

PUBLIC

Annex C

Disagreements identified below require further submissions from the parties

	Reference	Text	Defence Comment	Prosecution Comment
1	Para. 72	Women prisoners held captive at Bosco NTAGANDA's apartment <u>camp</u> in Mongbwalu were raped by his troops.	The word "Women" should be replaced by the phrase "The three nuns", so as to accurately reflect the findings of the Pre-Trial Chamber in paragraph 49 of its Decision.	This language accurately reflects the Decision at para.49: The Chamber found that " <i>After the takeover of Mongbwalu, UPC/FPLC soldiers also committed acts of rape against civilian women in Mongbwalu</i> ". The Chamber then provides what are clearly <u>examples</u> only, stating this finding is " <u>demonstrated by</u> the following facts", referring to the specific example of the three nuns. The Chamber is silent as to whether there may be other examples. It is therefore not appropriate to limit the phrase "women prisoners" to only the three nuns, who in any event were indeed "women prisoners".
2	Para. 72	UPC/FPLC commanders had 'concubines' at their camp in Mongbwalu.	This sentence should be deleted, since the Pre-Trial Chamber found that there are no substantial grounds to believe that UPC/FPLC soldiers committed acts of sexual slavery during the First Attack, as specified in paragraph 53 of its Decision.	The <u>Decision</u> did not explicitly reject these facts and this statement does not modify or exceed the charges. The phrase " <i>concubines</i> " is not a legal term, in contrast to the term " <i>sexual slaves</i> " which the Prosecution deleted from paragraph 74. Instead, this language reflects the quoted evidence from a witness and as such should not be deleted.
3	Para. 79	<u>The UPC/FPLC also forcibly transferred civilians from villages</u>	The word "including" added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the	The Decision does not expressly reject "including in" from the original DCC. Article 61(7) requires the Chamber to reject charges

		<p><u>surrounding Lipri, Kobu and Bambu, during the Second Attack, including in Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu and Gutsi. For example, before being attacked, Lipri accommodated approximately 1,200 persons displaced from inter alia, Nyangaray, which were attacked by the UPC/FPLC shortly before Lipri.</u></p>	<p>geographical scope of counts 12-13 as regards the Second Attack to the locations specified in paragraph 36 of its Decision.</p>	<p>and/or facts expressly. Limiting the charges only to precise villages does not accurately reflect the Decision as a whole. Paragraph 36 must be read together with: (a) para. 29: “<u>a number of villages</u> in [the collectivités] as identified by the Chamber”; (b) para. 37: the findings of para. 36 are more specifically supported by the facts in paras. 38-73; (c) paras. 38-73: incorporate more inclusive language such as: “displaced from, <u>inter alia...</u>”; “fled to other locations <u>such as...</u>”; “<u>in [neighbouring/surrounding/other] village</u>”; “<u>surrounding [bush/forest]</u>”; “<u>in and around</u>”, “<u>heading to</u>”, “<u>on the road from...to...</u>” Deleting “including in” would undermine the PTC’s findings as to the continuing nature of the crimes of sexual slavery (e.g. paras. 56-57: individuals whose slavery started in Kobu and continued/ended in Bunia), and of forcible transfer/displacement (e.g. paras. 65-67: examples of civilians fleeing “from <u>villages surrounding ...</u>”; “...to other locations <u>such as...</u>”).</p>
4	Para. 84	<p><u>During the Second Attack, UPC/FPLC soldiers committed rape including in Lipri, Kobu, Bambu, Sangi and Buli and sexually enslaved women</u></p>	<p>The words “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of counts 4-5 and 7-8 as regards the Second Attack to the locations specified in paragraph 36 of its</p>	<p>Please refer to Point 3 above</p>

		<u>including in Kobu, Sangi, Buli, Jitchu and Ngabuli.</u>	Decision.	
5	Para. 85	The UPC/FPLC set <u>fire to the straw houses and destroyed permanent structures mostly by removing their metal roofs including in Kobu, Lipri, Bambu, Camp P.M., Buli, Jitchu, Djuba, Sangi, Tsili, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali and Ngabuli.</u>	The word “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of counts 3 and 18 as regards the Second Attack to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above
6	Para. 85	<u>Furthermore, UPC/FPLC troops destroyed fields including in Kobu, Camp P.M. and Lipri.</u> The UPC/FPLC destroyed and burned the villages after the departure of the adverse party.	The word “including” added by the Prosecution should be deleted, so as to accurately reflect the findings of the Pre-Trial Chamber in paragraph 73 of its Decision.	Please refer to Point 3 above and article 61(7) gives the PTC the power to confirm the charges, decline to confirm the charges and adjourn the hearing. There is no power to modify the charge. Where the PTC declines to confirm a charge, or rejects the facts and circumstances described in that charge and/or its legal characterisation, it must do so explicitly. Where there is no finding on a factual allegation, the Prosecution is entitled to retain the statement in the Updated DCC.
7	Para. 95	Camps were located on	The words “Centrale”, “Mahabusu”,	Please refer to Point 3 above and article 61(7)

		sites including Centrale, Mandro, Mahabusu, Lingo, Rwampara, Bule, Bogoro, Sota, Mongbwalu, Bunia, Fataki, Khari and Kilo.	“Bule”, “Bogoro”, “Sota”, “Fataki”, “Khari” and “Kilo” should be deleted, so as to accurately reflect the findings of the Pre-Trial Chamber in paragraph 87 of its Decision.	gives the PTC the power to confirm the charges, decline to confirm the charges and adjourn the hearing. There is no power to modify the charges. Where the PTC declines to confirm a charge, or rejects the facts and circumstances described in that charge and/or its legal characterisation, it must do so explicitly. Where there is no finding on a factual allegation, the Prosecution is entitled to retain the statement in the Updated DCC.
8	Para. 95	<u>Between on or about 6 August 2002 and August 2003, there were training camps including at (i) Mandro, from August 2002 until July 2003, (ii) at Rwampara, until August 2003 at the latest, (iii) at Lingo, until after the Lonyo battle, and (iv) in Mongbwalu, until August 2003.</u>	The word “including” added by the Prosecution should be deleted, so as to accurately reflect the findings of the Pre-Trial Chamber in paragraph 89 of its Decision.	Please refer to Point 3 above
9	Para. 98	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);	The phrases “Songolo (31 August 2002)”, “Libi (October 2002)”, “Mbau (October-November 2002)”, “Kpandroma (October 2002)”, “Mambasa”, “Eringeti”, “Mabanga (May or June 2003)” and “Lonyo (May or June 2003)” should be deleted, so as to reflect the findings of the	Article 61(7) gives the PTC the power to confirm the charges, decline to confirm the charges and adjourn the hearing. There is no power to modify the charges. Where the PTC declines to confirm a charge, or rejects the facts and circumstances described in that charge and/or its legal characterisation, it

		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.	Pre-Trial Chamber in paragraph 94.	must do so explicitly. Where there is no finding on a factual allegation, the Prosecution is entitled to retain the statement in the Updated DCC.
10	Para. 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.	The phrase “Bosco NTAGANDA and” should be deleted. Bosco NTAGANDA is not charged as a direct perpetrator with the crime of rape and sexual slavery of child soldiers (counts 6 and 9), as noted by the Pre-Trial Chamber in paragraph 144 of its Decision. The sentence beginning with the word “They” should be amended accordingly.	This mischaracterises the purpose of this paragraph. Bosco NTAGANDA was never charged as a direct perpetrator of the crimes of rape and sexual slavery of child soldiers (counts 6 and 9), so that the Chamber’s findings at para. 144 are not relevant. The Chamber did not make any finding regarding this assertion, and silence on the point cannot lead to deletion of the allegation. The information as to the negative example given by Bosco NTAGANDA and other commanders by their rapes and/or

				enslavement of girl and women UPC/FPLC soldiers, is relevant, <i>inter alia</i> : (a) to demonstrate Bosco NTAGANDA's intent and knowledge; (b) to support findings on the relevant modes of liability (including indirect co-perpetration and command responsibility); and (c) for contextual purposes, to demonstrate the widespread or systematic nature of these acts of rape and/or sexual slavery within the UPC/FPLC.
11	Para. 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.	The whole paragraph should be deleted. Bosco NTAGANDA is not charged as a direct perpetrator with the crime of rape and sexual slavery of child soldiers (counts 6 and 9), as noted by the Pre-Trial Chamber in paragraph 144 of its Decision.	This mischaracterises the purpose of this paragraph. Bosco NTAGANDA was never charged as a direct perpetrator of the crimes of rape and sexual slavery of child soldiers (counts 6 and 9), so that the Chamber's findings at para. 144 are not relevant. The Chamber did not make any finding regarding this assertion, and silence on the point cannot lead to deletion of the allegation. The information as to Bosco NTAGANDA's rapes and/or enslavement of girl and women UPC/FPLC soldiers, including in his escort, is relevant, <i>inter alia</i> : (a) to demonstrate Bosco NTAGANDA's intent and knowledge; (b) to support findings on the relevant modes of liability (including indirect co-perpetration and command responsibility); and (c) for contextual purposes, to demonstrate the widespread or systematic nature of these acts

				of rape and/or sexual slavery within the UPC/FPLC.
12	Para. 157-a	<p>They include:</p> <p>a. murder and attempted murder during and after the UPC/FPLC attack on Mongbwalu (and Banyali-Kilo <i>collectivité</i>, <u>including in Mongbwalu, Pluto, Nzebi, Sayo, Kilo</u>) <u>between</u> on or about <u>1520</u> November <u>2002</u> to and on or about <u>15 6</u> December 2002...</p>	The word “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of counts 1-2 as regards the First Attack to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above
13	Para. 157-b	<p>b. murder and attempted murder during and after the UPC/FPLC attack on Walendu-Djatsi <i>collectivité</i> (<u>including in Kobu, Sangi, Bambu, Lipri, Tsili, Ngongo, Jitchu</u>) <u>between</u> on or about <u>126</u> February to and on or about <u>27</u> February 2003 3 March 2003...</p>	The word “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of counts 1-2 as regards the Second Attack to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above
14	Para. 158	<u>This persecution occurred in Mongbwalu and</u>	The words “including” added by the Prosecution should be deleted, since the	Please refer to Point 3 above

		<u>Banyali Kilo collectivité (including in Mongbwalu, Pluto, Nzebi, Sayo, and Kilo), and Walendu Djatsi collectivité (including in Kobu, Sangi, Bambu, Lipri, Tsili, Ngongo, Jitchu, Buli, Nyangaray, Gutsi, Camp P.M., Djuba, Sangi, Katho, Gola, Mpetsi/Petsi, Avetso, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali, and Ngabuli).</u>	Pre-Trial Chamber limited the geographical scope of count 10 to the locations specified in paragraph 36 of its Decision.	
15	Para. 160	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 <i>collectivités</i> (<u>including in Mongbwalu, Nzebi, Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu, and Gutsi</u>).	The word “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of counts 12-13 to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above
16	Para. 162-a	The acts of persecution	The words “including” added by the	Please refer to Point 3 above

		<p>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 <u>Mongbwalu and the Banyali-Kilo collectivité (including in Mongbwalu and Nzebi between</u> on or about 20 <u>15</u> November to and on or about 15 <u>6</u> December 2002, and in the Walendu-Djatsi <i>collectivité (including in Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu and Gutsi)</i>, on or about 16-27 <u>12</u> February and to on or about 3 <u>27</u> February 2003 as set out in...</p>	<p>Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of counts 12-13 to the locations specified in paragraph 36 of its Decision.</p>	
17	Para. 162-b	<p>b. murder and attempted murder during and after the attack on Mongbwalu</p>	<p>The words “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the</p>	<p>Please refer to Point 3 above</p>

		(and the Banyali-Kilo <i>collectivité</i> <u>including in Mongbwalu, Pluto, Nzebi, Sayo and Kilo</u>) <u>between on or about 20</u> in November <u>2002</u> and <u>on or about 6</u> December 2002, and after the the attack on the Walendu-Djatsi <i>collectivité</i> <u>(including in Kobu, Sangi, Bambu, Lipri, Tsili, Ngongo and Jitchu)</u> <u>between</u> on or about 16 <u>12</u> February <u>2003</u> to and on or about <u>27</u> February <u>2003</u> 33—March 2003...	geographical scope of counts 1-2 to the locations specified in paragraph 36 of its Decision.	
18	Para. 162-c	c. rape and—sexual slavery of the non-Hema civilian population during and after the attack on Mongbwalu (and the Banyali-Kilo <i>collectivité</i> , <u>including in Mongbwalu, Kilo and Sayo</u>) <u>between on or about</u> in <u>20</u> November <u>2002</u> to and on or about <u>and</u> 6 December 2002, and	The words “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of counts 4-5 to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above

		<p><u>rape</u> during and after the attack on the Walendu-Djatsi <i>collectivité</i> (including in Lipri, Kobu, Bambu, Sangi and Buli) and sexual slavery during and after the attack on Walendu-Djatsi <i>collectivité</i> (including in Kobu, Sangi, Buli, Jitchu and Ngabuli) <u>between</u> on or about 1612 February 2003 toand on or about <u>27 February 2003</u>3 March 2003</p>		
19	Para. 163	<p>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 <i>collectivités</i> were forcibly displaced (including in <u>Mongbwalu, Nzebi, Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu and Gutsi</u>) from <u>between on or about 20 November 2002 through and on or about</u>to <u>27</u></p>	<p>The words “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of counts 12-13 to the locations specified in paragraph 36 of its Decision.</p>	<p>Please refer to Point 3 above</p>

		<u>February 2003 March 2003</u>		
20	Para. 165	<u>Between on or about 20 November 2002 and on or about 6 December 2002, Bosco NTAGANDA personally committed, committed through the UPC/FPLC, and/or ordered or induced, and/or contributed to the commission of or the attempted commission of, and/or is otherwise responsible as a commander for, attacks against protected objects in Mongbwalu and Banyali Kilo <i>collectivité</i> (including in Mongbwalu and Sayo).</u>	The word “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of count 18 as regards the First Attack to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above
21	Para. 165	<u>Between on or about 12 February 2003 and on or about 27 February 2003, Bosco NTAGANDA contributed to the commission or the attempted commission of, and/or is otherwise</u>	The word “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of count 18 as regards the Second Attack to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above

		<u>responsible as a commander for attacks on protected objects in Walendu Djatsi collectivité (including in Bambu)</u>		
22	p. 60 (Counts 1-2)		The list of locations specified in paragraph 36 of the Pre-Trial Chamber's Decision as regards counts 1-2 should be added. The word "including" should not be added.	Please refer to Point 3 above
23	p. 60-61 (Count 3)		The list of locations specified in paragraph 36 of the Pre-Trial Chamber's Decision as regards count 3 should be added. The word "including" should not be added.	Please refer to Point 3 above
24	p. 60-61 (Count 3)		The blanket reference to paragraphs 63-91 should be amended so as to exclude paragraph 87. The latter refers to acts of forcible displacement, which have been found not to be underlying acts of the crime of attacks against the civilian population, as evidenced by paragraph 48 of the Pre-Trial Chamber's Decision.	The Decision did not explicitly reject forcible displacement as an underlying act of attacks against civilian populations (WC). Further, the Decision delineated that "the Chamber considers, that in principle, any conduct [...] may constitute an act of violence for the purpose of the war crime of attacking civilians..." (ICC-01/04-02/06, para. 46). Therefore, given the PTC silence and explanation of the war crimes scope, paragraph 87 describing instances of forcible displacement should properly remain in Count 3.

25	p. 61 (Counts 4-5)		The list of locations specified in paragraph 36 of the Pre-Trial Chamber's Decision as regards counts 4-5 should be added. The word "including" should not be added.	Please refer to Point 3 above
26	p. 61-62 (Counts 7-8)		The list of locations specified in paragraph 36 of the Pre-Trial Chamber's Decision as regards counts 7-8 should be added. The word "including" should not be added.	Please refer to Point 3 above
27	p. 61-62 (Counts 7-8)		References to paragraphs 67, 71, 72 and 74 should be deleted, since the Pre-Trial Chamber found that there are no substantial grounds to believe that UPC/FPLC soldiers committed acts of sexual slavery during the First Attack, as specified in paragraph 53 of its Decision.	Although the Chamber decided that it did not consider the acts viewed together as a whole (as described <i>inter alia</i> , at paragraphs 67, 71, 72 and 74) legally amounted to sexual slavery in the <i>First Attack</i> , such acts including capturing, detaining and raping civilian female prisoners in prior incidents, that comprise some of the elements of sexual slavery, remain relevant for, <i>inter alia</i> : (a) contextual purposes for the findings of sexual slavery in the Second Attack; (b) Bosco NTAGANDA's intent and knowledge and; (c) the modes of liability for these counts (including command responsibility). The Chamber also upheld the factual findings contained in these paragraphs. Accordingly they should not be deleted as relevant paragraphs for counts 7-8.
28	p. 62		Reference to paragraph 105 should be	Bosco NTAGANDA was never charged as a

	(Count 9)		deleted, since Bosco NTAGANDA is not charged as a direct perpetrator with the crime of rape and sexual slavery of child soldiers (counts 6 and 9), as noted by the Pre-Trial Chamber in paragraph 144 of its Decision.	direct perpetrator of the crimes of rape and sexual slavery of child soldiers (counts 6 and 9), so that the Chamber's findings at para. 144 are not relevant. The Chamber did not make any finding regarding this assertion, and silence on the point cannot lead to deletion of the allegation. The information as to Bosco NTAGANDA's rapes and/or enslavement of girl and women UPC/FPLC soldiers, including in his escort, is relevant for Count 9, <i>inter alia</i> : (a) to demonstrate Bosco NTAGANDA's intent and knowledge; (b) to support findings on the relevant modes of liability (including indirect co-perpetration and command responsibility); and (c) for contextual purposes, to demonstrate the widespread or systematic nature of these acts of rape and/or sexual slavery within the UPC/FPLC.
29	p. 62 (Count 10)		The list of locations specified in paragraph 36 of the Pre-Trial Chamber's Decision as regards count 10 should be added. The word "including" should not be added.	Please refer to Point 3 above
30	p. 62-63 (Count 11)		The words "including" added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of count 11 to the locations specified in paragraph 36 of its	Please refer to Point 3 above

			Decision.	
31	p. 63-64 (Counts 12-13)		The words “including” added by the Prosecution should be deleted , since the Pre-Trial Chamber limited the geographical scope of counts 12-13 to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above
32	p. 64-65 (Count 17)		The words “including” added by the Prosecution should be deleted, since the Pre-Trial Chamber limited the geographical scope of count 17 to the locations specified in paragraph 36 of its Decision.	Please refer to Point 3 above
33	p. 65 (Count 18)		The list of locations specified in paragraph 36 of the Pre-Trial Chamber’s Decision as regards count 18 should be added. The word “including” should not be added.	Please refer to Point 3 above