

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

TRIAL CHAMBER VI

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public
With Public Annex 1

**PUBLIC REDACTED VERSION of the “CORRECTED VERSION of
Closing Brief of the Common Legal Representative
of the Victims of the Attacks” (ICC-01/04-02/06-2275-Conf-Corr)**

Source: Office of Public Counsel for Victims (CLR2)

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Ms Nicole Samson

Counsel for the Defence

Mr Stéphane Bourgon

Mr Christopher Gosnell

Legal Representatives of the Victims

Ms Sarah Pellet

Ms Vony Rambolamanana

Legal Representatives of the Applicants

Mr Dmytro Suprun

Ms Anne Grabowski

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TABLE OF CONTENTS

I.	CONFIDENTIALITY	5
II.	INTRODUCTION	5
III.	PROCEDURAL BACKGROUND	9
IV.	APPLICABLE LAW	14
A.	MENTAL ELEMENT	14
B.	LEGAL STANDARDS FOR INDIVIDUAL CRIMINAL RESPONSIBILITY	14
1.	Individual Criminal Responsibility – direct perpetration – Article 25(3)(a) of the Statute ..	15
2.	Individual Criminal Responsibility – ordering – Article 25(3)(b) of the Statute.....	16
3.	Responsibility of Commanders and Other Superiors – Article 28(a) of the Statute	18
C.	CONTEXTUAL ELEMENTS - CRIMES AGAINST HUMANITY.....	21
D.	CONTEXTUAL ELEMENTS – WAR CRIMES	23
E.	MATERIAL ELEMENTS OF THE CRIMES CHARGED	25
1.	Murder and attempted murder	25
a.	Murder and Attempted Murder as a crime against humanity - Article 7(1)(a) of the Statute	25
b.	Murder and Attempted Murder as a war crime – Article 8(2)(c)(i) of the Statute	25
2.	Attacks against the civilian population.....	26
a.	Attacks against a civilian population as a war crime – Article 8(2)(e)(i) of the Statute	26
3.	Rape.....	28
a.	Rape as a crime against humanity pursuant to Article 7(1)(g) of the Statute and as a war crime pursuant to Article 8 (2)(e)(vi) of the Statute	28
4.	Sexual Slavery	29
a.	Sexual Slavery as a crime against humanity pursuant to Article 7(1)(g) of the Statute and as a war crime pursuant to Article 8(2)(e)(vi) of the Statute	29
5.	Persecution	29
a.	Persecution as a crime against humanity – Article 7(1)(h) of the Statute	29
6.	Pillage.....	31
a.	Pillage as a war crime – Article 8(2)(e)(v) of the Statute	31
7.	Forcible transfer of population	32
a.	Forcible Transfer as a crime against humanity – Article 7(1)(d) of the Statute	32
b.	Forcible Transfer as a war crime – Article 8(2)(e)(viii) of the Statute.....	33
8.	Attacks against Protected Objects	34
a.	Attacks against Protected Objects as a war crime – Article 8(2)(e)(iv) of the Statute	34
9.	Destruction of property	34
a.	Destruction of Property as a war crime – Article 8(2)(e)(xii) of the Statute	34
V.	SUBMISSIONS ON THE ASSESSMENT OF EVIDENCE.....	35
VI.	BRIEF AND BASIC OVERVIEW OF COMMANDERS AND BASIC STRUCTURE OF THE UPC/FPLC	37
VII.	SUBMISSIONS ON FACTUAL CIRCUMSTANCES OF THE CRIMES	41
A.	CONTEXTUAL ELEMENTS – CRIMES AGAINST HUMANITY	42
1.	Widespread or Systematic Attacks	42
a.	Conclusion	52

B. CONTEXTUAL ELEMENTS – WAR CRIMES.....	53
A. FIRST ATTACK.....	54
1. Mongbwalu	54
2. Sayo	73
3. Nzebi	79
4. Kilo	80
a. Conclusion	87
B. SECOND ATTACK	89
1. Lipri/Tsili	89
2. Camp PM.....	92
3. Kobu Takeover.....	93
4. Bambu	98
5. Buli.....	104
6. Jitchu	107
7. Gutsi	108
8. Sangi.....	110
9. Kobu – Hotel Paradiso	114
10. Nyangaray	124
a. Conclusion	125
VIII. THE VICTIMS SUFFERED ON ACCOUNT OF THE CRIMES COMMITTED BY THE ACCUSED AND HIS SUBORDINATES	126
a) Victimisation and Suffering Associated with Murder and Attempted Murder	129
b) Victimisation and Suffering Associated with Forcible Transfer	133
c) Victimisation and Suffering Associated with Rape and Sexual Slavery	137
d) Victimisation and Suffering Associated with Pillage and Destruction of Property	143
e) Victimisation and Suffering Associated with the Destruction of Protected Objects	146
f) Victimisation and Suffering Associated with Persecution – including <i>inter alia</i> Torture, Inhumane Treatment, Forced Labour.....	146
a. Conclusion	147
IX. THE CRIMINAL RESPONSIBILITY OF MR NTAGANDA FOR THE CRIMES COMMITTED AND THE SUFFERING INFLICTED UPON THE VICTIMS ...	148
1. The Accused’s Role and Authority	148
2. The Accused’s Mens Rea	151
3. Ntaganda bears individual criminal responsibility pursuant to Article 25(3)(a) of the Statute– First Alternative.....	154
4. Ntaganda bears individual criminal responsibility pursuant to Article 25(3)(b) of the Statute – First Alternative.....	154
5. Ntaganda bears criminal responsibility as a commander pursuant to Article 28(a) of the Statute	157
X. CONCLUSION	166

I. CONFIDENTIALITY

1. Pursuant to regulations 23*bis*(1) and (2) of the Regulations of the Court, the present submissions are classified as ‘confidential’, as they refer to sensitive information relating to protected victims and witnesses.

II. INTRODUCTION

2. In accordance with the spirit of the Rome Statute (the “Statute”), victims have the right to truth and justice and the right to contribute to the search for the truth. In this vein, the Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) respectfully submits these final submissions.

3. The Legal Representative avers that the evidence adduced before the Chamber is such as to establish beyond reasonable doubt that the crimes charged and laid out in the UDCC¹ have been committed by the Accused, Mr Bosco NTAGANDA, and by UPC/FPLC soldiers and persons under the direct control, command, and authority of the Accused.

4. The victims have waited more than 14 years for justice to be done. Many of them have continued to suffer the consequences of the harm inflicted upon them at the hands and at the behest of Mr NTAGANDA. Others have already passed away. In some cases, their relatives have been allowed to participate on their behalf in order to obtain the justice that has come too late for their deceased relatives.

5. The Chamber authorised some of the victims the Legal Representative represents to come before it and to express their views and concerns, or to present evidence with a view to assisting the Chamber in its search for the truth. These

¹ Updated Document Containing the Charges, ICC-01/04-02/06-458-AnxA, 16 February 2015 (the “UDCC”).

victims have shown particular courage, given the heinous fates they have suffered at the hands of Mr NTAGANDA, his associates, and subordinates.

6. The Chamber has heard about the on-going prejudice they suffer; it has heard about their economic bases being wiped out, and future dreams being shattered. It has heard about their recurring nightmares, physical ailments, and psychological problems. The 1859 victims the Chamber allowed to participate in these proceedings are the ones who suffered and continue to suffer as a result of the acts and omissions of the Accused. Many of them have been victimised in more than one way.

7. The evidence shows that Mr NTAGANDA bears criminal responsibility for the crimes he committed as – at least² – a direct perpetrator pursuant to 25(3)(a), through his orders and instructions pursuant to Article 25(3)(b), and as a superior pursuant to Article 28(a) of the Statute. Accordingly, he should be found guilty of the same. He must serve a sentence that justly reflects the gravity of the harm³ he has caused to so many – in some cases with consequences for generations to come.

8. The victims take issue with the Accused's version of the events, and in particular, with his attempt to downplay his role and influence within the FPLC. He essentially seeks to hide behind his formal superiors, deceased General KISEMBO and the political leader of the UPC, Thomas LUBANGA. The Accused claims to have merely been following and implementing orders – military orders – within a hierarchical structure.⁴ However, his actual role on the ground was that of the *de facto* supreme commander whose orders were generally followed and implemented without interference from his *de jure* superiors.

² The Legal Representative will not address all charged modes of responsibility. See *infra*, paras. 12, 42, 460.

³ The Legal Representative intends to file separate submissions on the gravity and extent of the harm suffered by the victims he represents, if and when the Chamber will be entertaining the question of the quantum of a sentence to be imposed.

⁴ See e.g. Bosco NTAGANDA, T-226-CONF-ENG-CT-WT, 17 August 2017, p. 48 and T-215-ENG-ET-WT, 29 June 2017, p. 7.

9. NTAGANDA also claims to have meted out punishment within the ranks.⁵ The victims urge the Chamber to closely look at all the evidence before it, which distinctly shows that any punishment he ordered was either a sham or aimed at punishing failure to carry out his orders to his satisfaction. In sum, the punishment he implemented was arbitrary, disproportionate, random, and meaningless. He failed to take all reasonable measures within his power to prevent or repress their commission. To the contrary, by failing to act he encouraged the commission of crimes by his troops.

10. The evidence shows that, at the very least, the Accused acted with carelessness towards the consequences of his acts and omissions in this regard. The commanders he allegedly punished were shortly afterwards promoted to leading positions or otherwise rewarded with special tasks or appreciation. His purported orders to protect civilians were equally meaningless, given his own role and presence during the atrocious attacks upon civilians.

11. The evident lack of follow-up on such alleged orders and determination to resolutely implement them must be understood as an expression of his disregard for the laws and customs of war. Rather, the evidence shows beyond reasonable doubt that Mr NTAGANDA is criminally responsible for the crimes committed through his direct orders and instructions pursuant to Article 25(3)(b) and as a superior in accordance with Article 28(a) of the Statute in this regard.

12. The Legal Representative does not intend to address in depth all aspects of the individual criminal responsibility of the Accused, as doing so would unduly encroach upon the role of the Prosecutor. However, the Legal Representative will make limited submissions on the Accused's responsibility for the commission of crimes by him, his troops and the subordinated civilians he commanded and led during the various attacks. In his submissions, he will focus on the factual elements

⁵ See e.g. Bosco NTAGANDA, T-235-Red-ENG-CT-WT, 4 September 2017, p. 47; T-222-CONF-ENG CT-WT, 11 July 2017, pp. 67-68; T-217-Red-ENG-WT, 3 July 2017, p. 57; T-215-ENG-ET-WT, 29 June 2017, pp. 7-8 and T-213-Red-ENG-WT, 27 June 2017, p. 84.

of the crimes committed against the victims and their relatives, as well as his command responsibility in relation to these events.

13. In light of the victims' role to contribute to the search for the truth, and given the page limit authorised for the present submissions, the Legal Representative will also not exhaustively cover all charges and locations listed in the Updated Document Containing the Charges, but focus his review of the evidence on the attacks and atrocities that are of most concern to the victims he represents.

III. PROCEDURAL BACKGROUND

14. On 6 March 2007, Pre-Trial Chamber I issued a Warrant of Arrest for Bosco NTAGANGA.⁶

15. On 13 July 2012, Pre-Trial Chamber II issued a second warrant of arrest for Mr. Ntaganda.⁷

16. On 22 March 2013, Mr NTAGANDA voluntarily surrendered to the custody of the Court and his initial appearance took place on 26 March 2013.⁸

17. On 10 January 2014, the Prosecution filed its document containing the charges levied against Mr NTAGANDA as well as the supporting list of evidence.⁹

18. On 9 June 2014, Pre-Trial Chamber II issued its decision on the Prosecutor's charges against the Accused.¹⁰

19. The confirmation of charges hearing was held from 10 to 14 February 2014.¹¹

20. On 18 July 2014, the Presidency referred the case to Trial Chamber VI (the "Chamber").¹²

⁶ Warrant of Arrest – Corrigendum, ICC-01/04-02/06-2-Corr-tENG-Red, reclassified as public by order of Pre-Trial Chamber I of 29 September 2010.

⁷ Decision on the Prosecutor's Application under Article 58, ICC-01/04-02/06-36-Red, 13 July 2012.

⁸ T-2-ENG-ET-WT, 26 March 2013.

⁹ Document Containing the Charges, ICC-01/04-02/06-203-AnxA, 10 January 2014; List of Evidence, ICC-01/04-02/06-203-AnxB, 10 January 2014, reclassified as public by virtue of Decision ICC-01/04-02/06-209 of 14 January 2014.

¹⁰ Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06-309, 9 June 2014.

¹¹ T-7-ENG-ET and T-7bis-ENG-ET, 10 February 2014; T-8-ENG-ET, 11 February 2014; T-9-ENG-ET, 12 February 2014; T-10-ENG-ET, 13 February 2014; T-11-ENG-ET, 14 February 2014.

¹² Decision constituting Trial Chamber VI and referring to it the case of The Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06-337, 18 July 2014.

21. On 9 October 2014, the Chamber issued a scheduling order whereby it, *inter alia*, determined that the trial was to begin on 2 June 2015.¹³

22. On 30 October 2014, the Chamber ordered the Prosecution to file an updated document containing the charges and to hold consultations with the Defence before doing so.¹⁴

23. On 14 November 2014, the Prosecution filed an Updated Document Containing the Charges.¹⁵

24. On 6 February 2015, the Chamber rendered its decision on victim participation at trial.¹⁶

25. On the same day, and after having received submissions from the parties, the Chamber issued its decision on the updated document containing the charges in which it made determinations on the issues in dispute between the parties, ordered the Prosecution to refile an amended document, and ordered the Prosecution to submit a pre-trial brief no later than three months prior to the commencement of the trial.¹⁷

26. The Prosecution filed a further updated document containing the charges on 16 February 2015 (the “UDCC”).¹⁸

27. On 2 September 2015, the trial commenced with the opening statements of the parties and participants.¹⁹

¹³ Corrigendum of “Order Scheduling a Status Conference and Setting the Commencement Date for the Trial”, ICC-01/04-02/06-382-Corr, 9 October 2014, para. 8f.

¹⁴ Order instructing the Prosecution to prepare an updated document containing the charges, ICC-01/04-02/06-390, 30 October 2014.

¹⁵ Updated Document Containing the Charges, ICC-01/04-02/06-402-AnxA, 14 November 2014, Annex to Prosecution’s Submission of an Updated Document Containing the Charges, the Joint Submission of Areas of Disagreement and Request to File Additional Observations, ICC-01/04-02/06-402.

¹⁶ Decision on victims’ participation in trial proceedings, ICC-01/04-02/06-449, 6 February 2015.

¹⁷ Decision on the updated document containing the charges, ICC-01/04-02/06-450, 6 February 2015.

¹⁸ See *supra*, note 1.

28. On 10 February 2016, the Chamber authorised six victims to present their views and concerns before the Chamber²⁰ and a further three victims to present evidence.²¹ It indicated that the presentation of views and concerns by the victims was to take place on 2 and 3 March 2017, and the presentation of evidence by the victims was to take place between 10 and 13 April 2017.²²

29. On 29 March 2017, the Prosecution formally closed its case.²³

30. On 12 April 2017, the Legal Representative closed the presentation of evidence on behalf of the victims of the attacks.

31. Having obtained an extension of time to do so,²⁴ the Defence requested leave to present a no case to answer motion with respect to counts 1 to 5, 7 to 8, 10 to 13, and 17 to 18 insofar as they relate to the alleged 'Second Attack' and in relation to count 17 insofar as it relates to attacks on protected objects in or around Mongbwalu, Sayo, and Bambu.²⁵

32. The Defence's request to present a no-case-to-answer motion was rejected on 1 June 2017;²⁶ leave to appeal the decision was granted on 14 June 2017.²⁷

33. Leave to suspend the hearings until a decision be rendered by the Appeals Chamber was rejected on 14 June 2017,²⁸ and the Accused took the stand, testifying

¹⁹ T-23-ENG-ET-WT, 2 September 2015.

²⁰ Ultimately, only five of the six victims authorised to do so appeared before the Chamber.

²¹ Decision authorising LRV to present Evidence, p. 20.

²² Decision authorising LRV to present Evidence, p. 21.

²³ Prosecution's Notice of the Close of its Case-in-Chief, ICC-01/04-02/06-1839, 29 March 2017.

²⁴ Email communication from the Chamber to the parties and participants of 13 April 2017 at 18:23.

²⁵ Request for leave to file motion for partial judgment of acquittal, ICC-01/04-02/06-1879-Conf, 25 April 2017, paras. 2-3.

²⁶ Decision on Defence request for leave to file a 'no case to answer' motion, ICC-01/04-02/06-1931, 1 June 2017.

²⁷ T-209-Red-ENG-WT, 14 June 2017, pp. 24-26.

²⁸ T-209-Red-ENG-WT, 14 June 2017, pp. 23-24.

under oath under the conditions set out by the Chamber in its “Decision on further matters related to the testimony of Mr Ntaganda”.²⁹

34. On 5 September 2017, the Appeals Chamber dismissed the Defence’s appeal and affirmed the Trial Chamber’s decision of 1 June 2017.³⁰

35. On 5 December 2017, the Chamber held a status conference at which it sought the parties’ and participants’ observations regarding the closing of the presentation of evidence, as well as the length and timing of the respective closing briefs.³¹

36. On 28 December 2017, the Chamber issued an order whereby it, *inter alia*, directed that the Prosecution and the Legal Representatives file their respective closing briefs within four weeks of the presentation of evidence being declared closed by the Presiding Judge.³²

37. On 23 February 2018, the Defence notified the Chamber of the end of the presentation of its case which began on 29 May 2017.³³

38. On 26 February 2018, the Chamber rejected a Prosecution request for presenting evidence in rebuttal.³⁴ A “Second Prosecution request for presentation of evidence in rebuttal”³⁵ of 2 March 2018, was likewise rejected on 16 March 2018.³⁶

²⁹ Decision on further matters related to the testimony of Mr Ntaganda, ICC-01/04-02/06-1945, 8 June 2017.

³⁰ Judgment on the appeal of Mr Bosco Ntaganda against the “Decision on Defence request for leave to file a ‘no case to answer’ motion”, ICC-01/04-02/06-2026-OA6, 5 September 2017.

³¹ T-256-CONF-ENG-ET, 5 December 2017.

³² Order providing directions related to the closing briefs and statements, ICC-01/04-02/06-2170, 28 December 2017, para. 8.

³³ Notice on behalf of Mr Bosco Ntaganda concerning the end of the presentation of evidence by the Defence, ICC-01/04-02/06-2243, 23 February 2018; T-206-Red-ENG-WT, 29 May 2017.

³⁴ Decision on Prosecution request for presentation of evidence in rebuttal (ICC-01/04-02/06-2197-Conf) and related filings, No. ICC-01/04-02/06-2246, 26 February 2018.

³⁵ Second Prosecution request for presentation of evidence in rebuttal, ICC-01/04-02/06-2249-Conf, 2 March 2018.

³⁶ Decision on Second Prosecution request for presentation of evidence in rebuttal and related requests, ICC-01/04-02/06-2258, 16 March 2018.

39. The Chamber closed the presentation of evidence in the case on 16 March 2018.³⁷

40. On 13 April 2018, the Chamber, by Majority, extended the time limit for the filing of the closing briefs and ordered the Prosecution and Legal Representatives for Victims to file their respective briefs on 20 April 2018. In accordance with the newly set deadline, the Defence was directed to file its closing brief on 18 June 2018.³⁸

³⁷ Decision closing the presentation of evidence and providing further directions, ICC-01/04-02/06-2259, 16 March 2018.

³⁸ Decision providing further directions on the closing briefs, ICC-01/04-02/06-2272, 13 April 2018, para. 15.

IV. APPLICABLE LAW

A. MENTAL ELEMENT

41. Article 30(1) of the Statute stipulates that unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Article 30(2) of the Statute sets out that, a person has intent where (a) in relation to conduct, that person means to engage in the conduct; (b) in relation to consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. “*Knowledge*” is further defined in Article 30(3), namely: “*Knowledge*” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

B. LEGAL STANDARDS FOR INDIVIDUAL CRIMINAL RESPONSIBILITY

42. The Legal Representative will not address all modes of the alleged criminal responsibility of the Accused, but instead chooses to focus his submissions on the Accused’s responsibility for direct perpetration under Article 25(3)(a) of the Statute, for ordering under Article 25(3)(b) of the Statute as well as command responsibility under Article 28(a) of the Statute. The page limit imposed upon the Legal Representative would not allow him to adequately develop submissions on the modes of liability of co-perpetration under Article 25(3)(a) – second alternative, ‘other contributions’ under Article 25(3)(d)(i), and ‘attempts’ under Article 25(3)(f) of the Statute without this having an impact on the completeness of his other submissions, particularly those pertaining to the factual circumstances and consequences thereof for the victims he represents.

43. However, it is underscored that this selective approach does not in any way equate to the Legal Representative believing that the evidence is insufficient to establish the Accused's criminal responsibility pursuant to Articles 25(3)(a) – second alternative, 25(3)(d)(i), and 25(3)(f) of the Statute in relation to the relevant charges.

44. Finally, the Legal Representative submits that where for the same count and the same set of facts the Accused's responsibility is pleaded pursuant to both Articles 25 and 28 of the Statute and the Accused could be found liable under both, the Chamber should enter a conviction on the basis of Article 25 of the Statute to sufficiently reflect culpability and consider the superior position of the accused as an aggravating factor in sentencing.³⁹

1. INDIVIDUAL CRIMINAL RESPONSIBILITY – DIRECT PERPETRATION – ARTICLE 25(3)(A) OF THE STATUTE

45. A person bears criminal responsibility within the meaning of Article 25(3)(a) of the Statute – first alternative – if he “*commits such a crime [...] as an individual*”.⁴⁰ Trial Chamber VII in the case of *Bemba et al.*,⁴¹ recalled that in order to hold a person criminally responsible as a direct perpetrator under Article 25(3)(a) of the Statute, the person has to “‘*physically carry out the objective elements of the offence' with the requisite mens rea in his or her own person.*”⁴²

³⁹ Cf. *Setako* Appeal Judgment, para. 266; *Renzaho* Appeal Judgment, para. 564.

⁴⁰ Article 25(3)(a) of the Statute.

⁴¹ *Bemba et al.* Trial Judgment.

⁴² *Bemba et al.* Trial Judgment, para. 58.

2. INDIVIDUAL CRIMINAL RESPONSIBILITY – ORDERING – ARTICLE 25(3)(B) OF THE STATUTE

46. Article 25(3)(b) of the Statute ascribes individual criminal responsibility to a person who “[o]rders, solicits or induces the commission of [a crime within the jurisdiction of the Court] *which in fact occurs or is attempted*”.⁴³ The term ‘ordering’ should be given its ordinary meaning. Further guidance may be found in the jurisprudence of the ICTR and ICTY.

47. In *Bagosora et al.*,⁴⁴ the ICTR Appeals Chamber recalled that ordering “*requires that a person in a position of authority instruct another person to commit an offence.*”⁴⁵ The *actus reus* of ordering “*cannot be established in the absence of a prior positive act because the very notion of ‘instructing’, pivotal to the understanding of the question of ‘ordering’, requires ‘a positive action by the person in a position of authority’*”.⁴⁶ Furthermore, in *Nahimana et al.*, the ICTR Appeals Chamber held that with respect to ‘ordering’, a person in a position of authority may incur responsibility for ordering another person to commit an offence, if the person who received the order actually proceeds to commit the offence subsequently.⁴⁷

48. Responsibility is incurred if the order has a direct and substantial effect on the commission of the illegal act.⁴⁸ Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order.⁴⁹

⁴³ Article 25(3)(b) of the Statute.

⁴⁴ *Bagosora et al.* Appeal Judgment, para. 277.

⁴⁵ *Bagosora et al.* Appeal Judgment, para. 277.

⁴⁶ *Bagosora et al.* Appeal Judgment, para. 277.

⁴⁷ *Nahimana et al.* Appeal Judgment, para. 481.

⁴⁸ *Setako* Appeal Judgment, para. 240. See also *Renzaho* Appeal Judgment, para. 315; *Gacumbitsi* Appeal Judgment, para. 185.

⁴⁹ *Nahimana et al.* Appeal Judgment, para. 481.

49. It is not necessary to demonstrate the existence of a formal superior-subordinate relationship between the accused and the actual physical perpetrator of the crime.⁵⁰

50. Moreover, in the case of *Dragomir Milošević*, the ICTY Appeals Chamber, considered that:

“The Trial Chamber has adopted a very general approach in that it did not analyse whether Milošević ordered every sniping or shelling incident, but rather concluded that those incidents could only take place if ordered by him in the framework of the campaign directed against the civilian population [...]. In principle, this approach is not erroneous as such, given that both the actus reus and the mens rea of ordering can be established through inferences from circumstantial evidence, provided that those inferences are the only reasonable ones.”⁵¹

51. As regards ‘soliciting’ and ‘inducing’ – the second and third alternatives under Article 25(3)(b) of the Statute – the Trial Chamber in *Bemba et al.* recalled that these fall into the broader category of ‘instigating’ or ‘prompting another person to commit a crime’ in the sense that they refer to a form of conduct by which a person exerts psychological influence on another person as a result of which the criminal act is committed.⁵²

52. The *mens rea* for instigating requires that the perpetrator act with either direct intent or prompt another to commit a crime, or with awareness of the substantial likelihood that a crime will be committed in execution of that instigation.⁵³

⁵⁰ *Galić* Appeal Judgment, para. 176. See also *Setako* Appeal Judgment, para. 240; *Gacumbitsi* Appeal Judgment, para. 182; *Kamuhanda* Appeal Judgment, para. 75; *Semanza* Appeal Judgment, para. 361.

⁵¹ *D. Milošević* Appeal Judgment, para. 265.

⁵² *Bemba et al.* Trial Judgment, para. 73.

⁵³ *Nchamihigo* Appeal Judgment, para. 61. See also *Kordić and Čerkez* Appeal Judgment, paras. 29, 32.

3. RESPONSIBILITY OF COMMANDERS AND OTHER SUPERIORS – ARTICLE 28(A) OF THE STATUTE

53. The Statute provides for criminal responsibility of military commanders in its Article 28(a). The drafters of the Statute have taken into account the jurisprudence of the *ad hoc* tribunals and expressly set out a number of elements that had previously only been reflected in the relevant jurisprudence.⁵⁴ In *Bemba*, the Trial Chamber also relied on the aforementioned jurisprudence when it formulated six elements characterising command responsibility under the Statute. It set forth that:

“(a) crimes within the jurisdiction of the Court must have been committed by forces;

(b) the accused must have been either a military commander or a person effectively acting as a military commander;

(c) the accused must have had effective command and control, or effective authority and control, over forces that committed the crimes;

(d) the accused either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes;

(e) the accused must have failed to take all necessary and reasonable measures within his power to prevent or repress the commission of such crimes or to submit the matter to the competent authorities for investigation and prosecution; and

(f) the crimes committed by the forces must have been a result of the failure of the accused to exercise control properly over them.”⁵⁵

54. It is submitted that, in the absence of applicable ICC jurisprudence beyond *Bemba*, the jurisprudence of the *ad hoc* tribunals remains instructive and should be taken into account when it comes to determining the Accused’s responsibility under Article 28(a) of the Statute and interpreting the *Bemba* criteria.

⁵⁴ See AMBOS (K.), “Superior Responsibility”, in CASSESE (A.), GAETA (P.) and JONES (Eds.), *The Rome Statute of the International Criminal Court: a Commentary*, Vol. I, Oxford University Press, Oxford, 2002, pp. 848-849.

⁵⁵ *Bemba* Trial Judgment, para. 170.

55. Moreover, the Chamber is asked to adopt the existing jurisprudence with regard to specific components of the applicable *Bemba* criteria, such as the ICTY Appeals Chamber's ruling in *Blaškić* endorsing a similar finding in *Krnojelac*, whereby it held that the subordinates who commit the crimes need not all be identified; that the identification of subordinates who committed the criminal acts by category or group is sufficient.⁵⁶ Taking this approach is appropriate since, as reasoned in *Hadžihasanović*, the responsibility of the superior "*must be conceived as a type of personal responsibility for failure to act. The Accused will not be convicted for crimes committed by his subordinates but for failing in his obligation to prevent the crimes or punish the perpetrators.*"⁵⁷

56. Article 28(a) of the Statute applies to commanders "*effectively acting*"⁵⁸ as such and thus includes both *de jure* and *de facto* military commanders.⁵⁹ "[W]hat determines the boundaries of applicability of the doctrine of superior responsibility is not the nature of the role or function [...] but the degree of authority which he is capable of exercising over others".⁶⁰ Even a superior who lacks formal letters of appointment or commission but does, in reality, have effective control over the perpetrators of offences might incur criminal responsibility.⁶¹

57. Furthermore, the superior may incur responsibility for crimes committed by persons who are not formally his direct subordinates, insofar as he exercises effective control over them.⁶²

⁵⁶ *Blaškić* Appeal Judgment, para. 217 referring *inter alia* to *Krnojelac* 11 February 2000 Decision, para. 18.

⁵⁷ *Hadžihasanović* Trial Judgment, para. 2075.

⁵⁸ See Article 28(a) of the Statute.

⁵⁹ *Aleksovski* Trial Judgment, paras. 75-75; *Blaškić* Trial Judgment, para. 300.

⁶⁰ METTRAUX (G.), *The Law of Command Responsibility*, Oxford University Press, Oxford, 2009, p. 102. See also *Kajelijeli* Appeal Judgment, para. 87; *Bagilishema* Appeal Judgment, para. 50; *Bemba* Trial Judgment, para. 179.

⁶¹ *Stakić* Trial Judgment, para. 459.

⁶² *Blaškić* Trial Judgment, para. 301.

58. The “*the ability to exercise effective control in the sense of a material power to prevent or punish [...] will almost invariably not be satisfied unless such a relationship of subordination exists*”.⁶³

59. In *Orić*, the trial chamber further defined effective control as “*the ability to maintain or enforce compliance of others with certain rules and orders*”.⁶⁴ These definitions were endorsed by the trial chamber in *Karadžić* as factors for assessing the effectiveness of the control. The *Karadžić* Chamber recalled the applicable factors as: “(i) [the commander’s] *capacity to issue orders and whether those orders were in fact followed, (ii) the authority to issue disciplinary measures, and (iii) the power to promote personnel and terminate positions held.*”⁶⁵ Whether the effective control descends from the superior to the subordinate culpable of the crime through intermediary subordinates is immaterial as a matter of law; instead, what matters is whether the superior has the material ability to prevent.⁶⁶

60. Finally, knowledge may be inferred from circumstantial evidence.⁶⁷ A failure by the accused to punish the past offences of his subordinates may be relevant to determining whether he ‘possessed information that was sufficiently alarming to put him on notice of the risk that similar crimes might subsequently be carried out by his subordinates and justify further inquiry’.⁶⁸

⁶³ *Karadžić* Trial Chamber, para. 582; *Stakić* Trial Judgment, para. 459; *Delalić et al.* Appeal Judgment, para. 303. See also *Bemba* Confirmation Decision, 414.

⁶⁴ *Orić* Trial Judgment, para. 311.

⁶⁵ *Karadžić* Trial Chamber, para. 581.

⁶⁶ *Orić* Appeal Judgment, para. 20.

⁶⁷ *Karadžić* Trial Chamber, para. 585; *Galić* Appeal Judgment, paras. 171, 184.

⁶⁸ *Karadžić* Trial Chamber, para. 586; *Strugar* Appeal Judgment, paras. 297-301; *Blaškić* Appeal Judgment, para. 62.

C. CONTEXTUAL ELEMENTS - CRIMES AGAINST HUMANITY

61. Article 7 of the Statute sets out that all proscribed acts listed must be committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.⁶⁹ Article 7(2) more specifically defines that an “[a]ttack directed against any civilian population’ means a course of conduct involving multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”.⁷⁰

62. The term ‘directed against’ the civilian population requires that the civilian population must be the primary, as opposed to incidental, target of the attack.⁷¹

63. A population is considered to be civilian if it is predominantly civilian in nature,⁷² the presence of certain non-civilians in its midst does not change the character of the population.⁷³ The attack must have targeted more than a limited and randomly selected number of individuals within the population.⁷⁴

64. While the term ‘widespread’ refers to the large-scale character of the attack and the number of persons targeted, the term ‘systematic’ refers to the organised nature of the acts of violence and the improbability of their random occurrence.⁷⁵ The assessment of what constitutes ‘widespread’ or ‘systematic’ may take into account the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, and identifiable patterns of crimes.⁷⁶ As set out by the *Bemba*

⁶⁹ Article 7(1) of the Statute.

⁷⁰ Article 7(2) of the Statute.

⁷¹ *Bemba* Trial Judgment, para. 154.

⁷² *Karadžić* Trial Judgment, para. 474. See also *Tadić* Trial Judgment, para. 638; *Milutinović et al* Trial Judgment, para. 146.

⁷³ *Tadić* Trial Judgment, para. 638. See also *Bemba* Trial Judgment, para. 153.

⁷⁴ *Karadžić* Trial Judgment, para. 475.

⁷⁵ *Karadžić* Trial Judgment, para. 477, referring to *Blaškić* Appeal Judgment, para. 101.

⁷⁶ *Karadžić* Trial Judgment, para. 477.

Trial Chamber, the requirement that the acts form part of a ‘course of conduct’ shows that Article 7(1) is not designed to capture single isolated acts.⁷⁷

65. The *Bemba* Trial Chamber further set out that “[w]hile it may be of evidential value, the Statute does not envisage any requirement of demonstrating a ‘motive’ or ‘purpose’ underlying the policy to attack the civilian population.”⁷⁸ It considered that the ‘policy’ need not be formalised and may be inferred from a variety of factors, which, taken together, establish that a policy existed.⁷⁹

66. Such factors, according to that Chamber, may include (i) that the attack was planned, directed or organised; (ii) a recurrent pattern of violence; (iii) the use of public or private resourced to further the policy; (iv) the involvement of the state or organisational forces in the commission of crimes (v) statements, instructions or documentation attributable to the state or the organisation condoning or encouraging the commission of crimes; and/or (vi) an underlying motivation.⁸⁰

67. As such, the course of conduct must reflect a link to the state or organisational policy in order to exclude those acts which are perpetrated by isolated and un-coordinated individuals acting randomly on their own.⁸¹

68. In relation to all individual crimes against humanity, the Elements of Crimes, moreover, require that the perpetrator knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack against a civilian population.⁸²

⁷⁷ *Bemba* Trial Judgment, para. 149.

⁷⁸ *Bemba* Trial Judgment, para. 159.

⁷⁹ *Bemba* Trial Judgment, para. 160.

⁸⁰ *Bemba* Trial Judgment, para. 160.

⁸¹ *Bemba* Trial Judgment, para. 161.

⁸² Elements of Crimes, Articles 7(1)(a)-(k).

D. CONTEXTUAL ELEMENTS – WAR CRIMES

69. Article 8(1) of the Statute sets out that the Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. As recalled by the *Bemba* Trial Chamber, the existence of a plan, policy or large-scale commission is not a pre-requisite for the Court to exercise jurisdiction over war crimes but rather serves as a practical guidance for the Court.⁸³

70. Article (8)(2)(c) concerns war crimes “[i]n the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely any of the following acts committed against 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”.⁸⁴

71. Article 8(2)(e), which is the provision of Article 8 with which Mr NTAGANDA is charged in relation to Counts 3, 5, 8, 11, 13, 17, and 18⁸⁵ further delimits the meaning of the term “war crimes”, namely “[o]ther serious violations of laws and customs applicable in armed conflicts not of an international character, within the established framework of international law [...]”.⁸⁶

72. The *Bemba* Trial Chamber recalled that the concept of ‘armed conflict’ within the established framework of international law was set forth by the Appeals Chamber in *Tadić*; the latter definition also having been endorsed by the Court’s Pre-

⁸³ *Bemba* Trial Judgment, para. 126.

⁸⁴ Article 8(2)(c) of the Statute.

⁸⁵ The Legal Representative will not address any of the material elements of the crimes charged in counts 6, 9, 14, 15, and 16, as they solely pertain to crimes relating to child soldiers and therefore do not touch upon the interests of the victims he represents.

⁸⁶ Article 8(2)(e) of the Statute.

Trial Chamber.⁸⁷ The Appeals Chamber in *Tadić* considered that an armed conflict exists whenever there is resort to armed force between states or protracted armed violence between government authorities and organised armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or in the case of internal conflicts, a peaceful settlement is achieved.⁸⁸

73. In relation to Article 8(2)(c) of the Statute, the Elements of Crimes further require that (i) the perpetrator was aware of the status of the victim(s) and (ii) the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.⁸⁹ As regards crimes proscribed under Article 8(2)(e) of the Statute, the Elements of Crimes require that the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.⁹⁰

⁸⁷ *Bemba* Trial Judgment, para. 128, referring to *Tadić* Jurisdiction Decision, para. 70; *Bemba* Confirmation Decision, para. 229.

⁸⁸ *Tadić* Jurisdiction Decision, para. 70.

⁸⁹ Elements of Crimes, Articles 8(2)(c)(i)-(iv).

⁹⁰ Elements of Crimes, Articles 8(2)(e)(i)-(xv).

E. MATERIAL ELEMENTS OF THE CRIMES CHARGED⁹¹

1. MURDER AND ATTEMPTED MURDER

a. Murder and Attempted Murder as a crime against humanity - Article 7(1)(a) of the Statute

74. For the Elements of Crime of Article 7(1)(a) of the Statute to be satisfied, the (i) perpetrator killed one or more persons;⁹² (ii) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (iii) the perpetrator knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack against a civilian population. A victim's killing may be proven by circumstantial evidence as long as the victim's death is the only reasonable inference that can be drawn therefrom.⁹³

b. Murder and Attempted Murder as a war crime – Article 8(2)(c)(i) of the Statute

75. Article 8(2)(c)(i) of the Statute proscribes “[v]iolence to life and person, in particular murder of all kinds [...]”

76. As regards the material elements of Article 8(2)(c)(i)⁹⁴ of the Rome Statute, the *Bemba* Trial Chamber underscored that, like the *actus reus* of the crime against humanity of murder, the *actus reus* of the war crime of murder requires that a perpetrator killed or caused the death of one or more persons.⁹⁵

⁹¹ See *supra*, note. 85.

⁹² The term “killed” is interchangeable with the term “caused death”. See the Elements of Crimes of Article 7(1)(a).

⁹³ *Bemba* Trial Judgment, para. 88.

⁹⁴ The Legal Representative does not address the Elements of Crimes in relation to Article 8(2)(c)(i)-2, the war crime of mutilation, Article 8(2)(c)(i)-3, the war crime of cruel treatment, and Article 8(2)(c)(i)-4, the war crime of torture. Acts of torture will be addressed in conjunction with the crime against humanity of persecution as charged under Count 10 of the UDCC, and in particular para. 77 of the UDCC.

⁹⁵ *Bemba* Trial Judgment, para. 91.

77. However, the war crime of murder contains the further and distinct element that the person or persons so killed were either *hors de combat* or civilians, medical personnel, or religious personnel taking no active part in the hostilities.⁹⁶ The burden to establish the status of the victim as a civilian taking no active part in hostilities lies with the Prosecution.⁹⁷

2. ATTACKS AGAINST THE CIVILIAN POPULATION

a. Attacks against a civilian population as a war crime – Article 8(2)(e)(i) of the Statute

78. The Elements of Crimes specify that in order to satisfy the *actus reus* requirements of the war crime of “*attacks against a civilian population*” the perpetrator must have (i) directed an attack; (ii) the object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.⁹⁸ The Elements further set out the specific intent requirement that the perpetrator must have intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.⁹⁹

79. The *Katanga* Trial Chamber considered that the term ‘attack’ must be understood as ‘acts of violence against the adversary, whether in offence or defence’.¹⁰⁰ It further held that no result needs to ensue from the attack, as it considered “*that the absence of a result requirement in the Elements of Crimes is not accidental, insofar as, where such a requirement exists, the Elements of Crimes refer to it and specify the consequence thereof.*”¹⁰¹

⁹⁶ Elements of Crimes, Article 8(2)(c)(i)-1, War crime of murder.

⁹⁷ *Bemba* Trial Judgment, para. 94.

⁹⁸ Elements of Crimes, Article 8(2)(e)(i) – War crime of attacking civilians.

⁹⁹ Elements of Crimes, Article 8(2)(e)(i) – War crime of attacking civilians.

¹⁰⁰ *Katanga* Trial Judgment, para. 798.

¹⁰¹ *Katanga* Trial Judgment, para. 799.

80. Moreover, the *Katanga* Trial Chamber recalled that the prohibition on the direct targeting of civilians “*can in no circumstances be counterbalanced by military necessity.*”¹⁰² Relying on, *inter alia*, Additional Protocol II to the Geneva Conventions, academic commentary and jurisprudence of the ICTY, it concluded that “*the prohibition on directly attacking civilians is [...] absolute and applies both to international and non-international armed conflict.*”¹⁰³

81. The *Katanga* Trial Chamber considered that the crime may be established “*even if the military operation also targeted a legitimate military objective*” and noted that it was important that it be established that the *primary* object of the attack was the civilian population or individual civilians.¹⁰⁴

82. Importantly, it also specifically recalled that indiscriminate attacks may qualify as intentional attacks against the civilian population or individual civilians, “*especially where the damage caused to civilians is so great that it appears [...] that the perpetrator meant to target civilian objectives.*”¹⁰⁵

83. The ICTY Trial Chamber in *Mladić* set forth that

“[w]hen determining whether an act of violence can be seen as being ‘directed’ against civilians not taking direct part in hostilities, a trial chamber can consider, *inter alia*, the means and methods used in the course of the attack (e.g. the type of weapon), the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time, and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.”¹⁰⁶

The Legal Representative submits that these considerations are compatible with the elements set out in the Court’s Elements of Crimes and submits that they may be instructive in the present case.

¹⁰² *Katanga* Trial Judgment, para. 800.

¹⁰³ *Katanga* Trial Judgment, para. 800.

¹⁰⁴ *Katanga* Trial Judgment, para. 802.

¹⁰⁵ *Katanga* Trial Judgment, para. 802.

¹⁰⁶ *Mladić* Trial Judgment Volume III, para. 3209.

3. RAPE

- a. *Rape as a crime against humanity pursuant to Article 7(1)(g) of the Statute and as a war crime pursuant to Article 8 (2)(e)(vi) of the Statute*

84. As previously set out by the *Bemba* Trial Chamber, only the contextual elements of these two statutory crimes differ.¹⁰⁷ The material elements of the *actus reus* of both crimes require that (i) “the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any part of the body”.¹⁰⁸

85. The invasion must have been “committed by force, or threat of force or coercion [...] or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”

86. As set out by the ICTR Appeals Chamber, a Chamber need not have heard an explicit description of the act of penetration for it to conclude that the *actus reus* is established. In particular, in the case of *Hategekimana* the Appeals Chamber was satisfied that the trial chamber reasonably relied on the evidence of an eye-witness who was not specifically asked about the penetration of his daughter but clearly and consistently used the word ‘rape’ throughout his testimony to describe what happened to her. In this case, the Appeal Chamber was satisfied that, in the context, this term was reasonably understood as sexual penetration.¹⁰⁹

¹⁰⁷ *Bemba* Trial Judgment, para. 98.

¹⁰⁸ Elements of Crimes, Article 7(1)(g)-1.

¹⁰⁹ *Hategekimana* Appeal Judgment, paras. 161-162.

4. SEXUAL SLAVERY

- a. *Sexual Slavery as a crime against humanity pursuant to Article 7(1)(g) of the Statute and as a war crime pursuant to Article 8(2)(e)(vi) of the Statute*

87. The material elements of the war crime of sexual slavery only differ from those of the crime against humanity of sexual slavery in terms of the contextual elements of the crime.¹¹⁰ The elements of crime for the crime against humanity of sexual slavery require that (i) “[t]he perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty”, (ii) the perpetrator “caused such person or persons to engage in one or more acts of a sexual nature”.¹¹¹

5. PERSECUTION

- a. *Persecution as a crime against humanity – Article 7(1)(h) of the Statute*

88. The Elements of Crimes define the crime against humanity of persecution as follows:¹¹² “[T]he perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted group or collectivity as such. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender [...] or other grounds that are universally recognized as impermissible under international law [...]”.¹¹³

89. To date, the Court has not rendered any judgment in relation to charges of persecution. Accordingly, the Legal Representative relies on jurisprudence of the *ad hoc* Tribunals as regards the definition of the crime of persecution.

¹¹⁰ See *supra*, sections C and D.

¹¹¹ Elements of Crimes, Article 7(1)(g)-2, Crime against humanity of sexual slavery.

¹¹² The contextual elements are omitted from the definition recounted here.

¹¹³ Elements of Crimes, Article 7(1)(h).

90. The persecutory act must be discriminatory in fact for the crime of persecution to be established.¹¹⁴ In this regard, the Appeals Chamber of the ICTY upheld the trial chamber's finding that "[t]he actus reus of the crime consists of an act or omission that discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law."¹¹⁵ The underlying act committed on discriminatory grounds, considered in isolation or in conjunction with other acts, must be of the requisite gravity; not every denial of a fundamental human right will be serious enough to constitute a crime against humanity.¹¹⁶

91. The Appeals Chamber of the ICTY has further held that torture, cruel treatment, and other inhumane acts may constitute persecution.¹¹⁷

92. The Legal Representative, in particular, invites the Chamber to consider the findings of the Appeals Chamber in the case of *Popović et al.* when considering the *mean rea* requirement of the crime of persecution in the present case. In the former, the Appeals Chamber "observe[d] that when considering whether an accused has the required intent for the crime of persecution, trial chambers are allowed to consider 'the general attitude of the alleged perpetrator as demonstrated by his behaviour'. The use of derogatory language in relation to a particular group – even where such usage is commonplace – is one aspect of an accused's behaviour that may be taken into account, together with other evidence, to determine the existence of discriminatory intent."¹¹⁸

93. The Appeals Chamber, in an earlier case set forth that a showing of a specific persecutory intent behind an alleged persecutory plan or policy, that is, the removal

¹¹⁴ *Lukić and Lukić* Appeal Judgment, para. 455.

¹¹⁵ *Lukić and Lukić* Appeal Judgment, paras. 453, referring to *Lukić and Lukić* Trial Judgment, para. 992.

¹¹⁶ *Mladić* Trial Judgment Vol III, para. 3229.

¹¹⁷ *Kordić and Čerkez* Appeal Judgment, para. 106.

¹¹⁸ *Popović et al.* Appeal Judgment, para. 713.

of targeted persons from society or humanity, is not required to establish the *mens rea* of the perpetrator carrying out the underlying physical acts of persecutions.¹¹⁹

6. *PILLAGE*

a. Pillage as a war crime – Article 8(2)(e)(v) of the Statute

94. The material elements of this war crime require that (i) the perpetrator appropriated certain property, (ii) intended to deprive the owner of the property, (iii) intended to appropriate it for private or personal use, and (iv) the appropriation was without the consent of the owner, and (v) the conduct took place in the context of and was associated with an armed conflict not of an international character.¹²⁰

95. The *Katanga* Trial Chamber held that pillaging extends to all types of property, private or public.¹²¹ This interpretation was subsequently endorsed by the *Bemba* Trial Chamber.¹²²

96. The appropriation must have been unlawful.¹²³ In certain circumstances appropriation of property may not be regarded as unlawful where it can be justified under international humanitarian law, such as the general exception to the prohibition of appropriation of property when it is justified by military necessity. In the context of an international armed conflict, treaty law and international customary law justify battlefield seizures of military equipment of the adverse party as war booty.¹²⁴

¹¹⁹ *Kordić and Čerkez* Appeal Judgment, para. 111.

¹²⁰ Elements of Crimes, Article 8(2)(e)(v).

¹²¹ *Katanga* Trial Judgment, para. 905.

¹²² *Bemba* Trial Judgment, para. 115.

¹²³ *Cf. Bemba* Trial Judgment, para. 115; *Stanišić and Župljanin* Trial Judgment; *Kordić and Čerkez* Appeal Judgment, para. 84.

¹²⁴ *Mladić* Trial Judgment Volume III, para. 3250.

7. FORCIBLE TRANSFER OF POPULATION

a. Forcible Transfer as a crime against humanity – Article 7(1)(d) of the Statute

97. Forcible transfer of the population is proscribed in Article 7(1)(d) of the Statute when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

98. To date, the Court has not rendered any judgment on charges of forcible transfer. Hence, the Legal Representative, in his submissions, relies on the jurisprudence of the ICTY as regards the different elements of the crime as defined in international law.

99. Forcible transfer is defined as (i) the forced displacement of one or more persons by expulsion or other forms of coercion, (ii) from an area in which they are lawfully present, (iii) without grounds permitted under international law, and (iv) the displacement may take place within national borders.¹²⁵

100. The act inducing the departure need not be criminal as such.¹²⁶ The ICTY Appeals Chamber recently affirmed that the requirement that the displacement of persons be forced is not limited to physical force but can be met through the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or taking advantage of a coercive environment.¹²⁷ It is the absence of a genuine choice that makes the displacement unlawful.¹²⁸

¹²⁵ *Karadžić* Trial Judgment, para. 488.

¹²⁶ *Stanišić and Župljanin* Appeal Judgment, para. 918.

¹²⁷ *Stanišić and Župljanin* Appeal Judgment, para. 918. See also *Dorđević* Appeal Judgment, para 727; *Stakić* Appeal Judgment, para. 281; *Krnojelac* Appeal Judgment, paras 229-233. See also the Elements of Crimes, Article 7(1)(d), footnote 12.

¹²⁸ *Stanišić and Župljanin* Appeal Judgment, para. 918.

101. Furthermore, it is a well-established principle of international humanitarian law that forced displacement is not justified in circumstances where the humanitarian crisis that caused the displacement is itself the result of the accused's unlawful activity.¹²⁹ Proof of intent to permanently displace deportees is not required.¹³⁰

b. Forcible Transfer as a war crime – Article 8(2)(e)(viii) of the Statute

102. The material elements of the war crime of forcible transfer set out in the Elements of Crimes require that (i) the perpetrator ordered a displacement of a civilian population; (ii) such order was not justified by the security of the civilians involved or by military necessity; (iii) the perpetrator was in a position to effect such displacement by giving such order; (iv) the conduct took place in the context of and was associated with an armed conflict not of an international character; and (v) the perpetrator was aware of factual circumstances that established the existence of an armed conflict.

¹²⁹ *Tolimir* Appeal Judgment, para. 158.

¹³⁰ *Stakić* Appeal Judgment, pp. 304-307.

8. *ATTACKS AGAINST PROTECTED OBJECTS*

a. Attacks against Protected Objects as a war crime – Article 8(2)(e)(iv) of the Statute

103. The Elements of Crime set forth that the material elements of this statutory crime¹³¹ encompass that (i) the perpetrator directed an attack; (ii) the object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives; (iii) the “*perpetrator intended such building or buildings [...] to be the object of the attack.*”

104. The Legal Representative further notes that, if the destruction is committed on discriminatory grounds, it may constitute persecution.¹³²

9. *DESTRUCTION OF PROPERTY*

a. Destruction of Property as a war crime – Article 8(2)(e)(xii) of the Statute

105. In addition to the nexus requirement between the crime and the existence of an armed conflict not of an international character, and the perpetrator’s awareness of the circumstances establishing such conflict, the Elements of Crimes specify that the following five requirements need to be made out to establish the war crime of destruction of property: (i) the perpetrator destroyed certain property; (ii) such property was property of an adversary; (iii) such property was protected from the destruction under the international law of armed conflict; (iv) the perpetrator was aware of the factual circumstances that established the status of the property; and (v) the destruction was not required by military necessity.¹³³

¹³¹ Exclusive of the contextual elements of war crimes.

¹³² *Stanišić and Župljanin* Trial Judgment, para. 86.

¹³³ Elements of Crimes, Article 8(2)(e)(xii).

V. SUBMISSIONS ON THE ASSESSMENT OF EVIDENCE

106. It is for the Chamber to determine whether the ultimate weight of all the evidence adduced is sufficient to establish beyond reasonable doubt the elements of the crimes charged and the responsibility of the Accused.¹³⁴ In assessing the weight to be given to the testimony of a witness, the Chamber needs to assess the credibility of witnesses, the reliability of their testimony, and ultimately determine the weight to be accorded to their evidence.¹³⁵

107. The Prosecution bears the burden of establishing each element of the alleged crimes and the charged modes of responsibility for a conviction of the Accused beyond reasonable doubt. The victims of the crimes committed have a right to truth and justice as well as the right to contribute to the search for the truth, which extends to making final submissions on the evidence presented at trial, as authorised by the Chamber in its *“Order providing directions related to the closing briefs and statements”*.¹³⁶

108. The Legal Representative recalls that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.¹³⁷ A Chamber may enter a conviction on the basis of a single witness, although such evidence must be assessed with the appropriate caution.¹³⁸ Insignificant discrepancies between the evidence of different witnesses, or between the evidence of a particular witness in court and his prior statements, in general have not been regarded as discrediting

¹³⁴ See e.g. *Karadžić* Trial Judgment, para. 10; *Bemba* Trial Judgment, paras 228-230; *Katanga* Trial Judgment, para. 79.

¹³⁵ See e.g. *Lubanga* Appeal Judgment, para. 239; *Ndahimana* Appeal Judgment, para. 45. See also *Ntawukulilyayo* Appeal Judgment, para. 21.

¹³⁶ Order providing directions related to the closing briefs and statements, ICC-01/04-02/06-2170, 28 December 2017, para. 8.

¹³⁷ *Karadžić* Trial Judgment, para. 12; *Nyiramasuhuko et al.* Appeal Judgment, para. 2063; *Kupreškić et al.* Appeal Judgment, para. 33.

¹³⁸ *Haradinaj* Appeal Judgment, para. 145.

such evidence.¹³⁹ A Chamber is also free to decide not to rely on some parts of a witness's account whilst accepting other aspects of his or her evidence.¹⁴⁰

109. As regards the evidence of an accused, the Trial Chamber in the *Katanga* case set out that it took the statements of the accused into account and that it “*relied on them in its Judgement*” insofar as it found them credible.¹⁴¹ Where it considered the accused's account not sufficiently credible, it “*dismissed it without any conclusion as to his guilt or innocence.*”¹⁴² The ICTR Appeals Chamber in *Nyiramasuhuko et al.*

*“underline[d] that trial chambers are tasked with determining the guilt or innocence of the accused and must do so in light of the entirety of the evidence admitted into the record and that neither the Statute nor the Rules prevent a trial chamber from relying on the testimony of the accused to convict that accused, unless the accused's self-incriminating evidence was compelled [...].”*¹⁴³

110. The Legal Representative avers that the same applies in the present case. In fact, when the Accused chose to testify and took the oath,¹⁴⁴ he was again instructed by the Presiding Judge that doing so meant that he waived his right to remain silent and that “*the answers provided by [him] may be used against [him]*”,¹⁴⁵ as previously set out in the Chamber's decision on the matter.¹⁴⁶

111. Finally, the Legal Representative contends that, having waived his right to remain silent, and having chosen to present a positive case, the Accused nevertheless failed to refute or even to address many of the factual allegations contained within

¹³⁹ *Karadžić* Trial Judgment, para. 12.

¹⁴⁰ *Bemba* Trial Judgment, para. 231; *Katanga* Trial Judgment, para. 84; *Setako* Appeal Judgment, para. 48; *Haradinaj et al.* Appeal Judgment, para. 201.

¹⁴¹ *Katanga* Trial Judgment, para. 105.

¹⁴² *Katanga* Trial Judgment, para. 105.

¹⁴³ *Nyiramasuhuko et al.* Appeal Judgment, para. 576. See also *Karera* Appeal Judgment, para. 19; *Galić* Appeal Judgment, paras. 17-18.

¹⁴⁴ T-209-Red-ENG-WT, 14 June 2017, pp. 30-31.

¹⁴⁵ T-209-Red-ENG-WT, 14 June 2017, p. 30.

¹⁴⁶ Decision on further matters related to the testimony of Mr Ntaganda, ICC-01/04-02/06-1945, 8 June 2017, para. 24.

the UDCC. Accordingly, where the Chamber is satisfied that the evidence presented is, by and of itself, credible, it is squarely entitled to enter convictions on the same.

VI. BRIEF AND BASIC OVERVIEW OF COMMANDERS AND BASIC STRUCTURE OF THE UPC/FPLC

112. The Legal Representative will refrain from making extensive submissions on the structure of the forces that attacked the civilian population. However, he submits a very brief and basic overview of these structures in order to put his further submissions on the crimes committed into context. For ease of reference, the Legal Representative will, throughout his submissions, generically refer to soldiers of the ‘UPC’, meaning the *Union des Patriotes Congolais*,¹⁴⁷ when he, in fact, more precisely refers to soldiers of the UPC’s armed wing, the FPLC, namely the *Forces Patriotiques pour la Libération du Congo*.¹⁴⁸

113. The UPC was created on 15 September 2000.¹⁴⁹ NTAGANDA joined the UPC movement in September 2002,¹⁵⁰ when Thomas LUBANGA formed a UPC controlled government with its seat in Bunia, Ituri.¹⁵¹ The training of the first FPLC recruits took place in Mandro in August or early September 2002.¹⁵² Around the same time, namely in early September 2002, LUBANGA appointed NTAGANDA as Deputy Chief of Staff in Charge of Operations and Organisation.¹⁵³ NTAGANDA held this position until December 2003.¹⁵⁴ The General Staff of the FPLC was effectively staffed

¹⁴⁷ Agreed Fact 41.

¹⁴⁸ Agreed Facts 42-43.

¹⁴⁹ DRC-OTP-0113-0052.

¹⁵⁰ Bosco NTAGANDA, T-231-CONF-ENG-ET, 28 August 2017, p. 62.

¹⁵¹ Agreed Fact 77.

¹⁵² P-0901, T-30-CONF-ENG-CT, 22 September 2015, p. 23.

¹⁵³ Agreed Fact 78.

¹⁵⁴ Agreed Fact 79.

on 4 September 2002.¹⁵⁵ KISEMBO was appointed to the position of Chief of General Staff.¹⁵⁶

114. The smallest military unit within the FPLC was the section and the highest unit was the brigade, or *secteur*.¹⁵⁷ Between the smallest and the largest units, there was also the platoon, the company, and then the battalion.¹⁵⁸ All of the units were ultimately under the command of the Chief of Staff,¹⁵⁹ since the FPLC followed a military hierarchical structure.¹⁶⁰ NTAGANDA's role of Deputy Chief of Staff in Charge of Operations entailed that he was in charge of all military operations in which the FPLC was involved.¹⁶¹ It was also NTAGANDA who made decisions as to the distribution of weapons.¹⁶² If he was absent, KISEMBO also had the power to issue orders for weapons to be distributed.¹⁶³ The weapons came from Rwanda.¹⁶⁴ In addition, NTAGANDA trained FPLC recruits in 'ideology', pursuant to an ideology programme he designed.¹⁶⁵

115. Some of NTAGANDA's former fellow members of the Chui Mobile Force movement became officers in the FPLC.¹⁶⁶ These included, *inter alia*, commanders ERIC MBAVAZI and ABELANGA.¹⁶⁷ LUBANGA appointed MBAVAZI to the

¹⁵⁵ P-0901, T-30-CONF-ENG-CT, 22 September 2015, pp. 23, 35.

¹⁵⁶ P-0901, T-30-CONF-ENG-CT, 22 September 2015, p. 23; P-0796, T-120-CONF-ENG-ET, 13 July 2016, p. 15; P-0290, T-67-CONF-ENG-CT, 12 February 2016, p. 46; D-0243, T-257-CONF-ENG-CT, 5 December 2017, p. 30; D-0038, T-249-CONF-ENG-CT, 17 October 2017, p. 61. See also DRC-OTP-0137-0711; P-0901 and T-27-Red-ENG-WT, 17 September 2015, pp. 46-47.

¹⁵⁷ P-0901, T-30-CONF-ENG-CT, 22 September 2015, p. 32.

¹⁵⁸ P-0901, T-30-Red-ENG-WT, 22 September 2015, p. 33.

¹⁵⁹ P-0901, T-30-Red-ENG-WT, 22 September 2015, p. 33.

¹⁶⁰ P-0901, T-30-CONF-ENG-CT, 22 September 2015, p. 32.

¹⁶¹ P-0190, T-96-Red-ENG-WT, 6 June 2016, p. 49.

¹⁶² P-0055, T-71-CONF-ENG-ET, 24 February 2016, p. 7.

¹⁶³ P-0055, T-71-CONF-ENG-ET, 24 February 2016, p. 7.

¹⁶⁴ P-0963, T-78, CONF ENG-ET, 11 April 2016, p. 72; P-0016, DRC-OTP-0126-0422-R01, paras. 194-195, 197.

¹⁶⁵ Bosco NTAGANDA, T-232-CONF-ENG-ET, 29 August 2017, pp. 37, 78.

¹⁶⁶ P-0901, T-27-CONF-ENG-ET, 17 September 2015, p. 38.

¹⁶⁷ DRC-OTP-0137-0711 and P-901, T-27-Red-ENG-WT, 17 September 2015, pp. 46-47 and T-27-CONF-ENG-ET, 17 September 2015, p. 38.

position of G-5 in charge of ideology and instruction.¹⁶⁸ The position of G-2 in charge of intelligence was initially occupied by IDRISS BOBALE, who was replaced by ALI MBUYI, a Rwandan who was a “*frère de sang*” of NTAGANDA.¹⁶⁹ Towards the end of September 2002, KISEMBO appointed all the commanders within the FPLC, including DAVID PIGWA and AMÉRICAIN.¹⁷⁰ It was around the same time that commanders BAGONZA and KYALIGONZA also joined the movement.¹⁷¹

116. The commanders of the various units had and used various telecommunication devices, including very high frequency *Motorola* radio devices that used an un-secured frequency,¹⁷² and so-called high frequency *phonies*, namely short-wave radios that communicate over very long distances.¹⁷³ Some commanders, such as KISEMBO and NTAGANDA also had satellite phones,¹⁷⁴ whereas all commanders, including NTAGANDA, had portable *Motorolas* with which they communicated amongst each other.¹⁷⁵

117. At the time of the takeover of Mongbwalu,¹⁷⁶ new sector commanders had been appointed: JÉRÔME KAKWAVU was put in charge of the Mongbwalu sector, Mahagi was under MUGISA, Aru was under SALONGO (a.k.a. TIGER ONE¹⁷⁷) and Bunia under KYALIGONZA.¹⁷⁸ Commander SEYI was stationed in Kandoyi.¹⁷⁹ KAKWAVU’s men had been integrated into the FPLC in late October 2002.¹⁸⁰

¹⁶⁸ Bosco NTAGANDA, T-215-ENG-WT, 29 June 2017, p. 43.

¹⁶⁹ P-0016, DRC-OTP-0126-0422-R01, paras. 68, 185.

¹⁷⁰ Bosco NTAGANDA, T-215-ENG-ET-WT, 29 June 2017, pp. 63-64.

¹⁷¹ Bosco NTAGANDA, T-213-CONF-ENG-CT, 27 June 2017, p. 50.

¹⁷² P-0290, T-65-CONF-ENG-CT, 10 February 2016, p. 62; Bosco NTAGANDA, T-222-ENG-ET-WT, 11 July 2017, p. 35.

¹⁷³ D-0243, T-259-CONF-ENG-CT, 6 December 2017, pp. 16-17. P-0290, T-65-CONF-ENG-CT, 10 February 2016, p. 46.

¹⁷⁴ D-0243, T-259-CONF-ENG-CT, 6 December 2017, p. 15; P-0190, T-97-CONF-ENG-ET, 7 June 2016, pp. 27-28; Bosco NTAGANDA, T-222-ENG-ET-WT, 11 July 2017, p. 33.

¹⁷⁵ D-0243, T-259-CONF-ENG-CT, 6 December 2017, p. 37; P-0190, T-97-CONF-ENG-ET, 7 June 2016, pp. 26-27; P-0016, DRC-OTP-0126-0422-R01, para. 173.

¹⁷⁶ See *infra*, Mongbwalu.

¹⁷⁷ P-0017, T-58-Red-ENG-CT-WT, 28 January 2016, p. 65.

¹⁷⁸ P-0055, T-70-CONF-ENG-CT, 23 February 2016, p. 80.

¹⁷⁹ P-0055, T-70-CONF-ENG-CT, 23 February 2016, p. 82.

¹⁸⁰ P-0016, DRC-OTP-0126-0422-R01, paras. 91-92, 95.

118. SALUMU MULENDA BIN BERNARD (a.k.a. SALUMU) commanded one of the UPC's three brigades, namely the "*Alpha Brigade*".¹⁸¹ As to the battalion commanders within SALUMU's brigade, there was for instance commander PAPY, who was the "*Kilo battalion commander*".¹⁸² The other battalion commanders in SALUMU's brigade were commanders AMÉRICAIN, DAVID PIGWA, and ABELANGA.¹⁸³ SALUMU was a colonel, and thus subordinate to NTAGANDA, who was a general.¹⁸⁴ PAUL MUGISA was in command of the second, or "*Bravo*" brigade, whereas EMMANUEL NDUNGUSTE (a.k.a. MANU) commanded the third brigade, namely the "*Charlie*" brigade.¹⁸⁵ MUGISA was also the 'local' commander in Komanda in October 2002.¹⁸⁶

119. After the Mongbwalu operation in late November 2002, the 'South' sector was created and commander SALONGO was put in charge.¹⁸⁷ The respective three brigades were commanded by commanders BAGONZA, SALUMU, and KYALIGONZA.¹⁸⁸

120. Other commanders who participated in the attacks included commanders Jovith LINGANGA, who, at least in November 2003, held the rank of colonel,¹⁸⁹ and SAFARI who, in October 2002, was the commander in charge of operations in sector 'East'.¹⁹⁰

121. In sum, it is submitted that the evidence presented shows that the UPC's armed wing, the FPLC, operated according to a clear structure modelled after a

¹⁸¹ P-0963-T-78-CONF-ENG-ET, 11 April 2016, p. 65; P-0017, T-58-Red-ENG-CT-WT, 28 January 2016, p. 36; P-0016, DRC-OTP-0126-0422-R01, para. 76.

¹⁸² P-0963-T-78-CONF-ENG-ET, 11 April 2016, pp. 65-66; See also Bosco NTAGANDA, T-222-ENG-ET-WT, 11 July 2017, p. 7.

¹⁸³ P-0017, T-58-Red-ENG-CT-WT, 28 January 2016, p. 37.

¹⁸⁴ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 78.

¹⁸⁵ P-0016, DRC-OTP-0126-0422-R01, para. 76.

¹⁸⁶ DRC-OTP-0017-0025.

¹⁸⁷ P-0016, DRC-OTP-0126-0422-R01, para. 78.

¹⁸⁸ P-0016, DRC-OTP-0126-0422-R01, para. 78.

¹⁸⁹ DRC-OTP-0016-0042. LINGANGA was, in December 2003, promoted to the G-3 position. See DRC-OTP-0016-0131.

¹⁹⁰ DRC-OTP-0017-0025.

military hierarchy, but that the one wielding ultimate control over the lower ranks, troops, and subordinated individuals with regard to the operations on the ground was the *de facto* leader, Bosco NTAGANDA, rather than the *de jure* Chief of General Staff, KISEMBO.

VII. SUBMISSIONS ON FACTUAL CIRCUMSTANCES OF THE CRIMES

122. Among the victims the Chamber has authorised to participate in the proceedings, there are 41 direct and indirect victims of sexual violence,¹⁹¹ 1083 victims of murder committed of their close relatives, in some cases, almost entire families; 1202 victims have had their property pillaged, and 910 had their houses, businesses or both burnt down or otherwise destroyed. A total of 423 victims were forcibly displaced. A vast majority of them were subjected to these crimes on persecutory grounds.

123. The Chamber has also heard the evidence of V1 who spoke about his torture at the hands of the Accused's subordinates¹⁹² which, the Legal Representative submits, constitutes an act of persecution.

124. Through the following description of the events giving rise to the crimes that victimised his clients, the Legal Representative seeks to highlight aspects of the compelling evidence that, in his submission, inevitably leads to the conclusion that the Accused is criminally responsible for these acts.

¹⁹¹ 39 victims being direct or indirect victims of rape; 2 victims being victims of sexual slavery.

¹⁹² V1, T-201-Red-ENG-WT, 10 April 2017, pp. 9, 10-13, 19, and T-201-CONF-ENG-ET, 10 April 2017, pp. 59-61, 71, 79-80; DRC-PCV-0001-0079.

A. CONTEXTUAL ELEMENTS – CRIMES AGAINST HUMANITY

1. WIDESPREAD OR SYSTEMATIC ATTACKS

125. The Chamber heard evidence of murder, pillage, rape, forced displacement, and sexual slavery in various towns and villages. The evidence clearly shows a repeated pattern and thus leaves no doubt that there was a systematic, deliberate attack that was carried out against the – mainly Lendu – population by UPC forces throughout the Ituri region. The Chamber, for instance, heard about attacks in Songolo and Komanda after the ousting of governor LOMPONDO from Bunia on 9 August 2002.¹⁹³

126. These attacks, although not part of the ‘First and Second Attacks’ charged by the Prosecution, were carried out during the temporal scope delimiting the UDCC¹⁹⁴ and are therefore significant in demonstrating the widespread or systematic character of the attacks against the civilian population as a whole throughout this period. In fact, when LOMPONDO was ousted in August 2002, the UPC also drove the Lendu out of Bunia and many Lendu fled to other, surrounding villages, including Kobu,¹⁹⁵ where they were ultimately attacked again.

127. P-0888 testified that during the attack in which he participated in Songolo – a village located on the Bunia road towards Komanda, close to Nyankunde¹⁹⁶ – the soldiers removed any item of value from the straw houses before torching them as ordered by their commanders.¹⁹⁷ They looted vehicles, radios, TV sets, cameras, and other items they would recover from the houses and handed them over to their commanders.¹⁹⁸ They also broke into shops and took all the merchandise which they

¹⁹³ DRC-OTP-0074-0422, p. 0074-0440; Agreed Fact 54.

¹⁹⁴ UDCC, paras. 43-52. See also *idem*, para. 53a.

¹⁹⁵ P-0301, T-149-Red-ENG-WT, 7 October 2016, p. 27; P-0918, T-155-CONF-ENG-ET, 10 November 2016, p. 79; Agreed Fact 54.

¹⁹⁶ P-0898, T-154-CONF-ENG-ET, 9 November 2015, p. 27; DRC-OTP-2106-0044.

¹⁹⁷ P-0888, T-105-Red-ENG-WT, 20 June 2016, p. 46 and T-105-CONF-ENG-ET, 20 June 2016, p. 57.

¹⁹⁸ P-0888, T-105-Red-ENG-WT, 20 June 2016, p. 58 and T-105-CONF-ENG-ET, 20 June 2016, p. 83.

likewise handed over to their commanders, except for some of the clothing they pillaged and kept for themselves.¹⁹⁹

128. This attack took place somewhere around the end of August 2002²⁰⁰ and many people were killed during this operation, including women, children, and old people.²⁰¹ According to P-0888, there were young children of about five or six years old among those who were killed and even babies who could not yet walk.²⁰²

129. Some people were killed while they fled, whereas others were killed in their homes.²⁰³ P-0888 testified that their commanders instructed them to go from house to house and kill those they found inside *“because ‘Commander BOSCO’ gave the order”*.²⁰⁴ P-0888 stated that rocket launchers and mortars were used during the Sangolo operation [REDACTED].²⁰⁵

130. NTAGANDA himself told the Judges that he was the commander directing the attack on Komanda.²⁰⁶ NTAGANDA was stationed in Irumu, while commanders KYALIGONZA and SAFARI were in charge of carrying out the attack.²⁰⁷ SAFARI was actually injured by shrapnel during this attack.²⁰⁸ Commanders BAGONZA and KASANGAKI²⁰⁹ were also reported to have been involved in the attack.²¹⁰

131. During the attack, the commanders explained to their troops that the houses they were to torch and the property they were to loot belonged to the enemy and,

¹⁹⁹ P-0888, T-105-Red-ENG-WT, 20 June 2016, p. 58.

²⁰⁰ P-0190, T-97-Red-ENG-WT, 7 June 2016, p. 33.

²⁰¹ P-0888, T-105-CONF-ENG-CT, 20 June 2016, pp. 47, 54; P-0907, T-89-CONF-ENG-ET, 25 April 2016, p. 42.

²⁰² P-0888, T-105-CONF-ENG-CT, 20 June 2016, p. 54.

²⁰³ P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 42.

²⁰⁴ P-0888, T-105-CONF-ENG-CT, 20 June 2016, p. 56. See also P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 43.

²⁰⁵ P-0888, T-105-CONF-ENG-ET, 20 June 2016, p. 61.

²⁰⁶ Bosco NTAGANDA, T-213-CONF-ENG-CT, 27 June 2017, p. 13.

²⁰⁷ P-0907, T-89-CONF-ENG-CT, 25 April 2016, pp. 36, 46, 79.

²⁰⁸ P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 46.

²⁰⁹ DRC-OTP-0137-0711 and P-901, T-27-Red-ENG-WT, 17 September 2015, p. 46.

²¹⁰ P-0012, DRC-OTP-0105-0085, para. 346.

therefore, had to be destroyed.²¹¹ Sometimes, they would set the houses alight, so that the enemy would come out of the house and they could shoot them as they emerged from the burning house.²¹² P-0907 also saw a soldier called BASARA, [REDACTED], rape a woman whom he found inside one of the houses he was searching in Komanda.²¹³

132. BASARA also shot and killed another woman whom he found in a different house because she refused to come with him.²¹⁴ Another soldier, a certain NDOMBOLO, raped and killed several women he found in a house, because someone told him that they were ‘the wives of soldiers’.²¹⁵

133. These women, children, and elderly were civilians and they were killed for the simple reason that they belonged to the Lendu tribe²¹⁶ because every Lendu, irrespective of age or gender, was regarded as ‘the enemy’.²¹⁷

134. Commander KASANGAKI was present and participating in the house searches during which civilians were raped and killed, and so was commander SAFARI.²¹⁸ Commander BAGONZA was put in charge of the *ratissage* operations after the main attack,²¹⁹ despite his reputation of killing and raping which was well-known within the UPC.²²⁰ It was NTAGANDA who appointed him for that task.²²¹

²¹¹ P-0888, T-105-Red-ENG-WT, 20 June 2016, p. 58.

²¹² P-0907, T-89-CONF-ENG-CT, 25 April 2016, pp. 48-49.

²¹³ P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 42.

²¹⁴ P-0907, T-89-CONF-ENG-CT, 25 April 2016, pp. 42-43.

²¹⁵ P-0907, T-89-CONF-ENG-CT, 25 April 2016, pp. 45-46.

²¹⁶ P-0888, T-105-CONF-ENG-CT, 20 June 2016, pp. 51, 61.

²¹⁷ P-0012, DRC-OTP-0105-0085, para. 347.

²¹⁸ [REDACTED]

²¹⁹ P-0190, T-96-CONF-ENG-ET, 6 June 2016, p. 92.

²²⁰ P-0016, DRC-OTP-0126-0422-R01, paras. 210-214.

²²¹ P-0190-T-96-CONF-ENG-ET, 7 June 2016, p. 92.

135. Moreover, the Chamber heard that commanders gave no specific instructions on the battlefield as regarded the treatment of civilians,²²² and that even rocket launchers were used during the attack on this village.²²³

136. The Defence sought to demonstrate that the operations in Komanda and Songolo were legitimate military operations²²⁴ and that no one was hurt as the civilians had allegedly already fled before the UPC troops even reached the village. It sought to convince the Chamber that no houses were burnt down, and no belongings were pillaged by the UPC troops.

137. The Accused claimed that looting and destruction of civilian dwellings was carried out by APC troops rather than UPC soldiers.²²⁵ He also claimed that killings would have been committed by Lendu combatants.²²⁶ Not only is this version of events speculative and contrary to the credible account of P-0888, but the Accused further contradicted himself when he also claimed that belongings that *had* been taken by his soldiers were burnt so as to serve as an example to other soldiers not to engage in pillaging.²²⁷ None of this evidence and alternative versions of events is convincing or capable of casting doubt upon P-0888's and P-0907's respective versions. If anything, the evidence adduced by the Defence supports the fact that NTAGANDA's subordinated commanders were present and giving direct instructions to their soldiers during the attacks, including on the selection of targets²²⁸ and that NTAGANDA was the commander directing the overall attack.²²⁹

138. Just as they did in Songolo, the UPC was attacking numerous villages along the Komanda road in an attempt to reach Beni.²³⁰ In Komanda alone, approximately

²²² D-0017, T-252-CONF-ENG-ET, 27 November 2017, pp. 61-62.

²²³ P-0888, T-105-CONF-ENG-ET, 20 June 2016, p. 18.

²²⁴ See e.g. Bosco NTAGANDA, T-215-ENG-ET-WT, 29 June 2017, p. 78.

²²⁵ Bosco NTAGANDA, T-213-CONF-ENG-CT, 27 June 2017, p. 17.

²²⁶ Bosco NTAGANDA, T-213-CONF-ENG-CT, 27 June 2017, p. 17.

²²⁷ Bosco NTAGANDA, T-213-CONF-ENG-CT, 27 June 2017, pp. 13, 16.

²²⁸ See e.g. D-0017, T-252-CONF-ENG-ET, 27 November 2017, pp. 60-61.

²²⁹ Bosco NTAGANDA, T-213-CONF-ENG-CT, 27 June 2017, p. 13.

²³⁰ Sonia Bakar, T-192-Red-ENG-WT, 6 February 2017, pp. 37-38.

50 people were killed.²³¹ Other than killings, many abductions and rapes were reported in the villages along the Komanda road, with the highest number of rapes having been committed in Mambasa.²³²

139. The Komanda attack took place around the end of October, beginning of November 2002, [REDACTED] commander SAFARI was injured during this attack in November 2002.²³³ At the time, SAFARI was the commander in charge of operations in sector 'East'.²³⁴ According to the Accused, the Zumbe and Komanda operations were carried out in October 2002.²³⁵

140. During one of the various attacks along the Komanda road, NTAGANDA himself used artillery equipment; he testified about firing a 60mm shell from a mortar at "*the enemy*" when he in fact could not even see where it was landing.²³⁶ He stated that he fired it, not "*know[ing] what the consequences were*".²³⁷

141. The Judges have further heard accounts of UPC soldiers raping and killing civilians on their way through other Iturian villages. For instance, the UPC attacked Zumbe in October 2002, where it laid anti-personnel mines and "*destroy[ed] everything*".²³⁸ The soldiers were to "*strike hard*" and "*show no mercy*".²³⁹ Rather than specific rules of engagement, the soldiers were simply told that they "*would find the enemy there*" and all people in Zumbe were effectively considered their enemies.²⁴⁰ They were not meant to spare anything, anything at all.²⁴¹

²³¹ Sonia Bakar, T-192-Red-ENG-WT, 6 February 2017, p. 38.

²³² Sonia Bakar, T-192-Red-ENG-WT, 6 February 2017, p. 38.

²³³ [REDACTED]

²³⁴ DRC-OTP-0017-0025.

²³⁵ Bosco NTAGANDA, T-215-CONF-ENG-ET, 29 June 2017, p. 78.

²³⁶ Bosco NTAGANDA, T-219-Red-ENG WT, 6 July 2017, p. 38.

²³⁷ Bosco NTAGANDA, T-219-Red-ENG WT, 6 July 2017, pp. 37-38.

²³⁸ P-0907, T-89-CONF-ENG-CT, 25 April 2016, pp. 73-74.

²³⁹ P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 73.

²⁴⁰ P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 73.

²⁴¹ P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 74.

142. At no time did the UPC commanders give instructions about how Lendu civilians should be treated.²⁴² They simply told their troops that *“When you go into battle, don’t spare the enemy, you must hit them, strike them and loot.”*²⁴³

143. In the villages of Sayo and Nzebi, the UPC soldiers broke in the doors and windows of houses.²⁴⁴ Nzebi, for instance, was known to be a village inhabited mainly by the Lendu tribe.²⁴⁵

144. Other neighbouring villages were being attacked in the same way, namely Bambu, and Nyangaray which are villages situated in the close vicinity of Sayo,²⁴⁶ villages that were known to be *“Lendu villages”*.²⁴⁷

145. P-0815 testified that, after he had fled his home village of Sayo in late November 2002 because of the attacks, he later on found himself in the village of Mahagi where he witnessed the ‘Hema soldiers’ taking away virtually all the property they came across, including money and cattle.²⁴⁸

146. P-0815 heard that the soldiers, apart from pillaging, also committed rapes in the village and took young girls as forced ‘wives’.²⁴⁹ His daughter was among those who were raped by soldiers.²⁵⁰ Three young girls aged 14, 15, and 16 were abducted in the market and forcibly taken to the military camp.²⁵¹ The commander who eventually released them for a ransom paid by their relatives initially refused to let

²⁴² P-0017, T-59-CONF-ENG-ET, 29 January 2016, p. 63.

²⁴³ P-0010, T-47-CONF-ENG-CT, 11 November 2015, p. 15.

²⁴⁴ [REDACTED]

²⁴⁵ P-0768, T-33-CONF-ENG-ET, 19 October 2015, pp. 51-52.

²⁴⁶ P-0800, T-68-CONF-ENG-ET, 16 February 2016, p. 45.

²⁴⁷ P-0800, T-68-CONF-ENG-ET, 16 February 2016, p. 45.

²⁴⁸ P-0815, T-76-CONF-ENG-ET, 4 April 2016, pp. 36-37 and T-77-Red-ENG-WT, 5 April 2016, pp. 17-18.

²⁴⁹ P-0815, T-76-Red-ENG-WT, 4 April 2016, p. 37; T-76-CONF-ENG-CT, 4 April 2016, pp 42-43, 51 and T-77-CONF-ENG-ET, 5 April 2016, p. 46.

²⁵⁰ P-0815, T-76-CONF-ENG-CT, 4 April 2016, pp. 41-42.

²⁵¹ P-0815, T-76-CONF-ENG-ET, 4 April 2016, pp. 37, 42-43, 51 and T-77-CONF-ENG-ET, 5 April 2016, pp. 41-46.

them go, claiming that he had just “*married them off*”.²⁵² The girls were only 14, 15, and 16 years-old.²⁵³

147. V2 testified that, fleeing Mongbwalu to Beba *via* Pluto, she and others came across a soldier who had decapitated a young man.²⁵⁴ The soldier claimed the man had been a Lendu, and he took the head and put it on a knife and started to brandish the head in the air, saying: “*This is a Lendu!*”²⁵⁵ One of the other soldiers said: “*Kadogo, kadogo, come, bring this head and we’re going to burn it*”.²⁵⁶ The *kadogo* then took the head and put it in the fire.²⁵⁷

148. Later that day, the soldiers arrested several people, including V2, separating women and men.²⁵⁸ The women were to sit on one side and the men on the other.²⁵⁹ They did not tell them why they were being arrested.²⁶⁰ Three soldiers came and took V2 and her child; they took her to the bush and told her to lie down.²⁶¹ When he refused and resisted, another soldier took away her child and she was hit [REDACTED] with a rifle butt which caused her [REDACTED].²⁶²

149. The soldiers forced her to the ground and then two of them raped her by penetrating her vagina, taking turns.²⁶³ A third soldier was holding her [REDACTED] year-old child and the baby had just been left somewhere nearby while V2 was being raped.²⁶⁴ When they finished raping her, the soldiers just left her there. Shortly thereafter, V2 set out on the way to Lodjo, which was about twelve km from Beba.²⁶⁵

²⁵² P-0815, T-76-CONF-ENG-CT, 4 April 2016, pp. 43, 45 and T-77-CONF-ENG-CT, 5 April 2016, p. 41.

²⁵³ P-0815, T-76-CONF-ENG-CT, 4 April 2016, p. 44 and T-77-CONF-ENG-CT, 5 April 2016, pp. 32-33.

²⁵⁴ V2, T-202-Red-ENG-WT, 11 April 2017, p. 17.

²⁵⁵ V2, T-202-Red-ENG-WT, 11 April 2017, p. 17.

²⁵⁶ V2, T-202-Red-ENG-WT, 11 April 2017, p. 18.

²⁵⁷ V2, T-202-Red-ENG-WT, 11 April 2017, p. 18.

²⁵⁸ V2, T-202-Red-ENG-WT, 11 April 2017, pp. 18, 22, 24.

²⁵⁹ V2, T-202-Red-ENG-WT, 11 April 2017, p. 18.

²⁶⁰ V2, T-202-Red-ENG-WT, 11 April 2017, p. 24.

²⁶¹ V2, T-202-Red-ENG-WT, 11 April 2017, p. 18.

²⁶² V2, T-202, Red-ENG WT, 11 April 2017, p. 18.

²⁶³ V2, T-202-Red-ENG-WT, 11 April 2017, pp. 18, 26.

²⁶⁴ V2, T-202-Red-ENG-WT, 11 April 2017, p. 26.

²⁶⁵ V2, T-202-Red-ENG-WT, 11 April 2017, p. 28.

150. When she arrived in [REDACTED], she met [REDACTED], a man who hailed from Mongbwalu and whom she had previously met in [REDACTED] when she and her husband had fled.²⁶⁶ [REDACTED] had been in the group of men that was separated from the women in [REDACTED].²⁶⁷ He told V2 and the other women who had made it to [REDACTED] that he had managed to escape whereas all the others – those who refused to join the army – had been “*eliminated*”.²⁶⁸ According to what [REDACTED] told them, some of the men had accepted to join the army and those were still alive.²⁶⁹ However, V2’s husband had been among the group of men who had been killed.²⁷⁰

151. When Bambu was attacked by the UPC towards the end of the year 2002,²⁷¹ P-0113 gathered her children and fled together with [REDACTED].²⁷² They fled in the direction of Sangi.²⁷³ However, as the situation remained unstable they continued on to Ngabulo.²⁷⁴ But even in Sangi and Ngabulo the UPC came “*looking for villagers*”.²⁷⁵ At the time, P-113’s [REDACTED] was only [REDACTED] old and P-0113 had to carry [REDACTED] in her arms.²⁷⁶

152. V1 was arrested by UPC soldiers in Bambu towards the end of the year 2002.²⁷⁷ They stopped him on a road, arrested him, and beat him up.²⁷⁸ V1 stated that he was arrested for the simple reason that he was a Lendu.²⁷⁹ The soldiers took him to the military camp in [REDACTED] and beat him up again once they arrived there.²⁸⁰

²⁶⁶ V2, T-202-Red-ENG-WT, 11 April 2017, p. 28 and T-202-CONF-ENG-ET, 11 April 2017, p. 83.

²⁶⁷ V2, T-202-Red-ENG-WT, 11 April 2017, p. 28 and T-202-CONF-ENG-ET, 11 April 2017, p. 83.

²⁶⁸ V2, T-202-Red-ENG-WT, 11 April 2017, p. 28 and T-202-CONF-ENG-ET, 11 April 2017, p. 83.

²⁶⁹ V2, T-202-CONF-ENG-ET, 11 April 2017, p. 28.

²⁷⁰ V2, T-202-CONF-ENG-ET, 11 April 2017, pp. 29, 84.

²⁷¹ P-0113, T-118-Red-ENG-WT, 11 July 2016, p. 13.

²⁷² P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 16.

²⁷³ P-0113, T-118-Red-ENG-WT, 11 July 2016, p. 13.

²⁷⁴ P-0113, T-118-Red-ENG-WT, 11 July 2016, p. 13.

²⁷⁵ P-0113, T-118-Red-ENG-WT, 11 July 2016, p. 13 and T-118-CONF-ENG-ET, 11 July 2016, p. 18.

²⁷⁶ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 17.

²⁷⁷ V1, T-201-Red-ENG-WT, 10 April 2017, p. 9.

²⁷⁸ V1, T-201-Red-ENG-WT, 10 April 2017, 10 April 2017, pp. 9-10.

²⁷⁹ V1, T-201-Red-ENG-WT, 10 April 2017, 10 April 2017, pp. 9-10.

²⁸⁰ V1, T-201-Red-ENG-WT, 10 April 2017, p. 10 and T-201-CONF-ENG-ET, 10 April 2017, p. 79.

While they were beating him with batons and clubs, they were telling him that they “[were] *the masters of the Lendu*”.²⁸¹ The soldiers removed his clothing and poured water over him before they beat him.²⁸² He was also whipped from which he sustained injuries.²⁸³ The soldiers who beat him were wearing fatigues and were carrying rifles.²⁸⁴ He had injuries and severe pain in his “*sides*”.²⁸⁵ Thereafter, he was put in a room in a building within the camp, which was not really a prison *per se*.²⁸⁶ V1 then realised how he had sustained injuries to his [REDACTED].²⁸⁷ To this day, he bears scars, including one on his [REDACTED], and has difficulty walking stemming from the injuries to his [REDACTED] he sustained at the time.²⁸⁸

153. V1 was held in [REDACTED] for four days during which time he was beaten countless times and made to clean the latrines of the building barehanded.²⁸⁹ When he finished cleaning the toilets, the soldiers took him back to the prison, and he did not have any opportunity to wash himself.²⁹⁰ He was also forced to fetch water from the well.²⁹¹

154. P-0106, who had fled Kobu when “[t]he group of Bosco” attacked, managed to escape from captivity after having been apprehended in the bush by UPC soldiers.²⁹² He stated that the attackers followed the villagers into the bush where they arrested people they came across.²⁹³ They would call out into the bush that people should come out and that they wanted to enter into a dialogue with them.²⁹⁴

²⁸¹ V1, T-201-Red-ENG-WT, 10 April 2017, p. 11.

²⁸² V1, T-201-Red-ENG-WT, 10 April 2017, p. 11.

²⁸³ V1, T-201-Red-ENG-WT, 10 April 2017, p. 12.

²⁸⁴ V1, T-201-Red-ENG-WT, 10 April 2017, p. 13.

²⁸⁵ V1, T-201-Red-ENG-WT, 10 April 2017, pp. 13-15.

²⁸⁶ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 80.

²⁸⁷ V1, T-201-Red-ENG-WT, 10 April 2017, p. 13.

²⁸⁸ V1, T-201-Red-ENG-WT, 10 April 2017, pp. 13, 38-39; DRC-PCV-0001-0079.

²⁸⁹ V1, T-201-Red-ENG-WT, 10 April 2017, p. 11 and T-201-CONF-ENG-ET, 10 April 2017, pp. 71, 79.

²⁹⁰ V1, T-201-Red-ENG-WT, 10 April 2017, p. 12.

²⁹¹ V1, T-201-Red-ENG-WT, 10 April 2017, p. 11.

²⁹² P-0106, T-44-Red-ENG-WT, 3 November 2015, pp. 27-28, 41.

²⁹³ P-0106, T-44-Red-ENG-WT, 3 November 2015, p. 28.

²⁹⁴ P-0106, T-44-Red-ENG-WT, 3 November 2015, p. 31.

155. P-0106 was warned by some people with whom he found himself in the bush that the Hema had done exactly that in Limani and that the population who followed their call to come out of the bush was subsequently killed.²⁹⁵ After he managed to free himself and continue his flight, P-0106 reached the village of [REDACTED] where he found his [REDACTED] killed in the latter's house.²⁹⁶ [REDACTED] had been shot in the back.²⁹⁷ P-0792, a Lendu inhabitant of [REDACTED],²⁹⁸ also testified that he fled his village during the attacks in November and was forced to hide out in the surrounding bush until about March 2003.²⁹⁹

156. The UPC soldiers also set up roadblocks at which they would stop and arrest women to rape them there or take them back to their camps to make them "*their wives*", which besides rape also meant that "*that woman would be forced to live with that particular soldier*" in a camp.³⁰⁰ One such roadblock, for instance, existed in a place called Kosovo near Iga Barrière.³⁰¹

157. As early as 6 November 2002, the UPC leadership received internal situation reports alerting it to crimes being committed against the civilian population.³⁰² These reported infractions included torture, rape, and pillage in places such as Mabanga, Barrière, Lipri, and Fataki, as well as pillage of 'war booty' committed particularly by the leadership ranks.³⁰³

158. UPC commanders were also aware of rapes being committed by other commanders and soldiers. [REDACTED] credibly recounted to the Chamber how Commander JÉRÔME had received a complaint from a civilian woman in

²⁹⁵ P-0106 T-44-Red-ENG-WT, 3 November 2015, p. 31.

²⁹⁶ P-0106, T-44-Red-ENG-WT, 3 November 2015, pp. 42-43.

²⁹⁷ P-0106, T-44-Red-ENG-WT, 3 November 2015, p. 43.

²⁹⁸ P-0792, T-150-CONF-ENG-ET, 10 October 2016, p. 43.

²⁹⁹ P-0792, T-150-CONF-ENG-ET, 10 October 2016, p. 46, 48.

³⁰⁰ P-0758, T-161-CONF-ENG-ET, 21 November 2016, p. 22.

³⁰¹ P-0758, T-161-CONF-ENG-ET, 21 November 2016, p. 22.

³⁰² DRC-OTP-0109-0136, pp. 1, 4.

³⁰³ DRC-OTP-0109-0136, p. 5.

[REDACTED] that she had been raped by Commander MANU.³⁰⁴ The only way in which Commander JERÔME reacted was by telling her that “*he could pay for her medical expenses*” and that he would speak to Commander MANU “*about the matter*”.³⁰⁵ P-0758 also testified that the rape and sexual slavery of civilian women “*didn’t mean anything*” to the high-ranking officers, because they were themselves raping women and girls.³⁰⁶

a. Conclusion

159. The testimony of the witnesses who spoke about these various attacks and crimes referred to in this section clearly attests to a certain *modus operandi*, a systematic way of attacking and victimising the population in these Lendu and non-Hema inhabited villages. It is within this context that the UPC troops carried out the two larger operations the Prosecution has charged as the ‘First and Second Attacks’.

³⁰⁴ [REDACTED]

³⁰⁵ [REDACTED]

³⁰⁶ P-0758, T-161-CONF-ENG-ET, 21 November 2016, p. 8.

B. CONTEXTUAL ELEMENTS – WAR CRIMES

160. The Chamber has heard evidence on the protracted and on-going conflict between the Hema and Lendu ethnicities, which intensified in 1999 and onwards.³⁰⁷ It has further been presented with evidence that armed groups, such as the APC, FNI, FRPI – on the Lendu side – and the UPC/FPLC on the Hema side were involved in this conflict on opposing sides and clashed during the period up to December 2003.³⁰⁸ It has also heard evidence of the Accused himself, to the effect that he was aware of the armed conflict of a non-international character taking place in Ituri between August 2002 and December 2003.³⁰⁹

161. It is in this context, that war crimes were committed against the civilian population by troops under the overall command and control of the Accused.³¹⁰

³⁰⁷ See e.g. DRC-OTP-0185-0879, p. 0185-0880; P-0005, T-183-Red-ENG-WT, 19 January 2017, p. 28; P-0901, T-27-Red-ENG-WT, 17 September 2015, p. 25; D-0038, T-249-CONF-ENG-CT, 17 October 2017, p. 14; Zawadi BAHATI, T-245-CONF-ENG-CT, 15 September 2017, p. 21; DRC-OTP-2078-0458; DRC-OTP-2078-0551, paras. 1-2; DRC-OTP-0065-0148; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 11; Roberto GARRETÓN, T-32-Red-ENG-WT, p. 89; P-0245, T-141-CONF-ENG-ET, 27 September 2016, p. 29; P-0918, T-155-CONF-ENG-ET, 10 November 2016, p. 78; DRC-OTP-0074-0628, pp. 0074-0639, 0074-0657, 0074-0659; DRC-OTP-2078-0393, para. 15.

³⁰⁸ DRC-OTP-0074-0422, pp. 0074-0468 to 0074-0470; DRC-OTP-2082-2127; DRC-OTP-0065-0148, p. 2, DRC-OTP-2102-3966 (middle message). See also P-0017, T-58-Red-ENG-CT-WT, 28 January 2016, pp. 18-19; P-0907, T-91-Red-ENG-WT, 28 April 2016, pp. 29-30; P-0109, T-96-Red-ENG-WT, 6 June 2016, pp. 46-47; P-0790, T-56-Red-ENG-WT, 21 January 2016, pp. 31-32; P-0010, T-46-Red-ENG-WT, pp. 29-30; P-0792, T-150-CONF-ENG-ET, 10 October 2016, p. 44; P-0190, T-97-CONF-ENG-CT, 7 June 2016, p. 11.

³⁰⁹ Bosco NTAGANDA, T-211-CONF-ENG-ET, 15 June 2017, pp. 40-43, 45; T-219-Red-ENG-WT, 6 July 2017, p. 31; T-235-Red-ENG-CT-WT, 4 September 2017, pp. 71-72; T-238-Red-ENG-CT2, 6 September 2017, p. 3.

³¹⁰ See *infra*, section IX.

A. FIRST ATTACK

1. MONGBWALU

162. Mongbwalu is a town located in the Banyali-Kilo collectivité.³¹¹ In 2002, there was a significant number of Lendu living in and around Mongbwalu.³¹² Among the population, there were some armed men who defended the town under the Lendu commander KUNG FU.³¹³ However, there was no Lendu military camp as such in Mongbwalu.³¹⁴ In fact, in late November 2002, when the UPC soldiers took over Mongbwalu, there were no more Lendu combatants in the area and the only Lendu left in town were Lendu civilians.³¹⁵

163. The city is and was of significant strategic importance within the Ituri region for reasons of infrastructure, gold mining, and richness in precious stones and minerals.³¹⁶ For the latter reason, it also came to be largely populated by Lendu, the majority of whom were working in the Kilo-Moto mines.³¹⁷ Lulu and Nyali were also involved in the mining and some of them lived and worked in Mongbwalu.³¹⁸

164. The UPC sought to take control of Mongbwalu in order to regain the mining region and to cut the Lendu off from supply.³¹⁹ Their objective in attacking Mongbwalu was to drive out the Lendu or to “*eliminate all of them, loot their possessions, their various goods, possessions, financial means, [and] occupy their houses*”.³²⁰

³¹¹ Agreed Fact 6; DRC-OTP-2076-0211.

³¹² P-0039, DRC-OTP-2062-0244-R02, para. 10.

³¹³ P-0039, DRC-OTP-0104-0015-R03, paras. 18-19.

³¹⁴ P-0039, DRC-OTP-0104-0015-R03, paras. 18-19 and DRC-OTP-2062-0244-R02, para. 14-16.

³¹⁵ P-0768, T-33-Red-ENG-WT, 19 October 2015, p. 43.

³¹⁶ P-0190, T-97-CONF-ENG-CT, 7 June 2016, p. 16-17; P-0017, T-58-Red-ENG-CT-WT, 28 January 2016, p. 55; P-0039, DRC-OTP-0104-1500-R03, para. 15; P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 36; P-0055, T-70-ENG-CONF-ET, 23 February 2016, p. 99; P-0016, DRC-OTP-0126-0422-R01, paras. 119, 121; P-0877, DRC-OTP-2069-2086-R03, para. 10; Bosco NTAGANDA, T-216-ENG-ET-CT-WT, 30 June 2017, p. 47.

³¹⁷ P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 45.

³¹⁸ P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 45.

³¹⁹ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 71.

³²⁰ P-0963, T-78 CONF-ENG-ET, 11 April 2016, p. 73.

The troops were instructed to kill those they encountered, because “[a]nybody that [they] would find there would be considered as the enemy because all [their] relatives had already left that town. [...] There was nothing else to do but to kill them.”³²¹ NTAGANDA and SALUMU gave their troops instructions prior to the attack, wherein they explained that the city had to be captured, and the Lendu driven out.³²² The enemy was not to be spared; they were to be struck and their property to be looted.³²³ An entire brigade of soldiers was briefed to this effect in Mabanga prior to the attack.³²⁴

165. After a first failed attempt to capture the town,³²⁵ the UPC attacked Mongbwalu for a second time in November or December 2002,³²⁶ about two weeks after the failed attempt.³²⁷ The village of Dhego was the meeting point for the soldiers before the Mongbwalu attack.³²⁸ There were at least 500 UPC soldiers who attacked from the direction of Dhego alone.³²⁹

166. Commander SALUMU’s brigade reached Mongbwalu *via* Dala³³⁰ and Lalu and attacked the town from the airport side³³¹ in accordance with NTAGANDA’s order.³³² JERÔME KAKWAVU’s brigade was supposed to join from another direction.³³³ After

³²¹ P-0898, T-154-CONF-ENG-ET, 9 November 2016, pp. 10-11.

³²² P-0963, T-78-CONF-ENG-ET, 11 April 2016, pp. 70, 75; P-0907, T-89-CONF-ENG-ET, 25 April 2016, pp. 79-80. See also P-0017, T-58-Red-ENG-CT-WT, 28 January 2016, p. 54.

³²³ P-0010-T-47-Red2-ENG-WT, 11 November 2015, pp. 10, 15.

³²⁴ [REDACTED]

³²⁵ P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 84. See also P-0850, DRC-OTP-2067-1825, para. 14.

³²⁶ P-0887, T-93-CONF-ENG-CT, 2 May 2016, p. 9; P-0877, DRC-OTP-2069-2086, para. 10; P-0850, DRC-OTP-2067-1825, para. 9; V2, T-202-CONF-ENG-ET, 11 April 2017, pp. 13-14; P-0039, DRC-OTP-0104-0015-R03, para. 21; P-0805, T-25-CONF-ENG-CT, 15 September 2015, p. 31.

³²⁷ P-0850, DRC-OTP-2067-1825, paras. 14, 31; P-0907, T-89-CONF-ENG-ET, 25 April 2016, p. 84; DRC-OTP-2081-0507, p. 0574.

³²⁸ D-0251, T-260-CONF-ENG-CT, 7 December 2017, pp. 26-27.

³²⁹ D-0251, T-260-CONF-ENG-CT, 7 December 2017, p. 64.

³³⁰ P-0017, T-58-CONF-ENG-CT, 28 January 2016, p. 59 and T-61-CONF-ENG-ET, 2 February 2016, p. 44.

³³¹ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 12; P-0017, T-61-CONF-ENG-ET, 2 February 2016, p. 23, 48-49; P-0963, T-78-CONF-ENG-ET, p. 72. See also P-0877, DRC-OTP-2069-2086-R03, para. 10; DRC-OTP-2080-0239.

³³² P-0963, T-78-CONF-ENG-ET, 11 April 2016, pp. 70, 73, 77.

³³³ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 73.

surrounding the town, they took Mongbwalu from several fronts.³³⁴ It was around 10 a.m. when P-0850 started hearing gunfire in Mongbwalu coming from the direction of Pluto.³³⁵ A lot of noise from heavy weapons could be heard³³⁶ as far as to the village of Yedi.³³⁷

167. The attack lasted three days until Mongbwalu was successfully taken over.³³⁸ The first day of the attack was a Friday.³³⁹ Bosco NTAGANDA led the attack, together with other commanders, including commanders JERÔME and SALUMU.³⁴⁰ NTAGANDA was in the so-called “*advance team*”.³⁴¹ He was moving between the frontline and the supporting artillery that was directly receiving orders to fire the heavy weaponry.³⁴² NTAGANDA personally gave orders for the B-12 to be used to shell targets in Mongbwalu.³⁴³ KISEMBO only arrived after the town had been taken over and was met at the airport by NTAGANDA and other commanders.³⁴⁴

168. The commanders, including SALUMU and AMÉRICAIN, did not give their soldiers any special rules of engagement; they just told them that there were only enemies in Mongbwalu and that they should strike them and not spare anyone.³⁴⁵ There were also civilian combatants who took part in the attack, looted property, raped, and killed Lendu.³⁴⁶ These civilians were under the command of ROY NDIMA

³³⁴ P-0010, T-50-CONF-ENG-CT, 16 November 2015, p. 16; P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 73.

³³⁵ P-0850, DRC-OTP-2067-1825, para. 31.

³³⁶ P-0039, DRC-OTP-0104-1500-R01, para. 21; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, pp. 3-4.

³³⁷ [REDACTED]

³³⁸ P-0010, T-50-CONF-ENG-CT, 16 November 2015, pp. 15-16.

³³⁹ P-0039, DRC-OTP-0104-1500-R01, para. 21.

³⁴⁰ P-0898, T-154-CONF-ENG-ET, 9 November 2016, pp. 12-13; P-0963, T-78-CONF-ENG-ET, 11 April 2016, para. 74; P-0016, DRC-OTP-0126-0422-R01, para. 128. See also P-0907, T-89-CONF-ENG-CT, 25 April 2016, p. 80.

³⁴¹ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 22.

³⁴² [REDACTED]

³⁴³ [REDACTED]

³⁴⁴ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 22.

³⁴⁵ P-0907, T-89-CONF-ENG-ET, 25 April 2016, p. 80 and T-90-CONF-ENG-ET, 26 April 2016, p. 8.

³⁴⁶ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 13.

CHRIST (a.k.a commander ROY),³⁴⁷ and had been briefed in Dala prior to the launching of the attack.³⁴⁸ They effectively operated as the rearward base of the UPC army and also carried items for the troops.³⁴⁹ Commander ROY was directly subordinate to NTAGANDA.³⁵⁰ He was a trader from Bambu mine who had been in the Mabanga self-defence committee and “*was able to supply people to help the army*”, namely the UPC.³⁵¹ These combatants would generally not fight; rather, they would follow the troops to loot and destroy.³⁵² It was NTAGANDA himself who told P-0055 that civilians were mobilised for this purpose.³⁵³

169. Contrary to the assertions of the Accused,³⁵⁴ civilians were present in Mongbwalu when his troops attacked.³⁵⁵ Many Lendu, Nande, and Lese only took flight during the UPC attack.³⁵⁶ NTAGANDA even filmed civilians fleeing on the road and into the bush, as well as two dead women in *pagna* lying on the road and two men having been captured.³⁵⁷ P-0039 also recounted how he saw the population fleeing when he and his family took flight on the first day of the attack.³⁵⁸ As he fled, P-0039 could hear the noise of artillery weapons.³⁵⁹

170. On the first day, the UPC captured the airport.³⁶⁰ It was on 21 November 2002 that, [REDACTED].

³⁴⁷ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 14; P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 12; P-0907, T-89-CONF-ENG-ET, 25 April 2016, p. 80.

³⁴⁸ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 35.

³⁴⁹ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 12. See also *infra*, section IX.

³⁵⁰ P-0898, T-154-CONF-ENG-ET, 9 November 2016, pp. 35-36.

³⁵¹ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 12.

³⁵² P-0055, T-71-CONF-ENG-CT, 24 February 2016, p. 47.

³⁵³ P-0055, T-71-CONF-ENG-CT, 24 February 2016, p. 49.

³⁵⁴ Bosco NTAGANDA, T-213-CONF-ENG-CT, 27 June 2017, p. 15.

³⁵⁵ P-0859, T-51-CONF-ENG-ET, 17 November 2015, p. 19; P-0850, DRC-OTP-2067-1825, para. 30; V2, T-202-Red-ENG-WT, 11 April 2017, pp. 13-14, 18, 31; D-0251, T-260-ENG-ET, 7 December 2017, p. 32.

³⁵⁶ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 3.

³⁵⁷ P 0055, T-70-CONF-ENG-CT, pp. 95-97. Ntaganda testified that the French ARTEMIS force seized his camcorder and tapes around September 2003. See Bosco NTAGANDA, T-217-Red-ENG-ET, 3 July 2017, p. 31.

³⁵⁸ P-0039, DRC-OTP-0104-0015-R01, paras. 20-22.

³⁵⁹ P-0039, DRC-OTP-0104-0015-R01, para. 22.

³⁶⁰ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 75.

171. There were about 300 armed soldiers at the airport and [REDACTED] could see some crates of ammunition.³⁶¹ He knew they were UPC soldiers, as they were dressed in camouflage uniforms.³⁶² The UPC ordered [REDACTED].³⁶³ They also threatened [REDACTED] that if he [REDACTED], they would kill him.³⁶⁴ They then pillaged everything [REDACTED]: money, gold, and goods.³⁶⁵ [REDACTED] had [REDACTED] US Dollars on him which the soldiers took away.³⁶⁶

172. The soldiers ordered [REDACTED] to give their names and show their ID cards and upon seeing their IDs, they separated [REDACTED], who were Lendu, from the line.³⁶⁷ Both groups were then taken towards a row of buildings where the soldier who appeared to be in charge ordered other soldiers to kill [REDACTED].³⁶⁸

173. [REDACTED] were ordered to strip down naked and their hands were tied behind their backs with a military cord.³⁶⁹ Thereafter, soldiers carrying hammers took them away, downhill towards the river [REDACTED] where [REDACTED] believed they were beaten to death,³⁷⁰ as he could hear their cries from where he was.³⁷¹ The soldiers then escorted [REDACTED] group towards [REDACTED].³⁷²

174. On the second day of the attack, the UPC advanced into the centre of town.³⁷³ More troops arrived *via* Mbidjo and reinforced the soldiers that had already reached Mongbwalu.³⁷⁴ They then proceeded towards Sayo,³⁷⁵ which they captured as well.³⁷⁶

³⁶¹ [REDACTED]

³⁶² [REDACTED]

³⁶³ [REDACTED]

³⁶⁴ [REDACTED]

³⁶⁵ [REDACTED]

³⁶⁶ [REDACTED]

³⁶⁷ [REDACTED]

³⁶⁸ [REDACTED]

³⁶⁹ [REDACTED]

³⁷⁰ [REDACTED]

³⁷¹ [REDACTED]

³⁷² [REDACTED]

³⁷³ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 75.

³⁷⁴ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 75.

³⁷⁵ See *infra*, Sayo.

³⁷⁶ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 75.

175. V2 stated that the soldiers would break into houses and kill people.³⁷⁷ The soldiers V2 saw breaking into houses and killing people were wearing green and black camouflage uniforms with rain boots (*jambières*) and were carrying rifles.³⁷⁸ This was corroborated by P-0888, who was present during the attack and saw soldiers breaking in doors of houses, bringing out the people who had been inside and killing them.³⁷⁹ Other civilians died when fire was set to houses, burning them down with people still inside.³⁸⁰

176. P-0888, P-0768, P-0190 saw Lendu civilians being killed by UPC soldiers and stated that many civilians were killed during the Mongbwalu operation and many dead bodies could be seen around the city.³⁸¹ P-0017 saw bodies of dead men in civilian attire along the road in Mongbwalu city centre.³⁸² P-0888 believed many of the dead bodies strewn around the city to be of Lendu ethnicity, which he based on the fact that Lendu are in general small in stature and have distinctive features.³⁸³ Among the dead, P-0888 also saw women and children.³⁸⁴ V2 saw the dead bodies of three men whom she believed to be civilians.³⁸⁵ P-0892 testified that she saw a group of Hema civilians and soldiers kill a Lendu with an axe and a machete; she knew the man to be a tailor.³⁸⁶

177. P-0886 testified that, when Mongbwalu airport was captured, many people had gone to the parking lot in Mongbwalu and were killed there.³⁸⁷ He heard about

³⁷⁷ V2, T-202-Red-ENG-WT, 11 April 2017, p. 15.

³⁷⁸ V2, T-202-CONF-ENG-ET, 11 April 2017, pp. 14-15, 22.

³⁷⁹ P-0888, T-105-CONF-ENG-CT, 20 June 2016, p. 81.

³⁸⁰ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 16.

³⁸¹ P-0888, T-105-CONF-ENG-CT, 20 June 2016, p. 79; P-0768, T-33-Red-ENG-WT, 19 October 2015, p. 44; P-0190, T-97-CONF-ENG-CT, 7 June 2016, pp. 8-9.

³⁸² P-0017, T-58-CONF-ENG-CT, 28 January 2016, pp. 67-68.

³⁸³ P-0888, T-105-CONF-ENG-CT, 20 June 2016, pp. 79-80.

³⁸⁴ P-0888, T-105-CONF-ENG-CT, 20 June 2016, p. 80.

³⁸⁵ V2, T-202-Red-ENG-WT, 11 April 2017, p. 31.

³⁸⁶ P-0892, T-85-CONF-ENG-CT, 19 April 2017, pp. 13-14.

³⁸⁷ P-0886, T-37-CONF-ENG-ET, 23 October 2017, p. 7.

those killings from a young girl who had helped him flee to the bush.³⁸⁸ The parking lot was shelled and this is how all the people who had gathered there died.³⁸⁹ The UPC attackers also killed people on the road between Mongbwalu and Sayo.³⁹⁰

178. The Chamber further heard the evidence of witness P-0963, according to whom the UPC were [REDACTED] ordered to shoot at anything that moved,³⁹¹ [REDACTED].³⁹² These orders were given either orally and personally, or *via* the radio communication system.³⁹³

179. Witness P-0859, a Lendu inhabitant of [REDACTED], also recounted for the Chamber how his infant nephew was killed during the shelling of the residential compound of his family.³⁹⁴

180. P-0010 testified that during the takeover of Mongbwalu the UPC employed a B-10 missile launcher, the shoulder-borne G2, and the RPG, which is a missile launcher that is mounted on a vehicle and was used by NTAGANDA personally.³⁹⁵ The only order given by Bosco NTAGANDA was: *"When you come across the enemy, you must hit him"*, the enemy being the Lendu.³⁹⁶

181. In the absence of any expert evidence on ballistics, including conventional and barrelled weapons, the Legal Representative invites the Chamber to draw its own conclusions on the use of artillery weapons in civilian areas within the context of all the evidence presented in this case. In particular, the Chamber has heard from soldiers operating light (60 mm) and medium mortars (80 mm), as well as the heavier

³⁸⁸ P-0886, T-37-CONF-ENG-ET, 23 October 2017, p. 7.

³⁸⁹ P-0886, T-37-CONF-ENG-ET, 23 October 2017, p. 7.

³⁹⁰ P-0886, T-37-CONF-ENG-ET, 23 October 2017, p. 7.

³⁹¹ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 81.

³⁹² P-0963, T-77-CONF-ENG-CT 11 April 2016, p. 82.

³⁹³ P-0963, T-78-CONF-ENG-ET 11 April 2016, p. 83.

³⁹⁴ P-0859, T-51-CONF-ENG-CT, 17 November 2015, pp. 8-9, 16-17 and T-52-CONF-ENG-CT, 18 November 2015, p. 5.

³⁹⁵ P-0010, T-47-Red2-ENG-WT, 11 November 2015, p. 11.

³⁹⁶ P-0010, T-47-Red2-ENG-WT, 11 November 2015, p. 10.

class 120/122 barrelled B-10 and B-12 during UPC operations.³⁹⁷ It has likewise heard about the use of this equipment by the Accused himself.³⁹⁸

182. It is submitted that the evidence before the Chamber shows that the Accused and his subordinates deliberately shelled civilians and civilian dwellings. At the very minimum, the evidence is sufficient to show the reckless use of mortar fire in civilian areas causing foreseeable civilian casualties. The Accused took no steps to prevent or avoid such casualties.

183. On the third day of the fighting in Mongbwalu, NTAGANDA and his troops went to the convent and arrested Lendu priest Bwanalungwa and three nuns.³⁹⁹

184. The Chamber also heard the evidence of [REDACTED] who testified about [REDACTED] NTAGANDA questioning the priest at the Kilo-Moto apartments and hitting him with a piece of wood during the questioning.⁴⁰⁰ NTAGANDA then left the room and ordered his troops to take the priest behind the apartments.⁴⁰¹ [REDACTED] NTAGANDA followed them; [REDACTED] a gunshot.⁴⁰² [REDACTED] the priest lying on the ground and Bosco NTAGANDA “*finishing him off*”.⁴⁰³ NTAGANDA then ordered his bodyguards to throw the body into the bush just below the apartments where he was living.⁴⁰⁴

185. The next day, civilians “*were asked*” to bury him.⁴⁰⁵ NTAGANDA’s bodyguards also beat and killed at least two other people they had taken prisoner and locked up

³⁹⁷ P-0963, T-78-CONF-ENG-ET, 11 April 2016, p. 77; Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, pp. 48, 51-52.

³⁹⁸ P-0010, T-47-Red2-ENG-WT, 11 November 2015, p. 11; Bosco NTAGANDA, T-219-Red-ENG-WT, 6 July 2017, p. 37.

³⁹⁹ [REDACTED]

⁴⁰⁰ [REDACTED]

⁴⁰¹ [REDACTED]

⁴⁰² [REDACTED]

⁴⁰³ [REDACTED]

⁴⁰⁴ [REDACTED]

⁴⁰⁵ P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 56.

at their camp on the suspicion that they were members of the APC.⁴⁰⁶ Bosco NTAGANDA was not only present when these prisoners were beaten and killed, but he himself came to get these prisoners and ordered them to be tied up prior to their killing.⁴⁰⁷

186. There were other incidents of killings of prisoners taken during the Mongbwalu attack. For instance, a Lendu woman suspected of being a chieftain having practiced witchcraft and cannibalism was interrogated, tortured, and eventually executed by commander SALUMU and 'Bureau Two', respectively.⁴⁰⁸ Before she was executed, her knees had been crushed and she had been left lying in agony for a few hours.⁴⁰⁹

187. After the priest had been killed,⁴¹⁰ the Lendu nuns remained locked up in the 'apartments'.⁴¹¹ NTAGANDA ordered that they, too, be killed before he left.⁴¹² However, after NTAGANDA had ordered their execution, one of the soldiers freed them instead.⁴¹³ Nevertheless, before being freed the nuns were raped by NTAGANDA's bodyguards.⁴¹⁴

188. Civilian women and girls, mainly Lendu but also those belonging to other tribes perceived to cooperate with the Lendu, as well as Nyali girls were systematically raped when the UPC took over Mongbwalu.⁴¹⁵ P-0898, who participated in the attack, testified that he heard that the women and girls who had

⁴⁰⁶ [REDACTED]

⁴⁰⁷ [REDACTED]

⁴⁰⁸ [REDACTED]

⁴⁰⁹ [REDACTED]

⁴¹⁰ P-0190, T-97-CONF-ENG-CT, 7 June 2016, pp. 8-9.

⁴¹¹ [REDACTED]

⁴¹² [REDACTED]

⁴¹³ [REDACTED]

⁴¹⁴ [REDACTED]

⁴¹⁵ P-0190, T-97-CONF-ENG-CT, 7 June 2016, pp. 8-9, 11.

not managed to flee were being raped.⁴¹⁶ He also heard about women being taken as so-called ‘wives’.⁴¹⁷

189. P-0017 also recounted how women were being taken back to the camp, namely commander SALUMU’s camp.⁴¹⁸ He saw two of them cooking and ‘looking after SALUMU’s house’ during day time.⁴¹⁹ However, there was also at least one incident of a woman having been taken to a hut within a camp who was screaming for help.⁴²⁰ When a soldier went to see what was going on and found an undressed woman and a soldier who was only half-clothed in the hut with her, he told the soldier in the hut to “*quickly finish and let the person go*”.⁴²¹

190. The UPC soldiers systematically went from house to house to find women to rape. P-0190 was told about the rapes of a woman in front of her daughter – who was subsequently raped as well – by soldiers who had come to their house, killed the lady’s husband and proclaimed that, since they “[had] *already raped them, it [was] not necessary to kill them*”.⁴²²

191. [REDACTED] testified that in the aftermath of the UPC takeover of Mongbwalu in November 2002, three armed UPC soldiers came to the house in which she and other women had taken refuge with their children.⁴²³ The soldiers told her that they needed her daughter to “*do some work*” for them, and took the [REDACTED] year-old girl with them, as well as another, [REDACTED]-year old girl and a young lady who had been staying in the same house.⁴²⁴

192. When [REDACTED]’s daughter returned after about three and a half hours, she only fell to the ground, crying; she was covered in blood, pressing her skirt

⁴¹⁶ P-0898, T-154-Red-ENG-WT, 9 November 2016, p. 16.

⁴¹⁷ P-0898, T-154-Red-ENG-WT, 9 November 2016, pp. 16-17.

⁴¹⁸ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 32.

⁴¹⁹ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 32.

⁴²⁰ P-0017, T-59-CONF-ENG-CT, 29 January 2016, pp. 32-33.

⁴²¹ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 33.

⁴²² P-0190, T-97-CONF-ENG-CT, 7 June 2016, p. 13.

⁴²³ [REDACTED]

⁴²⁴ [REDACTED]

against her legs and said that she was in a lot of pain.⁴²⁵ [REDACTED]'s daughter would not speak for more than a day and only when she began to speak the next day, [REDACTED] found out that she had been raped by two soldiers in the house to which she had been taken by them.⁴²⁶

193. The other, [REDACTED]-year old girl, also returned to the house, swollen "*in certain places*", and with a swollen face.⁴²⁷ She told [REDACTED], that she had been taken to a house, was forced to enter a bedroom, and was beaten because she had refused; she was then raped by two men.⁴²⁸

194. [REDACTED] testified that, after the takeover of Mongbwalu, soldiers in camouflage uniforms carrying weapons came to her house at night and told her [REDACTED] that they were looking for girls.⁴²⁹ Her [REDACTED] did not want to let them in, told them that there were no girls, only children, but the soldiers entered the house, went to look in the rooms and apprehended [REDACTED] and pushed them through the door and told them to leave with them.⁴³⁰ Her [REDACTED]'s pleading to leave them alone was to no avail.⁴³¹ The soldiers – two in front and one behind them – escorted the two girls to a building where they were told to eat, but [REDACTED] refused.⁴³²

195. Shortly thereafter, two other soldiers in camouflage uniforms came to fetch them, saying that commander [REDACTED] was waiting for them.⁴³³ [REDACTED] was taken to another house where they brought her to a bedroom saying "*Commander [REDACTED] invites you*".⁴³⁴ When she came into the room she saw the

⁴²⁵ [REDACTED]

⁴²⁶ [REDACTED]

⁴²⁷ [REDACTED]

⁴²⁸ [REDACTED]

⁴²⁹ [REDACTED]

⁴³⁰ [REDACTED]

⁴³¹ [REDACTED]

⁴³² [REDACTED]

⁴³³ [REDACTED]

⁴³⁴ [REDACTED]

commander on the bed.⁴³⁵ He was clothed only with his underwear and [REDACTED] saw another soldier in a camouflage uniform sitting on a chair.⁴³⁶ Commander [REDACTED] told her to undress, which she refused to do, so the commander ordered his men to undress her by force.⁴³⁷

196. [REDACTED] believed that the soldiers were speaking Kihema, as she could not understand what they were saying.⁴³⁸ Two soldiers took off her skirt and underwear and threw her on the bed.⁴³⁹ The commander then tried to penetrate her with his finger and he said: *"This girl is still a minor, she has not known a man"* and he then got on top of her and penetrated her vagina with his penis.⁴⁴⁰ [REDACTED] started to scream and as she did the commander put a cloth over her mouth and *"continued to do whatever he wanted to do"*.⁴⁴¹

197. When he finished, one of the commander's bodyguards got on top of her and likewise penetrated her vagina and with his penis.⁴⁴² Before the third soldier could do the same, the soldiers let her leave the room to urinate. When the soldier accompanying her with a torch saw that the urine that was coming out was blood, he said *"oh, this child is dead"*.⁴⁴³ He told her to leave and that he would explain why she fled.⁴⁴⁴ [REDACTED] then fled back home but the blood flow did not stop, as she had sustained internal injuries to her vagina and other, external injuries.⁴⁴⁵ The injuries took three months to heal.⁴⁴⁶

⁴³⁵ [REDACTED]

⁴³⁶ [REDACTED]

⁴³⁷ [REDACTED]

⁴³⁸ [REDACTED]

⁴³⁹ [REDACTED]

⁴⁴⁰ [REDACTED]

⁴⁴¹ [REDACTED]

⁴⁴² [REDACTED]

⁴⁴³ [REDACTED]

⁴⁴⁴ [REDACTED]

⁴⁴⁵ [REDACTED]

⁴⁴⁶ [REDACTED]

198. P-0887 also testified about a [REDACTED] girl in Mongbwalu being raped by soldiers in the aftermath of the November takeover by the UPC.⁴⁴⁷ One day when P-0887 [REDACTED], she saw that the girl was being pushed and escorted away by an armed soldier on the road.⁴⁴⁸ The soldier had entered the house and told that girl's father that the girl should come out of the house.⁴⁴⁹ P-0887 stated that one knew that she had certainly been raped, because she only returned the next morning.⁴⁵⁰ According to P-0887, there were other victims of such rapes, namely girls from neighbouring villages.⁴⁵¹

199. According to P-0887, soldiers would come into town and "*find [...] women and bring them back to where they were staying.*"⁴⁵² These women were civilian women and when the soldiers came back to the camp with them they were armed and would typically walk behind the women.⁴⁵³ Although P-0887 did not know what exactly happened to the women, they were usually crying when they left.⁴⁵⁴ P-0887 was able to observe that the soldiers would take the women to a house; the women would not stay long, unless a soldier brought a woman in the evening in which case she would stay overnight and leave the next morning.⁴⁵⁵

200. P-0010 testified that after the battle for Mongbwalu, NTAGANDA's bodyguards brought two civilian women to the airport where the troops were staying and they showed them to NTAGANDA who told them: "*Do your work*".⁴⁵⁶ She then saw them take the girls into a *manyata* (straw hut) and rape them.⁴⁵⁷ The girls were killed afterwards.⁴⁵⁸ She saw several of NTAGANDA's bodyguards rape

⁴⁴⁷ P-0887, T-93-Red-ENG-WT, 2 May 2016, p. 24.

⁴⁴⁸ P-0887, T-93-Red-ENG-WT, 2 May 2016, p. 25.

⁴⁴⁹ P-0887, T-93-Red-ENG-WT, 2 May 2016, p. 25.

⁴⁵⁰ P-0887, T-93-Red-ENG-WT, 2 May 2016, p. 25.

⁴⁵¹ P-0887, T-93-Red-ENG-WT, 2 May 2016, p. 24.

⁴⁵² P-0887, T-93-CONF-ENG-CT, 2 May 2016, p. 31.

⁴⁵³ P-0887, T-93-CONF-ENG-CT, 2 May 2016, p. 32.

⁴⁵⁴ P-0887, T-93-CONF-ENG-CT, 2 May 2016, p. 32.

⁴⁵⁵ P-0887, T-93-CONF-ENG-CT, 2 May 2016, p. 32.

⁴⁵⁶ P-0010, T-47-Red2-ENG-WT, 11 November 2015, p. 16.

⁴⁵⁷ P-0010, T-47-Red2-ENG-WT, 11 November 2015, p. 16.

⁴⁵⁸ P-0010, T-47-Red2-ENG-WT, 11 November 2015, p. 16.

these girls and also saw how the girls were shot.⁴⁵⁹ On another occasion, P-0010 saw how twelve bodyguards [REDACTED] gang-raped two civilian women they came across.⁴⁶⁰

201. While they were occupying Mongbwalu, the UPC also took a number of Lendu and Nyali prisoners, some of whom they killed.⁴⁶¹ Especially the Lendu, “*never came back*”, such as the priest.⁴⁶² Often, people were taken to the headquarters at camp Goli, also known as the ‘apartments’, and put in a small room referred to as ‘*Mabushu*’.⁴⁶³ [REDACTED], P-0898 sometimes heard the shooting of guns from behind the camp.⁴⁶⁴ Soldiers and civilian combatants alike would ‘target’⁴⁶⁵ the prisoners behind the apartments.⁴⁶⁶ He would hear the soldiers who went behind the camp say things like “*they were cleaning up the dirt*” and that they “*need to clean up the dirt*”.⁴⁶⁷ P-0898 understood the term ‘dirt’ to be referring to persons of Lendu ethnicity.⁴⁶⁸ There was even a slogan saying “*a good Lendu is a dead Lendu*”, meaning that the Lendu were seen as ‘dirt’ and hence had to be exterminated.⁴⁶⁹ This slogan was used by both soldiers and civilian combatants alike.⁴⁷⁰

202. When the UPC took over Mongbwalu they also ordered that the soldiers pillage and gather anything they could find.⁴⁷¹ Items of higher quality and value had to be handed over to the commanders, otherwise the soldiers would get punished.⁴⁷²

⁴⁵⁹ P-0010, T-47-Red2-ENG-WT, 11 November 2015, p. 17.

⁴⁶⁰ P-0010, T-47-CONF-ENG-CT, 11 November 2015, p. 17. See also *supra*, para. 187.

⁴⁶¹ P-0898, T-154-Red-ENG-WT, 9 November 2016, pp. 18-19.

⁴⁶² P-0898, T-154-Red-ENG-WT, 9 November 2016, p. 19. See also *supra*, para. 184.

⁴⁶³ P-0898, T-154-CONF-ENG-ET, 9 November 2016, pp. 19-20.

⁴⁶⁴ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 20.

⁴⁶⁵ It is submitted that the term ‘target’ is to be understood as the practice of public execution by firing squad. See e.g. Bosco NTAGANDA, T-222-ENG-CT-WT, 11 July 2017, p. 61 and T-213-CONF-ENG-CT, 27 June 2017, p. 87; DRC-OTP-2102-3854, p. 2102-3919; P-0963, T-80-CONF-ENG-ET, 13 April 2016, pp. 89-90.

⁴⁶⁶ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 20.

⁴⁶⁷ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 21.

⁴⁶⁸ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 21.

⁴⁶⁹ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 21.

⁴⁷⁰ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 21.

⁴⁷¹ P-0888, T-105-CONF-ENG-CT, 20 June 2016, p. 77.

⁴⁷² P-0888, T-105-CONF-ENG-CT, 20 June 2016, p. 82.

According to P-0055, motorcycles, bicycles, and vehicles were looted from the local inhabitants.⁴⁷³ Most of the time, the commanders or senior ranking officers were the ones who kept the looted vehicles.⁴⁷⁴

203. P-0888 saw pillaged vehicles at NTAGANDA's residence in Mongwbalu,⁴⁷⁵ and P-901 testified about later on seeing appliances such as TV sets and freezers at NTAGANDA's residence that had not been there previously.⁴⁷⁶ NTAGANDA's and SALUMU's instructions included the looting of Lendu possessions, including food, money, and occupation of their houses.⁴⁷⁷ P-0898 personally saw soldiers looting.⁴⁷⁸ NTAGANDA was also seen transporting pillaged goods originating from the hospital in his vehicle.⁴⁷⁹ Likewise, commander SALUMU was seen bringing office equipment to the camp in his vehicle.⁴⁸⁰

204. P-0892 testified that the day after the UPC had taken over Mongbwalu she saw that soldiers were breaking in the doors of shops and taking out many things, including TV sets and radios.⁴⁸¹ After they would take bags of things out of the shops, Hema civilians would go in and take whatever they wanted.⁴⁸² She believed these civilians to be Hema based on the language she heard them speak in.⁴⁸³

205. P-0892 also saw UPC soldiers taking away property from residential houses.⁴⁸⁴ When she eventually returned to her own home after having fled Mongbwalu following the takeover, she found that her property had been taken away, including

⁴⁷³ P-0055, T-72-CONF-ENG-CT, 25 February 2016, p. 11.

⁴⁷⁴ P-0055, T-72-CONF-ENG-CT, 25 February 2016, p. 11.

⁴⁷⁵ P-0888, T-105-CONF-ENG-CT, 20 June 2016, p. 84.

⁴⁷⁶ P-0901, T-32-CONF-ENG-CT, 25 September 2015, p. 30.

⁴⁷⁷ P-0963, T-78-CONF-ENG-ET 11 April 2016, p. 73; P-0010, T-47-CONF-ENG-CT, 11 November 2015, p. 13.

⁴⁷⁸ P-0898, T-155-Red-ENG-WT, 10 November 2016, p. 57.

⁴⁷⁹ P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 19.

⁴⁸⁰ P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 19.

⁴⁸¹ P-0982, T-83-CONF-ENG-CT, 18 April 2016, pp. 36-38.

⁴⁸² P-0982, T-83-CONF-ENG-CT, 18 April 2016, pp. 36-38.

⁴⁸³ P-0982, T-83-CONF-ENG-CT, 18 April 2016, pp. 36-38 and T-86-CONF-ENG-ET, 20 April 2016, p. 17.

⁴⁸⁴ P-0892, T-83-CONF-ENG-CT, 18 April 2016, p. 42.

beds, radio sets, clothes, and a suitcase.⁴⁸⁵ Even the iron sheets had been removed from the roof of her house.⁴⁸⁶ P-0805 testified that he had his shop looted in Mongbwalu; all items were removed from the premises.⁴⁸⁷ The soldiers also looted all of P-0039's belongings from his house in Mongbwalu.⁴⁸⁸

206. P-0898 testified that most of the looting was committed by the civilian combatants under NDIMA CHRIST, who would loot anything they could find and looted even more than the soldiers.⁴⁸⁹ It is submitted that both soldiers and civilian combatants alike looted civilian property, and that, in any event, both were and acted under the command of the Accused.

207. The UPC retained control of Mongbwalu until at least February 2003.⁴⁹⁰ The Chamber heard the evidence of P-0892 who described the climate of insecurity following the takeover in November that forced her to leave the town. In particular, P-0892 testified that in the beginning, she only abandoned her house and went to where she believed she could safely hide out with her [REDACTED] children, the youngest being [REDACTED].⁴⁹¹

208. However, after the attack and takeover, children and young girls started being raped and the inhabitants who had not yet fled were profoundly affected by these incidents.⁴⁹² As her own daughter had been abducted and raped by members of the UPC army who had come to her house,⁴⁹³ she testified that she ran out of courage to stay in Mongbwalu once these rapes started occurring.⁴⁹⁴ As she saw others packing

⁴⁸⁵ P-0892, T-83-CONF-ENG-CT, 18 April 2016, p. 41 and T-86-ENG-CONF-ET, 20 April 2016, p. 7.

⁴⁸⁶ P-0892, T-83-CONF-ENG-CT, 18 April 2016, p. 41.

⁴⁸⁷ P-0805, T-26-CONF-ENG-CT, 16 September 2015, p. 30.

⁴⁸⁸ P-0039, DRC-OTP-2061-0244-R02, paras. 27.

⁴⁸⁹ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 14 and T-155-Red-ENG-WT, 10 November 2016, p. 57.

⁴⁹⁰ Agreed Fact 81.

⁴⁹¹ P-0892, T-83-CONF-ENG-CT, 18 April 2016, p. 19-21.

⁴⁹² P-0892, T-86-CONF-ENG-ET, 20 April 2016, p. 5.

⁴⁹³ P-0892, T-83-CONF-ENG-CT, 18 April 2016, p. 45 and T-85-ENG-CONF-ET, 19 April 2016, pp. 5-8.

⁴⁹⁴ P-0892, T-86-CONF-ENG-ET, 20 April 2016, p. 5.

up and leaving, she too decided to leave.⁴⁹⁵ In fact, what frightened her most were the rapes.⁴⁹⁶

209. NTAGANDA himself reportedly captured scenes of people fleeing on camera during the operation; the video showed civilians fleeing on the road and into the bush.⁴⁹⁷

210. According to P-0892, most people fleeing Mongbwalu were heading towards Ariwara, whereas she fled to [REDACTED].⁴⁹⁸ P-0894 testified that, when the UPC attacked Mongbwalu ‘around December 2002’, he, his [REDACTED] initially fled to [REDACTED]; from there his [REDACTED] fled on to [REDACTED].⁴⁹⁹ P-0894 remained in [REDACTED] for some more days until he, too, fled because of the distressing events he witnessed.⁵⁰⁰ He was able to meet up with his [REDACTED] from where they continued to [REDACTED] and remained until July 2005 before returning to Mongbwalu.⁵⁰¹

211. P-0912 also testified that she fled Mongbwalu together with [REDACTED] in the aftermath of the attack.⁵⁰² In fact, it was her who told her [REDACTED] that “*if they [find] us in the house, they may kill us, so I said we had to leave, and so [REDACTED] said yes, we can go along with all the others*”⁵⁰³ after armed UPC soldiers repeatedly came to the house they were hiding in to take away young girls to rape.⁵⁰⁴ They then left towards [REDACTED], *via* a Nyali village, where they were told that the war had intensified.⁵⁰⁵

⁴⁹⁵ P-0892, T-86-CONF-ENG-ET, 20 April 2016, p. 5.

⁴⁹⁶ P-0892, T-86-CONF-ENG-ET, 20 April 2016, pp. 5-6.

⁴⁹⁷ [REDACTED]

⁴⁹⁸ P-0892, T-85-CONF-ENG-CT, 19 April 2016, p. 28 and T-86-ENG-CONF-ET, 20 April 2016, pp. 4, 9.

⁴⁹⁹ P-0894, DRC-OTP-2076-0194, paras. 33-34.

⁵⁰⁰ P-0894, DRC-OTP-2076-0194, paras. 51 and T-104-CONF-ENG-ET, 17 June 2016, p. 9. See *infra* Sayo.

⁵⁰¹ P-0894, DRC-OTP-2076-0194, paras. 54, 57.

⁵⁰² P-0912, T-148-CONF-ENG-ET, 6 October 2016, p. 74.

⁵⁰³ P-0912, T-148-CONF-ENG-ET, 6 October 2016, p. 74.

⁵⁰⁴ P-0912, T-148-CONF-ENG-ET, 6 October 2016, pp. 59-61, 69.

⁵⁰⁵ P-0912, T-148-CONF-ENG-ET, 6 October 2016, pp. 74-75.

212. P-0859 fled from Mongbwalu to [REDACTED] where he stayed for approximately one week.⁵⁰⁶ According to him, many people had fled to [REDACTED], and some of them had even crossed the Ituri river close to Yedi.⁵⁰⁷ During their flight, they would sleep in abandoned houses here and there, but they could not find any food other than a few vegetables, which they were unable to cook.⁵⁰⁸

213. The heavy rain had made the path muddy and moving about was particularly difficult.⁵⁰⁹ As the UPC was already occupying the region and passing on the main roads, people would avoid taking the main roads and rather fled through the bush as they were afraid to be killed if they encountered the soldiers of the UPC.⁵¹⁰

214. P-0850 who had worked [REDACTED],⁵¹¹ his children, and many others fled from Mongbwalu towards Kilo, where only a few days later they came under attack of the UPC.⁵¹² P-0019, who is of Lendu ethnicity, fled with her family to Kobu.⁵¹³

215. P-0039 initially fled Mongbwalu to [REDACTED], where he stayed for approximately two months.⁵¹⁴ He recalled spending Christmas and the New Year celebrations in [REDACTED] and staying in the village until 25 February 2003,⁵¹⁵ when the UPC came to attack this village as well.⁵¹⁶

216. V2, a young [REDACTED] woman, testified that she eventually fled Mongbwalu when the soldiers started breaking into houses, killing people or

⁵⁰⁶ P-0859, T-51-Red-ENG-WT, 17 November 2015, pp. 22-24.

⁵⁰⁷ P-0859, T-51-Red-ENG-WT, 17 November 2015, p. 23.

⁵⁰⁸ P-0859, T-51-Red-ENG-WT, 17 November 2015, p. 24.

⁵⁰⁹ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 8.

⁵¹⁰ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, pp. 10-11.

⁵¹¹ P-0805, T-25-CONF-ENG-CT, 15 September 2015, p. 30.

⁵¹² P-0850, DRC-OTP-2067-1825-R02, paras. 31, 33-34, 36. See also *infra* Kilo.

⁵¹³ P-0019, T-115-CONF-ENG-ET, 6 July, 2016, pp. 12, 20 and T-116-CONF-ENG-ET, 7 July 2016, pp. 14-15.

⁵¹⁴ P-0039, DRC-OTP-0104-0015-R01, para. 26.

⁵¹⁵ P-0039, DRC-OTP-0104-0015-R01, para. 26.

⁵¹⁶ P-0039, DRC-OTP-0104-0015-R01, para. 26. See also *infra* Buli.

enlisting them forcibly.⁵¹⁷ There were [REDACTED] women and [REDACTED] 'young people' who fled with her, first towards [REDACTED] and then they fled Mongbwalu altogether.⁵¹⁸ When she fled, V2 was with her [REDACTED] baby; she fled towards Pluto in the hope to meet up with her [REDACTED] as [REDACTED] had already managed to flee there.⁵¹⁹ In her estimation, Pluto was about 10 km from Mongbwalu and they were travelling the entire day.⁵²⁰

217. When they arrived in Pluto, V2 realised that there were also disturbances in that village and fled on to Beba.⁵²¹ However, she and several other people got arrested and she was raped by two soldiers.⁵²² Shortly after the rapes, V2 set out to reach Lodjo, which was about 12 km from Beba.⁵²³ In Lodjo, she learned that her husband had been shot for refusing to join the 'Hema army',⁵²⁴ and she thus continued to flee to [REDACTED] where she and her baby stayed for more than a month.⁵²⁵

⁵¹⁷ V2, T-202-Red-ENG-WT, 11 April 2017, pp. 20, 31.

⁵¹⁸ V2, T-202-Red-ENG-WT, 11 April 2017, pp. 13, 20.

⁵¹⁹ V2, T-202-Red-ENG-WT, 11 April 2017, p. 13.

⁵²⁰ V2, T-202-Red-ENG-WT, 11 April 2017, p. 20.

⁵²¹ V2, T-202-Red-ENG-WT, 11 April 2017, p. 21.

⁵²² V2, T-202-Red-ENG-WT, 11 April 2017, pp. 17-18, 22, 24-26.

⁵²³ V2, T-202-Red-ENG-WT, 11 April 2017, p. 28.

⁵²⁴ V2, T-202-CONF-ENG-CT, 11 April 2017, pp. 28-29, 83-84.

⁵²⁵ V2, T-202-CONF-ENG-CT, 11 April 2017, p. 79.

2. SAYO

218. Sayo,⁵²⁶ which is located in the Banyali-Kilo *collectivité* north-west of Mongbwalu, was mainly inhabited by people of Lendu ethnicity and home to the factory⁵²⁷ of the Kilo-Moto mines, where many of these Lendu worked.⁵²⁸ The UPC sought to control Sayo and Nzebi because it, *inter alia*, was a possible route for the enemy to flee, and NTAGANDA gave orders to his soldiers to this effect.⁵²⁹

219. A large number of Lendu had fled to Sayo when Camp Lubacanga, one of the outposts of the Kilo-Moto company, was attacked by the UPC.⁵³⁰ At this time, there was still a small group of Lendu fighters in Sayo, so people believed to be safer there.⁵³¹ In fact, so many people fled to and gathered in Sayo in the days prior to the attack that there was not enough space to accommodate all of them, and people had to sleep in the church and school, or even out in the open.⁵³²

220. The village was attacked by the UPC under commanders NTAGANDA and SALUMU after Mongbwalu airport was captured.⁵³³ The attack started around 10 a.m.⁵³⁴ and the village was effectively taken over on the third day of the Mongbwalu battle.⁵³⁵ [REDACTED] testified that NTAGANDA sent commander KASANGAKI to Sayo with the forward detachment, [REDACTED].⁵³⁶ NTAGANDA and KASANGAKI remained in close contact *via* the *Motorola* radio during this

⁵²⁶ DRC-D18-0001-0491.

⁵²⁷ P-0815, T-76-CONF-ENG-ET, 4 April 2016, p. 14; P-0768, T-33-CONF-ENG-ET, pp. 37-38; DRC-OTP-2058-0664-R02.

⁵²⁸ P-0768, T-33-CONF-ENG-CT, 19 October 2015, pp. 45, 52.

⁵²⁹ P-0768, T-33-CONF-ENG-CT, 19 October 2015, pp. 44-45.

⁵³⁰ P-0039, DRC-OTP-2061-0244-R02, paras. 9, 20.

⁵³¹ P-0039, DRC-OTP-2061-0244-R02, para. 20.

⁵³² P-0039, DRC-OTP-2061-0244-R02, para. 20.

⁵³³ P-0886, T-36-Red2-ENG-WT, 22 October 2017, pp. 70-71; P-0768, T-33-CONF-ENG-CT, pp. 37-38; DRC-OTP-2058-0664.

⁵³⁴ P-0017, T-58-CONF-ENG-CT, 28 January 2016, p. 66.

⁵³⁵ P-0017, T-58-CONF-ENG-CT, 28 January 2016, p. 66.

⁵³⁶ [REDACTED]

operation.⁵³⁷ KASANGAKI gave orders to his soldiers as to which houses they should shell.⁵³⁸ According to the Accused, Sayo was taken on 24 November 2002.⁵³⁹ When the UPC soldiers arrived in Sayo, there were many dead civilians, young and old, women and children, who had been killed by members of the UPC, including in their own homes.⁵⁴⁰ P-0768 knew that they had been killed by the UPC, because he saw many of them killed by shelling or gunshot and even eye-witnessed them being killed.⁵⁴¹ P-0017 could see dead bodies in the village, as they advanced towards the centre of Sayo.⁵⁴² [REDACTED] participated in a search operation after the effective takeover, where UPC soldiers would look for weapons left behind by the enemy.⁵⁴³ During this search operation, he saw many corpses.⁵⁴⁴

221. P-0963 and P-0768 also testified about seeing dead bodies of civilians strewn along the way from Mongbwalu when the troops entered Sayo.⁵⁴⁵ P-0017 likewise saw civilian bodies, including the body of a dead woman on the ground in front of the dispensary as he entered Sayo village with the troops.⁵⁴⁶ And as the UPC troops advanced, he observed more dead bodies.⁵⁴⁷ It appeared to P-0017 that the dead woman had just given birth and he could hear the cries of a baby coming from inside the dispensary.⁵⁴⁸

⁵³⁷ [REDACTED]

⁵³⁸ [REDACTED]

⁵³⁹ Bosco NTAGANDA, T-216-ENG-CT-WT, 30 June 2017, p. 79.

⁵⁴⁰ P-0768, T-33-CONF-ENG-CT, 19 October 2015, pp. 45, 48, 51.

⁵⁴¹ P-0768, T-33-CONF-ENG-CT, 19 October 2015, pp. 44-46, 49.

⁵⁴² P-0017, T-58-Red-ENG-CT-WT, 28 January 2016, p. 68.

⁵⁴³ [REDACTED]

⁵⁴⁴ [REDACTED]

⁵⁴⁵ P-0963-T-78-CONF-ENG-ET, 11 April 2016, p. 79; P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 59.

⁵⁴⁶ P-0017, T-58-CONF-ENG-CT, 28 January 2016, pp. 68-69.

⁵⁴⁷ P-0017, T-58-CONF-ENG-CT, 28 January 2016, pp. 68-69.

⁵⁴⁸ P-0017, T-58-CONF-ENG-CT, 28 January 2016, p. 69.

222. It was already evening when the attackers came to Sayo Catholic Church in the vicinity of which [REDACTED] had taken refuge.⁵⁴⁹ The attackers came from the direction of the Kanga factory,⁵⁵⁰ opening fire from the weapons they were carrying and shelling the village “*attacking everyone*”;⁵⁵¹ “*looking for Lendu people*”.⁵⁵² He could also see the soldiers install heavy weapons at Abibi mountain and a weapon on a tripod at Abibi mine.⁵⁵³

223. Among the civilians who were killed in Sayo were the bodies of [REDACTED] members of the [REDACTED] family who were eventually found by the roadside near the police station.⁵⁵⁴ [REDACTED] himself had been killed right outside his house.⁵⁵⁵ He used to be the [REDACTED] and was of [REDACTED] ethnicity.⁵⁵⁶ [REDACTED].⁵⁵⁷

224. [REDACTED], who was among the deceased and who had been married to a Lendu girl, had had grass bands on his neck and wrist and this is why, [REDACTED] believed, he had been killed.⁵⁵⁸ [REDACTED] was about 19 or 20 years old.⁵⁵⁹ [REDACTED] explained that to the UPC, wearing grass bands signified that one was either Lendu or their accomplice and this was why so many people had been killed.⁵⁶⁰ [REDACTED] had been shot into one side of his thorax.⁵⁶¹ [REDACTED],⁵⁶² [REDACTED], had been shot in the back; the bullet had also hit the baby she carried on her back.⁵⁶³ [REDACTED] was between 12 and 14 years old at the time.⁵⁶⁴ The

⁵⁴⁹ [REDACTED]

⁵⁵⁰ [REDACTED]

⁵⁵¹ [REDACTED]

⁵⁵² [REDACTED]

⁵⁵³ [REDACTED]

⁵⁵⁴ [REDACTED]

⁵⁵⁵ [REDACTED]

⁵⁵⁶ [REDACTED]

⁵⁵⁷ [REDACTED]

⁵⁵⁸ [REDACTED]

⁵⁵⁹ [REDACTED]

⁵⁶⁰ [REDACTED]

⁵⁶¹ [REDACTED]

⁵⁶² [REDACTED]

⁵⁶³ [REDACTED]

child was about two-and-a-half years old and was called [REDACTED].⁵⁶⁵ On the road nearby, there was also the body of a boy who was about 14 years-old and who appeared to have died as a result of bleeding; he was hit on one side of his body and the bullet went right through, destroying his shoulder area.⁵⁶⁶ Pigs and hyenas had already started to eat the dead bodies [REDACTED].

225. [REDACTED] the body of retired Colonel LUSALA who had been working as head of security in the mine near the Catholic Church.⁵⁶⁷ Maggots had already begun to eat away at his body which was clothed in civilian clothes;⁵⁶⁸ [REDACTED].

226. [REDACTED] in Sayo there were people who got hit by shrapnel from rocket launchers both inside and outside of their residential homes.⁵⁶⁹ People went to the health centre to have some of the shrapnel and bullets removed [REDACTED]. [REDACTED], was hit by shrapnel of artillery fire and [REDACTED] could hear his cries when it happened.⁵⁷⁰ [REDACTED].⁵⁷¹

227. [REDACTED].⁵⁷² [REDACTED].⁵⁷³ It was on Sunday around 1 or 2 p.m. that the UPC attacked the health centre with a rocket launcher.⁵⁷⁴ They came from the direction of Sayo Catholic church.⁵⁷⁵ [REDACTED].⁵⁷⁶ [REDACTED] UPC soldiers dressed in military uniforms “*with black spots*” and “*green boots*” attack the health centre on this day.⁵⁷⁷

⁵⁶⁴ [REDACTED]

⁵⁶⁵ [REDACTED]

⁵⁶⁶ [REDACTED]

⁵⁶⁷ [REDACTED]

⁵⁶⁸ [REDACTED]

⁵⁶⁹ [REDACTED]

⁵⁷⁰ [REDACTED]

⁵⁷¹ [REDACTED]

⁵⁷² [REDACTED]

⁵⁷³ [REDACTED]

⁵⁷⁴ [REDACTED]

⁵⁷⁵ [REDACTED]

⁵⁷⁶ [REDACTED]

⁵⁷⁷ [REDACTED]

228. When Sayo was almost captured and people were fleeing the village, Bosco NTAGANDA ordered his troops to fire at a column of people [REDACTED].⁵⁷⁸

229. After the successful takeover, the UPC soldiers set up camp between the Sayo village and the church⁵⁷⁹ and started looting the village.⁵⁸⁰

230. Some UPC soldiers stopped [REDACTED]. [REDACTED] the bodies of [REDACTED] men who were already in a decomposing state.⁵⁸¹ The bodies were under the beds and some had body parts, such as arms and legs cut off.⁵⁸² Another body had received a bullet into the eyeball.⁵⁸³

231. [REDACTED].

232. After the UPC eventually left Sayo, more decomposing corpses and skeletons of persons who had been eaten up by wild animals were found in the bush.⁵⁸⁴ Behind the Catholic Church [REDACTED] saw bones and decomposing bodies that school children had found.⁵⁸⁵

233. When P-0815, [REDACTED], returned to the village after having taken flight during the attack, he found the medical centre destroyed and looted.⁵⁸⁶ P-0815 also saw destruction, remnants of fire, and smoke-covered walls inside Sayo Church.⁵⁸⁷ This is corroborated by P-0768 who testified about the looting of Sayo Church by

⁵⁷⁸ P-0017, T-58-CONF-ENG-CT, 28 January 2016, pp. 70-71; DRC-REG-0001-0019; DRC-REG-0001-0017.

⁵⁷⁹ DRC-OTP-2076-0212.

⁵⁸⁰ P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 51.

⁵⁸¹ [REDACTED]

⁵⁸² [REDACTED]

⁵⁸³ [REDACTED]

⁵⁸⁴ [REDACTED]

⁵⁸⁵ [REDACTED]

⁵⁸⁶ P-0815, T-76-Red-ENG-WT, 4 April 2016, p. 60.

⁵⁸⁷ P-0815, T-76-Red-ENG-WT, 4 April 2016, p. 56.

elements of the UPC.⁵⁸⁸ According to P-0898, the Church also appeared to have been burnt from the outside.⁵⁸⁹

234. Apart from the destruction that was apparent in Sayo Church and the medical centre,⁵⁹⁰ all the houses were burnt down in the village.⁵⁹¹ P-0815 saw broken-down doors and destroyed buildings, including brick houses that showed signs of being torched.⁵⁹²

⁵⁸⁸ P-0768, T-33-CONF-ENG-CT, 19 October 2015, 46.

⁵⁸⁹ P-0898, T-154-CONF-ENG-ET, 9 November 2016, p. 26.

⁵⁹⁰ See *infra*, para. 233.

⁵⁹¹ P-0815, T-76-CONF-ENG-CT, 4 April 2016, p. 56; P-0898, T-154-CONF-ENG-ET, 9 November 2017, p. 26.

⁵⁹² P-0815, T-76-CONF-ENG-CT, 4 April 2016, p. 56.

3. NZEBI

235. As the Chamber heard, NTAGANDA ordered his troops to go to the villages of Sayo and Nzebi, located in the Banyali-Kilo collectivité, and control these villages.⁵⁹³ After Sayo, his troops indeed proceeded to attack Nzebi, which was in fact a mainly Nyali village.⁵⁹⁴ However, it bordered ‘Camp Nzebi’ which was home to miners of the Kilo-Moto mining company, who were mainly Lendu.⁵⁹⁵ Nzebi is situated about five kilometres from Mongbwalu and one kilometre from Sayo.⁵⁹⁶

236. Two Lendu civilians who had been found in the bush near Nzebi by “intelligence soldiers” were brought to NTAGANDA by commander PIGWA when they had set up camp.⁵⁹⁷ When NTAGANDA saw that they were Lendu, he ordered their execution.⁵⁹⁸ MUSEVENI, the chief of NTAGANDA’s bodyguards, took the two to a place nearby and killed them by gunshot.⁵⁹⁹ [REDACTED] NTAGANDA give the order for their execution and afterwards saw their dead bodies.⁶⁰⁰

⁵⁹³ P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 45, 52; Agreed Facts 7, 9.

⁵⁹⁴ P-0039, DRC-OTP-2062-0244-R-02, para. 9.

⁵⁹⁵ P-0039, DRC-OTP-2062-0244-R-02, para. 9.

⁵⁹⁶ P-0039, DRC-OTP-2062-0244-R-02, para. 9.

⁵⁹⁷ [REDACTED]

⁵⁹⁸ [REDACTED]

⁵⁹⁹ [REDACTED]

⁶⁰⁰ [REDACTED]

4. KILO

237. Kilo⁶⁰¹ is a village located in the gold mining area in the Banyali-Kilo collectivité and, at the time, was mainly inhabited by Nyali and Lendu.⁶⁰² Lendu combatants organised under the command of KABULI, LONGANGI, and KUNG FU had also had a camp in that village.⁶⁰³

238. On 21 November 2002, the UPC soldiers, who had arrested [REDACTED] and the other [REDACTED] at Mongbwalu [REDACTED] and killed [REDACTED], escorted their prisoners towards Kilo.⁶⁰⁴ As they were escorting them on foot, one armed soldier was walking ahead and about seven at the rear of the queue.⁶⁰⁵ The soldiers addressed the men, saying that they had come *“to free the area, to chase away the Lendu; that they wanted to liberate the area”*.⁶⁰⁶ They also told the men that since they were Nyali, they *“were not in trouble”* and eventually let them go, telling them to go towards Kilo when the group reached the main road.⁶⁰⁷

239. In the morning of 6 December 2002, the UPC attacked Kilo.⁶⁰⁸ According to P-0850, the attack happened only a few days after the UPC had attacked and taken over Mongbwalu from where he had fled.⁶⁰⁹ It was around 5 a.m. that P-0877, who was also in Kilo, heard shots nearby and the population fled into the bush.⁶¹⁰ P-0850 was with his wife and family when he heard both shooting and the explosion of a bomb.⁶¹¹ There was no time to gather any belongings to take with them.⁶¹² P-0850,

⁶⁰¹ DRC-OTP-2067-1836-R01.

⁶⁰² Agreed Fact 5; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, pp. 11-12; V3, T-203-CONF-ENG-ET, 12 April 2017, p. 13; P-0877, DRC-OTP-2069-2086-R03, para. 22.

⁶⁰³ P-0877, DRC-OTP-2069-2086-R03, para. 22.

⁶⁰⁴ See *supra*, paras. 170-173.

⁶⁰⁵ [REDACTED]

⁶⁰⁶ [REDACTED]

⁶⁰⁷ [REDACTED]

⁶⁰⁸ P-0877, DRC-OTP-2069-2086-R03, para. 23; DRC-OTP-2081-0507, p. 0578. See also P-0017, T-59-CONF-ENG-CT, 29 January 2016, p.38.

⁶⁰⁹ P-0850, DRC-OTP-2067-1825, paras. 33, 36.

⁶¹⁰ P-0877, DRC-OTP-2069-2086-R03, para. 23.

⁶¹¹ P-0850, DRC-OTP-2067-1825, para. 36.

together with his family, was hiding out in the bush until the next day when the chief of [REDACTED] locality called them back to the village using a megaphone.⁶¹³ When they returned to Kilo, P-0850 found out that the UPC had taken control of the village.⁶¹⁴ UPC commander KASANGAKI came to the village to address the population: He told them that the population was not their enemy, even the Lendu who were unarmed; they would only be chasing the Lendu who were carrying *armes blanches* and fetishes.⁶¹⁵ KASANGAKI also told them that the population should go and tell those still hiding in the bush to return to Kilo.⁶¹⁶ Anyone who was left in the bush would be considered an enemy.⁶¹⁷

240. The UPC soldiers and commanders who had come to Kilo were well equipped. They had weapons such as SMGs, MAGs, B12s, mortars and other weapons that were carried on vehicles.⁶¹⁸ Some soldiers were also carrying weapons with ammunition belts.⁶¹⁹

241. Weapons were not the only thing that was brought to the soldiers in Kilo from Mongbwalu. One of the officers was told to take antibiotics to the soldiers because of the high number of soldiers suffering from sexually transmitted, venereal diseases.⁶²⁰ The officer was told that once he got to Kilo, he “*would understand the way the soldiers were living there.*”⁶²¹ In fact, commanders and soldiers took girls they liked the looks of to their camp to sleep with them “*exerting their influence*”, which *de facto* meant that the girls did not dare to refuse.⁶²² The soldiers and commanders, including

⁶¹² P-0877, DRC-OTP-2069-2086-R03, para. 23.

⁶¹³ P-0877, DRC-OTP-2069-2086-R03, paras. 24-25; P-0850, DRC-OTP-2067-1825, paras. 36-37.

⁶¹⁴ P-0850, DRC-OTP-2067-1825, para. 38.

⁶¹⁵ P-0877, DRC-OTP-2069-2086-R03, para. 27 and DRC-OTP-2077-0118-R03, para. 14.

⁶¹⁶ P-0877, DRC-OTP-2069-2086-R03, para. 27.

⁶¹⁷ P-0877, DRC-OTP-2069-2086-R03, para. 27.

⁶¹⁸ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 14; DRC-OTP-2102-3854, p. 2102-3982.

⁶¹⁹ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 14.

⁶²⁰ P-0017, T-59-CONF-ENG-ET, 29 January 2016, pp. 38-39.

⁶²¹ P-0017, T-59-CONF-ENG-ET, 29 January 2016, pp. 38-39.

⁶²² P-0017, T-59-CONF-ENG-ET, 29 January 2016, pp. 40, 43.

commanders AMÉRICAIN and ERIC (a.k.a. ECHO CHARLIE) would even speak about this openly in front of other soldiers.⁶²³

242. There was a man living in the village who was [REDACTED].⁶²⁴ He suffered from epilepsy and was thought to be ‘crazy’ and people had given him the nickname ROBOT.⁶²⁵ One day, ROBOT went to fetch water, singing a song to the effect that the Hema should leave and the Lendu should return.⁶²⁶ Battalion commander AMÉRICAIN,⁶²⁷ who was drinking at a restaurant nearby, heard ROBOT sing, took his bodyguard’s weapon and went to shoot him twice, killing the man.⁶²⁸

243. Later on, ROBOT’s family also had to pay a fine to the UPC for ROBOT having sung the song.⁶²⁹ Although P-0850 did not himself witness the killing of ROBOT, he was told about the incident by many people and he saw ROBOT’s dead body when it was buried.⁶³⁰ P-0850 saw that ROBOT had been shot in the head.⁶³¹

244. On 8 December 2002, the population was told to come to the UPC camp for collective work, which consisted of digging a trench around the camp.⁶³² P-0877 states that the male population went because they knew that any refusal to do so would be punished with a fine or the like.⁶³³ There was no genuine choice.

245. The UPC had also set up an intelligence office in their Kilo camp, which was part of the “*Bureau 2*”.⁶³⁴ This bureau was, *inter alia*, tasked with identifying people who were suspected of working together with or otherwise supporting the Lendu

⁶²³ P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 40.

⁶²⁴ P-0877, DRC-OTP-2069-2086-R03, paras. 31-32.

⁶²⁵ P-0877, DRC-OTP-2069-2086-R03, paras. 31-32.

⁶²⁶ P-0877, DRC-OTP-2069-2086-R03, para. 31.

⁶²⁷ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 43.

⁶²⁸ P-0877, DRC-OTP-2069-2089-R03, para. 31 and T-110-CONF-ENG-ET, 27 June 2017, p. 14.

⁶²⁹ P-0877, DRC-OTP-2069-2086-R03, para. 31.

⁶³⁰ P-0850, DRC-OTP-2067-1825, para. 47.

⁶³¹ P-0850, DRC-OTP-2067-1825, para. 47 and P-0850, T-113-CONF-ENG-ET, 30 June 2016, p. 13.

⁶³² P-0877, DRC-OTP-2069-2086-R03, para. 28; P-0850, DRC-OTP-2067-1825, para. 39.

⁶³³ P-0877, DRC-OTP-2069-2086-R03, para. 28.

⁶³⁴ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 37; P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 44.

combatants.⁶³⁵ P-0877 also saw UPC soldiers go to the bush bringing back Lendu prisoners whom they tied up and took away.⁶³⁶ He saw this happening on a daily basis and generally the Lendu that were captured were adult men.⁶³⁷ These prisoners were never seen again.⁶³⁸

246. P-0850 saw four Lendu, including one young woman, being brought to the UPC 'office' in the camp.⁶³⁹ When he saw them being brought to this building, he was [REDACTED].⁶⁴⁰ The prisoners had their hands tied on their backs and they were wearing civilian clothing.⁶⁴¹ P-0850 knew one of them, a Lendu man called [REDACTED], who was married to a Nyali woman.⁶⁴² When the prisoners had been taken inside the office building, P-0850 could hear UPC soldiers questioning them; they were accusing them of 'being Lendu'.⁶⁴³

247. The soldiers then strip-searched [REDACTED] and when they found an armband on him, they took all the prisoners out of the building and escorted them downhill and past the trenches.⁶⁴⁴ Shortly thereafter, P-0850 heard blows and cries; he heard screams "*I am dying! I am dying!*" and then there was silence.⁶⁴⁵

248. The UPC soldiers also continued bringing civilian women to the camp in order to rape them.⁶⁴⁶

249. Just after Christmas 2002, villagers saw NTAGANDA and KISEMBO arrive in Kilo.⁶⁴⁷ They came in a vehicle and were accompanied by escorts.⁶⁴⁸ NTAGANDA

⁶³⁵ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 37.

⁶³⁶ P-0877, DRC-OTP-2069-2086-R03, para. 30.

⁶³⁷ P-0877, DRC-OTP-2069-2086-R03, para. 30 and T-109-Red-ENG-WT, 24 June 2016, p. 46.

⁶³⁸ P-0877, DRC-OTP-2069-2086-R03, para. 30.

⁶³⁹ P-0850, DRC-OTP-2067-1825, para. 40.

⁶⁴⁰ P-0850, DRC-OTP-2067-1825, para. 42.

⁶⁴¹ P-0850, DRC-OTP-2067-1825, para. 41.

⁶⁴² P-0850, DRC-OTP-2067-1825, para. 40.

⁶⁴³ P-0850, DRC-OTP-2067-1825, paras. 41-42.

⁶⁴⁴ P-0850, DRC-OTP-2067-1825, paras. 42-43.

⁶⁴⁵ P-0850, DRC-OTP-2067-1825, para. 43.

⁶⁴⁶ P-0017, T-59-Red-ENG-WT, 29 January 2016, pp. 42-43.

went to see the *chef de collectivité* and left towards the UPC camp.⁶⁴⁹ According to P-0850, NTAGANDA was wearing a military uniform during this visit.⁶⁵⁰

250. Throughout their stay in Kilo, the UPC soldiers abducted people.⁶⁵¹ In fact, many people, mostly Lendu, were arrested and killed after being made to dig their own graves.⁶⁵² However, the UPC also arrested and killed those whom they merely suspected of cooperating with the Lendu.⁶⁵³

251. One such case was that of a Nyali called [REDACTED] who was suspected of working with the Lendu combatants.⁶⁵⁴ He was arrested and made to dig his own grave, but was eventually allowed to leave the camp when [REDACTED] came to beg for his release.⁶⁵⁵

252. It was NTAGANDA who personally told the businessman: *"I am responsible for operations. I have intelligence to say that this person has cooperated with the Lendu, and he continued to cooperate with the Lendu. As you don't want to help us, I am going to do the work which the parties asked me to carry out"*.⁶⁵⁶

253. Around this time, the UPC controlled the area and all the Lendu had left, not only the combatants.⁶⁵⁷ In fact, the Lendu had been driven out and some of the Nyali inhabitants had left as well because they were afraid of seeing the soldiers.⁶⁵⁸ One day, Generals NTAGANDA, KISEMBO and other UPC commanders came to call on

⁶⁴⁷ P-0877, DRC-OTP-2077-0118-R03, para. 39; V3, T-203-CONF-ENG-ET, 12 April 2017, pp. 10, 41, 122.

⁶⁴⁸ P-0850, DRC-OTP-2067-1825, para. 50.

⁶⁴⁹ P-0877, DRC-OTP-2077-0118-R03, para. 39.

⁶⁵⁰ P-0850, T-112-CONF-ENG-ET, p. 61.

⁶⁵¹ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 39.

⁶⁵² V3, T-203-CONF-ENG-ET, 12 April 2017, p. 38.

⁶⁵³ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 38.

⁶⁵⁴ V3, T-203-CONF-ENG-ET, 12 April 2017, pp. 37-38.

⁶⁵⁵ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 38.

⁶⁵⁶ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 37.

⁶⁵⁷ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 101; P-0850, DRC-OTP-2067-1825, para. 36.

⁶⁵⁸ V3, T-203-Red-ENG-WT, 12 April 2017, p. 14.

one of the prominent Nyali businessmen, [REDACTED] in the village,⁶⁵⁹ as they went to speak to all the elders in order to gain their support.⁶⁶⁰

254. Being Nyali, [REDACTED] had not left the village when the UPC attacked, since it was generally only the Lendu who were being driven out by the UPC.⁶⁶¹ At the meeting KISEMBO, NTAGANDA and other commanders, including MANGAINO⁶⁶² who was responsible for security in Kilo, had with [REDACTED],⁶⁶³ KISEMBO said that he wanted the village's collaboration with commander PAPY, so that they "*could eliminate the Lendu*".⁶⁶⁴

255. As [REDACTED], they were seeking his support in telling them where the Lendu had gone; they also wanted him to contribute financially to the UPC movement.⁶⁶⁵ [REDACTED] refused to cooperate with the UPC and their aim of driving out the Lendu.⁶⁶⁶

256. The commanders came back another time to again ask for financial contributions,⁶⁶⁷ and when [REDACTED] refused again,⁶⁶⁸ NTAGANDA and his soldiers came to his house [REDACTED], threatened his family and took him away.⁶⁶⁹ They put him into one of their vehicles and drove off.⁶⁷⁰ V3 and [REDACTED] went to the camp to see General KISEMBO the next day; V3 explained to him what had happened during the night and KISEMBO told him not to worry

⁶⁵⁹ V3, T-203-Red-ENG-WT, 12 April 2017, p. 11.

⁶⁶⁰ P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 42.

⁶⁶¹ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 14.

⁶⁶² P-0017 testified that other commanders present on the ground in Kilo included commanders AMÉRICAIN, SAMY, ANDRÉ, MANGAINO, MUGISA, PASCAL, and ERIC. See P-0017, T-59-Red-ENG-WT, 29 January 2016, pp. 46, 58, 61.

⁶⁶³ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 8 and V3, T-203-Red-ENG-WT, 12 April 2017, p. 17.

⁶⁶⁴ V3, T-203-Red-ENG-WT, 12 April 2017, pp. 17, 33.

⁶⁶⁵ V3, T-203-Red-ENG-WT, 12 April 2017, p. 33.

⁶⁶⁶ V3, T-203-Red-ENG-WT, 12 April 2017, p. 20.

⁶⁶⁷ V3, T-203-Red-ENG-WT, 12 April 2017, p. 22.

⁶⁶⁸ V3, T-203-Red-ENG-WT, 12 April 2017, p. 25.

⁶⁶⁹ V3, T-203-Red-ENG-WT, 12 April 2017, pp. 40-43, 45, 84.

⁶⁷⁰ V3, T-203-Red-ENG-WT, 12 April 2017, pp. 42-43.

and come back later; he said: *"I'm going to try and call these people so that [REDACTED] is freed"*.⁶⁷¹

257. However, when V3 returned at midday, KISEMBO was no longer there and had apparently left towards [REDACTED], or at least this is what V3 was told.⁶⁷² [REDACTED] was never seen again.⁶⁷³ A friend of [REDACTED] later on found out that [REDACTED] was taken to Shari river and killed.⁶⁷⁴ In fact, at that time, Shari river was infamously known as the 'slaughterhouse' throughout Ituri because many people were killed there in order not to leave traces of their bodies.⁶⁷⁵ Other people in the village were abducted in similar circumstances.⁶⁷⁶

258. The rapes of local Nyali girls only stopped after KISEMBO, who was half-Nyali and had spent some of his childhood in Kilo,⁶⁷⁷ had arrived in the village and promised the village elders that their children *"would no longer be victims of this form of crime"* if they encouraged their children to join the UPC.⁶⁷⁸

259. The UPC eventually left Kilo in the second week of February 2003, moving in the direction of Kobu.⁶⁷⁹ SALUMU informed the troops that they were going to *"have an operation in Kobu"*.⁶⁸⁰ He also briefed his commanders, including commanders AMÉRICAIN, MANGAINO, SAMY, MUGISA, and PASCAL on the operations ahead.⁶⁸¹ This happened after a UPC commander had attempted to attack Lipri, was repelled, and had lost a number of heavy weapons to the enemy.⁶⁸² After they had left, the population, including [REDACTED] found a hole in the ground of about two

⁶⁷¹ V3, T-203-Red-ENG-WT, 12 April 2017, p. 43.

⁶⁷² V3, T-203-Red-ENG-WT, 12 April 2017, p. 43.

⁶⁷³ V3, T-203-Red-ENG-WT, 12 April 2017, p. 46.

⁶⁷⁴ V3, T-203-CONF-ENG-ET, 12 April 2017, pp. 45, 71.

⁶⁷⁵ V3, T-203-Red-ENG-WT, 12 April 2017, p. 47.

⁶⁷⁶ V3, T-203-Red-ENG-WT, 12 April 2017, p. 49.

⁶⁷⁷ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 15.

⁶⁷⁸ P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 42.

⁶⁷⁹ P-0877, DRC-OTP-2069-2086-R03, para. 33; P-0850, DRC-OTP-2067-1825, para. 54.

⁶⁸⁰ P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 46.

⁶⁸¹ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 61.

⁶⁸² P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 46.

by three meters which was located at the edge of the camp and which was filled with dead bodies.⁶⁸³

260. There were at least ten bodies that showed different signs of injuries, such as bayonet cuts or marks of blows from hammers or similar objects and there was a very strong stench emanating from them so that the *chef de localité* told them to only fill up the hole with soil rather than bury the bodies individually.⁶⁸⁴ The bodies were either naked or topless and all were male.⁶⁸⁵ Human skulls and remains continued to be found in the area in the years that followed when people were farming or digging in the mining areas.⁶⁸⁶

a. Conclusion

261. It is submitted that the evidence presented shows beyond reasonable doubt that the Accused led the First Attack against the civilian population of Mongbwalu and that during the course and immediate aftermath of that attack, he personally, as well as his subordinates, committed the crimes charged under counts 1 to 5, 7, 8, 10 to 13, and 18.

262. The evidence establishes that the Accused ordered the attack on the civilian population in Sayo and was on the ground during at least part of the implementation of his direct orders. The evidence further shows that the crimes charged under counts 1 to 3, 10 to 11, 17, and 18 were committed in the village of Sayo.

263. The Chamber should thus reject the Accused's claims that (i) there were no civilians in Sayo, and (ii) that Sayo Church had not been affected by the fighting.⁶⁸⁷

⁶⁸³ [REDACTED]

⁶⁸⁴ [REDACTED]

⁶⁸⁵ P-0877, T-109-CONF-ENG-ET, 24 June 2016, p. 47.

⁶⁸⁶ P-0877, DRC-OTP-2069-2089-R03, para. 34 and T-109-Red-ENG-WT, 24 June 2016, p. 47; P-0850, DRC-OTP-2067-1825, para. 48.

⁶⁸⁷ Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, pp. 55-56.

264. The Accused further, directly ordered the execution of two prisoners on persecutory grounds in the village of Nzebi, after attacking the civilian population in this village pursuant to his orders. The evidence thus establishes that the crimes charged under counts 1 to 3 were committed in Nzebi.

265. Finally, the evidence further establishes beyond reasonable doubt that UPC troops under the command and authority of the Accused committed the crimes charged under counts 1 to 5, 7 to 8, 10 to 13, and 18 in the village of Kilo. The Accused was on the ground and directly supervised part of the operations.

B. SECOND ATTACK

266. When the UPC launched the attack on Kobu, Bambu, and Lipri, which falls into what the Prosecution has classified as the ‘Second Attack’,⁶⁸⁸ they not only attacked these villages, but many small villages surrounding them were also affected by this operation.⁶⁸⁹

1. LIPRI/TSILI

267. The UPC attacked the village on or around 14 January 2003.⁶⁹⁰ The attackers came from the direction of Mwanga and Centrale.⁶⁹¹ The UPC units commanded by commander SALONGO had previously ‘opened’ the Lipri road in order to attack Mwanga and Lipri.⁶⁹² Three people lost their lives during the attack before the troops retreated.⁶⁹³ On this occasion, they were not successful in taking the village over.

268. P-0105, [REDACTED], testified that many Lendu who had fled the surrounding areas had gathered in Lipri for refuge,⁶⁹⁴ as it was also known as a “*Lendu centre*”, meaning that it would be predominantly inhabited by Lendu.⁶⁹⁵

269. The UPC returned to Lipri, attacking the village on 17 February 2003.⁶⁹⁶ Again, they were pushed back by Lendu combatants⁶⁹⁷ and lost one of their heavy weapons,

⁶⁸⁸ See UDCC, paras 49, 76 *et seq.*

⁶⁸⁹ P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 62.

⁶⁹⁰ P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 44; P-0005, T-189-CONF-ENG-ET, 27 January 2017, p. 13.

⁶⁹¹ P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 44.

⁶⁹² P-0907, T-90-CONF-ENG-CT, 26 April 2016, p. 59.

⁶⁹³ P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 44.

⁶⁹⁴ P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 41.

⁶⁹⁵ P-0005, T-185-CONF-ENG-ET, 23 January 2017, p. 25.

⁶⁹⁶ P-0127, T-139-Red-ENG-WT, 26 September 2016, p. 4.

⁶⁹⁷ P-0127, T-139-Red-ENG-WT, 26 September 2016, p. 4.

the so-called *saba-saba*, during this battle.⁶⁹⁸ The soldiers returned the next day, 18 February 2003, in the early morning hours.⁶⁹⁹ Their ranks were reinforced and they were heavily armed this time around.⁷⁰⁰ As they approached, gunshots could be heard coming from the direction of Ngongo.⁷⁰¹ They used rocket launchers and the 'B-12' as they attacked.⁷⁰² P-0127 saw the approaching UPC troops attack Lipri market with a rocket launcher.⁷⁰³ He also observed that the soldiers attacked with a weapon that was mounted on a four-by-four jeep.⁷⁰⁴

270. When they realised they were unable to defend the village, the Lendu combatants decided to retreat and have the UPC take over Lipri.⁷⁰⁵ According to P-0105, the Lendu combatants were an unorganised group of individuals who had a few weapons which had previously been seized from the enemy.⁷⁰⁶ The UPC leadership was aware that it was essentially only civilians who were attacked and killed in Lipri.⁷⁰⁷

271. The UPC troops led by NTAGANDA succeeded in taking over Lipri and set up camp there.⁷⁰⁸ The villages of Lipri and Tsili are in fact set up in a way that they essentially represent one village.⁷⁰⁹ According to P-0127, these villages are "*almost assimilated with each other*".⁷¹⁰

⁶⁹⁸ P-0105, T-134-CONF-ENG-ET, 19 September 2016, p. 13 and T-135-CONF-ENG-ET, 20 September 2016, p. 13.

⁶⁹⁹ P-0105, T-134-CONF-ENG-ET, 19 September 2016, p. 13 and T-135-CONF-ENG-ET, 20 September 2016, p. 13; DRC-OTP-0017-0023.

⁷⁰⁰ P-0105, T-133-CONF-ENG-ET, 16 September 2016, pp. 44, 53; P-0127, T-139-CONF-ENG-ET, 26 September 2016, pp. 4-5.

⁷⁰¹ P-0105, T-133-Red-ENG-WT, 16 September 2016, p. 53.

⁷⁰² P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 65.

⁷⁰³ P-0127, T-139-Red-ENG-WT, 26 September 2016, p. 4.

⁷⁰⁴ P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 9.

⁷⁰⁵ P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 53.

⁷⁰⁶ P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 71.

⁷⁰⁷ P-0190, T-97-CONF-ENG-CT, 7 June 2016, p. 23.

⁷⁰⁸ P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 44; P-0190, T-97-CONF-ENG-CT, 7 June 2016, pp. 22-24.

⁷⁰⁹ P-0127, T. 139-CONF-ENG-ET, 26 September 2016, p. 7.

⁷¹⁰ P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 10.

272. Houses were looted and set on fire by Hema and Gegere 'civilian combatants' mobilised for this purpose to prevent the Lendu from coming back.⁷¹¹

273. In other, smaller Lendu villages that were around Lipri and Tsili, such as Avetso, Djuba, Nyarara and Katho, they proceeded the same way: they looted crops from farms and burnt down houses they came across.⁷¹² They also removed items of value or use from the houses, such as cooking utensils before setting fire to peoples' homes.⁷¹³

274. [REDACTED] and other inhabitants of Lipri fled to the bush up to Djuba Hill from where they were able to observe what was going on in the surrounding area.⁷¹⁴ Lipri, Tsili and other surrounding villages were literally emptied of its inhabitants.⁷¹⁵ [REDACTED] stayed in the bush from 18 February until [REDACTED] March.⁷¹⁶

275. [REDACTED], who had seen the attackers enter the village, also took towards the bush.⁷¹⁷ His family had left after the first attack on the village; they had headed up to [REDACTED] and eventually [REDACTED] reunited with them in the area of [REDACTED].⁷¹⁸

276. People were hiding out in the bush in dire circumstances.⁷¹⁹ There was no shelter, and if they were lucky they would find trees under which they could take shelter.⁷²⁰ However, mostly, the displaced villagers were sleeping in the open.⁷²¹ They

⁷¹¹ P-0055, T-71-ENG-CONF-ET, 24 February 2016, p. 46; P-0190, T-97-CONF-ENG-ET, 7 June 2016, p. 22.

⁷¹² P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 46; P-0127, T. 139-CONF-ENG-ET, 26 September 2016, pp. 5, 12.

⁷¹³ See e.g. P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 10.

⁷¹⁴ [REDACTED]

⁷¹⁵ P-0127, T-139-CONF-ENG-ET, 26 September 2016, 10.

⁷¹⁶ [REDACTED]

⁷¹⁷ [REDACTED]

⁷¹⁸ [REDACTED]

⁷¹⁹ P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 12.

⁷²⁰ P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 12.

⁷²¹ P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 12.

would eat what they could find, and if they did not find anything, they would go without eating.⁷²²

277. As to the scale of the displacement, MONUSCO reported about 200 internally displaced people to return to Lipri in June 2003.⁷²³ Many displaced people also went to Bunia and reported on the crimes committed against them, complaining to the UPC about what had happened to them.⁷²⁴

2. CAMP PM

278. P-0100, who lived in Camp PM, a village in the Walendu Djatsi collectivité⁷²⁵ which is largely inhabited by “retired persons”,⁷²⁶ testified that the inter-ethnic war reached the village when Bosco NTAGANDA’s troops left Mongwbalu and Kilo chasing out the Lendu from these places.⁷²⁷ The population fled to the bush as the attackers neared around eight or nine o’clock in the evening.⁷²⁸ P-0100 fled when he heard the soldiers firing gunshots.⁷²⁹

279. When the soldiers reached the village and opened fire, a deaf lady, who had remained in her house while the other inhabitants had fled, was killed.⁷³⁰ [REDACTED].

280. The soldiers tried to set fire to houses as they left the village, with which they did not succeed as it was raining.⁷³¹ They cut down banana trees in a plantation

⁷²² P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 12.

⁷²³ DRC-OTP-0005-0090, p. 0005-0091.

⁷²⁴ P-0190, T-97-CONF-ENG-CT, 7 June 2016, p. 22.

⁷²⁵ Agreed Fact 13.

⁷²⁶ P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 24.

⁷²⁷ P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 27.

⁷²⁸ P-0100, T-131-Red-ENG-WT, 14 September 2016, pp. 27-28.

⁷²⁹ P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 29.

⁷³⁰ P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 27.

⁷³¹ P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 29.

belonging to [REDACTED] and destroyed the plantation after looting some of the fruit.⁷³²

281. When P-0100 returned to the village, he found his house had been set on fire, but not completely burnt down.⁷³³ Clothing was strewn all around the property.⁷³⁴ P-0100 fled the village again and headed towards the bush near [REDACTED], where he stayed in the company of some people he met in the bush.⁷³⁵ And even there, the UPC found and attacked people.⁷³⁶

3. *KOBU TAKEOVER*

282. The UPC's 'Kilo battalion' under commander SALUMU attacked Kobu, which is located in the Walendu-Djatsi *collectivité*, on a Tuesday in February 2003 from the direction of Kilo.⁷³⁷ The village was in fact attacked by two battalions of infantry and heavy weapon units.⁷³⁸ Reinforcements bringing in ammunition came from Mongbwalu.⁷³⁹

283. According to P-0018, Kobu was a village mainly inhabited by Lendu, Bira, Nyali and *Jajambo*.⁷⁴⁰ The population had returned to the village following an earlier attack around October 2002 when many of the inhabitants had been displaced.⁷⁴¹

⁷³² P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 29.

⁷³³ P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 31.

⁷³⁴ P-0100, T-131-Red-ENG-WT, 14 September 2016, pp. 31-32.

⁷³⁵ P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 32.

⁷³⁶ P-0100, T-131-Red-ENG-WT, 14 September 2016, p. 32.

⁷³⁷ P-0907, T-90-CONF-ENG-ET, 26 April 2016, p. 59; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, pp. 14-15; P-0121, T-172-CONF-ENG-ET, 6 December 2016, pp. 59-60; P-0790, T-53-CONF-ENG-ET, 18 January 2016, pp. 44-45; P-0106, T-44-Red-ENG-ET, 2 November 2015, p. 28. See also P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 69; Agreed Fact 23.

⁷³⁸ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 58.

⁷³⁹ P-0017, T-59-CONF-ENG-CT, 29 January 2016, p. 63.

⁷⁴⁰ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 59-60; P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 30. For definitions of "*Jajambo*" and "*Nande*", see also Agreed Facts 38-39.

⁷⁴¹ P-0790, T-53-CONF-ENG-CT, 18 January 2016, pp. 36-38; P-0121, T-172-CONF-ENG-ET, 6 December 2016, pp. 59-60; P-0301, T-149-CONF-ENG-ET, 7 October 2016, pp. 28-29.

Some of the young people in the village tried to put up resistance around Wadza, but they were unable to repel the advancing UPC troops.⁷⁴²

284. P-0121 saw the army arrive and heard a bomb explode in the air.⁷⁴³ Gunshots were audible even from afar.⁷⁴⁴ The attack started around noon.⁷⁴⁵ P-0106, [REDACTED] took flight when the village was attacked and the noise of explosions could be heard.⁷⁴⁶ He fled to the bush around [REDACTED].⁷⁴⁷ P-0121 and his family as well as other residents took towards the bush, heading to [REDACTED].⁷⁴⁸

285. P-0805, [REDACTED], saw people fleeing when the village was attacked.⁷⁴⁹ P-0857 and some members of his family fled to Gutsi, a neighbouring village.⁷⁵⁰ P-0301, a Lendu [REDACTED], testified that he, too, took flight when he could hear the noise of detonating bombs.⁷⁵¹ He also took towards Gutsi.⁷⁵² Gunfire could be heard in the surrounding bush until the evening.⁷⁵³

286. Other than Commander SALUMU, commanders SAIDI, NGANDJA, and KAZUNGU, ERIC, and PASCAL were involved in the Kobu operation.⁷⁵⁴ NTAGANDA was supervising the operation and giving orders *via Motorola*.⁷⁵⁵

287. As the soldiers approached the village, the villagers were unable to take anything from their homes as it was already too late.⁷⁵⁶ P-0805, for instance, was only

⁷⁴² P-0790, T-53-CONF-ENG-CT, 18 January 2016, pp. 40-41; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 16.

⁷⁴³ P-0121, T-172-CONF-ENG-ET, 6 December 2016, pp. 60-61.

⁷⁴⁴ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 45; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 16; P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 69.

⁷⁴⁵ P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 31.

⁷⁴⁶ P-0106, T-44-Red-ENG-ET, 2 November 2015, p. 28.

⁷⁴⁷ P-0106, T-44-Red-ENG-ET, 2 November 2015, pp. 28, 32.

⁷⁴⁸ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 60.

⁷⁴⁹ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 15.

⁷⁵⁰ P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 70.

⁷⁵¹ P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 30.

⁷⁵² P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 30.

⁷⁵³ P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 31.

⁷⁵⁴ P-0017, T-59-Red-ENG-WT, 29 January 2016, p. 58; P-0901, T-29-CONF-ENG-CT, 21 September 2015, pp. 11-12, 38-39; DRC-OTP-0204-0056 at 3:00-9:01.

⁷⁵⁵ P-0901, T-29-CONF-ENG-CT, 21 September 2015, p. 13.

able to gather a few clothes and cooking equipment.⁷⁵⁷ When the villagers fled, P-0790 initially stayed behind.⁷⁵⁸ His [REDACTED] had already fled with the others when the UPC attacked.⁷⁵⁹ However, [REDACTED] were still in the village [REDACTED] somewhere and he went to look them.⁷⁶⁰

288. When he found [REDACTED], UPC soldiers were already in the village.⁷⁶¹ P-0790 took [REDACTED], and tried to run away,⁷⁶² but he could already hear gunshots coming from the Kilo direction.⁷⁶³ As he was trying to flee, he chanced upon soldiers who were about 30m away from where he was and opened fire.⁷⁶⁴ [REDACTED] were hit by the gunfire while he was [REDACTED] while trying to flee; he was also hit when the soldiers shot at them.⁷⁶⁵

289. In order to save himself, he had to leave [REDACTED] behind who he could tell had already died.⁷⁶⁶ P-0790 managed to crawl into the bush and he eventually reached the other villagers when night fell.⁷⁶⁷ He did at first not realise that he was seriously wounded because he could only think about [REDACTED] who had been killed.⁷⁶⁸ [REDACTED], and [REDACTED] at the time.⁷⁶⁹ He was never able to

⁷⁵⁶ P-0790, T-53-CONF-ENG-CT, 18 January 2016, pp. 38-39; P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 30.

⁷⁵⁷ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, pp. 18-19.

⁷⁵⁸ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 38.

⁷⁵⁹ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 43 and T-54-CONF-ENG-CT, 19 January 2016, p. 44.

⁷⁶⁰ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 44-45.

⁷⁶¹ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 45.

⁷⁶² P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 45

⁷⁶³ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 45.

⁷⁶⁴ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 45 and T-54-CONF-ENG CT, 19 January 2016, p. 43.

⁷⁶⁵ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 45 and T-54-CONF-ENG-CT, 19 January 2016, p. 43; DRC-OTP-2078-2407.

⁷⁶⁶ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 45.

⁷⁶⁷ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 45.

⁷⁶⁸ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 46 and T-54-CONF-ENG-CT, 19 January 2016, pp. 43-44; T-57-CONF-ENG-CT, 25 January 2016, p. 6.

⁷⁶⁹ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 46.

recover their bodies or remains, let alone bury them after he had to abandon them where they had been killed.⁷⁷⁰

290. P-0790 himself sustained a serious, large wound [REDACTED].⁷⁷¹ He was bleeding throughout the night.⁷⁷² It was only after resting for a few days that P-0790 was able to walk to [REDACTED].⁷⁷³ He arrived in [REDACTED] at night, crossing [REDACTED].⁷⁷⁴

291. The weapons used during the attack on Kobu included mortar shells that had specifically been provided to the 'Kilo battalion' together with other weapons and ammunition from the weapons stock at the 'apartments' in Mongwbalu.⁷⁷⁵ When the UPC had seized the village, they set up camp at Kobu market, which was located on an elevation.⁷⁷⁶ Commander SALUMU, however, occupied a house further down the road towards Kilo État and Kilo Mission.⁷⁷⁷

292. Fleeing to [REDACTED], P-0121 and his family continued on to Gutsi.⁷⁷⁸ They were afraid to be found in the bush, so they did not light any fires.⁷⁷⁹ According to P-0857, while the UPC soldiers were occupying Kobu, they also went into other villages such as Buli, Sangi, and Jitchu to look for people.⁷⁸⁰

293. P-0121 and his family were hiding out in the bush in the vicinity of Buli [REDACTED], constantly moving so as not to be found.⁷⁸¹ They found manioc and

⁷⁷⁰ P-0790, T-53-CONF-ENG-CT, 18 January 2016, p. 47 and T-54-CONF-ENG-CT, 19 January 2016, p. 17.

⁷⁷¹ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 44 and T-57-CONF-ENG-ET, 25 January 2016, p. 7.

⁷⁷² P-0790, T-57-CONF-ENG-ET, 25 January 2016, p. 6.

⁷⁷³ P-0790, T-57-CONF-ENG-ET, 25 January 2016, p. 11.

⁷⁷⁴ P-0790, T-57-CONF-ENG-ET, 25 January 2016, p. 11.

⁷⁷⁵ [REDACTED]

⁷⁷⁶ P-0017, T-59-CONF-ENG-ET, 29 January 2016, p. 65.

⁷⁷⁷ P-0017, T-59-CONF-ENG-ET, 29 January 2016, p. 65.

⁷⁷⁸ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 60.

⁷⁷⁹ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 64.

⁷⁸⁰ P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 71.

⁷⁸¹ P-0121, T-172-CONF-ENG-ET, 6 December 2016, pp. 69-70.

cassava in the fields on which they survived.⁷⁸² The women, children, and old people would find shelter in tree houses the men set up for them and the men themselves would sleep outside in open air.⁷⁸³

294. Having fled to Gutsi, which is situated on a hill from where the neighbouring villages are visible, P-0857 was able to observe the UPC soldiers setting houses on fire in Kobu.⁷⁸⁴ Other, smaller villages were also being attacked in the vicinity, which the villagers who had fled to Gutsi could observe from there.⁷⁸⁵

295. The UPC also shelled a column of civilians in the vicinity of Kobu.⁷⁸⁶ As the people dressed in civilian clothing were approaching the village, singing and making noise, commander SALUMU gave the order to shoot at them with the [REDACTED] weapon.⁷⁸⁷

296. [REDACTED] testified that the purpose of targeting the column was to dispel it and to *“keep exerting pressure so that nobody could even light a fire to cook or to warm themselves and they would understand that we could see the fire, so every time we saw one we were to destroy it.”*⁷⁸⁸ This measure was aimed at *“those who were fleeing, those people who had fled from Kobu centre and who were seeking refuge in the forests surrounding the valleys in Kobu”*.⁷⁸⁹ Put differently, the UPC troops were purposely and intentionally targeting the civilian population with heavy anti-personnel weapons.

297. P-0127 eventually reached [REDACTED] where he learned that Commander SALUMU of the UPC had called the Lendu population for a peace meeting which

⁷⁸² P-0121-T-172-CONF-ENG-ET, 6 December 2016, p. 74; P-0805, T-25bis-CONF-ENG CT, 15 September 2015, p. 19.

⁷⁸³ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 74. *See also infra*, Victimisation and Suffering Associated with Forcible Transfer.

⁷⁸⁴ P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 71.

⁷⁸⁵ P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 32.

⁷⁸⁶ [REDACTED]

⁷⁸⁷ [REDACTED]

⁷⁸⁸ [REDACTED]

⁷⁸⁹ [REDACTED]

was to take place in Sangi.⁷⁹⁰ P-0127 was curious about the meeting and set out to go to Sangi for this purpose.⁷⁹¹ He, however, first decided to go to [REDACTED] in order to meet up with other people from the Lendu community, so that they could attend the peace meeting together.⁷⁹²

4. *BAMBU*

298. The majority of people living in Bambu were Lendu.⁷⁹³ Many Lendu had also fled to Bambu from Mongbwalu in 2002 due to the clashes in the town.⁷⁹⁴

299. Bambu was a mining area where gold was panned.⁷⁹⁵ Commander SALUMU's and KYALIGONZA's troops attacked Bambu [REDACTED] upon the orders of NTAGANDA.⁷⁹⁶

300. Contrary to the assertion of D-0038 that there were no civilians in the village of Bambu when it was attacked,⁷⁹⁷ there were still many civilians in the village – either locals or refugees from other villages. The Chamber has, for instance, heard the evidence of P-0018, [REDACTED], who testified about hearing gunfire coming from the direction of Shari, the river that separates Nizi from Bambu.⁷⁹⁸ She concluded that UPC soldiers were attacking the village.⁷⁹⁹ She did not see any Lendu fighters

⁷⁹⁰ P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 20.

⁷⁹¹ P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 20.

⁷⁹² P-0127, T-139-CONF-ENG-ET, 26 September 2016, p. 20.

⁷⁹³ P-0018, T-110-CONF-ENG-ET, 27 June 2016, p. 45.

⁷⁹⁴ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 11.

⁷⁹⁵ [REDACTED]

⁷⁹⁶ [REDACTED]

⁷⁹⁷ D-0038, T-249-CONF-ENG-CT, 17 October 2017, pp. 73-74.

⁷⁹⁸ P-0018, T-110-Red-ENG-WT, 27 June 2016, p. 48 and T-111-CONF-ENG-ET, 28 June 2016, p. 54.

⁷⁹⁹ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 52-54.

defending Bambu and took flight to the bush.⁸⁰⁰ In fact, the Lendu combatants had long been driven out of the area around this time.⁸⁰¹

301. The UPC employed heavy weaponry when it attacked the village,⁸⁰² which resulted in the destruction of various buildings, including the court and the stadium.⁸⁰³ Pictures of the structures of the Bambu stadium taken many years after the events in question are not capable of rebutting P-0863's credible account that the stadium's structure was indeed damaged during the attack.⁸⁰⁴ In fact, the pictures still testify to the seating structures being destroyed. In light of abundant evidence on the UPC's military equipment⁸⁰⁵ versus the arms used by the combatants, D-0038's assertion that the combatants were able to launch rockets and shells from Bambu should equally be rejected.⁸⁰⁶

302. When the UPC eventually took over Bambu, they stayed in the village for about a month.⁸⁰⁷ During this time, they would even launch mortar shells ("*bombs*") into the bush where people were hiding.⁸⁰⁸

303. The Chamber heard the evidence of V1 whose family compound was hit by a shell and [REDACTED] his family [REDACTED] were instantaneously killed in this incident on 19 February 2003.⁸⁰⁹ Moreover, the Chamber has heard the graphic detail of the injuries sustained by those killed in the attack,⁸¹⁰ including V1's [REDACTED].⁸¹¹ The Chamber equally heard V1 speak of his profound pain and

⁸⁰⁰ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 52, 55 and T-111-CONF-ENG-ET, 28 June 2016, p. 55.

⁸⁰¹ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 60.

⁸⁰² P-0863, T-180-Red-ENG-WT, 16 January 2017, p. 26.

⁸⁰³ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 26.

⁸⁰⁴ DRC-D18-0001-2929; DRC-D18-0001-2928.

⁸⁰⁵ See e.g. *supra*, paras. 140, 167, 269, 295, 299.

⁸⁰⁶ D-0038, T-249-CONF-ENG-ET, 17 October 2017, p. 73.

⁸⁰⁷ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 32; V1, T-201-Red-ENG-WT, 10 April 2017, pp. 9-10, 20.

⁸⁰⁸ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 37.

⁸⁰⁹ V1, T-201-CONF-ENG-ET, 10 April 2017, pp. 20, 68, 70.

⁸¹⁰ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 21.

⁸¹¹ V1, T-201-CONF-ENG-ET, 10 April 2017, pp. 21-22.

suffering on account of the loss of life of his family members,⁸¹² and his actions in trying to see whether they were still alive, regardless of whether he would also be struck.⁸¹³

304. [REDACTED] provided the physical evidence of the metal stabiliser of the artillery shell that hit [REDACTED],⁸¹⁴ as well as pictures of damage to [REDACTED] that corroborate his account.⁸¹⁵ His account is further corroborated by Witness P-0863 who testified that he heard a shell pass through the air at [REDACTED] and that he subsequently found out about it killing the family of [REDACTED] and how he attended their funeral.⁸¹⁶

305. [REDACTED] also testified about listening to intercepted UPC messages⁸¹⁷ wherein he heard mention of the number of weapons they had in [REDACTED], as well as instructions to fire on people who had taken refuge in the valleys.⁸¹⁸

306. Witness [REDACTED] credibly asserted that the metal stabiliser he recovered was the stabiliser of the very shell that [REDACTED].⁸¹⁹ He explained to the Chamber how he, as a layman but fact witness, concluded that the trajectory of the shell originated in the direction of Nizi, given that it hit [REDACTED] from that direction.⁸²⁰ This assessment was corroborated by the testimony of [REDACTED], who stated that the attack on Bambu was launched from Nizi under the command of commander KYALIGONZA.⁸²¹ Against this evidence, the Chamber should reject D-0038's claim that the enemy was well armed and attacking the UPC soldiers from the bridge.⁸²²

⁸¹² V1, T-201-Red-ENG-WT, 10 April 2017, p. 38.

⁸¹³ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 21.

⁸¹⁴ [REDACTED]

⁸¹⁵ DRC-PCV-0001-0126; DRC-PCV-0001-0086; DRC-PCV-0001-0089.

⁸¹⁶ P-0863, T-180-CONF-ENG-ET, 16 January 2017, pp. 27-28.

⁸¹⁷ See *infra*, para. 331.

⁸¹⁸ [REDACTED]

⁸¹⁹ [REDACTED]; DRC-PCV-0001-0126; DRC-PCV-0001-0086.

⁸²⁰ [REDACTED]

⁸²¹ [REDACTED]

⁸²² D-0038, T-249-CONF-ENG-CT, 17 October 2017, p. 73.

307. When the UPC attacked Bambu, P-0018, together with other members of her family fled to the bush around [REDACTED] in order to hide out there.⁸²³ From [REDACTED] they continued on to [REDACTED] and Buli.⁸²⁴ During the flight she got separated from some of her family members and ended up in the company of *inter alia*, [REDACTED].⁸²⁵

308. P-0863, who fled with [REDACTED], went into the bush towards Gutsi.⁸²⁶

309. The two churches in Bambu as well as all the schools had been ransacked as well.⁸²⁷ The churches' doors were broken in. The priest's chalice had been taken and all the other objects were demolished. The priest's and nuns' belongings, including clothing and books had also been looted.⁸²⁸ The church had kept a food stock for malnourished children – all of which had been pillaged by the UPC.⁸²⁹

310. Bambu hospital received many patients after the initial, earlier attacks, some returning from the bush to where they had fled when the UPC attacked.⁸³⁰ The medical staff who had themselves fled returned to the hospital after the attack in order to take care of the sick and wounded.⁸³¹

311. Some patients who had sustained shot wounds from bullets, and others had contracted malaria in the forest or suffered from malnutrition.⁸³² There was no medication with which [REDACTED] could treat those who had contracted malaria.⁸³³ The bullet wounds were particularly gruesome, sometimes leaving large

⁸²³ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 52, 55.

⁸²⁴ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 55-56.

⁸²⁵ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 56, 62-64 and T-111-CONF-ENG-ET, 28 June 2016, p. 66.

⁸²⁶ P-0863, T-180-CONF-ENG-ET, 16 January 2017, pp. 32, 35.

⁸²⁷ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 49.

⁸²⁸ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 49.

⁸²⁹ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 49.

⁸³⁰ [REDACTED]

⁸³¹ [REDACTED]

⁸³² [REDACTED]

⁸³³ [REDACTED]

exit wounds on peoples' bodies.⁸³⁴ The staff had to improvise and practice "*war medicine*" as there were essentially no materials or products for surgeries.⁸³⁵ In some cases they were simply unable to treat the wounds or patients died of tetanus.⁸³⁶

312. Initially, when the UPC attacked Bambu sporadically, the hospital staff was able to evacuate their patients to the village of Saint-Therèse.⁸³⁷ However, when the main attack was launched, the hospital staff was unable to take their patients with them when they themselves fled to save their lives.⁸³⁸

313. When the hospital staff returned to Bambu hospital, they found that the UPC soldiers had killed the patients who had been in the wards and were too weak to flee during the attack.⁸³⁹ Their bodies showed signs of beatings and cuts from axes and machetes.⁸⁴⁰ Most of these patients had been tuberculosis patients who had not had the strength to flee.⁸⁴¹ Only one Bira man who had stepped on a mine in Lipri and lost his leg was still alive after having been shot by the UPC in the hospital; he later on died of tetanus.⁸⁴² Before he died, he was able to tell the returning staff what had happened to him.⁸⁴³ [REDACTED] also saw bullet holes in room No. 8 of the hospital.⁸⁴⁴

314. Nine dead people were found in the courtyard of the hospital and most of them had indeed been shot dead.⁸⁴⁵ The hospital staff buried six of them in a hole that

⁸³⁴ [REDACTED]

⁸³⁵ [REDACTED]

⁸³⁶ [REDACTED]

⁸³⁷ [REDACTED]

⁸³⁸ [REDACTED]

⁸³⁹ [REDACTED]

⁸⁴⁰ [REDACTED]

⁸⁴¹ [REDACTED]

⁸⁴² [REDACTED]

⁸⁴³ [REDACTED]

⁸⁴⁴ [REDACTED]

⁸⁴⁵ [REDACTED]

had previously been dug to serve as a latrine, but had not been used as such yet.⁸⁴⁶ To [REDACTED] knowledge, the bodies remain buried next to the hospital to this day.⁸⁴⁷

315. The soldiers had also pillaged all the material the staff had hidden in the roof or the ground, such as the sterilising equipment, dentistry material, laboratory equipment, and a small stock of medication.⁸⁴⁸

⁸⁴⁶ [REDACTED]

⁸⁴⁷ [REDACTED]

⁸⁴⁸ [REDACTED]

5. *BULI*

316. P-0018 testified that people who arrived in Buli came from, *inter alia*, Mongbwalu as well as from the direction of Bambu; others came from neighbouring localities such as Kobu, Gutsi, or Lipri.⁸⁴⁹ She stated that the people arriving in Buli had fled the 'war'.⁸⁵⁰ This account was corroborated by [REDACTED], who testified that after having fled Mongbwalu he stayed in Buli.⁸⁵¹

317. There were many such displaced people who arrived from other, neighbouring villages and there was not enough shelter for all of them.⁸⁵² Most of the displaced persons were Lendu.⁸⁵³ P-0113 was one of those who had fled towards Buli and stayed in the surrounding bush.⁸⁵⁴ There was neither shelter nor food for the people staying in and around Buli.⁸⁵⁵

318. [REDACTED] went to towards Sangi in order to find food in the fields.⁸⁵⁶ When he returned, he said that he was stopped by UPC troops and was taken to Kobu⁸⁵⁷ where he was given a letter in which the UPC asked for a meeting in Sangi.⁸⁵⁸ Although, [REDACTED] did not herself see the letter, [REDACTED] told her that the UPC soldiers were asking for a pacification meeting to be held in Sangi.⁸⁵⁹ [REDACTED] confirmed that [REDACTED] had been stopped by UPC soldiers in

⁸⁴⁹ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 57-59; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 28, 34; P-0300, T-166-CONF-ENG-CT, 28 January 2016, p. 47.

⁸⁵⁰ P-0018, T-110-CONF-ENG-ET, 27 June 2016, p. 59.

⁸⁵¹ [REDACTED]

⁸⁵² P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 34.

⁸⁵³ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 34.

⁸⁵⁴ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 22.

⁸⁵⁵ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 22.

⁸⁵⁶ [REDACTED]

⁸⁵⁷ [REDACTED]

⁸⁵⁸ [REDACTED]

⁸⁵⁹ [REDACTED]

Kobu and been told by NTAGANDA himself that they should convey to the population that they should return the *saba-saba* weapon that was lost in Lipri.⁸⁶⁰

319. Commander SALUMU further told them that if the weapon was not returned, they would be struck.⁸⁶¹ [REDACTED] handed the letter over to the [REDACTED] of Buli.⁸⁶² A response to the letter was drafted and [REDACTED] took it to Kobu to hand it over to the UPC.⁸⁶³ It was on a Wednesday that people started leaving Buli towards Sangi in order to attend the meeting.⁸⁶⁴ [REDACTED] were among the people who left for Sangi.⁸⁶⁵ They decided “*it was preferable to go and listen to what had to be said*”.⁸⁶⁶ DYIKPANU was also among those who decided to go to the peace talks, and they went to attend the meeting.⁸⁶⁷ The population was tired of not eating properly, the poor sleeping and living conditions they found themselves in as a result of their flight, which made them essentially homeless.⁸⁶⁸

320. The men who went to attend the meeting were unarmed.⁸⁶⁹ P-0018 and other women remained behind but fled in the direction of [REDACTED] when they heard gunshots emanating from Sangi.⁸⁷⁰ P-0018 was with [REDACTED].⁸⁷¹ When the soldiers arrived in Buli, they were setting houses on fire and “*shooting all around*”.⁸⁷²

321. P-0039 was forced to flee again when the UPC soldiers attacked Buli.⁸⁷³ He and other people who had gathered in Buli took flight to the surrounding bush.⁸⁷⁴ The

⁸⁶⁰ [REDACTED]

⁸⁶¹ [REDACTED]

⁸⁶² [REDACTED]

⁸⁶³ [REDACTED]

⁸⁶⁴ [REDACTED]

⁸⁶⁵ [REDACTED]

⁸⁶⁶ [REDACTED]

⁸⁶⁷ [REDACTED]

⁸⁶⁸ [REDACTED]

⁸⁶⁹ P-0018, T-110-CONF-ENG-ET, 27 June 2016, p. 69 and T-111-CONF-ENG-CT, 28 June 2016, p. 70; P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 10.

⁸⁷⁰ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 63-64, 70 and T-111-CONF-ENG-CT, 28 June 2016, pp. 70-73.

⁸⁷¹ P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 63, 70-71, 76.

⁸⁷² P-0018, T-110-CONF-ENG-ET, 27 June 2016, p. 79 and T-111-CONF-ENG-CT, 28 June 2016, p. 71.

⁸⁷³ P-0039, DRC-OTP-0104-0015-R03, para. 26.

⁸⁷⁴ P-0039, DRC-OTP-0104-0015-R03, para. 26.

soldiers followed them even into the bush, firing at the fleeing population.⁸⁷⁵ The soldiers, who were dressed in camouflage uniforms with berets, continued firing shots into the air until nightfall which caused terror among those who had run for their lives and were hiding in the bush.⁸⁷⁶

322. When the UPC soldiers entered the village of Buli and went to the bush chasing people, P-0113 was captured.⁸⁷⁷ Other members of her family with whom she had fled managed to run away when the soldiers arrested P-0113, [REDACTED].⁸⁷⁸ P-0113 [REDACTED] were taken to Buli together with other people the soldiers had found and arrested in the bush.⁸⁷⁹ P-0039, who had spent the night hidden in the bush, and who, during his flight had lost his family members, was eventually found by a UPC soldier.⁸⁸⁰ The soldier who found him wore a camouflage uniform and was armed with a rifle.⁸⁸¹

323. The soldier spoke Swahili to P-0039 and ordered him to walk in front of him until they reached a group of other UPC soldiers who were searching the bush for 'Lendu'.⁸⁸² P-0039 overheard the soldiers saying to each other that they were tired and therefore going to return the next day to continue looking for Lendu.⁸⁸³ As the soldiers ordered P-0039 to continue walking, they crossed a river and eventually reached Buli village and the adjacent village of [REDACTED].⁸⁸⁴ He was also made to carry a mattress to their final destination.⁸⁸⁵

⁸⁷⁵ P-0039, DRC-OTP-0104-0015-R03, para. 26.

⁸⁷⁶ P-0039, DRC-OTP-0104-0015-R03, para. 26.

⁸⁷⁷ P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 13-14, 20-21, 30-32.

⁸⁷⁸ P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 31-32.

⁸⁷⁹ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 34.

⁸⁸⁰ P-0039, DRC-OTP-0104-0015-R03, para. 27 and DRC-OTP-2062-0244-R02, para. 34.

⁸⁸¹ P-0039, DRC-OTP-0104-0015-R03, para. 27.

⁸⁸² P-0039, DRC-OTP-0104-0015-R03, para. 27.

⁸⁸³ P-0039, DRC-OTP-0104-0015-R03, para. 28.

⁸⁸⁴ P-0039, DRC-OTP-0104-0015-R03, para. 28 and DRC-OTP-2062-0253-R02, paras. 36, 38.

⁸⁸⁵ P-0039, DRC-OTP-0104-0015-R03, para. 28.

324. When they arrived, the soldiers took P-0039 to [REDACTED].⁸⁸⁶ One of the children in the hut was actually P-0039's [REDACTED].⁸⁸⁷

325. Once arrived in Buli, P-0113 [REDACTED] prisoners, most of whom she believed to be Lendu.⁸⁸⁸ The soldiers ordered P-0113 and other women to cook for them.⁸⁸⁹ While they were cooking, they could move about; however, it was not possible for them to leave Buli.⁸⁹⁰ Among the other women who were made to cook, P-0113 recognised one of the women from [REDACTED].⁸⁹¹

326. At one point, when P-0113 was cooking as ordered, [REDACTED] and an armed soldier in camouflage uniform stopped her.⁸⁹² The soldier started to undress her, threw her to the ground and raped her by penetrating her vagina with his penis against her will.⁸⁹³ When he raped her, he told [REDACTED] in Swahili that he was "*making her his wife*" and if she cried out, he would kill her.⁸⁹⁴ After he had finished raping her, he said: "*[REDACTED] and go back, do your work.*"⁸⁹⁵

6. JITCHU

327. Having fled to Jitchu from Buli, [REDACTED] stayed in Jitchu overnight.⁸⁹⁶ She could hear gunshots being fired until nightfall and the next morning she saw fires in Gutsi.⁸⁹⁷ The soldiers found [REDACTED].⁸⁹⁸ [REDACTED] and an elderly

⁸⁸⁶ P-0039, DRC-OTP-0104-0015-R03, para. 29.

⁸⁸⁷ P-0039, DRC-OTP-0104-0015-R01, para. 29.

⁸⁸⁸ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 34 and T-119-CONF-ENG-CT, 12 July 2016, pp. 19-20.

⁸⁸⁹ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 35.

⁸⁹⁰ P-0113, T-119-CONF-ENG-CT, 12 July 2016, p. 61.

⁸⁹¹ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 35.

⁸⁹² P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 33-36.

⁸⁹³ P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 33-36.

⁸⁹⁴ [REDACTED]

⁸⁹⁵ [REDACTED]

⁸⁹⁶ [REDACTED]

⁸⁹⁷ [REDACTED]

⁸⁹⁸ [REDACTED]

woman who was nearby in the bush were also apprehended by the soldiers.⁸⁹⁹ In total, the soldiers apprehended approximately [REDACTED] Lendu whom they then made to carry their booty, such as mattresses and clothing to [REDACTED] where they arrived at some point in the afternoon.⁹⁰⁰

328. Likewise, the group of Lendu who had been apprehended in the bush near Buli did not stay long in Jitchu. According to P-0039, it was [REDACTED] that the soldiers came and ordered him and his group to get out of the hut and walk to [REDACTED].⁹⁰¹ He took [REDACTED] as they walked until a soldier came to take the [REDACTED] away; he did not see [REDACTED] again until a few months after when [REDACTED] was found in a Nyali village.⁹⁰²

329. In the village of Jitchu proper, which was a Lendu village,⁹⁰³ the remaining population was told by their village chief to go and attend peace talks with the Hema in Kobu.⁹⁰⁴ He told them that there had been a letter convening them to a meeting to this effect.⁹⁰⁵ It was mainly the male population that went to attend the talks.⁹⁰⁶

7. *Gutsi*

330. When the UPC took over Bambu and installed itself in the village, P-0863 and his [REDACTED] wife [REDACTED] children fled to Gutsi.⁹⁰⁷ There was no shelter and P-0863 had to sleep in the open.⁹⁰⁸ There was also no food to be found, as there were not even any farms around.⁹⁰⁹ Some people who had also fled to Gutsi managed

⁸⁹⁹ [REDACTED]

⁹⁰⁰ [REDACTED]

⁹⁰¹ P-0039, DRC-OTP-0104-0015-R03, para. 30.

⁹⁰² P-0039, DRC-OTP-0104-0015-R03, paras. 29-30.

⁹⁰³ P-0108, T-185-CONF-ENG-ET, 23 January 2017, p. 44.

⁹⁰⁴ P-0108, T-185-CONF-ENG-ET, 23 January 2017, pp. 45-46.

⁹⁰⁵ P-0108, T-185-CONF-ENG-ET, 23 January 2017, p. 46.

⁹⁰⁶ P-0108, T-185-CONF-ENG-ET, 23 January 2017, p. 50.

⁹⁰⁷ P-0863, T-180-CONF-ENG-ET, 16 January 2017, pp. 32, 35, 37.

⁹⁰⁸ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 34.

⁹⁰⁹ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 34.

to build makeshift shelters from tarpaulin where at least the children could take refuge during the night.⁹¹⁰

331. While he was in Gutsi, P-0863 [REDACTED] a Lendu militia man had seized a radio from a UPC soldier who was killed in Bambu.⁹¹¹ As [REDACTED], the combatant had taken the radio to Gutsi, where another former Lendu combatant installed the radio and managed to intercept some of the UPC's communications.⁹¹² The radio was set up in [REDACTED].⁹¹³

332. P-0863 was curious about these intercepts and went to listen to them; this is how he learned that the UPC was launching an attack on Buli from Kobu.⁹¹⁴ He also overheard on the radio that the UPC planned to call people out of the bush and have them go to Kobu, thinking that the fighting was over.⁹¹⁵ The people in Gutsi understood that the UPC wanted to trap them, and decided not to leave the village.⁹¹⁶

⁹¹⁰ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 35.

⁹¹¹ P-0863, T-180-Red-ENG-WT, 16 January 2017, p. 37; P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 75.

⁹¹² P-0863, T-180-Red-ENG-WT, 16 January 2017, p. 37; P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 35.

⁹¹³ P-0863, T-181-CONF-ENG-ET, 17 January 2017, pp. 52-55; P-0857, T-194-CONF-ENG-ET, 8 February 2017, pp. 15-16; P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 48.

⁹¹⁴ P-0863, T-180-CONF-ENG-ET, 16 January 2017, p. 37.

⁹¹⁵ P-0863, T-180-CONF-ENG-ET, 16 January 2017, pp. 43-44.

⁹¹⁶ P-0301, T-149-CONF-ENG-ET, 7 October 2016, pp. 35.

8. SANGI

333. The Chamber heard that the UPC went to Sangi and convened the local people to a meeting.⁹¹⁷ P-0019, for instance, testified that when she had fled to [REDACTED], UPC troops lured her and others to a “*peace meeting*” near the Catholic Church in Sangi,⁹¹⁸ only to be surrounded and arrested when they arrived.⁹¹⁹ P-0113 testified that among those who followed the soldiers’ call for a peace meeting were [REDACTED].⁹²⁰

334. P-0019 later found out that another group of people had suffered the same fate just before she got there, with both young and old persons of both genders having been arrested and bound by their wrists and feet.⁹²¹ The group [REDACTED] guarded by UPC soldiers so that they were unable to flee.⁹²² Others were held in a house or houses around the church that had been abandoned by the local population.⁹²³

335. All the prisoners who had been taken to Buli by the UPC soldiers were ordered to leave for Sangi and Kobu and to carry baggage “*that belonged to the soldiers*”, namely goods that had been pillaged in Buli.⁹²⁴ Commander SALUMU⁹²⁵ ordered P-0113 to carry [REDACTED].⁹²⁶ To her knowledge, everybody who had been in Buli went to Kobu⁹²⁷ accompanied by soldiers who were armed with rifles.⁹²⁸

⁹¹⁷ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 35; P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 36.

⁹¹⁸ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 27.

⁹¹⁹ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 28.

⁹²⁰ P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 27-28.

⁹²¹ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 28.

⁹²² P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 30.

⁹²³ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, pp. 30-31.

⁹²⁴ P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 41-43.

⁹²⁵ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 14 and T-119-CONF-ENG-CT, 12 July 2016, p. 42.

⁹²⁶ P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 14-15, 38, 42-43.

⁹²⁷ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 42.

⁹²⁸ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 42

336. P-0018 also testified how she and other women were taken to Sangi by soldiers and made [REDACTED].⁹²⁹ She observed that one of the soldiers had a *Motorola* and was giving orders to the others who were guarding the women.⁹³⁰ When she had been taken to Sangi, P-0018 saw smoke coming from houses in the village and she also saw heavy weapons, including mortars.⁹³¹

337. When the group of prisoners from Buli arrived in Sangi, they stopped to rest for a [REDACTED].⁹³² P-0113 went to relieve herself and was followed by a UPC soldier armed with a weapon who forced her to sleep with him; he penetrated her vagina with his penis against her will.⁹³³ When he raped her he told her that if she shouted out he would kill her.⁹³⁴

338. The soldiers who were guarding the women wore camouflage uniforms and were bearing individual weapons.⁹³⁵ They also addressed them with comments such as “[t]he Lendu are useless wild animals and we can do with them anything we want. They are not humans.”⁹³⁶ UPC troops were taking women away from the group, including young girls and took them to the bush where they proceeded to rape them, and several women did not return.⁹³⁷

339. P-0019 could hear the women shouting and screaming once they had been taken to the bush.⁹³⁸ When they came to pick up the women the soldiers addressed them in Swahili, saying things like: “*We can kill you. There will be no consequences if we kill you.*”⁹³⁹ The soldiers also yelled at them when they hit them and said things like:

⁹²⁹ P-0018, T-110-CONF-ENG-ET, 27 June 2016, p. 80.

⁹³⁰ P-0018, T-110-CONF-ENG-ET, 27 June 2016, p. 80 and T-112-CONF-ENG-ET, 29 June 2016, p. 35.

⁹³¹ P-0018, T-110-CONF-ENG ET, 27 June 2016, p. 80 and T-111-CONF-ENG CT, 28 June 2016, p. 5.

⁹³² P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 46.

⁹³³ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 46.

⁹³⁴ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 46.

⁹³⁵ [REDACTED]

⁹³⁶ [REDACTED]

⁹³⁷ [REDACTED]

⁹³⁸ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 30.

⁹³⁹ P-0018, T-111-CONF-ENG-CT, 28 June 2016, p. 17.

"You are stupid" and *"We will marry you all"*,⁹⁴⁰ pulling and hitting the women on their backs.⁹⁴¹

340. From where P-0018 was sitting, she could see [REDACTED].⁹⁴² She could also see that the soldiers were beating the prisoners *"black and blue"* with their rifles⁹⁴³ and heard the people inside cry out in Kilendu.⁹⁴⁴

341. Several other groups of people were brought to Sangi, as according to P-0019, her group was [REDACTED] to arrive and be detained by the UPC in Sangi. She witnessed another group of Lendu being brought in by UPC soldiers who tied them up and flogged them with sticks, belts, and rifle butts.⁹⁴⁵ She also saw some people being mutilated and killed by the troops by having their ears or genitals cut off.⁹⁴⁶ P-0019 heard some of the UPC soldiers say: *"in three days we are going to exterminate you Lendu"*.⁹⁴⁷ Some prisoners were forced to eat their own ears that had been cut off.⁹⁴⁸

342. The next morning, soldiers came to take [REDACTED] women [REDACTED] and took them to the bush.⁹⁴⁹ P-0018 could hear them crying out, screaming in Kilendu *"Mother, I am going to die"*.⁹⁵⁰ Thereafter, the soldiers brought some women back to the group and other soldiers came to take [REDACTED] other women.⁹⁵¹ The women and soldiers were [REDACTED] and she could hear the women scream.⁹⁵²

⁹⁴⁰ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 18-19.

⁹⁴¹ P-0018, T-111-CONF-ENG-CT, 28 June 2016, p. 17.

⁹⁴² P-0018, T-110-CONF-ENG-ET, 27 June 2016, pp. 81-82; T-111-CONF-ENG-CT, 28 June 2016, p. 7 and T-112-CONF-ENG-ET, 29 June 2016, p. 8.

⁹⁴³ P-0018, T-110-CONF-ENG-ET, 27 June 2016, p. 82; T-111-CONF-ENG-CT, 28 June 2016, pp. 7-8 and T-112-CONF-ENG-ET, 29 June 2016, pp. 10, 33.

⁹⁴⁴ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 7-9.

⁹⁴⁵ P-0019, T-116-CONF-ENG-CT, 7 July, 2016, pp. 3-4.

⁹⁴⁶ P-0019, T-116-CONF-ENG-CT, 7 July, 2016, pp. 4-5.

⁹⁴⁷ P-0019, T-116-CONF-ENG-CT, 7 July, 2016, pp. 4-5.

⁹⁴⁸ P-0019, T-116-CONF-ENG-CT, 7 July, 2016, pp. 4-5.

⁹⁴⁹ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10-12.

⁹⁵⁰ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10-12.

⁹⁵¹ P-0018, T-111-CONF-ENG-CT, 28 June 2016, p. 14.

⁹⁵² P-0018, T-111-CONF-ENG-CT, 28 June 2016, p. 15.

The women were being raped.⁹⁵³ P-0018 [REDACTED].⁹⁵⁴ A soldier then came and took away [REDACTED].⁹⁵⁵ P-0018 could hear that [REDACTED] was raped and then shot dead.⁹⁵⁶

343. Thereafter, one of the soldiers came for P-0018.⁹⁵⁷ He was armed.⁹⁵⁸ [REDACTED]. She refused to follow his order, so the soldier started to pull her into the forest while she tried to fight him off.⁹⁵⁹ During this fight, she sustained an injury [REDACTED] but she continued to fight the soldier.⁹⁶⁰ She did not succeed in fighting him off her and the soldier penetrated her vagina with his penis, raping her.⁹⁶¹

344. While he was raping her, the soldier said: *“Are you joking with me? I could kill you. You know, I can kill you and there’s nothing you can do about it”*.⁹⁶² There were [REDACTED] soldiers standing by, laughing.⁹⁶³ As she kept fighting, he threatened her with his weapon and then shot her [REDACTED].⁹⁶⁴ The gunshot [REDACTED] left her unconscious.⁹⁶⁵ The soldiers left her for dead and it was only much later, after the soldiers had already left, [REDACTED].⁹⁶⁶ She only regained consciousness when she was taken to [REDACTED] and reunited with [REDACTED].⁹⁶⁷

345. The group of prisoners among which P-0019 was detained were not themselves mistreated in Sangi; however, they were forced to carry bundles to

⁹⁵³ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 12, 15.

⁹⁵⁴ P-0018, T-111-CONF-ENG-CT, 28 June 2016, p. 15.

⁹⁵⁵ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 15-16, 20.

⁹⁵⁶ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 20, 30-31.

⁹⁵⁷ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 20.

⁹⁵⁸ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 20.

⁹⁵⁹ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 20.

⁹⁶⁰ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 12, 20.

⁹⁶¹ P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 12, 20.

⁹⁶² P-0018, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 80.

⁹⁶³ P-0018, T-112-CONF-ENG-ET, 29 June 2016, p. 5.

⁹⁶⁴ P-0019, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 80.

⁹⁶⁵ P-0019, T-111-CONF-ENG-CT, 28 June 2016, pp. 10, 20.

⁹⁶⁶ P-0019, T-111-CONF-ENG-CT, 28 June 2016, pp. 20-22.

⁹⁶⁷ P-0019, T-111-CONF-ENG-CT, 28 June 2016, p. 21.

[REDACTED] which she later discovered contained pillaged items.⁹⁶⁸ Some items were light, others were very heavy.⁹⁶⁹ While they were carrying the goods, the UPC troops hit them all over their bodies with rifle butts especially when they were not walking quickly enough.⁹⁷⁰ Some people even died on the way.⁹⁷¹ As she was walking P-0113 recognised the [REDACTED] body of [REDACTED].⁹⁷²

346. P-0019 also saw [REDACTED] carrying loads, and witnessed people being hit with rifle butts and houses being set aflame on the way.⁹⁷³ Shortly after they had passed the body of [REDACTED], the soldiers threw P-0113' [REDACTED] into the bush [REDACTED].

347. During the march, the prisoners could not talk to each other.⁹⁷⁴ The UPC soldiers were giving orders, ordering people to carry the goods they had taken from the houses they subsequently burnt down.⁹⁷⁵ They also talked amongst themselves and P-0019 was able to understand them to say that on this day "[they] *ha[d] captured many prisoners of war*".⁹⁷⁶

9. KOBU – HOTEL PARADISO

348. It was several days after the takeover of Kobu by the UPC that the UPC took the Lendu prisoners from Sangi and Buli to Kobu.⁹⁷⁷ When the Lendu prisoners from Sangi finally arrived in Kobu/Wadza, they were put in different houses; the houses

⁹⁶⁸ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, pp. 32-35.

⁹⁶⁹ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 32-35.

⁹⁷⁰ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, pp. 32-36.

⁹⁷¹ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 32.

⁹⁷² P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 46-47.

⁹⁷³ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 32.

⁹⁷⁴ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 35.

⁹⁷⁵ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 35.

⁹⁷⁶ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 36.

⁹⁷⁷ P-0039, DRC-OTP-0104-0015-R03, para. 30; P-0019, T-115-CONF-ENG-CT, 6 July, 2016, pp. 33, 36; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 35.

were so full of people that one could hardly breathe.⁹⁷⁸ There was, however, also a group of about six women who were taken away in a different direction.⁹⁷⁹

349. P-0113 was in [REDACTED] group to arrive in Kobu.⁹⁸⁰ The UPC troops first brought the prisoners to a house from where they later took them to a place known as “*Paradiso*”.⁹⁸¹ Even the people who arrived from Jitchu, including P-0108, were taken towards the “*Paradiso*” building.⁹⁸² P-0113 believed that they would be shown a place to spend the night; however, she quickly realised that all the men, women, and children were in fact taken to a place of execution.⁹⁸³

350. P-0039 was taken to a house [REDACTED].

351. The prisoners could not leave the houses, as UPC troops – some of whom were carrying small light weapons, as well as heavier weapons with ammunition chains – had surrounded the entire neighbourhood.⁹⁸⁴

352. P-0019 knew that there was at least more than one house in which people were being held because the soldiers who took her group to a house could in fact not fit them into this house anymore, as it was already full with many other people who were held there.⁹⁸⁵ They were then taken to a different house near [REDACTED] where she and other Lendu women who had been taken hostage were ordered to cook for the UPC troops.⁹⁸⁶ P-0019 did not previously know the other women with whom she was put in a house in order to cook.⁹⁸⁷

⁹⁷⁸ P-0019, T-115-CONF-ENG-CT, 6 July 2016, p. 33, 36.

⁹⁷⁹ P-0039, DRC-OTP-0104-0015-R03, para. 31.

⁹⁸⁰ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 48.

⁹⁸¹ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 48.

⁹⁸² P-0108, T-185-CONF-ENG-ET, 23 January 2017, p. 49.

⁹⁸³ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 48.

⁹⁸⁴ P-0019, T-115-Red-ENG-WT, 6 July, 2016, pp. 37-38.

⁹⁸⁵ P-0019, T-115-Red-ENG-WT, 6 July, 2016, p. 37.

⁹⁸⁶ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, pp. 32, 36-37, 44.

⁹⁸⁷ P-0019, T-115-Red-ENG-CT, 6 July, 2016, p. 36.

353. The next morning, the [REDACTED] left and P-0039 was able to glance through the gap of the door, seeing that there were more than a hundred Lendu men, women, and children being led off in the direction of Kilo.⁹⁸⁸ He could see that they were taken away in groups.⁹⁸⁹ When he managed to sneak out of the hut and approach them a bit, he could see soldiers separating women from men, and how the men were taken behind a house.⁹⁹⁰ P-0039 then returned to the hut in which he, [REDACTED] had been held.⁹⁹¹

354. The prisoners were made to line up and the soldiers came to take them away in groups of ten to kill them, executing them right next to where the others were lining up.⁹⁹² P-0113 could see people being killed with knives, batons and machetes from where she was standing.⁹⁹³ The people lining up were silent but those who were being executed could be heard screaming: “*My God, my God*” in Kingwa, Kilendu or Swahili.⁹⁹⁴

355. When the soldiers came for P-0108, he tried to flee, but he was apprehended and the “*Hema*” started to hit him and “*cut [him] up with the machete*”.⁹⁹⁵ Before he was hit and lost consciousness, he was aware of many others being hit by people who tried to “*exterminate them*”.⁹⁹⁶ Before it was P-0113’s turn to line up, a soldier came to look for the “[REDACTED] *woman*” because commander [REDACTED] had sent for her.⁹⁹⁷

⁹⁸⁸ P-0039, DRC-OTP-0104-0015-R03, para. 32.

⁹⁸⁹ P-0039, DRC-OTP-2062-0244-R02, para. 46.

⁹⁹⁰ P-0039, DRC-OTP-2062-0244-R02, para. 48.

⁹⁹¹ P-0039, DRC-OTP-2062-0244-R02, para. 50.

⁹⁹² P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 49 and T-119-CONF-ENG-CT, 12 July 2016, p. 51.

⁹⁹³ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 49.

⁹⁹⁴ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 49.

⁹⁹⁵ P-0108, T-185-CONF-ENG-ET, 23 January 2017, pp. 49, 58-59.

⁹⁹⁶ P-0108, T-185-CONF-ENG-ET, 23 January 2017, p. 49.

⁹⁹⁷ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 49.

356. P-0019 was able to see what was happening because the kitchen where she and the other women were forced to cook was located [REDACTED].⁹⁹⁸ While P-0019 she was being held there, she was taken “*as a wife*” by commander LINGANGA, that is, she was forced to have sexual intercourse against her will with him.⁹⁹⁹ She knew his name was LINGANGA because she overheard other soldiers addressing him in this way.¹⁰⁰⁰ She also understood that he was a commander because he always carried a black *Motorola* and was surrounded by children who were his bodyguards.¹⁰⁰¹

357. When they were in the house, commander LINGANA told her to kneel down and he then penetrated her both vaginally and anally while simultaneously insulting her and telling her that “*they*” were not human, but wild animals.¹⁰⁰² While she was being raped, P-0019 felt “*as if everything was finished for [her]. [She] felt as if [she] were dead*”.¹⁰⁰³ There were other rapes that took place in a specific area just outside the house where [REDACTED] and P-0019 witnessed several other women being raped; the UPC soldiers would even use wooden sticks to penetrate the women vaginally.¹⁰⁰⁴

358. There were also Lendu men who were being raped anally by UPC soldiers who “*raped them from behind by the buttocks*” using both their penises and wooden instruments.¹⁰⁰⁵ P-0019 witnessed many of these male victims “[suffer] *a great deal*” and die shortly afterwards.¹⁰⁰⁶ She saw some of them die with her own eyes.¹⁰⁰⁷ Although she did not know how many Lendu men were raped, she testified that “*there were a lot of them.*”¹⁰⁰⁸ P-0019’s testimony in this regard is corroborated by P-

⁹⁹⁸ P-0019, T-115-Red-ENG-WT, 6 July, 2016, p. 49.

⁹⁹⁹ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 38.

¹⁰⁰⁰ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 38.

¹⁰⁰¹ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 39.

¹⁰⁰² P-0019, T-115-CONF-ENG-CT, 6 July, 2016, pp. 38-39.

¹⁰⁰³ P-0019, T-115-CONF-ENG-CT, 6 July 2016, p. 39.

¹⁰⁰⁴ P-0019, T-115-CONF-ENG-ET, 6 July, 2016, pp. 40, 49.

¹⁰⁰⁵ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 45.

¹⁰⁰⁶ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 46.

¹⁰⁰⁷ P-0019, T-115-CONF-ENG-CT, 6 July, 2016, p. 46.

¹⁰⁰⁸ P-0019, T-115-CONF-ENG-CT, 6 July 2016, p. 45.

0769 who testified being told by [REDACTED] about UPC troops torturing captured Lendu by anally penetrating them with arrows.¹⁰⁰⁹

359. The Chamber also heard the evidence of P-0113 who recounted how, after she had been [REDACTED], she was taken to the house in which commander SALUMU stayed and how she was again forced to have sexual intercourse with him.¹⁰¹⁰ She stated that, since she had just been [REDACTED], “[t]here [was] *no way to refuse*” when commander SALUMU had her woken up and told her that she was “*going to spend the night with [him]*”, and he “*took [her] as his wife*” by penetrating her vagina with his penis.¹⁰¹¹

360. [REDACTED].

361. On the way, which led through Bambu and Lipri, P-0113 saw houses being looted by Hema civilians, including men, women and children.¹⁰¹² She believed they were civilians because they wore civilian clothing.¹⁰¹³

362. P-0039 who, after having snuck out and seen people being led through the village and separated, had returned to the hut where he remained hidden [REDACTED].¹⁰¹⁴ Eventually, he decided to leave and headed towards [REDACTED].¹⁰¹⁵ He reached that village in the evening.¹⁰¹⁶ There, he was told that some Lendu fighters had discovered the dead bodies of nearly 50 people in Kobu.¹⁰¹⁷ He went on and shared this message with people he found in the bush.¹⁰¹⁸

¹⁰⁰⁹ P-0769, T-120-CONF-ENG-ET, 13 July 2016, p. 59.

¹⁰¹⁰ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 51.

¹⁰¹¹ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 51.

¹⁰¹² P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 52-53.

¹⁰¹³ P-0113, T-118-CONF-ENG-CT, 11 July 2016, p. 53.

¹⁰¹⁴ P-0039, DRC-OTP-0104-0015-R03, para. 33.

¹⁰¹⁵ P-0039, DRC-OTP-0104-0015-R03, para. 33.

¹⁰¹⁶ P-0039, DRC-OTP-0104-0015-R03, para. 33.

¹⁰¹⁷ Cf. *infra*, paras. 378-379.

¹⁰¹⁸ [REDACTED]

363. Many people who had managed to stay in the bush came to know about the massacre in Kobu. They all hurried back to the village to see what had happened. Among those, who returned were P-0790, P-0805, P-0105, P-0106, P-0100, P-0301, and P-0857. This was around one or two-and-a-half weeks after the initial UPC's attack and takeover of Kobu.¹⁰¹⁹

364. When P-0790 returned to Kobu, he found that his valuables, such as gold, were taken from his home.¹⁰²⁰ The roofing sheets were also pillaged and his house had been completely destroyed.¹⁰²¹ Even though houses remained as they were in Kobu centre, in the surrounding areas the residential houses were torched or otherwise destroyed.¹⁰²²

365. Buildings and structures were damaged from artillery fire, such as the pharmacy, which, while not completely destroyed, was damaged by a shell that had destroyed the roof structure of the building.¹⁰²³ Other houses, including those of P-0121 were burnt down,¹⁰²⁴ or had their metal roofing removed.¹⁰²⁵ Shops had their doors broken in, "*things had been set on fire*", ammunition casings were lying about on the streets, and the village had been completely pillaged.¹⁰²⁶

366. As P-0790 entered Kobu, he could see some corpses on the road towards the church of Wadza.¹⁰²⁷ Dead bodies in civilian clothing could also be seen on the road towards Lipri.¹⁰²⁸ When he entered Kobu, P-0805 saw the bodies of three dead Lendu women lying on the ground off to the side of the market place.¹⁰²⁹ As he continued along the road he also noticed the dead bodies of two Lendu men lying on the terrace

¹⁰¹⁹ See *supra*, Kobu Takeover; P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 36; P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 72; P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 59.

¹⁰²⁰ [REDACTED]

¹⁰²¹ [REDACTED]

¹⁰²² P-0113, T-118-CONF-ENG-ET, 11 July 2016, p. 55.

¹⁰²³ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 75.

¹⁰²⁴ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 75.

¹⁰²⁵ P-0805, T-26-Red-ENG-WT, 16 September 2015, p. 14.

¹⁰²⁶ P-0301-T-149-CONF-ENG-ET, 7 October 2016, pp. 68-69.

¹⁰²⁷ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 16.

¹⁰²⁸ P-0113, T-118-CONF-ENG CT, 11 July 2016, pp. 54-55.

¹⁰²⁹ P-0805-T-26-Red-ENG-WT, 16 September 2016, pp. 11-12; DRC-OTP-2058-1105.

of a house; they had been disembowelled with a bladed weapon.¹⁰³⁰ P-0790 saw a pile of bodies near the church.¹⁰³¹

367. It was past the Catholic Church, down the slopes, near a small wooded area that the people found many dead bodies.¹⁰³² The bodies were lying in a banana field where the trees had been cut down, not far from hotel *Paradiso*, approximately half a kilometre from *Paradiso*.¹⁰³³

368. P-0805 was among those who went to the location where he had been told the people had been killed.¹⁰³⁴ There were bodies of women, children, young people; some people had been beaten to death and some of the women had been disembowelled; a pregnant lady had her baby cut out of her stomach.¹⁰³⁵ P-0805 observed the bodies of women who had been disembowelled and stated that he saw dead children of only two or three years of age among the dead.¹⁰³⁶ Some people had been tied up using their clothing.¹⁰³⁷

369. P-0805 saw some bodies stripped down to their underwear whereas others were still fully clothed.¹⁰³⁸ P-0790 noticed that one body had bullet wounds around the mouth.¹⁰³⁹ P-0805 saw bodies whose heads had been crushed with mortars that were left just there, whereas others even had their heads cut off.¹⁰⁴⁰ There were other bodies that had their throats slit.¹⁰⁴¹ P-0790, P-0301 and P-0805 saw DYIPKANU's

¹⁰³⁰ P-0805, T-26-Red-ENG-WT, 16 September 2015, pp. 14; DRC-OTP-2058-1105.

¹⁰³¹ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 16.

¹⁰³² P-0301, T-149-CONF-ENG-ET, 7 October 2016, pp. 59-60.

¹⁰³³ P-0790, T-54-CONF-ENG-CT, 19 January 2016, pp. 16, 18; DRC-OTP-0077-0295; DRC-OTP-0072-0473; P-0857, T-193-CONF-ENG-ET, 7 February 2017, pp. 74, 78.

¹⁰³⁴ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 38.

¹⁰³⁵ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 16; DRC-OTP-2058-1106; DRC-OTP-2058-1107; DRC-OTP-2058-1108; DRC-OTP-2058-1109; DRC-OTP-2058-1110; DRC-OTP-2058-1112; P-0105, T-134-CONF-ENG-ET, 19 September 2016, p. 20.

¹⁰³⁶ P-0805, T-26-Red-ENG-WT, 16 September 2015, p. 7.

¹⁰³⁷ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 18; P-0805, T-26-CONF-ENG-CT, 16 September 2015, p. 7.

¹⁰³⁸ P-0805, T-25bis-CONF-ENG-CT, 15 September 2015, p. 41.

¹⁰³⁹ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 17.

¹⁰⁴⁰ P-0805, T-26-CONF-ENG-CT, 16 September 2015, p. 7; P-0301-T-149-CONF-ENG-ET, 7 October 2016, p. 76.

¹⁰⁴¹ P-0805, T-26-CONF-ENG-CT, 16 September 2015, p. 10; DRC-OTP-2058-1106.

body.¹⁰⁴² P-0105 was also able to identify him among the dead.¹⁰⁴³ DYIPKANU's body was almost naked; he was only wearing red underwear and it seemed like he had been tied up with his shirt.¹⁰⁴⁴ To P-0790 it looked like DYIKPANU had been beaten to death.¹⁰⁴⁵

370. [REDACTED].¹⁰⁴⁶ In fact, all people who had been in the bush were Lendu.¹⁰⁴⁷

371. A young man named [REDACTED] was also among the dead.¹⁰⁴⁸ P-0105 further recognised the body of BUROMBI who was a Lendu dignitary from Nyangaray.¹⁰⁴⁹ P-0301 saw the dead body of a girl he knew; her name was [REDACTED] and she hailed from Kobu.¹⁰⁵⁰ He also recognised the body of a young man called [REDACTED].¹⁰⁵¹ A man was taking photographs of the dead bodies that were found.¹⁰⁵²

372. P-0106, who had returned from the bush upon being told that people had been killed in Kobu, also saw the dead bodies [REDACTED].¹⁰⁵³ [REDACTED] body was disfigured.¹⁰⁵⁴ [REDACTED].¹⁰⁵⁵

373. [REDACTED].¹⁰⁵⁶ Moreover, their bodies were naked.¹⁰⁵⁷ He also saw that other bodies at the site had been disembowelled and decapitated.¹⁰⁵⁸

¹⁰⁴² P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 16; P-0805, T-26-CONF-ENG-CT, 16 September 2015, p. 9; P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 60.

¹⁰⁴³ P-0105, T-134-CONF-ENG-ET, 19 September 2016, p. 20.

¹⁰⁴⁴ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 18; DRC-OTP-2058-1110.

¹⁰⁴⁵ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 18; DRC-OTP-0152-0240; DRC-OTP-0152-0239.

¹⁰⁴⁶ [REDACTED]

¹⁰⁴⁷ [REDACTED]

¹⁰⁴⁸ [REDACTED]

¹⁰⁴⁹ P-0105, T-134-CONF-ENG-ET, 19 September 2016, p. 20; T-135-CONF-ENG-ET, 20 September 2016, p. 34.

¹⁰⁵⁰ P-0301-T-149-CONF-ENG-ET, 7 October 2016, p. 60.

¹⁰⁵¹ P-0301-T-149-CONF-ENG-ET, 7 October 2016, p. 60.

¹⁰⁵² P-0301-T-149-CONF-ENG-ET, 7 October 2016, p. 63.

¹⁰⁵³ P-0106, T-44-CONF-ENG-ET, 3 November 2015, pp. 45-46 and T-45-CONF-ENG-ET, 4 November 2015, p. 24.

¹⁰⁵⁴ P-0106, T-45-Red-ENG ET, 4 November, p. 24.

¹⁰⁵⁵ P-0106, T-44-CONF-ENG-CT, 3 November 2015, p. 45 and T-45-CONF-ENG-ET, 4 November 2015, p. 24.

374. There were other dead children among the dead, namely a boy called [REDACTED] who was about 4 years-old, as well as another boy of three or four, whose name was [REDACTED].¹⁰⁵⁹

375. [REDACTED], was also found among the people who had been killed in the banana field.¹⁰⁶⁰ [REDACTED], who was a teacher [REDACTED], as well as [REDACTED], a crop grower, were also among the dead.¹⁰⁶¹ [REDACTED] were relatives of P-0113[REDACTED].¹⁰⁶²

376. P-0857 identified [REDACTED] among the dead, as well as [REDACTED].¹⁰⁶³ He also he saw small children of two or three months among the dead¹⁰⁶⁴ and recognised the body of [REDACTED] teacher [REDACTED].¹⁰⁶⁵

377. The dead bodies he saw were in general unclothed.¹⁰⁶⁶ As he was unable to stand the sight of his loved ones among the heaped up bodies in the banana field, P-0857 withdrew from the upsetting sight and it was only later that he learned that [REDACTED] had also been among the dead.¹⁰⁶⁷

378. When the bodies were piled up, P-0790 stated that they counted 57 corpses.¹⁰⁶⁸ P-0805 counted 49 bodies.¹⁰⁶⁹ P-0105 counted “*approximately 54*” bodies,¹⁰⁷⁰ whereas P-0857 counted 53 bodies.¹⁰⁷¹

¹⁰⁵⁶ P-0106, T-44-Red-ENG-WT, 3 November 2015, p. 48.

¹⁰⁵⁷ P-0106, T-44-Red-ENG-WT, 3 November 2015, p. 48.

¹⁰⁵⁸ P-0106, T-44-Red-ENG-WT, 3 November 2015, p. 48.

¹⁰⁵⁹ P-0100, T-131-ENG-CONF-ET, 14 September 2016, pp. 21-23.

¹⁰⁶⁰ P-0100, T-131-ENG-CONF-ET, 14 September 2016, pp. 21-23.

¹⁰⁶¹ P-0113, T-118-CONF-ENG-ET, 11 July 2016, pp. 28-29; P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 60.

¹⁰⁶² P-0113, T-118-CONF-ENG-CT, 11 July 2016, pp. 28-29.

¹⁰⁶³ P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 79.

¹⁰⁶⁴ P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 79.

¹⁰⁶⁵ P-0857, T-193-CONF-ENG-ET, 7 February 2017, p. 82.

¹⁰⁶⁶ P-0857, T-193-CONF-ENG-ET, 7 February 2017, pp. 68, 82.

¹⁰⁶⁷ P-0857, T-193-CONF-ENG-ET, 7 February 2017, pp. 81-82.

¹⁰⁶⁸ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 18.

¹⁰⁶⁹ P-0805, T-26-Red-ENG-WT, 16 September 2015, p. 7.

379. While the exact number of bodies may not be known for certain, the abundant evidence credibly presented to the Chamber shows that at least 49 persons were brutally killed, mutilated, and left in the banana field in Kobu near the hotel *Paradiso*.

380. Some victims only later found out that their loved-ones had been killed in Kobu. For instance, P-0018 was told that [REDACTED] had been taken to Kobu and killed there, together with the other people who had been captured and taken there from Sangi.¹⁰⁷² [REDACTED] found [REDACTED] body and buried him in Kobu together with the body of another person.¹⁰⁷³

381. P-0108 was found alive [REDACTED] having been hit [REDACTED].¹⁰⁷⁴

¹⁰⁷⁰ P-0105, T-134-CONF-ENG-ET, 19 September 2015, p. 20.

¹⁰⁷¹ P-0857, T-193-CONF-ENG-ET, 7 February 2017, pp. 78-79.

¹⁰⁷² P-0018, T-111-CONF-ENG CT, 28 June 2016, p. 22.

¹⁰⁷³ P-0018, T-111-CONF-ENG CT, 28 June 2016, pp. 22-23.

¹⁰⁷⁴ P-0108, T-185-CONF-ENG-ET, 23 January 2017, pp. 49, 59.

10. NYANGARAY

382. It was approximately one month and a half after the operation in Mongbwalu that NTAGANDA had sent Commander SALUMU to open the road to Bunia *via* Nyangaray,¹⁰⁷⁵ which resulted in the various attacks along this route. Nyangaray itself was also attacked and the population driven out or killed despite the fact that there was no legitimate objective behind it; some young villagers defended it with arrows, but did not even have firearms.¹⁰⁷⁶

383. P-0868 testified that Nyangaray was attacked by Hema, that is UPC troops, led by “Bosco” in February 2003.¹⁰⁷⁷ They came from the Kilo-Kabakaba-Buangwe road when they entered the village.¹⁰⁷⁸

384. When the UPC attacked Nyangaray on 17 February 2003, the population, including P-0868 fled to the bush to hide from the attackers.¹⁰⁷⁹ During the attack, it was every man for himself and people just fled, leaving everything behind in a hurry.¹⁰⁸⁰ It was only later in the bush that people found each other.¹⁰⁸¹ P-0868 came across other villagers, namely [REDACTED].¹⁰⁸² [REDACTED].

385. P-0868 recalled that there were around 50 to 60 villagers in the bush, including small children, toddlers who had just started to walk, and elderly persons over 60; and the population had fled as far away as two and a half hours by foot until they

¹⁰⁷⁵ P-0768, T-34-CONF-ENG-CT, 20 October 2015, p. 59.

¹⁰⁷⁶ P-0768, T-36-CONF-ENG-CT, 22 October 2015, pp. 10, 11.

¹⁰⁷⁷ P-0868, T-177-CONF-ENG-ET, 13 December 2016, pp. 54-56.

¹⁰⁷⁸ P-0868, T-177-CONF-ENG-ET, 13 December 2016, p. 59.

¹⁰⁷⁹ P-0868, T-177-CONF-ENG-ET, 13 December 2016, pp. 57, 66.

¹⁰⁸⁰ P-0868, T-177-Red-ENG-WT, 13 December 2016, pp. 57-58.

¹⁰⁸¹ P-0868, T-177-Red-ENG-WT, 13 December 2016, p. 58.

¹⁰⁸² P-0868, T-177-Red-ENG-WT, 13 December 2016, p. 58.

reached the [REDACTED] forest.¹⁰⁸³ They had many difficulties finding food in the bush.¹⁰⁸⁴

a. Conclusion

386. It is submitted that the evidence presented establishes beyond reasonable doubt that NTAGANDA ordered commander SALUMU to lead the troops to attack the civilian population in the various villages along the Lipri, Bambu, Kobu axe. Commander SALUMU, who was directly subordinate to NTAGANDA, received weapons from NTAGANDA as well as orders NTAGANDA issued *via Motorola*.¹⁰⁸⁵

387. It is submitted that it is immaterial that NTAGANDA was not on the ground during all of the operations of the ‘Second Attack’, as he, through these means of communication – and ultimately supervision – ensured that the operations were carried out as planned. Moreover, given that SALUMU worked side by side with the Accused during the First Attack,¹⁰⁸⁶ the Accused knew that his orders to SALUMU would be implemented on the ground.

388. The evidence further establishes that the crimes charged under counts 1 and 2 were committed in Lipri,¹⁰⁸⁷ Kobu, Bambu, and Sangi; crimes charged under counts 3, 11-13 were committed in the villages of Lipri, Camp PM, Kobu, Bambu, Sangi, and Nyangaray; crimes charged under count 10 were committed in Lipri, Camp PM, Kobu, Bambu, Buli, Jitchu, Gutsi, Sangi, and Nyangaray; and crimes charged under counts 4 to 5 and 7 to 8 were committed in Buli, Sangi, and Kobu; crimes charged under counts 18 were committed in Lipri, Bambu, Camp PM, Buli, Jitchu, Kobu, and Nyangaray.

¹⁰⁸³ P-0868, T-177-CONF-ENG-ET, 13 December 2016, p. 60.

¹⁰⁸⁴ P-0868-T-177-CONF-ENG-ET, 13 December 2016, p. 61.

¹⁰⁸⁵ See *supra*, paras. 286, 291, 299.

¹⁰⁸⁶ See e.g. paras. 167, 178, 220.

¹⁰⁸⁷ The Legal Representative submits that indiscriminate shelling of residential areas fulfils the material elements of attempted murder.

VIII. THE VICTIMS SUFFERED ON ACCOUNT OF THE CRIMES COMMITTED BY THE ACCUSED AND HIS SUBORDINATES

389. It is averred that the Chamber's duty to determine the truth is not limited to establishing the guilt or innocence of the Accused alone. Part of the truth that is to be determined by the Chamber is the victimisation, the suffering and harm caused to those who were directly affected by the crimes committed. As recalled in the preamble to the Statute, "[m]indful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity",¹⁰⁸⁸ the international community has established this Court.

390. It is before this Court that victims of the most serious crimes of concern to the international community as a whole have a right not only to truth and justice, but also a right to be heard, and to have their views and concerns taken into consideration by the Chamber.

391. During the course of this trial, the Chamber has received evidence that was not strictly limited to the naked facts of the crimes committed, but included emotional accounts of the agony suffered by the victims of the crimes that have been inflicted upon them, their relatives, and communities.

392. In keeping with the Chamber's duty pursuant to Article 74(2) of the Statute,¹⁰⁸⁹ the Chamber, in its evaluation of the evidence submitted and discussed before it, is respectfully requested to give due consideration to the accounts of victims and the suffering inflicted upon them.

¹⁰⁸⁸ Preamble to the Statute.

¹⁰⁸⁹ Article 74(2) of the Statute reads as follows in relevant part: "*The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. [...] The Court may base its decision only on evidence submitted and discussed before it at the trial.*"

393. It is averred that in order to establish the truth, it is necessary to not only look at the guilt or innocence of the perpetrators, be they direct or indirect, but also to recognise the suffering of those who were victimised by the acts committed. This recognition should, however, not be confused or replaced with the participating victims' legitimate rights to reparations for harm suffered should the Accused be found guilty for any or all of the crimes under the counts charged.

394. It is submitted that the victims who have participated in these proceedings have suffered unspeakably at the hands of the Accused and his subordinates. They have suffered rapes, torture, and death of close family members. They have suffered physically and emotionally as a result of the heinous acts committed against them. And these accounts should be both heard, and acknowledged as being part of the acts upon which the Judges of this Chamber will render their decision pursuant to Article 74 of the Statute.

395. Yet, the Legal Representative does not intend the following section to be an exhaustive account of the suffering. It is intended to shed light but on a mere fraction of the agony and pain suffered by those who came to fall victim to the crimes committed and who had to, and in many cases still do, endure the consequences of their victimisation. In-depth submissions on concrete and quantifiable harm – as understood within the meaning of Article 75 of the Statute – will be provided to the Chamber at a later, more appropriate stage, if applicable.¹⁰⁹⁰

396. However, it is deemed necessary to remind the Chamber – by way of selected examples¹⁰⁹¹ – of the hardship and suffering the crimes inflicted upon the victims – participating or not. *Victimisation* of the victims of the crimes is not limited to those victims who participated in the proceedings; it includes witnesses who do not enjoy

¹⁰⁹⁰ The Legal Representative further reserves the right to make additional submissions in this regard in the context of sentencing proceedings, if applicable.

¹⁰⁹¹ Due to the page limit imposed, the Legal Representative has made a selection of representative accounts of the suffering inflicted upon victims on a general level and should be taken into account by the Chamber in its deliberations.

dual-status, it includes relatives, children, neighbours, or friends. The Legal Representative cannot speak on their behalf and does not attempt or pretend to do so. However, their suffering is exemplary in many ways of the suffering inflicted upon the many hundreds of victims he represents.

397. Lastly, the Legal Representative recalls that five victims came before the Chamber to express their view and concerns in person, as authorised.¹⁰⁹² These views and concerns are not ‘evidence’ to be considered by the Chamber in determining the individual criminal responsibility of the Accused.¹⁰⁹³

398. However, these views and concerns are a part of the “*entire proceedings*”¹⁰⁹⁴ referred to in Article 74(2) of the Statute upon which the Chamber shall base their decision. Given their separate status, the Legal Representative did not recall any views and concerns expressed by the five victims within the context of his submissions on the facts in section VII above. He will, however, refer to them in his submissions on the suffering endured by victims of the crimes committed by the Accused and his subordinates.

¹⁰⁹² Decision authorising LRV to present Evidence, para. 59.

¹⁰⁹³ *The Prosecutor v. Dominic Ongwen*, “Public Redacted Version of Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests, ICC-02/04-01/15-1199-Red, 6 March 2018, para. 74.

¹⁰⁹⁴ See *supra*, note 1089.

a) Victimisation and Suffering Associated with
Murder and Attempted Murder

399. P-0108 recounted the horrific story of having been struck [REDACTED] with machetes during his desperate attempt to flee his attackers. He told the Chamber how the Hema attackers

“chopped [him] up with the machete, [...] there was on one there to help me, [sic] But [...] they found me and the members of my family were asked to recognise me [...] In the evening, I had been all by myself lying in pain [REDACTED]. So that’s where they found me, they took me in a vehicle, and it was not easy to find medication in 2003; it was very difficult to find medication at the time, so my wounds became infected. [...] My injury remained or my wound was not healing for about a year and a half. This wound – this bone here, here, was broken. I had [REDACTED] at this level here. One day I went to [REDACTED]. [...]”¹⁰⁹⁵

400. A/20126/14, a Lendu victim authorised to present his views and concerns, also spoke of the dreadful event of his brother being hacked to death to the extent of dismembering his body, near the village of [REDACTED] while they were fleeing.¹⁰⁹⁶ They were apprehended when they were approaching the village in search of something to eat while hiding out in the bush.¹⁰⁹⁷ A/20126/14 himself was arrested and taken to the commander; there he was questioned and stabbed with a bayonet that was affixed to a rifle.¹⁰⁹⁸

401. Dual status witness P-0790 recounted to the Chamber how his family was seriously hurt by the murder of [REDACTED]. He stated how it negatively affects him emotionally to talk about their death, as it would bring back the memories of how it happened.¹⁰⁹⁹ He further gave the Chamber a graphic description of the injuries he himself sustained during the attack. [REDACTED]. This injury [REDACTED] renders everyday life difficult for him in many ways. In addition to

¹⁰⁹⁵ P-0108, T-185-CONF-ENG-ET, 23 January 2017, pp. 59-60; DRC-OTP-0108-0115; DRC-OTP-0108-0114; DRC-OTP-0108-0113.

¹⁰⁹⁶ A/20126/14, T-199-CONF-ENG-ET, 2 March 2017, pp. 23, 26.

¹⁰⁹⁷ A/20126/14, T-199-CONF-ENG-ET, 2 March 2017, p. 19.

¹⁰⁹⁸ A/20126/14, T-199-CONF-ENG-ET, 2 March 2017, pp. 19-20.

¹⁰⁹⁹ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 38.

this life-changing physical injury, he has suffered and continues to suffer the psychological impact the crimes committed had on him, and his family. As he expressed to the Judges, he considers himself worthless and asks himself why he must continue to live, whenever he and his family think about the loss of [REDACTED].¹¹⁰⁰ He summed up his suffering by stating:

“We went through a difficult period during that war. We lost [REDACTED] and that is a prejudice that haunts us to this very day. We wonder what it is that we did to deserve this thing that befell us. And today we are still of that [sic] mindset. Whenever we think about these things, the same feelings swell within us.”¹¹⁰¹

402. P-0859 explained to the Chamber how one of his [REDACTED] became [REDACTED] after he witnessed his [REDACTED] being killed by UPC soldiers.¹¹⁰²

403. The Chamber further heard of other psychological harm and suffering connected with the attacks and suffered by survivors, relatives, or witnesses of the carnage in the banana field in Kobu and other places.¹¹⁰³ As put in words by P-0105, even today, when he passes through Sangi, he is very sorrowful.¹¹⁰⁴ He described how, after the events, he fell ill for a week; he did not go out and continues suffering from the images of the dead bodies he saw executed in Kobu on 29 February.¹¹⁰⁵ He told the Judges how *“this incident still torments [him] to this very day.”*¹¹⁰⁶ Likewise, P-0805 testified before the Judges how the sight of the dead people in the banana field made him sick to his stomach and severely traumatised him.¹¹⁰⁷

¹¹⁰⁰ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 38.

¹¹⁰¹ P-0790, T-54-CONF-ENG-CT, 19 January 2016, p. 40.

¹¹⁰² P-0859, T-52-CONF-ENG-CT, 18 November 2015, p. 5.

¹¹⁰³ See e.g., P-0105, T-134-CONF-ENG-ET, 19 September 2016, pp. 17-18.

¹¹⁰⁴ P-0105, T-134-CONF-ENG-ET, 19 September 2016, p. 17.

¹¹⁰⁵ P-0105, T-134-CONF-ENG-ET, 19 September 2016, pp. 17, 19, 20.

¹¹⁰⁶ P-0105, T-134-CONF-ENG-ET, 19 September 2016, p. 18.

¹¹⁰⁷ P-0805, T-26, CONF-ENG-ET, 16 September 2015, p. 8.

404. V3 gave a compelling account of how the abduction and disappearance of [REDACTED], as well as learning of his death has severely traumatised the victim, who was only [REDACTED] years-old at the time of the events.¹¹⁰⁸

405. V1 spoke about the profound pain of instantaneously losing [REDACTED].¹¹⁰⁹ The Judges have heard, how, struck by terror and panic, V1 ran out of his house to where the shell had hit because he knew his family was gathered [REDACTED].¹¹¹⁰ He ran to them, regardless of whether he would also be struck by a shell.¹¹¹¹

406. V1 saw one [REDACTED] dead on the ground as well as two [REDACTED], one of whom had been hit in the stomach. Six people in total died in this incident.¹¹¹² The people who died were [REDACTED].¹¹¹³

407. V1's [REDACTED] was hit in the head by shrapnel.¹¹¹⁴ [REDACTED] was also hit by shrapnel; both [REDACTED] arms and torso were injured.¹¹¹⁵ [REDACTED] was hit in the stomach and his intestines were visible.¹¹¹⁶ [REDACTED] was also hit in the stomach and similarly disembowelled.¹¹¹⁷ [REDACTED] was hit in the chest and both legs were amputated and crushed from the impact.¹¹¹⁸

408. All of these imagines stay with V1 for the rest of his life. He even had to go through the gruesome experience of bandaging the mutilated bodies and burying them [REDACTED], where their graves remain to this day;¹¹¹⁹ as a vivid reminder of

¹¹⁰⁸ V3, T-203-CONF-ENG-ET, 12 April 2017, pp. 7, 49.

¹¹⁰⁹ V1, T-201-CONF-ENG-ET, 10 April 2017, pp. 21-22, 30.

¹¹¹⁰ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 21.

¹¹¹¹ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 21.

¹¹¹² V1, T-201-CONF-ENG-ET, 10 April 2017, pp. 21-22.

¹¹¹³ V1, T-201-CONF-ENG-ET, 10 April 2017, pp. 22, 30.

¹¹¹⁴ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 22.

¹¹¹⁵ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 22.

¹¹¹⁶ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 22.

¹¹¹⁷ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 22.

¹¹¹⁸ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 22.

¹¹¹⁹ V1, T-201-CONF-ENG-ET, 10 April 2017, pp. 22-23, 63-64.

the events. He testified how he *“did not want to speak to any woman”* for six months following the event because [REDACTED] had died.¹¹²⁰

409. Victim a/30169/15 spoke to the Chamber about the circumstances of his flight through the bush and how, one day, when they reached a little creek, they could hear gunfire.¹¹²¹ A/30169/15 told his children to stop as the soldiers would find them anyway.¹¹²² At that point, his younger brother was hit by a bullet, in fact by 12 bullets.¹¹²³ In total eleven people were killed in the valley on that day.¹¹²⁴ He was unable to return to the valley to bury his brother’s body.¹¹²⁵

¹¹²⁰ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 38.

¹¹²¹ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 38.

¹¹²² A/30169/15, T-198-Red-ENG-WT, 1 March 2017, pp. 38-39.

¹¹²³ A/30169/15, T-198- Red-ENG-WT, 1 March 2017, p. 39.

¹¹²⁴ A/30169/15, T-198- Red-ENG-WT, 1 March 2017, p. 39.

¹¹²⁵ A/30169/15, T-198- Red-ENG-WT, 1 March 2017, p. 39.

b) Victimisation and Suffering Associated with
Forcible Transfer

410. The Chamber has heard many accounts of suffering experienced by the population that was systematically expelled from their native villages, and forced to live in the forest without proper food or shelter for weeks or months on end. P-0805 as well as P-0792, for instance, explained how they and their families suffered greatly while they were hiding and moving through the bush.¹¹²⁶ They had no access to medication and it was very difficult to find food in the fields. They “*were scavengers*”.¹¹²⁷

411. There were children and elderly in P-0805’s family, as well as [REDACTED].¹¹²⁸ There was no shelter and they tried to put together some huts to sleep in.¹¹²⁹ P-0792 spoke of up to six families cramping into a hut, if they were able to find one for shelter.¹¹³⁰ The prevalence of many mosquitos in the forest meant that people began to suffer from malaria and especially the children were malnourished and suffered from many different health issues.¹¹³¹

412. Furthermore, the Chamber has heard the horrific descriptions of the physical suffering of people chased to the bush.

413. The displaced people suffered from,¹¹³² *inter alia*, gunshot wounds and conjunctivitis,¹¹³³ scabies,¹¹³⁴ and skin diseases because they were unable to exercise

¹¹²⁶ P-0805, T-26-CONF-ENG-ET, 16 September 2015, p. 27; P-0792, T-150-CONF-ENG-ET, 10 October 2016, p. 47.

¹¹²⁷ P-0805, T-26-CONF-ENG-ET, 16 September 2015, p. 27.

¹¹²⁸ P-0805, T-26-CONF-ENG-ET, 16 September 2015, p. 27.

¹¹²⁹ P-0805, T-26-CONF-ENG-ET, 16 September 2015, p. 28.

¹¹³⁰ P-0792, T-150-CONF-ENG-ET, 10 October 2016, p. 47.

¹¹³¹ P-0805, T-26-CONF-ENG-ET, 16 September 2015, p. 28.

¹¹³² P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 76.

¹¹³³ Conjunctivitis may *inter alia* be caused by viral or bacterial infection. See Black’s Medical Dictionary, p. 227.

¹¹³⁴ Scabies is a common contagious itching disease which can live only on human skin. It is caused by larvae deposited under the skin of humans that become mites. Scabies is spread by skin-to-skin contact, usually *via* hands. Scabies can affect any age group. Typically, the patient complaints of

any hygiene in the forest as they had no soap with which they could wash themselves.¹¹³⁵ There were also cases of intestinal worms.¹¹³⁶ Especially among children conjunctivitis was very common.¹¹³⁷

414. At least prior to the attack that caused him to flee to the bush, P-0121 was able [REDACTED],¹¹³⁸ but in the forest, the conditions were much more relentless. The Chamber also heard the testimony of [REDACTED], who, [REDACTED] people at the [REDACTED] hospital who returned from hiding in the bush.¹¹³⁹ He, in particular testified to cases of malaria, meningitis, malnutrition and injuries sustained during the war.¹¹⁴⁰ Some people actually died of malnutrition in the forest around [REDACTED].¹¹⁴¹ In some cases, [REDACTED] did not have any medication for some of these patients.¹¹⁴²

415. In terms of injuries people sustained, there were injuries caused by bullets – which accounted for the majority of injuries – and sometimes very serious injuries that [REDACTED] found “*frightening*”.¹¹⁴³ For instance, he saw injuries with a relatively small entry hole but a huge exit hole.¹¹⁴⁴

widespread itching. Burrows are visible as 3-5 mm long wavy black lines in the skin of the hands, wrists or sides of the feet. The intensity of the rash depends on the immune response. Papules, pustules, crusts, and excoriations are seen on the hands and there may be widespread eczematous or urticarial rash elsewhere. Papules or even nodules on the penis and scrotum are characteristic. *See Black’s Medical Dictionary*, p. 550.

¹¹³⁵ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 76.

¹¹³⁶ Intestinal worms or parasites: an organism which lives in or on another organism, known as the host. A parasite derives all its nourishment from the host. It may damage the host’s bodily functions and in extreme cases cause the death of the host. *See Black’s Medical Dictionary*, p. 469.

¹¹³⁷ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 68.

¹¹³⁸ P-0121, T-172-CONF-ENG-ET, 6 December 2016, p. 68.

¹¹³⁹ [REDACTED]

¹¹⁴⁰ [REDACTED]

¹¹⁴¹ [REDACTED]

¹¹⁴² [REDACTED]

¹¹⁴³ [REDACTED]

¹¹⁴⁴ [REDACTED]

416. The displacement severely impacted on people's access to food. In the area of Lipri, Nyangaray, and Kobu there had been a lot of agriculture, and the fact that the population could not move freely had an impact on the ability of farmers to attend to their crops that were otherwise sold as far as Bunia.¹¹⁴⁵ This situation in turn, caused food shortage that negatively affected people – people would even starve to death.¹¹⁴⁶

417. P-0892 also spoke about the difficulties especially her young children faced while they were fleeing through the bush. She explained how her [REDACTED] children with whom she fled [REDACTED], were constantly tired and angry.¹¹⁴⁷ She was also facing the problem of finding food for her children and herself. They sometimes found “taro” namely cocoyams but did not always find a way of cooking it, as they had no pots, pans or other utensils.¹¹⁴⁸ Essentially, they were starving.¹¹⁴⁹

418. People had no clothes that they could change,¹¹⁵⁰ so they were forced to wear the same garments while they were roaming the bush for weeks.

419. The Chamber heard how the suffering in the bush also took an emotional toll on P-0805 and his family; how it was exceedingly difficult for them to endure the adverse conditions they found themselves in on account of having been displaced out of fear of being killed.¹¹⁵¹

420. Victim a/01635/13 also recounted the difficulties she and her family encountered when they were forced to flee to the bush in order to save their lives. She was afraid for the lives of her Lendu children; that they would be captured and killed and so she decided to flee from [REDACTED] to the bush, taking nothing with them, her [REDACTED] baby strapped to her back.¹¹⁵² Night had already fallen when

¹¹⁴⁵ P-0105, T-133-CONF-ENG-ET, 16 September 2016, pp. 40-41.

¹¹⁴⁶ P-0105, T-133-CONF-ENG-ET, 16 September 2016, p. 41.

¹¹⁴⁷ P-0892, T-85-CONF-ENG-CT, 19 April 2017, pp. 27-28.

¹¹⁴⁸ P-0892, T-85-CONF-ENG-CT, 19 April 2017, pp. 28-29.

¹¹⁴⁹ P-0892, T-85-CONF-ENG-CT, 19 April 2017, pp. 28-29.

¹¹⁵⁰ P-0301, T-149-CONF-ENG-ET, 7 October 2016, p. 34.

¹¹⁵¹ P-0805, T-26-CONF-ENG-ET, 16 September 2015, p. 30.

¹¹⁵² A/01635/13, T-198-Red-ENG-WT, 1 March 2017, pp. 10-11.

she, her family and other villagers took towards the bush to escape the approaching soldiers.¹¹⁵³ They had no food and it began to rain and they had to take shelter under trees, sleeping on banana leaves.¹¹⁵⁴ Four days they stayed in the bush, without food and proper shelter.¹¹⁵⁵

421. A/30169/15 spoke to the Chamber about the dismal circumstances, he and his children found themselves in when they had to flee to the bush. They had no food or soap but spent about two weeks in the bush.¹¹⁵⁶ Two of his children fell ill during this time.¹¹⁵⁷ The food they could find, they would roast over open fire but the soldiers saw the smoke and would begin to shoot into the bush.¹¹⁵⁸ As they continued to flee, the two children who had fallen ill died.¹¹⁵⁹

¹¹⁵³ A/01635/13, T-198-Red-ENG-WT, 1 March 2017, p. 11.

¹¹⁵⁴ A/01635/13, T-198-Red-ENG-WT, 1 March 2017, p. 12.

¹¹⁵⁵ A/01635/13, T-198-Red-ENG-WT, 1 March 2017, p. 12.

¹¹⁵⁶ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 38.

¹¹⁵⁷ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, pp. 38-39.

¹¹⁵⁸ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 38.

¹¹⁵⁹ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 38-39.

c) Victimization and Suffering Associated with
Rape and Sexual Slavery

422. A/01635/13 told the Chamber about the anguish she felt when she learned that [REDACTED] was abducted by soldiers to “*be [the] wife*” of a soldier or commander.¹¹⁶⁰ When [REDACTED] eventually returned, after peace had been restored, she was suffering from severe pain in her stomach and lower abdomen and she would have her menstrual period twice in a single month. So she was taken to the hospital in [REDACTED] where she was treated.¹¹⁶¹ These symptoms originated from the injuries she had suffered on account of being raped several times by UPC soldiers.

423. In addition, a/01635/13’s [REDACTED] was infected by microbes that caused her a great deal of suffering.¹¹⁶² She also developed mental problems. In the beginning she was suffering quietly, she had been overwhelmed by the bad things and people dying she had witnessed, but she increasingly suffered on account of people asking her questions about the commander with whom she had been.¹¹⁶³ She became afraid of people; that people might ask her questions, and she began to [REDACTED].¹¹⁶⁴

424. It was only later on, [REDACTED] that her mental state improved.¹¹⁶⁵ A/01635/13 stated that she, herself, had found peace again because she was able to speak about her pain and suffering caused by the events in 2002/2003.¹¹⁶⁶

425. Similarly, a/30169/15 spoke about his 14 and 12 year-old daughters being abducted and taken to Lipri.¹¹⁶⁷ The girls returned the next day, their clothing torn

¹¹⁶⁰ A/01635/13, T-198-CONF-ENG-ET, 1 March 2017, pp. 14, 23.

¹¹⁶¹ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, pp. 20-21.

¹¹⁶² A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 21.

¹¹⁶³ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 21.

¹¹⁶⁴ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 21.

¹¹⁶⁵ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 21.

¹¹⁶⁶ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 30.

and blood-stained and they had visibly been beaten.¹¹⁶⁸ The soldiers made them “*their women*” and also forced them to carry items for them.¹¹⁶⁹

426. A/30169/15 took his daughters to UNICEF so they could receive some care.¹¹⁷⁰ Especially his older daughter was very traumatised by the events. Even to this day she suffers a lot; the younger one recovered somewhat after receiving care and is today married with children.¹¹⁷¹ However, according to a/30169/15, she also displays signs of mental problems.¹¹⁷²

427. A/30286/15, a Lendu woman,¹¹⁷³ living in [REDACTED], was [REDACTED] years of age at the time her village was attacked.¹¹⁷⁴ When the soldiers came across her, they told her that they were going to kill everybody but that she would be spared if she agreed that they “*married her*”, and that if she did not agree, she would be killed.¹¹⁷⁵ She was subsequently raped until she fell unconscious by three soldiers and left for dead.¹¹⁷⁶

428. She was bleeding profusely from her vagina when she was found and taken to the ransacked [REDACTED] where she again lost consciousness.¹¹⁷⁷ Her wound was stitched but became infected and she also developed severe headaches.¹¹⁷⁸ She recounted to the Chamber how she felt like she “*had lost all dignity*”.¹¹⁷⁹ She stated: “*At that time, I was [REDACTED] years old, I was still a child, so I felt that I no longer had*

¹¹⁶⁷ A/30169/15, T-198-Red-ENG-WT, 1 March 2017, p. 39.

¹¹⁶⁸ A/30169/15, T-198-CONF-ENG-ET, 1 March 2017, pp. 40, 42.

¹¹⁶⁹ A/30169/15, T-198-CONF-ENG-ET, 1 March 2017, pp. 41-42.

¹¹⁷⁰ A/30169/15, T-198-CONF-ENG-ET, 1 March 2017, p. 43.

¹¹⁷¹ A/30169/15, T-198-CONF-ENG-ET, 1 March 2017, p. 42.

¹¹⁷² A/30169/15, T-198-CONF-ENG-ET, 1 March 2017, p. 43.

¹¹⁷³ A/30286/15, T-198-CONF-ENG-ET, 1 March 2017, p. 57; T-198-Red-ENG-WT, 1 March 2017, p. 58-59.

¹¹⁷⁴ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 59.

¹¹⁷⁵ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 58.

¹¹⁷⁶ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, pp. 58-61.

¹¹⁷⁷ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 59.

¹¹⁷⁸ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 59.

¹¹⁷⁹ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 59.

any dignity left. I hate myself."¹¹⁸⁰ The entire village was talking about her and she cannot find a man to marry her. There was one man who wanted to marry her but when he had heard what people were saying about her, he abandoned her.¹¹⁸¹

429. A/30286/15 told the Judges how she hurts very much because she is isolated in her community.¹¹⁸² She said: *"I lost my reputation at [REDACTED] years old in the entire village. So no girl can speak to me in the village. I do not even have the courage to talk."*¹¹⁸³ Even today, there are days she does not want to get out of bed and she thinks about the soldiers. She also suffers from nightmares of the soldiers coming to get her, taking her away and raping her.¹¹⁸⁴

430. A/20018/14 was raped by two soldiers in sight of her children – [REDACTED] – having fled [REDACTED] together with her [REDACTED] children.¹¹⁸⁵ The children were very traumatised by what happened.¹¹⁸⁶

431. A/20018/14 was in great pain for a long time after the event whenever she urinated.¹¹⁸⁷ Subsequently, when she received some care, she also found out that she had contracted various venereal diseases.¹¹⁸⁸ Yet, what disturbed her most about the things that had befallen her was that the rapes happened in front of her children.¹¹⁸⁹

432. The Chamber also heard the testimony of P-0912 as regards the physical injury she had sustained during the rapes. She spoke of serious external and internal wounds to her vagina and that these painful injuries took three months or longer to heal.¹¹⁹⁰ Apart from the physical injury, P-0912 also told the Chamber:

¹¹⁸⁰ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 59.

¹¹⁸¹ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 60.

¹¹⁸² A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 60.

¹¹⁸³ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 60.

¹¹⁸⁴ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 60.

¹¹⁸⁵ A/20018/14, T-199-CONF-ENG-ET, 1 March 2017, pp. 7-8.

¹¹⁸⁶ A/20018/14, T-199-Red-ENG-WT, 1 March 2017, p. 11.

¹¹⁸⁷ A/20018/14, T-199-CONF-ENG, 1 March 2017, p. 9.

¹¹⁸⁸ A/20018/14, T-199-CONF-ENG, 1 March 2017, p. 8.

¹¹⁸⁹ A/20018/14, T-199-CONF-ENG, 1 March 2017, p. 9.

¹¹⁹⁰ P-0912, T-148-CONF-ENG-ET, 6 October 2016, p. 67.

*“I did not want to talk about these things to anyone and I kept the secret within me. I continued to be frightened. My mind was not at rest. Everybody knew – or I thought that everybody knew that I had been raped, although I did not tell it to everyone.”*¹¹⁹¹

433. P-0019, testified how, already while she was being raped, she felt like *“everything was finished for [her].”*¹¹⁹²

434. Psychotherapist and clinical adviser Maeve Lewis¹¹⁹³ explained to the Chamber that in communities where there is a high level of stigma attached to sexual crime, it was very common that women would hesitate to seek medical help or assistance because of the fear of exposure.¹¹⁹⁴

435. Lewis further explained that it was *“almost a universal experience”* for victims of sexual assault to have their emotional wellbeing affected.¹¹⁹⁵ According to her, victims experience great fear and terror and for many the fear is that they will be re-victimised if the sexual assault happened in a situation of lawlessness or ‘war’ for instance.¹¹⁹⁶ Lewis added that the universal and most pervasive experience of sexual violence for women sexually assaulted or raped was that of shame.¹¹⁹⁷ Typically women feel contaminated, dirty, unclean following sexual violence because of the nature of the ‘very private’ violation they have experienced.¹¹⁹⁸

436. According to Lewis, especially in conflict and post-conflict situations witnesses expressed the view that they would be ostracised by their communities if it became known that they had been raped and, therefore, it was to be expected that there would be delays in reporting cases of rape.¹¹⁹⁹

¹¹⁹¹ P-0912, T-148-CONF-ENG-ET, 6 October 2016, p. 77.

¹¹⁹² See *supra*, para. 357.

¹¹⁹³ Maeve Lewis, T-113-Red-ENG-WT, 30 June 2016, pp. 33-34.

¹¹⁹⁴ Maeve Lewis, T-113- Red-ENG-WT, 30 June 2016, pp. 55-56.

¹¹⁹⁵ Maeve Lewis, T-113-Red-ENG-WT, 30 June 2016, p. 53.

¹¹⁹⁶ Maeve Lewis, T-113- Red-ENG-WT, 30 June 2016, pp. 53-54.

¹¹⁹⁷ Maeve Lewis, T-113- Red-ENG-WT, 30 June 2016, p. 54.

¹¹⁹⁸ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 8.

¹¹⁹⁹ Maeve Lewis, T-113-Red-ENG-WT, 30 June 2016, pp. 65-66.

437. In particular, Lewis conducted a clinical assessment of Witness P-0018 and concluded she suffered psychological consequences that were consistent with the events she reported.¹²⁰⁰ Lewis explained that the victim had witnessed many people being killed and heard [REDACTED] being killed.¹²⁰¹ P-0018 also described her rape in some detail.¹²⁰² Lewis explored the impact of these events on the victim's life and reached the conclusion that the victim had suffered severe psychological harm and continues to suffer the effect of this harm which has a considerable impact on her life.¹²⁰³

438. In addition, P-0018 has [REDACTED]¹²⁰⁴ as a result of a gunshot wound she sustained during her rape, which also causes her significant difficulties and embarrassment.¹²⁰⁵ Moreover, P-0018 had the "*absolute belief*" her husband would abandon her if he were to find out.¹²⁰⁶

439. P-0365 explained that, for instance, young girls would be less respected in their family and would not be able to find a husband because "*no man would like to marry them because any man looking for a wife would not want to be identified in the society as one who has taken a raped girl for a wife*".¹²⁰⁷ She testified that throughout the Iturian communities, even relatives would consider the raped person to be "*of lesser status*".¹²⁰⁸

440. The Chamber heard the testimony of other witnesses who testified to the same effect, namely that rape would result in stigma and ultimately ostracise the victim. P-0014, for instance, explained to the Chamber:

¹²⁰⁰ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 6.

¹²⁰¹ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 7.

¹²⁰² Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, pp. 6-7.

¹²⁰³ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, pp. 6-7.

¹²⁰⁴ DRC-OTP-0096-0144; DRC-OTP-0096-0142; DRC-OTP-0096-0141; DRC-OTP-0096-0140; DRC-OTP-0096-0138.

¹²⁰⁵ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 8; DRC-OTP-2059-0058.

¹²⁰⁶ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 8.

¹²⁰⁷ P-0365, T-147-CONF-ENG-ET, 5 October 2016, p. 36.

¹²⁰⁸ P-0365, T-147-CONF-ENG-ET, 5 October 2016, pp. 36-37.

“You may also want to understand that in our culture, [...] if my wife is raped, I no longer feel like a man and I can no longer stand tall in front of anybody because I am covered in shame. That is the feeling I would have if my wife is raped. So that also amounts to having been vanquished somehow. That is why it becomes impossible for me then to stand and to demonstrate that I am the defender and the protector of my wife.”¹²⁰⁹

441. Lewis also spoke about other symptoms prevalent in victims of sexual violence, such as shame associated with irritability. She, for instance, found these to be present when she conducted a clinical assessment of P-0019.¹²¹⁰ According to Lewis, one of the clusters of symptoms of post-traumatic stress is a state of high physiological arousal, a high reactivity to events.¹²¹¹ She explained that anger and irritability are experienced almost universally and victims find it difficult to withhold their anger in their day-to-day life.¹²¹²

442. In the case of P-0113, Lewis diagnosed post-traumatic stress disorder (“PTSD”), which was in part due to the witness’s genuine belief that she would be killed during the events.¹²¹³ PTSD is a disorder not uncommonly experienced by individuals exposed to crime or trauma.¹²¹⁴

443. Lewis further explained to the Chamber that someone who has PTSD lives his/her life with quite intrusive memories of what happened, such as mind-drifts, day-dreaming and trouble concentrating.¹²¹⁵ There is also a physical component because the person will generally have quite high levels of adrenaline coursing through his/her body which makes it very difficult to concentrate.¹²¹⁶

¹²⁰⁹ P-0014, T-138-CONF-ENG-ET, 23 September 2016, pp. 99-100.

¹²¹⁰ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, pp. 8-9; DRC-OTP-2059-0080.

¹²¹¹ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 9.

¹²¹² Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 9.

¹²¹³ Maeve Lewis, T-114-CONF-ENG, 1 July 2016, pp. 10-11; DRC-OTP-2059-0069, p. 6-7.

¹²¹⁴ Dr. John Yuille, DRC-OTP-2085-0103, p. 2085-0107.

¹²¹⁵ Maeve Lewis, T-114-CONF-ENG, 1 July 2016, p. 12. See also Dr. John Yuille, T-84-ENG-ET-WT, 18 April 2016, pp. 22-23.

¹²¹⁶ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 12.

444. The Chamber has heard that PTSD can persist for a lifetime in the absence of psychotherapeutic or medical intervention.¹²¹⁷

445. P-0892 spoke of the behavioural changes she noticed in [REDACTED] following the latter's rape.¹²¹⁸ She gave an emotional account of how [REDACTED]:

[REDACTED]¹²¹⁹

446. The Chamber further heard how these changes also directly affected P-0892 in that [REDACTED] would remove herself from her company and the company of her other siblings because she found it difficult to stay around other people.¹²²⁰ [REDACTED] also no longer wanted to help her with the business and eventually even refused to go to school at all.¹²²¹

447. Dr. Yuille explained to the Chamber how the psychological make-up of the victim has a direct impact on the severity of the traumatising and that some victims may be most severely affected and devastated by a sexual assault whereas another victim would be able to put it behind her and move on with her life.¹²²² He further explained that collectively suffered events may equally have a collective traumatic impact on entire communities.¹²²³

d) Victimisation and Suffering Associated with Pillage and Destruction of Property

¹²¹⁷ Maeve Lewis, T-114-CONF-ENG-ET, 1 July 2016, p. 70; Dr. Yuille, T-87-ENG-ET-WT, 21 April 2016, pp. 23-25.

¹²¹⁸ P-0892, T-85-CONF-ENG-CT, 19 April 2017, pp. 30-31.

¹²¹⁹ P-0892, T-85-CONF-ENG-CT, 19 April 2017, p. 30.

¹²²⁰ P-0892, T-85-CONF-ENG-CT, 19 April 2017, pp. 30-31.

¹²²¹ P-0892, T-85-CONF-ENG-CT, 19 April 2017, p. 31.

¹²²² Dr. John Yuille, T-87-ENG-ET-WT, 21 April 2016, p. 25-26.

¹²²³ Dr. John Yuille, T-87-ENG-ET-WT, 21 April 2016, p. 26.

448. The Legal Representative submits that in particular the crimes of pillage and destruction of property may give rise to victims' claims for reparations or restitution, should the Accused be found guilty of Counts 11 and 18. It is for this reason that the present submissions are particularly limited and do not in any way attempt to cover any potential claims victims may have at a possible future stage of the proceedings. Rather, as the other submissions within this section of the Legal Representatives' closing brief, the following examples of suffering and hardship are intended to complement the evidence heard in relation to the allegations under Counts 11 and 18, respectively in painting the fullest picture possible of the crimes committed against victims on the ground.

449. P-0859, for instance, testified how coming home to a destroyed and looted home [REDACTED] had dire consequences for the survivors in his family.¹²²⁴ As their mattresses had been looted, the family had to sleep on the bare floor.¹²²⁵

450. To this day, they struggle to make ends meet and sometimes, there's not enough money to pay for the children's school fees and the children get expelled from school.¹²²⁶ P-0859 also spoke of the suffering the expulsion of his children from school causes him.¹²²⁷ After all, his family had had good standing in the community and had been relatively well off before the events in [REDACTED].

451. His [REDACTED] trading desk in [REDACTED] was looted when he was killed and he had not had the opportunity to tell his family members where his savings were and that to this date they have not had any opportunity to recover any of his property.¹²²⁸ The UPC looted everything they had, and the family "*no longer live[s] the life that [they] led before the war.*"¹²²⁹ The only assistance the victims of the

¹²²⁴ P-0859, T-51-CONF-ENG-ET, 17 November 2015, p. 26 and T-52-CONF-ENG-CT, 18 November 2015, p. 4.

¹²²⁵ P-0859, T-51-CONF-ENG-ET, 17 November 2015, p. 26.

¹²²⁶ P-0859, T-52-CONF-ENG-CT, 18 November 2015, p. 7.

¹²²⁷ P-0859, T-52-CONF-ENG-CT, 18 November 2015, p. 7.

¹²²⁸ P-0859, T-52-CONF-ENG-CT, 18 November 2015, p. 5.

¹²²⁹ P-0859, T-52-CONF-ENG-CT, 18 November 2015, p. 6.

[REDACTED] attack received was rendered by NGOs from 2007 onwards and in the form of distribution of basic foodstuffs such as maize flour and beans, as well as blankets.¹²³⁰

452. When P-0892 returned to her home in [REDACTED] she found that all of her belongings had been pillaged from her house.¹²³¹ She got by as some neighbours gave her some cooking utensils, but they did not even have blankets to cover themselves with at night and had to use banana leaves for this purpose.¹²³² She stated that they lived a life of suffering for a long time following the attack.¹²³³

453. When A/30286/15 – having been treated by an NGO after the rapes she suffered – was sent home, there no longer was a home to be going to. The attackers had burnt down the houses in the village and she found herself with nothing at all.¹²³⁴ Her entire house had been burnt to the ground and she did not know “*where to start or finish*.”¹²³⁵ People would, however, find some tarpaulin and set up makeshift ‘houses’ and began to rebuilt their homes gradually.¹²³⁶

454. A/20126/14 also spoke of the farms around Lipri having been looted and that people did not even dare go back to their farms out of fear of being apprehended and killed.¹²³⁷

455. A/30169/15 told the Chamber how, upon return to their village, they found their house and village torched and their belongings had been destroyed.¹²³⁸ Especially his older daughter reacted very badly to seeing all their clothing and

¹²³⁰ P-0859, T-52-CONF-ENG-CT, 18 November 2015, p. 8.

¹²³¹ P-0892, T-85-CONF-ENG-CT, 19 April 2017, p. 29.

¹²³² P-0892, T-85-CONF-ENG-CT, 19 April 2017, p. 31.

¹²³³ P-0892, T-85-CONF-ENG-CT, 19 April 2017, p. 32.

¹²³⁴ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 59.

¹²³⁵ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 60.

¹²³⁶ A/30286/15, T-198-Red-ENG-WT, 1 March 2017, p. 60.

¹²³⁷ A/20126/14, T-199-Red-ENG-WT, 2 March 2017, pp. 22-23.

¹²³⁸ A/30169/15, T-198-CONF-ENG, 1 March 2017, p. 43.

belongings having been torched and she would cry incessantly.¹²³⁹ She developed high blood pressure and other problems and eventually passed away.¹²⁴⁰

e) Victimisation and Suffering Associated with
the Destruction of Protected Objects

456. After the war, Bambu hospital had difficulties to care for the patients that would come as they had no material.¹²⁴¹ It took the hospital staff about a month to at least provisionally repair the damage sustained to the building.¹²⁴² At the same time, there were many patients who suffered from malaria,¹²⁴³ serious wounds or even lost limbs.¹²⁴⁴ [REDACTED] distinctly remembered a lady called [REDACTED] who was the only survivor found among a group of four people who had been cut up by machetes and killed near Nyangaray by “UPC combatants”.¹²⁴⁵ She had sustained gruesome wounds from machete coups, which took years to heal.¹²⁴⁶

f) Victimisation and Suffering Associated with
Persecution – including *inter alia*¹²⁴⁷ Torture,
Inhumane Treatment, Forced Labour

457. The Chamber has heard how the severe beatings to which V1 was subjected have left long-lasting injury.¹²⁴⁸ He can no longer farm his fields like he used to because he has difficulties moving.¹²⁴⁹ V1 also needs to permanently take relieving medication and sit down often because he is unable to stand for longer periods of

¹²³⁹ A/30169/15, T-198-CONF-ENG, 1 March 2017, p. 43.

¹²⁴⁰ A/30169/15, T-198-CONF-ENG, 1 March 2017, pp. 43-44.

¹²⁴¹ [REDACTED]

¹²⁴² [REDACTED]

¹²⁴³ [REDACTED]

¹²⁴⁴ [REDACTED]

¹²⁴⁵ [REDACTED]

¹²⁴⁶ [REDACTED]

¹²⁴⁷ Other than forcible transfer and sexual violence, which also qualify as underlying acts of persecution as they were committed with the requisite discriminatory intent.

¹²⁴⁸ See DRC-PCV-0001-0079.

¹²⁴⁹ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 13.

time.¹²⁵⁰ The Chamber has also heard of the appalling and degrading treatment he was subjected to when he was forced to [REDACTED] while being held prisoner.¹²⁵¹

458. Moreover, the unlawful detention and forced labour of women¹²⁵² placed them in the specifically vulnerable position which made them easy prey of soldiers and commanders who further took advantage of their captivity to rape them.

a. Conclusion

459. It is submitted that the expressions of pain and suffering heard before the Chamber paint a grim picture of the consequences the large-scale victimisation had on the hundreds and even thousands of victims concerned by the facts of this case. The Legal Representative therefore respectfully requests that the Chamber take this facet of the evidence as well as the views and concerns of participating victims into account when pronouncing a judgment pursuant to Article 74 of the Statute.

¹²⁵⁰ V1, T-201-CONF-ENG-ET, 10 April 2017, p. 13-14.

¹²⁵¹ See *supra*, para. 153.

¹²⁵² See *supra*, paras. 187-200, 322-327, 334-350, 356-359.

IX. THE CRIMINAL RESPONSIBILITY OF MR NTAGANDA FOR THE CRIMES COMMITTED AND THE SUFFERING INFLICTED UPON THE VICTIMS

460. As set out *supra*,¹²⁵³ the Legal Representative will make only limited submissions on the criminal responsibility of the Accused, as it is not his role to prove the Accused's responsibility. Still, as crimes are not committed in the abstract but by perpetrators against victims, the victims have a legitimate interest in the truth about who bears responsibility for inflicting harm, loss, pain, and suffering upon them, their relatives, and communities. The victims participating in this case submit that the evidence presented indeed shows beyond reasonable doubt that the Accused bears criminal responsibility for crimes that were committed against.

1. THE ACCUSED'S ROLE AND AUTHORITY

461. The Chamber has heard evidence that NTAGANDA, although appointed as the deputy to KISEMBO,¹²⁵⁴ had more significant *de facto* powers than the Chief of Staff. Chief of Staff KISEMBO had only been appointed to the higher rank because LUBANGA "*was not allowed to put a [sic] Rwanda speaker at the head of the FPLC*".¹²⁵⁵ He only exercised commanding powers when NTAGANDA was not present.¹²⁵⁶ This would manifest itself in NTAGANDA carrying out operations without KISEMBO even being aware or informed.¹²⁵⁷

462. In some cases, KISEMBO was only later on apprised of the operations NTAGANDA had carried out.¹²⁵⁸ For instance, the evidence of V3, according to

¹²⁵³ See *supra*, para. 42.

¹²⁵⁴ Agreed Fact 78; DRC-D18-0001-5520.

¹²⁵⁵ P-0190, T-96-CONF-ENG-ET, 6 June 2016, p. 50.

¹²⁵⁶ P-0055, T-71-CONF-ENG-ET, 24 February 2016, p. 7.

¹²⁵⁷ P-0190, T-96-CONF-ENG-ET, 6 June 2016, p. 50.

¹²⁵⁸ P-0190, T-96-CONF-ENG-ET, 6 June 2016, p. 50.

which KISEMBO told him that he would see what he could do to have [REDACTED] freed after the latter had been abducted by NTAGANDA the previous night,¹²⁵⁹ indicates that KISEMBO was unaware of the incident. The fact that nothing happened, and the man did not return further illustrates KISEMBO's impotence in the face of NTAGANDA's actions. P-0016 stated that NTAGANDA only reported to LUBANGA, and if he decided on an operation, there was an operation.¹²⁶⁰ LUBANGA in turn had more confidence in NTAGANDA than in KISEMBO because NTAGANDA had more military experience than KISEMBO.¹²⁶¹

463. The Accused's version of the internal hierarchy, according to which he had no commanding or supervisory powers, and merely followed the orders of KISEMBO and LUBANGA,¹²⁶² should simply not be believed.

464. The Accused explained to the Chamber that he was the one to design the FPLC's training program and ideology.¹²⁶³ He also personally transmitted motivational speeches and lessons in 'ideology'¹²⁶⁴ to his subordinates.¹²⁶⁵ It was he, who oversaw other commanders teaching *his* ideology, including his *de jure* superior KISEMBO.¹²⁶⁶

465. He also made several public appearances in Hema-dominated villages to gather support against the 'enemy'. For instance, shortly after the ousting of LOMPONDO, NTAGANDA held a rally in Mudzipela where he called on the young people to follow training in order to be able to defend themselves, and on parents to

¹²⁵⁹ See V3, T-203-CONF-ENG-ET, 12 April 2017, pp. 42-44.

¹²⁶⁰ P-0016, DRC-OTP-0126-0422-R01, para. 65.

¹²⁶¹ P-0016, DRC-OTP-0126-0422-R01, para. 63.

¹²⁶² See DRC-D18-0001-5528; DRC-D18-0001-5527; DRC-D18-0001-5525; Bosco NTAGANDA, T-213-CONF-ENG-CT, 27 June 2017, p. 57 and T-215-ENG-ET-WT, 29 June 2017, pp. 63-64.

¹²⁶³ Bosco NTAGANDA, T-213-Red-ENG-WT, 27 June 2017, p. 64 and T-232-CONF-ENG-CT, 29 August 2017, pp. 37-38.

¹²⁶⁴ Bosco NTAGANDA, T-233-Red-ENG WT, 30 August 2017, p. 16.

¹²⁶⁵ See *supra*, para. 164.

¹²⁶⁶ Bosco NTAGANDA, T-214-Red-ENG-WT, 28 June 2017, pp. 4-5 and T-232-CONF-ENG-CT, 29 August 2017, p. 37.

send their children to follow military training.¹²⁶⁷ He personally addressed the population, stating: *“It’s not enough to flee, we should all hold together, and [...] those who are old enough can go and follow training in order to be able to defend themselves against the Lendu.”*¹²⁶⁸

466. The Chamber has also heard evidence to the effect that the Accused was regarded as a ‘great’ or ‘brave’ commander.¹²⁶⁹ D-0243 for instance, testified that *“He was a brave soldier. And he commanded troops who respected him.”*¹²⁷⁰ *“[H]is soldiers, they said that he was a man who put order into the army.”*¹²⁷¹ In fact, the recruits who followed the UPC’s training had to venerate the Accused with songs describing his courage and martial skills.¹²⁷² Moreover, his troops would address him with the honorary titles ‘Afande’ or ‘Mzee’, which denoted respect and honour,¹²⁷³ because he *“[was] the senior commander, the person in charge the highest ranking officer, the senior officer.”*¹²⁷⁴ It was even said that:

*“Bosco NTAGANDA was the most powerful, the strongest, and sometimes even the president was afraid of Bosco NTAGANDA, regardless of the information he received. You see, he received a lot of information, many messages and many reports of what was not going well within the patriotic forces of the UPC. So, President Lubanga could hit the table and react when he received information in anger, but he could not call him to make any comments and remarks to him.”*¹²⁷⁵

467. The Accused was a commander who was respected and had a role model function in relation to those whom he commanded. In the words of the Accused himself *“[his] role was to direct the commanders so that they could carry out their work*

¹²⁶⁷ P-0918, T-155-CONF-ENG-ET, 10 November 2016, pp. 79-81.

¹²⁶⁸ P-0918, T-155-CONF-ENG-ET, 10 November 2016, p. 80.

¹²⁶⁹ See e.g. P-0758, T-161-CONF-ENG-ET, 21 November 2016, p. 17; D-0251, T-260-CONF-ENG-CT, 7 December 2017, p. 40.

¹²⁷⁰ D-0243, T-259-CONF-ENG-CT, 6 December 2017, p. 32.

¹²⁷¹ D-0243, T-259-CONF-ENG-CT, 6 December 2017, p. 46.

¹²⁷² Bosco NTAGANDA, T-213-Red-ENG-WT, 27 June 2017, p. 66; P-0901, T-31-Red-ENG-CT, 24 September 2015, p. 8.

¹²⁷³ P-0030, T-144-CONF-ENG-ET, 30 September 2016, p. 37.

¹²⁷⁴ P-0030, T-144-Red-ENG-WT, 30 September 2016, pp. 36.

¹²⁷⁵ [REDACTED]

following discipline".¹²⁷⁶ That was his "*day-to-day task*"; namely to ensure that the FPLC functioned in the manner of an organised army.¹²⁷⁷

468. From the evidence before the Chamber, it is abundantly clear that the Accused had effective authority and control over UPC troops, as well as certain Hema civilians accompanying his troops¹²⁷⁸ and that he was in a position of authority that would enable him to give orders. It was NTAGANDA who had control and command over all military operations in which the UPC troops were involved and "*not a single operation could have been undertaken without Ntaganda's involvement in his capacity as person in charge of operations within the FPLC*".¹²⁷⁹ Each movement of the UPC troops for every attack needed his authorisation.¹²⁸⁰ It was NTAGANDA who ensured both the collaboration between the units from various brigades and the avoidance of confrontations or conflicts between troops.¹²⁸¹ In sum, NTAGANDA had the *de facto* overall control over the UPC/FPLC troops.

2. THE ACCUSED'S MENS REA

469. The direct and indirect encouragement to commit despicable crimes against the local Lendu and non-Hema population stemmed from the Accused's hatred of these ethnic groups, which he actively conveyed to the recruits, soldiers, bodyguards, and commanders. He taught disregard for Lendu lives and property when he instructed his soldiers.¹²⁸²

¹²⁷⁶ Bosco NTAGANDA, T-218-Red-ENG-WT, 4 July 2017, p. 33.

¹²⁷⁷ Bosco NTAGANDA, T-218-Red-ENG-WT, 4 July 2017, p. 33.

¹²⁷⁸ See e. g. P-0055, T-71-CONF-ENG-CT, 24 February 2016, pp. 47-49; P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 35. Cf. Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, p. 34.

¹²⁷⁹ P-0190, T-96-CONF-ENG-CT, 6 June 2016, p. 49.

¹²⁸⁰ P-0017, T-60-CONF-ENG-ET, 1 February 2016, p. 7.

¹²⁸¹ P-0017, T-60-CONF-ENG-ET, 1 February 2016, p. 7.

¹²⁸² See e.g. *supra*, para. 164.

470. The Accused tried to convince the Judges that the ideology of the UPC was a peaceful one and that his training program in ideology reflected such peaceful values.¹²⁸³ Yet, he was unable to even sum up what this ideology was when repeatedly asked about it by the Presiding Judge.¹²⁸⁴ This only underscores that, contrary to the Accused's claims, his ideology program did not include instructions on the protection of civilians. The messages he in reality conveyed to his troops were messages of hatred against the Lendu ethnic group and that all Lendu, irrespective of their status¹²⁸⁵ or gender¹²⁸⁶ were 'the enemy'¹²⁸⁷ and had to be killed,¹²⁸⁸ including children.¹²⁸⁹ The recruits were even instructed to sing songs about the extermination of the Lendu ethnic group.¹²⁹⁰

471. Furthermore, in giving orders to kill the enemy, he *inter alia*, employed persecutory vocabulary mirroring that infamously coined and used against his own ethnic group during the Rwandan genocide.¹²⁹¹ Namely, NTAGANDA told his soldiers to "*do [their] work*",¹²⁹² meaning to rape and kill Lendu; it was understood as such by his troops who came to regard Lendu as "*dirt*" and their killing as 'cleaning up the dirt'.¹²⁹³

472. In sum, the Accused harboured and openly displayed disdain for the Lendu civilians whom he ordered to be killed.¹²⁹⁴ His intention to harm members of the Lendu ethnic group is further demonstrated by his deeds, including, but not limited

¹²⁸³ Bosco NTAGANDA, T-214-Red-ENG-WT, 28 June 2017, pp. 4-5.

¹²⁸⁴ Bosco NTAGANDA, T-232-CONF-ENG-CT, 29 August 2017, pp. 37-38.

¹²⁸⁵ P-0898, T-154-CONF-ENG-ET, 9 November 2016, pp. 10-11; P-0907, T-90-CONF-ENG-ET, 25 April 2016, pp. 36, 51; P-0010, T-47-CONF-ENG-CT, 11 November 2015, p. 10.

¹²⁸⁶ P-0017, T-59-CONF-ENG-ET, 29 January 2016, p. 62.

¹²⁸⁷ P-0898, T-154-CONF-ENG-ET, 9 November 2016, pp. 10-11; P-0907, T-90-CONF-ENG-ET, 25 April 2016, pp. 36, 51; P-0768, T-33-CONF-ENG-CT, 19 October 2015, p. 37.

¹²⁸⁸ P-0907, T-90-CONF-ENG-ET, 25 April 2016, p. 36; P-0010, T-47-CONF-ENG-CT, 11 November 2015, p. 10.

¹²⁸⁹ P-0017, T-59-CONF-ENG-ET, 29 January 2016, p. 62.

¹²⁹⁰ P-0016, DRC-OTP-0126-0422-R01, paras. 56-57.

¹²⁹¹ See e. g. *Nahimana et. al.* Trial Judgment, para 114; *Gacumbitsi* Trial Judgment, para. 275; *Nyiramasuhuko et al.* Trial Judgment, para. 895; *Kalimanzira* Trial Judgment, para. 514.

¹²⁹² See *supra*, para. 200.

¹²⁹³ See *supra*, para. 201.

¹²⁹⁴ See *supra*, paras. 184, 187, 200, 228, 236.

to the murder of the Lendu priest in Mongwablu.¹²⁹⁵ It was this behaviour that he passed on to his troops, by directly inciting hatred against the Lendu on the one hand and by leading by ‘example’ in committing crimes on the other. He also actively taught disregard for Lendu lives and property when he instructed his soldiers.¹²⁹⁶

473. This attitude also extended to collaborators, or those ‘assisting the Lendu’. The Chamber has, for instance, heard credible evidence from V3 that NTAGANDA was present and involved in the UPC’s efforts to raise funds, moral, and logistical support in the Nyali community – a community not as such implicated in the ethnic conflict between Hema and Lendu – and that those who did not comply with the UPC’s demands were pressured, persecuted, and ultimately killed.¹²⁹⁷ NTAGANDA himself exerted pressure on the Nyali businessman whereby he, repeatedly calling upon him to “*support the programme*”,¹²⁹⁸ the main concern being “*to drive out the Lendu*”.¹²⁹⁹ V3’s testimony in this regard is corroborated by other evidence to the effect that the UPC was collecting money from local traders to finance its “*war efforts*”.¹³⁰⁰

¹²⁹⁵ See *supra*, para. 184.

¹²⁹⁶ See e.g. *supra*, para. 164.

¹²⁹⁷ V3, T-203-CONF-ENG-ET, 12 April 2017, pp. 17-19, 24-25, 35-36, 40-45, 82-84.

¹²⁹⁸ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 18.

¹²⁹⁹ V3, T-203-CONF-ENG-ET, 12 April 2017, p. 18.

¹³⁰⁰ P-0043, DRC-OTP-2054-5546-R02, pp. 83, 88.

**3. NTAGANDA BEARS INDIVIDUAL CRIMINAL RESPONSIBILITY
PURSUANT TO ARTICLE 25(3)(A) OF THE STATUTE– FIRST
ALTERNATIVE**

474. The evidence establishes beyond reasonable doubt that the Accused directly committed the crimes of murder and attempted murder (counts 1 and 2),¹³⁰¹ attacks against the civilian population (count 3),¹³⁰² persecution (count 10),¹³⁰³ and pillage (count 11)¹³⁰⁴ with the requisite *mens rea*.¹³⁰⁵

**4. NTAGANDA BEARS INDIVIDUAL CRIMINAL RESPONSIBILITY
PURSUANT TO ARTICLE 25(3)(B) OF THE STATUTE – FIRST
ALTERNATIVE**

475. As set out above,¹³⁰⁶ the Accused held a position of authority over those to whom he imparted direct orders.¹³⁰⁷ The Chamber has heard how the Accused directly ordered (i) indiscriminate shelling of civilian areas; (ii) the shelling of a column of civilians;¹³⁰⁸ (iii) the rape,¹³⁰⁹ and (iv) the execution of captured Lendu individuals.¹³¹⁰ These acts were carried out by both troops under his direct operational command during military offensives, as well by his bodyguards who were under his direct command and control.

476. When the Accused was giving these orders, he was aware of the substantial likelihood that a crime will be committed in the execution of that order.¹³¹¹ He, in fact,

¹³⁰¹ See *supra*, paras.137, 140, 184.

¹³⁰² See *supra* paras. 130, 167, 178, 220, 228, 271, 286.

¹³⁰³ See e. g. *supra*, para. 200, 236.

¹³⁰⁴ See *supra*, para. 203.

¹³⁰⁵ See *supra*, The Accused's Mens Rea.

¹³⁰⁶ See *supra*, The Accused's Role.

¹³⁰⁷ Cf. *Bagosora et al.* Appeal Judgment, para. 277.

¹³⁰⁸ See *supra* paras. 167, 178, 228.

¹³⁰⁹ See *supra* para. 200.

¹³¹⁰ See *supra* paras, 184, 187, 200, 236.

¹³¹¹ Cf. *Nahminana et al.* Appeal Judgment, para. 481.

employed his powers to ensure that his instructions to eliminate the Lendu ethnic group from the areas taken over by the UPC were followed.

477. The Accused planned and directed the operations on the ground¹³¹² and the Chamber has heard abundant evidence to the effect that his orders and directions were generally followed.¹³¹³ It also heard that the Accused personally thanked his troops after the successful takeovers of Mongbwalu, Sayo, and Nzebi,¹³¹⁴ which in itself indicates that his orders were followed to his satisfaction. In the same vein, the Chamber has heard evidence that the Accused had the effective power to punish those soldiers or commanders who did not carry out his instructions to his satisfaction.¹³¹⁵

478. The Accused himself explained the role he played in relation to operations and on the ground, such as for instance in Komanda and Sayo.¹³¹⁶ In light of the overwhelming evidence to the fact that the UPC soldiers committed brutal massacres in both Komanda¹³¹⁷ and Sayo,¹³¹⁸ the Accused's version of events can simply not be leant any belief.

479. Since military operations were carried out in accordance with the orders given by the Accused,¹³¹⁹ there is no reason to believe that other orders – such as the instruction to eliminate the Lendu – were disobeyed. Similarly, no credence can be given to the Accused's claims that he instructed his troops to protect civilians,¹³²⁰ as the evidence recounted in section VII above, paint a very different picture.

¹³¹² See e.g. P-0768, T-33-CONF-ENG-CT, 19 October 2015, pp. 33-34; P-0888, T-105-CONF-ENG-CT, 2 June 2016, p. 56; P-0907-T-89-CONF-ENG-ET, 25 April 2016, pp. 15, 21, 46; P-0016, DRC-OTP-0126-0422-R01, para. 65.

¹³¹³ See *supra*, paras. 129, 137, 167, 178, 184, 187, 200, 220, 228, 236, 299, 382.

¹³¹⁴ P-0768, T-33-CONF-ENG-CT, 19 October 2015, pp. 52-53.

¹³¹⁵ Bosco NTAGANDA, T-213-Red-ENG-WT, 27-June 2017, pp. 13-14.

¹³¹⁶ Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, p. 39.

¹³¹⁷ See *supra*, paras. 131-133.

¹³¹⁸ See *supra*, paras. 220, 221, 223, 228.

¹³¹⁹ See e.g. *supra*, para. 130, 166, 167, 218, 271.

¹³²⁰ See e.g. Bosco NTAGANDA, T-232-CONF-ENG-ET, 29 August 2017, p. 38 and T-214-CONF-ENG-ET, 28 June 2017, pp. 4-5.

480. Even Hema civilians who were willing to provide assistance to the UPC because they shared the UPC's 'ideology',¹³²¹ were afraid of the UPC commanders and felt obliged to implement their "orders", feeling "*subject to their the orders*".¹³²²

481. D-0243 was a civilian trader whom [REDACTED].¹³²³ He stayed put more or less 24 hours a day, always at the disposal of the UPC's commanders because he "*was afraid of the commanders*".¹³²⁴

482. D-0243 explained that: "*If a commander called [him] and [he] wasn't [sic] in [his] place of work, [the commander] could think that [he] didn't really take [his] work to heart.*"¹³²⁵ He further testified that: "*[He] respected the orders that were given to [him].*"¹³²⁶ NTAGANDA was one of those commanders who used D-0243's 'services',¹³²⁷ although he denied ever having done so.¹³²⁸ It is submitted that D-0243's consistent account should be given more credence than that of the Accused in this regard.

¹³²¹ D-0243, T-259-CONF-ENG-CT, 6 December 2017, p. 11.

¹³²² D-0243, T-259-CONF-ENG-CT, 6 December 2017, pp. 33-34.

¹³²³ D-0243, T-257-CONF-ENG-CT, 5 December 2017, pp. 28, 35 and T-259-CONF-ENG-CT, 6 December 2017, p. 10.

¹³²⁴ D-0243, T-257-CONF-ENG-CT, 5 December 2017, pp. 47, 59.

¹³²⁵ D-0243, T-257-CONF-ENG-CT, 5 December 2017, p. 47.

¹³²⁶ D-0243, T-259-CONF-ENG-CT, 6 December 2017, p. 33.

¹³²⁷ D-0243, T-259-CONF-ENG-CT, 6 December 2017, pp. 32, 37-38.

¹³²⁸ Bosco NTAGANDA, T-222-ENG-CT-WT, 11 July 2017, p. 36.

5. NTAGANDA BEARS CRIMINAL RESPONSIBILITY AS A COMMANDER PURSUANT TO ARTICLE 28(A) OF THE STATUTE

483. The Legal Representative submits that, if the evidence is deemed insufficient to satisfy the material elements of Articles 25(3)(a) and (b) of the Statute, the Chamber should in any event find the Accused guilty on the basis of Article 28(a) of the Statute. However, the Legal Representative posits that a conviction on the basis of Articles 25(3)(a) and (b) would more appropriately reflect the Accused's culpability as established by the evidence.

484. As "*a commander is responsible not as though he had committed the crime himself, but his responsibility is considered in proportion to the gravity of the offences committed*",¹³²⁹ a conviction pursuant to Article 28(a) of the Statute would insufficiently capture the Accused's active contributions to the crimes committed that victimised the Legal Representative's clients and other civilians.

485. It is submitted that, as deputy chief of staff in charge of operations,¹³³⁰ NTAGANDA had access to information on the events on the ground through multiple sources, including direct knowledge, written, and oral reports.¹³³¹ The Accused himself spoke about the functioning hierarchy whereby complaints about misconduct or crimes were reported up the chain of command.¹³³²

486. It is further averred that the powers attendant to the role and position held by the Accused imposed upon him the obligation to, *inter alia*, put an end to the criminal activity, to impose appropriate punitive measures, and to take measures to prevent or deter further criminal acts by his subordinate commanders, soldiers, and

¹³²⁹ Halilović Trial Judgment, para 54.

¹³³⁰ See *supra*, paras. 113-114.

¹³³¹ P-0055, T-70-ENG-CONF-CT, pp. 71-72, 75. See also P-0005, T-184-CONF-ENG-ET, 20 January 2017, p. 17; Bosco NTAGANDA, T-217-CONF-ENG-ET, 3 July 2017, p. 58.

¹³³² See e. g. Bosco NTAGANDA, T-218-Red-ENG-WT, 4 July 2017, p. 39. See also DRC-OTP-0109-0136, pp. 0109-0136, 0109-0139.

subordinated civilian combatants. The Accused, however, failed to do any of the above.

487. Moreover, his presence on the ground made him directly aware of the crimes that were being perpetrated by his troops. Yet, no one was punished after, for instance, the Songolo operation.¹³³³ Likewise, despite the UPC/FPLC's General Staff – including NTAGANDA – being aware of the massacre and destruction carried out by SALUMU's troops in Kobu, SALUMU was not punished.¹³³⁴ To the contrary, by his own actions and omissions, he actively encouraged crimes being committed against the Lendu and non-Hema population.

488. NTAGANDA testified before the Judges that he took several measures in response to behaviour of commanders or troops, which he characterised as 'disciplinary'. For instance, he spoke about commander KAZUNGU who had *"done some foolish things in Mongbwalu"*, whereby a Lendu trader was killed and the troop who killed the trader was executed. He stated that *"Kazungu subsequently did something else while drunk and he was therefore arrested."*¹³³⁵ However, commander KAZUNGU was not punished; rather, he was sent to Aru and 'converted' into a 'good leader'. NTAGANDA stated that KAZUNGU *"subsequently became a very good soldier and later became a battalion commander."*¹³³⁶

489. While NTAGANDA asserted that, in the context of this reported incident, he recalled the necessity of disciplinary measures within his armed group by stating: *"We are the ones in charge of providing [the soldiers] with discipline [...] because we have become the parents of our troops. So I am going to use disciplinary measures to convert this person into a good leader [...]"*.¹³³⁷ However, the record is devoid of any disciplinary measure that was *actually* imposed in this instance. A change of location and giving an

¹³³³ P-0190, T-96-CONF-ENG CT, 6 June 2016, p. 91.

¹³³⁴ P-0016, DRC-OTP-0126-0422-R01, paras. 155-157, 168. See also *infra*, para. 493.

¹³³⁵ Bosco NTAGANDA, T-218-Red-ENG-WT, 4 July 2017, p. 39.

¹³³⁶ Bosco NTAGANDA, T-218-Red-ENG-WT, 4 July 2017, p. 39.

¹³³⁷ DRC-OTP-2102-3855 at p. 2102-4012; Bosco NTAGANDA, T-218-Red-ENG-WT, 4 July 2017, p. 39.

opportunity to rise in the ranks does certainly not correspond to an adequate disciplinary measure. To the contrary, it constitutes public approval of such conduct.

490. NTAGANDA further testified that there were many people who had previously been in the APC who joined the ranks of the UPC.¹³³⁸ He stated that it did not matter that the APC was an army that committed the worst crimes; because the UPC gave them – these ex-APC soldiers – the ‘new ideology’ and they understood that ideology and therefore they were carrying out the task without problem.¹³³⁹

491. The statement that the soldiers, after being taught the ‘new ideology’ adhered to proper and lawful rules of engagement is just as incredulous as NTAGANDA’s claim that soldiers were punished for infractions. To the contrary, it underlines the Accused’s role in promoting and tolerating criminal behaviour within the ranks. Many of his former fellow members of the APC or Chui Mobile Force were appointed to leading roles in the UPC/FPLC.¹³⁴⁰ Moreover, it was NTAGANDA himself who founded the APC¹³⁴¹ and influenced that group’s ideology in the first place.¹³⁴²

492. When NTAGANDA was not physically present on the ground, he received reports of crimes being committed. It was the bureau of the G-2 that would forward such reports informed him and KISEMBO of complaints received from civilians about theft, rape, extortion or looting committed by UPC soldiers.¹³⁴³ Yet, NTAGANDA ignored such reports and instead personally came to thank the troops

¹³³⁸ Bosco NTAGANDA, T-216-ENG-CT-WT, 30 June 2017, pp. 15-16.

¹³³⁹ Bosco NTAGANDA, T-216-ENG-CT-WT, 30 June 2017, p. 16.

¹³⁴⁰ See *supra*, para. 115.

¹³⁴¹ P-0901, T-27-CONF-ENG-CT, 17 September 2015, p. 20-25 and T-30-CONF-ENG-CT, 22 September 2015, p. 17; Bosco NTAGANDA, T-213-Red-ENG-WT, 27 June 2017, pp. 19, 28, 33. See also T-211-CONF-ENG-ET, 15 June 2017, pp. 68-69.

¹³⁴² The Accused testified that he was not only the founder but also the head of the APC prior to co-founding the Chui Mobile Force. See Bosco NTAGANDA, T-212-CONF-ENG-ET, 16 June 2017, pp. 24, 38-39.

¹³⁴³ [REDACTED]

after the attacks on, for instance, Mongbwalu, Sayo, and Nzebi,¹³⁴⁴ thereby endorsing their behaviour and crimes committed in those places.

493. Moreover, NTAGANDA openly expressed his praise for commanders he knew to be involved in the commission of crimes. [REDACTED].

494. LUBANGA had summoned [REDACTED] to hear about this incident as MONUC had contacted and informed LUBANGA about the Kobu killings.¹³⁴⁵ NTAGANDA already knew about the event.¹³⁴⁶ NTAGANDA quite often emphasised how SALUMU was a fine gentleman.¹³⁴⁷ Even on this occasion, NTAGANDA again stated, [REDACTED], that SALUMU “*was a real man*”, that he was “*a brave, a fine person*” which, to P-0055’s understanding, signified that NTAGANDA approved of SALUMU’s conduct during the Kobu ‘operation’.¹³⁴⁸ [REDACTED]¹³⁴⁹

495. These weren’t the only reports coming in from MONUC to whom members of the local population went in order to report crimes. Such reports directly implicated other UPC commanders, such as commander SAIDI who was reported to have killed a man because “*he wanted [his] woman*”.¹³⁵⁰ Yet, no action was taken on any reports of rape or murder committed in the ranks of the UPC forces.

496. The Chamber has also heard the Accused speak about his purported ‘punishment’ of commander MANU in Mongbwalu. NTAGANDA stated that he scolded and ‘punished’ commander MANU for displaying “*APC conduct*”, namely – according to the Accused – using heavy weapons in a manner resulting in injury to the troops and for having used a vehicle to reach Mongbwalu, when he – the

¹³⁴⁴ P-0768, T-33-CONF-ENG CT, 19 October 2015, pp. 52-53.

¹³⁴⁵ [REDACTED]

¹³⁴⁶ P-0055, T-71-CONF-ENG-CT, 24 February 2016, p. 52.

¹³⁴⁷ P-0055, T-71-CONF-ENG-CT, 24 February 2016, pp. 52-53.

¹³⁴⁸ P-0055, T-71-CONF-ENG-CT, 24 February 2016, p. 57 and T-74-CONF-ENG-CT, 29 February 2016, p. 70.

¹³⁴⁹ [REDACTED]

¹³⁵⁰ P-0012, T-164-CONF-ENG-ET, 24 November 2016, pp. 35-36.

Accused – as superior in command, had to reach Mongbwalu on foot.¹³⁵¹ The Accused's 'punishment' was the removal of MANU's vehicle.¹³⁵² This example clearly illustrates the real reason of the so-called punishment, namely that the Accused did not tolerate anyone to undermine his authority and superior position.

497. Furthermore, the Accused claimed that he allegedly punished commander MANU and told MANU in front of all officers that he was "*moved aside until this is finished*", because he "*had committed an act that was not good*".¹³⁵³ Being 'moved aside' does not constitute any kind of genuine punishment, nor does an 'act that was not good' mean anything in terms of publicly and transparently punishing subordinates for crimes they have committed to uphold discipline and adherence to the laws and customs of war.

498. Furthermore, and directly contradictory to the Accused's claims that he punished commander MANU, the Accused did not prohibit or prevent commander MANU from being present when journalists came to film the successful takeover of Mongbwalu at Mongbwalu airport or the commanders' sighting of the gold mines.¹³⁵⁴

499. Upon cross-examination, the Accused tried to explain this by stating that there were different kinds of punishment and "*as a commander who served for a long time, it depends. It depends on the offence committed and the person who committed it*".¹³⁵⁵ He also claimed that commander MANU, whom he "*gave [...] a warning in front of the commanders [...] did not have any mission or assignment, no men to command*".¹³⁵⁶ Yet, commander MANU was promoted and put in charge of the North-East sector¹³⁵⁷ shortly after the alleged 'punishment' and it was NTAGANDA himself who

¹³⁵¹ Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, p. 57.

¹³⁵² Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, p. 57.

¹³⁵³ Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, p. 69.

¹³⁵⁴ Bosco NTAGANDA, T-235-Red-ENG-CT-WT, 4 September 2017, pp. 46-47; DRC-OTP-2058-0251, 02:39-03:20.

¹³⁵⁵ Bosco NTAGANDA, T-235-Red-ENG-CT-WT, 4 September 2017, p. 47.

¹³⁵⁶ Bosco NTAGANDA, T-235-Red-ENG-CT-WT, 4 September 2017, p. 47.

¹³⁵⁷ P-0016, DRC-OTP-0126-0422-R01, para. 76.

informed all commanders of this promotion on 21 January 2003.¹³⁵⁸ The Accused's explanations about the purported punishment and its adequacy are entirely implausible and should not be believed.

500. Likewise, the Accused promoted KASANGAKI to the position of deputy to the G-2,¹³⁵⁹ despite his involvement in the crimes committed during the Komanda, Songolo, Sayo, and Kilo operations.¹³⁶⁰

501. The Accused spoke of other incidents where commanders were allegedly 'detained' for being "*at fault*", such as commanders LINGANGA and ABELANGA in January 2003.¹³⁶¹ Yet, again, there were no real consequences or effective disciplinary measures that were employed to punish anyone for the commission of crimes, as evidenced, for instance, by commander LINGANGA again participating in military operations as early as February 2003, in which context he committed the rapes of P-0019.¹³⁶² Later in 2003, LINGANGA was even promoted to the rank of 2IC by NTAGANDA.¹³⁶³

502. Possibly one of the most notorious commanders was commander ABELANGA who was subordinate to SALUMU, who himself committed and ordered the commission of countless crimes against the civilian population, as recounted above.¹³⁶⁴ The Accused spoke about commander SALUMU reporting to him an incident of ABELANGA sending his troops to fetch him beer from the civilian population.¹³⁶⁵ Purportedly, NTAGANDA immediately called ABELANGA on the *Motorola*; he informed him that he was to be put in detention and that he should pass

¹³⁵⁸ DRC-OTP-2102-3854, at page 2012-4019 (second message).

¹³⁵⁹ [REDACTED]

¹³⁶⁰ See *supra*, paras. 130, 134, 220, and 239.

¹³⁶¹ Bosco NTAGANDA, T-213-Red-ENG-WT, 27 June 2017, pp. 85-86.

¹³⁶² See *supra*, paras. 356-356.

¹³⁶³ Bosco NTAGANDA, T-222-CONF-ENG-CT-WT, 11 July 2017, p. 23.

¹³⁶⁴ See *surpa*, Kobu Takeover and Kobu – Hotel Paradiso.

¹³⁶⁵ Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, p. 58.

his communication device to his deputy.¹³⁶⁶ Not only is it unclear whether this disciplinary measure was indeed enforced, but more importantly, this example illustrates how NTAGANDA sought to downplay ABELANGA's criminal conduct before the Judges.

503. The Accused was, contrary to his own assertions, fully aware of the grave crimes ABELANGA committed. Instead of taking action, however, he condoned the commission of these crimes by taking no action to punish or discipline the latter. Instead, he, for instance, stood by and laughed at the sight of Commander ABELANGA raping a detained, male [REDACTED],¹³⁶⁷ merely commenting the act by saying to ABELANGA: *"Things aren't going well for you with those practices of yours"*.¹³⁶⁸

504. In his own testimony NTAGANDA merely stated that ABELANGA drank a lot of alcohol and when he was drunk he would *"do things that were not good"* and he would *"fetch alcohol from civilian homes"* and he had to be detained quite frequently.¹³⁶⁹ Yet, NTAGANDA neither dismissed nor demoted him, nor did ABELANGA get prosecuted for the killings and rapes he committed.

505. It is submitted that NTAGANDA's reference to *"things that were not good"* in actual fact refers to rapes and executions rather than the example he gave, namely *"fetching alcohol from civilian homes"*. It can hardly be said that NTAGANDA was unaware of ABELANGA's misdemeanour, given that he had known him for a long period of time, since ABELANGA had previously even been his chief of escorts.¹³⁷⁰

¹³⁶⁶ Bosco NTAGANDA, T-217-Red-ENG-WT, 3 July 2017, p. 58.

¹³⁶⁷ [REDACTED]

¹³⁶⁸ [REDACTED]

¹³⁶⁹ Bosco NTAGANDA, T-214-CONF-ENG-ET, 28 June 2017, p. 10.

¹³⁷⁰ See D-251, T-260-ENG-CT, 7 December 2017, p. 69.

506. In reality, NTAGANDA was indifferent to what ABELANGA was doing and evidently failed to adequately punish the commander or otherwise take reasonable steps to prevent him from committing such acts.

507. This failure to act also resulted in it being common knowledge among the troops that Commander ABELANGA raped and killed. In fact, [REDACTED] was told by a fellow soldier that “[e]very time ABELANGA comes he rapes people. And if you say anything, they’ll kill you.”¹³⁷¹ Prior to raping the prisoner, ABELANGA asked him whether he had heard the gunshot the previous night; the commander said “*It was me. I shot that gun.*”¹³⁷² He then threw him against the wall and gave him to understand that he better obey.¹³⁷³

508. NTAGANDA’s behaviour in the face of crimes being committed resulted in this behaviour becoming standard practice amongst his troops. The Chamber has heard of the brutal rapes of civilian women at the hands of the Accused’s troops, and the fact that other soldiers would stand by laughing at the sight of it.¹³⁷⁴ The Chamber further heard that sexual crimes were known to be common place in at least Kilo, where the troops even acquired drugs to distribute amongst the soldiers who had contracted venereal diseases.¹³⁷⁵

509. It is therefore submitted that the Accused bears criminal responsibility as a commander for the crimes committed by troops and civilians¹³⁷⁶ subordinated to him and acting under his overall command. As set out *supra* in the review of the evidence on the record in section VII, crimes within the jurisdiction of the Court were committed. The evidence further establishes that the Accused was a military commander and that he was effectively acting as such.¹³⁷⁷

¹³⁷¹ [REDACTED]

¹³⁷² [REDACTED]

¹³⁷³ [REDACTED]

¹³⁷⁴ See *supra*, para. 344.

¹³⁷⁵ See *supra*, para. 241.

¹³⁷⁶ See *supra*, para. 168.

¹³⁷⁷ See *supra*, The Accused’s Role and Authority.

510. The Accused clearly failed in his obligation to prevent the crimes or punish the perpetrators, and must therefore bear criminal responsibility for his omission,¹³⁷⁸ because he had the material powers to prevent or punish the acts.¹³⁷⁹

¹³⁷⁸ *Cf. Hadžihasanović Trial Judgment*, para. 2075.

¹³⁷⁹ *Cf. supra*, note 63.

X. CONCLUSION

511. The victims aver that the evidence demonstrates beyond reasonable doubt that the Accused incurred individual criminal responsibility under, at least,¹³⁸⁰ Articles 25(3)(a) – first alternative – and 25(3)(b) – first alternative – of the Statute. Alternatively, the Accused should be found guilty pursuant to Article 28(a) of the Statute.

512. The victims, moreover, request that the large-scale victimisation resulting from the crimes committed be acknowledged in the Chamber's judgment.

RESPECTFULLY SUBMITTED



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 7th Day of November 2018

At The Hague, The Netherlands

¹³⁸⁰ Based on the Legal Representative's selective approach in the review of the relevant evidence.
See also *supra*, para. 42.