and weapons exercises. The instructors sought to boost the morale of the children by compelling them to sing aggressive military songs, including songs disparaging of, or threatening towards, the Lendu ethnic group.
97. Child soldiers suffered cruel treatment at the training camps. They were routinely beaten and forced to partake in drug and substance abuse. Discipline was harsh and included whipping. Child soldiers died as a result of such punishment.
98. After completion of training, **Bosco NTAGANDA** provided each of the children with a military uniform and a personal weapon, signifying their readiness for battle. He deployed the trained recruits for use to participate actively in hostilities. Children under the age of 15 actively participated in hostilities through combat on the frontlines, fighting in the attacks on Bunia (6-9 August 2002); Songolo (31 August 2002); Zumbe (16 October 2002); Libi (October 2002); Mbau (October-November 2002); Kpandroma

(October 2002); Mambasa, Komanda and Eringeti (between October and December 2002); Mongbwalu (18-23 November 2002) Mabanga (May or June 2003); Lonyo (May or June 2003); Lipri, Kobu and Bambu (16 February to 3 March 2003); Bunia (6 March, 6 May 2003) and elsewhere. Prior to combat, FPLC commanders gave children orders to kill civilians and burn houses. Child soldiers both inflicted and suffered casualties. During combat, many child soldiers fighting for the FPLC were killed.

99. Additionally, **Bosco NTAGANDA** and other FPLC military commanders, UPC national secretaries and LUBANGA used children under the age of 15 as bodyguards. Their tasks included guaranteeing physical protection, including during military deployments.

iv. Rape and Sexual Slavery of UPC/FPLC Child Soldiers

100. From 2 July 2002 to 31 December 2003, UPC/FPLC commanders and soldiers raped and sexually enslaved their soldiers without regard to age, including child soldiers under the age of 15. Some child soldiers became pregnant as a result of their rape. Child soldiers were often raped by more than one UPC/FPLC commander or soldier. These child soldiers were raped routinely when they were not participating in hostilities, such as during military training and after battles had taken place. UPC/FPLC commanders and soldiers referred to child soldiers (and other girls and women in the UPC/FPLC above the age of 15) as *guduria*, a large cooking pot, to mean that they could be used for sex whenever the soldiers wanted them for that purpose.

101. UPC/FPLC commanders exploited girl child soldiers in the UPC/FPLC for domestic chores, for cooking, and for sex. As soldiers in the UPC/FPLC, girls and women were subjected to sexual abuse in a coercive and harsh military structure; without the possibility to leave the armed group.

UPC/FPLC commanders raped their soldiers under threat of death often while the commanders were armed. Girls and women in the UPC/FPLC could not resist.

102. The UPC/FPLC also used rape of its own soldiers as a form of punishment.

103. **Bosco NTAGANDA** and other commanders knew or should have known that in the ordinary course of events UPC/FPLC troops, including children under the age of 15, would be raped and sexually enslaved by their own commanders and other UPC/FPLC soldiers. The girls and women who were part of the UPC/FPLC were particularly vulnerable. They were lodged in training camps with male commanders and soldiers who had authority over them, who abused that authority and who were armed and violent. These girls and women were made to perform domestic chores in commanders' residences. They could not leave camp without permission and they had to obey their superiors and commanders or face punishment. No distinctions were made regarding age within the UPC/FPLC; all recruits and trained soldiers were treated in the same way.

104. **Bosco NTAGANDA** and other commanders led by negative example. They raped girl and women soldiers, including those below the age of 15, and kept them as sex slaves.

105. **Bosco NTAGANDA** himself raped and/or sexually enslaved women and girls in the UPC/FPLC, including in his escort, which communicated a message of official approval and further contributed to the crimes.

106. **Bosco NTAGANDA** failed to take all necessary and reasonable measures within his power to prevent or repress these crimes or to punish the perpetrators.

107. The rape and sexual enslavement of child soldiers by UPC/FPLC commanders and soldiers constitute war crimes. Child soldiers are afforded general protections against sexual violence under the fundamental guarantees applicable to persons affected by non-international armed conflict.¹² They also have special protections because of their vulnerability as children.¹³ Both of these levels of protections support the recognition of child soldiers as victims of sexual violence for the purposes of charges under article 8(2)(e)(vi).

108. Evidence of the rape and sexual slavery of UPC/FPLC soldiers of all ages is relevant to prove a pattern of conduct and **Bosco NTAGANDA**'s intent and knowledge even if the charges relate solely to UPC/FPLC child soldiers under the age of 15.

G. FACTS RELEVANT TO ESTABLISH INDIVIDUAL CRIMINAL RESPONSIBILITY OF BOSCO NTAGANDA

109. **Bosco NTAGANDA** bears individual criminal responsibility for the crimes charged in this DCC which he committed, ordered, induced and/or attempted, pursuant to article 25(3)(a) as a direct perpetrator, a direct co-perpetrator and/or an indirect co-perpetrator, articles 25(3)(b) and 25(3)(f), or to which he contributed pursuant to article 25(3)(d), or as a military commander pursuant to article 28(a).

¹² Article 4 of Additional Protocol II and Common Article 3 of the Geneva Conventions.

¹³ Article 4(3) of Additional Protocol II.

110. In its Decision on the Prosecutor's application for a warrant of arrest, the Chamber noted that **Bosco NTAGANDA's** liability as an indirect co-perpetrator "does not prejudice any subsequent finding regarding the applicability of a different mode of liability at a later stage of the proceedings".¹⁴ The Prosecution charges alternative modes of liability arising out of the same factual circumstances in order to provide notice to the Defence at the outset rather than through notification pursuant to regulation 55(2) of the Regulations of the Court at a later stage in the proceedings. Ultimately, if the charges are confirmed, the Trial Chamber will determine whether the person charged is criminally responsible and, if so, under which mode(s) of liability. Confirming charges for alternative modes of liability promotes judicial efficiency and reduces the potential disruptive effect at the trial stage of notification that the legal characterisation of the facts may change. The Prosecution submits that the options available to the Trial Chamber should not be artificially reduced, provided the alternate modes of liability are supported by the evidence.

i. Article 25(3)(a) of the Rome Statute

a) Common Plan between Bosco NTAGANDA and Co-Perpetrators

111. **Bosco NTAGANDA** committed each of the charged crimes in concert with others either personally or through his contribution to the Common Plan, set out in paragraph 1 above, by means which included the commission of crimes. **Bosco NTAGANDA**, **LUBANGA**, **KISEMBO** (until early December 2003) and others were co-perpetrators to the Common Plan which lasted from 2 July 2002 to 31 December 2003.

¹⁴ ICC-01/04-02/06-36-Red, para.66.

112. As described in paragraph 23, the co-perpetrators were associated since 2000. In 2002, LUBANGA was the Minister of Defence in the RCD-K/ML and President of the UPC; **Bosco NTAGANDA** was a member of the APC, the armed wing of the RCD-K/ML. A rivalry and rift had developed between LUBANGA, (supported by **Bosco NTAGANDA** and KISEMBO), and President NYAMWISI of the RCD-K/ML.

113. In March -April 2002, **Bosco NTAGANDA** and co-perpetrators within the APC who were loyal to LUBANGA revolted against President NYAMWISI. The very same persons who had orchestrated the first mutiny within the APC in 2000 (namely, **Bosco NTAGANDA**, KISEMBO, TCHALIGONZA, KASANGAKI, BAGONZA) acted together again with LUBANGA to organise this second revolt against President NYAMWISI and the RCD-K/ML in 2002.

114. Between April and August 2002, **Bosco NTAGANDA** and other co-perpetrators contributed to the implementation of the Common Plan by establishing training camps, recruiting young persons including children under the age of 15, securing weapons and uniforms for the recruits and leading the operation to oust the RCD-K/ML and take control of Bunia on behalf of the UPC/FPLC.

115. The UPC headquarters in Bunia was used in the summer of 2002 to train recruits, including children under the age of 15. They were trained to take control of Bunia, and Ituri, by means which included the commission of crimes.

116. **Bosco NTAGANDA** was a commander in the attack on Bunia in early August 2002 by the forces that became the FPLC, in which the UPDF provided support. The UPC/FPLC took control of Bunia which resulted in

the displacement of thousands of civilians, the murder of some 100 civilians, rape, and large-scale pillaging and destruction of property.

117. Following this attack, the UPC officially emerged as the movement in power. On 11 August 2002, LUBANGA and others who held positions in the UPC signed a declaration declaring that they were in charge of the political, economic and military management of Ituri.

118. On 2 and 3 September 2002, President LUBANGA formally established and named the UPC's military wing, the FPLC, thereby formalising the existing military structure of the UPC. He appointed KISEMBO and **Bosco NTAGANDA** as Chief of Staff and Deputy Chief of Staff, respectively. He appointed KAHWA as Minister of Defence, and placed RAFIKI in charge of security and head of the AGS. TCHALIGONZA, BAGONZA and KASANGAKI were senior military commanders. He appointed his full political executive.

119. The co-perpetrators met frequently to discuss strategy and the implementation of the Common Plan.

b) UPC/FPLC Organised and Hierarchical Apparatus of Power

120. The implementation of the Common Plan was effected by an organised hierarchy, comprised of LUBANGA as President and Commander in Chief, KISEMBO as Chief of Staff and **Bosco NTAGANDA** as Deputy Chief of Staff.

121. From its creation on 15 September 2000, the UPC quickly developed into a sophisticated and structured political organisation. The UPC's administration of Ituri resembled that of a government running a country, with national secretaries working directly with President LUBANGA.

122. The UPC's military wing, the FPLC, was formally established in September 2002, through the appointment of commanders and soldiers who were already associated with the UPC. Staff officers in charge of Personnel, Intelligence, Logistics, Administration, Civilian and Military operations reported to the Chief of Staff and the Deputy Chief of Staff in charge of operations and organisation.

123. The FPLC was a fully-functioning army with its main staff headquarters located in Bunia. It was comprised of sectors, brigades, battalions, companies, platoons and sections situated throughout Ituri, with each brigade containing between approximately 1000-1500 soldiers. It operated according to a chain of command where reports and orders were relayed down from headquarters to the field and up the chain of command. It mirrored the conventional structure of a traditional army, within which **Bosco NTAGANDA** discharged significant military functions.

124. The UPC/FPLC troops also received military training including in arms, drills, tactics and respect for hierarchy.

125. The UPC/FPLC had an effective communications system that used satellite communications and Motorola "*radio-phonies*" ("manpacks"), with most officers and commanders using individual military 'call-signs' during their communications. There were structured and efficient reporting mechanisms, which enabled the FPLC hierarchy, including **Bosco NTAGANDA**, to be informed of all critical developments.

c) Contribution of Bosco Ntaganda

126. **Bosco NTAGANDA** contributed to the crimes charged in the following ways:

- a) recruiting, training and using young persons, including under the age of 15, to participate actively in hostilities;
- b) planning the attacks and ordering and encouraging the UPC/FPLC and the Hema civilian supporters to commit crimes by securing and distributing weapons and ammunition in advance of and during attacks, deploying troops, commanding operations, communicating with superiors and subordinates on military matters;
- c) meeting and maintaining regular contact with his co-perpetrators to discuss the implementation of the Common Plan, briefing and instructing the troops on operational matters; and
- d) facilitating and/or encouraging the commission of crimes by the UPC/FPLC and the Hema civilian supporters through his own criminal actions and by failing, while under a duty stemming from his position, to take adequate steps to prevent, repress or punish the perpetrators of such crimes.

127. **Bosco NTAGANDA** was in constant communication with his co-perpetrators and his subordinates, whether at headquarters or in the field. He regularly communicated with his soldiers by Motorola radio, one of the means of communication in the UPC/FPLC. **Bosco NTAGANDA** also communicated via satellite phone and long-distance radio. His call sign was "Tango-Romeo."

128. **Bosco NTAGANDA** recruited soldiers, including children under the age of 15. He regularly inspected the training camps, saw the children being trained, encouraged them, and also attended 'passing out' ceremonies when child recruits had finished their training and were ready for

deployment and use. At one visit to Rwampara training camp on 12 February 2003, LUBANGA gave a speech to the recruits in which he stated that **Bosco NTAGANDA** must visit the recruits in the training camp because he needed troops. LUBANGA explained that he, **Bosco NTAGANDA** and other senior leaders of the UPC/FPLC had come to encourage the recruits in their training.

129. **Bosco NTAGANDA** acquired and distributed weapons and ammunition within the UPC/FPLC. His own residence in Bunia was the site of a weapons depot. Weapons would come from Rwanda and **Bosco NTAGANDA** would collect and distribute them. **Bosco NTAGANDA** personally transported weapons and ammunition by aircraft to the troops stationed in Aru in preparation for the attack on Mongbwalu.

130. As Deputy Chief of Staff in charge of operations, **Bosco NTAGANDA** conceived of and planned military operations. In his role as operations commander, **Bosco NTAGANDA** created sectors, deployed troops to the field and was a key commander of military operations.

131. During the Mongbwalu attack in November 2002, **Bosco NTAGANDA** deployed troops, briefed them in advance of the attack and gave specific instructions to carry out criminal activities. He participated in planning meetings for the attack in the Walendu-Djatsi *collectivité* including in Lipri, Kobu and Bambu, and played a key role in commanding the attack from Bunia. **Bosco NTAGANDA's** failure to punish any of the perpetrators of the crimes committed during these two attacks confirmed his approval and encouragement of the crimes.

d) Execution of the Crimes was Secured by Almost Automatic Compliance with Orders Given by Bosco NTAGANDA and his Co-Perpetrators

132. In light of the structure and size of the UPC/FPLC, **Bosco NTAGANDA** and senior UPC/FPLC members were assured that their subordinates, including the direct perpetrators of the crimes, would comply with their instructions. This is corroborated by the fact that: (a) the perpetrators did not act alone but attacked in groups often composed of dozens of persons; (b) the perpetrators were well armed, including with heavy military weapons; and (c) the perpetrators received military training, including on obedience to hierarchy. **Bosco NTAGANDA** played a dominant role in the military and in the planning and preparatory phases of the attacks. He distributed weapons, decided on deployments, created military sectors, issued orders and expected them to be complied with.

ii. Articles 25(3)(b),(d) and (f) of the Rome Statute

133. In the alternative, **Bosco NTAGANDA** is individually criminally responsible pursuant to articles 25(3)(b), (d) or (f) for the crimes charged.

134. **Bosco NTAGANDA** ordered or induced the commission of crimes. He held a position of influence as Deputy Chief of Staff in charge of operations in the UPC/FPLC. He had command authority over the troops and routinely issued military orders during the course of operations. In addition to ordering the commission of crimes, he personally committed crimes which, coupled with his failure to prevent and punish UPC/FPLC troops for committing these crimes on each occasion, sent a clear signal to the UPC/FPLC troops that the commission of crimes was officially tolerated. His orders and inducement had a direct effect on the commission or attempted commission of the crimes.

135. **Bosco NTAGANDA** contributed to the commission or attempted commission of crimes by a group of persons, including LUBANGA and KISEMBO, who were acting with a common purpose to further their criminal activity or criminal purpose to take over Ituri and expel the non-Hema population by means which involved the commission of crimes. Alternatively, **Bosco NTAGANDA** knew the group's intention to commit the crimes. As set out in paragraphs 126-131 **Bosco NTAGANDA** planned military operations, deployed troops, supplied weapons and ammunition to troops, created military sectors, issued orders during military operations, participated in military operations in which crimes against civilians were committed, recruited and trained recruits including children under the age of 15 and used them to participate actively in hostilities. He was in constant contact with the persons acting with a common purpose.

136. **Bosco NTAGANDA** is also criminally responsible for the attempted murders by the UPC/FPLC troops acting under his orders or instigation, or acting further to the co-perpetrators' Common Plan.

a) *Bosco NTAGANDA fulfils the Subjective Elements of the Crimes Charged*

137. **Bosco NTAGANDA** intended to bring about the objective elements of the crimes, and/or was aware that they would occur in the ordinary course of events in implementing the Common Plan. He knew that his conduct was part of a widespread or systematic attack against the non-Hema civilian population pursuant to, or in furtherance of, the organisational policy and was aware of the factual circumstances that established the existence of an armed conflict.

138. As one of the central figures in the Common Plan, and due to his command and control over the FPLC, **Bosco NTAGANDA** had full knowledge that his contribution to the Common Plan would bring about the objective elements of the crimes charged and intended that it be so.

139. The attacks prior and subsequent to the charged attacks described at paragraphs 43-52 are relevant to **Bosco NTAGANDA's** intent and knowledge of the crimes charged. **Bosco NTAGANDA** participated in or commanded attacks prior to the two charged attacks and, as such, the prior and subsequent attacks indicate a continuous pattern of conduct. The prior attacks were so widespread or systematic that **Bosco NTAGANDA** had to have known, at a minimum, that the same type of prohibited acts perpetrated during those attacks would occur in the ordinary course of events of the two charged attacks. This is particularly so given that the direct perpetrators who were deployed in the two charged attacks had previously been deployed in a number of those prior attacks.

140. **Bosco NTAGANDA's** involvement in subsequent attacks perpetrated by the CNDP, for which he was Chief of Staff of its armed wing, and the M23 during which similar crimes were committed against civilians indicates a continuing pattern of conduct.

b) Bosco NTAGANDA and Co-Perpetrators were Aware and Accepted that Implementing the Common Plan would Result in the Realisation of the Objective Elements of the Crimes

141. **Bosco NTAGANDA** and his co-perpetrators were mutually aware and accepted that implementing the Common Plan would, in the ordinary course of events, result in the attacks on the non-Hema civilian population and in the commission of the crimes charged in this DCC. **Bosco NTAGANDA** and others planned and prepared to use violent

means to expel the non-Hema civilian population from the predominantly non-Hema civilian areas in Ituri and to assume military, political and economic domination of Ituri.

142. **Bosco NTAGANDA**'s intent and/or knowledge is established from the following facts: (a) he and his co-perpetrators adopted the Common Plan; (b) he knew that his co-perpetrators, some of whom also exercised command authority and control over the UPC/FPLC espoused the Common Plan; (c) he knew about the roles that other co-perpetrators were assigned in the Common Plan and the means they had at their disposal to implement it; (d) he met frequently with his co-perpetrators to discuss and coordinate the implementation of the Common Plan; (e) he gave instructions to his subordinates to implement the Common Plan; (f) he provided weapons and troops for the two charged attacks; (g) he kept direct contact with the UPC/FPLC forces involved in the two charged attacks; (h) he directly participated in the attack on Banyali-Kilo *collectivité*; (i) he was aware of the contribution that other members of the Common Plan provided towards its implementation; (j) as the Deputy Chief of Staff in charge of operations he was briefed by his subordinates and co-perpetrators about the situation on the ground in the course of the attacks; and (k) he knew about the crimes committed by UPC/FPLC forces and the Hema civilian supporters.

143. The co-perpetrators' intent and/or knowledge is established from the following facts: (a) their adoption of the Common Plan; (b) their knowledge that **Bosco NTAGANDA** had adopted the Common Plan; (c) their attendance at meetings together with **Bosco NTAGANDA** or other co-perpetrators to discuss and coordinate the implementation of the Common Plan; (d) their awareness of the means and authority at their disposal to implement the Common Plan; and (e) their respective

contributions to the implementation of the Common Plan, including recruiting, arming, financing, coordinating and instructing the direct perpetrators.

c) *Bosco NTAGANDA was Aware of the Factual Circumstances Enabling him and his Co-Perpetrators to Exercise Joint Control over the Crimes*

144. **Bosco NTAGANDA's** knowledge of the factual circumstances that enabled him to exercise control over the crimes jointly with his co-perpetrators can be established from the following facts: (a) he was aware that he exercised *de jure* and *de facto* command authority over the UPC/FPLC and over the Hema civilian supporters; (b) his role and command authority within the UPC/FPLC as Deputy Chief of Staff, in charge of operations; (c) his role in planning and in providing logistical support, including weapons and troops, for the two charged attacks; (d) his direct participation in the attack on the Banyali-Kilo *collectivité* and in other attacks; (e) his knowledge that other co-perpetrators espoused the Common Plan and were willing to implement it; (e) his knowledge that other members of the Common Plan also exercised command and control over the UPC/FPLC and the Hema civilian supporters; (f) his knowledge that the UPC/FPLC had an effective structure and hierarchy; and (g) his knowledge of the size of the UPC/FPLC, and its composition of trained soldiers with obedience to hierarchy.

d) *Subjective elements of article 25(3)(b)*

145. **Bosco NTAGANDA** knew that the crimes would be committed in the ordinary course of events as a consequence of the execution of the order or as a result of the inducement. As Deputy Chief of Staff in charge of operations and organisation, in a structured armed group such as the UPC/FPLC where the soldiers were trained in obedience to hierarchy and where strict chains of command were imposed, **Bosco NTAGANDA**

knew that his orders would be executed. He also knew that his own commission of crimes and his failure to prevent, repress or punish crimes served as approval and inducement for the commission of crimes by the UPC/FPLC and Hema civilian supporters.

e) Subjective elements of article 25(3)(d)

146. **Bosco NTAGANDA**'s intentional contributions were made with the aim of furthering the criminal activity or criminal purpose of the group or in the knowledge of the intention of the group to commit the crimes. This is shown by his position within the UPC/FPLC, his command of troops, his role in planning and participating in attacks, his communication with and to subordinates and members of the group and his knowledge of the crimes.

iii. Article 28 of the Rome Statute

147. In the further alternative, **Bosco NTAGANDA** is individually criminally responsible as a military commander pursuant to article 28(a) for the crimes charged.

148. From at least 2 July 2002 to 31 December 2003, **Bosco NTAGANDA** was one of the highest military authorities in the UPC/FPLC. In his capacity as Deputy Chief of Staff in charge of operations and then as Chief of Staff, he was the military commander of, and had effective command and control over, the UPC/FPLC troops and the Hema civilian supporters that participated in the crimes alleged in this DCC.

149. **Bosco NTAGANDA** knew or, owing to the circumstances at the time, should have known that the UPC/FPLC and Hema civilian supporters were committing or were about to commit the crimes through numerous sources, including:

- a) his own involvement in the preparation, planning and/or execution of such crimes;
- b) his receipt of information about the commission of such crimes from members of the UPC/FPLC and the international community, the media and/or other persons;
- c) his knowledge that UPC/FPLC Commanders MULENDA, SIMBA, ABELANGA and LINGANGA committed rapes on Lendu civilians; and
- d) his personal observation of the commission of such crimes.

150. **Bosco NTAGANDA** failed to take all necessary and reasonable measures within his power to prevent or repress the commission of crimes by members of the UPC/FPLC and the Hema civilian supporters and/or to punish the perpetrators of these crimes and/or to refer or submit the matter to the competent authorities. The acts and omissions of **Bosco NTAGANDA** that demonstrate his failure to take all such necessary and reasonable measures include:

- a) his failure to order or initiate genuine or adequate investigations into credible allegations of the commission of crimes by UPC/FPLC forces and/or the Hema civilian supporters;
- b) his failure to report information about the commission or possible commission of crimes by the UPC/FPLC forces and/or the Hema civilian supporters to the appropriate authorities;
- c) his failure to discipline, dismiss, demote or refrain from promoting or rewarding members of the UPC/FPLC forces and/or the Hema civilian supporters who were involved in the

commission of crimes and/or who failed to prevent or punish the commission of crimes by their subordinates; and

- d) his failure to issue orders that were necessary and reasonable in the circumstances to prevent or repress the commission of crimes by the UPC/FPLC forces and/or the Hema civilian supporters.

151. **Bosco NTAGANDA**'s failure to exercise his duty to prevent crimes increased the risk that the forces would commit these crimes.

H. THE CHARGES

i. Relevant Facts and circumstances

a) Relevant to charges pursuant to Article 25(3)(a), (b) and (d)

152. **Bosco NTAGANDA** became Deputy Chief of Staff in charge of operations in the UPC/FPLC in early September 2002. Before that, he was the key operations commander in the forces that were to officially become the FPLC. Between July 2002 and end December 2003, **Bosco NTAGANDA** exercised military command and control over these troops, and over the Hema civilian supporters whom he and his co-perpetrators engaged to carry out crimes, in concert with the UPC/FPLC. By December 2003, he was appointed Chief of Staff.

153. The UPC/FPLC was an organised and hierarchically structured apparatus of power. By virtue of his position of military command and his contribution to the Common Plan, including his direct participation in the crimes, **Bosco NTAGANDA** (together with his co-perpetrators who exercised command and control and made contributions to the Common

Plan) had the ability to commit crimes himself and to use the UPC/FPLC to further the criminal purpose and to commit the crimes charged.

154. By April 2002, **Bosco NTAGANDA** and his co-perpetrators adopted the Common Plan. In implementing the Common Plan, the co-perpetrators, UPC/FPLC troops and the Hema civilian supporters committed a series of crimes, including the crimes charged.

155. Between July 2002 and December 2003, **Bosco NTAGANDA** personally committed, committed in concert with others; and/or ordered or induced; and/or otherwise contributed to the commission or attempted commission of the murder, persecution, attacks against the civilian population, forcible transfer, rape, sexual slavery, pillaging and destruction of property of the non-Hema civilian population and of the attacks against protected objects in the Banyali-Kilo and Walendu-Djatsi *collectivités* in Ituri.

156. Between July 2002 and December 2003, **Bosco NTAGANDA** committed jointly with others or through the UPC/FPLC, and/or ordered or induced, the enlistment and conscription of children under the age of 15 and their use to participate actively in hostilities, as well as the rape and sexual slavery of UPC/FPLC soldiers under the age of 15, as set out in paragraphs 65, 92-99 and 100-106.

157. The acts of murder and attempted murder that formed part of the Common Plan were carried out on or about 15 November 2002 to on or about 3 March 2003 by **Bosco NTAGANDA**, the UPC/FPLC and the Hema civilian supporters. They include:

- a) murder and attempted murder during and after the UPC/FPLC attack on Mongbwalu (and Banyali-Kilo *collectivité*) on or about 15

November to on or about 15 December 2002, as set out in paragraphs 63, 67-71 and 74; and

b) murder and attempted murder during and after the UPC/FPLC attack on Walendu-Djatsi *collectivité* on or about 16 February to on or about 3 March 2003, as set out in paragraphs 78-81, 83-84, 86 and 89-90.

158. The acts of persecution that formed part of the Common Plan were carried out on or about 15 November 2002 to on or about 3 March 2003 by **Bosco NTAGANDA**, the UPC/FPLC and the Hema civilian supporters. They are illustrative of a wider persecutory campaign implemented throughout Ituri.

159. Throughout the period of the charges, beginning in July 2002, the UPC/FPLC forces with the Hema civilian supporters attacked and/or took control of predominantly non-Hema towns and villages throughout Ituri. The takeovers continued into 2003.

160. During and after these attacks, and continuing until 31 December 2003, the UPC/FPLC carried out persecutory acts against the non-Hema population, particularly the Lendu, including forcible transfer, murder and attempted murder, rape and sexual slavery. These acts and the threat of further acts caused the non-Hema population, particularly the Lendu, to flee in fear. Thousands of Lendu and other non-Hema were displaced, often multiple times, from their homes and initial places of refuge in the Banyali-Kilo and Walendu-Djatsi *collectivités*.

161. **Bosco NTAGANDA** intended to commit the acts on ethnic grounds and/or was aware that in the ordinary course of events in implementing the Common Plan such acts would be committed or had been committed.

162. The acts of persecution carried out by the co-perpetrators, the UPC/FPLC troops with the Hema civilian supporters pursuant to the Common Plan included:

- a) forcible transfer of the non-Hema population, particularly the Lendu, from their homes in the Banyali-Kilo *collectivité* on or about 15 November to on or about 15 December 2002, and in the Walendu-Djatsi *collectivité* on or about 16 February to on or about 3 March 2003, as set out in paragraphs 67, 68-69, 71, 74, 76, 78-79, 81, 83-84 and 86-87;
- b) murder and attempted murder during and after the attack on Mongbwalu (and the Banyali-Kilo *collectivité*) in November and December 2002, and after the the attack on the Walendu-Djatsi *collectivité* on or about 16 February to on or about 3 March 2003, as set out in paragraphs 63, 67-71, 74, 78-81, 83-84, 86 and 89-90; and
- c) rape and sexual slavery of the non-Hema civilian population during and after the attack on Mongbwalu (and the Banyali-Kilo *collectivité*) in November and December 2002, and during and after the attack on the Walendu-Djatsi *collectivité* on or about 16 February to on or about 3 March 2003, as set out in paragraphs 67, 72, 74, 77-79, 84, 89.

163. Beginning in August 2002, the attack against the civilian population committed by the UPC/FPLC, which included murder, rape, sexual slavery, pillaging, destruction of property and attacks on protected objects, caused the non-Hema population, particularly Lendu, to flee in fear. As a result of these acts, many non-Hema civilians and other persons not taking active part in hostilities in the Banyali-Kilo and Walendu-Djatsi *collectivités* were forcibly displaced from November 2002 through to

March 2003, as set out in paragraphs 67, 68-69, 71, 74, 76, 78-79, 81, 83-84 and 86-87.

164. As alleged in paragraphs 92-99, starting from at least July 2002 through to December 2003, and in various locations throughout Ituri including Bunia, **Bosco NTAGANDA** and his co-perpetrators directly, jointly and through others recruited children under the age of 15 into the UPC/FPLC and used them to participate actively in hostilities.

165. **Bosco NTAGANDA**, in concert with others, ordered and/or induced attacks against protected objects in Mongbwalu and Sayo in November 2002, and in Bambu in February 2003, as set out in paragraphs 69, 71-72, 78 and 81.

166. These acts constitute an attack against a civilian population that was widespread or systematic and pursuant to an organisational policy.

167. **Bosco NTAGANDA** contributed to the realisation of the crimes in the following ways:

- a) recruiting, training and using young persons, including children under the age of 15, to participate actively in hostilities;
- b) planning the attacks and ordering and encouraging the UPC/FPLC and the Hema civilian supporters to commit crimes, securing and distributing weapons and ammunition in advance of and during attacks, deploying troops, commanding operations, creating military sectors, communicating with superiors and subordinates on military matters;

- c) meeting and maintaining regular contact with his co-perpetrators to discuss the implementation of the Common Plan, briefing and instructing the troops on operational matters;
- d) failing to take adequate steps to prevent the commission of crimes against the non-Hema population residing in areas under their control; and
- e) facilitating and/or encouraging the commission of crimes by the UPC/FPLC and the Hema civilian supporters through his own criminal actions and by failing, while under a duty stemming from his position, to take adequate steps to prevent or repress such crimes or punish the perpetrators.

168. **Bosco NTAGANDA** induced the commission of the crimes charged through: (i) his orders to commit crimes; (ii) his own commission of crimes which encouraged his troops and the Hema civilian supporters by sending a message of official tolerance; and (iii) his use of derogatory terms towards the Lendu and non-Hema civilian population.

169. **Bosco NTAGANDA** further encouraged the UPC/FPLC troops and the Hema civilian supporters to commit the crimes by failing to take measures within his power to prevent, repress or punish the commission of crimes.

170. **Bosco NTAGANDA** also acted with the requisite intent and knowledge. **Bosco NTAGANDA** was aware that the Common Plan involved an element of criminality; he was aware of the fundamental features of the UPC/FPLC troops and the Hema civilian supporters and the factual circumstances that enabled him and his co-perpetrators to exercise joint control over the crimes. **Bosco NTAGANDA** further intended or knew

that his conduct was part of a widespread or systematic attack against a civilian population. He also knew that he acted pursuant to or in furtherance of the Common Plan. He was aware of the factual circumstances that established the existence of an armed conflict. **Bosco NTAGANDA** contributed to the crimes while being aware that the crimes would be committed in the ordinary course of events.

b) Relevant to Charges pursuant to Article 28(a)

171. As Deputy Chief of Staff in charge of operations and organisation, from at least July 2002 to December 2003, **Bosco NTAGANDA** was a military commander with effective command and control over the UPC/FPLC troops.

172. **Bosco NTAGANDA** had effective command and control over the UPC/FPLC troops and the Hema civilian supporters at all times relevant to the charges. From July 2002 to December 2003, **Bosco NTAGANDA**'s *de jure* and *de facto* command authority gave him the ability and power to prevent, repress and punish the commission of the crimes charged. The UPC/FPLC consisted of well-trained officers and soldiers and had a functioning command structure. **Bosco NTAGANDA** had the power to appoint, promote, demote, remove and punish commanders and soldiers, or to recommend that such measures be taken. He had the power to plan attacks, to instruct commanders and soldiers, and to command operations. He had the power to arm the UPC/FPLC forces, to deploy or withdraw troops, and to ensure his subordinates complied with his orders.

173. **Bosco NTAGANDA** knew, or owing to the circumstances at the time, should have known that the UPC/FPLC troops and the Hema civilian supporters were committing or were about to commit the crimes charged.

Bosco NTAGANDA failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the crimes charged or to punish the perpetrators.

174. The authority of other co-perpetrators over their subordinates neither excluded nor diminished **Bosco NTAGANDA's** effective command and control over the UPC/FPLC forces and the Hema civilian supporters, which he maintained throughout the period relevant to the charges.

175. Due to **Bosco NTAGANDA's** command and control over the UPC/FPLC forces and the Hema civilian supporters as described above, his failure to take measures to prevent crimes increased the risk that the UPC/FPLC forces and the Hema civilian supporters committed the crimes charged. He further failed to repress crimes, punish perpetrators or submit the matter for investigation or prosecution.

176. The charged crimes committed by the UPC/FPLC forces and the Hema civilian supporters concern activities that were within the effective responsibility and control of **Bosco NTAGANDA**.

ii. Legal characterisation of the facts

COUNTS 1 and 2: MURDER AND ATTEMPTED MURDER

Based on the facts and circumstances described in paragraphs 63, 67-71, 74, 78-81, 83-84, 86 and 89-90, **Bosco NTAGANDA** is criminally responsible for:

Count 1: Murder and attempted murder of civilians, a **crime against humanity**, punishable pursuant to articles 7(1)(a), as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), 25(3)(f) or 28(a).

Count 2: - Murder and attempted murder of civilians, **a war crime**, punishable pursuant to article 8(2)(c)(i), as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), 25(3)(f) or 28(a).

COUNT 3: ATTACKS AGAINST THE CIVILIAN POPULATION

Based on the facts and circumstances described in paragraphs 63-91, **Bosco NTAGANDA** is criminally responsible for:

Count 3: Attacks against a civilian population, **a war crime**, punishable pursuant to article 8(2)(e)(i), as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii) or 28(a).

COUNTS 4 and 5: RAPE OF CIVILIANS

Based on the facts and circumstances described in paragraphs 67, 72, 74, 77-79, 84, 89, **Bosco NTAGANDA** is criminally responsible for:

Count 4: Rape of civilians, **a crime against humanity**, punishable pursuant to articles 7(1)(g), as well as 25(3)(a) – direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii) or 28(a).

Count 5: Rape of civilians, **a war crime**, punishable pursuant to article 8(2)(e)(vi), as well as 25(3)(a) – direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii) or 28(a).

COUNT 6: RAPE OF UPC/FPLC CHILD SOLDIERS

Based on the facts and circumstances described in paragraphs 100-106, **Bosco NTAGANDA** is criminally responsible for:

Count 6: Rape of UPC/FPLC child soldiers, **a war crime**, punishable pursuant to article 8(2)(e)(vi), as well as 25(3)(a) – direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

COUNTS 7 and 8: SEXUAL SLAVERY OF CIVILIANS

Based on the facts and circumstances described in paragraphs 67, 72, 74, 77-79, 84, 89, **Bosco NTAGANDA** is criminally responsible for:

Count 7: Sexual slavery of civilians, **a crime against humanity**, punishable pursuant to articles 7(1)(g), as well as 25(3)(a) – direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

Count 8: Sexual slavery of civilians, **a war crime**, punishable pursuant to article 8(2)(e)(vi), as well as 25(3)(a) – direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

COUNT 9: SEXUAL SLAVERY OF UPC/FPLC CHILD SOLDIERS

Based on the facts and circumstances described in paragraphs 100-106, **Bosco NTAGANDA** is criminally responsible for:

Count 9: Sexual slavery of UPC/FPLC child soldiers, **a war crime**, punishable pursuant to article 8(2)(e)(vi), as well as 25(3)(a) – direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

COUNT 10: PERSECUTION

Based on the facts and circumstances described in paragraphs 63, 67-72, 74, 76-81, 83-84, 86-87 and 89-90, **Bosco NTAGANDA** is criminally responsible for:

Count 10: Persecution on ethnic grounds, a **crime against humanity**, punishable pursuant to 7(1)(h), as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

COUNT 11: PILLAGING

Based on the facts and circumstances described in paragraphs 67, 72, 77-78, 81 and 84-85, **Bosco NTAGANDA** is criminally responsible for:

Count 11: Pillaging, a **war crime**, punishable pursuant to article 8(2)(e)(v), as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

COUNT 12 and 13: FORCIBLE TRANSFER OF POPULATION

Based on the facts and circumstances described in paragraphs 67, 68-69, 71, 74, 76, 78-79, 81, 83-84 and 86-87, **Bosco NTAGANDA** is criminally responsible for:

Count 12: Forcible transfer of population, a **crime against humanity**, punishable pursuant to articles 7(1)(d) as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

Count 13: Displacement of civilians, a **war crime**, punishable pursuant to articles 8(2)(e)(viii) as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

COUNTS 14, 15 and 16: ENLISTMENT AND CONSCRIPTION OF CHILDREN UNDER 15 AND THEIR USE TO PARTICIPATE ACTIVELY IN HOSTILITIES

Based on the facts and circumstances described in paragraphs 65, 92-99, **Bosco NTAGANDA** is criminally responsible for:

Count 14: Conscription of children under the age of 15, a **war crime**, punishable pursuant to article 8(2)(e)(vii) as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

Count 15: Enlistment of children under the age of 15, a **war crime**, punishable pursuant to article 8(2)(e)(vii), 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

Count 16: Use of children under the age of 15 to participate actively in hostilities, a **war crime**, punishable pursuant to article 8(2)(e)(vii), as well as 25(3)(a) - direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

COUNT 17: ATTACKS AGAINST PROTECTED OBJECTS

Based on the facts and circumstances described in paragraphs 69, 71-72, 78 and 81, **Bosco NTAGANDA** is criminally responsible for:

Count 17: Attacks against protected objects, a **war crime**, punishable pursuant to article 8(2)(e)(iv) as well as 25(3)(a) -- direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).

COUNT 18: DESTRUCTION OF PROPERTY

Based on the facts and circumstances described in paragraphs 67, 73, 77-78, 80-81, 85, 89, **Bosco NTAGANDA** is criminally responsible for:

Count 18: Destruction of property, a **war crime**, punishable pursuant to article 8(2)(e)(xii), as well as 25(3)(a) – direct perpetration, direct or indirect co-perpetration, 25(3)(b), 25(3)(d)(i) or (ii), or 28(a).