

Public Redacted Version

Annex 1 to filing ICC-01/04-02/06-2298

PART I - INTRODUCTION

1. Bosco NTAGANDA, *alias* “The Terminator”, depicted by Human Rights organizations as a brutal commander, surrendered voluntarily to the ICC in March 2013, unaware that a second warrant of arrest had been issued against him¹ in addition to allegations that he was involved with the FPLC in recruiting and using *kadogos* aged below 15.
2. Mr NTAGANDA joined the military at the age of 16, as a member of the RPA. During his close to twenty-year military career, Mr NTAGANDA: participated in the restoration of good governance in Rwanda; was involved in putting an end to the horrendous genocide in Rwanda; participated in overthrowing the dictatorial MOBUTU regime as a member of the AFDL; joined the APC/RCD-K/ML whose goal was to replace the KABILA regime, which he deserted when he realized that the RCD-K/ML moved away from its sound principles, by taking side in the raging ethnic conflict in Ituri; participated in the creation of the FPLC, as a law abiding and disciplined military force, armed branch of the UPC-RP, whose goal was reconciliation amongst all ethnic groups and the protection of civilians without discrimination; joined the CNDP in its opposition to the second KABILA regime, which fuelled the ethnic conflict and was promoted General by KABILA in the FARDC.
3. Mr NTAGANDA whose family was amongst the victims of the Rwanda genocide, candidly claimed being a *révolutionnaire* but not a criminal.
4. For more than five years, Mr NTAGANDA has been involved in the fight of his life, against all odds, to establish who he really is and demonstrate that he is not the brutal commander depicted on the internet but rather a trained soldier, instructor and leader, who believes that the *raison d'être* of the military is to protect both the physical security and the rights of all Congolese without distinction.
5. Mr NTAGANDA believed in the UPC-RP's goals and ideology, which corresponded in every respect to his own objectives as a *révolutionnaire* and the military ethos which has been guiding him since becoming a soldier.

¹ ICC-01/04-02/06-44-Conf-Exp,p.6.

6. From the moment he was made aware of the arrest warrant issued against LUBANGA, UPC-RP President and himself, Mr NTAGANDA has been claiming his innocence.
7. Despite the very important position he held in the FPLC as *Chef-d'État-major-adjoint – opérations et organisation*, Mr NTAGANDA is well aware that he was a pawn in the horrible ethnic conflict in the DRC, fuelled by international politics and power hungry politicians to the detriment of the civilian population.
8. The case for the Defence is that the Prosecution picked the wrong organisation and the wrong accused.
9. The UPC-RP, initially created as a minor political movement, which became an organisation and *de facto* government, neither had a policy to attack civilians nor a plan to oust non-Hema civilians, for the purpose of taking political control of Ituri.
10. As for the FPLC, whose origin goes back to a group of APC/RCD-K/ML mutineers loyal to Lubanga, aiming to organise and to protect all members of the civilian population, from all ethnic groups without distinction, from the RCD-K/ML's evil plans to eradicate part of Ituri's population.
11. Neither the FPLC operation in Mongbwalu nor the operation on the Mongbwalu-Kilo-Nyengarai-Bunia axis, constituted, individually or collectively, widespread or systematic attack directed against the civilian population of Ituri.
12. Despite LUBANGA's conviction Mr NTAGANDA continues to claim that the FPLC did not have a policy to recruit or use *kadogos* under the age of 15 in the conduct of its operations.
13. From the beginning of Mr NTAGANDA's trial, the Prosecution and the Defence have adopted and presented diametrically opposed theories. This remains the case as the Parties are submitting their Final Closing Briefs.
14. What is new, however, is the evidence presented by the Prosecution and the Defence in support of their theories.

15. This Brief reviews the evidence adduced shedding light on the unreliable testimony offered by Prosecution witnesses, in particular insider witnesses, which underscores the deficiencies and the weakness of the Prosecution's case.
16. Mr NTAGANDA opted to take the stand in his own defence. He testified for 127 hours over 33 days from 14 June to 13 September 2017.
17. Mr NTAGANDA was cross-examined during no less than 63 hours divided in two periods from 14 June to 21 July and from 28 August to 13 September 2017. Not only did the Prosecution benefit from years of investigation to prepare for this ultimate moment, it had a unique opportunity to adjust, enhance and tailor its cross-examination during a five-week period after the completion of Mr NTAGANDA's examination-in-chief.
18. Mr NTAGANDA responded to each and every question put to him by his Counsel, the Prosecution, one LRV and the Judges, in a phlegmatic manner, providing coherent and detailed answers, drawing at all times on his personal experience, observations and actions.
19. Mr NTAGANDA aimed and succeeded in providing the Chamber with a complete overview of his career from the moment he joined the military in 1991² until he was appointed *Chef-d'État-major-général par interim* in December 2003. Mr NTAGANDA voluntarily and openly provided evidence on every event raised in the questions put to him. He did not hesitate to address sensitive potentially incriminating events such as when he fired a weapon on a man who wanted to assassinate him in 2000.
20. In sum, Mr NTAGANDA transparently provided the Chamber with all necessary information to assess his conduct during the time period covered by the charges.
21. Comparing the evidence adduced by the Prosecution with the testimony of Mr NTAGANDA and the evidence which corroborates his testimony, the case for the Defence as presented herein is that Mr NTAGANDA must be acquitted on all counts.

² D-0300:T-209,47:7-9.

PART II - CHARGES AND PROOF OF CHARGES

A. The scope of the charges

22. The judgment on the charges, pursuant to Article 74, “shall not exceed the facts and circumstances described in the charges and any amendments to the charges.” The charges are contained in the UDCC which must include “the time and place of the alleged crimes, which provides a sufficient legal and factual basis to bring the person or persons to trial.”³
23. The charges encompass the allegation that there was: (i) a widespread and systematic attack against a civilian population, fulfilling the “chapeau” requirement of Article 7; (ii) “individual crimes” committed during a “First Attack” between 20 November and 6 December 2003, which include acts of murder and rape; (iii) “individual crimes” committed during a “Second Attack” between 12 and 17 February 2003; and (iv) recruitment and use of child soldiers. A conviction can be entered for “individual crimes” only to the extent specified in the UDCC.⁴

B. Proof

24. A conviction on a criminal charge, with all the grave consequences that entails, requires proof beyond a reasonable doubt.⁵ Proof to that standard is required of each fact corresponding to the elements of the crime and mode of liability for each charge.⁶ Where circumstantial evidence is relied upon, the Judge must be convinced not merely that the facts established the accused’s guilt are not only the most reasonable inference, but that it is the only reasonable inference.⁷ The inference must correspond squarely with the requirements of the crime.
25. The “requirement”⁸ of putting one’s case is a highly context-specific principle⁹ which, incidentally, finds no place in this Court’s statutory instruments. Whether the principle

³ RoC, Reg. 52(b).

⁴ Art. 74(2), [Bemba AJ](#), para. 115.

⁵ Art. 66(3).

⁶ [Lubanga AJ](#), para. 22; [Bemba et al. AJ](#), para. 868; [Bemba AJ](#), para. 42.

⁷ [Bemba et al. AJ](#), para. 868.

⁸ PCB, para. 30.

⁹ See e.g. [Stanisić & Župljanin](#), para. 18 (adopting a “flexible approach, including in light of the “complexity or scope of the indictment”).

applies directly to the Prosecution's cross-examination¹⁰ of NTAGANDA is irrelevant: what is relevant is how the Trial Chamber should assess key aspects of NTAGANDA's testimony movements and knowledge when it was not challenged by the Prosecution, especially in respect of issues on which the Prosecution adduced little or no contradictory evidence or otherwise give clear notice of its case.¹¹ This concerns, in particular, NTAGANDA's testimony about his whereabouts during the alleged Second Attack.

26. Corroboration arises when facts of sufficient similarity are described by sufficiently independent sources to allow the trier of fact to evaluate any similarities or contradictions as an indicator of reliability. Descriptions of different facts,¹² or of the same facts but from "essentially the same source,"¹³ provide no, or lesser, corroboration.
27. Reports,¹⁴ notes,¹⁵ and "databases"¹⁶ from various UN and NGO sources have been admitted as evidence. The sources of the salient information in those reports are, in almost all cases, not provided. The information is, accordingly, not only hearsay, but also anonymous hearsay.
28. The Chamber has no reliable way of knowing how this information was elicited or who provided which information. The circumstances are even less transparent than judicial *procès-verbaux d'audition* whose unreliability even for the limited purpose of establishing general facts was recently highlighted in *Bemba*.¹⁷ Records underlying these reports were lost,¹⁸ destroyed,¹⁹ "cleaned,"²⁰ not provided,²¹ not requested by the

¹⁰ PCB, para. 31.

¹¹ Cf. *Popovic TJ*, para. 21.

¹² See *Bagosora TJ*, para. 1978 (rejecting claim of corroboration, *inter alia*, because the testimony in question referred to "separate incidents at different times").

¹³ *Bemba AJ*, Separate Opinion, para. 10.

¹⁴ [DRC-OTP-0074-0797](#) ("Ituri Covered in Blood"); [DRC-OTP-0074-0628](#) ("Curse of Gold"); [DRC-OTP-2003-0497](#) ("Seeking Justice"); [DRC-OTP-0152-0286](#) (SIT Report); [DRC-OTP-0074-0422](#) (Special Report in Ituri, 2004).

¹⁵ [DRC-OTP-0208-0284](#) ([REDACTED]); [DRC-OTP-0138-0106](#).

¹⁶ [DRC-OTP-0195-2366](#) ([REDACTED]).

¹⁷ *Bemba AJ*, Separate Opinion, para. 9 (relying on these sources to establish the "scale and magnitude of the attack").

¹⁸ **P-0046**: T-100, 72:18-21, T-101, 73:19-25; T-101:13:11-19; **P-0317**: T-192, 64:7.

¹⁹ **P-0317**: T-192, 63:2-64:25 ("I decided to destroy the questionnaires for security reasons").

²⁰ **P-0046**: P-0046: T-101, 98:16-22; T-103, 12:22-13:7.

²¹ **P-0315**: T-107, 98:8-15, 96:2-6, 97:8-9; T-108, 83:2-83:5; **P-0046**: T-103, 36:13-23, 37:6-12; **P-0317**: T-192, 56:2-4, T-193, 12:7-15.

Prosecution²² or disclosed very late,²³ including after relevant witnesses had already testified.²⁴ The Lipri video illustrates the unsatisfactory²⁵ circumstances in which information included in the UN reports and databases was collected, and of the unreliability of the information itself.²⁶ P-0317, the principal author of the UN's human rights reports, admitted that she prepared her reports on the basis of consultations with every major group in Ituri other than the UPC.²⁷ The scale of possible error in such reports is reflected in HRW's claim in its 2003 report, subsequently repudiated, that the MLC had been involved in the Mongbwalu operation.²⁸

29. The anonymity element reduces reliability still further.²⁹ This anonymity does not arise because the source's name was forgotten or never known,³⁰ but because it was withheld by the UN and HRW intentionally. Reliance on such information, with information of such critical and exculpatory importance as source withheld, by parties working closely with the Prosecution, damages the integrity of these proceedings. Just as this Court would never allow the admission of an anonymous Rule 68(2)(b) statement; just as it would be a violation of fundamental rights to rely on information provided by a person who both absent and anonymous;³¹ so too should this court place no weight on anonymous statements incorporated and conveyed into evidence as reports.
30. Reliability must also be assessed in relation to the specificity of the fact to be proven. Self-reports of age, observational assessments of age, and observation of specific crimes are all specific and incriminating facts for which anonymous hearsay evidence as presented in this case is inappropriate.

²² P-0315:T-108,83:6-12.

²³ P-0046:T-100,2:22-4:8; P-0901:T-27,6:1-4; P-0055:T-41,6:3-9:9; P-0190:T-97,65:25-66:19; P-0800:T-68,3:17-7:12; P-0963:T-78,7:20-8:5; P-0315:T-108,6:10-14.

²⁴ P-0317:T-193,48:3-20(referring to [DRC-OTP-0195-2366](#)).

²⁵ P-0317:T-193,17:20-22.

²⁶ [DRC-OTP-1033-0221](#),34:03-45:22.

²⁷ P-0317:T-193,33:1-11.

²⁸ P-0317:[DRC-OTP-2058-0990](#),para.124-125;T-108,15:1-21:13.

²⁹ T-107,58:10-11("PRESIDING JUDGE FREMR: [...]we will exercise really high caution in relation to this document because in fact its mainly based on anonymous sources.")

³⁰ [Ndindabahizi AJ](#), para.115;[Bagosora TJ](#), para.890;[Gotovina TJ](#), para.241;[Haradinaj TJ](#),para.317(placing no reliance on hearsay, *inter alia*, because source not made clear during testimony).

³¹ ECHR, *Ellis & Simms v. UK*,para.74.

31. The testimonial evidence brought into the controlled atmosphere of the courtroom cannot be evaluated without regard to the atmosphere of propaganda, collusion, improper influence, ethnic rivalry, vulnerability and poverty that continues to this day in Ituri. International witnesses acknowledged the danger of political and military leaders feeding them false information to vilify their enemies or rivals,³² (which did not stop them, however, from relying on it to draw incriminating conclusions against NTAGANDA).³³ Robert GARRETON provided a chilling example of an investigation he conducted in 2001 in which the Lendu and Hema communities blamed one other vehemently and with apparent sincerity for exactly the same events, even providing the same photographs of purported victims of the other side.³⁴ The splintering of the UPC into various factions³⁵ provides yet further cause to witnesses to blame one another for conduct.
32. Many of the witnesses, as will be discussed in more detail below, were closely associated by kinship or friendship; others were brought together by community leaders and P-0154. Several witnesses demonstrated that they were significantly motivated by the expectation of money or benefits from an international institution were matters of substantial concern to them. These factors and indications of improper influence, as inevitable as they may be in an international investigation in a post-conflict setting, require that testimonial evidence be treated with particular care.

PART III - THE UPC-RP AND/OR FPLC NEITHER HAD A POLICY TO ATTACK CIVILIANS NOR DEvised A COMMON PLAN TO EXPEL NON-HEMA - THERE WAS NO WIDESPREAD OR SYSTEMATIC ATTACK DIRECTED AT THE CIVILIAN POPULATION

33. The Prosecution's case rests on the premise that the UPC-RP and FPLC are responsible for a widespread or systematic attack direct against the non-Hema civilian population of Ituri, pursuant to or in furtherance of an organisational policy to commit such attack. The Prosecution failed to prove its case.

³² P-0317:T-193,19:9-12;P-0315:T-108,33:7-11,78:12-20("It's a mere survival strategy").

³³ P-0315:T-108,31:8-32:9,34:5-9,52:20-53:6.

³⁴ [DRC-OTP-2084-0408](#), paras.47-48.

³⁵ [REDACTED] ; P-0901:T-32,21:5-11; D-0300:T-221,42:22-43:7;T-218,60:5-7; D-0013[REDACTED]; [REDACTED].

34. The UPC-RP and the FPLC were indeed organisations but they never adopted, individually or together, a policy to attack non-Hema civilians, nor actively promoted or encouraged such an attack at any time.
35. They also did not launch any widespread or systematic attack directed at the non-Hema civilian population of Ituri pursuant to Article 7(1).
36. In addition, there was no common plan involving UPC-RP and/or FPLC members to drive out members of the non-Hema population (Lendu and *non-originaires*), for the purpose of taking military and political control of Ituri.

CHAPTER I – THE ABSENCE OF AN ORGANISATIONAL POLICY TO ATTACK NON-HEMA CIVILIANS

37. From the creation of the UPC as political movement by LUBANGA and others, until it became an organisation pursuant to Article 7(1), the UPC-RP as an organisation neither adopted a policy to attack non Hema civilians nor encouraged such an attack at any time.
38. From the moment forces commanded by KISEMBO assembled for self-defence purposes in Mandro in April 2002, through the period of their training and up until their first involvement in military operations in August 2002, the FPLC, as an organisation pursuant to Article 7(1), neither adopted a policy to attack non Hema civilians nor encouraged such an attack at any time.
39. Through their intentions and actions, the UPC-RP and the FPLC considered individually or together neither adopted a policy to attack non Hema civilians nor encouraged such an attack at any time.

Section I – The UPC-RP had no organisational policy to attack civilians

A. Origin and objectives of the UPC-RP

40. From 1999, an ethnic conflict erupted in Ituri from which all civilians suffered and in which Hema were particularly targeted.
41. In this context, the RCD, a political movement created in Goma in response to KABILA's alarming declaration that all Tutsis and those who look like them should be

eliminated,³⁶ organized a rebellion with the aim of changing the political regime in the DRC³⁷ for the benefit of all members of the population. The RCD soon split giving birth to the RCD Goma supported by Rwanda and the RCD-K supported by Uganda, which began fighting each other.

42. Moving from Kisangani to Bunia,³⁸ where it initially established a *de facto* government based on sound objectives including the protection of all civilians without discrimination, the RCD-KML was plagued by internal power-struggles involving MBUSA, TIBASIMA and WAMBA.³⁹ As a result, the RCD-KML moved away from its ideology and objectives, siding with Lendu combatants in the ongoing ethnic conflict, giving rise to mistreatment of the population and regular massacres being committed against several ethnic groups, including the Hema.⁴⁰
43. All of this happened before the eyes of the UPDF present in Bunia which at times intervened to protect the population, other times siding with the RCD-KML *de facto* government and its discriminatory policy.
44. In this context, LUBANGA and others created the UPC, a political movement whose objective was to restore good governance; promote reconciliation; establish peace; protect all civilians without discrimination. These objectives did not change even when the UPC-RP became *de facto* government in 2002.
45. In parallel, RCD-KML's military branch the APC started to attack civilians and discriminate against Hema and *non-originaire* officers such as Mr NTAGANDA,⁴¹

³⁶ D-0300:T-211,31:12-20;50:18-20.

³⁷ D-0300:T-211,33:12-15.

³⁸ D-0300:T-211,47:17-48:18.

³⁹ P-0014:DRC-OTP-2054-0429,0451:18-0452:6.

⁴⁰ [DRC-OTP-0197-0238](#); [DRC-OTP-0214-0065](#); [DRC-OTP-0214-0091](#); [DRC-OTP-0037-0512](#); [DRC-OTP-0037-0521](#); [DRC-OTP-0033-0038](#); [DRC-OTP-0033-0041](#); [DRC-OTP-0033-0044](#); [DRC-OTP-0033-0058](#); [DRC-OTP-0126-0030](#); [DRC-OTP-0037-0536](#); [DRC-OTP-0037-0542](#); [DRC-OTP-0033-0044](#), p.0049 ("Parmi les victimes, il y a eu beaucoup d'alur suivis des autres tribus telles que Hema, lugbara, Logo, etc."); [DRC-OTP-0214-0116](#), p.0117 ("In August 2001 : the war of the Lendu takes also as target other tribes notably the Bira with the attack on the Andisoma, Mobala, and since December 2001, the Alur [...]"), p.0122 ("The war has taken as target the peoples of the Nilotic origin, namely the Hema, Mambisa, Ndo-Okebo and Alur"); [DRC-OTP-0037-0489](#); [DRC-OTP-0113-0135](#) ("La guerre qui, au départ, concernait les deux ethnies Hema-Lendu prendra une dimension jusque-là jamais vécue dans l'histoire de peuple iturien, avec des affrontements entre Lendu-Alur, Hema-Bira, Bira-Lendu, Lendu-Nyali, Ngiti-Bira, Lugbara-Lugbara,... Mais malheureusement jusqu'aujourd'hui la malhonneteté politique des dirigeants de ce mouvement ne fait parler que la guerre inter-ethnique Hema-Lendu").

⁴¹ D-0300:T-213,17:4-8 ("However, this procedure was not subsequently applied by the APC because they went ahead to attack civilian populations. The Lendu combatants burnt down their houses and even killed some

contrary to the ideology previously in force in Kisangani.⁴² APC troops also supported Lendu combatants during the attacks.⁴³ Officers disagreeing with this new policy, including Mr NTAGANDA, KISEMBO, BAGONZA mutinied, creating the Chui Mobile Force in order to defend all civilians and Hema officers.⁴⁴ They went into the bush to protect themselves, where they received the support of the population.⁴⁵ Their objective was to pressure WAMBA to put an end to his discriminatory policy,⁴⁶ and be in a position to remain in the APC.⁴⁷

46. With the assistance of the “parents of the mutineers”, which included LUBANGA, the Chui met with a Ugandan delegation in Bunia who decided to train them in order to have an effective force ready to defend the population upon their departure from Ituri.⁴⁸
47. The commanders were sent for training to Jinja⁴⁹ whereas the troops were sent to Tchankwanzi.⁵⁰ Troops in Tchankwanzi may have sung songs related to Mr NTAGANDA based on their association as part of Chui.⁵¹ No evidence was heard that “the co-perpetrators used a house on Gaba Road, in Kampala, as a safe house where they were training”, or that any UPC statutes was discussed there.⁵² The [REDACTED] put to Mr NTAGANDA during his cross-examination is not evidence.
48. Mr NTAGANDA was not aware at the time that recruits other than the Chui contingent,⁵³ were sent to Tchankwanzi for training from Bunia.⁵⁴ Accordingly, and

people. [...] that is why there was a separation, because were not willing to follow that ideology”),T-212,9:5-10;2,11:1-19,18:7-15,21:2-13,22:1-23;2,23:3-13,24:18-25,32:2-9,34:22-24.

⁴² D-0300:T-212,23:14-21.

⁴³ D-0300:T-212,23:9-13.

⁴⁴ D-0300:T-212,36:14-37:17,T-225,34:3-12(“In going to Sota it wasn't my intention to protect the Hema civilian population; however, if those people or any people, irrespective of their ethnic origin, were attacked, then I would have defended them”).

⁴⁵ D-0300:T-212,41:1-7,T-224,67:2-3,T-225,22:1-25:7, T-212,46:2-8.

⁴⁶ D-0300:T-212,40:18-25,T-241,9:3-10(“When we left and went into the bush, it was because of his bad policies. He was attacking us and discriminated against us. I learned from a commander -- we agreed that we were not in agreement with this discriminatory policy. But our intent was to show that we were being targeted and we were not in agreement with that discrimination. But as for driving out Wamba Dia Wamba, we were a very small group and we did not have enough members to drive him out. We couldn't have done that”).

⁴⁷ D-0300:T-230,71:15-18(“[w]hen we were in the Chui mobile forces, we thought we were going to be entered into APC, RCD-K/ML, but we didn't have a plan with regard to the creation of FPLC. We didn't have this kind of idea”).

⁴⁸ D-0300:T-231,64:11-13.

⁴⁹ D-0300:T-212,85:20-86:4.

⁵⁰ D-0300:T-212,85:20-24.

⁵¹ PCB,para.850.

⁵² PCB,para.851.

⁵³ D-0300:T-212,84:10-13;T-231,50:18-25.

contrary to the Prosecution's allegations,⁵⁵ there was no recruitment wave launched by the Chui at that time. A newspaper article published in Beni in June 2003 about demobilisation does not prove that Mr Ntaganda knew about their presence three years earlier.⁵⁶ No witness testified that they saw NTAGANDA other than at the beginning of their training in Tchakwanzi at night,⁵⁷ which implies that NTAGANDA's visit could have coincided with the arrival of only the first recruits, rather than the entire contingent. Mr NTAGANDA himself testified that he did not see anyone there other than those whom he recognised as having previously been with CHUI which is not incompatible with the presence of others whom he may not have noticed.⁵⁸

49. While the initial plan was for the trained Chui to come back to Bunia, most of them were in fact sent to Equateur.⁵⁹
50. A series of events followed which, contributed to escalating the political tension leading to a confrontation in 2002 between APC and FPLC. First, MBUSA overthrew WAMBA. Second, LUBANGA, whose UPC was dormant, decided to commit to politics playing le *Beau risque*: rather than overthrowing the RCD and APC leadership, LUBANGA chose to try to change the policy from the inside as minister of sports and then of Defence in the RCD-KML.⁶⁰
51. Yet, at the beginning of 2002, the APC finally switched sides in favour of the Lendu combattants. [REDACTED] confirmed he was sent with Claude KIZA to NYANGARAI, as trader's vehicles had been stopped by Lendu combatants. The resistance was so intense that they had to retreat back to Mongbwalu and ask for reinforcement.⁶¹ While in Mongbwalu, KIZA received the order to go back to Bunia without the reinforcement being sent, to speak to NYAMWISI over the Iridium.⁶²

⁵⁴ D-0300:T-212,26:8-11,83:22-84:9,84:14-16,84:22-85:7;T-231,28:6-29:23.

⁵⁵ PCB,para.845-847.

⁵⁶ PCB,fn.2655.

⁵⁷ [REDACTED].

⁵⁸ D-0300:T-213,5:1-20.

⁵⁹ [REDACTED].

⁶⁰ [DRC-OTP-0137-0034](#);D-0300:T-213,27:22-25.

⁶¹ [REDACTED].

⁶² [REDACTED].

Subsequently “he was very hard on [REDACTED]. There was no longer any understanding between [Claude KIZA] and some Hema officers.”⁶³

52. This occurred at the same time Hema were chased from Mongbwalu by the Lendu combattants, who instituted a tribal regime in Mongbwalu.⁶⁴
53. Lubanga proposed a new *mise en place* in April 2002 to redress the imbalance of ethnic representation amongst the officer corps in the APC.⁶⁵ The objective was ethnic balance, not discrimination,⁶⁶ and ensuring that former Chui members, such as Mr NTAGANDA, were given appropriate positions within the APC.⁶⁷ Mr NTAGANDA explained that, more broadly, the goal was to restore discipline, stop the army from killing civilians and to enable peace to return in Ituri.⁶⁸ The new structure did not have ethnic grounds.
54. MBUSA refused the *mise en place*⁶⁹ and, more generally, prevented LUBANGA from performing his functions as Defence Minister.⁷⁰ It also became apparent that people from Kivus were taking over the most important political positions in the Province,⁷¹ and decided to arm Lendu combatants to reinforce their military power.⁷²

⁶³ [REDACTED].

⁶⁴ **P-0907**:T-91,28:23-32:6; **P-0887**:T-94,46:7-49:18.

⁶⁵ **D-0300**:T-213,28:3-14,29:8-12,33:6-17,33:18-34:5; **P-0041**:DRC-OTP-2054-5199,p.5278:15-5279:14; **P-0901**:T-31,17:24-18:11.

⁶⁶ PCB,fn.2673; CLAUDE was supposed to remain in the APC, as deputy of KISEMBO in MAMBASA. LOMPONDO was also supposed to remain in the APC, with Mr NTAGANDA as his deputy:**D-0300**:T-213,34:16-22.

⁶⁷ **D-0300**:T-213,27:4-14.

⁶⁸ **D-0300**:T-232,41:7-14.

⁶⁹ [DRC-OTP-0066-0048](#),p.0048-0049(“La première balle sera dirigée contre celui-là même qui l’a ramené en ituri. Ainsi, il barrera littéralement le chemin à son ministre de Défense en torpillant sérieusement la gestion de l’armée. Les prérogatives du Commissaire à la Défense seront méconnues ; une partie de l’armée et quelques officiers seront dressés contre le Com.Déf ; des enjambements des ordres allant même du Président au Commandant compagnie ; des commandants supposés de l’aubédictance du Com.Déf seront si pas exécutés, arrêtés et transférés en prison à Beni ; tantôt c’est la tête du Com.Déf lui-même qui est réclamée”); **D-0300**:T-213,32:10-14.

⁷⁰ [DRC-OTP-0066-0039](#),p.0045(“Mais auparavant et par priorité il fallait écarter avant tout un homme qui lui fait peur et d’une très grande valeur politique. Cet homme, c’est Thomas Lubanga. Les autres ituriens sont gagnés à sa cause par leur maintien aux postes ministériels et présidentiel. Les mises en place publiées par Kisuki consacre l’hégémonie du Kivu sur l’Ituri : tous les postes de commandement, de gestion et de sécurité civile sont confiés aux gens du Kivu ou aux ressortissants des autres provinces, fidèles à leur politique.”); **D-0300**:T-213,36:17-23.

⁷¹ [DRC-OTP-0127-0110](#); [DRC-OTP-0066-0048](#)(“L’affectation des Nande ou des membres du Kivu-Holding dans tous les postes juteux et les services clés au détriment des Ituriens”).

⁷² [DRC-OTP-0066-0048](#),p.0049(“L’armement des forces négatives qui n’épargnent aucune tribu [...] La mixation de l’APC et les combattants lendu pour des opérations de massacre”)

55. On 17 April 2002, in reaction, the Iturian notables, issued a Political Declaration, calling for more Iturians amongst political leadership of Ituri.⁷³ The goal was not to oust *non-originares* from Ituri,⁷⁴ but rather to denounce the RCD-KML's political and administrative management of Ituri as being ethnically biased. This was a legitimate opinion, shared by signatories that included two Biras, one Alur, one Lubara and one Ngiti.⁷⁵ "Affirmative action" does not mean ethnic discrimination.
56. LOMPONDO gave Thomas LUBANGA, and the group who had gathered at his residence and nearby an ultimatum: report to LOMPONDO or the APC would use force against them.⁷⁶ The group refused. The APC attacked LUBANGA's residence on 18 April 2002. CLAUDE, who was responsible for LOMPONDO's forces controlling Bunia and the surroundings,⁷⁷ was killed in the fighting.⁷⁸
57. The UPDF intervened with tanks, ending the fighting. They brokered negotiations in Kasese⁷⁹ between LUBANGA's faction⁸⁰ – which contrary to [REDACTED]'s uncorroborated and contradictory statement⁸¹ was not identified as "FRP" – and representatives of the RCD-K/ML from Beni.⁸²
58. The outcome was that the northeast of the city was assigned to the mutineers, and the southeast to LOMPONDO's APC. The two groups were asked not to attack each other.⁸³ The goal of the meeting was not to oust the RCD out of power, let alone expel non-Hema from Ituri.⁸⁴
59. Even though Bunia was not ethnically divided, as suggested by the Prosecution based on P-0901's testimony,⁸⁵ the security situation did not improve for the population⁸⁶ or

⁷³ [DRC-OTP-0127-0110](#).

⁷⁴ Contra PCB, para. 196, 896, 927.

⁷⁵ [REDACTED].

⁷⁶ D-0300:T-213,37:22-38:2.

⁷⁷ D-0300:T-213,28:17-18.

⁷⁸ D-0300:T-213,38:3-18; [DRC-OTP-0064-0476](#), para. 6; [DRC-OTP-0064-0463](#), para. 3; D-0300:T-213,45:1-46:19; [DRC-REG-0001-0058](#); [DRC-OTP-0066-0050](#); [DRC-OTP-0127-0148](#), p. 0149.

⁷⁹ D-0300:T-213,47:7-24

⁸⁰ D-0300:T-213,48:3-8; [DRC-OTP-0127-0115](#).

⁸¹ [REDACTED]. [REDACTED] ("*[REDACTED]* : il n'y avait pas vraiment de clivage entre les gens et tout le monde se connaissait. LUBANGA faisait d'ailleurs aussi partie du RCD/K-ML, où il occupait la fonction de Ministre de la Défense").

⁸² D-0300:T-213,48:17-25.

⁸³ D-0300:T-213,49:12-19.

⁸⁴ D-0300:T-232,28:9-16; T-241,23:5-12.

⁸⁵ PCB, para. 859; See Part IV, Chapt. III, Section I(E).

for the mutineers.⁸⁷ They decided to get ready to defend themselves and set up a training camp in Mandro.

60. On 16 May 2002, LUBANGA, [REDACTED] and representatives of various ethnic communities in Ituri⁸⁸ created the FRP to oppose NYAMWISI and LOMPONDO's management of the region,⁸⁹ and to achieve reconciliation between Ituriens and dialogue with Kinshasa for the reunification of the country.⁹⁰
61. In June 2002, a second meeting was held as a follow-up to the Kasese meeting,⁹¹ but it resulted in the arrest of Lubanga and other notables by Ugandan authorities, who then sent them to Kinshasa where they were detained by the central government. This was a step that damaged efforts at peaceful reconciliation in Ituri.
62. After a period of particularly intense attacks against Hema civilians, culminating in the attack on Mudzipela, the UPDF chased LOPONDO and the APC from Bunia on 9 August 2002.⁹² After his departure, the UPC and the FRP took advantage of the political vacuum⁹³ to take over political leadership in Bunia.
63. On 11 August 2002, LUBANGA and his delegation published a FRP political declaration from detention in Kinshasa, declaring that *“nos éléments armés dissidents du RCD/ML alignés derrière l'Ex-Ministre de la Défense du RCD/ML, Monsieur Thomas LUBANGA ont pris le contrôle effectif de Bunia et ses environs”*⁹⁴ This statement taking credit for events in which they had no hand was an opportunistic

⁸⁶ **D-0300**:T-213,50:12-20 (“[...]There was insecurity within the population given that it had been divided in two. People were armed. There were several abductions carried out by Molondo's people, who would abduct civilians who would never return. So the security situation was quite dangerous [...]”).

⁸⁷ **D-0300**:T-213,49:20-50:7 (“[...]Bagonza, for example, fled to Uganda. Tchaligonza also fled to Uganda. Those were two major commanders and so when they fled, that was clearly an indication that they had come to the conclusion that the security situation had gotten worse”).

⁸⁸ [REDACTED].

⁸⁹ [DRC-OTP-0194-0328](#),p.0329(“La nomination pour le compte d'une politique spécifique du RCD/KIS-ML d'un Gouverneur militaire jouant en même temps le rôle de Comandant des Opérations est une catastrophe pour l'Ituri, car on assiste à la recrudescence de la violence, des vols en mains armées et des assassinats partout en Ituri à l'instar de ce qui se passe au Nord Kivu bis géré par le même mouvement avec leur complicité flagrante.”);**P-0005**:T-187,29:2-13.

⁹⁰ [REDACTED];[DRC-OTP-0113-0135](#),p.0137(“Objectifs du FRP Parachever la réconciliation des ethnies actuellement en conflit en Ituri ; concrétiser le dialogue direct avec le Gouvernement de Kinshasa en vue d'impliquer l'Ituri dans le processus de l'unification du pays”).

⁹¹ [REDACTED]. At [REDACTED],(“[REDACTED]”).

⁹² [DRC-OTP-0049-0465](#),para.9.

⁹³ **D-0300**:T-214,75:19-25.

⁹⁴ [DRC-OTP-0113-0133](#).

exploitation of the situation, and a self-conferral of legitimacy, not a reflection of the events as they actually unfolded. Lubanga, obviously, was nowhere near Bunia at the time of these events, and was under arrest, yet he says that he has taken control of Bunia.

64. On 13 August 2002, Thomas LUBANGA issued a press release from Kinshasa⁹⁵ disavowing any ethnic dimension of his movement: “*Comme développé plus haut, le FRP est un front qui réunit toutes les ethnies de diverses tendances politiques de l’Ituri. Les Hema en sont membre au même titre que les Lendu, Lugbara, Ngiti, Bira, Lesse, Nyali, etc. et autre congolais déjà membres de l’UPC*”.⁹⁶ He reiterated previous statements that “*1. la fin du pouvoir du RCD/ML en Ituri 2. La gestion politique économique et militaire de l’Ituri par le FRP 3. La mise sur pied d’une structure pour la pacification et la reconstruction effective de l’Ituri*.”⁹⁷
65. At the end of August, LUBANGA returned to Bunia, along with DRC Minister of Human Rights, NTUMBA LUABA. They addressed the population who welcomed them:
- Our second message is one of peace and reconciliation [...] We think that all the world must understand that in Ituri there are no Alur, there are no Hema, there are no Bira, there are no Lendu, there are Congolese. They all have a right to life and together must come together to build this Ituri.⁹⁸
66. In order to pressure the central government into freeing the delegation still being held in Kinshasa, KAHWA took NTUMBA and LUBANGA hostage.⁹⁹ Mr NTAGANDA was in charge of security.¹⁰⁰ NTUMBA could move around freely in KAHWA’s compound and Mandro.¹⁰¹ [REDACTED]. [REDACTED] the group based in Mandro was helping the Lendus.¹⁰² A few days later, they went to the Bunia airport and the exchange took place between NTUMBA and the delegation that was in KINSHASA.¹⁰³

⁹⁵ [DRC-OTP-0113-0135](#).

⁹⁶ [DRC-OTP-0113-0135](#),p.0138.

⁹⁷ [DRC-OTP-0113-0133](#),p.0134.

⁹⁸ [DRC-OTP-0124-0002](#),06:11-07:33(Transl.[DRC-OTP-0176-0027](#),0033:101-112);**D-0300**:T-215,57:22-58:21;60:20-61:2. See also [DRC-OTP-0124-0002](#),01:15-04:00.

⁹⁹ **D-0300**:T-215,14:1-7,13:22-25,12:23-13:2.

¹⁰⁰ **D-0300**:T-215,15:3-10.

¹⁰¹ **D-0300**:T-215,20:8-20; **P-0057**:[DRC-OTP-0150-0354](#),para.80.

¹⁰² [REDACTED].

¹⁰³ **D-0300**:T-215,20:21-21:15.

67. Mr NTAGANDA explained: “[w]hen I was appointed deputy to Molondo, in the structure, Mbusi and Molondo refused, then problems started. We were attacked and we were trying to find a solution to the problems. When the Ugandans drove out Molondo, we set up the FPLC and the UPC in order to fight against the movement which was carrying out killings in Ituri. That was why we were led to create the FPLC because of the appalling acts of APC, RCD-K/ML. If they had integrated us into the APC, or I should say, if we had been integrated into APC and RCD-K/ML, the UPC/FPLC would never have seen the light of day.”¹⁰⁴

B. The UPC-RP in power

68. In September 2002, Mr LUBANGA and others created the UPC-RP, using as a basis the founding document from September 2000. The UPC, from the start, had no criminal objectives. Quite to the contrary, its objectives were to promote Congolese national unity and reconciliation.¹⁰⁵ The UPC as a political movement was also based on equality for all Congolese, without distinction based on sex, opinion or ethnicity.¹⁰⁶ From September 2000, the UPC also stated their respect of Human Rights and international conventions related to them.¹⁰⁷ The UPC’s objective from the beginning

¹⁰⁴ D-0300:T-230,17:22-72:4.

¹⁰⁵ [DRC-OTP-0014-0140](#),p.0141; [DRC-OTP-0091-0039](#),p.0039(“Il est guidé par les principes de l’unité nationale et de la démocratie [...] L’UPC se définit comme un mouvement démocratique de libération des peuples”);[DRC-OTP-0106-0169](#),p.0169(“L’UPC considère que le pouvoir appartient au peuple d’où il émane et à travers lequel il se légitime [...] L’UPC s’insurge contre la partition du pays”); [DRC-OTP-0113-0052](#),p.0052(“Convaincus qu’il est temps pour les filles et les fils de la RDC de se mobiliser et de s’engager massivement dans la lutte pour la libération totale du pays afin de le doter des institutions crédibles et démocratiques susceptibles de promouvoir la prospérité et de procurer le bien-être à tous; [...] Animés par la ferme volonté de sauvegarder l’UNITE et l’intégrité nationales”).

¹⁰⁶ [DRC-OTP-0014-0140](#),p.0142(“Est membre de l’UPC tout congolais sans distinction de sexe, de race, d’ethnie, de religion ou d’opinion, en parfait accord avec le contenu de l’Article 5 et qui adhère au programme du Mouvement”); [DRC-OTP-0091-0039](#),p.0040(“Assurer l’épanouissement de l’individu, l’équilibre et la cohésion sociale par une bonne justice fondée sur l’équité et l’égalité devant la loi.”); [DRC-OTP-0106-0169](#),p.0169(“L’UPC préconise la restitution du pouvoir au peuple par une démocratie participative fondée sur l’égalité sans discrimination de sexe, d’opinion, de tribu, de rang social et d’âge.”),p.0170(“L’UPC entend assurer la paix et la cohésion sociales par une bonne distribution de la justice fondée sur le principe d’équité et d’égalité des Citoyens devant la loi”),p.0174(“L’UPC lutte pour l’équité et l’instauration d’une justice sociale basée sur l’égalité devant la Loi et devant les droits”).

¹⁰⁷ [DRC-OTP-0106-0169](#),p.0169(“L’UPC prône le respect scrupuleux des Droits et Libertés Fondamentaux de l’Etre Humain tel que l’exige la Charte des Nations Unies en matière des Droits de l’homme.”),p.0171(“Au niveau international l’UPC affirme son respect de : la charte des Nations Unies, la charte de l’OUA ainsi que la Charte Africaine des Droits de l’Homme et des Peuples. Toutes les Conventions Internationales signées entre la République du Zaïre, la République Démocratique du Congo et les autres pays”); [DRC-OTP-0113-0052](#),p.0052(“Affirmant notre adhésion à la Déclaration Universelle des Droits de l’Homme et des Peuples”); [DRC-OTP-0014-0140](#),p.0141(“Combattre la dictature, le népotisme, la cléptocratie, la corruption, l’intolérance et exclusion et réhabiliter le peuple dans ses droits inaliénables.”),p.0142(“Favoriser la coopération du Pays avec tous les Etats épris de paix, de justice et de liberté”).

was re-integration into the national armed forces: “*l’UPC plaide pour la constitution d’une ARMÉE NATIONALE [...] L’UPC soutient l’idée d’une ARMÉE NATIONALE apolitique.*”¹⁰⁸

69. NTAGANDA never heard LUBANGA adopt any policy different from these publicly stated policies and principles.¹⁰⁹
70. On 3 September 2002, LUBANGA issued a decree designating his government,¹¹⁰ consisting of 24 national secretaries and deputies.¹¹¹ Six were Hema,¹¹² four Lendu,¹¹³ four *non-originares*,¹¹⁴ three Bira,¹¹⁵ two Alur,¹¹⁶ two Lugbara,¹¹⁷ two Luba,¹¹⁸ and three are from other ethnicities.¹¹⁹ The multi ethnic composition of the UPC-RP, including Lendu national secretaries, is further indication that there was no common plan to oust Lendu and *non originaire* out of Ituri.
71. On 11 September 2002, Thomas LUBANGA issued a speech on Radio CANDIP¹²⁰: “*nous garantissons à tous, en paroles et en actes, que notre lutte n’est pas dirigée contre une tribu quelconque ni contre un groupe de personnes donne. Nous combattons plutôt un système politique destructeur. [...] Notre programme prioritaire actuel n’est rien d’autre que la restauration d’une réconciliation véritable, condition sine qua non d’une paix durable détruite par des politiciens rusés qui ont injecté la gangrène de la division et de la haine dans la population de l’Ituri*”.
72. On 14 September 2002, Thomas LUBANGA issued an official UPC-RP statement, whereby it showed its will to cooperate with the central government in KINSHASA and with all political forces in Congo.¹²¹

¹⁰⁸ [DRC-OTP-0106-0169](#),p.0171.

¹⁰⁹ **D-0300**:T-215,59:6-9.

¹¹⁰ [DRC-OTP-0113-0055](#).

¹¹¹ [DRC-OTP-0037-0294](#);[DRC-OTP-0033-0086](#),p.0094-0095.

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED]. [REDACTED].

¹²⁰ DRC-OTP-0147-0212.

¹²¹ [DRC-OTP-0037-0266](#).

73. On 29 November 2002, Thomas LUBANGA wrote to the *Chef de Groupement* of Bedu/Ezekere, a predominantly Bbale and Ngiti *Groupement*,¹²² explaining that “[les tribus Bbale et Ngiti] ne sont, ni synonyme de ‘Combattants’ moins encore de l’APC, ADF, NALU Interahamwe ... qui ne sont autres que des forces dites ‘négatives’ dans le contexte international, et contre qui l’UPC-RP combat. Les FPLC, Armée de l’UPC-RP, ne sont pas une machine pro-Hema. Sinon, les troupes dernièrement venues de MONT HAWA, presque exclusivement constituées des ressortissants des territoires d’ARU, MAHAGI et WATSA ne s’y rallieraient pas. Le mouvement en soi est pour toute la patrie Congolaise”.
74. Two documents emanating from civil organisations dated December 2002 contain no allegations against the UPC-RP or the FPLC of mistreatment. Notably, one thanks the UPC-RP for its efforts to restore calm in the region, and [REDACTED].¹²³ The other calls for peace in Ituri [REDACTED].¹²⁴ A report from the UPC-RP states that the situation in Bunia is calm on 23 December 2002.¹²⁵
75. The Prosecution argues that Hema who tried to assist the Lendu and Ngiti were targeted for retribution.¹²⁶
76. Felix NTUMBA, a UN OCHA staff member, was pushed back from the territory under UPC-RP’s control and declared *Persona Non Grata*.¹²⁷ The reasons behind this decision, taken on the basis of a security report [REDACTED],¹²⁸ do not relate to the fact that he helped the Lendus.¹²⁹ Rather, he had a negative effect on the UPC-RP’s

¹²² [DRC-OTP-0017-0026](#).

¹²³ [DRC-OTP-2080-0101](#).

¹²⁴ [DRC-OTP-0132-0018](#).

¹²⁵ [DRC-OTP-0127-0126](#).

¹²⁶ PCB, para. 928.

¹²⁷ [DRC-OTP-0159-0438](#); [DRC-OTP-0159-0436](#).

¹²⁸ [DRC-OTP-0159-0438](#), p. 0438 (“Me référant au rapport sécuritaire en votre charge et à la lettre N°UPC-RP/CAB/SN/INTERAC/018/2002 du 22 novembre 2002 émanant du Secrétaire National à l’intérieur et aux affaires coutumières”); [REDACTED].

¹²⁹ [DRC-OTP-0159-0436](#).

relation with humanitarian organisations,¹³⁰ and LUBANGA's objective was to replace him with a new coordinator, with a sense of responsibility and collaboration.¹³¹

77. On 8 September 2003, Thomas LUBANGA revoked the decision to declare Felix NTUMBA *Persona non grata*:

*Dans cette logique et par ce geste, nous réitérons notre volonté légendaire de collaborer avec toute organisation qui lutte pour le bien-être de notre population. Cette levee est une gage de notre bonne foi de voir l'OCHA, et par ricochet tous les organismes humanitaires fonctionner sans entrave, jouissant de toute marge de manoeuvres dans leurs actions, dans la region où nos forces et notre idéologie sont présentes.*¹³²

78. Prosecution witnesses such as [REDACTED] claimed that Father Deneckere was accused by the UPC-RP of being pro-Lendu.¹³³ This evidence is contradicted by a video, which shows that prior to the expulsion of the Père Blanc, Thomas LUBANGA visited him and the Lendu he was allegedly protecting. Thomas LUBANGA explained that UPC-RP was in a position to ensure their security, and that it was a multi-ethnic party. He described this as a “forgery”, and said that the priest were using them as “lab rats”.¹³⁴
79. This is corroborated by the *Procès Verbal de Refoulement*, which states the reasons for the expulsion of Father Deneckere namely: “*Hebergement clandestine des déplacés avec l'intention d'éclabousser le Mouvement en ce qui concerne la sécurité des personnes et la libre circulation dans le Territoire sous contrôle de l'U.P.C./R.P.*” and “*Etre en intelligence avec les forces négatives qui entravent le processus de Pacification et de Réconciliation*”.¹³⁵

¹³⁰ [REDACTED]; [DRC-OTP-0159-0438](#) (“[...]les faits qui vous sont reprochés sont très graves pour la sécurité du territoire que contrôle l'UPC-RP. Aussi, ils sont susceptibles de nuire à l'harmonie de nos relations avec les organismes humanitaires implantés sur notre espace politique”).

¹³¹ [REDACTED]; [DRC-OTP-0159-0438](#) (“[...] je sollicite auprès de la coordination Humanitaire de la République Démocratique du Congo à Kinshasa de bien vouloir affecter un nouveau Coordonateur mû par les sens de responsabilité et de collaboration”).

¹³² [DRC-OTP-0165-0242](#).

¹³³ [REDACTED].

¹³⁴ [DRC-D18-0001-2488](#); [DRC-D18-0001-2489](#) (Transl. [DRC-D18-0001-6710](#)).

¹³⁵ [DRC-OTP-0113-0014](#).

C. UPC-RP pacification efforts

80. The pacification efforts of the UPC-RP were genuine and never ceased, contrary to the Prosecution's allegation that the UPC-RP used propaganda to conceal the existence of the common plan and of an organization policy to target civilians.
81. On 3 September 2002, the UPC-RP founded the Commission of Truth, Peace and Reconciliation ("CTPR").¹³⁶ Its main objectives were to advance the pacification process; bring the communities in conflict back to a peaceful, lasting and sincere cohabitation;¹³⁷ to make its army, the FPLC, a national army which is conscious of its role of protecting people and their goods; to convince, by dialogue, the warlords to abandon the logic of violence and to contribute in the pacification process and otherwise, force them to do so; and to institute a military court in order to sanction all the crimes committed by soldiers.¹³⁸
82. The CTPR was also created to follow-up on the LUANDA Agreement and on the CPI: "[t]his organ, representative of all the ethnic groups of Ituri, will have to incorporate others not native, of Ituri as well as some experts. Its role is to materialise the process of reconciliation and pacification".¹³⁹ To this end, it was composed of 122 members, representing all Iturian ethnicities as well as *non originaires*, all main religions, Lendus and FPLC fighters, women and NGOs.¹⁴⁰
83. Following the creation of the CTPR, the UPC-RP showed its willingness to participate in the Intercongolese dialogue, and the CPI.¹⁴¹ The UPC-RP also expressed its willingness to work with all ethnicities, including the Lendu.¹⁴²
84. Pacification missions were conducted following the creation of the CTPR, for instance in NYANKUNDE from 9 November 2002.¹⁴³

¹³⁶ [DRC-OTP-0092-0436](#),p.0441-0442;[DRC-OTP-0164-0447](#).

¹³⁷ [DRC-OTP-0092-0436](#),p.0443.

¹³⁸ [DRC-OTP-0092-0436](#),p.439.

¹³⁹ [DRC-OTP-0092-0436](#),p.439.

¹⁴⁰ [DRC-OTP-0092-0436](#),p.0442-0443, Title II.

¹⁴¹ [DRC-OTP-0164-0452](#); [DRC-OTP-0093-0134](#);[DRC-OTP-0037-0271](#); [DRC-OTP-0033-0086](#); [DRC-OTP-0037-0281](#);[DRC-OTP-0037-0280](#).

¹⁴² [DRC-OTP-0033-0086](#),p.0091("Il est à constater que tous les notables de l'Ituri sont rentrés à Bunia après la conférence de Kinshasa, sauf les notables lendu et bira. Ceci est regrettable, mais l'UPC-RP leur demanderait de rentrer chez eux, en vue de participer et contribuer au processus de réconciliation et de paix entre les ituriens. Il leur est demandé, en leur qualité de notables et pour le bien de l'Ituri et du Congo, de rejoindre le train de paix qui devrait embarquer tous les ituriens").

85. From 10 to 16 December 2002, the UPC-RP Foreign Affairs National Secretary met with international community representatives during a diplomatic mission in Kampala.¹⁴⁴ He also gave a media interview affirming UPC-RP's willingness to be a party in the CPI;¹⁴⁵ to participate in the Pretoria negotiations;¹⁴⁶ to implement its pacification program;¹⁴⁷ support of a withdrawal of UPDF, despite recent increase in troops;¹⁴⁸ collaboration with humanitarian staff in Ituri; and respect for human rights.¹⁴⁹
86. At the end of 2002, the UPC-RP National Secretariat for Pacification issued its Activity report for November and December 2002.¹⁵⁰ Several missions and meetings were conducted by members of the Secretariat,¹⁵¹ including meetings with FPLC representatives.¹⁵² The Secretariat also received complaints from the population, which were referred "*soit au Secrétariat Général de l'UPC-RP, soit au Secrétariat National à la Justice, soit au parquet de grande Instance de l'Ituri pour solution à leurs problèmes*".¹⁵³
87. The Secretariat intervened in cases having an impact on its work: "*Le Secrétaire National est intervenu personnellement auprès du Service des renseignements militaires (Bureau II) de FPLC en vue d'obtenir la libération des personnes détenues qui sont soit des criminels avérés dont on sollicite la libération au nom de la Pacification, ou des personnes arrêtées arbitrairement pour leur appartenance à telle ou telle ethnie ou contre lesquelles aucun grief solide n'a été porté.*"¹⁵⁴ The Secretariat

¹⁴³ [DRC-OTP-0093-0260](#).

¹⁴⁴ [DRC-OTP-0014-0152](#).

¹⁴⁵ [DRC-OTP-0014-0152](#), p.0155 ("Application par l'UPC-RP de l'Accord de Luanda : il faut amender cet accord en y incluant l'UPC. Nous avons présenté au monde entier notre alternative pour la CPI que nous voudrions vous demander de soutenir").

¹⁴⁶ [DRC-OTP-0014-0152](#), p.0156 ("transmettre à Paris que l'UPC lutte pour la paix en Ituri et dans la région des Grand Lacs et demande à la communauté internationale d'être associé à toutes rencontres internationales concernant le Congo, dont les consultation le Pretoria").

¹⁴⁷ [DRC-OTP-0014-0152](#), p.0153, 0154

¹⁴⁸ [DRC-OTP-0014-0152](#), p.0153 ("[...] l'UPDF n'a pas su assurer la sécurité des personnes en Ituri en tant que troupe d'occupation. Cette incapacité a créé une crise de compréhension concernant le comportement de l'UPDF sur le terrain"); p.0157 ("L'UPC a constaté le redéploiement massif de l'UPDF en Ituri [...] Il serait souhaitable de créer une Commission mixte UPC-UPDF-MONUC qui devrait gérer ce problème en vue de mieux préparer du retrait total de l'UPDF en cette période de transition").

¹⁴⁹ [DRC-OTP-0014-0152](#), p.0157 ("Nous (UPC) réaffirmons la collaboration avec les Humanitaires installés sur le territoire que nous contrôlons et le respect des droits de l'homme").

¹⁵⁰ [DRC-OTP-0093-0004](#). See also [DRC-OTP-0091-0665](#).

¹⁵¹ [DRC-OTP-0093-0004](#), p.0006, "2) Missions de pacification".

¹⁵² [DRC-OTP-0093-0004](#), p.0006, "1) Des réunions avec les Chefs de collectivités".

¹⁵³ [DRC-OTP-0093-0004](#), p.0006.

¹⁵⁴ [DRC-OTP-0093-0004](#), p.0006.

included several suggestions addressed to the FPLC, including the importance of collaborating, and pacification during the training of new recruits.¹⁵⁵ It demonstrates the continued control the executive of the UPC-RP was having over the FPLC and its ideology.

88. On 10 January 2003, TINANZABO issued a decree replacing the peace committees with local CTPR,¹⁵⁶ naming its members on 13 January,¹⁵⁷ and holding an official inauguration event that day with MONUC present expressing its support¹⁵⁸ and representatives of other ethnic communities present.¹⁵⁹ Mr NTAGANDA was also present.¹⁶⁰ TINANZABO and LUBANGA addressed the public:¹⁶¹

Le peuple Nyira du Nord-Kivu, [...] actuellement ce peuple vaque sans aucune inquiétude à ses occupations dans les territoires sous contrôle de l'UPC. Le peuple Lendu, le peuple Hema, les Alur, les Ndoo-okebo, les NYALI et consort ; hier se battaient avec le désir ou avec la volonté de s'exterminer mutuellement. Mais aujourd'hui, ils se tendent les uns les autres la main pour revenir à la raison.¹⁶²

89. The next day, on 14 January 2003, a pacification meeting took place in NGONGO.¹⁶³ The UPC-RP was represented by TINANZABO, a Bira, BEBETU, à Logo and Tschachu LILO, a Lendu.¹⁶⁴ They met with the chief of LIPRI,¹⁶⁵ representatives of the Lendu community [REDACTED],¹⁶⁶ and Lendu combatants¹⁶⁷ to negotiate for peace¹⁶⁸ and the opening of the Lipri-Bunia road:

Reopening this road helped us because we wanted the inhabitants of those places be able to come to Bunia to buy things at the market. These population movements were part of reconciliation, the people were together and that is a

¹⁵⁵ [DRC-OTP-0093-0004](#),p.0009.

¹⁵⁶ [DRC-OTP-0092-0466](#).

¹⁵⁷ [DRC-OTP-0089-0075](#).

¹⁵⁸ [DRC-D18-0001-6643](#),ll.264-270.

¹⁵⁹ **D-0300**:T-218,86:13-87:9;T-219,8:9-14.

¹⁶⁰ **D-0300**:T-219,3:15-19.

¹⁶¹ [DRC-D18-0001-0433](#),00:21:13-00:55:00;00:58:10-01:03:22(Transl.[DRC-D18-0001-6643](#)).

¹⁶² [DRC-D18-0001-6643](#),ll.161-168.

¹⁶³ **D-0300**:T-219,12 :4-9.

¹⁶⁴ **D-0300**:T-219,16:9-19; [DRC-OTP-0127-0058](#),17:00-17:43 (Transl.[DRC-OTP-2102-3675](#),3689:320-328) (“j’éprouve de la joie à trouver Lilo, un Lendu ... au sein de l’UPC. Alors que les gens disent que l’UPC est un parti de Hema”).

¹⁶⁵ **D-0300**:T-219,12:17.

¹⁶⁶ [REDACTED].

¹⁶⁷ **D-0300**:T-219,12:18.

¹⁶⁸ [REDACTED](“[REDACTED]”).

way of promoting reconciliation, particularly in villages which are more remote.¹⁶⁹

90. The video of the event shows that the road was indeed reopened, allowing for civilians to travel from LIPRI to Bunia safely.¹⁷⁰
91. During the meeting, a Lendu representative referred to a recent address by SALONGO on Radio Candip. The UPC-RP's delegation repudiated his words:

*Si vraiment il a dit cela ... il va le convoquer ... et lui va se justifier ... et expliquer pourquoi il a dit cela, car de telles paroles ... ne vont pas de pair avec l'objectif que l'UPC s'est fi... fixé. [...] L'ennemi de l'UPC ... ce n'est pas le Lendu. L'ennemi de l'UPC ce n'est pas le Hema. L'ennemi de l'UPC ce n'est pas une ethnie quelconque. L'UPC ne s'est pas constituée ... pour défendre ... ou bien pour combattre une ethnie quelconque. Nous devons bien nous comprendre. Ces gens-là sont en train de faire de la confusion ... en pensant que ... l'UPC s'est mise en place ... en vue de combattre les Lendu par exemple.*¹⁷¹

92. Mr NTAGANDA explained that he knew nothing about this implausible¹⁷² statement from SALONGO, either from the radio, the G2 or from LUBANGA.¹⁷³
93. TINANZABO also explained that :

*Les gens sont en train ... de ... faire ... de ... confondre l'UPC avec ... un parti de Hema et ainsi que de suite. [...] vous continuerez à comprendre davantage ... que notre parti ... n'est pas une affaire des Hema .. ni des Lendu ... ni des Bira ... ni des Ngiti ... ni d'une autre ethnie. C'est un parti ... qui a un bon objectif ... pour tous les Congolais ... et pour commencer ... ayons d'abord la paix en Ituri. Ceci est notre objectif.*¹⁷⁴

94. Following this meeting, Mr NTAGANDA instructed the troops, via his G2, to cease fire in order to restore peace and launch the committee.¹⁷⁵ The two incidents involving LINGANGA and ZERO ONE confirm that Mr NTAGANDA was enforcing the cease

¹⁶⁹ D-0300:T-219,13:5-9;[DRC-OTP-0120-0294](#),01:24:10-01:25:11(Transl.[DRC-OTP-0176-0187](#),0238:1372-1373).

¹⁷⁰ [DRC-OTP-0127-0058](#),23:44-25:48(Transl.[DRC-OTP-2102-3675](#),3696,490-3700,596).

¹⁷¹ [DRC-OTP-0127-0058](#),09:48-11:1 (Transl.[DRC-OTP-2102-3675](#),p.3685,II.191-208).

¹⁷² D-0300:T-237,68:14-17.

¹⁷³ D-0300:T-237,66:11-69:3.

¹⁷⁴ [DRC-OTP-0127-0058](#),14:39-15:15(Transl.[DRC-OTP-2102-3675](#),3688,274-281).

¹⁷⁵ T-219,16:2-8;[DRC-OTP-0017-0033](#),p.0198 (second)(Transl.[DRC-OTP-2102-3854](#),p.4020).

fire agreement.¹⁷⁶ A logbook message dated 1 February 2003 demonstrates that pacification was also enforced at the local level.¹⁷⁷

D. After the liberation of Mongbwalu, the UPC-RP's political focus turned mainly to defending itself against attacks by the UPDF and other groups

I. Arua meeting in December 2002

95. In December 2002, a meeting was set up in ARUA, in order to conduct peace negotiations with notables from several ethnicities, including Bira, Nyali, Ngiti and Lendu.¹⁷⁸ Lendu chiefs and combatants were to attend the meeting,¹⁷⁹ as well as Ugandan representatives.¹⁸⁰ LUBANGA explained the purpose of the meeting at the New Year's celebration in January 2003:

*En dépit de fougues, l'UPC-RP a déployé des efforts considérables de mettre les Congolais de l'Ituri autour d'une table dans le partage des idées, la gestion de l'espace libéré en vue de la cohésion dans les agir. Nous avons en effet organisé plusieurs pourparlers dans ce sens, dont le plus récent est celui où notre équipe de pacification à pied d'œuvre à ARUA vient d'obtenir l'assurance et l'acceptation de nos frères lendu de Kpandroma d'abandonner leur ancien projet de destruction et à s'inscrire dans le programme de pacification.*¹⁸¹

96. [REDACTED] the UPC-RP delegation¹⁸² consisting of one Bira,¹⁸³ one Lendu,¹⁸⁴ one non-originaire,¹⁸⁵ one Hema¹⁸⁶ and one Alur.¹⁸⁷ [REDACTED] for this kind of negotiations, national secretaries were chosen according the needs of the missions.¹⁸⁸ LUBANGA entrusted them to execute the mission well, and to express themselves on behalf of the UPC-RP.¹⁸⁹

¹⁷⁶ See Part V, Chapt. III-IV.

¹⁷⁷ [DRC-OTP-0017-0033](#), p.0137(third)([DRC-OTP-2102-3854](#), p.3959)(“CE CMD IYANGO (-) CMD FAUSTIN MAYEBO QUI SONT EN TRAIN DE PERTURBER LES HABITANTS ET DE FAIRE ECHOUER LE TRAVAIL DE PACIFICATION (-) ARRETEZ-LES ET ENVOYEZ-LES MOI, HQ DU SECTEUR (-) G2 S'OCCUPERA DE LEUR AFFAIRE (-)(-)”).

¹⁷⁸ [DRC-OTP-0164-0455](#).

¹⁷⁹ **D-0300**:T-218,56:3-6.

¹⁸⁰ [REDACTED].

¹⁸¹ [DRC-OTP-0037-0295](#), p.0296.

¹⁸² [REDACTED].

¹⁸³ TINANZABO ZEREMANI

¹⁸⁴ SATCHU LILO.

¹⁸⁵ CHUMA César.

¹⁸⁶ Daniel LITSHA SINGOMA.

¹⁸⁷ Ondini KIDIKPA, **P-0365**:T-147,77:24-25.

¹⁸⁸ [REDACTED].

¹⁸⁹ [REDACTED].

97. Nevertheless, this meeting was a failure: the delegation was very surprised as UGANDA had taken this opportunity to create the FNI, as a movement to go against the UPC,¹⁹⁰ in order to divide and to rule in ITURI.¹⁹¹ It was a surprise for LUBANGA, and the UPC-RP's delegation, and they could not agree with it,¹⁹² as the "the FNI had its own ideology which was different from that of the UPC."¹⁹³ LUBANGA felt betrayed by the two-faced action of UGANDA.¹⁹⁴ Moreover, "[i]t was difficult for us to sign such an agreement because we were not involved in the drafting of the agreement which was done by Uganda with a view to forcing the UPC to sign it".¹⁹⁵
98. Moreover, the APC and Lendu combattants, with logistical assistance of Uganda, bombed FPLC positions in Ndrele.¹⁹⁶ From this moment on, the relationship with the Ugandans deteriorated.
99. After his 11 December 2002 eviction from the UPC-RP,¹⁹⁷ KAHWA had also set up a new party: PUSIC, in order to attack the UPC-RP from Uganda.¹⁹⁸

II. *The alliance with RCD-Goma*

100. The political, military and economic alliance between the UPC-RP and RCD-Goma, on 6 January,¹⁹⁹ further exacerbated the tension with the UPDF.²⁰⁰ An RCD-Goma delegation then visited Bunia from 6 to 8 February 2003. That visit was important, as it was a way for the UPC-RP to open a channel with the government in KINSHASA, as the RCD-GOMA had been involved in the negotiations in Sun City.²⁰¹

¹⁹⁰ [REDACTED].

¹⁹¹ [REDACTED].

¹⁹² [REDACTED].

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED]. [REDACTED]. [REDACTED].

¹⁹⁶ D-0300:T-218,77:25-78:3,84:10-13; [DRC-OTP-0176-0418](#),0426:282-289.

¹⁹⁷ [DRC-OTP-0089-0057](#); [DRC-OTP-0014-0152](#),p.0161.

¹⁹⁸ D-0300:T-219,17:12-18.

¹⁹⁹ [DRC-OTP-0164-0444](#); [DRC-OTP-0132-0252](#); [DRC-OTP-0113-0156](#).

²⁰⁰ P-0005:T-188,37:9-38:9; D-0300:T-218,77:21-22;T-219,18:22-19:4; [DRC-D03-0001-0352](#).

²⁰¹ D-0300:T-219,64:19-65:3.

101. A public meeting was held in Bunia, and the people were cheering LUBANGA and ONUSUMBA, the representative of RCD-GOMA,²⁰² They explained that the goal of the alliance was to restore peace in ITURI and unity in CONGO.²⁰³ ONUSUMBA refers to an army representing all Congolese, invoking the objective, still shared by the UPC-RP,²⁰⁴ of a national army, under the government of KINSHASA.²⁰⁵
102. On 7 February, a peace agreement was signed in Bunia by all parties and communities.²⁰⁶

III. 23 January meeting with the Ugandans

103. Two meetings were held on 23 January 2003 with a Ugandan delegation: one at LUBANGA's residence,²⁰⁷ and the other one at Ciné Azanga.
104. [REDACTED] the first meeting, at which NTAGANDA was present,²⁰⁸ [REDACTED]²⁰⁹ [REDACTED]²¹⁰ [REDACTED].²¹¹ The politicians and notables voted for the departure of the UPDF from ITURI.²¹²
105. It was common knowledge that the UPDF was sabotaging the pacification programme, and the population was unhappy with their presence.²¹³
106. The second meeting, at which NTAGANDA was also present,²¹⁴ took place at Ciné Azanga.²¹⁵ All communities were present.²¹⁶ The objective was to hear the views of the

²⁰² [DRC-D18-0001-0427](#),03:10-05-25,38:40-40:20(Transl.[DRC-D18-0001-6667](#),6669:18-35,6676:242-254); **D-0300**:T-219,65:9-14;71:13-18.

²⁰³ [DRC-D18-0001-0427](#),46:00-50:03(Transl.[DRC-D18-0001-6667](#),6677:290-6678:324).

²⁰⁴ **D-0300**:T-219,79:1-5.

²⁰⁵ **D-0300**:T-219,78:16-25.

²⁰⁶ [DRC-OTP-0193-0243](#),p.0244; [DRC-D18-0001-0427](#),35:37-36:40(Transl.[DRC-D18-0001-6667](#),6675:213-219); [DRC-D18-0001-0425](#),14:02-14:39(Transcript [DRC-D18-0001-5540](#),5543:56-5544:61); **D-0300**:T-219,67:5-68:12.

²⁰⁷ **D-0300**:T-219,19:20-22; [REDACTED].

²⁰⁸ [REDACTED]; **D-0300**:T-219,24:15-16.

²⁰⁹ **D-0300**:T-219,23:1-5; [REDACTED].

²¹⁰ [REDACTED]; [REDACTED].

²¹¹ [REDACTED].

²¹² **D-0300**:T-219,19:23-20:1;20:8-9; [DRC-D03-0001-0352](#).

¹⁶⁹ [REDACTED].

²¹⁴ **D-0300**:T-219,25:4-5.

²¹⁵ [REDACTED]; **D-0300**:T-219,24:21-23.

²¹⁶ [REDACTED]; [DRC-OTP-0120-0294](#),02:01:26-02:06:13(Transl.[DRC-OTP-0176-0187](#),0251:1812-0255:1946).

population concerning the UPDF presence in ITURI.²¹⁷ The population expressly approved the departure of the UPDF from ITURI.²¹⁸

107. After this meeting, the Ugandans wanted LUBANGA to travel back with them, but the population and LUBANGA refused as relations were tense.²¹⁹ LUBANGA felt betrayed by the previous action from UGANDA against the UPC-RP,²²⁰ and MUSEVENI perceived this refusal as a humiliation.²²¹ Mr NTAGANDA accompanied them to the airport, and he felt their anger.²²² Following this meeting, the FPLC leadership knew the UPDF would attack them.²²³

IV. Creation of FIPI

108. At the end of December, the FNI, PUSIC and FPDC were created by the Ugandans.²²⁴ PUSIC was then structured by KAHWA, [REDACTED] and others.²²⁵ Arms were delivered by UGANDA to PUSIC.²²⁶
109. The FIPI brought together these three entities,²²⁷ in order for the Ugandans to counterbalance the UPC in ITURI.²²⁸ The discussion had started in January, and the agreement was signed on 9 February 2003.²²⁹ It was a danger for the FPLC, as their objective was to destroy what the UPC-RP had built, i.e. the pacification process.²³⁰
110. In February, following the creation of FIPI, the leaders of the three movements met KABILA to discuss how to get rid of the UPC-RP, as “Kabila was getting weapons on every occasion to fight against the UPC in Ituri”.²³¹ *“Une équipe de quatre officiels de F.I.P.I. a été conduit par le Capitaine MAGURU de l’UPDF à Kinshasa où elle a été*

²¹⁷ D-0300:T-219,1-3.

²¹⁸ [DRC-OTP-0127-0061](#),32:40-33:36(Transl.[DRC-OTP-2082-1033](#),1047:434-449)(“SS:C’est-à-dire que les UPDF doivent quitter l’ITURI. TOUS:Oui”).

²¹⁹ D-0300:T-219,30:18-31:2;[DRC-D03-0001-0352](#); [REDACTED].

²²⁰ [REDACTED].

²²¹ [REDACTED];[DRC-OTP-0017-0033](#),0146(first)(Transl.[DRC-OTP-2102-3854](#),3968)(“LEUR BUT COUPER MAHAGI ET DEMOLIR L’UPC CAR L’UPC-RP A CAUSE LA HONTE A LEURS SUPERIEURS A Bunia”); D-0300:T-219,48:22-49:1.

²²² D-0300:T-219,33:10-14.

²²³ D-0300:49:2-10; [DRC-OTP-0017-0033](#),0146(Transl.DRC-OTP-2102-3854,3968).

²²⁴ D-0300:T-218,60:4-7; 62:10-14.

²²⁵ [REDACTED].

²²⁶ P-0012:DRC-OTP-2054-0274,0324:18-0325:7.

²²⁷ P-0005:T-189,15:2-5.

²²⁸ P-0005:T-189,15:9-23.

²²⁹ P-0012:DRC-OTP-2054-0274,0337:3-11.

²³⁰ D-0300:T-220,9:2-10.

²³¹ [REDACTED];T-220,62:5-18;[DRC-OTP-0017-0033](#),0163(fourth)(Transl.DRC-OTP-2102-3854,3985).

*reçue par le Président Joseph KABILA le vendredi 14/02/2003 à 23 heures. Les promesses faites en armes, munitions et argent ont été réalisées par Kinshasa et cette équipe regagne Kampala, sauf imprévu aujourd'hui 19/02/2003".*²³² [REDACTED] confirmed that money was given by KABILA to the three leaders of FIPI: UNENCAN, NDJABU and KAHWA.²³³ While he denied it [REDACTED],²³⁴ he also stated:

[REDACTED].²³⁵

111. A logbook message dated 21 February 2003 is another indicia that Kinshasa indeed provided support to FIPI: "L'EQUIPE DE FIPI EST RENTREE DE KINSHASA (-) KINSHASA A ACCEPTE DE LEUR DONNER 1000 ELEMENTS ET ILS ATTERIRONT A BENI EN PASSANT PAR KLM (-) POUR COMMENCER A FAIRE L'INFILTRATION ET APRES UNE SEMAINE ILS COMMENCENT A NOUS ATTAQUER (-)(-)".²³⁶

V. Delivery of weapons and LUBANGA's plan to oust the UPDF

112. While the pressure from the Uganda side intensified, Mr LUBANGA planned to deliver weapons to the Lendu combatants²³⁷ and Uganda rebels, in order to establish a plan to drive out the UPDF from ITURI.²³⁸ At the end of January,²³⁹ [REDACTED], a UPDF colonel, acting as an intermediary between KISEMBO²⁴⁰ and Ugandan rebels based in

²³² [DRC-OTP-0193-0243](#),p.0245. [REDACTED].

²³³ [REDACTED].

²³⁴ [REDACTED].

²³⁵ [REDACTED].

²³⁶ [DRC-OTP-0017-0033](#),p.0172(second)(Transl.[DRC-OTP-2102-3854](#),p.3994); **D-0300**:T-221,9:22-23:15("FIPI was a party set up in Uganda the PUSIC, the FNI, the FPDC and also the APC. There was a coalition of parties. You can see that together with the UPDF, the coalition of these parties was preparing to strike at us. That's what happened thereafter when they came to Bunia on 6 March. So this is the plan that I was talking about. Q.Mr Ntaganda, when we see in this message Kinshasa has accepted to give them a thousand elements, what did that mean to you at the time? A.Kinshasa wanted to give them reinforcements by giving them a thousand troops from the FARC, the armed -- from the Congolese Armed Forces").

²³⁷ **D-0300**:T-220,69:1-13.

²³⁸ **D-0300**:T-219,54:15-21;T-220,68:17-23("Q.Well, why did he get you to come earlier? A.He entrusted me with a mission, a top secret mission, and I had to execute it as fast as possible. Q.What was this mission? A.We had to get the weapons which weren't taken to Kpandroma, I had to take -- provide them to the combatants and establish a plan with them because our plan was to drive out the UPDF").

²³⁹ [DRC-OTP-0017-0033](#),p.0120(second)(Transl.[DRC-OTP-2102-3854](#),p.3942).

²⁴⁰ **D-0300**:T-219,52:8-11.

Kpandroma, working with combatants,²⁴¹ sent [REDACTED] and the Cder of the combatants to negotiate with KISEMBO in Mongbwalu.²⁴²

113. [REDACTED] was the one who had brought the Lendu combatants together to fight Uganda,²⁴³ “[b]ecause the objective was to knock down the Ugandan government, and the combatants, they were fighting us, and the rebels were supporting the combatants to attack us because they thought that we were with the UPDF. But when they negotiated, they want us to give them a path to go and fight Uganda, and they were going to help us to drive the UPDF from Ituri. And we stayed together to set up – to be able to build peace together in Bunia”.²⁴⁴
114. Mr NTAGANDA explained that “giving weapons to the Lendu combatants was a way to facilitating our dialogue in order to achieve peace” and “As the Ugandan government was our enemy, the enemy of your enemy is also your enemy – the enemy of your enemy is your friend.”²⁴⁵
115. A first attempt failed in January,²⁴⁶ and a second attempt succeeded in February 2003.²⁴⁷
116. Increased tension with UPDF led to the 6 March attack by UPDF against the UPC-RP.²⁴⁸

VI. Situation in Bunia following the departure of the UPC-RP and FPLC

117. Following the defeat on 6 March, all FPLC leadership left Bunia. Mr NTAGANDA and LUBANGA went to Goma, while KISEMBO and his troops retreated to Mamedi.²⁴⁹
118. The Lendu combatants, APC and UPDF occupied Bunia, and people sought refuge at the airport, which was secured by the Ugandans,²⁵⁰ or fled *en masse* to escape attacks

²⁴¹ D-0300:T-219,50:24-51:5,53:8-14.

²⁴² D-0300:T-219,52:12-54:1.

²⁴³ D-0300:T-219,54:4-21.

²⁴⁴ D-0300:T-219,54:4-10.

²⁴⁵ D-0300:T-219,54:4-21.

²⁴⁶ See Part V, Chapt. III-IV.

²⁴⁷ See Part V, Chapt. III-IV

²⁴⁸ P-0005:T-189,17:24-18:6.

²⁴⁹ See Part V; D-0013:[DRC-D18-0001-6475](#), 6500:19-6502:22.

²⁵⁰ D-0300:T-221,41:21-25.

by Lendu combattants,²⁵¹ including looting,²⁵² despite some UPDF efforts to control them.²⁵³ On 3 April, Lendu combattants attacked Drodoro, with the possible complicity of the UPDF.²⁵⁴

119. In a letter to the UN representative in the DRC, Mr LUBANGA explained that:

[REDACTED]²⁵⁵

120. In another letter to the same UN representative, Mr LUBANGA explained that pacification would have to begin with the departure of UPDF from ITURI.²⁵⁶ On 10 April, he also pointed out that Uganda was playing a game of ‘*pyromane-pompier*’ in order to encourage insecurity in Bunia and justify their prolonged stay in the region.²⁵⁷

121. Indeed, the CPI took place between 4 and 14 April 2003,²⁵⁸ when the UPC-RP main leadership had been evicted from Bunia.²⁵⁹ Nevertheless, part of the UPC-RP executive attended the discussions, contributed to the work of the ICP and signed the final report.²⁶⁰ Signatories for the UPC-RP were TINANZABO, a Bira, ADUBANGO, an Alur, Eustache MATESO, a Hema, AKOBI a Lendu and Ondini KIDIKPA, an Alur.²⁶¹ The Prosecution’s allegation that LUBANGA revoked national secretary MATESO because he signed the Final report is contradicted by evidence that other signatories remained in the UPC-RP long after the signature.²⁶²

²⁵¹ P-0030:T-145,73:19-75:4;75:16-77:9.

²⁵² DRC-OTP-2067-2003,para.10;DRC-OTP-2078-0434(“Last night, [the Lendu combatants] attacked Kolomani with the mission of stealing cattle, looting, destroying property and massacre of innocent civilians. [...] Today the 18th of March03 the group of Lendu combatants/Wangitis attacked Kokolombo to steal cattle and in the process massacred 10 people. 6 children 4 adults”); DRC-OTP-0041-0107; DRC-OTP-0037-0088,para.3; DRC-OTP-0107-0510; DRC-OTP-0014-0170,p.0173-0174; DRC-OTP-0080-0006,11:11-13:04(Transl.DRC-OTP-1041-0442,0448:132-162).

²⁵³ DRC-OTP-0052-0199,para.13; DRC-OTP-2078-0434.

²⁵⁴ D-0300:T-211,50:1-5;T-221,46:21-47:11; DRC-OTP-0052-0049,para.11; DRC-OTP-0126-0073; DRC-OTP-2078-0393,para.15;DRC-OTP-0037-0088,para.2-3;p.0089;DRC-OTP-0037-0092;DRC-OTP-2078-0393,para.15.

²⁵⁵ [REDACTED].

²⁵⁶ DRC-OTP-0029-0308.

²⁵⁷ DRC-OTP-0029-0302(“[REDACTED]”).

²⁵⁸ DRC-OTP-0107-0223.

²⁵⁹ DRC-OTP-0014-0170,p.0171; P-0365:T-147,86:3-9.

²⁶⁰ DRC-OTP-0107-0223,p.0316; P-0365:T-147,78:11-17.

²⁶¹ DRC-OTP-0107-0223,p.0316; P-0365:T-147,77:18-78:5; P-0245:T-142:73:3-14.

²⁶² DRC-OTP-0089-0093:On 3 June 2003, TINANZABO remained in the UPC-RP government as General Secretary and spokesperson. Denis AKOBIS remained in the UPC-RP as national secretary for Economy, Industry and Trade; [REDACTED].

122. [REDACTED],²⁶³ explained that the Commission was chaired by Congolese, Angolans and Ugandans.²⁶⁴ “During the meeting the issue of insecurity was addressed by various speakers from throughout the Ituri, speaking one after the other, and they also spoke about issues pertaining to armed groups and insecurity. Discussions also focused on the fact that Ituri had no officials, no one was in charge of Ituri, and that it was MONUC at the time which tried to manage things”.²⁶⁵
123. After deliberations, recommendations and resolutions were adopted on several subjects related to pacification, and a special interim administration was set up.²⁶⁶
124. All political parties, countries and tribes were represented.²⁶⁷

VII. UPDF leaving Bunia

125. The UPDF handed over the security of Bunia to MONUC on 25 April 2003, following an agreement with the UN, and left Bunia effectively on 6 May 2003.²⁶⁸
126. Immediately after UPDF withdrawal, Lendu combatants started crossing the city, looting and killing civilians.²⁶⁹
127. Massacres were carried out in Bunia:²⁷⁰ “many members of the population had left with the UPDF for fear of being killed, and [...] those who remained were hiding with the MONUC and [...] were living in a very dangerous situation.”²⁷¹ Indeed, from 6 May 2003, IDPs gathered at the airport and next to the UNHQ, while civilians left the town along with UPDF soldiers, as they had “received threats from the Lendu combatants that they would be killed immediately the Ugandans left”.²⁷²

²⁶³ [REDACTED].

²⁶⁴ [REDACTED].

²⁶⁵ [REDACTED]; [DRC-OTP-0107-0223](#).

²⁶⁶ [REDACTED].

²⁶⁷ [REDACTED].

²⁶⁸ DRC-OTP-2078-0582; DRC-OTP-2078-0687; DRC-OTP-2078-0709; DRC-OTP-0082-0013, 12:36-13:33; **P-0002**:T-170,78:19-79:23.

²⁶⁹ DRC-OTP-2078-0704, para. 1-2; DRC-OTP-2078-0223, para. 3 (“[REDACTED]”); DRC-OTP-0155-0004, 40:52-43:02 (Transl. DRC-OTP-1033-0139, 0148:205-0149:249).

²⁷⁰ **D-0300**:T-221, 52:14-19.

²⁷¹ **D-0300**:T-221, 52:20-24; DRC-OTP-0082-0018, 46:01-46:58 (Transl. DRC-OTP-2102-3375, 3384:241-251) (“[REDACTED]”); 55:59-57:02 (Transl. DRC-OTP-2102-3375, 3388:409-3389:433).

²⁷² DRC-OTP-2078-0704, para. 4, 7; DRC-OTP-0037-0086; DRC-OTP-2078-0727, para. 7, p. 0730-0731; DRC-OTP-2078-0736; DRC-OTP-2078-0223, para. 6-7; DRC-OTP-0014-0170, p. 0174-0175.

128. As the Bunia population was once again facing attacks from Lendu combatants, KISEMBO decided to retake Bunia on 12 May 2003.²⁷³ The UPC-RP remained in Bunia until it complied with the international force Artémis' order to leave the town.²⁷⁴
129. Video DRC-OTP-0151-0665 was filmed on 13 May 2003 [REDACTED], the day after the FPLC had liberated Bunia.²⁷⁵ Large numbers of victims of the Lendu combatants, including women and babies, are shown on this video.²⁷⁶ They left cadavers in the street²⁷⁷ and the market.²⁷⁸ There is also a scene of looting at the Bunia market, with KISEMBO's men trying to put an end to it.²⁷⁹
130. In an address on Radio Candip dated 12 May 2003, TINANZABO stated:
- Nous saluons les efforts de la Commission de Pacification de l'Ituri et restons disposés à collaborer avec tous et spécialement avec la mission des Nations Unies en République Démocratique du Congo, la MONUC, et les humanitaires dont nous félicitons le courage pendant ce calvaire dont ils n'ont pas été épargnés. Très chers compatriotes, nous lançons un appel aux humanitaires pour qu'ils se mobilisent en vue de venir en aide aux populations congolaises de l'Ituri sinistrée. L'Union des Patriotes Congolais pour Réconciliation et la Paix leur garanti la sécurité. A la population congolaise de l'Ituri nous lançons un appel au calme et leur demandons de pardonner à ceux-là qui les ont martyrisés. Nous ne tolérerons pas, nous ne tolérerons aucun acte de vengeance et de haine tribale pouvant nous replonger dans le cycle de la violence.*²⁸⁰
131. On 15 May 2003, TINANZABO left for a conference for peace in DAR-ES SALAAM.²⁸¹ Calm was reportedly restored in Bunia, with sporadic fighting.²⁸²

²⁷³ D-0038 :T-249,82 :24-83 :25

²⁷⁴ **D-0300**:T-221,52:25-53:3.

²⁷⁵ DRC-OTP-1050-0298,0321:530-0322:547.

²⁷⁶ DRC-OTP-0151-0665,24:23-37:59(Transl.DRC-OTP-1050-0298,0328:769-0341:1213).

²⁷⁷ DRC-OTP-0151-0665,11:12-11:57(Transl.DRC-OTP-1050-0298,0317:382-0318:390).

²⁷⁸ DRC-OTP-0151-0665,11:57-14:21,16:38-22:33(Transl.DRC-OTP-1050-0298,0318 :391-0319:447, 0321:524-0327:712).

²⁷⁹ DRC-OTP-0151-0665,14:24-16:37(Transl.DRC-OTP-1050-0298,0319:451-0321:523);22:35-23:54 (Transl.DRC-OTP-1050-0298,0327:715-742)(“le voilà le commandant Eric qui est en train de défendre le pillage. Qu'il n'y ait pas de pillage, parce qu'on a déjà tout pillé [...] les Lendu sont passés ici, ils ont tout pillé. Alors [...] les militaires de l'UPC sont venus remettre de l'ordre [...] Nous sommes ici avec le commandant Eric, ici dans un lieu public [...] Des gens sont venus ici pour piller. Oui [...] on demande à tout le monde de s'éloigner, d'arrêter le pillage. Le pillage c'est quelque chose de mauvais”); **D-0038**:T-249,84:1-5.

²⁸⁰ DRC-D18-0001-6588,17:50-25:48(Transl.DRC-OTP-1050-0298).

²⁸¹ DRC-OTP-0024-0788.

²⁸² DRC-OTP-2078-0328; DRC-OTP-2078-0367.

132. Following the meeting in DAR-ES-SALAAM, Mr LUBANGA repeated the willingness of the UPC-RP to work for pacification in cooperation with the UN.²⁸³ He nevertheless criticised the CPI, for having been set up while the UPC-RP was not in Bunia, and for not restoring calm and peace in Bunia.²⁸⁴
133. On 20 May 2003, KISEMBO and NGUDJOLO met in Bunia at the UNHQ, and discussed the implementation of the 18 May agreement. They agreed *inter alia* to have their respective troops leave Bunia town.²⁸⁵
134. On 27 May 2003, KISEMBO addressed the population on Radio Candip, and asked them to vacate IDP camps and MONUC HQ. He also stated: “UPC expressed its full commitment towards the implementation of IPC mechanism. All Congolese civilians whether Hema or Lendu except the Lendu combatants were free to move around in any part of the town. The present conflict was not against the two communities of Hema and Lendu.”²⁸⁶

VIII. The return of Lubanga and meeting at the Bunia stadium June 2003

135. On 3 June 2003, Thomas LUBANGA issued a new decree to designate a new government. Once again, this government consisted of 8 persons of various ethnicity.²⁸⁷
136. LUBANGA, RAFIKI, LONEMA, MAFUTA and Mr NTAGANDA came back to ITURI at the beginning of June 2003.²⁸⁸
137. After their arrival, Mr LUBANGA had a meeting with the population, who was pleased to see him, in the centre of Bunia.²⁸⁹ All ethnic groups were represented.²⁹⁰ LUBANGA called for the signature of decrees to put an end to massacres, and for the end of civilians spreading fake news concerning the security situation in Bunia.²⁹¹

²⁸³ DRC-OTP-0017-0288.

²⁸⁴ DRC-OTP-0037-0312(“[REDACTED]”).

²⁸⁵ DRC-OTP-0005-0012; DRC-OTP-0035-0076,19:40-20:04.

²⁸⁶ DRC-OTP-0005-0027,para.2.

²⁸⁷ DRC-OTP-0089-0090.

²⁸⁸ D-0300:T-221,53:4-13.

²⁸⁹ D-0300:T-221,54:4-7.

²⁹⁰ D-0300:T-221,58:6-59:12.

²⁹¹ DRC-D18-0001-0431,01:48:20-01:50:30(Transl.DRC-D18-0001-5609,5618:217-5619:251).

138. Upon his return to Bunia, Mr NTAGANDA met with KISEMBO, who appointed him major general.²⁹²

IX. Meeting prior to Mongbwalu III

139. Mr NTAGANDA's testimony concerning a meeting prior to his departure to Mongbwalu do not affect his credibility.²⁹³
140. NTAGANDA testified in chief that KISEMBO held a meeting in Bunia, approximately two weeks after Mr NTAGANDA had arrived in Bunia,²⁹⁴ with the general staff and officers that had helped to liberate Bunia.²⁹⁵ KISEMBO "thanked everybody who had stayed faithful to the UPC/FPLC ideology [...] He asked our commander to check their forces and see if there were any soldiers aged under the aged of 18 years and he said if there were any such soldiers, they had to be demobilised and provided to the NGOs".²⁹⁶ The civil secretary also spoke about politics, and that the UPC-RP should follow its policies despite criticism.²⁹⁷ Mr LUBANGA also sent a message, saying that "there were foreigners to protect the civilian population and that we should no longer attack".²⁹⁸
141. When shown document DRC-D01-0003-5900 during direct examination, Mr NTAGANDA confirmed its content as consistent with the subjects discussed during the meeting he attended, but also pointed out that "[n]ot all the subjects were in the minutes". First, there is no mention of a civilian secretary speaking at that meeting. The two persons who spoke were KISEMBO (CEMG) and RAFIKI (AGS).²⁹⁹ Second, there is no mention in the document of a message passed by LUBANGA.³⁰⁰ Third, there is no mention of Mr NTAGANDA's promotion, while he testified in chief that the meeting he attended occurred immediately after he had been promoted by KISEMBO who then announced it during the meeting.³⁰¹ Fourth, Mr NTAGANDA testified that his

²⁹² D-0300:T-221,60:4-12.

²⁹³ *Contra* PCB, paras.93-104.

²⁹⁴ D-0300:T-221,1-2.

²⁹⁵ D-0300:T-221,60:13-23.

²⁹⁶ D-0300:T-221,61:10-15.

²⁹⁷ D-0300:T-221,61:4-8.

²⁹⁸ D-0300:T-221,61:23-25.

²⁹⁹ DRC-D01-0003-5900.

³⁰⁰ DRC-D01-0003-5900; D-0300:T-221,61:23-25.

³⁰¹ D-0300:T-221,66:19-67:3. *See also* T-229:38:15-21.

promotion was not related to the reintegration of soldiers into the national army.³⁰² Nevertheless, the subject of reintegration is mentioned in DRC-D01-0003-5900: “[l]ors de la reunification du Congo, les FPLC seront intégrés”. Fifth, the third operation in Mongbwalu is not mentioned in document DRC-D01-0003-5900 while it was discussed in the meeting Mr NTAGANDA attended.³⁰³ Crucially, NTAGANDA did not confirm the date of the meeting as being 16 June 2003.³⁰⁴

142. When shown his agenda during cross-examination showing that on 11 June 2003 he was retaking Mongbwalu³⁰⁵ and that he did not come back to Bunia for several weeks, Mr NTAGANDA confirmed *bona fide* that the meeting he participated in was not the one recorded in DRC-D01-0003-5900 as being the 16 June 2003.³⁰⁶ This does not exclude, however, that there was a different meeting that occurred earlier which addressed some, but not all, of the same subjects.³⁰⁷ Incidentally, the Prosecution does not dispute that DRC-OTP-0091-0888 are authentic notes of a real meeting at which the demobilisation of children is discussed.³⁰⁸ It is therefore difficult to understand what motivation the Prosecution is imputing to Ntaganda for lying³⁰⁹ – still less why anyone would forge DRC-D01-0003-5900, whose creation and provenance has nothing to do with Mr Ntaganda or his Defence.

143. Notes DRC-OTP-0091-0888 were seized during an operation at John TINANZABO’s home,³¹⁰ who appears in the list of participants.³¹¹

144. A 16 June meeting is also corroborated by video DRC-OTP-0127-0059 of 17 June, where TINANZABO says:

³⁰² D-0300:T-221,67:4-9.

³⁰³ D-0300:T-242,50:14-22(“it was on that occasion that I was entrusted with the mission to go to Mongbwalu. Kisembo explained to me that he had left troops in Dhego and I didn’t know that before and he entrusted me the mission to go and liberate Mongbwalu. So that was the subject that we discussed on the occasion of that meeting”).

³⁰⁴ D-0300:T-221,62:9-68:18. He maintained his position in cross-examination:T-229,37:1-6.

³⁰⁵ D-0300:T-229,28:9-17.

³⁰⁶ D-0300:T-229,53:18(“On the 16th I was not in Bunia”).

³⁰⁷ D-0300:T-229,54:6-17(“I have just confirmed that I did not take part in the meeting on the 16th, but I took part in another meeting before going to Mongbwalu. I repeat that. I cannot tell you the date on which this meeting took place, but it was before I left for Mongbwalu. And during this meeting I was promoted to the rank of major general”).

³⁰⁸ PCB,para.103-104.

³⁰⁹ D-0300:T-229,41:24-42:4(“According to my agenda, in relation to my trip to Mongbwalu, the date of the 16th is not correct. But [...] before going to Mongbwalu, I did attend a meeting. And the content is consistent, that is what I said”).

³¹⁰ T-242,46:18-20.

³¹¹ DRC-OTP-0014-0177.

[REDACTED].

X. Artemis

145. Art  mis started its deployment at the Bunia airport³¹² from 6 June 2003. Despite ongoing attacks by Lendu combatants, LUBANGA and the UPC-RP welcomed its arrival³¹³ and agreed to cantonment of forces outside of Bunia,³¹⁴ which was in fact implemented.³¹⁵ The order was issued not to attack the APC of the FAPC: “We were told to remain *in situ*, and even if there were attacks to not to respond, because the international force had been deployed to ensure protection of the civilian population and that we shouldn’t interfere with that”.³¹⁶ Nonetheless, attacks by Lendu combatants against the population continued,³¹⁷ including at Tchomia,³¹⁸ and civilians continued to flee Bunia fearing reprisals from Lendu combatants.³¹⁹ NIZI, FATAKI, LARGU, DRODRO, KACHELE,³²⁰ and Zumbe³²¹ were attacked. This demonstrates the feeling of security that UPC-RP military presence had provided to the population of Bunia.³²²

146. Mr NTAGANDA explained:

³¹² **D-0300**:T-222,9:4-7; DRC-OTP-0195-1382,para.2.

³¹³ DRC-OTP-0122-0037,p.0038; DRC-OTP-0014-0179; DRC-OTP-0014-0183; DRC-OTP-0127-0059,03:08-06:54 (Transl.DRC-OTP-0176-0063,0067:42-47)(“The UPC ... welcomes ... the deployment of the multinational force and wishes to welcome the force ... to our home in Ituri, to our home in... in ... Bunia ... and also wishes the force and efficient and productive mission in bringing security in Bunia town. The UPC-RP undertakes to ensure that it promotes an environment conducive to making the multinational force’s work and activities as efficient as possible”).

³¹⁴ DRC-OTP-0127-0059,08:02-10:25(Transl.DRC-OTP-0176-0063,0068:74-0069:);DRC-OTP-0127-0059,01:12:55-01:14:00;01:25:12-01:27:38(Transcript DRC-OTP-2102-0512,0514:3-14;0517:142-0518:168).

³¹⁵ DRC-OTP-0184-0133; DRC-OTP-0005-0083; **D-0300**:T-221,73:15-25;T-222,5:18-23;DRC-D18-0001-5530.

³¹⁶ **D-0300**:T-221,75:1-7.

³¹⁷ **D-0300**:T-221,75:8-14;77:13-18(“Q.So do I understand, Mr Ntaganda, that you left the civilians undefended? A.It wasn’t us. We were following an order issued by the United Nations. We had been told that those forces had been deployed to protect the civilian population, and so we complied with the order which had been passed on to us by President Thomas Lubanga”).

³¹⁸ **D-0300**:T-221,75:17.

³¹⁹ DRC-OTP-1002-0014,22:57-24:52(Transl.DRC-REG-0200-0001,7:1-28)(“the local people are furious that the French have told the Hema militia to pull back from the bridge. They are saying that the Lendu can now attack them at any time because there is no permanent French presence on the bridge marking the front line”); 36:46-39:35 (Transl.DRC-REG-0200-0001,15:12-18:9).

³²⁰ DRC-OTP-0152-1609,para.1;DRC-OTP-0005-0271,para.3(i)(1);DRC-OTP-0214-0176;DRC-OTP-0214-0177;**D-0300**:T-221,75:18-19;79:12-20.

³²¹ DRC-OTP-0005-0267,para.3(i)(1);**D-0300**:T-221,77:9.

³²² DRC-OTP-1002-0014,26:23-28:00(Transl.DRC-REG-0200-0001,9:7-10:12)(“So in the space of three hours the French intervention has only resulted in the evacuation of hundreds of people from an area in which they felt safe. The French thought that they were helping by getting the militia to withdraw from the front line, but actually what they have done, at least temporarily, is remove any sense of security that the people left in Bunia feel”).

I think that the FPLC had been created and I, as a commander, had an objective and that was to protect the civilian population and their belongings, and that is why we were not happy about the massacres which had been perpetrated. We complied with the order which had been issued to us with respect to the international force, but the local people were not happy. They demonstrated in the street, they took to the streets to express their feelings. Some of them went to the offices of the United Nations to stand in front of the building and to complain. It was most unfortunate.³²³

147. Meanwhile, a diplomatic mission was conducted in Uganda by the UPC-RP, with a view to restoring the relationship with MUSEVENI, and avoid any future confrontation, following the withdrawal of the UPDF.³²⁴
148. While KISEMBO thought he had good relations with Artémis, he was attacked by them at his headquarters in Miala in July 2003.³²⁵ All his weapons were destroyed or taken³²⁶ and two of his bodyguards died.³²⁷ After this, he moved to a location between CENTRALE and KATOTO.³²⁸ The troops remained outside of Bunia.³²⁹
149. From 16 to 20 August, a UPC-RP delegation attended the meeting of the Comité de Concertation des Groupes armés de l'Ituri, which had been set up in the framework of the IPC.³³⁰ The parties renewed their support to the Luanda Agreements, to the 18 March 2003 Agreement, to the principle to cease hostilities, to put an end to the use of child soldiers, and attacks against the civilian population.³³¹
150. On 28 July 2003, the UN adopted Resolution 1493, whereby it asked the Secretary General to deploy a brigade in Bunia.³³² On 1 September, DJOKABA welcomed the

³²³ D-0300:T-221,81:11-21.

³²⁴ DRC-OTP-0094-0160.

³²⁵ D-0300:T-222,14:11-17;[DRC-OTP-0005-0191](#);[DRC-OTP-0018-0158](#)("[REDACTED]").

³²⁶ D-0300:T-222,14:20-25;[DRC-OTP-0018-0159](#)("Concerne: Restitution de nos armes pillées ce vendredi 11 juillet dans notre camp de cantonnement de Miala").

³²⁷ D-0300:T-222,15:10-14; [DRC-OTP-0014-0263](#),p.0264("le même jour du vendredi 11.07.2003 après-midi il y a eu attaque du camp de cantonnement de F.P.L.C. de MIALA situé à (environs) 6 km de la ville de Bunia, par les éléments de la force multinationale. Dégat matériel : tout le camp incendié. Dégat corporel: 4 personnes tuées par balle dont une femme").

³²⁸ D-0300:T-222,16:1-3.

³²⁹ [DRC-OTP-0029-0288](#).

³³⁰ [DRC-OTP-0107-0362](#).

³³¹ [DRC-OTP-0107-0362](#),0363-0364.

³³² [DRC-OTP-0131-0161](#).

arrival of Task Force II, to replace Artémis force and expressed its support to the newly deployed Ituri Brigade.³³³

151. Subsequent to the fighting in Tchomia, Mr NTAGANDA met with KISEMBO in a bar. Some Pakistani Blue Berets tried to arrest him, in the bar as well as in his house. He escaped. ASIMWE, who was chief escort of KISEMBO at the time, explained to Mr NTAGANDA that his superiors were behind the attempt of arrest. He understood that KISEMBO had a change of heart.³³⁴
152. On 21 November 2003, the UPC-RP, the FAPC and FNI signed a political agreement in Bunia to favour reconciliation, pacification and unity of the Ituri administration.³³⁵

XI. Split of UPC-RP

153. LUBANGA dismissed KISEMBO³³⁶ after the latter had openly attempted to usurp his position³³⁷ and had become “the favourite child of the director Madam Macadam”, who was a director of the MONUC ITURI.³³⁸ Mr NTAGANDA opposed this statement and remained faithful to Mr LUBANGA.³³⁹ Mr NTAGANDA was appointed acting chief of staff, and LINGANGA was designated as his deputy.³⁴⁰ On 24 and 25 December, the UPC-RP along with the FAPC and FNI adopted an “*Acte d’engagement collectif des forces politiques et militaires de l’Ituri (à l’intention de tous les organismes humanitaires implantés en Ituri)*”, whereby they decided to ensure the protection and free movement of humanitarian actors and goods in Ituri, in order to humanitarian assistance to reach the population in need.³⁴¹ On 19 May 2004, the UPC officially

³³³ [DRC-OTP-0029-0286](#); see also [DRC-OTP-0029-0282](#).

³³⁴ [D-0300:T-222,22:8-17](#).

³³⁵ [DRC-OTP-0136-0171](#).

³³⁶ [DRC-OTP-0165-0254](#); see also [DRC-OTP-0113-0186](#).

³³⁷ [D-0300:T-222,23:9-18](#).

³³⁸ [D-0300:T-222,22:18-23](#).

³³⁹ [D-0300:T-222,23:19-24;24:12-25](#); [DRC-OTP-0165-0254](#) (“All the statements made by Commander Kisémbó and Mr Licha are null and have no effect within the UPC-RP. The FPLC, which is a well-organised army, which is well-structured, modernised, faithful and motivated by an idealistic and patriotic spirit, are today determined to stand behind a single man, his excellency Mr Thomas Lubanga, supreme commander for the FPLC and president of the UPC-RP”).

³⁴⁰ [D-0300:T-222,23:19-24](#); [DRC-OTP-0016-0131](#); [DRC-OTP-0132-0237](#).

³⁴¹ [DRC-OTP-0018-0108](#); [DRC-OTP-0132-0324](#).

became a political party, via its new status, which were adopted on 12 November 2003.³⁴² The objectives adopted in 2000 remained the same.³⁴³

Section II - The FPLC had no organisational policy to attack civilians

A. Origins of the FPLC

154. The origin of the FPLC finds its roots in April 2002, when the former mutineers loyal to LUBANGA decided to train recruits in Mandro and young people who were already part of peace committees.³⁴⁴ The training camp was set up in SAIKPA, next to Mandro,³⁴⁵ and included training about how to behave towards non-fighters in combat.³⁴⁶ The ideology taught the recruits was a revolutionary one. Songs were not sung denigrating any ethnicity,³⁴⁷ or women.³⁴⁸ Recruits were there voluntarily, sent by peace committees and from all ethnicities.³⁴⁹ They had only a few weapons, maximum five, that were used for protection of the centre.³⁵⁰ Lendu civilians were not identified as the enemy; on the contrary, Lendu civilians who had fled from their villages after attacks by Lendu combattants were welcomed in Mandro concurrent with the period of training.³⁵¹

155. The training camp was attacked in early June 2002³⁵² by the APC and combatants from Zombe.³⁵³ They burnt down the training centre and some houses in Mandro, and killed civilians.³⁵⁴ Training was relocated to KATOTO temporarily and subsequently to KUDJA.³⁵⁵

³⁴² [DRC-OTP-0089-0483](#).

³⁴³ [DRC-OTP-0089-0483](#), p.0484.

³⁴⁴ **D-0300**:T-213,51:1-10,51:17-24;60:19-24,52:19-53:4,59:6-15(“[...] put them into the movement to protect us and to protect members of the civilian population who were being attacked by Lendu combatants and by the APC at that time.”); **D-0080**:DRC-D18-0001-6163,para.34-36.

³⁴⁵ **D-0300**:T-213,61:12-18.

³⁴⁶ **D-0300**:T-213,65:5-10.

³⁴⁷ **D-0300**:T-213,66:20-23.

³⁴⁸ **D-0300**:T-213,67:4-18; **D-0017**:T-252,70:11-15.

³⁴⁹ **D-0038**:T-250,97:11-99:20; **D-0300**:T-213,74:23-75:18.

³⁵⁰ **D-0300**:T-214,11:22-25.

³⁵¹ **D-0300**:T-213,70:19-71:13;T-231,10:18-13:5; **D-0054**:T-243,76:23,78:3-10,80:21,89:5-7;T-244,8:19-25,7:11-13,22:3-4,18:15-25,19:5-13; [DRC-OTP-0126-0030](#).

³⁵² PCB,para.867 referring to [DRC-OTP-0055-0472](#); **D-0300**:T-214,12:8-13; [DRC-OTP-0051-0184](#),para.9; [DRC-OTP-0051-0210](#),para.3,“The MILOB team at Bunia”.

³⁵³ **D-0300**:T-214,2:8-25.

³⁵⁴ **D-0300**:T-214,12:14-13:4.

³⁵⁵ **D-0300** T-214,20:1-8; **D-0017**:T-252,69:19-70:10.

156. The FPLC was formally created at the beginning of September 2002, after the departure of LOMPONDO, as the military branch of the UPC-RP, under the leadership of its President, LUBANGA. KISEMBO became *Chef-d'État-major-général*, and Mr NTAGANDA was one of his two *Adjoint*. Chef KAHWA explained: “*Nous avons également constaté que ... toutes ces armées étaient ... que ce soient les FAC, que ce soit l'APC, c'étaient toutes des armées qui n'étaient là que pour harceler la population. C'est pour cette raison que nous avons pris la décision de faire une nouvelle révolution. Cette armée-ci sera une armée sans discrimination. Ce sera une armée pour tous les Congolais.*”³⁵⁶

B. FPLC ideology

157. When governor LOMPONDO left Bunia on 9 August 2002, numerous members of the APC deserted and sought to join KISEMBO's forces.³⁵⁷ Taking stock of the APC's disgraceful conduct and lack of proper ideology at the time, Mr NTAGANDA participated in establishing an ideology training centre in Mandro.³⁵⁸ The purpose of this centre was to ensure that former APC members understood that APC's practice and conduct towards the civilian population would not be tolerated in KISEMBO's forces.³⁵⁹

158. Mr NTAGANDA described the ideology on which recruits were trained in Mandro at the time and thereafter as follows:³⁶⁰ (i) the military is subordinated to the political leadership, “the armed wing follows the ideology of the political wing”;³⁶¹ (ii) the role of the military is to protect the civilian population and its property without discrimination, “soldiers ensure the safety and security of the civilians and their property [...] they must show discipline without discrimination towards civilians”;³⁶² (iii) the military directs its operations only against military objectives,³⁶³ “a soldier must fight against other soldiers”;³⁶⁴ (iv) the military must win the hearts and minds of the civilian population, “to be successful in a revolution you need to have the support of

³⁵⁶ [DRC-OTP-0082-0016](#) (Transl. [DRC-OTP-0164-0710](#), 0719:217-221).

³⁵⁷ **D-0300**:T-214,79:24-80:6.

³⁵⁸ **D-0300**:T-213,64:11-20;T-216,15:23-16:13.

³⁵⁹ **D-0300**:T-214,4:3-19.

³⁶⁰ **D-0300**:T-211,51:14-52:13;T-214,4:20-5:6; **P-0017**:T-60,80:4-12.

³⁶¹ **D-0300**:T-211,51:17-18.

³⁶² **D-0300**:T-214,4:24-5:5; **D-0038**:T-250,99:7-15.

³⁶³ GC AP.I, art.48.

³⁶⁴ **D-0300**:T-214,5:1; **D-0017**:T-252,59:4-62:16.

the civilians, the civilians actually needed to assist you in your actions”;³⁶⁵ and (v) “discipline and morale is the main weapon of all soldiers”.³⁶⁶

159. The FPLC tried to bring all village-based forces under its control, and the Comité de Paix, as discussed above, were abolished on 10 January 2003.³⁶⁷ Some resisted, however.³⁶⁸ On 10 December 2002, LUBANGA instructed KISEMBO to inventory all weapons possessed by civilians. This policy shows the UPC-RP’s willingness to get rid of civilian armed groups to ensure the security of the population.³⁶⁹
160. On 12 February 2003, Mr NTAGANDA, LUBANGA and TINANZABO visited recruits in Rwampara, a training camp which had replaced Mandro and new FPLC members who had just finished their training in NDROMO. LUBANGA and TINANZABO’s speeches to those assembled underscored the UPC-RP’s ideology as well as the overall objective to protect all civilians without discrimination and to bring back peace in ITURI.³⁷⁰
161. Mr NTAGANDA testified at length concerning the FPLC ideology and *raison d’être*, and his own: to protect the population, and to bring peace in Ituri. The evidence of Mr NTAGANDA’s speeches admitted in this case demonstrate the same.³⁷¹
162. On 31 July 2004, during a graduation ceremony for the FPLC, Mr NTAGANDA stated:

Premièrement, notre objectif en construisant notre propre armée était de mettre fin aux tueries. Je pense que vous pouvez constater que ... dans presque toutes les régions les tueries ont diminué. C’est ça qui était notre objectif ... à nous tous que vous ... que vous voyez porter ... l’uniforme. [...] Nous n’avons pas pris les armes ... pour porter les grades que nous portons. Nous n’avons pas pris les armes ... pour que nous puissions voler avec. Nous avons pris les armes pour mettre fin ... aux tueries qui étaient perpétrées dans le district de l’Ituri. [...] Notre objectif ... nous l’avons dit ...

³⁶⁵ D-0300:T-211,49:21-23.

³⁶⁶ D-0300:T-214,5:2.

³⁶⁷ DRC-OTP-0092-0466.

³⁶⁸ See Part VI, Chap. III, Section II.

³⁶⁹ [DRC-OTP-0093-0121](#).

³⁷⁰ [DRC-D18-0001-0463](#).

³⁷¹ [DRC-OTP-2058-0251](#); [DRC-D18-0001-0463](#) (Transl. [DRC-OTP-2101-2810](#), DRC-D18-0001-6710); [DRC-OTP-0127-0064](#), 44:32-57:28 (Transl. [DRC-OTP-0165-0349](#), 0375:588-0378:684) [DRC-OTP-0159-0477](#), 02:35:34-02:38:06 (Transl. [DRC-OTP-2085-0468](#), 0506:1280-0507:1340).

*c'est de protéger la population, de protéger ses biens ainsi que le pays. Le pays, la population du Congo et leurs biens.*³⁷²

C. FPLC uniforms

163. Towards the end of September 2002, the recently officially created FPLC³⁷³ obtained uniforms for its members thereby making them easily recognisable.³⁷⁴ These *tache-tache* uniforms, also easily distinguishable from APC and UPDF uniforms, were delivered by plane in Tchomia.³⁷⁵ Civilians volunteered to transport the uniforms to Mandro where they were distributed to all FPLC members.³⁷⁶ Addressing the FPLC forces assembled in Mandro, Chef KAHWA, *secrétaire national adjoint à la défense*, underscored the importance of their new uniforms:

You have received all the material. Don't think that we can fail. If we fight for the rights of inhabitants and we follow our revolution, we will be able to help all the Congolese and one day we can perhaps help Africa completely within the framework of our philosophy. And you the soldiers, may that uniform that you wear be like a flag of the country, it is the honour of the country.³⁷⁷

164. When JEROME's forces, former members of the APC, joined the FPLC, they were also distributed FPLC uniforms for the same reasons.³⁷⁸

D. Training of FPLC's heavy weapons gunners

165. Amongst the first weapons received in Mandro, before KISEMBO's forces became the FPLC, various heavy weapons were delivered, including some: Twelve 12.7mm; recoilless; B-10; and grenade-launcher/kangourou along with the fitting ammunition.³⁷⁹ The use of heavy weapons requires special training in relation to tactics, safety, precision, and, *inter alia*, destructive potential.³⁸⁰ Witnesses identified the difference

³⁷² [DRC-OTP-0127-0064](#),44:07-57:28(Transl.[DRC-OTP-0165-0349](#),0375:588-0378:684).

³⁷³ **D-0300**:T-215,35:16-24;T-231,8:21-82:3.

³⁷⁴ **D-0300**:T-215,68:7-11.

³⁷⁵ **D-0017**:T-253,11:16-12:20; **D-0300**:T-215,67:12-68:6.

³⁷⁶ **D-0017**:T-253,12:21-13:1.

³⁷⁷ **D-0300**:T-216,11:8-12.

³⁷⁸ **D-0300**:T-215,73:21-24;T-234,48:2-6.

³⁷⁹ **D-0300**:T-214,45:4-13;46:16-25.

³⁸⁰ [REDACTED].

between direct and indirect fire as well as the requirement for gunners operating these weapons to have completed higher education.³⁸¹

166. KISEMBO sought assistance from RCD-GOMA for FPLC recruits to undergo specialist heavy weapons training in Rwanda.³⁸² A group of higher educated recruits, most of them civilians with no military background, were selected to attend this training.³⁸³ All recruits selected for this training: reported to Mandro; spent a few days there; made the trip to Tchomia escorted by FPLC members; and travelled to Rwanda by plane.³⁸⁴ Since travelling from Mandro to Tchomia required going through enemy territory, almost everyone making this dangerous trip was armed. Only the civilian recruits who did not have a military background made this trip unarmed for safety reasons,³⁸⁵ [REDACTED].³⁸⁶ Upon returning from heavy weapons training in Rwanda the trained heavy weapons gunners were dispatched to various FPLC units.³⁸⁷ Thus ensuring that the FPLC's use of heavy weapons would be effective, precise and controlled by the commanders selecting the targets.³⁸⁸

E. Exchange of troops between the FPLC in Bunia and Jérôme's forces

167. Following the return of Thomas LUBANGA to Bunia at the end of August 2002 and the subsequent official creation of the FPLC, Jérôme KAKWAVU – former APC commander in the WATSA region who had recently deserted along with the forces under his command – initiated contacts with UPC-RP/FPLC leaders expressing his desire to join the FPLC.³⁸⁹
168. Mr NTAGANDA recalled his contacts with JEROME and discussing the situation with LUBANGA.³⁹⁰ Once an agreement was reached with JEROME – who expressed a need for weapons and requested the FPLC to supply him with the same - it was decided to exchange troops between the FPLC in Bunia and JEROME's forces. Pursuant to this agreement, JEROME was to send approximately 300 members of his forces to Bunia,

³⁸¹ [REDACTED]; [REDACTED].

³⁸² D-0300:T-215,49:20-50:11.

³⁸³ D-0300:T-215,66:4-9.

³⁸⁴ D-0017:T-253,13:12-17;

³⁸⁵ D-0300:T-215,66:10-67:3; D-0017:T-253,12:9-12.

³⁸⁶ [REDACTED].

³⁸⁷ D-0300:T-215,83:8-18; [REDACTED].

³⁸⁸ [REDACTED]; [REDACTED]; D-0300:T-213,11:18-22.

³⁸⁹ D-0300:T-215,22:18-24:10.

³⁹⁰ D-0300:T-215,23:4-11,23:25-24:10;25:6-12.

including experienced commanders but without weapons; while the FPLC in Bunia would send some 300 members to JEROME with their weapons.³⁹¹ The agreement also included sending FPLC uniforms “in order to harmonize our uniforms, since they were now on the side of the UPC, it was necessary for them to wear our uniforms.”³⁹²

169. Witnesses confirmed that this exchange took place in October 2002.³⁹³ Mr NTAGANDA entrusted PETER, his personal secretary, to organize and oversee the exchange.³⁹⁴

170. Notably, Mr NTAGANDA explained the rationale and the objective of the exchange as follows: ensuring that JEROME’s forces would conduct their operations in accordance with the FPLC ideology; receiving seasoned soldiers for the conduct of operations from Mandro, including experienced commanders; indirectly providing JEROME with weapons;³⁹⁵ and mixing troops from different geographic origins.

171. The exchange of troops between FPLC in Bunia and JEROME’s force was unrelated to the Mongbwalu operation later to be staged. Indeed, while JEROME obtained weapons, he neither obtained more or better forces. Moreover, had the FPLC wanted to position additional forces in preparation for an operation in Mongbwalu on two fronts, sending them all the way to Aru was nonsensical.

F. Discipline

172. The Mandro video³⁹⁶ displays the FPLC forces in Mandro: trained; wearing the new FPLC uniforms; equipped with personal and heavy weapons. This video was recorded towards the end of October 2002 after the exchange of troops with JEROME, before Mr NTAGANDA’s departure to Aru as well as before the arrival of SALUMU in Bunia and his appointment as commander of these forces (brigade) in Mandro.

³⁹¹ **D-0300**:T-215,70:22-71:20;72:4-24; **P-0901**:T-28,42:23-43:6; **P-0014**:[DRC-OTP-2054-1086](#),1102:3-8 ;**P-0055**:T-73,92:1-6; **P-0768**:T-33,30:11-18.

³⁹² **D-0300**:T-234,48:4-6.

³⁹³ **D-0300**:T-215:68:7-12; [REDACTED].

³⁹⁴ **D-0300**:T-215,71:21-72:3.

³⁹⁵ **D-0300**:T-215,71:9-20.

³⁹⁶ [DRC-OTP-0082-0016](#).

173. On that day, the Mandro brigade assembled to welcome the UPC-RP President and FPLC Commander-in-Chief Thomas LUBANGA.³⁹⁷ Chef KAHWA, *secrétaire national adjoint à la défense*, replaced LUBANGA at the last minute.³⁹⁸ In the presence of the FPLC/*Chef-d'État-major-général* KISEMBO, Chef KAHWA addressed the Mandro brigade, delivering a powerful speech prepared earlier with the assistance of Mr NTGANDA.³⁹⁹ Chef KAWHA stated the strategic objectives of the UPC-RP in clear language, including its vision for the well-being and the protection of the entire population of Ituri,⁴⁰⁰ within the DRC political structure.⁴⁰¹ Chef KAHWA also underscored the FPLC ideology including its primary *raison d'être*, i.e. to protect the civilian population. Chef KAHWA highlighted the difference between the unacceptable conduct of other military groups existing in the DRC and that expected of FPLC members. Chef KAHWA firmly stressed that breaches of discipline, in particular the commission of crimes such as: harassment of the civilian population, looting, rape and desertion would not be tolerated. Chef KAHWA went as far as stating that execution by firing squad would be the punishment for the commission of such crime.⁴⁰²
174. This event is highly significant considering that the FPLC members assembled in Mandro on that day subsequently became SALUMU's brigade which later participated in the FPLC operation in Mongbwalu.⁴⁰³ It shows the UPC-RP's efforts to ensure that all soldiers in its ranks well-trained and disciplined.
175. Moreover, all documents and speeches⁴⁰⁴ emanating from the FPLC leadership demonstrate that it was an organised and law abiding army, with an effective disciplinary system.⁴⁰⁵ Recruits received military discipline training.⁴⁰⁶ Fatigue or

³⁹⁷ D-0300:T-216,12:19-22.

³⁹⁸ D-0300:T-216,12:23-13:1.

³⁹⁹ D-0300:T-216,12:13-13:1.

⁴⁰⁰ DRC-OTP-0082-0016,13:19-14:27(Transl.[DRC-OTP-0164-0710](#),ll.212-222).

⁴⁰¹ D-0300:T-216,9:16-12:2;14:23-15:16.

⁴⁰² D-0300:T-216,11:13-16;18:9-19:6.

⁴⁰³ D-0300:T-216,6:13-16;12:7-12.

⁴⁰⁴ KISEMBO:[DRC-OTP-2058-0251](#)(Transl.[DRC-OTP-2102-3766](#));[DRC-OTP-0102-0003](#),33:01-36:50 (Transl.[DRC-OTP-2102-3433](#),ll.344-402);KAHWA:[DRC-OTP-0082-0016](#),11:30-18:15,19:46-21:27,22:42-23:34,25:17-26:47(Transl.[DRC-OTP-0164-0710](#),ll.190-264,288-310,329-346,374-397).

⁴⁰⁵ D-0300:T-213,81:14-21("Discipline is very important in a soldier's life. An army without discipline, you're better off without such an army. And it's better not to be its commander. But when you have a small army which is disciplined, it is likely to out perform and army which as large – is made up of large numbers of people. For this reason I must say that discipline within and army is extremely important. And so when you have experience, then you are able to command an army which can score some points and win."); D-0300:T-

supplementary exercises were imposed to undisciplined recruits.⁴⁰⁷ Soldiers breaking the military rules were put in jail.⁴⁰⁸ For instance, Mr NTAGANDA arrested PIGWA and KASANGAKI for having stolen cows;⁴⁰⁹ ABELANGA for looting after the liberation of Mongbwalu;⁴¹⁰ LINGANGA for launching an attack in a period of pacification;⁴¹¹ BRANDON and SOPICK for attempted rapes;⁴¹² and [REDACTED].⁴¹³ For the most extreme case of indiscipline, firing squads were also authorised by KISEMBO.⁴¹⁴ One took place at Camp Ndromo, when a soldier stole goods from Nande civilians.⁴¹⁵ Another took place in Mongbwalu, when Cdre LIRIPA was executed in Mongbwalu after he killed a Lendu civilian.⁴¹⁶ Mr NTAGANDA also ordered the burning of looted goods in Komanda.⁴¹⁷

G. Communication

176. With the aim of being able to exercise command and control as quickly as possible and to ensure cohesion amongst FPLC units despite the dreadful conditions in which they

222,59:8-61:1;[DRC-OTP-0017-0033](#),p.0101(second)(Transl.[DRC-OTP-2102-3854](#),3923);P-0769:T-121,8:8-9; **D-0038**:P-T-250,6:24-7:8.

⁴⁰⁶ **P-0055**:T-71,79:8-21; **P-0963**:T-81,74:14-18; **P-0911**:T-157,16:22-17:6(“Q.Could you explain what happened during the training? What type of training did you undergo? A. With regards to the training, physical education, there was also ideology. When I speak about ideology, we were given certain discipline, how should a soldier behave, how should a soldier comport himself. Q.And what did you learn about discipline during that training in the UPC? A.On the subject of discipline, I learnt certain things. Firstly, a soldier shouldn't steal. A soldier shouldn't rape. A soldier shouldn't harm the population. A soldier should just work with complete discipline”).

⁴⁰⁷ **D-0300**:T-213,82:12-16(“In an army when a recruit commits an offence, they might be asked to do push-ups, to roll over or to maintain a standing position for a long time, to go fetch water or to cook while the other recruits are receiving training, and from time to time might even be asked to lie down on the ground, and sometimes they might be flogged, but not to the point of injuring them.”); **D-0017**:T-254,7:3-14.

⁴⁰⁸ **D-0300**:T-213,85:24-86:10;[DRC-OTP-0017-0033](#),0194(second)(Transl.[DRC-OTP-2102-3854](#),4016).

⁴⁰⁹ **D-0300**:T-213,54:4-5,86:1;T-222,68:4-69:2.

⁴¹⁰ **D-0300**:T-213,13:24-14:1;T-214,10:13-21;T-233,54:7-8.

⁴¹¹ See Part V,Chapt.III; **D-0038**:T-250,4:20-5:7.

⁴¹² **D-0300**:T-214,9:17-10:2,10:6-12.

⁴¹³ [REDACTED].

⁴¹⁴ **D-0300**:T-213,87:2-6(“So the target or the firing squad is something that sends a strong message to the army and to the population. It is carried out in public and during the day in order to point out to the population that the duty of the army is to protect the members of the population”),87:11-41.

⁴¹⁵ **D-0300**:T-215,42:9-43:10; **D-0017**:T-252,65:10-25.

⁴¹⁶ [DRC-OTP-0017-0033](#),97(second),98(Transl.[DRC-OTP-2102-3854](#),3919,3920); **D-0300**:T-222,61:2-65:12).

⁴¹⁷ **D-0300**:T-213,13:9-23(“I do recall, for example, that in Komanda at the end of August 2002, when we went there, I was the commander. When we were able to bring Komanda under our control, I learned that some soldiers had looted some civilian homes, [...] We did not have information as to the location to which the population had moved, but since I had learnt that some soldiers had looted, I asked for those soldiers to be brought in. [...] I asked that the items that had been looted should be brought and that those who had looted those items be flogged. They were asked to lie on the ground and to be whipped. [...] The people of Bunia were all aware that I had taken such a measure and they were happy with that decision. And that is how I became popular with the people of Bunia, and to this very day they remember what I did.”),14:3-17; **D-0017**:T252,76:16-22,77:3-18.

operated, FPLC leaders did their utmost to implement the most efficient communication means and procedures possible. This included: satellite telephone communications *via* a device called Thuraya; short wave radio communication *via* a device called *phonie*; and very high frequency (VHF) radio communications *via* portable-Motorola-radios and VHF-Motorola-base.

I. Thuraya

177. No cellular telephone network functioned in Ituri until at least May 2003. Accordingly, the Thuraya, which operates like a mobile phone while using satellite network rather than a cellular network, was used for communications between the most senior FPLC officers. Due to the high cost involved, the only officers who had a Thuraya included KISEMBO, Mr NTAGANDA, JEROME/Comd-NE-OpSec and SALONGO/ Comd-SE-OpSec.⁴¹⁸ Within the UPC-RP, LUBANGA and RAFIKI also had a Thuraya.⁴¹⁹ Each Thuraya had a telephone number allowing for secure communications. No evidence of Thuraya communication was adduced in this case.

II. Phonie

178. The *phonie* operating on short wave radio frequencies was used at the time both for military and civilian commercial communications.⁴²⁰ Hence, anyone who had a *phonie* could listen to messages being transmitted on a given frequency. Consequently, the FPLC implemented communication procedures including the use of codes to ensure that messages sent and received were confidential and could not be understood by the enemy.⁴²¹
179. The procedures implemented required qualified *phonie* radio operators, known within the FPLC as '*signora*',⁴²² who were trained for this purpose. [REDACTED].⁴²³
180. Messages transmitted or received via *phonie* were transcribed in a logbook which was kept by the '*signora*' operating the *phonie* in each unit which had a *phonie* according to

⁴¹⁸ D-0300:T-222,33:11-35:16; P-0901:T-28,20:8-12; P-0055:T-71,42:9-15,98:8-18; P-0963:T-78,67; P-0907:T-90,46:17-19; P-0190:T-97,28:2-5; P-0002:T-172,16:6-11,16:22.

⁴¹⁹ P-0055:T-74,73:16-18, T-78,66:22-67:4; P-0002:T-172,15:24-25.

⁴²⁰ D-0300:T-215,23:19-24,T-222,37:20-25.

⁴²¹ D-0300:T-222,37:20-38:22.

⁴²² D-0300:T-215,85:9-12; P-0017:T-58,40:12-16; P-0055:T-70,70:15-71:1; D-0017:T-252,6:4-5.

⁴²³ [REDACTED].

a set procedure.⁴²⁴ When a *phonie* was operational *i.e.* ‘ON’, in the unit’s command post/headquarters or ‘plugged-in’ in a temporary location, all communication could be heard and *phonie* operators were expected to transcribe all messages in their logbooks.⁴²⁵ Either in the ‘IN’ or ‘OUT’ section.

181. Relying on this procedure, FPLC units and officers considered the *phonie* as a secure means of communication and thus did not hesitate to include confidential and sensitive information therein.⁴²⁶

III. Motorola

182. The portable-Motorola-radios used by the FPLC made it possible for FPLC units and members to communicate over short distances (5 km).⁴²⁷ VHF radio communications were not secured. Anyone in possession of a portable-Motorola-radio could hear all communication on a particular frequency.⁴²⁸ In fact, most FPLC VHF radio communication used the same frequency even though other frequencies, known only to certain FPLC members, were also used.⁴²⁹

183. Although the quality of such communication depended on the presence of obstacles, the topographical situation and the weather, they were efficient for tactical purposes within a limited area.⁴³⁰ With the aim of increasing the range of possible communications between two portable-Motorola-radios, FPLC members attempted to use modified antennas. The use of these antennas did not increase in any significant way the effective range of portable-Motorola-radios.⁴³¹ Indeed, it was not possible to communicate between Bunia and locations outside of Bunia using two portable-Motorola-radios.⁴³²

184. To overcome this major hurdle, a local civilian who had a Motorola base was called upon for assistance.⁴³³ Relying on the assistance of this person, who became known as PAPA THREE, it was possible to relay a message from Bunia to certain locations

⁴²⁴ D-0300:T-222,37:20-38:22.

⁴²⁵ D-0300:T-222,37:20-38:22.

⁴²⁶ D-0300:T-222,37:20-38:22;T-216,28:4-8.

⁴²⁷ D-0300:T-215,82:11-13.

⁴²⁸ D-0300:T-222,35:23-36:8.

⁴²⁹ [REDACTED].

⁴³⁰ D-0300:T-235,59:19-60:10.

⁴³¹ D-0300:T-235,59:3-9.

⁴³² D-0300:T-222,37:2-10.

⁴³³ D-0300:T-222,36:12-14.

outside of Bunia. It was not possible however, using this procedure to relay a message from Bunia to Mongbwalu, Kilo, Fataki or Mahagi.⁴³⁴ No other VHF-Motorola-base was available or used by the FPLC in 2002-2003.

185. Consequently, neither the UPC-RP nor the FPLC had an organization policy to attack non-Hema civilians.

CHAPTER II – THERE WAS NO WIDESPREAD OR SYSTEMATIC ATTACK DIRECTED AGAINST THE CIVILIAN POPULATION (ARTICLE 7)

186. Pursuant to Article 7(3), an attack directed against a civilian population is understood to mean a course of conduct involving the multiple commission of acts referred to in Article 7(1) of the statute against any civilian population, pursuant to or in furtherance of a state or organisational policy to commit such attack.
187. As demonstrated in Chapter 1, the UPC-RP and FPLC were organisations but never adopted an organisational policy to attack part of the civilian population belonging to ethnic groups other than the Hemas. Neither the UPC-RP nor the FPLC actively promoted or encouraged such an attack against a civilian population, let alone the non-Hema civilian population.
188. The Prosecution failed to prove that “between on or about 6 August 2002 and 27 May 2003 the UPC committed crimes listed in Article 7(1) as part of a widespread or systematic directed against a civilian population, with knowledge of this attack”.
189. Article 7(1) crimes the Prosecution claims were part of this attack are drawn from eight key “assaults”: the “attacks” defined in the UDCC as the First Attack and the Second Attack,⁴³⁵ and the six “contextual attacks”: assault on Bunia in August 2002⁴³⁶ assaults on Songolo,⁴³⁷ assault on Zumbe in October 2002,⁴³⁸ assault on Mambasa, Komanda and Erengenti in 2002;⁴³⁹ assault on Bunia in March 2003,⁴⁴⁰ and assault on Bunia in May 2003.⁴⁴¹

⁴³⁴ D-0300:T-215,82:11-13;T-216,86:5-6.

⁴³⁵ PCB,para.180-182 et ss.

⁴³⁶ PCB,para.154-161.

⁴³⁷ PCB,para.162-166.

⁴³⁸ PCB,para.167-171.

⁴³⁹ PCB,para.172-179.

⁴⁴⁰ PCB,para.183-185.

⁴⁴¹ PCB,para.186-190.

190. The Prosecution's arbitrary selection of six 'contextual attacks' does not provide a complete overview of all operations in which the FPLC were involved during the period from 6 August 2002 to 27 May 2003. Accordingly, the weight which can be attributed to these six 'contextual attacks' in determining whether there was a widespread or systematic attack directed at the non-Hema civilian population is very low.
191. In any event, the issue to be determined in this case is whether the First and the Second Attack considered individually constituted widespread or systematic attacks directed at the non-Hema civilian population of Banyali-Kilo and Walendu-Djatsi collectivities.
192. The case for the Defence is that neither the First Attack, nor the Second attack considered individually or together constituted widespread or systematic attacks against the civilian population. Taking into consideration all operations in which the FPLC were involved leads to the conclusion that the UPC-RP and FPLC did not launch a widespread and systematic against the non-Hema population of Ituri between 6 August 2002 and 31 December 2003.

Section I - FPLC operations from 6 August to November 2002

193. In early August 2002, as result of attacks against the civilian population of Loga, KISEMBO's forces assembled in Mandro launched a first operation against Lendu combatants which was a success and during which no crimes were committed. The evidence reveals that this attack was not directed against civilians.⁴⁴²
194. The next involvement of the forces assembled in Mandro in a military operation was a result of Lendu combattants and APC troops attacking the civilian population in Mudzipela, on or about 6 and 7 August 2002.⁴⁴³ KISEMBO, who was in Bunia at the time leading the *Etat-major* in creation, did not have sufficient soldiers to protect the civilian population of Mudzipela. He thus ordered Mr NTAGANDA to intervene and the latter deployed two companies early on 9 August 2002.⁴⁴⁴ Whereas many Hema civilians were killed by Lendu combattants and members of APC before the Mandro

⁴⁴² D-0017:T-252,71:10-73:20.

⁴⁴³ [DRC-OTP-0049-0465](#), para.9;D-0300:T-214,9-14.

⁴⁴⁴ D-0300:T-214,58 :15-24,59 :9-14.

forces intervened—who were buried in a mass grave in Mudzipela⁴⁴⁵ - there is no reliable evidence that any non-Hema civilians were killed thereafter. The evidence reveals that this attack was not directed against civilians.⁴⁴⁶ Mr NTAGANDA succeeded in pushing back the APC and Lendu combattants all the way to Mwanga.⁴⁴⁷

195. In parallel to this operation, the UPDF conducted an operation which did not last very long resulting in LOMPONDO, leaving Bunia with the APC forces he had assembled in the area.⁴⁴⁸ The forces in Mandro were not involved in the UPDF operation to oust LOMPONDO.⁴⁴⁹
196. Upon being informed that the UPDF were taking on LOMPONDO, Mr NTAGANDA left one battalion behind to block the road to Mudzipela and returned to Bunia at the former APC *Etat Major general* occupied by KISEMBO.⁴⁵⁰ Mr NTAGANDA described the positive reaction of the population,⁴⁵¹ as well as his encounter with a UPDF officer who explained to KISEMBO and him what happened.⁴⁵² The Bn commanded by Mr NTAGANDA returned to Mandro using a road kilometres away from the Sous region.⁴⁵³ The evidence reveals that exactions might have been committed in Bunia by UPDF, APC, or Lendu combattants, but there is no reliable evidence that an attack was committed against the civilian population by the FPLC.
197. Notably, as a consequence of LOMPONDO leaving Bunia, the APC deserted a number of positions it had been occupying in the region. Fully aware of the risk that LOMPONDO and the APC might launch a counter-attack on Bunia, KISEMBO ordered Mr NTAGANDA to deploy some of the forces assembled in Mandro to occupy these positions. Mr NTAGANDA illustrated where these positions were located, why it

⁴⁴⁵ DRC-OTP-0123-0009,30:37-35:34(Transl.DRC-OTP-2082-1122,1140:607-1142:688).

⁴⁴⁶ D-0300:T-214,60:15-23.

⁴⁴⁷ D-0300:T-214,61:1-13,20-25

⁴⁴⁸ [DRC-OTP-0049-0465](#),para.9;D-0300:T-214,62:17-24.

⁴⁴⁹ D-0300:T-214,62:1-8.

⁴⁵⁰ D-0300:T-214,63:12-18.

⁴⁵¹ D-0300:T-214,63:4-11.

⁴⁵² D-0300:T-214,64:15-65:8.

⁴⁵³ D-0300:T-214,65:9-11,15-22.

was important to occupy these positions to prevent a counter attack and to thereby to protect the population of Bunia.⁴⁵⁴

198. One such position was in Komanda, located approximately 80 kilometres away from Bunia, on the road leading to Beni, often referred to as the Bunia-Komanda axis. The forces sent to Komanda were approximately the size of a Company and were amongst the first to be the object of a counter attack.⁴⁵⁵ KISEMBO ordered Mr NTAGANDA to intervene, which he did with two companies.⁴⁵⁶ Combat was of short duration, as the APC which had re-occupied Komanda retreated soon after the operation started.⁴⁵⁷ Notably, Komanda was deserted as the civilian population left before the clashes between APC and NTAGANDA's group.⁴⁵⁸ There is neither evidence that crimes were committed by Mr NTAGANDA's forces, nor that any attack was directed against the civilian population. This is where Mr NTAGANDA burnt the looted goods referred to at Chapter 1 took place.
199. The plan following this operation was to position additional forces in Komanda. Mr NTAGANDA travelled back to Mandro to prepare these forces. As Mr NTAGANDA set out with the equivalent of a company to return to Komanda, he arrived in Bunia where he was ordered by KAHWA to remain in Mandro to ensure the security during the implementation of his secret plan to exchange NTUMBA LUABA with *notables* in Kinshasa.⁴⁵⁹ KISEMBO was ordered to take the forces to Komanda.⁴⁶⁰
200. The next fighting involving the forces under KISEMBO's command happened in Songolo, while Mr NTAGANDA was in Bunia.⁴⁶¹ D-0017 described this operation during which houses and *manyattas* in the military camp close to Songolo were burnt, before the enemy drove KISEMBO's troops out, but no civilians were attacked or killed, as they had already left.⁴⁶² There is no reliable evidence that crimes were committed nor that this attack was committed against the civilian population. The

⁴⁵⁴ D-0300:T-214,75:9-11;84:25-85:7 concerning map [DRC-REG-0001-0063](#) ("we did this in order to protect Bunia and to protect, to protect the inhabitants of that city and those who lived in the area").

⁴⁵⁵ D-0300:T-215,7:18-24,9:3-7.

⁴⁵⁶ D-0300:T-215,7:23-8:7.

⁴⁵⁷ D-0017:T-252,76:1314;D-0300:T-215,8:8-15.

⁴⁵⁸ D-0300:T-215,8:16-18.

⁴⁵⁹ D-0300:T-215,15:3-10.

⁴⁶⁰ D-0300:T-215,13:4-7,13-14.

⁴⁶¹ D-0300:T-215,27:9-12.

⁴⁶² D-0017:T-252,80:18-83:16.

evidence provided by P-0888 addressed in a different section cannot be relied upon in this regard.⁴⁶³

201. D-0017 testified as to what happened after the Songolo operation, namely that KISEMBO was attacked close to Nyankunde which was the object of a major attack on the civilian population by the APC and Ngiti combatants.⁴⁶⁴ The Nyankunde attack did not involve any of KISEMBO's forces assembled in Mandro and is one of the three largest massacres of the civilian population committed during the period 2002/2003. Hundreds of houses were burnt, the hospital was destroyed and hundreds of people were killed.⁴⁶⁵
202. Mr NTAGANDA had received orders via DIDIER who was in Songolo with KISEMBO, to occupy a position deserted by the APC in Mahagi.⁴⁶⁶ While travelling to MAHAGI, Mr NTAGANDA fell sick and was called back to return to Bunia due to KISEMBO's injuries.⁴⁶⁷ There is no evidence of any fighting and crimes committed against the civilian population during Mr NTAGANDA's travel in the Mahagi area. On his way back to Bunia, Mr NTAGANDA learned of the official creation of the FPLC and the appointment of KISEMBO, himself and DILANGU.⁴⁶⁸
203. Pursuant to Kiseambo's orders, Mr NTAGANDA deployed various troops in Largu.⁴⁶⁹
204. From this time until the end of October, there was an exchange of troops between the FPLC and JEROME's forces organised by Peter, JEROME sent troops from Aru to Mahagi, the uniforms arrived, recruits were sent to Tchomia to received heavy weapons training in Rwanda.⁴⁷⁰ Fightings also took place between FPLC forces in Chai/Marabo,⁴⁷¹ Kunda,⁴⁷² Zumbe⁴⁷³ and Komanda.⁴⁷⁴ Mr NTAGANDA was not involved in Zumbe and Komanda but played an active role in respect of the operation in

⁴⁶³ See Part VI, Chap. I, Section III.

⁴⁶⁴ **D-0017**:T-252,85:2-7; **D-0300**:T-215,27 :11-18,47 :13-19;**D-0300**:T-215,47 :7-12.

⁴⁶⁵ **P-0769**:T-122,21:12-13; **D-0300**:T-215,45:11-46:25.

⁴⁶⁶ **D-0300**:T-215,26 :17-28 :3.

⁴⁶⁷ **D-0300**:T-215,34:2-17.

⁴⁶⁸ **D-0300**:T-215,35:16-24.

⁴⁶⁹ **D-0300**:T-215,25:14-26:16.

⁴⁷⁰ See Part III, Chap. I, Section II.

⁴⁷¹ **D-0300**:T-215,79:22-8:22.

⁴⁷² **D-0300**:T-215,74:22-76:2.

⁴⁷³ **D-0300**:T-215,78:18-79:11.

⁴⁷⁴ **D-0300**:T-215,79:14-16.

Chai. D-0017 was involved in Zumbe and Komanda. He testified that no crimes were committed, and that civilians had fled the cities before the FPLC arrived.⁴⁷⁵ There is no reliable evidence that FPLC operation were directed against civilians or that crimes were committed.

205. The evidence provided by [REDACTED] in this regard cannot be relied upon. Regarding Komanda, D-0017 testified [REDACTED].⁴⁷⁶ In that regard, [REDACTED] account of these attacks is farfetched, implausible and unreliable in light of the evidence he fabricated in relation to the Mongbwalu operation.⁴⁷⁷
206. In light of all the evidence on the record regarding the operation conducted by the FPLC during the period from 6 August to 20 November, it cannot be concluded that these operations, considered individually or together, were directed at civilians.
207. This is the context in which the first attack must be assessed. Neither the UPC-RP nor the FPLC had a policy to attack civilians and engaged in a widespread or systematic attack against the civilian population.

Section II - The first attack

208. As addressed in detail in Part IV, the first attack, considered on its own or in conjunction with other preceding operation, was not a widespread or systematic attack and was not part of a wider attack against the civilian population. There is no reliable evidence that by then, the UPC-RP and the FPLC had adopted an organisation policy to attack non Hema civilians.

Section III - FPLC operations between the first and second attack

209. Notably, although the Prosecution does not rely on any operation conducted by the FPLC during this period, the FPLC were involved in many operations involving the use of force, which are relevant. The main operations conducted by the FPLC during this period were in the area of Mahagi, on the Mongbwalu-Kilo-Nyngaray-Bunia axis, and the Bunia-Komanda axis. The evidence, in particular the Ntaganda-logbook, shows

⁴⁷⁵ D-0017:T-252,73:21-74:11,74 :23-75:10,79:13-80:6;T-253:16:2-17:9,18:3-24,19:3-12.

⁴⁷⁶ D-0017:T-253,28:6-10.

⁴⁷⁷ See Part IV, Chap.III, Section I.

how the FPLC conducted its military operations on a quasi-daily basis, that no attacks were directed at civilians during this period.⁴⁷⁸

210. What is more, the FPLC continued in its endeavour to create an operational and effective law abiding military force modelled on government forces, and many measures were taken in this regard. For example, a new *mise en place* was designed by KISEMBO to ensure that everyone was aware of their position.
211. Regarding the civilian population, it is noteworthy that Mr NTAGANDA let the Lendu pass by Kpandroma to attend a negotiation meeting. At some point in January, LUBANGA had started negotiations with Lendu combatants to oust UPDF out from Ituri.
212. Accordingly, there was no widespread and systematic attack against the civilian population between the first and the second attack.

Section IV - Second attack

213. As addressed in detail in Part V, the first attack neither considered on its own nor in conjunction with other preceding operational was not a widespread or systematic attack and was not part of a wider attack against the civilian population. There is no reliable evidence that by then, the UPC-RP and the FPLC had adopted an organisation policy to attack non-Hema civilians.

Section V - The period from March to May 2003

214. The post-Second Attack operations likewise provide no retrospective indication of any policy to attack civilians during the First or Second Attacks.
215. The 6 March attack was provoked by the UPDF who deployed in LUBANGA's compound, and killed two FPLC soldiers in Bunia; by FIPI's creation who allowed LUBANGA to understand that negative forces were allying against him; and by cooperation between Museveni and Kabila, who was behind FIPI.⁴⁷⁹ On 6 March the FPLC was the attacking force and Mr NTAGANDA explained why the only way out due to the size and strength of the UPDF, APC and FAC together was to launch an

⁴⁷⁸ DRC-OTP-0017-0033(Transl.DRC-OTP-2102-3854).

⁴⁷⁹ See Part V, Chap.IV,Section I.

attack to protect the civilian population.⁴⁸⁰ Accordingly, the FPLC did not direct its attack against civilians. Quite to the contrary, the Lendu combatants which intervened as the FPLC was about to successfully oust the UPDF from Bunia directed an attack against the civilians of Bunia, killing many, destroying houses and pillaging the town.⁴⁸¹ In fact the 6 March events prove that the FPLC did not have a policy and were not involved in a commission of a widespread and systematic attack against the civilian population.

216. From 6 March, LUBANGA left for Goma and KISEMBO for Mamedi. There is no evidence of any organisational policy, and of any widespread or systematic attack against civilians. *A contrario*, the Lendu combattants directed several attacks against the civilian population, not only in Bunia, but in many surrounding villages. The UPDF was unable to protect the civilians during this period, and FNI seized this opportunity to attack villages such as Drodoro,⁴⁸² one of the biggest massacres of committed against the civilian population in 2002-2003.
217. The next operation referred to by the Prosecution as a contextual attack is when the Lendu combatants launched a major attack against civilians of Bunia, taking advantage of the UPDF departure. On 12 May, KISEMBO's forces launched an operation and liberated Bunia, ousting the Lendu combatants. There is no reliable evidence that the FPLC committed crimes during this operation, let alone that it directed attacks against civilians.⁴⁸³
218. More importantly, the FPLC operation led to the re establishment of basic living conditions for the population of Bunia, the majority of which supported the FPLC. What is more, the liberation of Bunia in May paved a way to LUBANGA's return to Bunia. Soon thereafter, the FPLC launched a third operation in Mongbwalu under the command of Mr NTAGANDA.⁴⁸⁴ There is no reliable evidence that crimes were committed during this new attempt to liberate Mongbwalu, now under the oppression of JEROME's forces.⁴⁸⁵ Considering that this attack is very similar to the first attack, both

⁴⁸⁰ D-0300:T-221,28:1-29:2,30:21-31:1.

⁴⁸¹ DRC-OTP-2067-1989,para.1;DRC-OTP-2067-1994,para.1;D-0300:T-221,37:5-8.

⁴⁸² DRC-OTP-0126-0073;DRC-OTP-2078-0393,para.15.

⁴⁸³ DRC-OTP-2078-0229;DRC-OTP-2078-0274;DRC-OTP-2078-0328.

⁴⁸⁴ D-0300:T-211,69:9-15.

⁴⁸⁵ D-0300:T-211,69:9-15.

in terms of the manner it was conducted on two fronts, from Mbidjo and from Dala,⁴⁸⁶ and that no crimes were committed, it is revealing that the Prosecution is not relying on it in support of its allegation that a widespread and systematic attack was directed against the civilian population.

Section VI - The period from June to December

219. Whereas the APC and the FNI launched many attacks directed at civilians during this period, there is no reliable evidence that the FPLC did the same. In fact, the evidence reveals that the FPLC refrained from launching operations, even to defend. The sole attack in which the FPLC was involved, was in Tchomia, was directed at Lendu combattants who occupied the town, and not at civilians.⁴⁸⁷

CONCLUSION

220. Analysis of the evidence in this case reveals that neither the UPC nor FPLC adopted any policy to attack civilians or any civilian population, let alone to commit a widespread or systematic attack against any civilian population.

CHAPTER III – THE ABSENCE OF A COMMON PLAN WITH AN ELEMENT OF CRIMINALITY

221. The “critical element of criminality”⁴⁸⁸ of the common plan, as postulated in the charges, is to “expel the non-Hema civilian population” by means of the enumerated crimes.⁴⁸⁹ Assuming military and political control of territory is not an international crime under the ICC Statute and, accordingly, cannot fall within the “critical element of criminality” by which the Chamber must assess NTAGANDA’s *mens rea*, and for assessing the sufficiency of his alleged contribution.

222. The Prosecution relies primarily on the events and actions during the “First Attack” and the “Second Attack” as proof of this common criminal plan. Those attacks, as discussed within the relevant sections, reveal no such common plan involving anyone, let alone such a plan involving NTAGANDA. NTAGANDA associated with other individuals within the FPLC and UPC, but not for the purpose of any international crime

⁴⁸⁶ D-0300:T-211, 69:20-21,70:5-13.

⁴⁸⁷ D-0300:T-222,32:3-18.

⁴⁸⁸ *Bemba et al.* AJ, para.133.

⁴⁸⁹ UDCC,para.1.

whatsoever, including to “expel the non-Hema civilian population” or to commit any of the other alleged international crimes.

223. The discussion of NTAGANDA’s actions and knowledge during the First and Second Attacks is sufficient to show the absence of his involvement in any common plan, and the perpetration of crimes by any individuals within an organization does not convert the organization into a common plan, let alone prove that everyone part of the organization is part of a common criminal plan.
224. The period prior to and after the two Attacks, as previously discussed, is likewise not indicative of any common plan to drive out the non-Hema civilian population, or commit any other crimes, during the two Attacks.
225. The UPC and FPLC, operating in an extremely difficult and ethnically polarised environment, worked to build a multi-ethnic political and military group, bring about pacification, and bring an end to the attacks of the APC and Lendu combatants on civilians. These were the UPC’s goals stated in public, for example during the 2003 New Years celebration;⁴⁹⁰ and they were the goals, despite a difficult context, that it attempted to pursue. As stated by Lubanga during that meeting, which was attempted by the FPLC’s top leadership as well as MONUC officials: “*l’espace sous contrôle de l’UPC-RP sert de terre d’asile et d’exil à la population du Nord-Kivu qui fuit l’insécurité, les hostilités instaurées par le regime de MBUSA NYAMWISI ainsi que le Gouvernement de Kinshasa*”.⁴⁹¹ LUBANGA consistently delivered the same message: the UPC-RP would work towards peace and reconciliation of all ethnic groups in Ituri.⁴⁹² The Prosecution’s attempt to characterize every statement contrary to its hypothesis as propaganda, while accepting every statement it interprets as consistent with its hypothesis as the truth, is a circular and unsound methodology.

⁴⁹⁰ D-0300:T-218,63:13-21.

⁴⁹¹ [DRC-OTP-0037-0295](#),p.0296.

⁴⁹² [DRC-OTP-0124-0002](#),01:15-04:12,06:11-07:54,23:05-25:21,29:22-32:02(Transl.[DRC-OTP-0176-0027](#)); [DRC-OTP-0147-0212](#); [DRC-OTP-0037-0295](#); [DRC-OTP-0127-0063](#),00:00:59-01:03:38(Transl.[DRC-OTP-0176-0418](#),0426:271-293); [DRC-D18-0001-0433](#),35:20-54:58,01:01:39-01:03:21(Transl.[DRC-D18-0001-6643](#),6647:104-6651:225,6653:264-275); [DRC-OTP-0120-0294](#),02:11:12-02:19:20(Transl.DRC-OTP-2102-2557); [DRC-D18-0001-0427](#),03.10-05.25,29.40-31.17,35.37-36.40,38.40-40.20,46.00-50.03 (Transl.[DRC-D18-0001-6667](#)); [DRC-D18-0001-0463](#); [DRC-D18-0001-0431](#); [DRC-OTP-0127-0059](#),00:03:08-00:06:54,00:08:02-00:10:25(Transcription [DRC-OTP-0176-0063](#),0067:37-57,0068:74-0069:102); [DRC-OTP-0102-0009](#) (Transl.[DRC-OTP-2102-0608](#)); [DRC-OTP-0102-0003](#),05:00-07:18,09:30-12:41,15:38-17:06,20:37-26:14,01:01:29-01:02:00,01:17:39-01:23:58(Transl.[DRC-OTP-2102-3433](#),11.85-100,117-140,167-182,214-270,672-678,818-900).

226. After the fighting was over, the FPLC's objective was to achieve its lawful military objectives and also ensure that its forces were disciplined and did not target non-fighters.
227. When the conflict did occur, FPLC and UPC authorities called civilians back to areas where there had been fighting, made serious efforts to avoid conflict and population displacement through pacification, and worked towards reconciliation in Ituri.
228. Lendu civilians may not have felt comfortable immediately returning to areas under the control of the group whom they were being taught by the Lendu leadership was a sly⁴⁹³ enemy.⁴⁹⁴ Indeed, Lendu combatants even attacked other Lendus who refused to take part in attacking the non-Lendu civilian population.⁴⁹⁵ Their non-return to areas of conflict, accordingly, does not prove the existence of any plan to drive them out.
229. On 26 February 2003, [REDACTED] stated again the objectives of the UPC-RP, in the name of Thomas LUBANGA:

[REDACTED].⁴⁹⁶

PART IV - MR NTAGANDA DOES NOT INCUR INDIVIDUAL CRIMINAL RESPONSIBILITY FOR THE CRIMES ALLEGEDLY COMMITTED DURING THE PROSECUTION'S FIRST ATTACK

230. The Prosecution contends that between on or about 20 November and 6 December 2002, the UPC launched an attack on the Banyali-Kilo *collectivité* during and after which Mr NTAGANDA and troops under his command committed numerous crimes.
231. The Defence acknowledges that during this period, the UPC-RP called upon the FPLC to conduct a military operation in Mongbwalu.
232. The case for the Defence however, is that: the *First Attack* did not constitute an attack directed against any civilian population pursuant to Art.7; and the FPLC did not, in the

⁴⁹³ P-0300:T-166,38:22-25("Q.And what about your reaction, Mr Witness? A.I lived with the Hema for a long time and I knew how their thought process was, I knew how smart they are. They're sly.")

⁴⁹⁴ P-0106:T-44,27:19-20;P-0031:T-175,30:4-7.

⁴⁹⁵ D-0054:T-244,7:11-17.

⁴⁹⁶ [REDACTED].

course of the *First Attack*, direct attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.

233. The case for the Defence rests on: (i) the measures taken by the UPC-RP to create the FPLC as a law abiding and disciplined military force; (ii) the UPC-RP's objectives in launching the FPLC operation in Mongbwalu; (iii) the unreliability of the evidence on which the Prosecution relies; (iv) the high probative value of the evidence adduced by the Defence; and (v) the manner in which the operation was conducted.
234. The case for the Defence is also that the Prosecution failed to prove the crimes alleged in the UDCC in relation to the *First Attack*. Accordingly, Mr NTAGANDA does not incur any criminal liability pursuant to any of the Art.25 modes of liability or as a commander pursuant to Art.28.

CHAPTER I – MEASURES TAKEN BY UPC-RP/FPLC LEADERS TO CREATE A LAW ABIDING AND DISCIPLINED MILITARY FORCE

235. The charges laid in relation to the *First Attack* must be adjudicated taking into account the measures taken by UPC-RP/FPLC leaders to create a law abiding and disciplined military force including: (i) adopting a proper military ideology and training its soldiers on the same; (ii) obtaining uniforms allowing its soldiers to be easily recognisable; (iii) ensuring that soldiers operating heavy weapons were properly trained; (iv) exchanging troops with forces recently joining the FPLC; (v) ensuring that FPLC soldiers were well aware that any breach of discipline or violation would be harshly punished; and (vi) organising radio communications and training radio operators.⁴⁹⁷
236. The measures taken by the UPC-RP illustrate its intent to create a multi-ethnic military force mandated to protect all civilians without discrimination.⁴⁹⁸

CHAPTER II - THE OBJECTIVES OF THE FPLC OPERATION IN MONGBWALU

237. In November 2002, the UPC-RP decided to call upon the FPLC to launch an operation in Mongbwalu.⁴⁹⁹ The aim of this operation fits in the UPC-RP strategic objective *i.e.*

⁴⁹⁷ Part III, Chap.I.

⁴⁹⁸ Part III, Chap.I.

⁴⁹⁹ [DRC-OTP-0138-0724](#), p.0734 (“Devant cette situation macabre, assumant pleinement ses responsabilités, l’UPC, par sa branche armée les FPLC, est intervenu en Novembre 2002 à Mongbwalu pour sauver cette population en détresse et empêcher le retour des criminels à Bunia”).

*“la restauration d’une réconciliation véritable, condition sine qua non d’une paix durable” including the restoration of “l’autorité de l’Etat; la bonne gouvernance; le respect des vies humaines; et le sens de la justice et de l’équité.”*⁵⁰⁰

238. Moreover, the UPC-RP’s goal in launching the operation in Mongbwalu, relying on the FPLC for this purpose, fit in its overarching aim of peace and reconciliation in Ituri.⁵⁰¹
239. The operational objectives of the Mongbwalu operation were: (i) to liberate Mongbwalu and put an end to the oppression of its population; (ii) to defeat the APC and Lendu combatants in Mongbwalu; and (iii) secure a strategic geographical location. The aim of the FPLC operation was not related to gold mining activities in Mongbwalu.

Section I - Ending the oppression of the Mongbwalu population

240. Many witnesses testified to the atrocious living conditions imposed on the population of Mongbwalu under the Lendu traditional tribal regime,⁵⁰² including *inter alia* the shocking practice of cannibalism.⁵⁰³ Evidence has also been adduced regarding the arrival *en masse* in Mongbwalu of members of the Lendu community,⁵⁰⁴ more particularly Lendu combatants, who chased or forced numerous inhabitants to leave, most of whom belonging to the Hema ethnic group.⁵⁰⁵ What is more, members of the

⁵⁰⁰ [DRC-OTP-0147-0212](#), pp.0214-0215.

⁵⁰¹ **D-0300**:T-216,10:10-11;11:1-4; [DRC-OTP-2101-2791](#),2802:243-248; [DRC-OTP-0113-0060](#),p.0060; [DRC-OTP-0164-0447](#),p.0448(“C’est pourquoi, l’UPC-RP [...] de juguler une fois pour toutes le mal et a élaboré à cet effet de présent programme de pacification et de réconciliation en Ituri”); [DRC-OTP-0093-0237](#),pp.0237-0238(“Pour prouver de sa bonne foi et sa volonté de cohabitation pacifique avec tous les frères de l’Ituri, y compris les combattants lendu, l’UPC-RP avait accepté de laisser ces dernier occuper une partie de la ville”)(underline added); [DRC-OTP-0164-0447](#),pp.0448-0449; [DRC-OTP-0107-0013](#); [DRC-OTP-0092-0680](#); **P-0901**:T-31,67:19-20; **P-0769**:T-122,35:12-16,35:25-36:4; **P-0030**:T-144,54:9-13,56:15-25; **D-0017**:T-252,59:4-11.

⁵⁰² **P-0907**:T-91,24:11-15,30:12-33:8; **P-0887**:T-94,40:17-22,45:17-46:6,48:2-49:18; **P-0800**:T-69,22:19-25,24:1-6,28:4-14; **P-0041**:[DRC-OTP-2054-5030-R02](#),5107:2-7;[DRC-OTP-2054-5199](#),5278:12-5279:14; **P-0768**:T-33,20:16-22; **P-0850**:T-112,68:12-69:6.

⁵⁰³ **P-0907**:T-91,31:15-32:5; **P-0887**:T-94,46:7-47:18; **P-0005**:T-189,27:24-28:4; **P-0894**: [DRC-OTP-2076-0194](#), pp.0199-0200,paras.29-31; [DRC-OTP-0214-0116](#),pp.0117-0118; [DRC-OTP-0074-0422](#),p.0436,para.36(“Lendu combatants engaged in inhumane acts such as mutilation and cannibalism, often under the effect of drugs prepared by their traditional healers”);[DRC-OTP-0138-0724](#),para.3 (A l’issue de la prise de pouvoir de l’UPC le 09 Aout 2002 à Bunia, les éléments de l’APC et leurs alliés, tenus en échec, se sont repliés sur la cité de Mongbwalu où ils asservissaient la population dans un régime terroristes caractérisé par des exécutions sommaires, des actes de cannibalisme, des viols, d’impositions immorales, des travaux forcés etc.)

⁵⁰⁴ **P-0887**:T-94,41:5-17.

⁵⁰⁵ **P-0800**:T-68,16:21-22,21:5-9;T-69,25:3-17(“In 2002 there was no longer any combat between them, between the APC and the combatants? There was none. But on the other hand, you know that during this period the Hema were driven out of Mongbwalu? Yes. You know that they started with the traders and afterwards it was extended to all Hema? Yes. And that the houses and the businesses that belonged to the Hema, they went – fell into Lendu hands? Yes”),27:25-28:1(“Q.And the Lendu combatants occupied Sayo and controlled Sayo?

Lendu ethnic group illegitimately occupied the houses belonging to inhabitants who left.⁵⁰⁶

241. Mr NTAGANDA testified on the operational instructions he received from LUBANGA: “All he asked me to do was to liberate the oppressed population who were living in a deplorable situation. He told me that the people of that region were living through an inhumane situation.”⁵⁰⁷

Section II - Defeating the APC and Lendu combatants

242. As of January 2002 at the latest, the APC and Lendu combatants occupied Mongbwalu together.⁵⁰⁸ From Mongbwalu, the APC was attacking JEROME’s forces on the Baku-Kandoyi-Aru axis.⁵⁰⁹ Controlling the Mongbwalu airport, the APC could receive weapons, ammunitions and other logistical support from Beni.⁵¹⁰ From a geographical standpoint, the APC constituted a threat and could launch an attack on Bunia.⁵¹¹ It was thus important for the FPLC to defeat the APC and Lendu combatants.

Section III - Securing Mongbwalu and its airport

243. Although the Bunia airport was operational at the time of the FPLC operations in Mongbwalu, it was controlled by the UPDF, which made it very difficult for the UPC-RP to receive weapons, ammunitions and other logistical supplies in Bunia. In July 2002, weapons were airdropped in Mandro, a large quantity of which was damaged in the process. In September 2002, the UPC-RP received uniforms and other supplies using a makeshift airstrip in Tchomia. Securing the Mongbwalu airport made it possible for the FPLC to receive the necessary logistical support to sustain its operations in both the NE-OpSec and the SE-OpSec.⁵¹²

A.And Mongbwalu as well”)(emphasis added); **P-0907**:T-89,12:20-13:8,78:14-20;T-91,13:13-2,32:17-33:18 (“[REDACTED]”)(emphasis added); **P-0887**:T-94,41:5-42:6.

⁵⁰⁶ **P-0886**:T-37,8:14-18; **P-0850**:T-112,72:19-73:4.

⁵⁰⁷ **D-0300**:T-216,47:1-3.

⁵⁰⁸ **P-0901**:T-31,20:4-11;[DRC-OTP-0214-0116](#),p.0117.

⁵⁰⁹ **D-0300**:T-216,34:17-22;T-234,45:21-46:4.

⁵¹⁰ **P-0886**:T-39,79:17-19; **D-0300**:T-234,57:24-58:25;[DRC-OTP-2102-3766](#),p.3769:5-21(“*L’avion que vous voyez a été capturé par des combattants de l’UPC, c’est-à-dire l’Union des Congolais. Il transportait des armes en provenance de BENI à destination de Mongbwalu*”).

⁵¹¹ **D-0300**:T-234,57:24-58:25.

⁵¹² **D-0300**:T-241,55:2-7.

244. Mr NTAGANDA further testified regarding the instructions he received: “Then he told me that if we were able to take control of the airport in that area, people will no longer be in danger”.⁵¹³

Section IV - Gold mining in Mongbwalu was not an objective

245. Many witnesses testified that the gold mining facilities, in particular the ‘Usine’ in Mongbwalu was destroyed during military clashes long before the FPLC operations.⁵¹⁴ Large scale mining activities had also been interrupted for a long period of time.⁵¹⁵ Gold mining activities in Mongbwalu at the time were limited to amateurish small scale individual gold prospectors.⁵¹⁶ Even though resuming gold mining activities on a large scale in a secure environment was in the interest of the Mongbwalu region and its population,⁵¹⁷ it was not one of the UPC-RP aims at that time.⁵¹⁸ No reliable and/or probative evidence to the contrary had been adduced.

CHAPTER III - THE UNRELIABILITY OF THE EVIDENCE ON WHICH THE PROSECUTION RELIES

246. In support of its contention that numerous crimes were committed during the *First Attack*, the Prosecution depends on unreliable evidence including *inter alia*: the testimony of five insider witnesses who lied and fabricated evidence under oath; the testimony of other witnesses not worthy of belief or implausible; and human rights reports based on hearsay or anonymous evidence.

247. The impact of the Prosecution’s dependence on such untrustworthy evidence is huge. Indeed, setting aside this evidence either in part or entirely depending on the situation, the Prosecution’s theory regarding the *First Attack* simply falls apart.

⁵¹³ D-0300:T-216,47:3-4.

⁵¹⁴ [DRC-OTP-2102-3766](#), [REDACTED] (“[REDACTED]”); P-0039:[DRC-OTP-0104-0015-R03](#), para.15 (“A l’époque de sa pleine activité, la société minière Kilo-moto de Mongbwalu et Bambu comptaient presque deux mille employés”).

⁵¹⁵ P-0039:[DRC-OTP-0104-0015-R03](#), para.15.

⁵¹⁶ P-0016:[DRC-OTP-0126-0422-R03](#), para.120 (“Mongbwalu a changé de main très souvent à cause de la possibilité d’extraire les revenus”).

⁵¹⁷ [DRC-OTP-2058-0251](#), 07:08 (Transl. [DRC-OTP-2102-3766](#)) (“MA: Et s’agissant des minerais d’or, est-ce que les habitants et les travailleurs, continuent à vaquer à leurs occupations habituelles ? BN: Oui, ils avaient pris la fuite puisque tous ceux qui se trouvaient dans les parages avaient été enlevés par les combattants [...]. Et maintenant il y en a qui commencent à revenir, et ils nous disent qu’ils avaient été roulés, ils pensaient que c’était les troupes de... des miliciens hema...”)

⁵¹⁸ D-0300:T-217,83:15-18 (“Mr. Ntaganda, on the same subject, during 2002/2003, as far as you know, was gold or other natural resources a motive for the actions of the FPLC and the UPC? A.I have understood the question and, no, that is not so.”)

Section I – Insider witnesses

248. The testimony of P-0768, P-0017, P-0963, P-0907 and P-0901 reveals that they lied under oath and to a large extent fabricated their narrative. Consequently, as set out below, all incriminating evidence they provided cannot be relied upon by the Chamber.

A. P-0768

249. No probative value whatsoever can attach to the evidence provided by P-0768, on its own or in corroboration of evidence provided by other Prosecution witnesses.

250. P-0768 testified knowing full well that he was shielded from public scrutiny and negative repercussions. First, P-0768 benefitted from the full set of in-court protective measures.⁵¹⁹ Second, P-0768 was given assurances pursuant to Rule 74 that his testimony would not be transmitted to any government, thereby protecting him from any prosecution or negative consequences in any State, as a result of his testimony.⁵²⁰ Third, the Prosecution undertook not to prosecute P-0768 for his participation in any event covered in his testimony.⁵²¹ Lastly, when P-0768 felt uneasy about the content of his testimony being public, the Chamber made a point of going into private session to ensure that he could testify at ease.⁵²²

251. Although P-0768 denied having *proprio motu* approached the Prosecution to offer to testify,⁵²³ the contents of a Prosecution investigation report put to him in cross-examination demonstrates that P-0768 established the first contact with the Prosecution and first volunteered to testify against Mr NTAGANDA.⁵²⁴

252. P-0768's motivation to testify is obvious. P-0768 holds a malignant grudge against Mr NTAGANDA [REDACTED];⁵²⁵ [REDACTED];⁵²⁶ [REDACTED];⁵²⁷ and

⁵¹⁹ P-0768:T-33,7:2-3.

⁵²⁰ P-0768:T-33,26:18-27:1.

⁵²¹ P-0768:T-33,27:2-3.

⁵²² P-0768:T-33,26:19-20.

⁵²³ P-0768:T-36,41:15-17.

⁵²⁴ P-0768:T-36,41:7-12.

⁵²⁵ [REDACTED].

⁵²⁶ [REDACTED]; [REDACTED].

⁵²⁷ [REDACTED]; [REDACTED].

[REDACTED] (“[REDACTED]”).⁵²⁸ Although P-0768 denied the above,⁵²⁹ his incriminating testimony considered as a whole clearly reveals his motivation to provide incriminating evidence against Mr NTAGANDA.

253. P-0768, *inter alia*: invented a false narrative concerning the placing of antipersonnel mines in Mongbwalu;⁵³⁰ fabricated personal knowledge of events that purportedly took place in Kobu;⁵³¹ lied about [REDACTED];⁵³² provided false evidence as demonstrated by [REDACTED] messages in the Ntaganda-Logbook⁵³³ concerning the murder of civilians in Mongbwalu;⁵³⁴ made up evidence concerning the involvement of Mr NTAGANDA in the transport of pillaged goods from Mongbwalu to Bunia;⁵³⁵ and provided false evidence regarding the age of soldiers in Mandro, [REDACTED].⁵³⁶ P-0768 was obstructive, refused to recognize contemporaneous messages [REDACTED]⁵³⁷ and refused to recognize disciplinary measures instigated against members of the FPLC including, in particular, the execution by firing squad of a FPLC member in Mongbwalu [REDACTED].⁵³⁸ As a result of his testimony, and before the judgement is rendered in this case, P-0768 must be investigated for lying under oath.

I. *P-0768 invented a false narrative concerning the placing of antipersonnel mines in Mongbwalu*

254. P-0768 could not resist fabricating evidence about the planting of antipersonnel mines in Mongbwalu even though he had never mentioned this issue during his multiple dealings with the Prosecution.⁵³⁹ Despite testifying that “many people were wounded [...] as a result of the mines”,⁵⁴⁰ that “these mines led to a number of civilian deaths”,⁵⁴¹ and that [REDACTED]⁵⁴² [REDACTED],⁵⁴³ he attempted to justify his

⁵²⁸ [REDACTED].

⁵²⁹ [REDACTED].

⁵³⁰ P-0768:T-33,59:15-18;66:2-67:10.

⁵³¹ P-0768:T-34,60:5-61:13.

⁵³² P-0768:T-33,33:6-15;51:17-52:13;55:22-24.

⁵³³ [REDACTED].

⁵³⁴ P-0768:T-33,44:16.

⁵³⁵ P-0768:T-33,59:13-60:4.

⁵³⁶ P-0768:T-34,48:22-25;54:2-6; T-36,47:19-24.

⁵³⁷ P-0768:T-36,28:19-40:7.

⁵³⁸ P-0768:T-34,16:13.

⁵³⁹ P-0768:T-36,5:22-24.

⁵⁴⁰ P-0768:T-35,73:19-20.

⁵⁴¹ P-0768:T-33,65:14.

⁵⁴² P-0768:T-33,66:15-21.

failure to even mention these events to the Prosecution earlier on the basis that “it’s been a long time since I left Ituri, and I wasn’t really prepared to testify and therefore certain events may have escaped me”.⁵⁴⁴

255. P-0768’s evidence concerning the casualties and civilian deaths arising from the planting of mines in Mongbwalu illustrates a grave and alarming situation, which, if it had taken place, would be known and remembered by the vast majority of the population. Cross-examined on the veracity of his narrative, P-0768 urged Counsel to “[REDACTED]”.⁵⁴⁵ On this backdrop, it is simply astonishing that P-0768 is the only witness who testified about the planting of antipersonnel mines in Mongbwalu in November 2002.
256. P-0768 testified that after Mr NTAGANDA left Mongbwalu, they “[REDACTED]”⁵⁴⁶ and that [REDACTED].⁵⁴⁷ There is, however, [REDACTED].⁵⁴⁸
257. P-0768 claims that he heard a radio conversation between Mr NTAGANDA and [REDACTED], during which “the various places and entry points at which those mines had been laid” was discussed.⁵⁴⁹ He claims to [REDACTED].⁵⁵⁰ Strikingly, in cross-examination, he [REDACTED]⁵⁵¹ [REDACTED]⁵⁵² [REDACTED] was unable to provide the specific sectors in Mongbwalu where the antipersonnel mines would have been laid.⁵⁵³
258. That the FPLC would have laid antipersonnel mines at all entry points which were not under the control of its soldiers⁵⁵⁴ - thereby endangering the lives of the civilian

⁵⁴³ P-0768:T-33,59:18.

⁵⁴⁴ P-0017:T-63,5:20-21.

⁵⁴⁵ P-0768:T-35,73:18-20,71:19-21.

⁵⁴⁶ P-0768:T-34,7:20-21.

⁵⁴⁷ P-0768:T-36,34:2-3.

⁵⁴⁸ [DRC-OTP-2102-3854](#); [DRC-OTP-2102-3828](#).

⁵⁴⁹ P-0768:T-35,74:8-10.

⁵⁵⁰ P-0768:T-33,66:17-22.

⁵⁵¹ P-0768:T-35,73:17.

⁵⁵² P-0768:T-35,74:16-19.

⁵⁵³ P-0768:T-35,75:11-17.

⁵⁵⁴ P-0768:T-35,72:25.

population they invited and wanted to return to Mongbwalu⁵⁵⁵ is senseless. Mr NTAGANDA explained why antipersonnel land mines were not used in Mongbwalu.⁵⁵⁶

II. *P-0768 fabricated personal knowledge of events that purportedly took place in Kobu*

259. P-0768 asserted that certain messages in the Ntaganda-Logbook were untrue,⁵⁵⁷ falsified,⁵⁵⁸ or that he did not remember the events depicted in contemporaneous messages therein.⁵⁵⁹ Moreover, at the time of the events in Kobu he testified about, P-0768 was actually in [REDACTED], deprived of communication capabilities with FPLC Units.

260. P-0768 confirmed that [REDACTED].⁵⁶⁰ [REDACTED].⁵⁶¹ [REDACTED].⁵⁶² [REDACTED].⁵⁶³ [REDACTED].⁵⁶⁴ [REDACTED].⁵⁶⁵ [REDACTED].⁵⁶⁶ [REDACTED].⁵⁶⁷ On [REDACTED].⁵⁶⁸ On [REDACTED].⁵⁶⁹ On [REDACTED].⁵⁷⁰ [REDACTED].⁵⁷¹ [REDACTED]; [REDACTED];⁵⁷² [REDACTED].

261. It follows from the above that on [REDACTED] at the very latest, P-0768 was in [REDACTED] working in his capacity as [REDACTED] and that the only element of [REDACTED].

262. P-0768 testified that SALUMU remained in Mongbwalu after the FPLC operation, for almost a month and a half.⁵⁷³ As illustrated by messages in the Ntagandas-Logbook,

⁵⁵⁵ **P-0768**:T-34,46:6-9.

⁵⁵⁶ **D-0300**:T-218,41:1-4.

⁵⁵⁷ **P-0768**:T-36,38:3-4; T-36,39:22-40:7.

⁵⁵⁸ **P-0768**:T-36,29:24.

⁵⁵⁹ [DRC-D18-0001-5748](#),p.5754 (Transl.[DRC-D18-0001-5778](#),p.5784).

⁵⁶⁰ **P-0768**:T-33,22:22.

⁵⁶¹ [DRC-OTP-2102-3854](#).

⁵⁶² [REDACTED].

⁵⁶³ [REDACTED].

⁵⁶⁴ [REDACTED].

⁵⁶⁵ [REDACTED].

⁵⁶⁶ [REDACTED].

⁵⁶⁷ [REDACTED].

⁵⁶⁸ [REDACTED].

⁵⁶⁹ [REDACTED].

⁵⁷⁰ [REDACTED].

⁵⁷¹ [REDACTED].

⁵⁷² [REDACTED].

⁵⁷³ **P-0768**:T-34,59:14-15.

this is incorrect. SALUMU became Commander of 409 Brigade (409Bde)⁵⁷⁴ and was in Kilo, as of 12 December 2002 at the very latest, along with his commander TIGER ONE (“SALONGO”), Commander of the South-East Operational Sector (Comd-SE-OpSec).⁵⁷⁵ Even though P-0768 denied having knowledge of SALONGO being promoted to this position,⁵⁷⁶ the NTAGANDA-FPLC-Logbook proves him wrong. In many instances, [REDACTED].⁵⁷⁷

263. P-0768 testified that SALUMU was sent on a mission by Mr NTAGANDA “who asked him to open the road from Mongbwalu to Bunia, going through Nyangarai”⁵⁷⁸ adding that they had requisitioned a company in his unit and that from then on, SALUMU “continued all the way to Bunia and he stayed in the operations there”.⁵⁷⁹ First, P-0768 later contradicted himself, stating that Mr NTAGANDA opened the road through Nyangaray to Bunia.⁵⁸⁰ Second, while SALUMU in his capacity as Comd-409Bde was involved in the operations in and around Kilo,⁵⁸¹ he was receiving his orders either by SALONGO/Comd-SE-OpSec or JEROME/Comd-NE-OpSec and not from Mr NTAGANDA. TIGER ONE/Comd-SE-OpSec’s immediate superior was KISEMBO in his capacity as Chef-EMG-FPLC, who was also present in Mongbwalu.⁵⁸² Moreover, there is no evidence that one company, [REDACTED] was under the command of SALUMU for the purported operation to open the road. At the alleged time, only the 7Bn remained in Mongbwalu while P-0768 was [REDACTED].⁵⁸³ Lastly, P-0768 asserted knowing that SALUMU’s unit went to Kobu without providing any specific time frame for this deployment.⁵⁸⁴

264. What is even more significant is P-0768’s description of the events which would have taken place in Kobu and the manner in which he would have learned about them.

⁵⁷⁴ [DRC-OTP-2102-3854](#).

⁵⁷⁵ [DRC-OTP-0017-0033](#),p.0048(second)(Transl.[DRC-OTP-2102-3854](#),p.3870).

⁵⁷⁶ **P-0768**:T-35,46:1-8.

⁵⁷⁷ [REDACTED].

⁵⁷⁸ **P-0768**:T-34,59:17-19.

⁵⁷⁹ **P-0768**:T-34,59:16-20.

⁵⁸⁰ **P-0768**:T-36,15:20.

⁵⁸¹ **P-0768**:T-33,33:22.

⁵⁸² [DRC-OTP-0017-0033](#),p.0053 (Transl.[DRC-OTP-2102-3854](#),p.3875); **P-0963**:T-78,63:17-22.

⁵⁸³ [REDACTED].

⁵⁸⁴ **P-0768**:T-34,60:11-23.

265. Significantly, P-0768's description of the events, which would have taken place in Kobu, matches neither the evidence in this case⁵⁸⁵ *nor* the Prosecution's theory of the case.⁵⁸⁶ Notably, he is not the only witness who testified about rumours spread out in Ituri concerning events that purportedly took place in Kobu.⁵⁸⁷
266. What is even more striking is the manner in which P-0768 would have learned about alleged killings in Kobu. P-0768's evidence that he learned about the killings *because* commanders talked about it on radios⁵⁸⁸ and he could follow what everyone said about what had happened because everyone used the same frequency⁵⁸⁹ puts to bare his lies and constructed knowledge.
267. P-0768 was in [REDACTED]⁵⁹⁰ and there was no way he could hear what the commanders were discussing on the radio.⁵⁹¹ Even if he had been in Mongbwalu, he could not have heard.⁵⁹² In addition, by the time these events allegedly took place, the FPLC was no longer transmitting messages *via phonie* noting messages in the Ntaganda-Logbook.⁵⁹³ P-0768 could not have learned about these events through these means. What is more, by the time these events allegedly took place, [REDACTED].⁵⁹⁴

III. P-0768 lied about [REDACTED]

268. Contrary to his testimony, the evidence establishes that P-0768 [REDACTED].⁵⁹⁵ First, P-0768 traveled from Bunia to [REDACTED]⁵⁹⁶ and lied about his observations regarding the age of soldiers in Mandro;⁵⁹⁷ second, P-0768 did not meet [REDACTED] in [REDACTED] and lied concerning [REDACTED];⁵⁹⁸ third, P-0768 was not able to

⁵⁸⁵ [REDACTED].

⁵⁸⁶ [REDACTED].

⁵⁸⁷ P-0055:T-71,50:7-22.

⁵⁸⁸ P-0768:T-34,61:5-7.

⁵⁸⁹ P-0768:T-34,61:8-9.

⁵⁹⁰ [REDACTED].

⁵⁹¹ D-0243:T-259,17:21-18:12.

⁵⁹² D-0243:T-259,40:22-41:10.

⁵⁹³ [DRC-OTP-0017-0033](#),p.0173 (last IN message) (Transl.[DRC-OTP-2102-3854](#),p.3995); [DRC-OTP-0017-0033](#),p.0174 (last OUT message) (Transl.[DRC-OTP-2102-3854](#),p.3996).

⁵⁹⁴ [REDACTED].

⁵⁹⁵ [REDACTED].

⁵⁹⁶ [REDACTED].

⁵⁹⁷ P-0768:T-34,51:1-3.

⁵⁹⁸ P-0768:T-33,28:9-28:22.

identify the road he took to get to Mongbwalu;⁵⁹⁹ fourth, P-0768 fabricated [REDACTED]⁶⁰⁰; fifth, [REDACTED]⁶⁰¹; sixth, P-0768's description of events preceding his arrival in Mongbwalu is contradicted by contemporaneous messages in the Ntaganda-Logbooks,⁶⁰² which also establish that as of [REDACTED], P-0768 had not yet departed from [REDACTED].⁶⁰³ The latter is confirmed by [REDACTED].⁶⁰⁴ Lastly, P-0768's description of the fighting in Mongbwalu over a period of two days is unsupported by the evidence.⁶⁰⁵

a. P-0768 traveled from Bunia to [REDACTED] with Mr Ntaganda and lied about his observations regarding the age of soldiers in Mandro

269. P-0768 testified that he went to the Mandro training camp once, when returning from [REDACTED].⁶⁰⁶ In cross-examination, P-0768 placed this trip at a time when Mr NTAGANDA was in Aru before the FPLC operation in Mongbwalu.⁶⁰⁷ P-0768 testified – [REDACTED]⁶⁰⁸ – that he traveled from [REDACTED] to Bunia on a plane, [REDACTED].⁶⁰⁹ While P-0768 attempted to justify his presence in [REDACTED] at the time by [REDACTED],⁶¹⁰ this is implausible. Had P-0768 been in [REDACTED] to [REDACTED], there was no need for him to travel to Bunia [REDACTED]; he could simply drive back to [REDACTED].⁶¹¹ P-0768 testified that [REDACTED]: “[REDACTED]”.⁶¹² [REDACTED]. [REDACTED],⁶¹³ [REDACTED].⁶¹⁴ As for the [REDACTED].⁶¹⁵

270. P-0768 confirmed that this was his first trip to Bunia. His testimony that he “was coming from [REDACTED] for [REDACTED] and I was called back to Bunia” – even

⁵⁹⁹ P-0768:T-34,5:2-22;T-35,30:4-33:17.

⁶⁰⁰ P-0768:T-33,33:1-15;T-35,61:2-14,43:20-22.

⁶⁰¹ [REDACTED].

⁶⁰² [REDACTED].

⁶⁰³ [REDACTED].

⁶⁰⁴ [REDACTED].

⁶⁰⁵ P-0768:T-33,33:19-37:20;39:25-40:4.

⁶⁰⁶ P-0768:T-34,50:17-18.

⁶⁰⁷ P-0768:T-36,27:19-25.

⁶⁰⁸ [REDACTED].

⁶⁰⁹ P-0768:T-36,22:2-5.

⁶¹⁰ P-0768:T-36,21:23-25.

⁶¹¹ [REDACTED].

⁶¹² P-0768:T-36,21:25-22:3(underline added).

⁶¹³ [REDACTED].

⁶¹⁴ [REDACTED].

⁶¹⁵ [REDACTED].

though he had never been there – “and I went to that training camp out of curiosity. I didn’t have any particular goal”⁶¹⁶ without mentioning [REDACTED], with whom he was in Bunia or whom he met in Mandro, is not credible. This is confirmed by P-0768’s testimony that the Commander of the Mandro training camp at the time was Mugisa MULEKE, who was actually assigned to Tchomia back in early August 2002.⁶¹⁷ Had P-0768 been in Mandro when Mr NTAGANDA was in Aru, he would have had to meet with the Commander of the camp and he would have met with SALUMU who travelled to Bunia as part of the exchange of troops with JEROME’s forces and who was appointed Commander of the Brigade up in Mandro by KISEMBO,⁶¹⁸ which first attempted to liberate Mongbwalu.⁶¹⁹

271. Mr NTAGANDA [REDACTED] in Bunia and took him to [REDACTED] where he informed him that [REDACTED], [REDACTED].⁶²⁰ [REDACTED].⁶²¹ The fact that [REDACTED]⁶²² does not impact this conclusion. P-0055 had just arrived in Bunia⁶²³ and he did not remember [REDACTED].⁶²⁴

b. P-0768 did not meet with [REDACTED] in [REDACTED] and lied concerning the [REDACTED]

272. P-0768 testified attending a meeting at [REDACTED] during which [REDACTED] and others were present.⁶²⁵ According to P-0768, [REDACTED] all spoke⁶²⁶ about [REDACTED].⁶²⁷ Importantly, [REDACTED].⁶²⁸ There is also no evidence that [REDACTED]travelled together to [REDACTED].

273. P-0768 testified that following this meeting, his first deployment was to the front to [REDACTED] and that before leaving [REDACTED], he was briefed [REDACTED] about the operational strategy as follows: “we were supposed to drive out the RCD

⁶¹⁶ P-0768:T-34,51:12-14(underline added).

⁶¹⁷ P-0768:T-34,51:19.

⁶¹⁸ [REDACTED].

⁶¹⁹ P-0768:T-33,31:23-32:3; [REDACTED]; D-0017:T-253,30:2-31:10.

⁶²⁰ [REDACTED].

⁶²¹ [REDACTED].

⁶²² P-0055:T-73,92:12.

⁶²³ P-0055:T-73,65:24-66:7.

⁶²⁴ P-0055:T-73,81:5-9.

⁶²⁵ P-0768:T-33,24:22-24.

⁶²⁶ P-0768:T-33,28:5.

⁶²⁷ P-0768:T-33,24:15-25:2.

⁶²⁸ P-0055:T-70,48:14-19.

troops which had come back to attack us in order to capture [REDACTED], and we also had to drive them out in order to recapture Mongbwalu”.⁶²⁹ It is revealing that neither [REDACTED] were mentioned during this briefing.

c. *P-0768 was not able to identify the road he took to get to Mongbwalu*

274. When asked which route he took to get to Mongbwalu, P-0768 asserted “when we left [REDACTED], we came here to [REDACTED] and after [REDACTED] we continued along the same itinerary all the way to [REDACTED], but we didn’t go through [REDACTED] here, we took another road from [REDACTED] without going through [REDACTED] and we went directly to [REDACTED] here. From [REDACTED] we continued down to Mongbwalu”.⁶³⁰ In cross-examination, P-0768 contradicted himself stating “Yes. We went through [REDACTED]”⁶³¹ and “Well, the truth is, perhaps I was mistaken”. Despite P-0768’s testimony that “this was the very first time that I had seen the map as it is here”, Counsel established that this very same map was shown to him during many days in [REDACTED].⁶³² It is also significant that the location identified by P-0768 on the map used by the Prosecution as being [REDACTED], his alleged point of departure, is incorrect.⁶³³ Moreover, invited to confirm that [REDACTED], where he would have begun his journey, was not on the map before him and actually much further north, P-0768 refused,⁶³⁴ realizing he had been caught.

d. *P-0768 fabricated [REDACTED]*

275. First, P-0768 could not, as he testified, have [REDACTED] as these troops were not in [REDACTED] when they were ordered to go to Mongbwalu.⁶³⁵ P-0768 confirmed that when Mr NTAGANDA was in [REDACTED] visited the troops [REDACTED].⁶³⁶

⁶²⁹ P-0768:T-33,28:17-29.

⁶³⁰ P-0768:T-34,5:3-7(underline added).

⁶³¹ P-0768:T-35,30:22.

⁶³² P-0768:T-35,32:13-18.

⁶³³ [DRC-REG-0001-0004](#); P-0768:T-36,8:4-12.

⁶³⁴ P-0768:T-36,8:13-15.

⁶³⁵ [REDACTED].

⁶³⁶ [REDACTED].

[REDACTED]. This is confirmed by [REDACTED].⁶³⁷ [REDACTED].⁶³⁸
[REDACTED].⁶³⁹

276. P-0768 lied about [REDACTED]. P-0768 confirmed that he did not have a Thuraya⁶⁴⁰ and claimed that he was [REDACTED].⁶⁴¹ However, [REDACTED].⁶⁴²

e. [REDACTED]

277. Strikingly, apart from being mentioned in one message [REDACTED],⁶⁴³ there is no trace of any communication involving P-0768 or [REDACTED].⁶⁴⁴ In fact, from the moment Mr NTAGANDA was in *phonie* contact with the commanders involved in the FPLC Mongbwalu operation, he was communicating with [REDACTED].⁶⁴⁵ [REDACTED],⁶⁴⁶ [REDACTED].

f. P-0768's description of events preceding his arrival in Mongbwalu is contradicted by contemporaneous messages in the Ntaganda-FPLC-Logbooks

278. P-0768 testified [REDACTED].⁶⁴⁷ During his examination-in-chief, he did not mention any fighting before entering Mongbwalu.⁶⁴⁸ Yet, during cross-examination, having had the opportunity to look at the short-Ntaganda-Logbook he suddenly remembered [REDACTED].⁶⁴⁹ Notwithstanding his sudden recollection of this combat – and despite his testimony that he accompanied the troops on foot all the way to Mongbwalu⁶⁵⁰ he confirmed having no knowledge of [REDACTED].⁶⁵¹

279. P-0768's fabricated narrative concerning his arrival and participation in the Mongbwalu operation is also illustrated by his description of the fighting. His assertion that the

⁶³⁷ [REDACTED]; [REDACTED].

⁶³⁸ [REDACTED].

⁶³⁹ [REDACTED].

⁶⁴⁰ P-0768:T-35,21:4-11.

⁶⁴¹ P-0768:T-33,33:6-15.

⁶⁴² [REDACTED].

⁶⁴³ [REDACTED].

⁶⁴⁴ P-0768:T-33,22:22.

⁶⁴⁵ [REDACTED].

⁶⁴⁶ P-0768:T-33,22:23-23:1.

⁶⁴⁷ P-0768:T-33,33:20-21.

⁶⁴⁸ P-0768:T-33,30:19-33:20.

⁶⁴⁹ P-0768:T-35,43:11-12.

⁶⁵⁰ P-0768:T-34,6:9.

⁶⁵¹ [REDACTED].

fighting, including the liberation of Sayo, lasted two days, is not supported by the evidence, including that of *inter alia* P-0017 (three days),⁶⁵² P-0886 (five-day war),⁶⁵³ P-0800 (from Thursday to Sunday when Sayo was taken)⁶⁵⁴ and P-0898 (three-day war).⁶⁵⁵ His testimony that Mr NTAGANDA was present during the fighting in Mongbwalu before Sayo was taken is even contradicted by P-0017.⁶⁵⁶ P-0768's evidence that on the day Sayo was liberated "[REDACTED]"⁶⁵⁷ is contradicted by evidence that from the moment SALUMU took the center of Mongbwalu, the APC and Lendu combatants left Mongbwalu, either towards Sayo or Kilo.⁶⁵⁸ From the moment Mr NTAGANDA arrived in Mongbwalu, the night before Sayo was liberated, the remaining enemy had retreated to Sayo where they were facing SEYI's forces which were at the Usine.⁶⁵⁹ P-0768 even confirmed that SEYI was the battalion commander involved in the liberation of Sayo.⁶⁶⁰ There was no other [REDACTED] from which the FPLC forces were threatened and P-0768's evidence in this regard was but an attempt to cover up his absence from the fighting in Sayo, knowing that this operation was video-recorded.⁶⁶¹

280. P-0768's absence from the FPLC operation in Mongbwalu is confirmed in the [REDACTED]⁶⁶² [REDACTED]⁶⁶³ [REDACTED]⁶⁶⁴ that P-0768 had not yet departed [REDACTED]. [REDACTED] is in turn strengthened by the words of [REDACTED] who stated that [REDACTED].⁶⁶⁵

281. [REDACTED].⁶⁶⁶ [REDACTED].⁶⁶⁷ [REDACTED]⁶⁶⁸ – along with [REDACTED] –⁶⁶⁹ [REDACTED].⁶⁷⁰ P-0768 was [REDACTED]⁶⁷¹ and to remain at [REDACTED].⁶⁷² P-

⁶⁵² P-0017:T-59,75:3-5.

⁶⁵³ P-0768:T-36,70:18.

⁶⁵⁴ P-0800:T-68,21:18-21.

⁶⁵⁵ P-0898:T-154,14:5-10.

⁶⁵⁶ P-0017:T-58,62:9-64:2.

⁶⁵⁷ P-0768:T-33,35:22-23.

⁶⁵⁸ P-0017:T-61,49:11-51:13.

⁶⁵⁹ D-0300:T-234,75:6-13.

⁶⁶⁰ P-0768:T-35,44:19-25.

⁶⁶¹ D-0300:T-217,55:14.

⁶⁶² [REDACTED].

⁶⁶³ P-0290:T-66,6:19-22;7:24-8:1.

⁶⁶⁴ [REDACTED].

⁶⁶⁵ [REDACTED].

⁶⁶⁶ [REDACTED].

⁶⁶⁷ [REDACTED].

⁶⁶⁸ [REDACTED].

0768 was present [REDACTED]⁶⁷³ and was not [REDACTED].⁶⁷⁴ When P-0768 was shown the [REDACTED]. P-0768 was only authorised [REDACTED], after Mr NTAGANDA's departure by plane from Mongbwalu.⁶⁷⁵

IV. P-0768 provided false evidence concerning the murder of civilians in Mongbwalu

282. P-0768 testified that [REDACTED] was attacked in the wake of the liberation of Sayo,⁶⁷⁶ that civilians were killed during this attack⁶⁷⁷ and that [REDACTED] was the object of looting by the FPLC.⁶⁷⁸ Although some witnesses mentioned having travelled through or in the direction of [REDACTED] when leaving Sayo,⁶⁷⁹ there is no evidence that [REDACTED] was attacked in the manner described by P-0768.⁶⁸⁰ When KISEMBO - present at the *Appartements* along with KASANGAKI, SALUMU, Mr NTAGANDA and others, [REDACTED]⁶⁸¹ -was briefed visually about the liberation of Sayo, not a word was said about [REDACTED].⁶⁸² Moreover, there is no message in the Ntaganda-Logbooks concerning the occupation of [REDACTED] by the FPLC.⁶⁸³ P-0768 was not in Sayo on 25 November, the day following the liberation of this town. He attended [REDACTED]⁶⁸⁴ but was ordered to [REDACTED].⁶⁸⁵ His statement "I found that many civilians had been killed by the UPC members in the battle that took place in Sayo [REDACTED]" is uncorroborated.⁶⁸⁶

283. [REDACTED].⁶⁸⁷ Following the liberation of Sayo on 24 November in the afternoon, Mr NTAGANDA made his way back to the *Appartements* and never returned to Sayo

⁶⁶⁹ [REDACTED].

⁶⁷⁰ [REDACTED].

⁶⁷¹ [REDACTED].

⁶⁷² [REDACTED].

⁶⁷³ [REDACTED].

⁶⁷⁴ [REDACTED].

⁶⁷⁵ [REDACTED].

⁶⁷⁶ P-0768:T-33,45:11-16.

⁶⁷⁷ P-0768:T-33,45:25-46:2.

⁶⁷⁸ P-0768:T-33,46:2-5.

⁶⁷⁹ DRC-OTP-2077-0210,p.0578,para.1; [DRC-OTP-2081-0589](#),p.0661,para.1.

⁶⁸⁰ P-0768:T-33,45:11-46:5.

⁶⁸¹ [REDACTED].

⁶⁸² [DRC-OTP-2058-0251](#),34:58-37:39.

⁶⁸³ [DRC-OTP-2102-3854](#); [DRC-D18-0001-5748](#),p.5748 (Transl.[DRC-D18-0001-5778](#),p.5778).

⁶⁸⁴ [REDACTED].

⁶⁸⁵ [REDACTED].

⁶⁸⁶ P-0768:T-33,45:15-18.

⁶⁸⁷ [REDACTED].

before leaving Mongbwalu.⁶⁸⁸ Mr NTAGANDA never set foot in [REDACTED].⁶⁸⁹ [REDACTED]. [REDACTED].⁶⁹⁰ Pressed for more in cross-examination, he provided wavering evidence regarding, *inter alia*, his own location in [REDACTED],⁶⁹¹ the number and identity of persons present at the time, and the manner in which [REDACTED] were dressed.⁶⁹² P-0768 erroneously identified KASANGAKI as the S2 of SALUMU's brigade⁶⁹³ and suddenly, brought up the presence of MUSEVINI, never mentioned before, purportedly the chief of Mr NTAGANDA's security.⁶⁹⁴ MUSEVINI was never Mr NTAGANDA's chief of security.⁶⁹⁵

284. P-0768 also concocted a false narrative concerning [REDACTED]. P-0768 was not in [REDACTED]⁶⁹⁶ and could not have been contacted on the radio by Mr NTAGANDA on this occasion to go to the *Appartements*. In fact, P-0768 was not [REDACTED].⁶⁹⁷ Moreover, his hearsay evidence that [REDACTED] the day before,⁶⁹⁸ when Sayo was liberated, because [REDACTED], is unsupported by any evidence. It is also contradicted by [REDACTED]⁶⁹⁹ as well as by the evidence related to [REDACTED].⁷⁰⁰ The Mongbwalu video showing KISEMBO and Mr NTAGANDA [REDACTED] the arrival of the FPLC delegation illustrates that this was Mr NTAGANDA's first presence there.⁷⁰¹ Moreover, P-0768 was unable to say when [REDACTED], the purported source of this hearsay evidence, would have provided this information to him.⁷⁰²

285. The same conclusion, *i.e.* concocted false evidence, applies to P-0768's testimony regarding: (i) [REDACTED];⁷⁰³ (ii) [REDACTED];⁷⁰⁴ (iii) and [REDACTED];⁷⁰⁵ and

⁶⁸⁸ [REDACTED].

⁶⁸⁹ [REDACTED].

⁶⁹⁰ P-0768:T-33,45:11-46:5.

⁶⁹¹ P-0768:T-36,48:9-49:21.

⁶⁹² P-0768:T-35,53:13-55:19.

⁶⁹³ P-0768:T-35,53:5-7.

⁶⁹⁴ P-0768:T-35,57:14-20.

⁶⁹⁵ D-0300:T-215,22:14-17.

⁶⁹⁶ [REDACTED].

⁶⁹⁷ [REDACTED].

⁶⁹⁸ [REDACTED].

⁶⁹⁹ [REDACTED].

⁷⁰⁰ [REDACTED].

⁷⁰¹ [REDACTED].

⁷⁰² [REDACTED].

⁷⁰³ [REDACTED].

⁷⁰⁴ [REDACTED].

(iv) the alleged [REDACTED].⁷⁰⁶ P-0768's hearsay evidence⁷⁰⁷ on these events is unsupported by any evidence and implausible.⁷⁰⁸

V. P-0768's refusal to recognize [REDACTED] as well as disciplinary measures instigated against members of the FPLC

286. P-0768 testified that Mr NTAGANDA provided weapons to Hema civilians who arrived with him in Mongbwalu and that these civilians killed Lendu people and committed crimes.⁷⁰⁹ First, P-0768 was not in Mongbwalu when Mr NTAGANDA arrived with civilians carrying ammunition.⁷¹⁰ Second, that Mr NTAGANDA gave weapons to these civilians and that [REDACTED], is unsupported by any other evidence.⁷¹¹

287. Although P-0768 further testified that during his stay in Mongbwalu "there were [Lendu] civilians who were assassinated by UPC members"⁷¹² and that he personally saw such crimes being committed,⁷¹³ he did not provide any concrete details regarding the time, place, or manner in which these alleged crimes were committed. Nor did he provide information regarding the identity of the victims or the identity of the perpetrators involved.

288. More importantly, P-0768's evidence is contradicted by [REDACTED] he reports to his superiors *inter alia* that the situation is calm and that the population has resumed its regular activities.⁷¹⁴

289. What is more, [REDACTED]: "[REDACTED]".⁷¹⁵

290. Strikingly, when a Lendu civilian was killed [REDACTED]:

[REDACTED].⁷¹⁶

⁷⁰⁵ [REDACTED].

⁷⁰⁶ [REDACTED].

⁷⁰⁷ [REDACTED].

⁷⁰⁸ [REDACTED].

⁷⁰⁹ P-0768:T-33,41:24-42:10.

⁷¹⁰ P-0768:T-35,43:14-19.

⁷¹¹ P-0768:T-33,42:10-12.

⁷¹² P-0768:T-33,44:16.

⁷¹³ P-0768:T-33,44:18.

⁷¹⁴ [REDACTED].

⁷¹⁵ [REDACTED].

291. This [REDACTED] is highly significant considering [REDACTED] that “I never saw a soldier or an officer being sanctioned for having killed a Lendu”.⁷¹⁷ Indeed, [REDACTED].⁷¹⁸

292. P-0768 went as far as saying that [REDACTED].⁷¹⁹ This is not an event P-0768 could have forgotten.

VI. P-0768 made up evidence concerning the involvement of Mr Ntaganda in the transport of pillaged goods from Mongbwalu to Bunia

293. P-0768 testified that when Mr NTAGANDA “left for Bunia,” he loaded the things that he had pillaged from Mongbwalu, and among them there were medicine and other materials from the hospital”⁷²⁰ and that “[Mr NTAGANDA] had his jeep, four-by-four, which he had taken from Bunia and he loaded the items onto the jeep. And there was also a Land Cruiser jeep, a cream-coloured one which he had taken from the priest and he also loaded items on to that”⁷²¹ and “it was Mr NTAGANDA who opened up the road from Mongbwalu-Nyangarai”.⁷²² First, P-0768’s evidence is related to his fabricated narrative concerning the planting of mines in Mongbwalu, which is revealing.⁷²³ Second, Mr NTAGANDA left Mongbwalu by plane, a fact not contested by the Prosecution.⁷²⁴ Third, having testified that Mr NTAGANDA arrived in Mongbwalu by foot – which is true although P-0768 was not there to see it - he did not explain how Mr NTAGANDA’s 4x4 ended up in Mongbwalu. Fourth, when Mr NTAGANDA left, there were only two serviceable vehicles in Mongbwalu, [REDACTED] and [REDACTED] seen in the Mongbwalu video.⁷²⁵ Fifth, contrary to P-0768’s repeated assertions, the road Mongbwalu-Kilo-Nyangaray-Bunia was not opened when Mr NTAGANDA left Mongbwalu. Even the 12 December message P-0768 attempted to rely upon in support of his claim that this road was open makes it

⁷¹⁶ [REDACTED].

⁷¹⁷ [REDACTED].

⁷¹⁸ [REDACTED].

⁷¹⁹ P-0768:T-36,29:24.

⁷²⁰ P-0768:T-33,59:13-15.

⁷²¹ P-0768:T-33,59:25-60:2.

⁷²² P-0768:T-36,15:20.

⁷²³ P-0768:T-33,59:7-21.

⁷²⁴ P-0290:T-67,13:12-16; D-0017:T-253,43:4:14.

⁷²⁵ D-0300:T-218,57:20-22.

clear that the road through Nyangaray was not opened at that time.⁷²⁶ Lastly, P-0768's claim based on unknown hearsay that a cream coloured Land Cruiser jeep was taken from the *Abbé* is unsupported by any reliable evidence. While vehicles can be seen at one of the congregation visited by KISEMBO and Mr NTAGANDA, they were non serviceable.⁷²⁷

VII. P-0768 provided false evidence regarding the age of soldiers in Mandro, [REDACTED]

294. P-0768 testified about the presence of young children, minors, under the age of 15, trained in Mandro or who were amongst the units of the FPLC, including amongst the bodyguards of UPC Commanders at the time.⁷²⁸ P-0768 asserted that to his knowledge “there was no age limit. There was no particular criterion for the recruitment of children. There were young people, old people”.⁷²⁹ Interestingly, he did advance his own assessment criteria as follows: “well I can distinguish a child, a minor, from an adult”,⁷³⁰ “well there were many small ones, and just looking at him you could see that they were minors. And even if you observe their behaviours, you could see that they were minors, they were under 15. Their sizes, their behaviours and those aspects made it clear that they were minors”.⁷³¹
295. P-0768 did not see any recruits being trained in Mandro⁷³² and his observations when presented with video and photographic evidence is of no assistance to the issue at hand. First, when watching the Mongbwalu video, P-0768 purportedly identified a male soldier, bodyguard of Mr NTAGANDA, stating: “He was a minor. He was under 15”.⁷³³ Significantly, P-0768 was not able to distinguish a female from a male and was not able to identify [REDACTED],⁷³⁴ a former member of the APC, member of Mr NTAGANDA's escorts, much older than 15.⁷³⁵ Second, P-0768 provided false evidence

⁷²⁶ [DRC-OTP-0017-0033](#),p.0048 (first) (Transl.[DRC-OTP-2102-3854](#),p.3870).

⁷²⁷ **D-0300**:T-217,77:20-23; [DRC-OTP-2058-0251](#),51:43-52:37.

⁷²⁸ **P-0768**:T-34,48:20-25.

⁷²⁹ **P-0768**:T-34,49:9-10.

⁷³⁰ **P-0768**:T-34,49:6.

⁷³¹ **P-0768**:T-34,47:20-23.

⁷³² **P-0768**:T-34,50:19-23.

⁷³³ **P-0768**:T-34,47:18.

⁷³⁴ **P-0768**:T-34,47:14.

⁷³⁵ **D-0017**:T-252,11:1-12:1;T-253,33:25-3,67:22-25;**D-0251**:T-260,19:19-25;**D-0300**:T-239,44:1-3.

regarding a photograph showing children evidently below 15.⁷³⁶ Whereas [REDACTED].⁷³⁷ The date on which the photograph is taken is unknown. Initially, P-0768 stated: “[REDACTED]”⁷³⁸ adding that “These children who were recruited at the time, they came from Bunia. They were recruited for the UPC”⁷³⁹ and “when they left the UPC there were NGOs who came to claim these children [REDACTED] and they came to claim them [...]”⁷⁴⁰ In cross-examination, P-0768 testified that [REDACTED].⁷⁴¹

296. First, in light of P-0768 testimony, that “I know somebody called [REDACTED]. He went to the villages to recruit, the surroundings villages, and he recruited young people from there”;⁷⁴² it is implausible that the FPLC would [REDACTED].⁷⁴³ Second, when the [REDACTED],⁷⁴⁴ [REDACTED]. More significantly, [REDACTED].⁷⁴⁵ In this context, that the FPLC would send *any* recruit [REDACTED]. P-0768’s testimony regarding this picture is yet again a fabrication on his part.

297. In addition to all the above, the credibility of P-0768 is further impacted by [REDACTED].⁷⁴⁶ P-0768 also provided false evidence about weapons appearing on three pictures taken in 2004, which he claimed were the exact weapons used in the FPLC Mongbwalu operation.⁷⁴⁷ Comparing these pictures with the weapons in the possession of the FPLC shortly before the Mongbwalu operation,⁷⁴⁸ reveals that these are different weapons.

298. P-0768’s grand finale in providing incriminating evidence against Mr NTAGANDA relates to [REDACTED], a [REDACTED]⁷⁴⁹ and who would have [REDACTED].⁷⁵⁰ P-0768 is the only witness who mentioned the presence and involvement of

⁷³⁶ [DRC-OTP-2058-0667](#).

⁷³⁷ [REDACTED].

⁷³⁸ **P-0768**:T-34,58:22-23.

⁷³⁹ **P-0768**:T-34,58:2-3.

⁷⁴⁰ **P-0768**:T-34,59:1-3.

⁷⁴¹ **P-0768**:T-36,20:14-21:16.

⁷⁴² **P-0768**:T-34,56:23-25.

⁷⁴³ **P-0768**:T-34,56:14-17.

⁷⁴⁴ [REDACTED].

⁷⁴⁵ [REDACTED].

⁷⁴⁶ **P-0768**:T-35,13:6-20.

⁷⁴⁷ **P-0768**:T-34,11:14; T-34,12:5-16; T-34,13:25.

⁷⁴⁸ **D-0300**:T-216,37:1-39:22,44:2-9; T-214,45:4-49:1.

⁷⁴⁹ **P-0768**:T-33,61:8-12.

⁷⁵⁰ **P-0768**:T-34,63:21-64:6.

[REDACTED] in this case. His allegations of [REDACTED].⁷⁵¹ P-0768's allegations of [REDACTED] – conveyed to the Prosecution before the beginning of the trial⁷⁵² – and P-0768 mentioning [REDACTED] is part of P-0768's plot to testify voluntarily and provide false incriminating evidence against Mr NTAGANDA.

B. P-0017

299. P-0017 is another Prosecution insider witness who testified fully shielded from public scrutiny and negative consequences possibly arising from his testimony. He benefited from the full set of protective measures.⁷⁵³ He was granted assurances pursuant to Rule 74⁷⁵⁴ and the Prosecution undertook not to prosecute him in relation to the events mentioned in his testimony.⁷⁵⁵ The Chamber even reminded him of this full protection to ensure that he would not hesitate to provide incriminating evidence.⁷⁵⁶ It is significant that P-0017 [REDACTED] even before providing his first statement to the Prosecutor.⁷⁵⁷ It is also noteworthy that before his testimony, P-0017 benefited from multiple days to review what he had previously said under oath.⁷⁵⁸

300. Although P-0017 appeared at times to provide evidence generally aligned with the sequence of events as they purportedly unfolded, he was not a truthful witness and no probative value can attach to his testimony unless it is corroborated by other reliable evidence. P-0017, *inter alia*: fabricated evidence concerning his presence at the [REDACTED] in the presence of Mr NTAGANDA during which crimes were allegedly committed;⁷⁵⁹ provided false evidence concerning the arrival of Mr NTAGANDA on the second day of the FPLC operation in Mongbwalu;⁷⁶⁰ provided inconsistent and implausible evidence that [REDACTED];⁷⁶¹ lied about (i) Mr NTAGANDA giving orders to fire at fleeing civilians;⁷⁶² (ii) the murder of an elderly

⁷⁵¹ First Restriction Decision, [ICC-01/04-02/06-410](#).

⁷⁵² First Restriction Request, [ICC-01/04-02/06-349](#), paras. 22-23.

⁷⁵³ P-0017:T-58,9:15-10:17.

⁷⁵⁴ P-0017:T-58,7:11-8:1.

⁷⁵⁵ P-0017:T-58,11:14-17.

⁷⁵⁶ P-0017:T-59,73:3-6.

⁷⁵⁷ [REDACTED].

⁷⁵⁸ P-0017:T-60,55:7-56:6.

⁷⁵⁹ P-0017:T-61,88:6-20.

⁷⁶⁰ P-0017:T-58,63:18-64:5.

⁷⁶¹ P-0017:T-58,66:21-67:1;T-61,69:22-70:1.

⁷⁶² P-0017:T-58,70:18-71:3.

man and a young girl by the FPLC;⁷⁶³ and (iii) the murder of persons who were allegedly in the church when Sayo was liberated;⁷⁶⁴ and provided false and implausible evidence concerning Motorola radio communications between SALUMU positioned in Kilo and KISEMBO located in Mongbwalu.⁷⁶⁵

301. At various times during his testimony, P-0017 provided evidence about the presence of soldiers aged below 15 in the FPLC.⁷⁶⁶ In light of his propensity to fabricate evidence about crimes and in the absence of specific, concrete and/or visual details, P-0017's evidence on this issue cannot be attributed any probative value.

I. P-0017 was not at the [REDACTED] in the presence of Mr Ntaganda

302. When P-0017 was shown the Mongbwalu video,⁷⁶⁷ he did not recognize the [REDACTED],⁷⁶⁸ KASANGAKI⁷⁶⁹ and SALUMU.⁷⁷⁰ Regarding the [REDACTED], this casts doubt as to whether he was ever present there. As for KASANGAKI and SALUMU, this seriously undermines his testimony about [REDACTED] these officers at the time and more importantly, about the information he purportedly obtained from them at various times.⁷⁷¹

303. P-0017 testified that following the liberation of Sayo, he remained in Mongbwalu staying in SALUMU's camp from where he was ordered [REDACTED] to the [REDACTED].⁷⁷² He further testified being present at the [REDACTED]⁷⁷³ and who committed crimes against prisoners [REDACTED], including one who would have been beaten to death⁷⁷⁴ and [REDACTED].⁷⁷⁵ While at the [REDACTED], [REDACTED].⁷⁷⁶

⁷⁶³ P-0017:T-61,70:16-24.

⁷⁶⁴ P-0017:T-58,78:5-9.

⁷⁶⁵ P-0017:T-59,79:18-23.

⁷⁶⁶ P-0017:T-58,25:2-5;25:23-25;T-60,31:10-19.

⁷⁶⁷ P-0017:T-62,48:6-10.

⁷⁶⁸ P-0017:T-62,50:7-25.

⁷⁶⁹ P-0017:T-62,51:17-22.

⁷⁷⁰ P-0017:T-62,52:5-10.

⁷⁷¹ P-0017:T-58,66:21-67:1,65:21-66:1;T-61,20:13-14(KASANGAKI);T-58,17:16-18;50:22-51:2,81:16-20;T-59,60:12-17,79:6-17(SALUMU).

⁷⁷² P-0017:T-59,16:5-8.

⁷⁷³ P-0017:T-59,21:5-21,22:5-23:8.

⁷⁷⁴ P-0017:T-59,23:18-24:8.

⁷⁷⁵ P-0017:T-59,24:6-8.

⁷⁷⁶ P-0017:T-58,82:8-17.

304. P-0017 fabricated all of the above. First, P-0017 did not [REDACTED] when Mr NTAGANDA was in Mongbwalu. Second, the evidence establishes that P-0017 did not [REDACTED] after the liberation of Sayo.

305. P-0017 testified that SALUMU gave him the order to go to Mr NTAGANDA [REDACTED] because “Commander Salongo was to be appointed sector commander. And [REDACTED]”.⁷⁷⁷ SALONGO’s appointment as Commander of the South-East Operational Sector (“Comd-SE-OpSec”) occurred on or about 10 December 2002,⁷⁷⁸ long after Mr NTAGANDA’s departure from Mongbwalu.⁷⁷⁹ SALONGO’s appointment which angered SALUMU,⁷⁸⁰ is related to Mr NTAGANDA’s message addressed to TIGER ONE “SUITE A LA MUTINERIE APPORTEE PAR LE COMDR SALUMU (-) TOI TU DOIS LE METTRE AU CACHOT MOI JE SAURAI CE QU’IL FAUT FAIRE DE TOUT URGENCE” on 15 December 2002.⁷⁸¹ On 15 December 2002 Mr NTAGANDA was in Bunia.⁷⁸² Whereas P-0017 would have seen SALONGO at the [REDACTED], he did not remember seeing KISEMBO in Mongbwalu although KISEMBO [REDACTED]⁷⁸³ from the moment he arrived by plane in Mongbwalu following the liberation of Sayo on 26 November 2002.

306. P-0017 testified that [REDACTED] after the operation in Sayo.⁷⁸⁴ P-0017 confirmed that he also went to Kilo⁷⁸⁵ and that “once we left Mongbwalu, yes, all [REDACTED] went to Kilo”.⁷⁸⁶ P-0017 implausibly claimed however - contrary to [REDACTED]⁷⁸⁷ - that he personally did not go to Kilo on this occasion⁷⁸⁸ and that only [REDACTED]

⁷⁷⁷ [REDACTED].

⁷⁷⁸ DRC-OTP-0091-0709; DRC-OTP-0092-0541; The first four messages addressed to SALONGO as Comd-SE-OpSec were sent on 19 December 2002: [DRC-OTP-0017-0033](#),p.0061 (second) (Transl.[DRC-OTP-2102-3854](#),p.3883); [DRC-OTP-0017-0033](#),p.0062 (first and second) (Transl.[DRC-OTP-2102-3854](#),p.3884); [DRC-OTP-0017-0033](#),p.0063 (second) (Transl.[DRC-OTP-2102-3854](#),p.3885); [DRC-OTP-0017-0033](#),p.0204 (second) (Transl.[DRC-OTP-2102-3854](#),p.4026); further messages were addressed to SALONGO as Comd-SE-OpSec on *inter alia*: 20 december 2002 [DRC-OTP-0017-0033](#),p.0203 (first & second) (Transl.[DRC-OTP-2102-3854](#),p.4025); and 15 January 2003 [DRC-OTP-0017-0033](#),p.0198 (second) (Transl.[DRC-OTP-2102-3854](#),p.4020).

⁷⁷⁹ **D-0300**:T-226,93:21-94:4.

⁷⁸⁰ **P-0017**:T-59,16:15-17.

⁷⁸¹ [DRC-OTP-0017-0033](#),p.0205 (first) (Transl.[DRC-OTP-2102-3854](#),p.4027).

⁷⁸² [DRC-OTP-0017-0033](#),p.0205 (first) (Transl.[DRC-OTP-2102-3854](#),p.4027); **D-0300**:T-218,23:2-24:2.

⁷⁸³ **P-0017**:T-62,71:1-6.

⁷⁸⁴ **P-0017**:T-62,58:21-25.

⁷⁸⁵ **P-0017**:T-62,57:6-7.

⁷⁸⁶ **P-0017**:T-62,57:11-14.

⁷⁸⁷ **P-0017**:T-58,59:22-60:4;T-62,59:4-7.

⁷⁸⁸ **P-0017**:T-62,59:13-16.

were taken to Kilo, thereby leaving [REDACTED] in Mongbwalu⁷⁸⁹ where they were of no use on the Mongbwalu-Kilo-Nyangarai-Bunia axis.⁷⁹⁰

307. Although P-0017 testified that [REDACTED] who stayed there alone⁷⁹¹ with a few soldiers,⁷⁹² he nonetheless accepted that [REDACTED], he remembered going [REDACTED] December 2002, “I was at [REDACTED] to open up that road”.⁷⁹³
308. Significantly, P-0017 did not remember: the FPLC plane which arrived at the Mongbwalu airstrip close to SALUMU’s camp⁷⁹⁴ the day following the liberation of Sayo;⁷⁹⁵ seeing the officers attending the post Sayo meeting held by Mr NTAGANDA at SALUMU’s house, also the next day,⁷⁹⁶ and, more importantly, the arrival of KISEMBO and his delegation by plane on the second day following the liberation of Sayo.⁷⁹⁷ What is even more striking is that according to his testimony, P-0017 did not see KISEMBO until much later in Kilo.⁷⁹⁸ All of the above demonstrates that P-0017 did not [REDACTED] in Mongbwalu.

II. *P-0017 provided false evidence concerning the arrival of Mr Ntaganda in Mongbwalu*

309. P-0017 testified that on the second day of the operation, he saw Mr NTAGANDA arrive by car in Mongbwalu.⁷⁹⁹ He further testified that Mr NTAGANDA went in the main camp “where SALUMU, the brigade commander, [REDACTED]”⁸⁰⁰ and that “[REDACTED]”.⁸⁰¹
310. P-0017 did not tell the truth as he did not see Mr NTAGANDA arrive in Mongbwalu. First, P-0017’s testimony corroborates that at the time no vehicle could travel between Lalu and the Mongbwalu airport. Second, when Mr NTAGANDA arrived in

⁷⁸⁹ P-0017:T-62,59:7-9.

⁷⁹⁰ P-0017:T-63,11:6-7.

⁷⁹¹ P-0017:T-63,8:6-10.

⁷⁹² P-0017:T-62,57:18-23.

⁷⁹³ P-0017:T-62,69:2-9.

⁷⁹⁴ P-0017:T-62,68:13-14.

⁷⁹⁵ P-0017:T-62,68:8-21; D-0300:T-217,58:24-59:6,76:21-77:5.

⁷⁹⁶ P-0017:T-62,65:25-66:9,67:12-20.

⁷⁹⁷ P-0017:T-62,68:18-21; D-0300:T-217,76:21-77:5.

⁷⁹⁸ P-0017:T-62,68:22-69:1.

⁷⁹⁹ P-0017:T-58,63:15-64:14.

⁸⁰⁰ P-0017:T-58,63:22-23.

⁸⁰¹ [REDACTED].

Mongbwalu, P-0017 was at the [REDACTED] where he had been sent to support SEYI's forces facing the enemy, which had retreated to Sayo. [REDACTED].⁸⁰²

311. P-0017 testified that he travelled from Mabanga to Lalu and all the way to Mongbwalu on foot;⁸⁰³ that this road was difficult;⁸⁰⁴ that he had to cross a forest just before reaching the airport;⁸⁰⁵ and that at the time of the events, it was the rainy season.⁸⁰⁶ Although P-0017 resisted the suggestion that there was no motorable road between Lalu to Mongbwalu at the time,⁸⁰⁷ he nonetheless stated "I did not travel by such road in a vehicle. I don't know whether the – what the state of such a road would have been, no".⁸⁰⁸ Mr NTAGANDA, who travelled from Mabanga to Dala by vehicle and from Dala to Mongbwalu on foot, explained - using a detailed military map⁸⁰⁹ - why it was not possible to travel all the way from Dala to Mongbwalu using a vehicle.⁸¹⁰
312. P-0017 agreed with the suggestion that 10 hours is a reasonable approximation of the time required to travel by foot from Lalu to Mongbwalu. Mr NTAGANDA left Mabanga in the afternoon and arrived in Mongbwalu at night, around 19h00.⁸¹¹ In the meantime, P-0017 was sent from SALUMU's camp to the [REDACTED], in the afternoon,⁸¹² to provide [REDACTED]. In cross-examination, P-0017 twice modified his evidence regarding the time he went to the [REDACTED], stating: "I went there in the afternoon. It was almost dark already"⁸¹³ and then "If I remember well, yes, it was in the evening".⁸¹⁴ Nevertheless, he was not in SALUMU's camp when Mr NTAGANDA arrived. Indeed P-0017 remembered seeing civilians arrive in Mongbwalu on the second day - confirming that on that day "I did not see them with ammunition"⁸¹⁵ - whereas when Mr NTAGANDA arrived at SALUMU's camp, he was

⁸⁰² [REDACTED].

⁸⁰³ P-0017:T-61,32:25-33:1.

⁸⁰⁴ P-0017:T-61,33:2-4.

⁸⁰⁵ P-0017:T-61,33:5-7.

⁸⁰⁶ P-0017:T-61,33:8-9.

⁸⁰⁷ P-0017:T-61,43:8-44:9.

⁸⁰⁸ P-0017:T-61,44:10-14.

⁸⁰⁹ [DRC-D18-0001-5290](#).

⁸¹⁰ D-0300:T-217,24:12-26:5,32:19-33:4.

⁸¹¹ D-0300:T-217,35:22-25.

⁸¹² P-0017:T-58,66:22-25.

⁸¹³ P-0017:T-61,66:7-12.

⁸¹⁴ P-0017:T-62,59:23-25.

⁸¹⁵ P-0017:T-61,60:9-11.

accompanied by civilians carrying ammunition,⁸¹⁶ which P-0017 missed entirely. That P-0017 unloaded the car in which Mr NTAGANDA arrived, is yet further fabrication on his part.

313. Lastly, [REDACTED], [REDACTED]⁸¹⁷ – which is corroborated by the Mongbwalu video⁸¹⁸ – all of P-0017's evidence regarding the use of cars to carry looted goods⁸¹⁹ is also fabrication.

III. P-0017 provided both false and implausible evidence regarding his participation in the FPLC operation in Sayo

314. During his examination in chief, P-0017 testified that he was at the [REDACTED] when the operation in Sayo began. P-0017 claimed that he accompanied KASANGAKI and SEYI who went from the [REDACTED] to Sayo, taking along [REDACTED]. P-0017 further testified that while in Sayo, his group was joined by Mr NTAGANDA who ordered him to fire [REDACTED] at fleeing civilians. P-0017 also claimed: (i) going to the Sayo church out of curiosity where he saw people sheltered therein; (ii) seeing the execution of a man who had come out of the church by one of Mr NTAGANDA's bodyguard; and (iii) having learned later that the people sheltered in the church were killed using bladed weapons.
315. P-0017 lied about these events. P-0017 did not accompany KASANGAKI and SEYI together in Sayo with [REDACTED]. Second, no civilians could have been fleeing from Sayo at the time as P-0017 claimed. Third, no people took shelter in the Sayo church at the time.
316. Although P-0017 was possibly at the [REDACTED] when the Sayo operation began,⁸²⁰ his evidence that he went to Sayo with KASANGAKI and SEYI together, taking along [REDACTED], is both implausible and contradicted by the evidence. Following the firing of the B-10 that caused the enemy to panic and flee⁸²¹ - which P-0017 does not remember⁸²² - Mr NTAGANDA authorised KASANGAKI to link up with SEYI's

⁸¹⁶ D-0300:T-217,32:19-33:4,33:22-34:4.

⁸¹⁷ [REDACTED].

⁸¹⁸ [DRC-OTP-2058-0251](#), [REDACTED] (Transl. [DRC-OTP-2102-3766](#), [REDACTED]).

⁸¹⁹ P-0017:T-58,81:1-7.

⁸²⁰ P-0017:T-58,66:21-67:1.

⁸²¹ D-0300:T-217,51:12-14.

⁸²² P-0017:T-62,13:19-24.

forces, and KASANGAKI then led the forces that first entered Sayo along with KAZUNGU and THEOPHILE.⁸²³ Meanwhile, SEYI was at the [REDACTED] where he had a grenade launcher.⁸²⁴ Mr NTAGANDA recalled that upon being informed by one of the commanders that SEYI was firing on them, he ordered him to stop on the Motorola.⁸²⁵ Mr NTAGANDA explained that neither SEYI nor himself as the senior commanders involved, could proceed to Sayo, as long as there was still an exchange of fire.⁸²⁶

317. What is more, P-0017's evidence [REDACTED] is wholly implausible. P-0017 explained the difference between a heavy weapon and a support weapon, the latter category comprising in his view, weapons such as "machine guns, G2, rocket launchers, seven" which can be used *in* infantry units as opposed to heavy weapons.⁸²⁷ [REDACTED] "to make sure that [REDACTED] don't cause a friendly fire incident".⁸²⁸ Reminded of what he said in his [REDACTED] interview "(...) when a company intervened [REDACTED] could not use those weapons for fear that the enemy would capture them", P-0017 also agreed - addressing [REDACTED] - that "when the infantry advanced, the support weapons stayed back"; and "when the infantry forces met with resistance, they took cover and then called on the support weapons to intervene".⁸²⁹ P-0017 also confirmed in relation to the first day of the operation, that "once the airport was captured the support weapons were installed at the end of the airport with a good view on the town of Mongbwalu".⁸³⁰
318. Mr NTAGANDA did not see any heavy weapons in Sayo and he explained why this was normal and expected. If KASANGAKI ever called upon P-0017 to fire with his [REDACTED] as he testified,⁸³¹ this could only have taken place when P-0017 was at the [REDACTED] with SEYI. In this regard, P-0017's evidence that he did not hear

⁸²³ D-0300:T-217,54:14-19.

⁸²⁴ D-0300:T-217,51:15-53:24.

⁸²⁵ D-0300:T-217,51:15-52:7.

⁸²⁶ D-0300:T-217,54:20-55:3.

⁸²⁷ P-0017:T-60,77:17-24.

⁸²⁸ P-0017:T-60,78:11-15.

⁸²⁹ P-0017:T-61,52:12-22.

⁸³⁰ P-0017:T-61,49:6-8.

⁸³¹ P-0017:T-58,68:6-14;T-61,101:7-21.

what was being said on the Motorola radio because he was concentrating on his task⁸³² is a marked departure from his purported conduct while in Kobu.⁸³³

319. Although P-0017 testified that there were still exchanges of fire in Sayo when he was there, he described the conduct of the Sayo operation as follows: “well, there was, first of all, the factory which was sort of a barrier which made it impossible for the group to advance. Finally, the infantry was able to dislodge them and – to dislodge it and then we went passed that barrier and there was no firing. It is when we passed that we were able to continue to advance or to march towards Sayo”.⁸³⁴ P-0017 also stated that Mr NTAGANDA “joined us in the square”⁸³⁵ – which corresponds to the clear area immediately beside the Sayo church⁸³⁶ - as “the operation was nearing its end” and “the last houses were being searched”⁸³⁷ and that “he had a camera, he was filming”,⁸³⁸ which corroborate Mr NTAGANDA’s evidence that when he entered the area, Sayo was secured and calm had returned.⁸³⁹
320. P-0017 lied about the order he would have received from Mr NTAGANDA to fire at civilians fleeing. First, P-0017 [REDACTED] when they entered in the center of Sayo.⁸⁴⁰ Second, when referring to the presence of Mr NTAGANDA in Sayo in his [REDACTED] statement,⁸⁴¹ P-0017 did not mention any order of the sort issued by Mr NTAGANDA to him.⁸⁴² Third, P-0017 testified that “after the firing [Mr NTAGANDA] commented that this should discourage them, that they would not have the strength to reorganise or to launch a counterattack”⁸⁴³ which makes it clear that if such an order to fire had been given, it was directed at the enemy and not at civilians. Fourth, P-0017’s description of the event “when he was with KASANGAKI they were talking, and KASANGAKI said that in the direction where [REDACTED] KASANGAKI said there was movement on the side, Mr NTAGANDA saw the

⁸³² P-0017:T-61,100:1-4.

⁸³³ P-0017:T-63,28:24-29:6.

⁸³⁴ P-0017:T-61,67:1-8 (underline added).

⁸³⁵ P-0017:T-58,70:1-3.

⁸³⁶ D-0300:T-217,48:5-11.

⁸³⁷ P-0017:T-58,70:5-6.

⁸³⁸ P-0017:T-61,70:13.

⁸³⁹ D-0300:T-217,52:4-6,54:20-55:3.

⁸⁴⁰ D-0300:T-217,53:14-18; P-0886:T-37,14:23-15:4.

⁸⁴¹ P-0017:T-61,106:8-19.

⁸⁴² P-0017:T-61,106:5-22.

⁸⁴³ P-0017:T-58,73:4-7.

movement and at that point he ordered fire”⁸⁴⁴ is wholly inconsistent with the presence of a very numerous “group of people walking in single file approximately four to 500 metres” from where they were,⁸⁴⁵ composed of “women or men [...] wearing trousers or some form of pagne cloth”.⁸⁴⁶

321. More importantly, the evidence establishes that the presence of such a group of people fleeing is firmly impossible. In cross-examination, P-0017 identified the zone/area where he was [REDACTED].⁸⁴⁷ The exhibit on which [REDACTED] and the area where the people fleeing were located⁸⁴⁸ reveals the people were walking on the route parallel to Sayo that leads to Nzebi⁸⁴⁹ and that the distance between the two was less than 200 meters.⁸⁵⁰ The evidence establishes that as soon as the fighting was approaching any location, the inhabitants therein immediately left. Testifying about Mongbwalu, P-0017 confirmed “well, those who knew that there was a conflict with the UPC preferred to withdraw”⁸⁵¹ and “when we engaged in fighting, I did not in fact see any civilians at that time, no”.⁸⁵² P-0017 also confirmed that on the first day of the Mongbwalu operation, the enemy, APC and Lendu combatants fell back to the factory, on the way to Sayo. P-0886, who was amongst the very last to leave from Sayo confirmed that when the FPLC soldiers entered Sayo, he had already left.⁸⁵³ Hence, P-0017 concocted false evidence about M NTAGANDA’s alleged order to fire at fleeing civilians. Contrary to his testimony, had P-0017 fired at civilians [REDACTED], there would have been a *carnage*⁸⁵⁴ and the fleeing civilians would not have suddenly disappeared as he claimed.⁸⁵⁵
322. P-0017 lied about seeing people sheltered in the Sayo church. P-0017 testified that when he arrived at the Sayo church, he did not see any civilians,⁸⁵⁶ which is markedly different from what he said in his first statement in [REDACTED]: “when we arrived at

⁸⁴⁴ P-0017:T-58,70:19-21.

⁸⁴⁵ P-0017:T-58,72:8-10.

⁸⁴⁶ P-0017:T-58,72:11-13.

⁸⁴⁷ P-0017:T-62,26:18-28:21.

⁸⁴⁸ [DRC-REG-0001-0017](#); P-0017:T-62,28:20-22.

⁸⁴⁹ [DRC-D18-0001-0491](#); [DRC-REG-0001-0068](#).

⁸⁵⁰ [DRC-D18-0001-5290](#).

⁸⁵¹ P-0017:T-61,50:1-4.

⁸⁵² P-0017:T-61,51:2-13.

⁸⁵³ P-886:T-40,17:10-25.

⁸⁵⁴ P-0017:T-58,72:20-24.

⁸⁵⁵ P-0017:T-58,72:17-19.

⁸⁵⁶ P-0017:T-61,108:2-5.

church, there were women and children who were civilians. They were shot dead by Bosco's troops, his bodyguards. He gave the order. Bosco gave the order and he stopped filming. The people were shot by Bosco's men".⁸⁵⁷ The best P-0017 could offer to explain the difference is that he provided this answer at his initial meeting with the Prosecution during which he gave *less information* than in his further statements.⁸⁵⁸

323. P-0017 created his narrative about the presence of people sheltered in the Sayo church, which is not corroborated by other reliable evidence. P-0017 identified the Sayo church on exhibit DRC-REG-0001-0016.⁸⁵⁹ P-0017 stated that he initially did not know this was a church because this was the first time he was in Sayo.⁸⁶⁰ P-0017 did not remember on which side of the building/church the door from where he purportedly saw people sheltering inside was.⁸⁶¹ He also testified "I was not in front of the crowd, I was behind. There were people in front of me and all of us were standing".⁸⁶² P-0017 could not tell the number of people inside the church but said it was around seven.⁸⁶³ P-0017 could not tell the ages because he did not see all the people inside.⁸⁶⁴ P-0017 was reminded about [REDACTED] where he said: "they were almost lying on the ground. They weren't even sitting down. It was war. They were afraid. They had lied down on the ground to protect themselves." Asked how he could reconcile [REDACTED] with his evidence that he saw the heads of the people,⁸⁶⁵ P-0017 stated "when we were talking about these things, well, I forgot those details because this was 12, 13 years ago".⁸⁶⁶ Pressed further, he added "In any case, I no longer remember that particular moment given the two documents that you have read. I no longer remember which is which".⁸⁶⁷ When P-0017 was reminded of [REDACTED] where he said "there were also members – avec un s – of the clergy from the church" he stated "in any case, I no

⁸⁵⁷ P-0017:T-61,108:15-109:6.

⁸⁵⁸ P-0017:T-61,109:7-11.

⁸⁵⁹ P-0017:T-62,23:1-17.

⁸⁶⁰ P-0017:T-62,23:3-14.

⁸⁶¹ P-0017:T-62,40:8-20.

⁸⁶² P-0017:T-62,41:3-4.

⁸⁶³ P-0017:T-62,40:21-23.

⁸⁶⁴ P-0017:T-62,41:18-19.

⁸⁶⁵ P-0017:T-62,42:13-20.

⁸⁶⁶ P-0017:T-62,42:21-22.

⁸⁶⁷ P-0017:T-62,43:11-12.

longer remember”.⁸⁶⁸ P-0017 provided further contradictory evidence concerning the presence of children and mothers.⁸⁶⁹

324. P-0017 further testified that one man who was sheltered in the church was executed by one of Mr NTAGANDA’s bodyguards, following the order of Mr NTAGANDA. This alleged murder, unsupported by other reliable evidence, was yet again made up by P-0017. P-0017’s evidence that he learned *later* – after he was supposedly transferred to Mr NTAGANDA’s camp⁸⁷⁰ - that the remaining people in the church were executed with bladed weapons⁸⁷¹ is revealing. P-0017’s evidence that he obtained this information from [REDACTED], as well as his family, but does not remember the name⁸⁷² and who was supposedly one of Mr NTAGANDA’s bodyguards even though there is no evidence of a NTAGANDA bodyguard having that name⁸⁷³ – further exposes his lie.
325. The same conclusion applies to P-0017’s evidence regarding the shooting of an elderly man and a young girl, which P-0017 had not even mentioned during his examination in chief.⁸⁷⁴ It also applies to P-0017’s concocted narrative concerning the dead woman close to the dispensary whom P-0017 saw alone and was able to determine had just given birth; and seeing the same body, when leaving Sayo, this time with a dead baby beside her. In his [REDACTED] statement P-0017 testified that “apart from that, when we arrived close to the dispensary I also saw that there was a woman with a small baby on the ground”.⁸⁷⁵
326. P-0017 testified that while he was close to the Sayo church, he did not see one of Mr NTAGANDA's bodyguards arrive with someone, dressed half civilian/half military in his detention⁸⁷⁶ and he did not see Mr NTAGANDA releasing this person after speaking with him⁸⁷⁷ for the purpose of sending a message to the enemy.⁸⁷⁸ P-0017 also

⁸⁶⁸ P-0017:T-62,43:19-25.

⁸⁶⁹ P-0017:T-62,44:1-6.

⁸⁷⁰ P-0017:T-58,81:16-20;T-59,16:5-12.

⁸⁷¹ P-0017:T-58,78:23-79:3.

⁸⁷² P-0017:T-62,45:4-18.

⁸⁷³ P-0017:T-62,45:22-24; D-0300:T-214,49:10-50:14.

⁸⁷⁴ P-0017:T-61,70:16-24.

⁸⁷⁵ P-0017:T-61,104:7-9, P-0886:T-37,59 :7-19 ; P-0800:T-68,33:12-17,58:1-5,58:1-5,58:24-59:4.

⁸⁷⁶ P-0017:T-62,46:15-19.

⁸⁷⁷ P-0017:T-62,46:20-24.

⁸⁷⁸ D-0300:T-217,54:9-11;55:4-12.

did not see his own commander, SALUMU⁸⁷⁹ who was present;⁸⁸⁰ he saw Mr NTAGANDA filming but did not see SALONGO/TIGER ONE who was present⁸⁸¹ and whom he knows;⁸⁸² and he did not see KAZUNGU who was present⁸⁸³ and whom he is familiar with.⁸⁸⁴ P-0017's evidence seriously casts doubt as to whether he was even present in Sayo on that day.

IV. P-0017 provided false and implausible evidence concerning Motorola radio conversations and the events in Kobu

327. P-0017 testified that [REDACTED], SALUMU [REDACTED] had Motorola radio conversations with KISEMBO, who was in Mongbwalu.⁸⁸⁵ P-0017 claimed that [REDACTED].⁸⁸⁶ Not only is P-0017's evidence, [REDACTED] Commander, implausible; it is also impossible as D-0243 confirmed that Motorola radio communications were not possible between Mongbwalu and Kobu.⁸⁸⁷ Even if KISEMBO had been in Kilo, such Motorola radio communications were not possible. P-0017's evidence that [REDACTED] during one of these radio conversations does not affect this conclusion. Although P-0017 confirmed that in Kobu they did not have a *phonie*,⁸⁸⁸ he could have obtained this information – not mentioned before his testimony - from someone arriving at his location or simply made it up.
328. As he did for the alleged radio conversations between KISEMBO and SALUMU, P-0017 lied about hearing the audio intercepts he listened to in court.⁸⁸⁹ First, he acknowledged that for two of the excerpts, he was not listening live.⁸⁹⁰ Second, a close listening of the excerpt in which P-0017 claims he was [REDACTED] in Kobu,⁸⁹¹ reveals that the latter was actually involved in the operation in the field and [REDACTED].⁸⁹² P-0017's explanation regarding the instances when ECHO

⁸⁷⁹ P-0017:T-62,21:7-9.

⁸⁸⁰ D-0300:T-217,53:25-54:4.

⁸⁸¹ D-0300:T-217,53:25-54:3.

⁸⁸² P-0017:T-61,94:16-22;T-62,20:3-16.

⁸⁸³ D-0300:T-217,54:14-19.

⁸⁸⁴ P-0017:T-61,98:6-12.

⁸⁸⁵ P-0017:T-59,78:10-13.

⁸⁸⁶ P-0017:T-63,9:11-15;28:18-29:1.

⁸⁸⁷ D-0243:T-257,56:16-18.

⁸⁸⁸ P-0017:T-63,31:17-20.

⁸⁸⁹ [DRC-OTP-0162-0115](#) (Track 1,06:50-13:38;23:45-25:44; track 2,05:20-06:25).

⁸⁹⁰ P-0017:T-60,42:17-18,43:19-20.

⁸⁹¹ P-0017:T-60,8:5-10.

⁸⁹² [REDACTED].

CHARLIE was [REDACTED] is revealing in this regard.⁸⁹³ P-0017's description of the events based on what he claimed he heard on the Motorola radio⁸⁹⁴ further illustrate that he adjusted his testimony to what he heard on the audio intercepts, which he had the opportunity to listen in full during his preparation sessions before his testimony.

329. In light of P-0017's propensity to fabricate evidence, all of his inconsistent, hearsay and implausible incriminating evidence related to the events in alleged second attack, cannot be attributed any probative value unless it is precisely corroborated by other reliable evidence.

C. P-0963

330. P-0963 is yet again a witness who testified knowing that he was fully shielded from public scrutiny and negative repercussions arising from his testimony. Although P-0963 was granted the full set of in-court protective measures, the purpose of which is to ensure that no one is aware that he is a witness in this case, P-0963 [REDACTED].⁸⁹⁵ P-0963 was also granted assurances pursuant to Rule 74⁸⁹⁶ and the Prosecution undertook not to prosecute him.⁸⁹⁷ What is more, [REDACTED], P-0963 even signed an agreement of limited responsibility strengthening the guarantee that he would not be prosecuted.⁸⁹⁸ P-0963 implausibly claimed that he did not understand this agreement and that it was not explained to him when he signed, a recurrent theme during his testimony.⁸⁹⁹

331. P-0963's [REDACTED] strongly suggest that he was coached and that he fabricated his evidence. P-0963, *inter alia*: lied about [REDACTED]; provided false evidence about his participation in the Mongbwalu operation; lied about his involvement in the Sayo operation; and made up evidence concerning the operation in KBL.

332. Consequently, no probative value whatsoever can attach to the evidence provided by P-0963, whether on its own or in corroboration of evidence provided by other Prosecution witnesses.

⁸⁹³ [REDACTED].

⁸⁹⁴ P-0017:T-60,39:9-43:22.

⁸⁹⁵ P-0963:T-82,83:3-19.

⁸⁹⁶ P-0963:T-78,33:6-22.

⁸⁹⁷ P-0963:T-78,33:22-24.

⁸⁹⁸ P-0963:T-80,70:21-71:1.

⁸⁹⁹ P-0963:T-80,71:2-20.

I. P-0963 was coached by [REDACTED]

333. P-0963 admitted⁹⁰⁰ [REDACTED] before and after his initial and subsequent encounters with Prosecution investigators [REDACTED]. [REDACTED].⁹⁰¹
334. P-0963 was introduced to [REDACTED].⁹⁰² [REDACTED], P-0963 met with [REDACTED] during which they talked about [REDACTED].⁹⁰³ P-0963 could not recall everything that was discussed.⁹⁰⁵ P-0963 [REDACTED] with [REDACTED]⁹⁰⁶ [REDACTED].⁹⁰⁷ Cross-examined on the content of [REDACTED] following this meeting held on [REDACTED],⁹⁰⁸ P-0963 denied [REDACTED] the information found in paragraph 4.⁹⁰⁹ P-0963 also denied [REDACTED] the information in paragraph 5 stressing that he had no knowledge of this information.⁹¹⁰ When paragraph 6 was read to him, P-0963 responded “I don’t know. I have no idea”.⁹¹¹ P-0963 then contested the contents of paragraph 12, claiming that it was not really [REDACTED].⁹¹² What is more, P-0963 challenged the contents of paragraph 11 affirming that “[REDACTED]”.⁹¹³ P-0963 denied that the information contained in [REDACTED].⁹¹⁴
335. P-0963 then denied having told [REDACTED] that “he had personally written accounts of events that occurred [...] [REDACTED]”, which he would [REDACTED].⁹¹⁵ P-0963 confirmed that he would not have been able to [REDACTED] and that this was [REDACTED]’s interpretation.⁹¹⁶

⁹⁰⁰ **P-0963**:T-80,74:12-75:5;T-82,51:24-54:7.

⁹⁰¹ [REDACTED].

⁹⁰² **P-0963**:T-82,55:13-56:4.

⁹⁰³ **P-0963**:T-82,62:19-23.⁹⁰⁴ **P-0963**:T-82,63:14-23.

⁹⁰⁴ **P-0963**:T-82,63:14-23.

⁹⁰⁵ **P-0963**:T-82,63:7-64:3.

⁹⁰⁶ **P-0963**:T-82,68:16-21.

⁹⁰⁷ **P-0963**:T-82,69:10-13; [REDACTED].

⁹⁰⁸ **P-0963**:[DRC-OTP-0147-0566](#);T-82,69:23-73:17;75:6-13.

⁹⁰⁹ **P-0963**:T-82,69:24-70:6.

⁹¹⁰ **P-0963**:T-82,71:9-19.

⁹¹¹ **P-0963**:T-82,71:23-72:2.

⁹¹² **P-0963**:T-82,72:4-21.

⁹¹³ **P-0963**:T-82,72:22-73:10.

⁹¹⁴ **P-0963**:T-82,73:6-10.

⁹¹⁵ **P-0963**:T-82,73:11-17.

⁹¹⁶ **P-0963**:T-82,73:18-74:9.

336. The next meeting between [REDACTED] and P-0963 was on [REDACTED].⁹¹⁷ P-0963 confirmed that the meeting [REDACTED],⁹¹⁸ during which [REDACTED].⁹¹⁹ This meeting took place [REDACTED]. The [REDACTED] meeting with [REDACTED], during which P-0963 [REDACTED].⁹²⁰ On [REDACTED], P-0963 met with [REDACTED] – a meeting which was [REDACTED] and P-0963⁹²¹ – during which he [REDACTED].⁹²² This document, [REDACTED], contains information inconsistent with P-0963's testimony that strongly suggests that he was coached by [REDACTED]. For example, not only is the information about TIGER ONE directing the fighting on the Mbidjo axis false,⁹²³ such information would be known to P-0963 if he had participated in the Mongbwalu operation.⁹²⁴
337. P-0963 confirmed that during the period from [REDACTED] until [REDACTED]⁹²⁵ [REDACTED], he had fresh meetings with [REDACTED]: “it would depend on the topic. It would depend on whether there was an event or something that [REDACTED] might have said to me”.⁹²⁶ On [REDACTED], P-0963 [REDACTED] document to [REDACTED].⁹²⁷ Contrary to information provided by the Prosecution, [REDACTED] claimed having [REDACTED].⁹²⁸ P-0963 confirmed that this document was drafted [REDACTED].⁹²⁹ Although P-0963 denied having discussed this document with [REDACTED], he nonetheless added “[REDACTED]”.⁹³⁰ The information contained in this second document also strongly suggests that P-0963 was coached by [REDACTED]. For example, the information concerning the execution of an *Abbé* and civilians massacred in Sayo by order of Mr NTAGANDA are revealing.⁹³¹

⁹¹⁷ P-0963:T-82,75:14-16.

⁹¹⁸ P-0963:T-82,75:14-16.

⁹¹⁹ P-0963:T-82,76:2-5.

⁹²⁰ P-0963:T-82,75:17-18,77:6-17.

⁹²¹ P-0963:T-82,78:1-3.

⁹²² P-0963:T-82,77:18-25.

⁹²³ P-0963:T-82,78:19.

⁹²⁴ D-0017:T-253,32:22-25; D-0300:T-216,85:1-11.

⁹²⁵ P-0963:T-82,79:24-80:1.

⁹²⁶ P-0963:T-82,79:16-23.

⁹²⁷ P-0963:T-82,80:7-19.

⁹²⁸ P-0963:T-82,80:15-19.

⁹²⁹ P-0963:T-82,80:24-81:2.

⁹³⁰ P-0963:T-82,81:3-7.

⁹³¹ [DRC-OTP-0149-0049](#).

II. *P-0963 did not attend training in Mandro*

338. P-0963 testified that [REDACTED] he trained with the UPC in [REDACTED] from where [REDACTED].⁹³² He further testified: being trained in [REDACTED]/Mandro⁹³³ starting in [REDACTED] for a period of three weeks to one month; being employed as an [REDACTED] for a period of a month and a half from [REDACTED];⁹³⁴ and [REDACTED].⁹³⁵

339. P-0963 lied about all of the above and the evidence he provided about his alleged training in Mandro, including in particular the execution he would have seen there,⁹³⁶ was made up. First, P-0963 [REDACTED] and did not attend training in [REDACTED].⁹³⁷ Second, P-0963 did not train in [REDACTED]/Mandro [REDACTED]⁹³⁸ and his employment at [REDACTED],⁹³⁹ which [REDACTED],⁹⁴⁰ is a lie.

a. P-0963 did not train in [REDACTED]

340. P-0963 testified that he was [REDACTED].⁹⁴¹ [REDACTED], P-0963 claimed that in [REDACTED], he went to [REDACTED].⁹⁴² P-0963 recognized that this was not true and that he was [REDACTED].⁹⁴³ P-0963 nonetheless claimed [REDACTED].⁹⁴⁴ Asked whether he had [REDACTED], P-0963 stated that he “[REDACTED]. That’s what [he] can say”.⁹⁴⁵ The [REDACTED]⁹⁴⁶ and the [REDACTED] for P-0963, [REDACTED]⁹⁴⁷ addressed in detail during cross-examination,⁹⁴⁸ demonstrate that P-

⁹³² P-0963:T-80,64:23. [REDACTED].

⁹³³ P-0963:T-80,58:11-15.

⁹³⁴ P-0963:T-80,67:16-19. [REDACTED].

⁹³⁵ P-0963:T-78,53:17-19.

⁹³⁶ P-0963:T-80,38:4-39:7.

⁹³⁷ P-0963:T-81,38 :16-24.

⁹³⁸ P-0963:T-80,58:11-15.

⁹³⁹ P-0963:T-78,53:22-54:1.

⁹⁴⁰ [REDACTED].

⁹⁴¹ P-0963:T-81,38:19-24.

⁹⁴² P-0963:T-81,38:7-12.

⁹⁴³ P-0963:T-81,38:16-24.

⁹⁴⁴ P-0963:T-81,39:10-23.

⁹⁴⁵ P-0963:T-81,40:2-3.

⁹⁴⁶ [REDACTED].

⁹⁴⁷ [REDACTED].

⁹⁴⁸ P-0963:T-81,40:22-48:21.

0963 actually [REDACTED].⁹⁴⁹ Not only was P-0963 [REDACTED]⁹⁵⁰ [REDACTED].⁹⁵¹

b. P-0963 did not train in Mandro

341. P-0963 testified that his training took place in [REDACTED] Mandro [REDACTED].⁹⁵² [REDACTED], P-0963 did not even mention [REDACTED].⁹⁵³ [REDACTED],⁹⁵⁴ P-0963 confirmed that [REDACTED].⁹⁵⁵ Moreover, P-0963 confirmed that, [REDACTED], he was not asked to provide information [REDACTED].⁹⁵⁶

342. P-0963 could neither identify any of the instructors who dispensed the training,⁹⁵⁷ nor any of the people who left [REDACTED] with him to go to Mandro.⁹⁵⁸ While he wrongly identified [REDACTED],⁹⁵⁹ he had no idea that MUGISA MULEKE was the Commander of Mandro in July.⁹⁶⁰ MULEKE is one of the first officers deployed by Mr NTAGANDA after the departure of LOMPONDO from Bunia.⁹⁶¹ Moreover, although P-0963 testified that he was [REDACTED] in August 2002 when Governor LOMPONDO left Bunia⁹⁶² and that he was aware of the events that led up to the fall of LOMPONDO:⁹⁶³ [REDACTED];⁹⁶⁴ and he was not aware that [REDACTED]⁹⁶⁵ [REDACTED].⁹⁶⁶ As for P-0963's knowledge that both UPC and the Ugandans were involved, he confirmed "that is information that we also heard. That is what we heard even over the radio, the UPC events which we heard".⁹⁶⁷

⁹⁴⁹ **P-0963**:T-81,48:7-21.

⁹⁵⁰ [REDACTED].

⁹⁵¹ [REDACTED].

⁹⁵² [REDACTED].

⁹⁵³ **P-0963**:T-80,84:18-85:3.

⁹⁵⁴ [REDACTED]. *See* Part VI, Chapt. I, Section III.

⁹⁵⁵ **P-0963**:T-78,46:24-47:7.

⁹⁵⁶ **P-0963**:T-81,5:24-6:6.

⁹⁵⁷ **P-0963**:T-78,38:4-7.

⁹⁵⁸ **P-0963**:T-78,31:5-20.

⁹⁵⁹ **P-0963**:T-78,38:4-7; **D-0300**:T-215,77:8-11.

⁹⁶⁰ **P-0963**:T-80,84:2-3.

⁹⁶¹ **D-0300**:T-214,20:15-17.

⁹⁶² **P-0963**:T-78,28:17-18.

⁹⁶³ **P-0963**:T-81,58:6-8.

⁹⁶⁴ **P-0963**:T-81,58:9-11.

⁹⁶⁵ **P-0963**:T-81,58:12-15.

⁹⁶⁶ **P-0963**:T-81,58:16-22.

⁹⁶⁷ **P-0963**:T-81,59:1-2.

343. P-0963 testified that he decided to join UPC as a result of [REDACTED].⁹⁶⁸ [REDACTED] was attacked on or about [REDACTED], many people were killed and [REDACTED].⁹⁶⁹ Shortly after his arrival in [REDACTED], LUBANGA requested Mr NTAGANDA to send forces [REDACTED] as a result of the attack.⁹⁷⁰ Even though P-0963 claimed that he decided to join UPC as a result of [REDACTED] – [REDACTED]⁹⁷¹ – there is no evidence to support this. Contrary to P-0963’s evidence, Mr NTAGANDA was not present when [REDACTED].⁹⁷²
344. P-0963 testified that “at the end of the training we received the weapon, yes”.⁹⁷³ [REDACTED]: “[...] as soon as you finish your training, that is the day that you receive your weapon”⁹⁷⁴ adding that “and me, us, we went to receive the weapons [REDACTED]”.⁹⁷⁵ Had P-0963 completed recruit [REDACTED].⁹⁷⁶ [REDACTED]⁹⁷⁷ [REDACTED].⁹⁷⁸ P-0963 [REDACTED]. Evidently, P-0963 was in [REDACTED] only for a few days before [REDACTED],⁹⁷⁹ although P-0963 testified that for him “a few days is months”.⁹⁸⁰
345. Furthermore, P-0963’s evidence that he received a weapon only [REDACTED] renders impossible his testimony, [REDACTED]⁹⁸¹ [REDACTED],⁹⁸² that he was employed as an [REDACTED].

III. *P-0963 did not participate in the Mongbwalu operation*

346. P-0963 testified that he traveled from Bunia to Mongbwalu [REDACTED].⁹⁸³ P-0963 further testified that [REDACTED], he was informed about the fighting

⁹⁶⁸ **P-0963**:T-78,29:6-13.

⁹⁶⁹ [REDACTED].

⁹⁷⁰ [REDACTED].

⁹⁷¹ **P-0963**:T-81,61:20-23.

⁹⁷² [REDACTED].

⁹⁷³ **P-0963**:T-81,12:24.

⁹⁷⁴ **P-0963**:T-81,10:18-11:5.

⁹⁷⁵ **P-0963**:T-81,13:4-8.

⁹⁷⁶ [REDACTED]; **P-0017**:T-60,76:23-77:2.

⁹⁷⁷ **P-0963**:T-81,22:9-18.

⁹⁷⁸ [REDACTED]; [REDACTED].

⁹⁷⁹ **P-0963**:T-81,63:14-15.

⁹⁸⁰ **P-0963**:T-81,63:18-20;63:24-25.

⁹⁸¹ **P-0963**:T-81,61:23-63:23.

⁹⁸² **P-0963**:T-78,53:22-24.

⁹⁸³ **P-0963**:T-78,69:16-70:6.

[REDACTED].⁹⁸⁴ P-0963 fabricated his narrative concerning his involvement in the Mongbwalu operation.

347. Contrary to P-0963's evidence, SALUMU and Mr NTAGANDA were not present together [REDACTED].⁹⁸⁵ The Short-Ntaganda-Logbook shows that from 19 to 21 November 2002, SALUMU and Mr NTAGANDA were communicating *via phonie*.⁹⁸⁶ As of 19h44 on 22 November 2002, Mr NTAGANDA was in Mabanga from where he received a message on his *phonie*, which was operational.⁹⁸⁷ By that time - two days before the liberation of Sayo⁹⁸⁸ - SALUMU's brigade was already fighting in Mongbwalu.⁹⁸⁹ Mr NTAGANDA met SALUMU for the first time upon arriving in Mongbwalu on 23 November 2002.⁹⁹⁰ P-0017 confirmed that Mr NTAGANDA arrived in Mongbwalu late on the second day of the operation.⁹⁹¹

348. P-0963 testified travelling from [REDACTED], [REDACTED], [REDACTED].⁹⁹² P-0963 testified that [REDACTED] did not have a commander, missing the fact that [REDACTED].⁹⁹³ P-0963 confirmed having no knowledge of an exchange of ammunition between SALUMU's brigade and SEYI's forces.⁹⁹⁴ Contrary to P-0963's testimony, P-0017 confirmed that SALUMU's brigade [REDACTED] reached Mongbwalu on foot.⁹⁹⁵ What is more, SALUMU's brigade [REDACTED].⁹⁹⁶

IV. P-0963 did not participate in the Sayo operation

349. P-0963 fabricated his narrative concerning his participation in the operation in Sayo with [REDACTED].⁹⁹⁷ Significantly, P-0963 was not able to correctly identify Sayo on the exhibit attached to his statement.⁹⁹⁸

⁹⁸⁴ P-0963:T-78,70:7-11.

⁹⁸⁵ D-0017:T-253,32:11-14;39:6-14.

⁹⁸⁶ [DRC-D18-0001-5748](#),p.5748 (Transl.[DRC-D18-0001-5778](#),p.5778); [DRC-D18-0001-5748](#),p.5756 (Transl.[DRC-D18-0001-5778](#),p.5786).

⁹⁸⁷ [DRC-D18-0001-5748](#),p.5758 (Transl.[DRC-D18-0001-5778](#),p.5788).

⁹⁸⁸ [DRC-OTP-0091-0709](#).

⁹⁸⁹ D-0017:T-253,39:23-40:6; P-0017:T-58,63:15-23.

⁹⁹⁰ D-0300:T-234,75:2-5; D-0017:T-253,39:23-25.

⁹⁹¹ P-0017:T-58,62:7-10.

⁹⁹² P-0017:T-58,50:16-51:11.

⁹⁹³ P-0017:T-58,32:13-19.

⁹⁹⁴ [REDACTED],p.5748 (Transl.[DRC-D18-0001-5778](#),p.5778); P-0017:T-61,24:20-22.

⁹⁹⁵ P-0017:T-61,32:25-33:1.

⁹⁹⁶ P-0017:T-58,59:15-60:7.

⁹⁹⁷ P-0963:T-78,79:6.

350. P-0963 testified “and then on the third day, we were able to recover all of Mongbwalu. You see, Mongbwalu is made up of several cities so we did not only stop at Mongbwalu, we had to move on towards Sayo, yes Sayo, and then we also recaptured Sayo after a few days, and then it was all over”.⁹⁹⁹ Contrary to his testimony, Sayo was liberated on the third day of the operation without interruption once Mongbwalu was secured.¹⁰⁰⁰ Asked about the period between the end of the fighting in Mongbwalu and the Sayo operation, P-0963 attempted to explain, stating: “and we were waiting for munitions, because when we attacked, when we occupied Mongbwalu, we were short of munitions and we therefore had to wait for ammunition from Bunia. And ammunition came, and that is how, therefore, we had sufficient ammunition to attack”.¹⁰⁰¹ P-0963’s narrative regarding the shortage and arrival of ammunition is unsupported by other reliable evidence. In fact, P-0963 appears to confuse this event with the exchange of ammunition between SALUMU’s brigade and SEYI’s forces before Mongbwalu was liberated,¹⁰⁰² he testified having no knowledge of. Again, this suggests that he was coached by [REDACTED] with whom he was in contact but got the script wrong.
351. P-0963 testified that SALUMU personally gave the order to attack and that he personally led the operation in Sayo.¹⁰⁰³ Again, his narrative is unsupported by other reliable evidence. Mr NTAGANDA commanded the Sayo operation and the senior officer involved from the Aru forces located at the *Usine* was SEYI.¹⁰⁰⁴ While SALUMU joined Mr NTAGANDA on his way to Sayo after it was secured, he was not involved in the operation.¹⁰⁰⁵
352. P-0963 testified that during the Sayo operation, [REDACTED].¹⁰⁰⁶ However, SALUMU’s brigade had [REDACTED] in Mongbwalu¹⁰⁰⁷ and Mr NTAGANDA did not travel from Bunia to Mongbwalu [REDACTED].¹⁰⁰⁸ During the Sayo operation,

⁹⁹⁸ [DRC-REG-0001-0023](#).

⁹⁹⁹ **P-0963**:T-78,75:18-21 (underline added).

¹⁰⁰⁰ **D-0300**:T-217,51:15-52:7; **D-0017**:T-253,41:5-8.

¹⁰⁰¹ **P-0963**:T-82,32:24-33:3.

¹⁰⁰² [DRC-D18-0001-5748](#),p.5748 (Transl.[DRC-D18-0001-5778](#),p.5778); **D-0300**:T-241,45:1-7.

¹⁰⁰³ **P-0963**:T-79,11:18-21.

¹⁰⁰⁴ **D-0300**:T-216,64:1-5; **P-0017**:T-58,66:21-10; **D-0017**:T-254,50:20-51:5.

¹⁰⁰⁵ **D-0300**:T-216,63:6-9.

¹⁰⁰⁶ **P-0963**:T-79,12:18-19.

¹⁰⁰⁷ **P-0017**:T-58,59:15-21.

¹⁰⁰⁸ **D-0300**:T-216,85:6-11.

[REDACTED].¹⁰⁰⁹ Strikingly, when P-0963 was asked [REDACTED], P-0963 responded: “(...) [REDACTED]. So we were advancing [REDACTED] from Mongbwalu to Sayo”.¹⁰¹⁰ [REDACTED] during the Sayo operation.¹⁰¹¹ Evidently, P-0963 did not participate in the Sayo operation.

353. Moreover, P-0963 confirmed he was not aware of the post-Sayo officers’ meeting convened by Mr NTAGANDA, held the next day, in SALUMU’s camp.¹⁰¹² Notably, P-0963 testified that SALUMU’s camp, camp GOLI, was occupied by the Aru brigade¹⁰¹³ which was not the case at that time.¹⁰¹⁴ What is more, P-0963’s evidence that all officers, including [REDACTED], moved to the *Appartements* following the Mongbwalu operation is not true and not corroborated by other reliable evidence.¹⁰¹⁵ More significantly, P-0963 testified that he did not see KISEMBO arrive in Mongbwalu by plane, two days after the liberation of Sayo.¹⁰¹⁶ In contrast, P-0963 only recalled KISEMBO arriving in Mongbwalu from Kilo by car, three weeks later,¹⁰¹⁷ which demonstrates not only that he did not participate in the Sayo operation but also that he was not in Mongbwalu before, during or after the operation.

V. P-0963 made up evidence concerning the operation in Kobu-Bambu-Lipri

354. A significant portion of P-0963’s testimony about the events in KBL in February 2003 rests on hearsay and/or unreliable evidence. Moreover, the differences between his evidence and that provided by P-0017 reveals that neither is telling the truth.
355. More importantly, P-0963’s testimony that [REDACTED],¹⁰¹⁸ demonstrates that he fabricated his narrative. Indeed, the evidence reveals that [REDACTED], before the operation in Kobu.¹⁰¹⁹ It moreover appears, on the basis of the hand-written document provided by P-0963 to a Prosecution investigator after meeting with [REDACTED], that P-0963 was coached by the latter in relation to the alleged events in Kobu.

¹⁰⁰⁹ D-0300:T-223,43:11-19.

¹⁰¹⁰ P-0963:T-82,37:17-19.

¹⁰¹¹ P-0017:T-58,59:15-60:7; D-0017:T-253,40:7-21; D-0300:T-217,51:15-52:7.

¹⁰¹² D-0300:T-217,68:17-70:16.

¹⁰¹³ P-0963:T-82,8:5-7.

¹⁰¹⁴ D-0300:T-217,37:12-38:3; P-0017:T-61,96:24-97:13.

¹⁰¹⁵ P-0963:T-78,88:2-8(“[REDACTED]”).

¹⁰¹⁶ P-0963:T-80,40:4-8.

¹⁰¹⁷ P-0963:T-78,89:7-8.

¹⁰¹⁸ P-0963:T-79,15:16-25.

¹⁰¹⁹ [REDACTED].

D. P-0907

356. P-0907's testimony differs from that of other insider witnesses, at least in one respect. P-0907 [REDACTED]. At the [REDACTED] opted to testify as a Prosecution witness [REDACTED]. P-0907 also provided truthful evidence about the atrocious living conditions imposed under the Lendu traditional tribal regime in 2001-2002, [REDACTED].
357. The difference stop here. Indeed, like P-0768, P-0017 and P-0963, P-0907 is yet another *insider* who lied under oath and fabricated evidence. P-0907, *inter alia*: (i) lied about being trained in Mandro before travelling to Tchomia, from where he was supposed to leave for the heavy weapons training in Rwanda; (ii) fabricated evidence about deserting Mr NTAGANDA's escorts to participate in the first FPLC attempt to liberate Mongbwalu; (iii) concocted a false narrative concerning his participation in the FPLC successful second attempt to liberate Mongbwalu; and (iv) made up evidence about civilian women forcibly taken to the *Appartements* by FPLC members.
358. Consequently, other than for P-0907's evidence about the situation in Mongbwalu where he lived in 2001-2002, no probative value whatsoever can attach to P-0907's testimony.

I. P-0907 testified as a Prosecution witness to [REDACTED]

359. Before becoming a Prosecution witness, P-0907 [REDACTED].¹⁰²⁰ P-0907 confirmed: meeting in Mongbwalu with [REDACTED] and a certain [REDACTED], an elderly wise person from the village, in [REDACTED];¹⁰²¹ meeting in Bunia with [REDACTED] and [REDACTED] on [REDACTED];¹⁰²² being asked and accepting to accompany [REDACTED] and [REDACTED];¹⁰²³ meeting in Bunia with [REDACTED] and [REDACTED] in [REDACTED]; being asked and accepting to accompany the latter to [REDACTED]; and meeting with [REDACTED] and [REDACTED] who [REDACTED], also in [REDACTED].¹⁰²⁴ P-0907 also confirmed

¹⁰²⁰ P-0907:T-91,5:14-12:15;T-92,65:15-74:6.

¹⁰²¹ P-0907:T-91,9:1-7.

¹⁰²² P-0907:T-91,9:21-24.

¹⁰²³ P-0907:T-91,10:4-10.

¹⁰²⁴ P-0907:T-91,5:14-17,11:18-12:15.

being asked in 2013 and 2014 [REDACTED] to which he responded yes on both occasions.¹⁰²⁵

360. Asked whether he recalled that [REDACTED], P-0907 responded “[REDACTED]”.¹⁰²⁶
 Asked whether he knew that [REDACTED], P-0907 responded “[REDACTED]”.¹⁰²⁷

361. P-0907 acknowledged that his first meeting with the Prosecution took place in [REDACTED] in [REDACTED].¹⁰²⁸ P-0907 confirmed that further to this interview, he became a [REDACTED] witness; he [REDACTED]; and he [REDACTED].¹⁰²⁹

362. Responding to the suggestion that the reason he decided to testify for the Prosecution is [REDACTED] “[REDACTED]”.¹⁰³⁰ In his statement, P-0907 was asked to confirm being aware that [REDACTED], to which P-0907 responded “[REDACTED]”.¹⁰³¹ P-0907 also testified “[REDACTED]”.¹⁰³²

363. P-0907 attempted to explain why [REDACTED], suggesting that he was somehow briefed and that it was difficult not to do so because [REDACTED] was present and he knew what rank he had in the past.¹⁰³³ First, P-0907 recalled being told by [REDACTED]: “[REDACTED]”.¹⁰³⁴ Second and more importantly, P-0907’s attempt to [REDACTED] “[REDACTED]”.¹⁰³⁵

II. P-0907 provided truthful testimony about the atrocious living conditions and the mistreatment of the population in Mongbwalu before November 2002

364. [REDACTED],¹⁰³⁶ P-0907 provided evidence – corroborated by P-0887¹⁰³⁷ - that:¹⁰³⁸
 the Lendu population was organised and operated on the basis of tribal customs and practices; to protect themselves, the Lendus relied on people referred to as Lendu combatants; at the end of 2001-early 2002, the APC, the military arm of RCD-K/ML,

¹⁰²⁵ P-0907:T-92,65:15-22.

¹⁰²⁶ P-0907:T-92,65:23-66:2.

¹⁰²⁷ P-0907:T-92,66:8-10.

¹⁰²⁸ P-0907:T-92,66:11-13.

¹⁰²⁹ P-0907:T-92,66:10-67:10.

¹⁰³⁰ P-0907:T-92,66:14-19.

¹⁰³¹ P-0907:T-92,34:10-16.

¹⁰³² P-0907:T-92,70:1-2.

¹⁰³³ P-0907:T-92,10:14-21;73:24-25.

¹⁰³⁴ P-0907:T-92,74:1-6.

¹⁰³⁵ P-0907:T-92,67:17-21.

¹⁰³⁶ P-0907:T-91,32:17-21.

¹⁰³⁷ [REDACTED].

¹⁰³⁸ P-0907:T-91,28:23-32:6.

was present in Mongbwalu; at the beginning, the APC was fighting the Lendus to ensure that Mongbwalu would be peaceful; the Lendu combatants did not wear any uniforms; the Lendu combatants were wearing either civilian clothing or even traditional clothing, including *gris-gris* or animal skin and the like; the Lendu combatants did not hesitate to use women and children to fight with them; in early 2002, the APC changed platform and started to fight with the Lendus on the same side; the living conditions imposed by the Lendus and the Lendu combatants were simply terrible; the Lendus imposed on women the obligation to go around topless and not to cross their arms on their chest; in Mongbwalu, pounding cassava was prohibited and no one was allowed to make locally brewed alcohol, *kaikpo*; in Mongbwalu the Lendus imposed a work obligation or *salongo*; anyone disobeying these rules would be beaten; and the Lendus would even cut off the ears of those who did not abide by these regulations. P-0907 confirmed cannibalism was practised by the Lendu combatants in Mongbwalu and that [REDACTED].¹⁰³⁹ P-0907 confirmed that these intolerable living conditions as well as the threats to his life, as a Hema, [REDACTED].¹⁰⁴⁰

III. P-0907 lied about being trained in Mandro

365. P-0907 testified that he left Mongbwalu [REDACTED] and fled to Bunia¹⁰⁴¹ where he met [REDACTED] who told him that as a young person he had to do the military training at the Mandro camp.¹⁰⁴² P-0907 affirmed that “[He] started as a recruit. That was in July. Then [he] was a recruit. [He] began in July and it went on until the middle of August. After that [he] was asked to go to [REDACTED]. That didn’t happen”.¹⁰⁴³ P-0907 specified that he was in training in Mandro for about a month and a half.¹⁰⁴⁴
366. Under oath, P-0907 provided a detailed description of the situation at the Mandro training centre which he claimed having personally observed, including on *inter alia*: the excessive training exercises; the harsh living conditions;¹⁰⁴⁵ the presence of recruits below the age of 15;¹⁰⁴⁶ the physical mistreatment of recruits;¹⁰⁴⁷ and the fact that

¹⁰³⁹ P-0907:T-91,31:19-32:6.

¹⁰⁴⁰ P-0907:T-91,33:3-12.

¹⁰⁴¹ P-0907:T-89,13:6.

¹⁰⁴² P-0907:T-89,13:10-11.

¹⁰⁴³ P-0907:T-89,36:2-4.

¹⁰⁴⁴ P-0907:T-91,14:7-8.

¹⁰⁴⁵ P-0907:T-90,76:10-77:2.

¹⁰⁴⁶ P-0907:T-89,25:7-13.

“anyone who deserted and fled from the training would be arrested and shot”.¹⁰⁴⁸ P-0907 even described the execution of a recruit by MUGISA MULEKE, which he allegedly observed personally.¹⁰⁴⁹

367. P-0907 lied about all of the above. P-0907 did not follow any training in Mandro. The Defence put its case to P-0907, [REDACTED].¹⁰⁵⁰

368. First, P-0907 confirmed that [REDACTED] who recruited him to go into the army is [REDACTED].¹⁰⁵¹ Mr NTAGANDA explained that MUGISA PAUL arrived in Mandro, coming from Uganda along with BAGONZA and TCHALIGONZA, when the last group of recruits going to Rwanda left for Tchomia.¹⁰⁵² P-0907 affirmed that “it was [REDACTED] who recruited [him]. He was the one who said to [him], ‘you’ll go to Mandro. You’ll be there for a few days. Then an airplane will come and take you to [REDACTED], where there is a military officers school’”.¹⁰⁵³ D-0017 who trained and was in Mandro never saw P-0907 in training.¹⁰⁵⁴

369. Second, P-0907 confirmed that when going from Mandro to Tchomia, he did not have a weapon. He also acknowledged that upon arriving in Tchomia, he “[REDACTED]”.¹⁰⁵⁵ Had P-0907 followed any recruit training before leaving Mandro, he would have been issued a weapon prior to making this dangerous trip in enemy territory¹⁰⁵⁶ and he certainly would not have [REDACTED]. Only the educated students selected to go to Rwanda who did not have prior military training made this trip unarmed.¹⁰⁵⁷ P-0907 [REDACTED], stated [REDACTED]”.¹⁰⁵⁸

¹⁰⁴⁷ P-0907:T-90,77:13-78:19.

¹⁰⁴⁸ P-0907:T-90,78:4.

¹⁰⁴⁹ P-0907:T-91,45:19-47:6.

¹⁰⁵⁰ P-0907:T-92,14:7-15:5.

¹⁰⁵¹ P-0907:T-91,40:11-41:4.

¹⁰⁵² D-0300:T-215,69:4-24.

¹⁰⁵³ P-0907:T-89,32:11-13 (underline added).

¹⁰⁵⁴ D-0017:T-253,12:20-22.

¹⁰⁵⁵ P-0907:T-91,15:13-16; D-0017:T-253,14:23-15:2.

¹⁰⁵⁶ D-0300:T-215,50:20-51:5; P-0017:T-60,76:23-77:2.

¹⁰⁵⁷ D-0017:T-253,12:9-12.

¹⁰⁵⁸ P-0907:T-92,13:16-19.

IV. P-0907 fabricated evidence concerning his participation in the first FPLC attempt to liberate Mongbwalu

370. P-0907 fabricated his narrative about deserting [REDACTED] for the purpose of taking part in the FPLC first attempt to liberate Mongbwalu,¹⁰⁵⁹ re-joining [REDACTED] thereafter.¹⁰⁶⁰ By the time SALUMU's brigade departed from Mandro to liberate Mongbwalu, P-0907 had become [REDACTED]¹⁰⁶¹ unlike [REDACTED].¹⁰⁶² P-0907 confirmed that [REDACTED] and that this was one of the duties of the [REDACTED]. P-0907's evidence that he deserted [REDACTED]; participated in the FPLC first attempt to liberate Mongbwalu; and re-joined [REDACTED] thereafter without telling anyone¹⁰⁶³ and without anyone noticing or asking questions, is wholly implausible.¹⁰⁶⁴ What is more, P-0907's evidence of a large gathering in Nizi -close to the Bambu bridge and a short distance away from Lendu controlled territory¹⁰⁶⁵ - where this operation was planned during two days following which Mr NTAGANDA arrived¹⁰⁶⁶ is unsupported by other reliable evidence as well as not credible.¹⁰⁶⁷ Moreover, P-0907's evidence that: he simply infiltrated the pack without reporting to anyone; he does not remember the name of the commander of the platoon which he joined; the platoon commanding officer did not ask him any question, including which unit he belonged to before; and when the platoon commander did ask him who he was, he responded that he was a soldier on his way to Mongbwalu,¹⁰⁶⁸ is absurd. Furthermore, P-0907's evidence as to how he returned from Mongbwalu to Bunia initially on foot for a distance of 60km¹⁰⁶⁹ and then using a taxi¹⁰⁷⁰ is even more incredible.

V. P-0907 concocted a false narrative regarding his participation in the FPLC successful second attempt to liberate Mongbwalu

371. P-0907 testified that after re-joining [REDACTED] at the headquarters in Bunia, he returned to Mongbwalu and took part in the second FPLC operation there, along with

¹⁰⁵⁹ P-0907:T-89,79:15-80:4.

¹⁰⁶⁰ P-0907:T-92,37:9-12.

¹⁰⁶¹ P-0907:T-92,19:21-20:9; [REDACTED].

¹⁰⁶² P-0907:T-92,20:1-4; [REDACTED].

¹⁰⁶³ P-0907:T-92,40:15-19.

¹⁰⁶⁴ P-0907:T-92,40:15-41:7.

¹⁰⁶⁵ P-0907:T-92,31:22-32:3.

¹⁰⁶⁶ P-0907:T-89,79:11-80:4.

¹⁰⁶⁷ P-0907:T-92,41:2-7.

¹⁰⁶⁸ P-0907:T-92,25:18-23.

¹⁰⁶⁹ P-0907:T-92,38:14-16.

¹⁰⁷⁰ P-0907:T-92,39:8-12.

[REDACTED], his colleague [REDACTED] - who first returned from Bunia to Nizi after P-0907 called [REDACTED] to invite him to join¹⁰⁷¹ - and others who tagged along the way, deserting their units to this end.¹⁰⁷²

372. P-0907 fabricated the totality of his evidence regarding the second FPLC operation in Mongbwalu and this period.
373. Whereas P-0907 affirmed that after the *First Attack*, no one found out that he went to Mongbwalu and that nobody asked him where he had gone,¹⁰⁷³ he shifted his evidence to: “[REDACTED] and the others wanted to find out where we had been”,¹⁰⁷⁴ which prompted him to change tactic and seek cover and guarantees from a higher ranking officer.¹⁰⁷⁵ P-0907 claimed that: he offered his services to [REDACTED] telling him that he knew where goods could be looted in Mongbwalu; [REDACTED] spoke to Mr NTAGANDA who provided him with a [REDACTED] for him and [REDACTED] was added to the [REDACTED] at his initiative;¹⁰⁷⁶ [REDACTED] joined [REDACTED] and his group on the way to Mongbwalu; and [REDACTED] told them to remain in Mongbwalu with looted goods while he went to fight in Kilo, is not only not supported by any reliable evidence but wholly inconceivable.
374. Strikingly, P-0907 testified that: “when we got to Mongbwalu [TIGER ONE] was already a sector commander because that had been announced. We were told, as soon as you get to Mongbwalu you should know that Tiger One is the sector commander”.¹⁰⁷⁷ TIGER ONE was appointed Sector Commander on or about 10 December 2002,¹⁰⁷⁸ many days after the second FPLC operation in Mongbwalu, which clearly demonstrates that P-0907 concocted his narrative. P-0907’s evidence that *inter*

¹⁰⁷¹ P-0907:T-92,44:21-23,45:6-9.

¹⁰⁷² P-0907:T-92,45:18-25.

¹⁰⁷³ P-0907:T-92,41:2-7.

¹⁰⁷⁴ P-0907:T-92,43:2-3.

¹⁰⁷⁵ P-0907:T-92,42:21-25.

¹⁰⁷⁶ P-0907:T-92,44:13-18.

¹⁰⁷⁷ P-0907:T-92,48:11-24.

¹⁰⁷⁸ DRC-OTP-0091-0709; DRC-OTP-0092-0541; The first four messages addressed to SALONGO as Comd-SE-OpSec were sent on 19 December 2002: [DRC-OTP-0017-0033](#),p.0061 (second) (Transl.[DRC-OTP-2102-3854](#),p.3883); [DRC-OTP-0017-0033](#),p.0062 (first and second) (Transl.[DRC-OTP-2102-3854](#),p.3884); [DRC-OTP-0017-0033](#),p.0063 (second) (Transl.[DRC-OTP-2102-3854](#),p.3885); [DRC-OTP-0017-0033](#),p.0204 (second) (Transl.[DRC-OTP-2102-3854](#),p.4026).

alia, TIGER ONE came along with the troops from Aru¹⁰⁷⁹ and that Sayo was already occupied when Mr NTAGANDA arrived in Mongbwalu,¹⁰⁸⁰ confirms P-0907's lies.

VI. P-0907 made up evidence about civilian women forcibly taken to the Appartements by FPLC members

375. P-0907 testified that "UPC soldiers had women in the [Appartements]. Most of them had one [REDACTED]. But no one married these women legally. They never went in front of their parents to ask for their hands in marriage".¹⁰⁸¹ P-0907 added "At that time [women taken to the Appartements] had no choice" and "if she wasn't in agreement you -- you would force her to go with you".¹⁰⁸² [REDACTED]: "[REDACTED]"¹⁰⁸³ and "[REDACTED]".¹⁰⁸⁴

376. First, in his statement provided to the Prosecution, P-0907 affirmed: "[REDACTED]".¹⁰⁸⁵ P-0907 attempted to explain this contradiction¹⁰⁸⁶ but his evidence was clearly contradicted by [REDACTED], who stated unequivocally that: [REDACTED];¹⁰⁸⁷ and [REDACTED].¹⁰⁸⁸ Second, P-0907's evidence that soldiers never requested permission from the parents before marrying a woman is contradicted by his own testimony,¹⁰⁸⁹ corroborated by that of [REDACTED] who affirmed that: "[REDACTED]".¹⁰⁹⁰ No reliable evidence establishes that other FPLC members acted otherwise. Third, P-0907 confirmed the content of his statement, which demonstrates that there was a procedure in place for FPLC members [REDACTED] to obtain permission before being authorised to live with their wives [REDACTED]: "[REDACTED]".¹⁰⁹¹

¹⁰⁷⁹ P-0907:T-92,50:7-16.

¹⁰⁸⁰ P-0907:T-92,56:12-15.

¹⁰⁸¹ P-0907:T-90,79:10-12.

¹⁰⁸² P-0907:T-90,80:11-15.

¹⁰⁸³ P-0907:T-90,79:12-13.

¹⁰⁸⁴ P-0907:T-90,80:4-5.

¹⁰⁸⁵ P-0907:T-90,90:6-10.

¹⁰⁸⁶ P-0907:T-90,90:12-20,88:20-89:2.

¹⁰⁸⁷ P-0907:T-90,74:15-22.

¹⁰⁸⁸ [REDACTED].

¹⁰⁸⁹ P-0907:T-90,79:23-24.

¹⁰⁹⁰ [REDACTED].

¹⁰⁹¹ P-0907:T-90,90:21-91:11.

377. Lastly, P-0907's testimony is further irreparably undermined by the evidence he provided for the first time during his testimony that: [REDACTED].¹⁰⁹² Although [REDACTED], testimony is also critically impaired by credibility issues, [REDACTED] in relation to the events that allegedly took place in Mongbwalu. Yet, [REDACTED] never mentioned any of these events, unheard of previously. P-0907's claim that he did not mention these events because he "thought it was [REDACTED]"¹⁰⁹³ is preposterous in light of the evidence he provided about [REDACTED]. Evidently, P-0907 made up these events as an attempt to buttress his false narrative.

E. P-0901

378. P-0901 was contacted by the Prosecution at the suggestion of [REDACTED],¹⁰⁹⁴ a witness who should be investigated for lying and fabricating evidence under oath.¹⁰⁹⁵ P-0901 knows [REDACTED] and the two have met in [REDACTED] since P-0901 [REDACTED] in [REDACTED] in [REDACTED].¹⁰⁹⁶

379. [REDACTED], P-0901 met with [REDACTED], in [REDACTED].¹⁰⁹⁷ In [REDACTED], P-0901 was interviewed and became a Prosecution witness.¹⁰⁹⁸ Due to purported security concerns, [REDACTED],¹⁰⁹⁹ .¹¹⁰⁰ [REDACTED], [REDACTED], [REDACTED], [REDACTED].¹¹⁰¹ [REDACTED], [REDACTED] in [REDACTED], P-0901 did not inform [REDACTED].¹¹⁰² Informed by P-0901 that he was not interested in [REDACTED] dropped the issue altogether.¹¹⁰³ Notably, P-0901 displayed blatant disregard for the measures put in place to protect him by appearing publicly in

¹⁰⁹² P-0907:T-90,83:9-16.

¹⁰⁹³ P-0907:T-90,91:18-25.

¹⁰⁹⁴ P-0901:T-32,37:17-38:12.

¹⁰⁹⁵ [REDACTED].

¹⁰⁹⁶ P-0901:T-32,38:8-12;T-30,27:18-22.

¹⁰⁹⁷ P-0901:T-32,48:12-23.

¹⁰⁹⁸ P-0901:T-30,5:6-17.

¹⁰⁹⁹ P-0901:T-32,53:21-54:8.

¹¹⁰⁰ Decision on request for in-court protective measures relating to P-0901, [ICC-01/04-02/06-828-Conf](#), para. 9

¹¹⁰¹ P-0901:T-32,45:9-13.

¹¹⁰² P-0901:T-32,52:23-53:3.

¹¹⁰³ P-0901:T-32,52:23-53:9.

the company of [REDACTED].¹¹⁰⁴ The Defence was precluded from further exploring P-0901's [REDACTED].¹¹⁰⁵

380. P-0901 was granted the full set of in-court protective measures¹¹⁰⁶ as well as assurances pursuant to Rule 74.¹¹⁰⁷ P-0901 thus testified fully shielded from public scrutiny and negative consequences arising from his testimony.

381. P-0901's association with UPC-RP, FPLC and Mr NTAGANDA amongst others goes back to mid-2000. Further to his service in the [REDACTED],¹¹⁰⁸ P-0901 was [REDACTED] was killed as members of the APC moved to murder Mr NTAGANDA.¹¹⁰⁹ [REDACTED].¹¹¹⁰ Already at that time, P-0901 was aware of Mr NTAGANDA's reputation as a courageous commander widely acclaimed by his fellow trainees, which P-0901 confirmed.¹¹¹¹

382. P-0901, *inter alia*: [REDACTED];¹¹¹² [REDACTED];¹¹¹³ [REDACTED];¹¹¹⁴ [REDACTED];¹¹¹⁵ [REDACTED];¹¹¹⁶ was present in Bunia when the UPDF chased LOMPONDO;¹¹¹⁷ became FPLC [REDACTED] when the FPLC was officially created;¹¹¹⁸ was promoted to [REDACTED] and became [REDACTED] shortly before the liberation of Bunia in May 2003;¹¹¹⁹ was assigned as FPLC [REDACTED] later in [REDACTED] and [REDACTED];¹¹²⁰ and was reassigned as [REDACTED] when Mr NTAGANDA replaced KISEMBO as FPLC *Chef-d'État-major-général par intérim*.¹¹²¹

¹¹⁰⁴ P-0901:T-32,52:23-53:16.

¹¹⁰⁵ P-0901:T-32,54:9-17.

¹¹⁰⁶ Decision on request for in-court protective measures relating to P-0901, [ICC-01/04-02/06-828-Conf](#).

¹¹⁰⁷ P-0901:T-27,8:6-21.

¹¹⁰⁸ P-0901:T-27,17:6-9,18:25-19:1.

¹¹⁰⁹ P-0901:T-30,61:21-25.

¹¹¹⁰ P-0901:T-27,20:3-16.

¹¹¹¹ P-0901:T-31,8:19-25.

¹¹¹² P-0901:T-27,53:22-23,56:14-15.

¹¹¹³ P-0901:T-27,57:3-6.

¹¹¹⁴ P-0901:T-27,59:25.

¹¹¹⁵ P-0901:T-27,59:1-10.

¹¹¹⁶ P-0901:T-27,56:16-57:16,60:15-61:5.

¹¹¹⁷ P-0901:T-29,43:21-24.

¹¹¹⁸ P-0901:T-28,7:10-11.

¹¹¹⁹ P-0901:T-30,24:16-25:9.

¹¹²⁰ P-0901:T-30,25:18-21.

¹¹²¹ P-0901:T-30,25:22-26:8.

383. P-0901's evidence corroborates to a large extent Mr NTAGANDA's testimony. However, P-0901 was an obstructive witness¹¹²² who lied under oath. P-0901 provided false evidence concerning FPLC VHF radio communications;¹¹²³ P-0901 lied about having listened in real time to the events heard on the KBL-audio-recording;¹¹²⁴ made up evidence concerning looting committed by members of SALUMU's brigade during the FPLC operation in Kobu;¹¹²⁵ provided unreliable evidence, almost entirely based on hearsay, concerning the FPLC operation in Mongbwalu¹¹²⁶ - in particular concerning the involvement of P-0768¹¹²⁷ and the presence of SALUMU and Mr NTAGANDA together in Bunia in relation to the operation¹¹²⁸ - and fabricated evidence implicating Mr NTAGANDA in looting in Mongbwalu.¹¹²⁹
384. Consequently, other than for the evidence provided by P-0901 which corroborates Mr NTAGANDA's testimony, no probative value can attach to his testimony.

I. P-0901 provided false evidence concerning FPLC VHF radio communications

385. D-0243, a civilian who possessed many years of practical experience in the use of [REDACTED], including [REDACTED],¹¹³⁰ assisted the FPLC by facilitating [REDACTED]. At the request of KISEMBO,¹¹³¹ D-0243 [REDACTED],¹¹³² made available and operated [REDACTED] from [REDACTED] for the benefit of the FPLC.¹¹³³ Use of [REDACTED] – which was the only [REDACTED] to the FPLC in 2002-2003¹¹³⁴ – allowed the FPLC to have [REDACTED] between Bunia and certain locations outside of Bunia.¹¹³⁵

¹¹²² **P-0901**:T-31,67:15-20,68:5-8;T-32,33:19,35:16-36:13.

¹¹²³ **P-0901**:T-28,15:1-16:11.

¹¹²⁴ **P-0901**:T-29,32:20-22.

¹¹²⁵ **P-0901**:T-29,18:13-19.

¹¹²⁶ **P-0901**:T-28,40:8-42:22,55:9-10;T-32,10:12-11:20,55:15-19.

¹¹²⁷ **P-0901**:T-28,40:14-42:4;T-32,10:12-11:20.

¹¹²⁸ **P-0901**:T-28,53:8-12.

¹¹²⁹ **P-0901**:T-28,58:8-23;T-32,30:6-32:4.

¹¹³⁰ **D-0243**:T-257,24:4-25:9.

¹¹³¹ **D-0243**:T-257,28:6-29:20;T-259,10:21-11:16.

¹¹³² **D-0243**:T-257,30:23-31:7.

¹¹³³ **D-0243**:T-257,31:8-17.

¹¹³⁴ **D-0243**:T-257,30:1-12,33:8-12.

¹¹³⁵ **D-0243**:T-257,35:5-13.

386. D-0243's evidence establishes that: most FPLC radio communications took place on one frequency known at the time as "*Boulevard*";¹¹³⁶ two other types of frequencies were used for VHF radio communications namely private frequencies attributed to certain officers and frequencies used during specific operations;¹¹³⁷ VHF radio communications were not encrypted although some code words were used to represent weapons or other material;¹¹³⁸ VHF radio communications were not transcribed in a logbook;¹¹³⁹ and the range of portable Motorola VHF radio communications was very short.¹¹⁴⁰
387. In Bunia, it was not possible for someone using a portable-Motorola-VHF-radio to communicate with another person using the same type of portable-Motorola-VHF-radio located outside of Bunia.¹¹⁴¹ In order to hold such a VHF radio communication, it was necessary to go through [REDACTED].¹¹⁴² Even then, [REDACTED], it was not possible to communicate between Bunia and Mongbwalu,¹¹⁴³ Kilo,¹¹⁴⁴ Fataki,¹¹⁴⁵ Mahagi.¹¹⁴⁶ The only [REDACTED].¹¹⁴⁷
388. As for VHF radio communications between two persons using portable-VHF-Motorola-radios outside of Bunia, whether equipped with the original antenna or a modified antenna, D-0243's evidence establishes that such communications were not possible between Kobu and Mongbwalu,¹¹⁴⁸ between Kobu and Kilo¹¹⁴⁹ and between Kobu and Nyangaray.¹¹⁵⁰
389. P-0901's evidence regarding FPLC VHF radio communications corroborates that of D-0243 to a large extent.¹¹⁵¹ However, P-0901 provided false evidence regarding the VHF

¹¹³⁶ D-0243:T-257,44:9-15.

¹¹³⁷ D-0243:T-257,44:9-45:2.

¹¹³⁸ D-0243:T-257,57:19-58:15.

¹¹³⁹ D-0243:T-257,48:14-19;T-259,14:6-12.

¹¹⁴⁰ D-0243:T-257,33:6-7.

¹¹⁴¹ D-0243:T-257,34:24-35:4.

¹¹⁴² D-0243:T-257,35:5-13.

¹¹⁴³ D-0243:T-257,40:17-41:16.

¹¹⁴⁴ D-0243:T-257,41:17-24.

¹¹⁴⁵ D-0243:T-257,41:25-42:6.

¹¹⁴⁶ D-0243:T-257,41:25-42:6.

¹¹⁴⁷ D-0243:T-257,30:1-12,33:8-12.

¹¹⁴⁸ D-0243:T-257,56:7-13.

¹¹⁴⁹ D-0243:T-257,57:2-6.

¹¹⁵⁰ D-0243:T-257,56:21-57:1.

¹¹⁵¹ P-0901:T-27,54:8-19;T-28,19:24-20:4,36:14-17.

radio equipment available to him and the distance over which he was able to hold VHF radio communications.

390. P-0901 stated that [REDACTED].¹¹⁵² P-0901 testified that one type of Motorola available could cover a range of 15 to 20 km¹¹⁵³ and that [REDACTED], he remembered that someone who was in Dhego was able to talk to someone in Bunia, over a distance of 40 km.¹¹⁵⁴ He further claimed that sometimes, someone in Komanda could speak to someone who was on a hill in Bunia, 75 km apart.¹¹⁵⁵ Either P-0901 wilfully provided false evidence or was referring to VHF radio communications going through [REDACTED], entirely omitting however to mention [REDACTED] and his essential function.
391. P-0901 described the Motorola base as a “Motorola that was not mobile. It stayed in a particular building with an outside antenna and it had a certain transmission power”¹¹⁵⁶ and “a sort of mini phonie that didn’t have a great range. I would say the range was about 80 Kilometers approximately”.¹¹⁵⁷
392. P-0901 lied when affirming that “[REDACTED]”.¹¹⁵⁸ P-0901’s omission to acknowledge that the only VHF-Motorola-base available to the FPLC in 2002-2003 was that operated by [REDACTED] irreparably impeaches his credibility. Indeed, P-0901’s evidence that he could hear the KBL audio recording [REDACTED]¹¹⁵⁹ was a blatant lie. Moreover, P-0901’s evidence that he could hold VHF radio communications on his own from Bunia to FPLC members located in Dhego,¹¹⁶⁰ Komanda,¹¹⁶¹ Mongbwalu,¹¹⁶² and Kobu¹¹⁶³ cannot be relied upon in any way.

II. **P-0901 lied about having listened in real time to the events heard on the KBL-audio-recording**

¹¹⁵² P-0901:T-28,18:14.

¹¹⁵³ P-0901:T-28,15:7-11.

¹¹⁵⁴ P-0901:T-28,15:12-15.

¹¹⁵⁵ P-0901:T-28,15:16-19.

¹¹⁵⁶ P-0901:T-28,36:25-37:2.

¹¹⁵⁷ P-0901:T-28,37:25-28:2.

¹¹⁵⁸ P-0901:T-28,37:2-3.

¹¹⁵⁹ P-0901:T-31,47:12-48 :15.

¹¹⁶⁰ P-0901:T-28,15:12-15.

¹¹⁶¹ P-0901:T-28,15:16-19.

¹¹⁶² P-0901:T-28,38:4-8.

¹¹⁶³ P-0901:T-31,47 :12-48 :15.

393. P-0901 explained where he was as the purported operation undertaken by SALUMU in Kobu unfolded. P-0901 specified that when the order for the February 2003 operation was given, [REDACTED]¹¹⁶⁴ along [REDACTED].¹¹⁶⁵ P-0901 added that he traveled back to Bunia in a vehicle,¹¹⁶⁶ arriving in Bunia [REDACTED] before 6 March when clashes occurred with the Ugandans.¹¹⁶⁷ In his [REDACTED] statement, P-0901 was even more precise: “We were in the month of March and I – we came back, if I haven’t forgotten, I hope, I went back to [REDACTED] on the [REDACTED]. The interviewer said: ‘The first of which month?’ Interviewee: ‘March’ Interviewer: ‘Okay’ Interviewee: ‘I spent the night in [REDACTED] on the [REDACTED] and then Salumu had already left.’”¹¹⁶⁸
394. When providing his statement and testifying in this case, P-0901 was very familiar with the timing of (i) the FPLC’s battle with the UPDF when the UPC-RP/FPLC was chased from Bunia; and (ii) his activities during this period. P-0901 clearly remembered 6 March 2003 as a very important date.¹¹⁶⁹ P-0901 also remembered that on [REDACTED], [REDACTED], he was ordered by KISEMBO to go to [REDACTED].¹¹⁷⁰ Significantly, as of 1 March 2003 at the very latest, all members of SALUMU’s brigade had returned to Bunia.¹¹⁷¹
395. It follows from P-0901’s testimony that by the time he returned to Bunia, on or about [REDACTED], having spent the night of [REDACTED] March in [REDACTED],¹¹⁷² the operation undertaken by SALUMU in Kobu was over and the participants therein had already returned. Evidently, P-0901 lied about having listened in real time, on his VHF radio, to the events heard on the KBL-audio-recording.
396. Nonetheless, P-0901 appears to have been in Bunia during the period from [REDACTED] March 2003. P-0901 testified that he saw and was talking with the commanders involved in the operation, who told him everything that happened.¹¹⁷³ P-

¹¹⁶⁴ P-0901:T-29,12:8.

¹¹⁶⁵ P-0901:T-29,11:8-10.

¹¹⁶⁶ P-0901:T-29,11:11.

¹¹⁶⁷ P-0901:T-29,12:6-12.

¹¹⁶⁸ P-0901:T-31,50:9-15.

¹¹⁶⁹ P-0901:T-32,23:3-7.

¹¹⁷⁰ P-0901:T-32,21:19-22:23

¹¹⁷¹ See Part V, Chapt.III.

¹¹⁷² P-0901:T-29,12:6-12;T-31,49:12-19.

¹¹⁷³ P-0901:T-29,14:16-25.

0901 specified: “that was before 6 March. And they explained to me how the fighting had unfolded. Those were the sources of my information with regard to these operations”.¹¹⁷⁴ P-0901 also affirmed “what’s more, when the war ended, some people in Bunia had actually seen these events and they told me about these events”.¹¹⁷⁵

397. When asked if he ever heard or got to know of any casualties during this operation, P-0901 responded: “there were some. But I cannot tell you how many. I know that there were some fatalities and there were also some injured persons”.¹¹⁷⁶

398. Strikingly, although P-0901 had access to FPLC commanders and others directly involved in these events at the time as well as later, he has no knowledge of a massacre committed by the FPLC in Kobu.

III. *P-0901 made up evidence concerning looting committed by members of SALUMU’s brigade during the FPLC operation in Kobu*

399. Asked if he knew what happened to the property that civilians left behind when they fled the area of Lipri, Kobu and Bambu, P-0901 responded “whether it be Salumu’s brigade who went to Kobu [...], and even those going from Bunia to Lipri or those going to Nyangarai, all of those individuals upon returning to Bunia brought something with them”.¹¹⁷⁷ P-0901 testified having seen war booty such as bicycles, radios, motorbikes, and furniture.¹¹⁷⁸

400. Considering that P-0901 was not in Bunia when the FPLC members involved in the operation returned to Bunia, he clearly made up this evidence, which is not probative of looting.

401. Whereas P-0901 also testified about looting that allegedly took place on the Komanda axis,¹¹⁷⁹ the same conclusion applies considering his evidence that “[He] didn’t get to Komanda at the time [...] if something happened there, [he] would not be in a position to be aware of it”.¹¹⁸⁰ What is more, P-0901’s denial of having any knowledge about

¹¹⁷⁴ P-0901:T-29,15:4-6.

¹¹⁷⁵ P-0901:T-29,14:25-15:2.

¹¹⁷⁶ P-0901:T-29,16:7-9.

¹¹⁷⁷ P-0901:T-29,18:14-16.

¹¹⁷⁸ P-0901:T-29,18:3-6.

¹¹⁷⁹ P-0901:T-29,19:4.

¹¹⁸⁰ P-0901:T-32,36:11-13.

Mr NTAGANDA burning looted goods and publicly whipping FPLC members in Komanda¹¹⁸¹ – an event widely known within the FPLC¹¹⁸² – is implausible.

402. What is probative however is P-0901's evidence that "[REDACTED], [he] never took part in any operations during which [he] might have seen looting".¹¹⁸³

IV. P-0901 provided unreliable evidence, almost entirely based on hearsay, concerning the FPLC operation in Mongbwalu

403. P-0901's evidence concerning the FPLC operations in Mongbwalu is for the most part unreliable.

404. First, P-0901's testimony regarding the objectives of the operation reveals that it is no more than his opinion on the matter. Indeed, P-0901 testified that "officially there was no particular authority who informed [him] about the takeover of Mongbwalu" and "officially they didn't tell [him] what the purpose of the takeover of Mongbwalu was".¹¹⁸⁴ Notably, P-0901's involvement in the operation is limited to a short presence at the Mongbwalu [REDACTED].¹¹⁸⁵ On this occasion, P-0901 did not go into town. He remained [REDACTED] where he met high-ranking commanders.¹¹⁸⁶

405. His evidence that [REDACTED] is not reliable. When [REDACTED], he did not mention being present on this occasion.¹¹⁸⁷ Mr NTAGANDA also testified that [REDACTED] and explained why.¹¹⁸⁸ P-0901 referred to information obtained on this occasion from SALUMU and Mr NTAGANDA but not from [REDACTED].¹¹⁸⁹ The other commanders present were [REDACTED].¹¹⁹⁰

406. P-0901's evidence concerning the conduct of the first and second FPLC attempts to liberate Mongbwalu is but hearsay from unidentified sources. While [REDACTED], P-0901 did not obtain any information concerning the civilian population.¹¹⁹¹ His

¹¹⁸¹ P-0901:T-32,35:16-36:13.

¹¹⁸² D-0017:T-254,83:5-8; P-0758:T-160,11:11-19; D-0300:T-215,7:18-8:1.

¹¹⁸³ P-0901:T-32,33:25-34:1.

¹¹⁸⁴ P-0901:T-28,54:17-22.

¹¹⁸⁵ P-0901:T-28,42:14-22.

¹¹⁸⁶ P-0901:T-28,55:21-23.

¹¹⁸⁷ [REDACTED].

¹¹⁸⁸ [REDACTED].

¹¹⁸⁹ P-0901:T-28,55:11-56:12.

¹¹⁹⁰ [REDACTED];

¹¹⁹¹ P-0901:T-28,56:4-7.

evidence that he later obtained information from unidentified commanders in Bunia that “apparently there were civilians who were killed”¹¹⁹² is not probative considering the information P-0901 obtained that “the ones in Mongbwalu did not have military uniforms”.¹¹⁹³

407. P-0901’s evidence that for the second operation “Commander Salumu and his brigade left from Dhego [REDACTED]”¹¹⁹⁴ is unreliable. First, SALUMU’s brigade did not leave from Dhego.¹¹⁹⁵ Dhego is where an exchange of ammunition took place from SALUMU’s brigade to SEYI’s forces,¹¹⁹⁶ which P-0901 has no knowledge of.¹¹⁹⁷ Second, P-0901 testified that he learned that [REDACTED] was amongst those who [REDACTED], when he was [REDACTED].¹¹⁹⁸ Third, responding to the suggestion [REDACTED] the troops in Mongbwalu after Sayo was liberated, P-0901 responded: “I don’t know. What I know is that the brigade [REDACTED]”.¹¹⁹⁹ P-0901’s knowledge is based on [REDACTED] as [REDACTED]¹²⁰⁰ and the fact that he stayed in [REDACTED], when he became [REDACTED].¹²⁰¹
408. P-0901 testified that when he traveled to Mongbwalu, he had a [REDACTED] intended for [REDACTED].¹²⁰² Mr NTAGANDA testified that he took the [REDACTED] brought by P-0901, and he gave to [REDACTED].¹²⁰³ P-0901’s evidence that SALUMU was not amongst the senior FPLC commanders who [REDACTED],¹²⁰⁴ corroborates Mr NTAGANDA’s testimony.
409. P-0901 testified that on the day he went to [REDACTED] in Mongbwalu, SALUMU informed him that SALONGO was their Sector Commander.¹²⁰⁵ P-0901 evidently confused the date on which he obtained this information. SALONGO became Sector Commander when assigned by KISEMBO around 10 December after the operation and

¹¹⁹² **P-0901**:T-28,56:17-18.

¹¹⁹³ **P-0901**: [REDACTED].

¹¹⁹⁴ **P-0901**:T-28,40:17-18.

¹¹⁹⁵ **D-0300**:T-216,82:24-83:6.

¹¹⁹⁶ [DRC-D18-0001-5748](#),p.5748 (Transl. [DRC-D18-0001-5778](#),p.5778); **P-0017**:T-61,24:20-22.

¹¹⁹⁷ **P-0901**:T-32,19:9-20:2.

¹¹⁹⁸ **P-0901**:T-32,17:12-15.

¹¹⁹⁹ **P-0901**:T-32,17:20-21.

¹²⁰⁰ [REDACTED].

¹²⁰¹ [DRC-OTP-0017-0033](#),p.0197 (second) (Transl. [DRC-OTP-2102-3854](#),p.4019).

¹²⁰² **P-0901**:T-28,55:16.

¹²⁰³ **D-0300**: [REDACTED].

¹²⁰⁴ **P-0901**:T-28,20:8-12.

¹²⁰⁵ **P-0901**:T-29,9:13-14.

after Mr NTAGANDA's departure from Mongbwalu.¹²⁰⁶ Notably, P-0901 testified that this was the first time the word "sector" was used and that he was not in a position to know who decided that there should be sectors in the FPLC.¹²⁰⁷ He also testified that it is only later in Bunia that he received confirmation that SALONGO was indeed the sector commander responsible for that area.¹²⁰⁸ What is more, SALUMU's negative reaction on or about 15 December 2002, upon being informed that SALONGO was assigned sector commander, demonstrates that SALUMU could not have provided this information to P-0901 at [REDACTED].¹²⁰⁹

410. P-0901's testimony that SALUMU, SALONGO and Mr NTAGANDA came to see him together [REDACTED] for the FPLC Mongbwalu operation¹²¹⁰ is not reliable. First, P-0901 does not remember when Mr NTAGANDA traveled to Aru.¹²¹¹ Second, when SALUMU arrived in Bunia, Mr NTAGANDA had already departed for Aru.¹²¹² Third, responding to the suggestion that Mr NTAGANDA was still in Aru and not in Bunia when [REDACTED] was given to SALUMU, P-0901 said he didn't remember.¹²¹³ Fourth, when SALUMU returned to Bunia [REDACTED] after the FPLC's first attempt to liberate Mongbwalu, he returned to Mabanga along with [REDACTED] who confirmed that Mr NTAGANDA was not with them.¹²¹⁴ Fifth, P-0901 testified that "when Salumu left Bunia, [he] was there with his soldiers. And when Afande Bosco [REDACTED], [he] was there",¹²¹⁵ which implies two different events. Sixth, Mr NTAGANDA testified that he did not meet with SALUMU before going to Mongbwalu on 21 November 2002.¹²¹⁶ Lastly, P-0901 testified that he saw Mr NTAGANDA [REDACTED] on a number of occasions.¹²¹⁷

¹²⁰⁶ [DRC-OTP-0092-0541](#).

¹²⁰⁷ **P-0901**:T-29,10:2-11.

¹²⁰⁸ **P-0901**:T-29,9:17-19.

¹²⁰⁹ **D-0300**:T-218,52:10-53:12; DRC-OTP-0017-0033,0205(first) (Transl.DRC-OTP-2102-3854,p.4027).

¹²¹⁰ **P-0901**:T-28,53:18-54:2.

¹²¹¹ **P-0901**:T-31,73:18-20.

¹²¹² **D-0300**:T-216,7:2-7.

¹²¹³ **P-0901**:T-32,10:11.

¹²¹⁴ [REDACTED].

¹²¹⁵ **P-0901**: [REDACTED].

¹²¹⁶ **D-0017**:T-253,39:24-40:3.

¹²¹⁷ **P-0901**:T-28,32:22-24.

V. P-0901 fabricated evidence implicating Mr Ntaganda in looting in Mongbwalu

411. P-0901 testified that when going to Mr NTAGANDA's residence for the first time following Mr NTAGANDA's return from Mongbwalu to Bunia, he saw freezers and other things including televisions, radios, and other kinds of appliances and the like,¹²¹⁸ which were not there when Mr NTAGANDA left for the operation in Mongbwalu.¹²¹⁹ P-0901 stated that he did not know where those things came from,¹²²⁰ implicitly claiming that Mr NTAGANDA looted these goods in Mongbwalu.
412. Not only is P-0901's evidence false, it irreparably undermines his credibility and reveals just how far he was willing to go in fabricating incriminating evidence against Mr NTAGANDA.
413. P-0901 did not remember when was the last time he went to the home of Mr NTAGANDA before the Mongbwalu operation;¹²²¹ P-0901 did not know exactly when Mr NTAGANDA came back from Mongbwalu: "he left Mongbwalu after having organising the FPLC soldiers who were on site. I think he spent more than a week";¹²²² and P-0901 could not identify why he went to Mr NTAGANDA's residence: "I believe I was asked to go there to tell him something".¹²²³
414. Pressed to describe the items he claimed to have seen, P-0901 backtracked and was unable to do so: (i) about the freezers: "I don't remember, but if my memory serves there was one and I took some milk out of it and drank some";¹²²⁴ (ii) about the several televisions: "In the living room. I saw one television set, just one";¹²²⁵ (iii) about the radios: "I saw a radio in the living room but don't ask me what brand it was";¹²²⁶ and (iv) about the several items in the living room: "I can't really describe them to you"¹²²⁷ and "I don't remember".¹²²⁸

¹²¹⁸ P-0901:T-28,58:8-17.

¹²¹⁹ P-0901:T-28,58:21-23.

¹²²⁰ P-0901:T-28,58:12-15.

¹²²¹ P-0901:T-32,29:1-5.

¹²²² P-0901:T-28,57:21-22.

¹²²³ P-0901:T-32,30:12-13.

¹²²⁴ P-0901:T-32,30:20-21.

¹²²⁵ P-0901:T-32,31:9.

¹²²⁶ P-0901:T-32,31:14.

¹²²⁷ P-0901:T-32,31:17-18.

¹²²⁸ P-0901:T-32,31:21.

415. Regarding the manner in which Mr NTAGANDA would have taken these looted goods from Mongbwalu to Bunia, P-0901 confirmed that vehicles could not use the road between DALA and Mongbwalu at the time.¹²²⁹ The road Bunia-Nyangaray-Kilo-Mongbwalu was not reopened to the FPLC until late December 2002.¹²³⁰ That P-0901 did not remember when this road was reopened is implausible.¹²³¹ P-0901 also confirmed that the Ugandans were keeping an eye on equipment going in and out.¹²³² P-0901 nonetheless did not agree with the suggestion that it was not possible to transport goods such as freezers and appliances of that size with a vehicle all the way to Bunia,¹²³³ which further undermines his credibility.
416. P-0901's evidence that he did not know what measures were taken and did not remember anyone being arrested for looting¹²³⁴ cannot be relied upon. Indeed, P-0901 confirmed being aware of the FPLC member publicly executed in Ndromo as an official punishment approved by Thomas LUBANGA himself.¹²³⁵ P-0901 testified that LUBANGA was strongly opposed to looting – as he was for other human rights related matters¹²³⁶ – and that LUBANGA brought together all the officers whom he reprimanded.¹²³⁷
417. P-0901 also testified that “within the FPLC no one was respected more than Afande Bosco. [...] He was the most respected person and the orders that he gave were followed and enforced by everyone”.¹²³⁸

Section II – Other witnesses

418. The testimony of P-0887, V-2, P-0877, P-0894, P-0892 and P-0912 reveals that in various ways, they lied under oath, distorted the facts or fabricated incriminating

¹²²⁹ **P-0901**:T-31,63:1-3.

¹²³⁰ **D-0300**:T-242,4:11-24;T-217,48:6-10; **P-0017**:T-61,38:4-39:10.

¹²³¹ **P-0901**:T-31,60:12-18.

¹²³² **P-0901**:T-32,32:24-25.

¹²³³ **P-0901**:T-32,32:16-19.

¹²³⁴ **P-0901**:T-32,33:15-16.

¹²³⁵ **P-0901**:T-32,36:14-23.

¹²³⁶ **P-0901**:T-32,34:11-12.

¹²³⁷ **P-0901**:T-32,34:16-19.

¹²³⁸ **P-0901**:T-32,34:23-35:1.

evidence.¹²³⁹ Consequently all incriminating evidence they provided cannot be relied upon.

A. P-0887

419. P-0887 [REDACTED], who fabricated most of his evidence, [REDACTED]. Moreover, as revealed by *inter alia* her VAF, P-0887 was not a truthful witness. Consequently, her evidence carries no weight.

420. Before [REDACTED] a Prosecution witness in January [REDACTED], P-0907 met [REDACTED], including on [REDACTED] and [REDACTED].¹²⁴⁰ P-0907 testified being aware that [REDACTED] and that [REDACTED], [REDACTED]. In these circumstances, P-0887's evidence [REDACTED]¹²⁴¹ is not credible. Indeed, when it was suggested to P-0907 that [REDACTED], P-0907 responded "[REDACTED], [REDACTED]".¹²⁴² P-0907 also confirmed the content of his statement "[REDACTED]".¹²⁴³

421. P-0907 also confirmed under oath that since becoming a Prosecution witness, he obtained [REDACTED]; [REDACTED]. P-0907 also admitted that he is not paying rent [REDACTED], which was the object of the [REDACTED] scheme.

422. When completing her VAF on [REDACTED] with the assistance of a representative from [REDACTED],¹²⁴⁴ P-0887 lied. First, P-0887 [REDACTED] who does not exist.¹²⁴⁵ The name of [REDACTED] does not appear in her [REDACTED].¹²⁴⁶ [REDACTED] appeared for the first time in her VAF. Questioned by the Prosecution in [REDACTED] concerning the origin of this name, P-0887 claimed it was a mistake, blaming the person who assisted her: "[...] the person who filled out this form in Mongbwalu added in certain things that I had not said"¹²⁴⁷ adding that the form was not

¹²³⁹ Unreliable evidence provided by several additional witnesses including P-0002, P-0022 P-0055, P-0190, P-0300, P-0800, P-0815, P-0850, P-0859, P-0850, P-0868, P-0886, P-0888, P-0895, P-0898 and V-3 is challenged when relevant to specific arguments.

¹²⁴⁰ P-0907:T-91,5:14-12:15;T-92,65:15-74:6.

¹²⁴¹ P-0887:T-94,97:16-18.

¹²⁴² P-0907:T-92,66:18-19.

¹²⁴³ [REDACTED].

¹²⁴⁴ Second OTP rebuttal request, [ICC-01/04-02/02-2249-Conf-AnxB](#); Defence Response, ICC-01/04-02/06-2254-Conf-AnxB,p.5.

¹²⁴⁵ P-0887:T-94,75:4-88:17.

¹²⁴⁶ [DRC-OTP-2090-0089](#),p.0091.

¹²⁴⁷ P-0887:T-94,80:20-21.

read back to her.¹²⁴⁸ Strikingly, this was a lie as three months after completing her VAF she obtained an *attestation de naissance* in Sayo in which she again provided the name [REDACTED].¹²⁴⁹

423. In her VAF, P-0887 also claimed that [REDACTED] was her [REDACTED]¹²⁵⁰ in all likelihood to strengthen her alleged prejudice. When giving her statement to the Prosecution, P-0887 again affirmed that this was incorrect, that [REDACTED] was actually her [REDACTED]¹²⁵¹ and again blaming the person who assisted her in filing in the form.¹²⁵² This was also a lie as three months after completing her VAF she obtained an *attestation de naissance* in Sayo in which she stated that [REDACTED].¹²⁵³
424. More importantly, when completing her VAF, P-0887 declared having been raped [REDACTED] by FPLC members while fleeing “*dans notre fuite en route les mêmes éléments de l’UPC m’ont violé [REDACTED]*”.¹²⁵⁴ Although P-0887 admitted to the Prosecution that this was not true, blaming once again the person who assisted her, her lie was exposed in cross-examination.¹²⁵⁵ Clearly, P-0887 intended to provide incriminating evidence when filing in her VAF against the FPLC and Mr NTAGANDA. No probative value can attach to any part of the testimony of a witness willing to make up such incriminating evidence and [REDACTED].

B. V-2

425. V-2 testified that she was living in Mongbwalu when the FPLC operations took place. She claimed to have seen with her own eyes the dead bodies of three civilian men killed by UPC soldiers;¹²⁵⁶ to have been raped by UPC soldiers; to have seen a UPC member brandishing the head of a Lendu on a knife; and that her husband was killed by soldiers. V-2 was not a truthful witness. She lied about living in Mongbwalu at the time of the

¹²⁴⁸ Decision Establishing Principles on the Victims' Application Process, [ICC-01/04-02/06-67](#); [DRC-D18-0001-6716](#); [DRC-D18-0001-6736](#); [DRC-D18-0001-6742](#); [DRC-D18-0001-6749](#); [DRC-D18-0001-6751](#); [DRC-D18-0001-5887](#).

¹²⁴⁹ [DRC-OTP-2090-0089](#),p.0093.

¹²⁵⁰ [DRC-OTP-2090-0089](#),p.0089,para.1.

¹²⁵¹ **P-0887**:T-93,52:9-11.

¹²⁵² **P-0887**:T-94,81:14-18.

¹²⁵³ [DRC-OTP-2090-0089](#),p.0093.

¹²⁵⁴ [DRC-OTP-2090-0089](#),p.0089,para.1.

¹²⁵⁵ **P-0887**:T-94,76:20-79:19.

¹²⁵⁶ **V2**:T-202,31:17.

FPLC operations, which irreparably impairs her credibility in respect of all evidence she provided.

426. According to V-2, at the time of the events, she had been living in Mongbwalu [REDACTED];¹²⁵⁷ she was a merchant¹²⁵⁸ [REDACTED]¹²⁵⁹ and doing business with Hemas.¹²⁶⁰ Strikingly, V-2 testified: “at that moment in time there was no airport in Mongbwalu”;¹²⁶¹ knowing Sayo but being unable to locate Sayo in relation to her house;¹²⁶² not knowing that towards the end of 2001-2002, members of the Hema ethnic group were chased from Mongbwalu;¹²⁶³ not knowing that the houses abandoned by Hemas were then occupied by Lendus;¹²⁶⁴ not knowing that there were almost no more Hemas living in Mongbwalu at the time;¹²⁶⁵ doing business with the Hemas who were buying things from her;¹²⁶⁶ not having noted any measures put in place by the Lendus at the time in Mongbwalu,¹²⁶⁷ including women having to walk topless because “that is no concern of mine”;¹²⁶⁸ not being able to locate [REDACTED] where she would have stayed one week when leaving Mongbwalu with any degree of precision;¹²⁶⁹ and not having seen Lendu combatants in Mongbwalu, since “at that time we had already gone”.¹²⁷⁰
427. On two occasions, the Presiding Judge intervened to remind V-2 of her obligation to tell the truth.¹²⁷¹ Evidently, she was not living in Mongbwalu at the time and she fabricated her narrative.
428. What is more, V2’s evidence about: the age of her children;¹²⁷² the context in which [REDACTED];¹²⁷³ not being able to provide any identifying documents for her

¹²⁵⁷ V2:T-202,66:12.

¹²⁵⁸ V2:T-202,11:24-25.

¹²⁵⁹ V2:T-202,74:9-11.

¹²⁶⁰ V2:T-202,73:16-18.

¹²⁶¹ V2:T-202,71:9-21.

¹²⁶² V2:T-202,72:1-6.

¹²⁶³ V2:T-202,72:24-73:2.

¹²⁶⁴ V2:T-202,73:3-5.

¹²⁶⁵ V2:T-202,73:6-9.

¹²⁶⁶ V2:T-202,73:16-19,74:12-17.

¹²⁶⁷ V2:T-202,74:18-75:22.

¹²⁶⁸ V2:T-202,75:7.

¹²⁶⁹ V2:T-202,75:23-76:23.

¹²⁷⁰ V2:T-202,77:10-22.

¹²⁷¹ V2:T-202,73:10-14,75:1-15.

¹²⁷² V2:T-202,12:13-17,20:14-15.

¹²⁷³ V2:T-202,37:4-24.

children;¹²⁷⁴ modifying the time elapsed before seeking medical treatment for her alleged rape;¹²⁷⁵ [REDACTED];¹²⁷⁶ having discussed her narrative with three alleged victims of rape she mentioned the names for the first time, [REDACTED], [REDACTED] and [REDACTED] one month prior to her testimony;¹²⁷⁷ and not knowing where the source of information she obtained, her neighbour [REDACTED], lived¹²⁷⁸ is implausible, mostly based on hearsay and totally unreliable.

429. Clearly, V-2 testified to obtain financial assistance “to rebuild my house and help me resume my trade”.¹²⁷⁹

C. P-0877

430. P-0877 lied concerning the manner and the purpose for which certain [REDACTED] were added to [REDACTED]. Moreover, P-0877 did not personally witness any crimes committed by FPLC members. His evidence was entirely based on hearsay or fabricated on the basis of information obtained when [REDACTED] and as such is unreliable.

431. Between [REDACTED], P-0877 [REDACTED].¹²⁸⁰ According to P-0877, during this period he [REDACTED] “[REDACTED]” [REDACTED] in Kilo and in its surrounding areas,¹²⁸¹ by *inter alia*, [REDACTED].¹²⁸²

432. P-0877 met the Prosecution for the first time in [REDACTED], on his own initiative,¹²⁸³ while already [REDACTED].¹²⁸⁴ P-0877 confirmed in his statement: “I did not witness the UPC commit any crimes when they were in Kilo [...]. I drew this conclusion myself as the Lendu forces would not torch their own villages but it was also confirmed to me later from [REDACTED]”.¹²⁸⁵ Cross-examined on the source allowing him to draw this conclusion, P-0877 testified that the conclusion he had drawn

¹²⁷⁴ V2:T-202,89:16-25,91:13-14.

¹²⁷⁵ V2:T-202,27:18-20,65:2-8.

¹²⁷⁶ V2:T-202,58:13-23,63:13-64:1.

¹²⁷⁷ V2:T-202,85:3-86:7.

¹²⁷⁸ V2:T-202,83:5-7.

¹²⁷⁹ V2:T-202,41:18.

¹²⁸⁰ P-0877:T-109,68:15-17.

¹²⁸¹ P-0877:T-109,69:8-10. [REDACTED] (T-109,68:24-69:2).

¹²⁸² P-0877:T-109,70:9-25.

¹²⁸³ P-0877:T-109,75:1-3.

¹²⁸⁴ P-0877:T-109,74:1-9.

¹²⁸⁵ P-0877:[DRC-OTP-2077-0118](#),p.0123,para.25.

was “[...] perhaps reinforced by the [REDACTED].”¹²⁸⁶ This was a recurring theme during his testimony.

433. When P-0877 provided his first statement,¹²⁸⁷ he neither brought nor used [REDACTED].¹²⁸⁸ It is only when providing his second statement¹²⁸⁹ that he referred to [REDACTED] and gave additional explanations on the basis of certain [REDACTED] he deemed relevant. The [REDACTED] drawn from P-0877’s [REDACTED] adduced by the Prosecution¹²⁹⁰ are of special interest in this regard. Although P-0877’s entire [REDACTED], [REDACTED], [REDACTED]. It is also significant that these [REDACTED]. P-0877 evidently fabricated and added [REDACTED] for the purpose of using them as justification for the information he provided to the Prosecution.

434. Additional anomalies regarding P-0877’s [REDACTED] were exposed during his testimony,¹²⁹¹ which impact his reliability and by the same token the weight that can be attributed to his evidence. In particular, P-0877’s evidence regarding Mr NTAGANDA’s presence in Kilo,¹²⁹² his basis for recognizing Mr NTAGANDA,¹²⁹³ the date on which he purportedly returned to Mongbwalu¹²⁹⁴ and his observations then, the killing of a disabled Lendu in Kilo,¹²⁹⁵ and seeing two or three Lendu prisoners tied up in Kilo.¹²⁹⁶

D. P-0894

435. P-0894 fabricated the incriminating evidence he provided concerning [REDACTED] murders allegedly committed by Mr NTAGANDA in Sayo.

436. First, in his VAF completed in [REDACTED] with the assistance of a [REDACTED], P-0894 provided information which he later modified in relation to *inter alia*:

¹²⁸⁶ P-0877:T-109,77:8-13.

¹²⁸⁷ P-0877:DRC-OTP-2069-2086-R03.

¹²⁸⁸ DRC-OTP-2077-0140.

¹²⁸⁹ P-0877:DRC-OTP-2077-0118-R03.

¹²⁹⁰ P-0877:T-110,26:9-14.

¹²⁹¹ P-0877:T-109,96:18-19;97:15-21(“several people had access to [his] notebook”), namely children who (“might play with documents”); T-109,92:10-11: P-0877 testified that these entries had been entered to help him “jog [his] memory”.

¹²⁹² P-0877:DRC-OTP-2077-0118,p.0125,para.39-41; T-110,19:4-7;21:8-16.

¹²⁹³ P-0877:DRC-OTP-2077-0118,p.0125,para.41.

¹²⁹⁴ DRC-OTP-2069-2086,para.11.

¹²⁹⁵ P-0877:DRC-OTP-2069-2086-R03,p.2091,para.31

¹²⁹⁶ P-0877:DRC-OTP-2069-2086-R03,pp.2088-2089,paras.11-15.

[REDACTED]; [REDACTED]; [REDACTED] having been killed [REDACTED]; and [REDACTED] having been killed “[REDACTED]”.¹²⁹⁷ P-0894 implausibly tried to blame [REDACTED] for these errors, stating that “things have been reversed here”.¹²⁹⁸

437. Second, P-0894’s evidence that [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]; [REDACTED], is simply incredible.¹²⁹⁹

438. Third, P-0894’s evidence related to the murder of LUSALA, for which Mr NTAGANDA is not even charged with,¹³⁰⁰ is the primary example of his fabricated evidence. In his VAF, P-0894 stated that [REDACTED] whereas in his statement P-0894 affirmed [REDACTED], [REDACTED].¹³⁰¹ [REDACTED],¹³⁰² [REDACTED]. [REDACTED]. Moreover, P-0894 [REDACTED].¹³⁰³ [REDACTED].¹³⁰⁴ The timing of LUSALA’s murder according to P-0894: “on the fourth day the war was over and the city had been taken over” and “on the fifth day (Mr NTAGANDA) came to SAIO to see his soldiers”,¹³⁰⁵ is contradicted by inter alia, P-0886 who testified that LUSALA would have been killed many days later.¹³⁰⁶

439. Fourth, P-0894 testified that the first time he saw Mr NTAGANDA was at a meeting which would have taken place on the day following the takeover of Sayo by the FPLC.¹³⁰⁷ However, P-0894 also stated that there were no civilians in Sayo when the attack took place¹³⁰⁸ and P-0886 confirmed that it took several days for them to return, thereby making it impossible for Mr NTAGANDA to address the civilians in Sayo at that time.¹³⁰⁹

¹²⁹⁷ [DRC-OTP-2090-0099](#).

¹²⁹⁸ **P-0894**:T-104,40:7.

¹²⁹⁹ [DRC-OTP-2076-0194](#),para.44-45.

¹³⁰⁰ Confirmation Decision (The name “LUSALA” does not appear on the Decision confirming the charges).

¹³⁰¹ [DRC-OTP-2076-0194](#),para.45.

¹³⁰² [DRC-OTP-2076-0194](#),para.46-47.

¹³⁰³ [DRC-OTP-2076-0194](#),para.45.

¹³⁰⁴ SAI2-F1-BI **P-0945**:T-125,3:6-6:3,6:17-7:15;[DRC-OTP-2084-0002](#),pp.0009-00010;[DRC-OTP-2070-0062](#).

¹³⁰⁵ [DRC-OTP-2076-0194](#),para.41.

¹³⁰⁶ **P-0886**:T-37,47:20-48:23.

¹³⁰⁷ [DRC-OTP-2076-0194](#),para.41.

¹³⁰⁸ **P-0894**:T-104,37:1-2(“Well, during that attack when there was firing, only the soldiers were there. Civilians had fled. Now, what I saw after the attack is that some people who had fled”).

¹³⁰⁹ **P-0886**:T-38,30:6-10; **P-0017**:T-59,10:14-18;11 :13-15.

440. Fifth, despite stating in his VAF that [REDACTED], P-0894 subsequently modified his narrative, stating that [REDACTED] but that Mr NTAGANDA had given the order.¹³¹⁰ Well aware that he could not establish how he learned of Mr NTAGANDA's purported order, P-0894 concocted a preposterous story that [REDACTED],¹³¹¹ [REDACTED]. Indeed, KAHWA was arrested on the same day [REDACTED] was killed.
441. Lastly, the fact that P-0894's recollection of the alleged killing [REDACTED], [REDACTED], [REDACTED], is not even mentioned in his VAF is also revealing.
442. Considered together, P-0894's VAF, statement, testimony and additional frivolous allegations of [REDACTED] related to him, [REDACTED] and [REDACTED] lead to the conclusion that all of his evidence must be disregarded.

E. P-0892 and P-0912

443. P-0892 and P-0912, [REDACTED], testified regarding the situation in Mongbwalu during and shortly after the FPLC operations in November 2002. Together, P-0892 and P-0912 concocted a false narrative concerning the alleged rape of the latter, which renders all evidence they provided unreliable.
444. Although P-0892 and P-0912 testified months apart, P-0892 was well aware of [REDACTED].¹³¹² In her VAF,¹³¹³ P-0892 affirmed that [REDACTED] in the house she was in;¹³¹⁴ [REDACTED]. Yet, when speaking to the investigator, P-0892 modified her narrative, stating: "[t]hey took her from the house where we were in and they took her to another location to rape her," which mirrors the testimony of [REDACTED].¹³¹⁵
445. Regarding the timing of her alleged rape, P-0892 and P-0912 provided the following information: P-0912 was born in [REDACTED];¹³¹⁶ P-0912 was [REDACTED] when she started going to school;¹³¹⁷ P-0912 completed [REDACTED] of schooling in [REDACTED] before moving to Mongbwalu;¹³¹⁸ in Mongbwalu, P-0912 completed

¹³¹⁰ [DRC-OTP-2076-0194](#), para.64 and 68.

¹³¹¹ [DRC-OTP-2076-0194](#), para.66.

¹³¹² **P-0912**:T-148,93:23-25.

¹³¹³ **P-0892**:T-86,9:8-12.

¹³¹⁴ **P-0892**:T-86,15:13-22.

¹³¹⁵ **P-0892**:T-86,15:13-22; **P-0912**:T-148,59:21-60:19,62:18-24.

¹³¹⁶ **P-0912**:[DRC-OTP-2092-0053](#);T-148,32:10-11; **P-0892**:T-85,5:12.

¹³¹⁷ **P-0912**:T-148,33:11-12,95:25-96:2; **P-0892**:T-85,38:16-17.

¹³¹⁸ **P-0912**:T-148,96:12-15.

her [REDACTED] and had to stop because of the war;¹³¹⁹ P-0912 was raped during the time she had to stop going to school because of the war;¹³²⁰ P-0912 stopped going to school at the age of [REDACTED];¹³²¹ P-0912 remembers still being a child at the time;¹³²² P-0912 was out of school for [REDACTED]¹³²³ during which her [REDACTED] died;¹³²⁴ P-0912's [REDACTED] was in fact the one paying for her schooling;¹³²⁵ when [REDACTED], she completed her [REDACTED] year and stopped going to school altogether.¹³²⁶

446. In light of the testimony of P-0892 and P-0912, it is simply impossible that P-0912 was raped in 2002, at the age of [REDACTED].¹³²⁷ P-0892 and P-0912 clearly fabricated their narrative.
447. Regarding the existing situation in Mongbwalu at the time of the purported FPLC operations, the evidence provided by P-0892 regarding the situation of [REDACTED] including, *inter alia*, [REDACTED];¹³²⁸ whether they were with her or not;¹³²⁹ whether she lost some during the war;¹³³⁰ whether she found some during the war¹³³¹ and even [REDACTED]¹³³² is confused, inconsistent and entirely implausible.
448. P-0892 and P-0912 also testified about certain events which could not have taken place and are not worthy of belief. For example, P-0892 and P-0912 both testify [REDACTED] after the FPLC's first attempt to liberate Mongbwalu, the latter saying they went there to get a number of items including [REDACTED]¹³³³ and the former saying they did not take anything from [REDACTED].¹³³⁴ P-0892's testimony that immediately following the beginning of the FPLC's operation, she saw FPLC members

¹³¹⁹ **P-0912:**T-148,96:12-23.

¹³²⁰ **P-0912:**T-148,97:10-12.

¹³²¹ **P-0912:**T-148,96:24-97:1.

¹³²² **P-0912:**T-148,100:19-20.

¹³²³ **P-0892:**T-85,39:2-3.

¹³²⁴ **P-0912:**T-148,33:8-11.

¹³²⁵ **P-0912:**T-148,84:18-21.

¹³²⁶ **P-0912:**T-148,97:2-4,33:2-4.

¹³²⁷ **P-0892:**T-85,5:9-10; **P-0912:**T-148,33:22-25.

¹³²⁸ **P-0892:**T-83,12:5-7([REDACTED]),28:11([REDACTED] with her at the house in Mongbwalu),T-85,22:2-3([REDACTED]).

¹³²⁹ **P-0892:**T-83,21:10-13,28:7-11.

¹³³⁰ **P-0912:**T-148,45:8-12; **P-0892:**T-83,24:14-25.

¹³³¹ **P-0892:**T-85,21:23-25([REDACTED]),22:2-3([REDACTED]);T-83,28:11([REDACTED]).

¹³³² **P-0892:**T-83,21:10-13,28:7-11.

¹³³³ **P-0912:**T-148,48:22-49:3.

¹³³⁴ **P-0892:**T-86,7:16,8:1-25.

looting in Mongbwalu with vehicles¹³³⁵ is not credible given that there was no vehicle in Mongbwalu at the time.¹³³⁶ P-0912's evidence that the soldiers she saw during the first FPLC operation were wearing ranks on their shoulders is also not possible,¹³³⁷ since FPLC members did not have ranks on their uniforms before 2004.¹³³⁸

449. Strikingly, P-0892 could not remember the day [REDACTED] during this period¹³³⁹ but could clearly state the date of the FPLC operation, November 9th, which was underscored by the Presiding Judge.¹³⁴⁰

Section III – Unreliable documentary evidence

450. Analysis of the evidence adduced in the form of HRW, MONUC¹³⁴¹ and UN¹³⁴² reports - along with the testimony of witnesses involved in their creation and/or admission¹³⁴³ - reveals that it cannot be relied upon by the Chamber due mainly to its bias nature, anonymous sources on which it rests and hearsay information it offers. The fact that these reports often rely on rumours appearing first in one report and then repeated in various forms in other reports, also impacts the reliability of the information contained therein.
451. P-0315's testimony concerning Mongbwalu, and the HRW Reports, Ituri Covered in Blood and Curse of Gold,¹³⁴⁴ is based almost entirely on anonymous hearsay.¹³⁴⁵ The anonymity arises from HRW refusing to provide the information.¹³⁴⁶ P-0315 claimed that her information was reliable because of the sheer volume of her sources and accuracy of interview-techniques. Despite these purported guarantees of reliability, the 2003 Report alleges, erroneously,¹³⁴⁷ that Jean-Pierre Bemba's MLC forces had participated in the First Attack.¹³⁴⁸ This was no minor error based on a

¹³³⁵ P-0892:T-83,36:7-9;T-86,17:20-23.

¹³³⁶ D-0300:T-217,77:20-23; [DRC-OTP-2058-0251](#),51:43-52:37.

¹³³⁷ P-0912:T-148,39:3-4,40:5-10,103:22-104:1.

¹³³⁸ P-0912:T-148,104:9-12.

¹³³⁹ P-0892:T-85,39:8-11.

¹³⁴⁰ P-0892:T-83,17:22-23,18:13-18.

¹³⁴¹ [DRC-OTP-0152-0286](#).

¹³⁴² [DRC-OTP-0074-0422](#).

¹³⁴³ Such as P-0046, P-0315, P-0317.

¹³⁴⁴ [DRC-OTP-0074-0797](#) ("2003 Report"),[DRC-OTP-0074-0628](#).

¹³⁴⁵ P-0315:T-107,58:10-11.

¹³⁴⁶ P-0315:T-108,36:17-20,46:7-9.

¹³⁴⁷ P-0315:[DRC-OTP-2058-0990](#),para.124-125;T-108,15:1-21:13.

¹³⁴⁸ P-0315:[DRC-OTP-2058-0990](#),para.124-125;T-108,15:1-21:13;[DRC-OTP-0074-0797](#),p.0829.

misinterpretation of the word “effaceurs,”¹³⁴⁹ but was based on multiple sources purportedly claiming that “the troops of the MLC were led by the UPC” and that “[t]hey all spoke Lingala.”¹³⁵⁰ One of the sources who gave this information, which is quoted in the 2003 Report, also claims that “Commander Bosco had been at the head of the attack.”¹³⁵¹ The publication of such a substantial error demonstrates that P-0315’s sources, and her methodology, is seriously flawed in respect of specific events at Mongbwalu.

452. P-0315 had far fewer sources about NTAGANDA’s role at Mongbwalu than her statement indicates.¹³⁵² Most provided general information, placed his arrival at Mongbwalu after the start of the attack, or based their own information on information provided by others or just rumours.¹³⁵³ P-0315 even relied on FNI military leaders, apparently considering that their information required no more caution than “a pinch of salt.”¹³⁵⁴
453. P-0315 explained that she “didn’t have all that information available to us when we did that first investigation.”¹³⁵⁵ While the Ituri Covered in Blood report emanates from her first field mission of P-0315,¹³⁵⁶ she repeatedly denied that some mistakes might have been included therein and preferring to indicate systematically that further investigations were required.¹³⁵⁷
454. P-0315’s evaluation, and notes, of her discussion with NTAGANDA in 2010 reflects either bias or misunderstanding. It is implausible, even if he had wanted to lie or be evasive, that NTAGANDA would have stated, as her notes indicate, that he was commanding the Mongbwalu operation from Aru.¹³⁵⁸ P-0315’s alacrity to conclude that NTAGANDA was “‘lying’” based on misunderstandings being clarified,¹³⁵⁹ and her

¹³⁴⁹ P-0315:DRC-OTP-2058-0990, para.125.

¹³⁵⁰ DRC-OTP-0074-0797, p.0830.

¹³⁵¹ DRC-OTP-0074-0797, p.0830.

¹³⁵² P-0315:T-108,60:22-61:14; cf. P-0315:DRC-OTP-2058-0990, para.127.

¹³⁵³ P-0315:T-108,25:2-60:21

¹³⁵⁴ P-0315:T-108,33:11.

¹³⁵⁵ P-0315:T-108,17:3-4,16:20-22 (“I think we clearly outlined what people had said, what information we had gathered. But it was clear that there remained some confusion. And so we stated in the report that further investigation would be required” (underline added)).

¹³⁵⁶ DRC-OTP-2058-0990, p.0998, para.42; P-0315:T-108,11:1-2.

¹³⁵⁷ P-0315:T-108,20:18-22.

¹³⁵⁸ DRC-OTP-2062-0363; P-0315:T-108,63:3-21.

¹³⁵⁹ P-0315:T-108,62:20-63:2.

easy claim that there were “no language difficulties during the meeting,”¹³⁶⁰ raises questions about P-0315’s over-confidence and refusal to admit error – underscored by her refusal to acknowledge that the 2003 Report states repeatedly¹³⁶¹ that the MLC had participated in Mongbwalu.¹³⁶²

CHAPTER IV - THE HIGH PROBATIVE VALUE OF THE EVIDENCE ADDUCED BY THE DEFENCE

455. Contrary to the unreliable evidence put forward by the Prosecution, the Defence advanced compelling and credible evidence offering high probative value. The main two sources of Defence evidence in relation to the *First Attack* are: (i) the testimony of Mr NTAGANDA as corroborated by witnesses who were with him at the time; and (ii) the Ntaganda-Logbook(s), which are actually Prosecution exhibits.

Section I – BN testimony

456. The testimony of Defence witnesses who were with Mr NTAGANDA at relevant times also solidly corroborates Mr NTAGANDA’s evidence.

457. Even though Mr NTAGANDA was in Aru when the FPLC first attempted to liberate Mongbwalu, he returned to Bunia at the earliest possibility following his conversation with LUBANGA and was personally involved both in the preparations and the conduct of the FPLC’s second attempt.

458. Mr NTAGANDA testified at length regarding his activities and whereabouts from the moment he landed in Bunia and was entrusted with the overall command of the operation until he handed over the command *bâton* to KISEMBO when the latter arrived in Mongbwalu and returned to Bunia on 28 November 2002.

459. The fact that Mr NTAGANDA – accused of having committed the worst possible crimes in the Banyali-Kilo *collectivité* during this period – candidly and openly acknowledged that he was in command of the FPLC forces from Aru and Mandro involved in this operation, is highly relevant in evaluating his testimony.

¹³⁶⁰ P-0315:[DRC-OTP-2058-0990](#),para.95.

¹³⁶¹ [DRC-OTP-0074-0797](#),p.24-26.

¹³⁶² P-0315:T-108,16:18-17:4,20:18-21:13.

460. Mr NTAGANDA provided detailed evidence regarding: the circumstances in which he was appointed to command the operation;¹³⁶³ the forces involved and who commanded them;¹³⁶⁴ the orders he issued;¹³⁶⁵ his communications with the commanders involved;¹³⁶⁶ the information he received from his commanders regarding the conduct of the operation before he arrived in Mongbwalu;¹³⁶⁷ how, when, and with whom he deployed to Mongbwalu;¹³⁶⁸ his actions upon arriving in Mongbwalu when there was no more fighting in the town;¹³⁶⁹ how he planned, organized and personally commanded the FPLC operation leading to the liberation of Sayo;¹³⁷⁰ the setting up of the FPLC operational *État-major* at the *Appartements*;¹³⁷¹ the deployment of FPLC forces following the liberation of Sayo;¹³⁷² the evacuation of wounded FPLC members;¹³⁷³ how and where he met with FPLC officers involved in the operations;¹³⁷⁴ the arrival of the Chef-EMG-FPLC and his delegation;¹³⁷⁵ the content of his report to KISEMBO;¹³⁷⁶ his touring the town of Mongbwalu with KISEMBO and his departure from Mongbwalu, returning to Bunia by plane.¹³⁷⁷

461. Mr NTAGANDA also testified openly, not holding back any information regarding events such as [REDACTED] and the measures he took in this regard;¹³⁷⁸ information received concerning violations committed by a senior commander and how he reacted;¹³⁷⁹ information he learned on the radio network concerning the capture of a

¹³⁶³ D-0300:T-216,44:11-45:1-5.

¹³⁶⁴ D-0300:T-216-ENG,48:14-25(Annex E).

¹³⁶⁵ [DRC-OTP-0017-0033](#),p.0213 (second); Translation [DRC-OTP-2102-3854](#),p.4035; D-0300:T-216 76:20-25.

¹³⁶⁶ ¹³⁶⁶ [DRC-D18-0001-5748](#),p.5748 (first) (Translation [DRC-D18-0001-5778](#),p.5778) to [DRC-D18-0001-5748](#),p.5756 (second) (Translation [DRC-D18-0001-5778](#),p.5786); [DRC-OTP-0017-0033](#),p.0213 (first) Translation [DRC-OTP-2102-3854](#),p.4035.

¹³⁶⁷ D-0300:T-217,37:13-38:3.

¹³⁶⁸ D-0300:T-217,37:22-38:21.

¹³⁶⁹ [DRC-OTP-0017-0033](#),p.0212 (second and third) (Translation [DRC-OTP-2102-3854](#),p.4034); D-0300:T-217,39:3-11.

¹³⁷⁰ D-0300:T-235,58:6-7; T-217,48:12-52:2; T-223,43:14.

¹³⁷¹ D-0300:T-217,39:3-11;

¹³⁷² D-0300:T-217,48:5-55:3.

¹³⁷³ D-0300:T-217,39:23-15-18, 67:19-68:12.

¹³⁷⁴ D-0300:T-217,68:18-70:23.

¹³⁷⁵ D-0300:T-217,76:21-77:4.

¹³⁷⁶ D-0300:T-217,79:16-19, 85:25-86:12, 87:12-22.

¹³⁷⁷ D-0300:T-218,4:23-5:10.

¹³⁷⁸ [REDACTED].

¹³⁷⁹ D-0300:T-217,57:24-58:5.

priest by KASANGAKI and how he reacted;¹³⁸⁰ and the messages he received and transmitted *via* his *signora* and *phonie* during this period.¹³⁸¹

462. Significantly, Mr NTAGANDA's testimony is corroborated by the Ntaganda-Logbooks which provide contemporaneous evidence on the actions of the FPLC both in Mongbwalu and elsewhere. Mr NTAGANDA's testimony is also corroborated by *inter alia* the testimony of D-0017, [REDACTED].
463. Conspicuously, the vast majority of the evidence provided by Mr NTAGANDA was not challenged by the Prosecution despite the unique opportunity and considerable time allotted for this purpose. This is undoubtedly a critical factor to be considered in evaluating Mr NTAGANDA's testimony.
464. In this regard, as addressed earlier, the evidence provided by insider witnesses including but not limited to P-0768, P-0017, P-0963, P-0907 and P-0901 cannot be relied upon to undermine Mr NTAGANDA's testimony. In fact, after comparing the unreliable testimony of the Prosecution's star insider witnesses with Mr NTAGANDA's extensive, credible and plausible evidence, it is incontestable that the latter must be accorded full probative value.

Section II - Logbooks

465. Two logbooks comprising messages transmitted over the *phonie* network during the period from 19 November 2002 to 22 February 2003 inclusive were admitted in evidence. The Defence concurs with the Prosecution's submission that the two FPLC logbooks¹³⁸² are key pieces of evidence, which contain contemporaneous information on the FPLC activities on a near daily basis.¹³⁸³
466. According to P-0245,¹³⁸⁴ both Ntaganda-logbooks were seized from Mr NTAGANDA's residence. Mr NTAGANDA recognized both logbooks as constituting his records of *phonie* communications transcribed by his radio operators at the time.¹³⁸⁵

¹³⁸⁰ D-0300:T-217,70:24-73:18; T-237,2:22-3:24.

¹³⁸¹ D-0300: T-216,60:20-T-217,60:8, T-217,66:6-T-218,8:18.

¹³⁸² Herein after referred to as: 'Ntaganda-Logbook' ([DRC-OTP-0017-0033](#)), 'Short-Ntaganda-Logbook' ([DRC-D18-0001-5748](#)) and together 'Ntaganda-Logbooks'.

¹³⁸³ D-0300:T-216,71:19-72:3; [REDACTED].

¹³⁸⁴ Metadata of [DRC-OTP-0017-0033](#): "[REDACTED]".

¹³⁸⁵ D-0300:T-216,58:1-15;T-216,67:17-69:8.

Whereas the Prosecution underscores that 80% of the outgoing messages in the Ntaganda-Logbook are sent by Mr NTAGANDA,¹³⁸⁶ this is not surprising considering that this logbook was maintained by Mr NTAGANDA's *signoras*. In fact, it is logical and normal that most of the outgoing messages were sent by Mr NTAGANDA. Notably, the Ntaganda-Logbook is associated with the *phonie* in use most of the time at the residence of Mr NTAGANDA but also at other temporary static locations, when Mr NTAGANDA was travelling in the company of his *signora(s)*. This was the case, for example, when Mr NTAGANDA travelled from Bunia to Mongbwalu [REDACTED] from 21-23 November and remained in Mongbwalu [REDACTED] during the period from 23-28 November 2002.

467. The Prosecution erroneously refers to the short-Ntaganda-Logbook as “separate loose pages of Mr NTAGANDA's radio communications”. Indeed, although the pages constituting the short-Ntaganda-Logbook were recorded in evidence in a non-chronological order,¹³⁸⁷ an examination of all pages recorded together – focusing on *inter alia*: (i) the presence of *recto* and *verso* pages, (ii) handwriting differences, (iii) ink colour differences, (iv) dates of events covered, (v) symbols such as arrows used to indicate a follow up page, (vi) empty spaces at the bottom of certain pages; and (vii) the manner in which the left side of the pages were ripped together – reveals that these pages constitute one *ensemble* with a first page comprising a message dated 19 November 2002 and a last page comprising a last message dated 30 November 2002.¹³⁸⁸

468. As for the order in which the pages of the Short-Ntaganda-Logbook were recorded in evidence,¹³⁸⁹ Mr NTAGANDA testified that when examining the Short-Ntaganda-Logbook, he realized that the pages were neither in a chronological order nor represented the sequence of events as they unfolded at the time.¹³⁹⁰ Mr NTAGANDA thus rearranged the pages on the basis of the above criteria and, more importantly, his recollection of the events as they unfolded. The result is exhibit DRC-D18-0001-5748,

¹³⁸⁶ PCB, para. 62.

¹³⁸⁷ DRC-OTP-0017-0003.

¹³⁸⁸ DRC-D18-0001-5748.

¹³⁸⁹ D-0300:T-216,60:14-61:22.

¹³⁹⁰ D-0300:T-216,60:14-67:16;T-235,20:2-8.

admitted in evidence on 22 May 2018.¹³⁹¹ Mr NTAGANDA explained how he arrived at this result.¹³⁹² The Prosecution affirmed that other than for one page, which it would have placed in a different order, it agreed on Mr NTAGANDA's reordering of the pages.¹³⁹³ Any attempt by the Prosecution to plead a different page order at this stage must be disregarded. In any event, an independent observer examining the pages of the Short-Ntaganda-Logbook - even without considering the content of the messages therein - would reach the same result as Mr NTAGANDA. What is more, if the content of the messages is taken into consideration, including the logical sequence of events based on *inter alia* the location of FPLC officers involved at the time, there can be no doubt that Mr NTAGANDA got it right.

469. The Ntaganda-Logbooks were initially translated in French by the Prosecution. Since many discrepancies were identified, an *inter partes* accuracy verification procedure was triggered by the Chamber leading to the production of corrected translations which were admitted in evidence.¹³⁹⁴

A. Probative value

470. The Ntaganda-Logbooks record the words used at the time by FPLC officers who transmitted messages, including Mr NTAGANDA. The Prosecution did not challenge the authenticity of any of the messages. Using the messages he transmitted and received, Mr NTAGANDA was able to explain and provide more detailed information regarding events mentioned therein, thereby enhancing the probative value of both the messages and Mr NTAGANDA's testimony. That said, where the Prosecution did not examine a witness on a particular message relevant to its case, little if any probative value can be attached to arguments made on the basis of such messages. This was the case for example when the Prosecution examined [REDACTED]¹³⁹⁵ without even bringing to his attention the [REDACTED],¹³⁹⁶ [REDACTED].

¹³⁹¹ Decision on the admission of three items, [ICC-01/04-02/06-2288](#).

¹³⁹² D-0300:T-216,60:14-67:16; T-235,20:2-8.

¹³⁹³ D-0300:T-216,60:14-61:15.

¹³⁹⁴ [DRC-OTP-2102-3854](#); [DRC-OTP-2102-3828](#).

¹³⁹⁵ [REDACTED]; [DRC-OTP-0017-0033](#),p.0176 (fourth) (Transl.[DRC-OTP-2102-3854](#),p.3998/DRC-OTP-0171-0926,p.1070).

¹³⁹⁶ [DRC-OTP-0017-0033](#),p.0171 (first) (Transl. [DRC-OTP-2102-3854](#),p.3993).

471. The fact that FPLC officers considered the *phonie* as a secure means of communication, through the use of codes, also enhances significantly the probative value of the information contained in the Ntaganda-Logbooks.¹³⁹⁷ No FPLC officer could ever imagine at the time that the Ntaganda-Logbooks would later be used as evidence in a criminal trial.¹³⁹⁸

B. Construction of the messages

472. The construction of the messages in the Ntaganda-Logbooks also bears particular importance regarding the weight that can be attributed to this evidence. Most messages contain: the person and/or unit sending the message; the person(s) and/or unit(s) to whom the message is addressed for action purposes; the person(s) and/or unit(s) to whom the message is sent for information purposes; a heading for archiving purposes, most of the time including a reference number illustrating the sequence of messages sent by a specific person or unit; and a military date-time group composed of six digits (the first two being the date and the next four being the time) along with a letter illustrating the time zone, followed by the month and a year.

473. Testifying on numerous messages, Mr NTAGANDA explained the difference between an action addressee “TO” and an information addressee “INFO”.¹³⁹⁹ He also explained certain conclusions that can be drawn from the information provided in addition to the content of the message. Indeed, when an outgoing message is addressed to an action addressee “TO”, this demonstrates that the sender and the receiver are not together in the same area.¹⁴⁰⁰ Although there are some exceptions, the same conclusion applies to “INFO” addressees who are usually not in the same location as the sender.

474. In this regard, the Prosecution’s submission that the absence of messages in the Ntaganda-Logbooks on a given day supports the inference that Mr NTAGANDA was close enough to his troops to use the Motorola or to address them in person, is without merit. Indeed, the absence of messages in the Ntaganda-Logbooks merely establishes that during this period, Mr NTAGANDA neither sent nor received any message. This

¹³⁹⁷ D-0300:T-213,17:25-18:7.

¹³⁹⁸ D-0300:T-222,73:21-24.

¹³⁹⁹ D-0300:T-216,70:15-72:3.

¹⁴⁰⁰ See for example [DRC-OTP-0017-0033](#),p.0213 (second); Transl.[DRC-OTP-2102-3854](#),p.4035; [DRC-OTP-0017-0033](#),p.0212 (second); Transl.[DRC-OTP-2102-3854](#),p.4034; [DRC-OTP-0017-0033](#),p.0209 (first); Transl.[DRC-OTP-2102-3854](#),p.4031.

was the case for example when Mr NTAGANDA's *phonie* was switched off. During the Mongbwalu operation, this happened when Mr NTAGANDA travelled from Bunia to Mongbwalu [REDACTED]. On these occasions, Mr NTAGANDA was not in VHF radio contact with either SALUMU or SEYI's brigades.¹⁴⁰¹ Moreover, when Mr NTAGANDA was with SALUMU and his brigade in Mongbwalu, [REDACTED], which defeats the Prosecution's argument.¹⁴⁰²

475. The construction of the Ntaganda-Logbooks is also relevant. While Mr NTAGANDA was able to provide insight on the content of many messages and confirmed having general knowledge of the procedure used to transcribe messages, he explained the difference between his knowledge and use of the logbooks in his capacity as a senior officer and the duties and responsibilities of his *signora(s)* for the technical aspects of the logbooks.¹⁴⁰³
476. Whereas the Short-Ntaganda-Logbook comprises messages received and transmitted during the period from 19-30 November 2002 in a single section, the messages transmitted and received in the Ntaganda-Logbook are found in two sections, "IN" and "OUT".¹⁴⁰⁴ Regarding the latter, Mr NTAGANDA [REDACTED] explained that the messages in the "IN" section were transcribed from left to right and top to bottom,¹⁴⁰⁵ starting on the first page.¹⁴⁰⁶ As for the messages transmitted, they begin on the last page, are transcribed from right to left and top to bottom. Although it was expected that the messages would be transcribed in a chronological order, this was not always the case.¹⁴⁰⁷

¹⁴⁰¹ [DRC-D18-0001-5748](#),p.5754(first) (Transl.[DRC-D18-0001-5778](#),p.5784); [DRC-D18-0001-5748](#),p.5756 (first) (Transl.[DRC-D18-0001-5778](#),p.5786); [DRC-D18-0001-5748](#),p.5758 (Transl.[DRC-D18-0001-5778](#),p.5788); [DRC-D18-0001-5748](#),p.5760 (Transl.[DRC-D18-0001-5778](#),p.5790); [DRC-OTP-0017-0033](#),p.0035 (Transl.[DRC-OTP-2102-3854](#),p.3857).

¹⁴⁰² [DRC-D18-0001-5748](#),p.5762(first) (Transl.[DRC-D18-0001-5778](#),p.5792) to [DRC-D18-0001-5748](#),p.5774 (third) (Transl.[DRC-D18-0001-5778](#),p.5804); [DRC-OTP-0017-0033](#),p.0211 (second,third); Transl.[DRC-OTP-2102-3854](#),p.4033; [DRC-OTP-0017-0033](#),p.0212 (second,third); Transl.[DRC-OTP-2102-3854](#),p.4034.

¹⁴⁰³ **D-0300**:T-216,80:9-23.

¹⁴⁰⁴ **D-0300**:T-216,74:9-17;78:4-11,80:2-8; [REDACTED].

¹⁴⁰⁵ [DRC-OTP-0017-0033](#),p.0034 (Transl.[DRC-OTP-2102-3854](#),p.3856).

¹⁴⁰⁶ [REDACTED]; **D-0300**:T-216,75:17-25.

¹⁴⁰⁷ [DRC-OTP-0017-0033](#),p.0211(third) (Transl.[DRC-OTP-2102-3854](#), p.4033); [DRC-OTP-0017-0033](#),p.0210 (third) (Transl.[DRC-OTP-2102-3854](#),p.4032) [DRC-OTP-0017-0033](#),p.0080 (third) (Transl.[DRC-OTP-2102-3854](#),p.3902).

477. As for the simultaneous use of two logbooks in which messages transmitted and received by Mr NTAGANDA on the same dates were transcribed in one, the other or both, [REDACTED] Mr NTAGANDA provided an explanation.¹⁴⁰⁸

C. The applicable procedure for transcribing messages

478. Mr NTAGANDA explained his knowledge and understanding of the applicable procedure for the recording of *phonie* messages.

479. Messages transmitted were communicated orally or in writing by the relevant officer to his *signora*; rewritten in coded language on a piece of paper; transmitted orally over the *phonie*; and subsequently transcribed in the logbook. To confirm that a particular message was sent, the relevant *signora* wrote '*passed*' over the message. Messages received were heard over the *phonie* by a *signora*; transcribed in original coded language on a piece of paper; rewritten in clear language and transcribed in the logbook.¹⁴⁰⁹

480. Mr NTAGANDA also explained that he consulted the Ntaganda-Logbooks which were brought to him by a *signora* when he was present at his residence. Mr NTAGANDA consulted the Ntaganda-Logbooks whenever his busy schedule allowed him to do so.¹⁴¹⁰ Mr NTAGANDA focused his attention on the messages received; he seldom read the outgoing messages, which he only did out of curiosity, time permitting, because he was already aware of their content.¹⁴¹¹

481. Mr NTAGANDA testified that when consulting the logbooks, he found errors both in form and content¹⁴¹² and acknowledged that he had not noticed these errors at the time. Considering the stressful times during which the messages were transcribed in the Ntaganda-Logbooks, Mr NTAGANDA stated that these errors did not surprise him.¹⁴¹³

482. [REDACTED]. Notably, [REDACTED]. [REDACTED].

¹⁴⁰⁸ D-0300:T-216,81:6-12.

¹⁴⁰⁹ D-0300:T-216,80:9-23;D-0300:T-216,71:19-72:3; [REDACTED].

¹⁴¹⁰ D-0300:T-222,44:3-8;T-227,5:18-6:2.

¹⁴¹¹ D-0300:T-216,80:24-81:5.

¹⁴¹² D-0300:T-220,78:25-81:14; [DRC-OTP-0017-0033](#),p.0176(fourth) (Transl.[DRC-OTP-2102-3854](#),p.3998); [DRC-OTP-0017-0033](#),p.0171(fourth) (Transl.[DRC-OTP-2102-3854](#),p.3993); [DRC-OTP-0017-0033](#),p.0175 (third) (Transl.[DRC-OTP-2102-3854](#),p.3997).

¹⁴¹³ D-0300:T-226,91:10-19;T-220;19-21.

D. [REDACTED]

483. The Prosecution's submission that the Defence is precluded from challenging [REDACTED] evidence because the latter was not cross-examined is without merit. Leaving aside the reasons why [REDACTED] was not cross-examined; not recalled before the presentation of the case for the Defence and not recalled by the Chamber after the presentation of the case of the Defence; the Chamber must not assess [REDACTED] evidence on the basis of the totality of the evidence admitted. Thus, it is open to the parties to make submissions on the weight to be attributed to [REDACTED] testimony. In any event, other than for [REDACTED] evidence concerning the age of the [REDACTED], the Defence takes issue with limited parts of his evidence. Regarding the age issue, the Defence made it clear when raising objections during [REDACTED] examination-in-chief that his evidence was both unreliable as well as wholly implausible considering the degree of difficulty associated with [REDACTED].
484. The most important issue related to [REDACTED], [REDACTED] at the time, is not related to the evidence he provided. Rather, [REDACTED].
485. Indeed, the messages [REDACTED] in the Short-Ntaganda-Logbook confirmed that he was present with Mr NTAGANDA in Mongbwalu. To provide but one example on 25 November 2002, [REDACTED]. Mr NTAGANDA testified that he personally wrote this message, [REDACTED] nor challenged by the Prosecution. Mr NTAGANDA's handwriting is found on other pages of the Short-Ntaganda-Logbook where [REDACTED].¹⁴¹⁴
486. Whereas [REDACTED] testified travelling with Mr NTAGANDA to Mongbwalu at a time when the airport was already controlled by the FPLC, he was evidently referring to his return to Bunia.¹⁴¹⁵
487. Furthermore, the messages [REDACTED] in the Short-Ntaganda-Logbook during the period from 19 to 23 November¹⁴¹⁶ corroborate Mr NTAGANDA's testimony that he

¹⁴¹⁴ [DRC-D18-0001-5748](#), p.5753 (Transl. [DRC-D18-0001-5778](#), p.5783) ; [DRC-D18-0001-5748](#), p.5750 (Transl. [DRC-D18-0001-5778](#), p.5780) ; [DRC-D18-0001-5748](#), p.5773 (Transl. [DRC-D18-0001-5778](#), p.5803).

¹⁴¹⁵ [REDACTED]; [D-0300](#):T-218,4:23-5:10.

¹⁴¹⁶ [DRC-D18-0001-5748](#), p.5748 (19 November 07h30-IN, 09h35-IN), p.5750 (19 November 07h39-IN, 09h23-IN, 14h30-IN, 16h06-IN); [DRC-OTP-0017-0033](#), p.0213 (19 November 13h05-IN), p.0213 (19 November 13h10-OUT), p.0212 (19 November 13h14-OUT); [DRC-D18-0001-5748](#), p.5752 (20 November

departed from Bunia on 21 November; spent the night of 21 November in Iga-Barriere; travelled to Mabanga on 22 November where he remained for the night and travelled to Mongbwalu on 23 November arriving late in the evening at all times in the company of[REDACTED].¹⁴¹⁷

488. Strikingly, the messages in the Ntaganda-Logbooks corroborate his testimony as to his activities and whereabouts during this period.

CHAPTER V – OVERVIEW OF THE SECOND FPLC ATTEMPT TO LIBERATE MONGBWALU

489. This Chapter provides an overview of: (i) the manner in which Mr NTAGANDA was appointed to command the second FPLC attempt to liberate Mongbwalu; and Mr NTAGANDA's activities and whereabouts while in command of the FPLC's second attempt to liberate Mongbwalu.

Section I – Mr Ntaganda's appointment to command the forces involved in the FPLC's second attempt to liberate Mongbwalu

490. Further to the exchange of troops leading to the integration of JEROME's forces in the FPLC, LUBANGA requested KISEMBO to travel to Aru in order to finalize the arrangements.¹⁴¹⁸ KISEMBO ordered Mr NTAGANDA to make this in his place.¹⁴¹⁹

491. Mr NTAGANDA travelled to Aru by plane at the end of October/beginning of November¹⁴²⁰ [REDACTED], [REDACTED], [REDACTED].¹⁴²¹ PETER was Mr NTAGANDA's personal secretary who supervised the exchange of troops.¹⁴²² [REDACTED] arrived in Bunia by plane, [REDACTED], [REDACTED], shortly before Mr NTAGANDA's departure.¹⁴²³ KISEMBO decided that [REDACTED] would best be employed if he returned with JEROME in Aru.¹⁴²⁴ Mr NTAGANDA gave

07h30-IN, 08h35-IN), p.5754-5756 (21 November 19h38-IN), p.5758 (22 November no specific time-IN), p.5760 (23 November 07h14-IN, 07h40-IN).

¹⁴¹⁷ See *infra* Part IV, Chapt. V.

¹⁴¹⁸ D-0300:T-216,21:18-20.

¹⁴¹⁹ D-0300:T-216,21:12-15.

¹⁴²⁰ [REDACTED].

¹⁴²¹ [REDACTED].

¹⁴²² D-0300:T-215,71:21-72:2.

¹⁴²³ [REDACTED]; [REDACTED].

¹⁴²⁴ [REDACTED].

[REDACTED] to LUBANGA's escorts and informed him that he had to return to [REDACTED].¹⁴²⁵ SALUMU arrived in Bunia on the day Mr NTAGANDA departed.¹⁴²⁶ Dressed in civilian clothes, he changed plane and accompanied Mr NTAGANDA to Aru.¹⁴²⁷ When Mr NTAGANDA departed to Aru, SALUMU had not arrived in Bunia and was not yet in command of the Mandro Bde.¹⁴²⁸ Mr NTAGANDA and SALUMU did not meet in Bunia. Mr NTAGANDA had no information about the military situation in Mongbwalu at that time.¹⁴²⁹

492. [REDACTED], Mr NTAGANDA testified that no weapons were taken on the flight on that day.¹⁴³⁰
493. Mr NTAGANDA did not deny that weapons were given to forces in Aru. He explained however how weapons were given to JEROME during the exchange of forces whereby: Mandro recruits travelled to Aru with their personal weapons; while JEROME soldiers travelled to Bunia without weapons.¹⁴³¹ In addition, a recoilless and a grenade launcher were also sent to Aru along with the Mandro recruits who went there.¹⁴³² During his stay in Aru and during his visit in Kandoyi, Mr NTAGANDA tried these weapons [REDACTED], [REDACTED]. Mr NTAGANDA confirmed however that uniforms were sent to all of JEROME's forces to ensure that they would clearly be identified as FPLC forces.
494. When travelling to Aru, Mr NTAGANDA did not know that SALUMU would be appointed Commander of the Brigade in Mandro.¹⁴³³ Mr NTAGANDA also did not know that in his absence, an operation would be launched in Mongbwalu under the command of SALUMU.¹⁴³⁴ [REDACTED]'s evidence that Mr NTAGANDA travelled to Aru to make arrangements for the operation in Mongbwalu based on information [REDACTED],¹⁴³⁵ is wholly implausible. Notably, [REDACTED]'s evidence

¹⁴²⁵ [REDACTED].

¹⁴²⁶ D-0300:T-216,42:2-3.

¹⁴²⁷ D-0300:T-216 23:21-24:4.

¹⁴²⁸ D-0300:T-216,42:2-3; D-0300:T-216,7:20-24.

¹⁴²⁹ D-0300 T-216,41:19-42:6.

¹⁴³⁰ D-0300:T-234,47:19-22.

¹⁴³¹ D-0300: T-215,71:3-73:24;P-0901:T-31,66:25-67:2.

¹⁴³² D-0300:T-234,47:15-48:6.

¹⁴³³ D-0300: T-216,42:2-3.

¹⁴³⁴ D-0300:T-216-FRA,42:3-8(D-0300:T-216-ENG 43:15-19)(Annex E).

¹⁴³⁵ [REDACTED].

concerning [REDACTED]¹⁴³⁶ and the fact that [REDACTED] was not even aware that there was a first attempt to take Mongbwalu under the command of SALUMU¹⁴³⁷ renders his evidence unreliable.

495. The Prosecution's reference to a statement obtained by [REDACTED] – which was not admitted in evidence – that Mr NTAGANDA came to Aru to give the 'GO' for the Mongbwalu operation – must also be disregarded.¹⁴³⁸ Mr NTAGANDA explained the context at the time, whereby APC forces from Mongbwalu were launching attacks against JEROME's forces on the Mongbwalu-Aru axis up to Kandoyi and that it was necessary for JEROME's forces to attack the APC with a view to forcing them to retreat in Mongbwalu.¹⁴³⁹ Moreover, had Mr NTAGANDA been involved in the planning and/or conduct of the FPLC's first attempt to liberate Mongbwalu, the evidence regarding Mr NTAGANDA's capabilities as a high level commander leads to the conclusion that neither a shortage of ammunition¹⁴⁴⁰ nor coordination problems as other witnesses have testified, would have plagued this attempt.
496. Mr NTAGANDA provided evidence on his activities during his mission in Aru which lasted about two weeks.¹⁴⁴¹
497. During Mr NTAGANDA's absence from Bunia, KISEMBO organized, in his capacity as *Chef-d'État-major-général*, the forces assembled in Mandro¹⁴⁴² as a Bde and appointed SALUMU as its commander.¹⁴⁴³ KISEMBO ordered SALUMU to launch an operation in Mongbwalu, which failed for various reasons, including a shortage of ammunition.¹⁴⁴⁴

¹⁴³⁶ [REDACTED].

¹⁴³⁷ [REDACTED].

¹⁴³⁸ D-0300:T-234,60:4-61:19.

¹⁴³⁹ D-0300:T-242,13:14-14:25.

¹⁴⁴⁰ D-0300:T-216,44:4-9.

¹⁴⁴¹ D-0300:T-216,25:2-42:9; [DRC-REG-0001-0393](#); D-0300:T-242,32:3-15:Kandoyi to Mongbwalu is approximately 160-170 kilometres; [DRC-REG-0001-0393](#).

¹⁴⁴² These are the forces which were addressed by Chef KAHWA in Mandro. [DRC-OTP-0082-0016](#),11:25-29:37 (Transl. [DRC-OTP-0164-0710](#),11.193-440).

¹⁴⁴³ D-0300:T-216,7:10-24.

¹⁴⁴⁴ D-0300:T-216,44:4-9.

498. Until Mr NTAGANDA was informed of SALUMU's failure to liberate Mongbwalu, when LUBANGA reached him on JEROME's telephone,¹⁴⁴⁵ he was not aware of the measures taken by KISEMBO in this regard.
499. Mr NTAGANDA travelled back to Bunia at the earliest possibility and reported to KISEMBO and LUBANGA who entrusted him with the 'command and control' of the second attempt to liberate Mongbwalu. [REDACTED], [REDACTED], [REDACTED].¹⁴⁴⁶ [REDACTED] SEYI was sent with the Aru Bde to participate in the Mongbwalu operation when Mr NTAGANDA ordered JEROME to provide a Bde for this purpose.
500. Upon leaving Aru, Mr NTAGANDA received a video camera from JEROME as a gift.¹⁴⁴⁷ This is the video camera that was used to record various events during the second FPLC attempt to liberate Mongbwalu.
501. Upon landing in Bunia,¹⁴⁴⁸ Mr NTAGANDA immediately reported to KISEMBO¹⁴⁴⁹ [REDACTED]. [REDACTED], [REDACTED], [REDACTED].¹⁴⁵⁰
502. KISEMBO provided information to Mr NTAGANDA regarding SALUMU's attempt to liberate Mongbwalu. He told him that in his absence, he had appointed SALUMU Commander of the forces assembled in Mandro¹⁴⁵¹ and ordered him to launch an operation to liberate Mongbwalu.¹⁴⁵² He said SALUMU executed the plan but unfortunately failed due *inter alia*, to a shortage of ammunition.¹⁴⁵³
503. KISEMBO ordered Mr NTAGANDA to prepare in order to launch a new operation to free Mongbwalu¹⁴⁵⁴ adding that SALUMU had returned to Mabanga with ammunition where he was preparing.¹⁴⁵⁵ Mr NTAGANDA suggested that it was necessary to use

¹⁴⁴⁵ D-0300:T-234,61:9-10; D-0300:T-242,9:5-6; D-0300:T-216-ENG,41:12-15(Annex E); D-0300:T-216,45:20-21.

¹⁴⁴⁶ [REDACTED].

¹⁴⁴⁷ D-0300:T-216,41:3-8.

¹⁴⁴⁸ D-0300:T-216,47:14.

¹⁴⁴⁹ [REDACTED].

¹⁴⁵⁰ [REDACTED].

¹⁴⁵¹ D-0300:T-216,43:10-11.

¹⁴⁵² D-0300:T-216,44:11-12.

¹⁴⁵³ D-0300:T-216,43:10-11.

¹⁴⁵⁴ D-0300:T-216,44:11-12.

¹⁴⁵⁵ [REDACTED].

some of JEROME's forces in order to launch an operation on Mongbwalu on two fronts, which KISEMBO approved.¹⁴⁵⁶ KISEMBO entrusted Mr NTAGANDA to lead the operation thereby placing the forces from Aru and Mandro under his command.¹⁴⁵⁷

504. During their encounter, Mr NTAGANDA reported to KISEMBO on his activities during his mission in Aru while KISEMBO informed him of his actions and other measures taken as *Chef-d'État-major-général* during his absence, including *inter alia* the creation and deployment of forces and the appointment of TCHALIGONZA as Commander of the Bunia bde.¹⁴⁵⁸ KISEMBO thereafter instructed Mr NTAGANDA to go and see the President.¹⁴⁵⁹
505. LUBANGA confirmed KISEMBO's order. LUBANGA explained the disastrous situation in Mongbwalu and the deplorable conditions in which its inhabitants were living.¹⁴⁶⁰ LUBANGA added that it was necessary to "free the people from the oppression".¹⁴⁶¹ LUBANGA did not issue any operational instructions to Mr NTAGANDA but provided him with a Thuraya.¹⁴⁶²

Section II - Mr Ntaganda's activities and whereabouts while in command of the FPLC's second attempt to liberate Mongbwalu

506. Following his meeting with the President, Mr NTAGANDA called JEROME to inquire about the location of his forces.¹⁴⁶³ JEROME informed Mr NTAGANDA that according to his latest information, his forces which had been fighting in Kandoyi were in a location called Damas.¹⁴⁶⁴ Mr NTAGANDA ordered JEROME to make these forces available to participate in the operation to liberate Mongbwalu he was now in command of.¹⁴⁶⁵

¹⁴⁵⁶ D-0300:T-216,44:13-17; D-0300:T-216,45:9-16.

¹⁴⁵⁷ D-0300:T-216,45:1-5.

¹⁴⁵⁸ D-0300:T-216,43:10-11 43:20-44:1

¹⁴⁵⁹ D-0300:T-216,44:17-18.

¹⁴⁶⁰ [DRC-OTP-2058-0251](#),01:43:59-01:44:14 (Transl. [DRC-OTP-2102-3766](#) ll.1664-1672); [DRC-OTP-2058-0251](#),01:49:24-01:50:21 (Transl. [DRC-OTP-2102-3766](#) ll.1830-1854); P-0907:T-91,30:7-32:6; P-0887:T-94,45:8-49:18; D-0300:T-216 45:20-21.

¹⁴⁶¹ D-0300:T-216,45:21-46:15-23.

¹⁴⁶² D-0300:T-216,45:20-21.

¹⁴⁶³ D-0300:T-216,45:21-22.

¹⁴⁶⁴ D-0300:T-216-FRA,46:21-47(D-0300:T-216-ENG,48:14-21)(Annex E).

¹⁴⁶⁵ D-0300:T-216,48:24-25 ; See also [DRC-REG-0001-5526](#).

507. Mr NTAGANDA then [REDACTED]¹⁴⁶⁶ [REDACTED]¹⁴⁶⁷ [REDACTED].¹⁴⁶⁸ Mr NTAGANDA then [REDACTED]¹⁴⁶⁹ but did not [REDACTED].¹⁴⁷⁰ LUBANGA confirmed [REDACTED]¹⁴⁷¹ and [REDACTED].¹⁴⁷²
508. [REDACTED] Mr NTAGANDA spent the night at Mr NTAGANDA's home in Bunia.¹⁴⁷³
509. [REDACTED], [REDACTED],¹⁴⁷⁴ [REDACTED]. [REDACTED], [REDACTED].¹⁴⁷⁵
510. [REDACTED], [REDACTED].¹⁴⁷⁶ [REDACTED], [REDACTED].¹⁴⁷⁷ [REDACTED], [REDACTED], [REDACTED].¹⁴⁷⁸
511. [REDACTED]¹⁴⁷⁹ [REDACTED].¹⁴⁸⁰ [REDACTED].¹⁴⁸¹ [REDACTED].¹⁴⁸²
512. [REDACTED], [REDACTED], [REDACTED], [REDACTED],¹⁴⁸³ [REDACTED]. [REDACTED], [REDACTED].¹⁴⁸⁴ [REDACTED].¹⁴⁸⁵
513. As demonstrated by the ten messages [REDACTED] in the Ntaganda-Logbooks,¹⁴⁸⁶ Mr NTAGANDA's *phonie* became operational on 19 November 2002.
514. Through these messages, Mr NTAGANDA learned and understood in the morning of 19 November 2002 that: (i) SALUMU (Mandro Bde) had sent 79 soldiers to Damas;¹⁴⁸⁷

¹⁴⁶⁶ [REDACTED].

¹⁴⁶⁷ [REDACTED].

¹⁴⁶⁸ [REDACTED].

¹⁴⁶⁹ [REDACTED].

¹⁴⁷⁰ [REDACTED].

¹⁴⁷¹ [REDACTED].

¹⁴⁷² [REDACTED].

¹⁴⁷³ [REDACTED].

¹⁴⁷⁴ [REDACTED].

¹⁴⁷⁵ [REDACTED].

¹⁴⁷⁶ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED], [REDACTED] , [REDACTED] .

¹⁴⁷⁷ [REDACTED]. [REDACTED].

¹⁴⁷⁸ [REDACTED]; [REDACTED]; [REDACTED].

¹⁴⁷⁹ [REDACTED].

¹⁴⁸⁰ [REDACTED]; [REDACTED].

¹⁴⁸¹ [REDACTED].

¹⁴⁸² [REDACTED];

¹⁴⁸³ [REDACTED].

¹⁴⁸⁴ [REDACTED]; [REDACTED].

¹⁴⁸⁵ [REDACTED].

¹⁴⁸⁶ [DRC-D18-0001-5748](#),p.5748 (first,second,third,fourth) (Transl. [DRC-D18-0001-5778](#),p.5778); [DRC-D18-0001-5748](#),p.5750 (first,second,third) (Transl. [DRC-D18-0001-5778](#),p.5780); [DRC-OTP-0017-0033](#),p.0213 (first,second) Transl. [DRC-OTP-2102-3854](#),p.4035; [DRC-OTP-0017-0033](#),p.0212 (first) Transl. [DRC-OTP-2102-3854](#),p.4034.

SALUMU had sent SMG ammunition to SEYI, quantity 10;¹⁴⁸⁸ SALUMU wanted Mr NTAGANDA to replace this ammunition by sending him SMG, quantity 20; SALUMU was taking steps for SEYI's forces to reach Pili Pili, 10 kilometres from the objective;¹⁴⁸⁹ SEYI had two small vehicles with him which had arrived during the night; and SEYI was waiting for the larger TATA vehicle which had broken down.¹⁴⁹⁰

515. Mr NTAGANDA recalled that on that day he met KISEMBO who gave him his own vehicle and requested the FEC President to find another vehicle in good order from him. Mr NTAGANDA sent this vehicle to the mechanics and it was ready the next day.¹⁴⁹¹ [REDACTED].¹⁴⁹²

516. Mr NTAGANDA returned to his residence¹⁴⁹³ and, on the basis of the information in his possession, at 13h10, the order to Commander SEYI and to Commander SALUMU was transmitted to launch the FPLC operation in Mongbwalu: "*avancez tous jusqu'à l'objectif*".¹⁴⁹⁴ In the same message, Mr NTAGANDA informed the two commanders that his vehicles were being repaired and informed SALUMU that he would bring him the SMG ammunition he gave to SEYI.¹⁴⁹⁵

517. At 14h30, a *phonie* message was received from Damas¹⁴⁹⁶ indicating that the 79 soldiers SALUMU had sent to that location¹⁴⁹⁷ were already on their way back where SALUMU was.

518. On 20 November 2002, Mr NTAGANDA received three messages including a request for material [REDACTED] in the Ntaganda-Logbooks.¹⁴⁹⁸ From the message received at 08h35 from SALUMU, Mr NTAGANDA learned and understood that the soldiers

¹⁴⁸⁷ [DRC-D18-0001-5748](#),p.5748 (first) (Transl. [DRC-D18-0001-5778](#),p.5778); **D-0300**:T-216 62:10-25.

¹⁴⁸⁸ [DRC-D18-0001-5748](#),p.5748 (first) (Transl. [DRC-D18-0001-5778](#),p.5778).

¹⁴⁸⁹ [DRC-D18-0001-5748](#),p.5748 (first) (Transl. [DRC-D18-0001-5778](#),p.5778).

¹⁴⁹⁰ [DRC-D18-0001-5748](#),p.5748 (second) (Transl. [DRC-D18-0001-5778](#),p.5778); **D-0300**:T-216 62:10-25.

¹⁴⁹¹ [D-0300](#):T-216-FRA 74:11-15([D-0300](#):T-216-ENG 77:4-7) (Annex E); **D-0300**:T-216,77:4-7.

¹⁴⁹² [REDACTED]; [REDACTED].

¹⁴⁹³ [D-0300](#):T-216-ENG 54:14-16([D-0300](#):T-216-FRA 52:9-12) (Annex E).

¹⁴⁹⁴ [DRC-OTP-0017-0033](#),p.0213 (second); Transl. [DRC-OTP-2102-3854](#),p.4035; **D-0300**:T-216 76:20-25.

¹⁴⁹⁵ [DRC-OTP-0017-0033](#),p.0213 (second); Transl. [DRC-OTP-2102-3854](#),p.4035.

¹⁴⁹⁶ [DRC-D18-0001-5748](#),p.5750 (second) (Transl. [DRC-D18-0001-5778](#),p.5780)(Annex E); **D-0300**:T-216,65:3-11.

¹⁴⁹⁷ [DRC-D18-0001-5748](#),p.5748 (first) (Transl. [DRC-D18-0001-5778](#),p.5778).

¹⁴⁹⁸ [DRC-D18-0001-5748](#),p.5752 (first,second,third) (Transl. [DRC-D18-0001-5778](#),p.5782); [DRC-D18-0001-5748](#),p.5754 (first) (Transl. [DRC-D18-0001-5778](#),p.5784).

sent to Damas had returned to his location;¹⁴⁹⁹ Commander SEYI could not be reached because he was on the move towards Pili Pili;¹⁵⁰⁰ and further information would be available once SEYI would arrive at that location.¹⁵⁰¹ Questioned on the *état de besoins* at the bottom of the first page for that day,¹⁵⁰² Mr NTAGANDA did not recall this information and could not confirm that it was connected to the information received from SALUMU. Mr NTAGANDA expressed the view based on the type of equipment requested, in particular *pont avant*, *traction 4x4* and *carburant*, which can only be used with vehicles, that these items were not requested by SALUMU because he did not have vehicles.¹⁵⁰³ Mr NTAGANDA also confirmed that he did not bring this kind of material when deploying to Mongbwalu.¹⁵⁰⁴

519. On 21 November 2002, Mr NTAGANDA departed from Bunia¹⁵⁰⁵ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].¹⁵⁰⁶ Mr NTAGANDA left Bunia before darkness on that day¹⁵⁰⁷ with two vehicles¹⁵⁰⁸ on which ammunition¹⁵⁰⁹ and a B-10 were loaded.¹⁵¹⁰ During the period before leaving Bunia, Mr NTAGANDA and his bodyguards conducted preparations for the Mongbwalu operation, including obtaining ammunition [REDACTED].¹⁵¹¹ During this period, it was not possible for Mr NTAGANDA to communicate with his two commanders, SALUMU and SEYI, who did not have Thuraya, by means other than *phonie*.¹⁵¹² Regarding the latter, Mr NTAGANDA [REDACTED] to learn from the messages that SEYI was leading the Aru brigade [REDACTED].¹⁵¹³ Mr NTAGANDA called JEROME before leaving Bunia to inquire about this situation.¹⁵¹⁴

¹⁴⁹⁹ [DRC-D18-0001-5748](#),p.5750 (second) (Transl. [DRC-D18-0001-5778](#),p.5780)(Annex E).

¹⁵⁰⁰ [DRC-D18-0001-5748](#),p.5754 (first) (Transl. [DRC-D18-0001-5778](#),p.5784).

¹⁵⁰¹ [DRC-D18-0001-5748](#),p.5754 (first) (Transl. [DRC-D18-0001-5778](#),p.5784).

¹⁵⁰² [DRC-D18-0001-5748](#),p.5752 (bottom of the page) (Transl. [DRC-D18-0001-5778](#),p.5782).

¹⁵⁰³ **D-0300**:T-235,10:2-11:22; [DRC-D18-0001-5748](#),p.5752 (first) (Transl. [DRC-D18-0001-5778](#),p.5784).

¹⁵⁰⁴ **D-0300**:T-235,10:19-11:7.

¹⁵⁰⁵ [DRC-REG-0001-0066](#);Bunia-Mongbwalu; **D-0300**:T-217,21:23-24:3.

¹⁵⁰⁶ [REDACTED]; [REDACTED].

¹⁵⁰⁷ **D-0300**:T-216,85:1-5; [REDACTED]

¹⁵⁰⁸ **D-0300** :T-216-CONF-FRA,74:13-15(D-0300:T-216,77:4-7)(Annex E).

¹⁵⁰⁹ **D-0300** :T-216,85:12-19.

¹⁵¹⁰ **D-0300**:T-216,85:14-15.

¹⁵¹¹ [REDACTED].

¹⁵¹² **D-0300**:T-216,86:1-6.

¹⁵¹³ [REDACTED].

¹⁵¹⁴ **D-0300**:T-216,45:17-22.

520. Mr NTAGANDA and his group reached Iga-Barrière in the early evening, stopping for the night.¹⁵¹⁵ [REDACTED] four messages including two requests for material.¹⁵¹⁶ Two of these messages were from Commander SEYI and Commander SALUMU from which Mr NTAGANDA learned and understood that: the Aru brigade under the command of SEYI was now in Pluto, 7 kilometers from the objective;¹⁵¹⁷ SEYI's forces were engaged by the enemy which attacked his three vehicles that could no longer be moved;¹⁵¹⁸ Commander SEYI lost three soldiers and fifteen more were injured;¹⁵¹⁹ SEYI was surrounded by the enemy and was requesting assistance;¹⁵²⁰ SALUMU's Bde was on the move and therefore not reachable by *phonie* until 22h30.¹⁵²¹ From a message received from Aru, [REDACTED], Mr NTAGANDA also learned that [REDACTED]¹⁵²² [REDACTED].¹⁵²³ In Iga-Barrière, Mr NTAGANDA addressed the population; he explained the objective of the attack on Mongbwalu was to ensure their security.¹⁵²⁴

521. On 22 November 2002, Mr NTAGANDA left Iga-Barrière in the morning,¹⁵²⁵ going through Nizi, reaching Mabanga in the evening.¹⁵²⁶ Mr NTAGANDA recalls that it was raining and that the travelling conditions were very difficult.¹⁵²⁷ On that day, [REDACTED] two messages in the short-Ntaganda-Logbook,¹⁵²⁸ one in the morning and one in the evening. Mr NTAGANDA testified that the first message was received in Iga-Barrière before setting out for Mabanga¹⁵²⁹ while the second one was received in Mabanga [REDACTED].¹⁵³⁰ Since Mr NTAGANDA did not receive any message from

¹⁵¹⁵ D-0300:T-216,85:1-5;T-216,85:18-19; D-0300:T-217,22:13; [DRC-REG-0001-0066](#); D-0017:T-253,39:16.

¹⁵¹⁶ [DRC-D18-0001-5748](#),p.5754 (second,third) (Transl. [DRC-D18-0001-5778](#),p.5784); [DRC-D18-0001-5748](#),p.5756 (first,second) (Transl. [DRC-D18-0001-5778](#),p.5786).

¹⁵¹⁷ [DRC-D18-0001-5748](#),p.5754 (third) (Transl. [DRC-D18-0001-5778](#),p.5784).

¹⁵¹⁸ [DRC-D18-0001-5748](#),p.5754 (third) (Transl. [DRC-D18-0001-5778](#),p.5784).

¹⁵¹⁹ [DRC-D18-0001-5748](#),p.5754 (third) (Transl. [DRC-D18-0001-5778](#),p.5784)(Annex E); *See also* [DRC-D18-0001-5748](#) (second) (Transl. [DRC-D18-0001-5778](#),p.5778).

¹⁵²⁰ [DRC-D18-0001-5748](#),p.5754 (third) (Transl. [DRC-D18-0001-5778](#),p.5784).

¹⁵²¹ [DRC-D18-0001-5748](#),p.5756 (second) (Transl. [DRC-D18-0001-5778](#),p.5786).

¹⁵²² [REDACTED]; [REDACTED]; [REDACTED].

¹⁵²³ [REDACTED].

¹⁵²⁴ D-0300:T-217,62:12-27:18.

¹⁵²⁵ D-0300:T-217,29:7-9.

¹⁵²⁶ D-0300:T-221,73:1-7; *See also* D-0300:T-217 23:5-9; [DRC-REG-0001-0066](#).

¹⁵²⁷ D-0300:T-217,29:20-21; T-217,33:1-2.

¹⁵²⁸ [DRC-D18-0001-5748](#),p.5758 (first,second,third,fourth) (Transl. [DRC-D18-0001-5778](#),p.5788).

¹⁵²⁹ D-0300:T-217,28:17-29:9.

¹⁵³⁰ [REDACTED].

SEYI and SALUMU on that day, he understood that the operation was ongoing and that the fighting had probably begun in Mongbwalu.

522. In the morning of 23 November 2002, while in Mabanga, [REDACTED] two messages in the short-Ntaganda-Logbook,¹⁵³¹ one from Mahagi and the other from Aru.¹⁵³² That morning, Mr NTAGANDA addressed civilians gathered in Mabanga before setting out for Mongbwalu.¹⁵³³ TIGER ONE filmed the event on Mr NTAGANDA's camera.¹⁵³⁴ Some civilians expressed the wish to follow Mr NTAGANDA and his group but Mr NTAGANDA refused saying that he had to make sure that Mongbwalu was liberated first.¹⁵³⁵ Mr NTAGANDA was given a megaphone and had to stand on a table so that everyone could hear his message.¹⁵³⁶
523. The road from Mabanga to Mongbwalu was difficult and even so more from Dala to Mongbwalu.¹⁵³⁷ In Mabanga, the *chef de localité* informed Mr NTAGANDA that the road though Lalu was not practicable and provided him with a group of civilians, approximately 20-25, to assist with the transport of ammunition.¹⁵³⁸ Mr NTAGANDA's group nonetheless travelled from Mabanga to Lalu to Dala by vehicle, where they met the civilians selected by the *chef de localité* in Mabanga, who unloaded the ammunition from the vehicles. These civilians were more than happy to assist Mr NTAGANDA in this task.¹⁵³⁹ They did not have weapons.¹⁵⁴⁰
524. Leaving Dala on foot,¹⁵⁴¹ the civilians carried the ammunition. Going through the forest was very difficult as the trail was very slippery due to the heavy rain and mud.¹⁵⁴² This was also filmed by SALONGO.¹⁵⁴³

¹⁵³¹ [REDACTED].

¹⁵³² [DRC-D18-0001-5748](#),p.5760 (first,second) (Transl. [DRC-D18-0001-5778](#),p.5790).

¹⁵³³ **D-0300**:T-223,45:21-46 :9; T-217,31:9-31 :7.

¹⁵³⁴ **D-0300**:T-216,86:25-87:3; *See also* **D-0300**:T-217,23:11-25; T-217,32:21-33:2; [DRC-REG-0001-0066](#).

¹⁵³⁵ **D-0300**:T-217,31:9-18.

¹⁵³⁶ **D-0300**:T-217,32 :3-7.

¹⁵³⁷ **D-0300**:T-217,29:20-21; T-217,33:1-2.

¹⁵³⁸ **D-0300**:T-217,32:21-23.

¹⁵³⁹ **D-0300**:T-217,34:10-14.

¹⁵⁴⁰ **D-0300**:T-217,34:7-9.

¹⁵⁴¹ **D-0300**:T-216,86:22-87:3; T-217,24:11-25:25; [DRC-REG-0001-0067](#). **D-0300**:T-216,86:22-87:3; T-217,24:11-25:25; [DRC-REG-0001-0067](#).

¹⁵⁴² **D-0300**:T-217,34:24,35:19-20.

¹⁵⁴³ **D-0300**:T-216,86:24-87:3.

525. Mr NTAGANDA's group and the civilians carrying the ammunition reached Mongbwalu airport¹⁵⁴⁴ in the evening when it was already dark, where they were welcomed by members of SALUMU's brigade.¹⁵⁴⁵ The airport had been secured and there was no fighting there.¹⁵⁴⁶ Mr NTAGANDA and his group were escorted from the airport to SALUMU's *État-major*, a house located in Camp Goli.¹⁵⁴⁷
526. D-0017's evidence corroborates Mr NTAGANDA's travel from Bunia to Mongbwalu over a period of three days.¹⁵⁴⁸
527. In the presence of SALONGO and KASANGAKI, Mr NTAGANDA was briefed by SALUMU, whom he met for the first time¹⁵⁴⁹ since the latter, coming from Aru, was appointed commander of the MANDRO Bde. SALUMU informed Mr NTAGANDA that, *inter alia*: when his Bde arrived and the fighting was going on at the airport, there were no inhabitants in the centre of Mongbwalu; there was no more fighting in Mongbwalu but he had approximately ten wounded soldiers in his brigade; and SEYI's Bde which had arrived from Pluto also had some wounded soldiers.¹⁵⁵⁰ SALUMU also informed Mr NTAGANDA where his and SEYI's forces were deployed and he talked about people of god being in the Catholic Church.¹⁵⁵¹ Mr NTAGANDA asked SALUMU whether he had assigned any troops to provide security for them, which SALUMU confirmed.¹⁵⁵²
528. SALUMU went on to say that some enemy remained in Sayo facing SEYI's forces at the factory.¹⁵⁵³ SALUMU also said that from the *Appartements*, Mr NTAGANDA would be able to see Sayo.¹⁵⁵⁴ [REDACTED].¹⁵⁵⁵
529. The following day, [REDACTED], [REDACTED] six messages in the Ntaganda-Logbooks, two outgoing messages¹⁵⁵⁶ and four incoming messages.¹⁵⁵⁷

¹⁵⁴⁴ [DRC-REG-0001-0068](#), (1) Mongbwalu airport.

¹⁵⁴⁵ **D-0300**:T-217,35:24-36:6.

¹⁵⁴⁶ **D-0300**:T-217,36:16-23.

¹⁵⁴⁷ **D-0300**:T-216 79:17-19 (Annex E); [DRC-REG-0001-0068](#), (2) Camp GOLI.

¹⁵⁴⁸ **D-0017**:T-253-FRA 39:13-17(D-0017:T-253-ENG 39:17-19)(Annex E); *See also* **D-0300**:T-217 23:5-9; [DRC-REG-0001-0066](#).

¹⁵⁴⁹ **D-0300**:T-216,7:8-9; *See also* **D-0300**:T-216,6:20-7:7.

¹⁵⁵⁰ **D-0300**:T-217,37:13-24.

¹⁵⁵¹ **D-0300**:T-217,37:13-24; T-217,38:2-3; [DRC-REG-0001-0068](#), (6) Church in Sayo.

¹⁵⁵² **D-0300**:T-217,37:18-19.

¹⁵⁵³ **D-0300**:T-217,38 :2-3.

¹⁵⁵⁴ **D-0300**:T-217,37:22-24.

¹⁵⁵⁵ [REDACTED].

530. The first three messages received by Mr NTAGANDA at 07h15 were not related to the situation in Mongbwalu.¹⁵⁵⁸ At 10h07 and 10h10, Mr NTAGANDA transmitted two messages, the first to JEROME Comd-NE-OpSec and the second to all stations requesting all units to ensure that the enemy would not close in on them.¹⁵⁵⁹
531. In the morning, Mr NTAGANDA visited the wounded soldiers and asked SALUMU to make troops available to launch an operation to take care of the situation in Sayo.¹⁵⁶⁰ Along with SALONGO, MUREFU and KASANGAKI, Mr NTAGANDA deployed to the *Appartements*.¹⁵⁶¹ Mr NTAGANDA found a suitable location from where he could fire the 12.7mm operated by MUREFU, the B-10 operated by GEGE and NDURU and the 60mm mortar manned by one of the bodyguards.¹⁵⁶² Mr NTAGANDA was in contact with SEYI at the *Usine*.¹⁵⁶³ SEYI had a grenade launcher which belonged to SALUMU's Bde.
532. Mr NTAGANDA personally commanded this operation.¹⁵⁶⁴ Notably, there were no civilians remaining in Sayo; only the enemy could be observed.¹⁵⁶⁵ Having assessed the strength of the enemy and identified where they were, Mr NTAGANDA first ordered the firing of a 60 mm mortar, which fell short of the target.¹⁵⁶⁶ Mr NTAGANDA then ordered the B-10 to be fired at the enemy he observed in Sayo.¹⁵⁶⁷ The enemy's reaction was instantaneous; they immediately started to flee.¹⁵⁶⁸
533. KASANGAKI who was with Mr NTAGANDA requested and was authorised to move up to Sayo to secure the town. Along with some of Mr NTAGANDA's bodyguards KASANGAKI went up to SEYI's position at the *Usine* where he teamed up with additional forces and two commanders, THEOPHILE and KAZUNGU.¹⁵⁶⁹ Remaining

¹⁵⁵⁶ [DRC-OTP-0017-0033](#),p.0212 (second,third); Transl.[DRC-OTP-2102-3854](#),p.4034.

¹⁵⁵⁷ [DRC-D18-0001-5748](#),p.5762(first,second,third)(Transl.[DRC-D18-0001-5778](#),p.5792); [DRC-D18-0001-5748](#),p.5764(first)(Transl.[DRC-D18-0001-5778](#),p.5794).

¹⁵⁵⁸ [DRC-D18-0001-5748](#),p.5760 (first) (Transl. [DRC-D18-0001-5778](#),p.5792).

¹⁵⁵⁹ [DRC-OTP-0017-0033](#),p.0212 (second and third) (Transl. [DRC-OTP-2102-3854](#),p.4034).

¹⁵⁶⁰ **D-0300**:T-217,39:3-11.

¹⁵⁶¹ **D-0300**:T-217,39:3-11; [DRC-REG-0001-0068](#), (3)*Appartements*.

¹⁵⁶² **D-0300**:T-217,48:12-20.

¹⁵⁶³ **D-0300**:T-223,43:14;T-217,51:18-52:2; [DRC-REG-0001-0068](#), (4)*Usine*.

¹⁵⁶⁴ **D-0300**:T-235,58:6-7.

¹⁵⁶⁵ **D-0300**:T-217,56:1-2; **P-0800**:T-68,31:10.

¹⁵⁶⁶ **D-0300**:T-217,49:18-23.

¹⁵⁶⁷ **D-0300**:T-217,51:7-24.

¹⁵⁶⁸ **D-0300**:T-217,49:20-51:9.

¹⁵⁶⁹ **D-0300**:T-217,54:14-55:3.

in radio contact with Mr NTAGANDA, KASANGAKI's forces continued on their way to Sayo.¹⁵⁷⁰ At some point, KASANGAKI having reached Sayo, a grenade was fired from SEYT's position prompting KASANGAKI to request and Mr NTAGANDA to order that no more grenades be fired, to avoid fratricide.¹⁵⁷¹

534. Sometime later, KASANGAKI whose group had ensured that no enemy were present in Sayo and secured the town, contacted Mr NTAGANGA to inform him that this was the case.¹⁵⁷² Mr NTAGANDA as the senior commander present went up to Sayo along with SALONGO who was recording the scene on Mr NTAGANDA's video camera, D-0017 who was with Mr NTAGANDA at the *Appartements* on that day did not go up to Sayo.¹⁵⁷³ In Sayo, Mr NTAGANDA met up with SEYI who also went up to Sayo when the town was secured and also met with SALUMU at some point.¹⁵⁷⁴ Mr NTAGANDA did observe however the impact where the B-10 round fell close to the square.
535. Close to the church, Mr NTAGANDA saw one dead enemy body.¹⁵⁷⁵ Mr NTAGANDA congratulated the troops who were already setting up their defence perimeter close to the church and their commanders, for a job well done.¹⁵⁷⁶ Mr NTAGANDA testified that the church was neither affected nor hit during the fighting, you could come in and see everything that was in the church, the doors were open, there was no one in the church.¹⁵⁷⁷ At one point, one of Mr NTAGANDA's bodyguards showed up having captured an enemy.¹⁵⁷⁸ Mr NTAGANDA ordered the release of the prisoner telling him to convey the message to the enemy not to come back to Sayo.¹⁵⁷⁹ On this, Mr NTAGANDA returned to the *Appartements*, leaving the forces there to organise.¹⁵⁸⁰

¹⁵⁷⁰ D-0300:T-217,48:5-20.

¹⁵⁷¹ D-0300:T-217,49:20-51:9.

¹⁵⁷² D-0300:T-217,54:14-55:3.

¹⁵⁷³ D-0300:T-217,51:18-53:18

¹⁵⁷⁴ D-0300:T-217,54:2-13;T-217,54:14-55:3; [DRC-REG-0001-0068](#),(5)Sayo.

¹⁵⁷⁵ D-0300:T-217,50:22-51:2.

¹⁵⁷⁶ D-0300:T-235,217,54:8-12.

¹⁵⁷⁷ D-0300:T-217 55:18-56:2.

¹⁵⁷⁸ D-0300:T-217,54:8-11.

¹⁵⁷⁹ D-0300:T-235,84:17-85:1.

¹⁵⁸⁰ D-0300:T-235,217,54:15-17.

536. [REDACTED], [REDACTED].¹⁵⁸¹ Mr NTAGANDA testified “[REDACTED]”.¹⁵⁸² He ordered [REDACTED].¹⁵⁸³ Mr NTAGANDA told [REDACTED].¹⁵⁸⁴ Mr NTAGANDA also took [REDACTED], [REDACTED].¹⁵⁸⁵
537. Mr NTAGANDA set up the FPLC operational *État-major* at the *Appartements*. In the evening, Mr NTAGANDA was contacted on his motorola by SALUMU who informed him that ABELANGA was harassing and searching civilians in Mongbwalu.¹⁵⁸⁶ Mr NTAGANDA immediately ordered that ABELANGA, despite his senior position as Bn Commander, be arrested and placed in detention forthwith. Mr NTAGANDA also contacted ABELANGA by Motorola to inform him personally of the measures he had just ordered.¹⁵⁸⁷ [REDACTED], [REDACTED].
538. The last message [REDACTED], received at 13h45 on that day, informed Mr NTAGANDA that the President had arrived in Aru for the funerals of the Governor who died in an ambush in Mahagi.¹⁵⁸⁸ Mr NTAGANDA confirmed when this message was received, he was involved in the Sayo operation.¹⁵⁸⁹
539. On 25 November, [REDACTED] four messages in the short-Ntaganda-Logbook.¹⁵⁹⁰ The second one being a message transmitted by Mr NTAGANDA to JEROME, Comd-NE-OpSec at 09h15.¹⁵⁹¹ In this message, Mr NTAGANDA informed JEROME that he was in Mongbwalu and told him that he wanted his forces based in Mahagi to attack the enemy in Ndrele.¹⁵⁹² Mr NTAGANDA also requested JEROME to inform KISEMBO, if he was still there, that Mongbwalu had now been liberated.

¹⁵⁸¹ D-0300: [REDACTED].

¹⁵⁸² D-0300: [REDACTED].

¹⁵⁸³ D-0300: [REDACTED]

¹⁵⁸⁴ D-0300: [REDACTED]

¹⁵⁸⁵ D-0300: [REDACTED].

¹⁵⁸⁶ D-0300:T-217,57:24-58:2.

¹⁵⁸⁷ D-0300: T-217,58:3-5.

¹⁵⁸⁸ [DRC-D18-0001-5748](#),p.5764 (first) (Transl.[DRC-D18-0001-5778](#),p.5794).

¹⁵⁸⁹ D-0300:T-217,40:24-41:10.

¹⁵⁹⁰ [DRC-D18-0001-5748](#),p.5766(first,second)(Transl.[DRC-D18-0001-5778](#),p.5796); [DRC-D18-0001-5748](#),p.5768 (first,second) (Transl.[DRC-D18-0001-5778](#),p.5798).

¹⁵⁹¹ [DRC-D18-0001-5748](#),p.5766 (second) (Transl.[DRC-D18-0001-5778](#),p.5796).

¹⁵⁹² [DRC-D18-0001-5748](#),p.5762 first)(Transl.[DRC-D18-0001-5778](#),p.5792).

540. Mr NTAGANDA then called KISEMBO on his Thuraya asking him to send an airplane to come and fetch the wounded.¹⁵⁹³ During this conversation, KISEMBO informed Mr NTAGANDA that he would arrive in Mongbwalu the next day.¹⁵⁹⁴
541. [REDACTED]. Mr NTAGANDA was present at the airport along with SALONGO, SALUMU, SEYI and KASANGAKI when the airplane landed.¹⁵⁹⁵ [REDACTED].¹⁵⁹⁶ The airplane took off shortly thereafter. [REDACTED]a Thuraya intended for SALUMU¹⁵⁹⁷ [REDACTED] Mr NTAGANDA gave it to SALONGO.¹⁵⁹⁸
542. On 25 November, Mr NTAGANDA also convened a meeting for all officers involved in the operation, which took place after the plane departed with the wounded.¹⁵⁹⁹ This meeting took place at SALUMU's *État-major* in camp Goli. [REDACTED]. [REDACTED],¹⁶⁰⁰ [REDACTED]. [REDACTED].¹⁶⁰¹
543. Following the officers' meeting, as Mr NTAGANDA was returning to the Appartements, he heard a motorola radio communication between SALUMU and KASANGAKI.¹⁶⁰² KASANGAKI informed SALUMU that he had arrested a priest in the bush along with three nuns and brought them back to the Appartements.¹⁶⁰³ Mr NTAGANDA did not like what he heard and was mad at SALUMU.¹⁶⁰⁴ He immediately intervened on the radio network, informing KASANGAKI that he was on his way to the *Appartements* and to wait for him there. Once at the *Appartements*, KASANGAKI informed Mr NTAGANDA that he wanted to interrogate the priest due to information he received that the latter had collaborated with the combatants and the APC to mistreat the population.¹⁶⁰⁵ On this basis, Mr NTAGANDA authorised KASANGAKI to interrogate the priest. Mr NTAGANDA had no reason to believe that

¹⁵⁹³ D-0300:T-217,39:23-15-18.

¹⁵⁹⁴ D-0300:T-237,40:10-18.

¹⁵⁹⁵ [REDACTED].

¹⁵⁹⁶ [REDACTED]; [REDACTED].

¹⁵⁹⁷ [REDACTED].

¹⁵⁹⁸ [REDACTED]

¹⁵⁹⁹ D-0300:T-217,68:18-70:23.

¹⁶⁰⁰ [REDACTED].

¹⁶⁰¹ [REDACTED].

¹⁶⁰² D-0300:T-217,70:17-71:4.

¹⁶⁰³ D-0300:T-217,70:24-73:18; T-237,2:22-3:24.

¹⁶⁰⁴ D-0300:T-217,70:24-71:4.

¹⁶⁰⁵ D-0300:T-237,3:20-24.

KASANGAKI would hurt the priest.¹⁶⁰⁶ KASANGAKI informed Mr NTAGANDA that the three nuns had insisted on accompanying the priest to the *Appartements* but that they were not detained.¹⁶⁰⁷ Mr NTAGANDA spoke to the three nuns. He reassured them and told them they would be taken home once the priest's interrogation was over.¹⁶⁰⁸ Mr NTAGANDA also spoke with the priest. Neither the priest, nor Mr NTAGANDA identified themselves during this encounter.¹⁶⁰⁹ Mr NTAGANDA did not request information regarding the ethnic group to which the priest belonged.¹⁶¹⁰ Mr NTAGANDA never asked this kind of information.¹⁶¹¹ Mr NTAGANDA returned to the place he was living further up at the *Appartements*.¹⁶¹²

544. The next day, 26 November, [REDACTED] three messages in the Ntaganda-Logbooks: two incoming messages not related to the situation in Mongbwalu¹⁶¹³ and one message transmitted by Mr NTAGANDA at 07h35 to JEROME, Comd-NE-OpSec.¹⁶¹⁴

545. On that day, KISEMBO arrived in Mongbwalu by plane along with a group of people, [REDACTED]: [REDACTED], [REDACTED]; [REDACTED], [REDACTED]; [REDACTED].¹⁶¹⁵ Mr NTAGANDA was present at the airport to welcome the *Chef-d'État-major-général*, [REDACTED], [REDACTED].¹⁶¹⁶ Mr NTAGANDA explained [REDACTED].¹⁶¹⁷

546. Mr NTAGANDA was interviewed by the journalist who arrived with the delegation.¹⁶¹⁸ Mr NTAGANDA provided information intended both for the public at large as well as to send a message to the enemy. Mr NTAGANDA explained that including information which would cause the enemy to have concerns was not common practice.¹⁶¹⁹

¹⁶⁰⁶ D-0300:T-217,73:8-13; [DRC-OTP-0017-0033](#),p.0087 (third) (Transl.[DRC-OTP-2102-3854](#),p.3909).

¹⁶⁰⁷ D-0300:T-217,72:13-21;T-237,5:6-17.

¹⁶⁰⁸ D-0300:T-217,72:18-21.

¹⁶⁰⁹ D-0300:T-237,5:18-7:7.

¹⁶¹⁰ D-0300:T-237,6:4-8.

¹⁶¹¹ D-0300:T-237,7:5-7.

¹⁶¹² D-0300:T-217,73:14-18.

¹⁶¹³ [DRC-D18-0001-5748](#),p.5769(first)(Transl.[DRC-D18-0001-5778](#),p.5799); [DRC-D18-0001-5748](#),p.5770 (first) (Transl.[DRC-D18-0001-5778](#),p.5780).

¹⁶¹⁴ [DRC-OTP-0017-0033](#),p.0211(third)(Transl.[DRC-OTP-2102-3854](#),p.4033).

¹⁶¹⁵ [REDACTED].

¹⁶¹⁶ [REDACTED].

¹⁶¹⁷ [REDACTED].

¹⁶¹⁸ D-0300:T-217,78:11-15.

¹⁶¹⁹ D-0300:T-235,85:2-87:4; D-0300:T-241,55:15-56:12.

547. Only one vehicle was available at the airport, [REDACTED] .¹⁶²⁰ [REDACTED], [REDACTED], [REDACTED], [REDACTED].¹⁶²¹
548. KISEMBO's delegation first stop was at the destroyed *Usine*.¹⁶²² No inference can be drawn from KISEMBO's delegation visit to the *Usine*. Moreover, no inference can be drawn from the commentary of the journalist concerning the possibility that the *usine* could resume its activities if the FPLC was successful in bringing back peace in Mongbwalu.
549. KISEMBO's delegation then made its way to the *Appartements*.¹⁶²³ [REDACTED]. [REDACTED].
550. At the *Appartements*, Mr NTAGANDA met with KISEMBO to brief him on the conduct of the Mongbwalu operation.¹⁶²⁴ Mr NTAGANDA briefed KISEMBO on, *inter alia*: the manner in which the operation was conducted; [REDACTED]; the presence at the Appartements of the priest and the three nuns; KASANGAKI's request to interrogate the priest.¹⁶²⁵ KISEMBO also informed Mr NTAGANDA of his actions as *Chef-d'État-major-général* since Mr NTAGANDA was entrusted with the command of the Mongbwalu operation, including *inter alia* the appointment of Alex MUNYALIZI as Bde Commander on the road going towards Beni.¹⁶²⁶
551. Mr NTAGANDA's briefing to KISEMBO in Mongbwalu marked the end of the period during which Mr NTAGANDA exercised 'effective command and control' over the Aru and Mandro Bde, which took part in the FPLC operations in Mongbwalu.
552. On the same day, KISEMBO is seen on the Mongbwalu video, being briefed by his officers, including *inter alia*: KASANGAKI, SALUMU and Mr NTAGANDA.¹⁶²⁷ [REDACTED]. Having a clear view on the terrain and Sayo, KISEMBO is briefed on the manner in which the operation was conducted and how the Lendu combatants were

¹⁶²⁰ [REDACTED]; [REDACTED].

¹⁶²¹ [DRC-OTP-2058-0251](#), 12:59-13:08.

¹⁶²² [DRC-OTP-2058-0251](#), 16:36-43:07 (Transl. [DRC-OTP-2102-3766](#), ll.269-581).

¹⁶²³ [DRC-OTP-2058-0251](#), 45:52-46:16 (Transl. [DRC-OTP-2102-3766](#), ll.664-672).

¹⁶²⁴ **D-0300**:T-217,80:17-82:8.

¹⁶²⁵ [REDACTED].

¹⁶²⁶ **D-0300**:T-217,87:12-22.

¹⁶²⁷ [DRC-OTP-2058-0251](#), 46:16-48:19 (Transl. [DRC-OTP-2102-3766](#), ll.672-698).

fleeing.¹⁶²⁸ Only one car is seen at the *Appartements* at this moment, which further confirms that no other vehicles were available at the *Appartements* at the time.¹⁶²⁹ Notably, no mention is made of Nzebi or of any operations conducted by the FPLC in Nzebi. That night, [REDACTED], KISEMBO and his officers watched Mr NTAGANDA's video.¹⁶³⁰ Although Mr NTAGANDA's video was neither found, nor admitted into evidence, it remains significant considering the scenes recorded and the observations provided by witnesses on the same.¹⁶³¹

553. On the next day, 27 November, [REDACTED] five messages in the Ntaganda-Logbooks, including three incoming messages not related to the presence of the FPLC in Mongbwalu¹⁶³² and two messages transmitted by Mr NTAGANDA.¹⁶³³ Significantly, the two messages transmitted by Mr NTAGANDA are actually one and the same message. This message was first written personally by Mr NTAGANDA in the short-Ntaganda-Logbook¹⁶³⁴ [REDACTED].¹⁶³⁵ The simultaneous presence of these two messages was not explained, [REDACTED].
554. On the same day, KISEMBO and Mr NTAGANDA toured Mongbwalu together. What can be seen on the Mongbwalu video regarding this visit is highly significant as it demonstrates KISEMBO, Mr NTAGANDA and the FPLC's intent for all Mongbwalu inhabitants to return.¹⁶³⁶ It also depicts measures taken and intended to restore peace in Mongbwalu.¹⁶³⁷ It further demonstrates that KISEMBO, Mr NTAGANDA and the FPLC did not act with a discriminatory intent against non-Hema civilians.
555. The Mongbwalu video also illustrates that the situation in Mongbwalu is calm;¹⁶³⁸ that inhabitants are returning;¹⁶³⁹ there are no vehicles moving around in the streets; that no property was destroyed;¹⁶⁴⁰ and that houses with iron sheet roofs are still intact.¹⁶⁴¹

¹⁶²⁸ **D-0300**:T-235,77:16-79:1.

¹⁶²⁹ [DRC-OTP-2058-0251](#),45:52-49:53.

¹⁶³⁰ [REDACTED].

¹⁶³¹ **P-0017**:T-58,70:12-17; **D-0017**:T-252,9:9-11; **P-0002**:T-172,3:15-4:19; **D-0300**:T-222,74:7-76:20.

¹⁶³² [DRC-D18-0001-5748](#),p.5772(first,second,third)(Transl.[DRC-D18-0001-5778](#),p.5802).

¹⁶³³ [DRC-D18-0001-5748](#),p.5773(first)(Transl.[DRC-D18-0001-5778](#),p.5803); [DRC-OTP-0017-0033](#),p.0211(second); Transl.[DRC-OTP-2102-3854](#),p.4033.

¹⁶³⁴ [DRC-D18-0001-5748](#),p.5773 (first)(Transl.[DRC-D18-0001-5778](#),p.5803).

¹⁶³⁵ [DRC-OTP-0017-0033](#),p.0211(second)(Transl.[DRC-OTP-2102-3854](#),p.4033).

¹⁶³⁶ [DRC-OTP-2058-0251](#),01:35:58-01:37:22.

¹⁶³⁷ [DRC-OTP-2058-0251](#),01:34:49-01:37:46;01:43:18-01:46:58;01:47:08-01:57:14.

¹⁶³⁸ [DRC-OTP-2058-0251](#),01:35:58-01:37:22.

556. KISEMBO and Mr NTAGANDA are also seen on the video visiting two religious congregations; KISEMBO reassuring the nuns while Mr NTAGANDA is taking measures to ensure the security of the perimeter on the outside.¹⁶⁴²
557. On the next day, Mr NTAGANDA departed from Mongbwalu by plane [REDACTED]: [REDACTED], [REDACTED]; [REDACTED], [REDACTED]; [REDACTED], [REDACTED].¹⁶⁴³ [REDACTED], [REDACTED].¹⁶⁴⁴
558. On that day, 28 November, [REDACTED] three messages in the short-Ntaganda-Logbooks before leaving Mongbwalu.¹⁶⁴⁵ The absence of messages between 11h45 on 28 November 2002¹⁶⁴⁶ and 30 November 2002¹⁶⁴⁷ coupled with the outgoing message in the Ntaganda-Logbook transmitted on 29 November at 08h55¹⁶⁴⁸ corroborates Mr NTAGANDA's testimony that he departed for Mongbwalu on 28 November mid-day and that he was operational again at his residence in Bunia on 29 November 2002 at 08h55.¹⁶⁴⁹
559. During the period from 29 November 2002 at 08h55 until 10 December at 10h45, the multiple messages [REDACTED] in the Ntaganda-Logbooks demonstrate that Mr NTAGANDA was neither in Mongbwalu nor in Kilo during this period.¹⁶⁵⁰ In fact, it can be concluded on the basis of these messages that Mr NTAGANDA was indeed in Bunia during this period.

CHAPTER VI – NEITHER MR NTAGANDA NOR THE FPLC COMMITTED THE CRIMES CHARGED IN RELATION TO THE FIRST ATTACK

¹⁶³⁹ [DRC-OTP-2058-0251](#),01:35:58-01:37:22.

¹⁶⁴⁰ [DRC-OTP-2058-0251](#),01:35:58-01:37:22.

¹⁶⁴¹ [DRC-OTP-2058-0251](#),01:35:58-01:37:22.

¹⁶⁴² [DRC-OTP-2058-0251](#),00:50:58-01:25:49.

¹⁶⁴³ [REDACTED].

¹⁶⁴⁴ [REDACTED]; [REDACTED]; [REDACTED].

¹⁶⁴⁵ [DRC-D18-0001-5748](#),p.5774(first,second,third)(Transl. [DRC-D18-0001-5778](#),p.5804).

¹⁶⁴⁶ [DRC-D18-0001-5748](#),p.5774(third)(Transl. [DRC-D18-0001-5778](#),p.5804).

¹⁶⁴⁷ [DRC-D18-0001-5748](#),p.5776(third)(Transl. [DRC-D18-0001-5778](#),p.5806).

¹⁶⁴⁸ [DRC-OTP-0017-0033](#),p.0211(first)(Transl. [DRC-OTP-2102-3854](#),p.4033).

¹⁶⁴⁹ **D-0300**:T-218,4:19-5:1.

¹⁶⁵⁰ Short-NTAGANDA-Logbook from [DRC-D18-0001-5748](#),p.5774(third)(Transl. [DRC-D18-0001-5778](#),p.5804) to [DRC-D18-0001-5748](#),p.5776(fourth)(Transl. [DRC-D18-0001-5778](#),p.5806); NTAGANDA-Logbook from [DRC-OTP-0017-0033](#),p.0211(first)(Transl. [DRC-OTP-2102-3854](#),p.4033) to [DRC-OTP-0017-0033](#),p.0208(fourth)(Transl. [DRC-OTP-2102-3854](#),p.4030).

560. This Chapter addresses the evidence adduced in relation to the crimes charged for the *First Attack*.

561. Notably, Mr NTAGANDA is not charged for direct co-perpetration for any of these crimes and the Prosecution's submissions in this regard should be disregarded.

562. Moreover, the Prosecution's submission at para. 1032 regarding the purported "repetition of the same pattern of crimes in the years following the events charged in this case" to prove Mr NTAGANDA's intent in relation to the *First Attack* and the *Second Attack*, is misplaced, misguided and should be disregarded altogether.

Section I – Contextual elements

563. Contrary to the PTC's finding, the events leading to the charges laid in this case took place in the context of an international armed conflict. Nonetheless, the Defence makes no specific submissions on the character of the conflict at this time.

564. The Defence also makes no submission at this time regarding the PTC's finding on the contextual elements for war crime pursuant to Art.8.

565. The Defence submits that the contextual elements for crimes against humanity pursuant to Art.7 have not been proved.

566. Neither the UPC-RP nor the FPLC as organizations, either individually or collectively, adopted a policy to attack civilians.¹⁶⁵¹ Moreover, the UPC-RP and the FPLC, individually or collectively, did not launch a widespread or systematic attack directed against the non-Hema civilian population of Ituri. Accordingly, Mr NTAGANDA does not incur any individual criminal responsibility for the crimes against humanity charged in Counts 1, 4, 10 and 12.

567. Lastly, the Defence submits that the UPC-RP and FPLC did not have a common plan to oust non-Hema civilians in order to take political and military control of Ituri.

¹⁶⁵¹ See Part III, Chap.I, Section I/II

Section II – No Hema civilian supporters were integrated in or under the command of the FPLC

568. There were no ‘Hema civilian supporters or combatants’ within FPLC ranks. From the moment APC mutineers loyal to LUBANGA and others, having trained in TCHAKWANZI in 2001 or not, began to assemble in Mandro with the aim of protecting the population of Ituri against the RCD-KML and LOMPONDO’s evil intentions, the aim was to create one organization.¹⁶⁵² Mr NTAGANDA, as KISEMBO’s 2I/C, oversaw the training at the Mandro camp, which was commanded by Mugisa MULEKE.¹⁶⁵³ Meanwhile, Chef KAHWA and others spread the message and invited young people, Hema for the majority but also from various other ethnic groups, to join the training.¹⁶⁵⁴
569. KISEMBO and Mr NTAGANDA knew on the basis of their experience that it was necessary to organize all those able and willing to contribute to the defence of the civilian population.¹⁶⁵⁵
570. The result was the FPLC officially created in September 2002.¹⁶⁵⁶ Even before this date, members of the FPLC were organized in a military structure with a defined chain of command, modelled on organizations its senior leaders previously belonged to, despite the absence of formal political guidance, the very limited experience of its members and a critical shortage of resources.¹⁶⁵⁷ Every possible measure was taken thereafter to turn the FPLC into a law-abiding and disciplined military force whose primary *raison d’être* was the protection of all civilians without discrimination.¹⁶⁵⁸
571. Notably, the FPLC obtained uniforms to ensure that FPLC members could be identified and distinguished from the civilian population.¹⁶⁵⁹

¹⁶⁵² D-0300:T-241,31:14-33:16.

¹⁶⁵³ D-0300:T-213,59:6-24; D-0017:T-252,55:23-24.

¹⁶⁵⁴ D-0038:T-250,51:18-52:21; D-0300:T-213,61:4-7.

¹⁶⁵⁵ D-0057:T-246,13:6-10; D-0300:T-213,30:8-22;T-232,41:12-14.

¹⁶⁵⁶ D-0300:T-231,60:18-20.

¹⁶⁵⁷ [DRC-D18-0001-5521](#); D-0017; D-0300:T-214,58:3-5.

¹⁶⁵⁸ See Part III, Chap.I.

¹⁶⁵⁹ P-0055:T-71,99:2; D-0207:T-261,29:2; P-0017:T-62,41:16; D-0300:T-234,48:2-6.

572. Although Mr NTAGANDA could not confirm that all members of former *Comités de paix* were integrated in the FPLC, he affirmed with conviction that everywhere the FPLC was present, those able and willing to contribute to the defence of the civilian population were integrated.¹⁶⁶⁰ In this regard, the FPLC must be distinguished from Lendu combatants who did not have a clear organizational structure, who did not wear uniforms and who expected women, children and the elderly to participate in combat.¹⁶⁶¹
573. The paucity of evidence adduced by the Prosecution regarding so-called ‘Hema civilian supporters’,¹⁶⁶² illustrates that no Hema civilians were integrated into the FPLC, let alone under the command of the FPLC at the times relevant to the UDCC.
574. P-0055’s bias and unreliable evidence must be assessed on the basis of his admission that he personally saw so-called ‘Hema civilian combatants’ once.¹⁶⁶³ P-0907, an unreliable witness who testified being present during this event, made no reference to the presence of Hema civilian supporters.¹⁶⁶⁴ Mr NTAGANDA also contradicted P-0055.¹⁶⁶⁵
575. P-0017’s evidence that ‘Hema civilian combatants’ suddenly arrived in Sayo pillaging houses after the liberation of the town,¹⁶⁶⁶ must be assessed in light of his unreliable testimony concerning the situation in Sayo he clearly fabricated.¹⁶⁶⁷ As for P-0017’s inconsistent and confusing evidence regarding the presence of armed civilians in Mongbwalu before the Sayo operation,¹⁶⁶⁸ it cannot be attributed any probative value.
576. P-0768’s evidence that Mr NTAGANDA armed Hema civilians who committed crimes in Mongbwalu must be entirely disregarded.¹⁶⁶⁹

¹⁶⁶⁰ D-0300:T-213,59:6-16.

¹⁶⁶¹ P-0907:T-91,29:12-30:1; P-0901:T-29,16:12-14; P-0016:[DRC-OTP-0126-0422-R03](#),para.140; D-0017:T-254,23:4-19.

¹⁶⁶² PCB,paras.112,204-205,207-210,237,242-245,339,384-386,390,393,404,417,433,435-436.

¹⁶⁶³ P-0055:T-71,47:24.

¹⁶⁶⁴ P-0907:T-89,T-90,T-91,T-92.

¹⁶⁶⁵ D-0300:T-234,48:2-6.

¹⁶⁶⁶ P-0017:T-58,77:22-78:4.

¹⁶⁶⁷ See Part IV,Chap.III,Section I.

¹⁶⁶⁸ P-0017:T-58,79:17-18.

¹⁶⁶⁹ See Part IV,Chap.III,Section I.

577. As for the observations made by P-0963,¹⁶⁷⁰ P-0315,¹⁶⁷¹ P-0317¹⁶⁷² and P-0002¹⁶⁷³ regarding the presence and conduct of Hema civilians, it carries little weight and does not establish any type of formal relationship, whether *de jure* or *de facto* between the FPLC and Hema civilians, let alone that Hema civilians were under the command of FPLC.
578. Mr NTAGANDA testified regarding the assistance he sought and obtained from the Mabanga *chef de localité* who provided him with civilian volunteers to carry ammunitions between Dala and Mongbwalu.¹⁶⁷⁴ The civilians who assisted Mr NTAGANDA were eager to do so and were not armed. This is the extent of the relationship between the FPLC and Hema civilians who voluntarily provided assistance.
579. Measures purportedly taken by KISEMBO to put an end to looting being committed by civilians in Mongbwalu illustrate the over-arching aim of the FPLC operations in Mongbwalu, *i.e.* to liberate the oppressed population living in deplorable conditions and ensure the return of peace and security.¹⁶⁷⁵ In so doing, KISEMBO went beyond the call of duty and his formal legal obligations.

Section III - Count 3 : Attacks directed against the civilian population

580. Pursuant to the UDCC,¹⁶⁷⁶ Mr NTAGANDA is charged in relation to the *First Attack* for: “Count 3: Attacks against a civilian population [...] in or around Mongbwalu and Sayo”.¹⁶⁷⁷ Mr NTAGANDA is solely charged pursuant to Count 3 for Mongbwalu and Sayo.¹⁶⁷⁸
581. Significantly, the Prosecution relies almost exclusively on the testimony of five insider witnesses – P-0017, P-0055, P-0768, P-0901 and P-0963¹⁶⁷⁹ – whose unreliable,

¹⁶⁷⁰ P-0963:T-85,86:10-12.

¹⁶⁷¹ [DRC-OTP-0074-0797](#),p.0829; P-0315:[DRC-OTP-2058-0990](#),p.0994,para.23.

¹⁶⁷² P-0317:T-193,41:9-13,41:16-18.

¹⁶⁷³ P-0002:T-170,64:24-65:2.

¹⁶⁷⁴ D-0300:T-217,32:19-33:2.

¹⁶⁷⁵ P-0898:T-154,14:5-10.

¹⁶⁷⁶ UDCC,paras.63-64,67-68,71,73.

¹⁶⁷⁷ UDCC,p.61.

¹⁶⁷⁸ UDCC,p.61.

¹⁶⁷⁹ See Part IV, Chapt.III, Section I.

different and incriminating evidence cannot be relied upon in any way concerning the FPLC operations in Mongbwalu.

A. Applicable law

582. Regarding the second and third essential elements of ‘attacking civilians’ as a war crime, which concerns the object of the attack and the intent of the perpetrator,¹⁶⁸⁰ it must be established that “the primary object of the attack was the civilian population or individual civilians [not taking direct part in hostilities]. Thus, situations in which an attack is directed against a military objective and civilians are *incidentally* affected, fall outwith article 8(2)(e)(i).”¹⁶⁸¹
583. As for the term ‘civilian population’ or civilians not taking an active part in hostilities, it refers to ‘civilians as a group’. Accordingly, factors such as the number and the conduct of combatants and/or civilians *taking* part in hostilities is highly relevant.¹⁶⁸² In this regard, indiscriminate attacks or the use of weaponry that has indiscriminate effects, *may* qualify as attacks against civilians depending on the consequences thereof.¹⁶⁸³
584. Moreover, as held by the PTC II, in order to be held criminally responsible for the war crime of attacking civilians: “the perpetrator must direct one or more acts of violence (an “attack”) against civilians not taking direct part in the hostilities, before the civilians have fallen into the hands of the attacking party [...]”¹⁶⁸⁴ This requires that the perpetrator resorted to this conduct as a method of warfare and that there exists a sufficiently close link to the conduct of hostilities.¹⁶⁸⁵
585. Hence, evidence related to acts committed after the liberation of Mongbwalu on 23 November 2002 and/or the liberation of Sayo on 24 November 2002 is not relevant to proving the crime of attacking civilians.

¹⁶⁸⁰ Elements of crimes, Art. 8(2)(e)(i).

¹⁶⁸¹ [Katanga TJ](#), para. 802.

¹⁶⁸² [Katanga TJ](#), para. 801.

¹⁶⁸³ [Katanga TJ](#), para. 802.

¹⁶⁸⁴ Confirmation Decision, para. 45 (underline added).

¹⁶⁸⁵ Confirmation Decision, para. 46.

B. Objective of the FPLC operations in Mongbwalu

586. The UPC-RP operational objectives when calling upon the FPLC to mount an operation in Mongbwalu were: (i) to liberate Mongbwalu and put an end to the oppression of its population;¹⁶⁸⁶ (ii) to defeat the APC and Lendu combatants in Mongbwalu;¹⁶⁸⁷ and (iii) secure a strategic geographical location.¹⁶⁸⁸ The aim of the FPLC operation was not related to gold mining activities in Mongbwalu.¹⁶⁸⁹ No reliable evidence illustrates any other objective, let alone that the non-Hema civilian population was the primary object of the attack.

587. Very few witnesses who were in a position to know the FPLC's objectives testified. Nonetheless, P-0190, despite all the incriminating evidence he fabricated, stated that "[t]here was no plan to deal with the civilians, only to attack the armed forces on site."¹⁶⁹⁰ P-0017 who was involved in the second FPLC attempt to liberate Mongbwalu, testified that the objective of the operation in Mongbwalu was to "dislodge the APC and the combatants who were there"¹⁶⁹¹ as "Mongbwalu and Sayo were controlled by the FNI".¹⁶⁹² P-0894, a civilian who provided unreliable evidence,¹⁶⁹³ said: "[t]he APC of MBUSA NYAMWISI was in command of Mongbwalu at this time".¹⁶⁹⁴ P-0300, also a civilian, testified that "the Lendu combatants were attacked in Mongbwalu".¹⁶⁹⁵ Many witnesses confirmed the presence of Lendu combatants in Mongbwalu as well as the intolerable living conditions imposed on the population living in Mongbwalu.¹⁶⁹⁶ Mr NTAGANDA testified that the FPLC "went in Mongbwalu to help the population who were suffering".¹⁶⁹⁷ Mr NTAGANDA also explained that the APC controlled the Mongbwalu airport making it possible to receive weapons, ammunitions or other support; and that from Mongbwalu, the APC was attacking JEROME's forces.¹⁶⁹⁸ As

¹⁶⁸⁶ **D-0300**:T-216,46:14-47:5;T-242,24:13-18; [DRC-OTP-2058-0251](#),00:09:18-00:09:39 (transl.[DRC-OTP-2102-3766](#),ll.155-157).

¹⁶⁸⁷ **D-0300**:T-223,9:1-25.

¹⁶⁸⁸ **D-0300**:T-234,57:24-58:25.

¹⁶⁸⁹ See Part IV, Chap.I,Section IV.

¹⁶⁹⁰ **P-0190**:T-97,7:10.

¹⁶⁹¹ **P-0017**:T-61,49:11-12.

¹⁶⁹² **P-0800**:T-68,16:25-17:3.

¹⁶⁹³ See Part IV,Chapt.I,Section IV.

¹⁶⁹⁴ **P-0894**:[DRC-OTP-2076-0194](#),p.0198,para.19.

¹⁶⁹⁵ **P-0300**:T-166,30:23-31:1.

¹⁶⁹⁶ **P-0800**:T-69,24:5-9,25:3-12; **P-0850**:T-112,66:25-67:2,68:12-69:2,72:19-73:1; **P-0907**:T-91,28:1-32:6,33:3-12; **P-0887**:T-94,40:23-41:17,46:7-49:18.

¹⁶⁹⁷ **D-0300**:T-216,46:14-47:5; T-242,24:13-18.

¹⁶⁹⁸ **D-0300**:T-241,55:2-7.

such, the APC constituted a threat as it could launch an attack on Bunia.¹⁶⁹⁹ Although P-0963 was not present in Mongbwalu, he nonetheless stated: “that was our objective, to regain the airport”.¹⁷⁰⁰ As for P-0768, a witness who should be investigated for lying under oath, he affirmed that “the object of the attack was to get Mongbwalu back, because the UPC considered Mongbwalu as a strategic place for them”.¹⁷⁰¹

C. Conduct of the FPLC operations

588. The FPLC conducted two operations in Mongbwalu. The first attempt was conducted by FPLC troops coming from Mandro, under the command of SALUMU. Mr NTAGANDA was neither physically present nor in command of this first attempt,¹⁷⁰² which rapidly failed due to: (i) the strength of the resistance encountered; (ii) lack of coordination; and (iii) shortage of ammunition.¹⁷⁰³ Had Mr NTAGANDA been present or involved, lack of coordination and/or absence of ammunition would certainly not have been an issue.
589. Following the failure of SALUMU’s first attempt, Mr NTAGANDA was given the mission to liberate Mongbwalu directly by LUBANGA and KISEMBO.¹⁷⁰⁴ The second attempt was conducted under the overall command of Mr NTAGANDA 10 days to two weeks later.¹⁷⁰⁵
590. The FPLC second attempt involved two brigades, the first coming from Mandro commanded by SALUMU and the second coming from Aru commanded by SEYI.¹⁷⁰⁶ Mr NTAGANDA was in contact with his commanders *via phonie* when SALUMU and/or SEYI were in a static location allowing them to turn their *phonie* online.¹⁷⁰⁷ On 19 November, Mr NTAGANDA issued the order for both brigades to launch the operation.¹⁷⁰⁸ The two brigades reached Mongbwalu on 21 November while Mr

¹⁶⁹⁹ D-0300:T-214,22:17-23:4.

¹⁷⁰⁰ P-0963:T-78,73:13.

¹⁷⁰¹ P-0768:T-33,36:7-11.

¹⁷⁰² D-0300:T-234,61:6-17.

¹⁷⁰³ D-0300:T-216,44:2-9.

¹⁷⁰⁴ D-0300:T-216,44:10-12;T-226,33:14-34:2.

¹⁷⁰⁵ P-0898:T-154,9:18-19; P-0800:T-68,21:3; P-0887:T-93,14:19-21; P-0850:T-112,73:13-14; P-0859:T-51,18:19-22.

¹⁷⁰⁶ D-0300:T-234,45:11-46:4.

¹⁷⁰⁷ D-0300:T-216,84:13-16.

¹⁷⁰⁸ D-0300:T-234,71:22-72:7.

NTAGANDA was travelling from Bunia to Mongbwalu.¹⁷⁰⁹ Mr NTAGANDA arrived in Mongbwalu in the evening of 22 November when the fighting had stopped and the enemy, comprising elements from APC and Lendus combatants, had retreated to Sayo.¹⁷¹⁰ The next day, Mr NTAGANDA personally commanded the operation in Sayo which was liberated some time in the afternoon.¹⁷¹¹

I. Orders and instructions given

591. Before leaving for Mongbwalu, FPLC troops in Mandro were assembled for a parade during which Chef KAHWA delivered a powerful speech on behalf of LUBANGA regarding the ideology of UPC-RP, the *raisons d'être* of FPLC and the conduct that was expected of FPLC members.¹⁷¹² The aim to protect all civilians without discrimination and the prohibition on the commission of crimes such as looting, rape and desertion were forcefully underscored.
592. When Mr NTAGANDA travelled to Aru before both attempts to liberate Mongbwalu, his primary mission was to communicate the FPLC ideology to JEROME and his forces.¹⁷¹³ This trip followed the exchange of troops between FPLC in Bunia and JEROME's forces, the objective of which was to ensure that the Aru forces would, dressed in the new FPLC uniform, abide with the FPLC ideology.¹⁷¹⁴ Thus, when the Aru troops departed from Mongbwalu sometime later,¹⁷¹⁵ they were well aware of the conduct that was expected of them.
593. [REDACTED]'s evidence of a speech delivered by Mr NTAGANDA in Mabanga¹⁷¹⁶ is false. Mr NTAGANDA did not address SALUMU's brigade in Mabanga. [REDACTED] fabricated this event for which he is the unique source. P-0017 who testified being in Mabanga on his way to Lalu,¹⁷¹⁷ confirmed that Mr NTAGANDA was neither in Mabanga nor in Lalu.¹⁷¹⁸ P-0017 also testified that when SALUMU

¹⁷⁰⁹ D-0300:T-216,82:6-12.

¹⁷¹⁰ D-0300:T-217,36:16-37:24.

¹⁷¹¹ D-0300:T-235,58:3-11.

¹⁷¹² [DRC-OTP-0082-0016](#).

¹⁷¹³ D-0300:T-216,28:21-29:9.

¹⁷¹⁴ D-0300:T-215,71:9-73:24.

¹⁷¹⁵ D-0300:T-216,48:24-25; D-0017:T-253,20:16-24:25.

¹⁷¹⁶ PCB,para.304.

¹⁷¹⁷ P-0017:T-58,50:16-19.

¹⁷¹⁸ P-0017:T-58,50:22-51:11,57:8-12,62:9-10.

purportedly addressed the brigade in Lalu,¹⁷¹⁹ he did not say that civilians were the object of the attack.¹⁷²⁰

594. Evidence provided by witnesses concerning orders and instructions issued by Mr NTAGANDA on various occasions clearly demonstrates what Mr NTAGANDA expected from FPLC members involved in operations. In particular, this evidence illustrates Mr NTAGANDA's leitmotiv based on his military ethos to protect the civilian population without discrimination and to attack only the enemy,¹⁷²¹ *i.e.* the person firing.¹⁷²² No reliable evidence illustrates any other type of instructions issued to FPLC members by Mr NTAGANDA.

II. Modus operandi

595. The objectives of the FPLC operations in Mongbwalu and Sayo as well as the orders and instructions issued to FPLC members involved, demonstrate that the primary aim of these operations was certainly not to attack the non-Hema civilian population. Evidence related to the conduct of the operations, including firing orders issued firmly support this conclusion.

596. Only one FPLC member testified about the first FPLC attempt to liberate Mongbwalu, P-0907, who fabricated his narrative on these events.¹⁷²³ As for witnesses who would have been present in Mongbwalu when SALUMU launched the initial operation, they confirmed that the civilian population left upon hearing the first gunshots before the fighting reached Mongbwalu.¹⁷²⁴

597. Regarding the second attempt, four insider witnesses provided evidence regarding the manner in which the fighting unfolded in Mongbwalu, namely P-0017, P-0768, P-0907 and P-0963. The evidence provided by these witnesses must be disregarded entirely on this issue.¹⁷²⁵ As for P-0017, he confirmed that "[w]hen we engaged in fighting I did

¹⁷¹⁹ P-0017:T-58,54:1-11.

¹⁷²⁰ P-0017:T-58,55:15-19;T-61,32:9-13;T-63,61:7-22.

¹⁷²¹ [DRC-OTP-2058-0251](#),01:56:03-01:56:17(transl.[DRC-OTP-2102-3766](#),ll.2025-2030).

¹⁷²² D-0017:T-252,62:9-16;60:23-61:2.

¹⁷²³ See Part IV, Chapt.III, Section I,(D).

¹⁷²⁴ P-0850:T-112,71:21-72:2,59:24-60:4; P-0894:[DRC-OTP-2076-0194](#),para.35;T-104,59:7; P-0887:T-93,12:13-21; P-0892:T-83,24 :5-15; P-0912:T-148,35:18-36:3; P-0888:T-107,12:19-13:19; [DRC-OTP-2075-0613](#),para.79; P-0800:T-68,18:7-19;T-69,31:19-21.

¹⁷²⁵ See Part IV, Chapt.III, Section III,(A),(C),(D).

not in fact see any civilians at that time”¹⁷²⁶ adding that “[o]nly military targets were there. The town was deserted.”¹⁷²⁷

598. As for other witnesses who provided evidence on the FPLC’s second attempt, they explained the reaction of the civilian population upon hearing the first gunshots, leaving before the fighting reached Mongbwalu.¹⁷²⁸ Thus, no civilians were in Mongbwalu when the fighting began: “[d]uring that attack when there was firing, only the soldiers were there. Civilians had fled”.¹⁷²⁹
599. At a minimum, women, children and elderly left,¹⁷³⁰ thereby casting a doubt on the status of anyone present in Mongbwalu when the fighting began. In this regard, it is also significant that “[a]mong the Lendu combatants there were also women combatants”¹⁷³¹ and “Lendu combattants did not have any military clothing”¹⁷³² as the vast majority of Lendus were in civilian clothes.¹⁷³³
600. By the time Mr NTAGANDA arrived in Mongbwalu, in the evening of the second day, there was no more fighting in Mongbwalu.¹⁷³⁴ The enemy, comprising Lendu combatants and elements of the APC, had retreated in Sayo facing SEYI’s forces positioned at the *usine*.¹⁷³⁵ The enemy’s presence in Sayo prevented SEYI’s forces from advancing, thereby allowing any civilians remaining in Sayo to leave *via* Nzebi.
601. In Mongbwalu, briefed on the situation by SALUMU, Mr NTAGANDA organised the following day’s operation in Sayo.¹⁷³⁶ P-0768 was not present at that time.¹⁷³⁷
602. Mr NTAGANDA explained in detail how the operation in Sayo was conducted the next day,¹⁷³⁸ including how the enemy retreated when the B-10 was fired and how Sayo was

¹⁷²⁶ P-0017:T-61,51:8-13.

¹⁷²⁷ P-0017:T-61,54:3-5; P-0017:T-63,16:17-22.

¹⁷²⁸ P-0859:T-51,20:17-21,23:20-23; P-0887:T-93,14:22-15:1; P-0892:T-83,27:19-25; P-0800:T-69,32:16-21; P-0850:T-112,73:18-24 ; P-0850:T-112,73:20-74:3.

¹⁷²⁹ P-0894:T-104,37:1-2.

¹⁷³⁰ P-0805:T-26,16:22-23.

¹⁷³¹ P-0800:T-69,48:11-19.

¹⁷³² P-0800:T-68,17:18-23.

¹⁷³³ P-0105:T-135,10:22-25; P-0863: T-180,19:8-12; P-0113:T-119,54:2; P-0815 :T-76,15:14-17.

¹⁷³⁴ D-0300:T-217,46:13-22.

¹⁷³⁵ D-0300:T-217,48:5-11.

¹⁷³⁶ D-0300:T-217,37:12-24,T-235,58:3-11.

¹⁷³⁷ PCB,para.304.

¹⁷³⁸ D-0300:T-217,51:15-52:7.

secured by forces led by KASANGAKI, and others.¹⁷³⁹ Mr NTAGANDA also provided evidence on the situation in Sayo based on his personal observations.¹⁷⁴⁰ Mr NTAGANDA confirmed that no heavy weapons were taken to Sayo during the advance.¹⁷⁴¹

603. Witnesses, who testified being present in Sayo at some point before it was liberated by the FPLC, confirmed that by the time FPLC troops entered Sayo, the civilian population had left the town.¹⁷⁴²

D. Consequences of the FPLC operations

604. Over and above the manner in which a military operation is conducted, the consequences thereof are a potential indicator as to whether it constituted an ‘attack on civilians’. In this case, as revealed *inter alia* by the alleged murders addressed in the section related to Counts 1 and 2 – for which there exists a sufficiently close link to the conduct of hostilities¹⁷⁴³ – it cannot be concluded that civilians were the primary object of the FPLC operations in Mongbwalu.

605. Indeed, whether in relation to Mongbwalu or Sayo, the evidence related to the number of persons who allegedly died as a result of the FPLC operations is inconclusive. Notably, the number of dead bodies observed is unknown and in any case very low. Neither the status of the persons who died nor the manner in which they were killed is known. Evidently, the evidence in this case is entirely different from the facts on the basis of which the *Katanga* Chamber was able to determine that an attack was directed on the predominantly Hema population of Bogoro.¹⁷⁴⁴

E. Mr Ntaganda bears no individual criminal responsibility pursuant to Count 3

606. The Prosecution failed to prove that Mr NTAGANDA or the FPLC directed attacks against the civilian population of Mongbwalu or Sayo during the *First Attack*.¹⁷⁴⁵

¹⁷³⁹ D-0300:T-217,54:14-18.

¹⁷⁴⁰ D-0300:T-217,48:5-11.

¹⁷⁴¹ D-0300:T-217,53:14-18.

¹⁷⁴² P-0800:T-68,31:7-13; P-0886:T-36,70:17-71:7.

¹⁷⁴³ Confirmation Decision,para.46.

¹⁷⁴⁴ [Katanga TJ](#),para.879.

¹⁷⁴⁵ Confirmation Decision,para.139; UDCC,p.61; PCB,paras.795-798.

607. The Prosecution has also failed to prove that Mr NTAGANDA possessed the required Art.30 *mens rea*. As demonstrated, Mr NTAGANDA did not intend “to direct attacks against the civilian population as such or against individual civilians not taking part in hostilities”.¹⁷⁴⁶ Mr NTAGANDA did not issue instructions regarding acts of murder,¹⁷⁴⁷ rape¹⁷⁴⁸ or displacement of civilians.¹⁷⁴⁹ Quite to the contrary, Mr NTAGANDA always insisted on engaging the enemy, which did not include civilians.¹⁷⁵⁰ Mr NTAGANDA also stressed the importance of protecting all civilians without discrimination¹⁷⁵¹ in accordance with FPLC ideology.¹⁷⁵²
608. Mr NTAGANDA developed the FPLC ideology, which was an integral part of UPC-RP’s ideology.¹⁷⁵³
609. P-0017’s evidence regarding Mr NTAGANDA’s purported order to fire at fleeing civilians from Sayo¹⁷⁵⁴ and his fabricated evidence concerning fleeing civilians hiding in the Sayo church¹⁷⁵⁵ – for which he is the sole witness – must be disregarded.
610. Moreover, Mr NTAGANDA did not arm Hema civilians¹⁷⁵⁶ and it cannot be inferred on this basis that Mr NTAGANDA possessed the required *mens rea* for Count 3.
611. Consequently, Mr NTAGANDA does not incur individual criminal responsibility under Count 3 pursuant to any Art.25 mode of liability.

Section IV – Counts 1 and 2

612. Pursuant to the UDCC, during the *First Attack* the UPC/FPLC would have killed “at least 28 non-Hema civilians” in various locations.¹⁷⁵⁷

¹⁷⁴⁶ Confirmation Decision, para. 128.

¹⁷⁴⁷ **D-0300**:T-233,52:5-15.

¹⁷⁴⁸ **D-0300**: T-233,52:5-15.

¹⁷⁴⁹ **D-0300**:T-237,60:4-9.

¹⁷⁵⁰ [DRC-OTP-2058-0251](#),23:15-24:51 (Transl.[DRC-OTP-2102-3766](#),ll.363-373); **D-0300**:T-216,31:12-23;T-213,7:23-25(“You identify the enemy that they are going to attack and you ask them not to steal from the civilian population, not to rape civilians, not to steal property from civilians”); [DRC-OTP-0082-0016](#),15:38-15:56 (Transl.[DRC-OTP-0164-0710](#),ll.233-237); **D-0017**:T-252,59:14-16; **D-0251**:T-260,32:9-10.

¹⁷⁵¹ **D-0300**:T-229,63:18-21.

¹⁷⁵² See Part IV, Chap.I, Section II(B).

¹⁷⁵³ [DRC-OTP-2101-2791](#),pp.2800-2803,ll.266-276.

¹⁷⁵⁴ PCB,fn.2493,paras.795-796.

¹⁷⁵⁵ PCB,paras.797-798.

¹⁷⁵⁶ Confirmation Decision,para. 147; PCB,para.797.

¹⁷⁵⁷ UDCC,para.63.

613. For such killings to constitute murder, the Prosecution must prove, leaving aside the contextual elements of crimes against humanity and war crimes, that the perpetrator intended to unlawfully kill the victim and in respect of murder as a war crime that the persons killed were either “*hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities”. In addition, the Prosecution must prove that Mr NTAGANDA harboured the Art.30 required mental element.¹⁷⁵⁸
614. The Prosecution failed to prove the crime of murder during the *First Attack*.
615. In particular, the Prosecution’s submission,¹⁷⁵⁹ on the basis of the Ituri Covered in Blood report, that P-0315 “documented at least 200 cases of civilians killed as a result of the assault on Banyali-Kilo”¹⁷⁶⁰ must be disregarded. Considering in particular the anonymous sources and the dragged-out hearsay character of the information provided in this report, its reliability is at best extremely low.¹⁷⁶¹ What is more, in respect of the the *First Attack*, the Ituri Covered in Blood Report addresses a time period much longer than that covered by the *First Attack*;¹⁷⁶² deals with alleged killings by many entities including RCD-KML, Lendu militia, UPC, APC, MLC, Ugandans soldiers, Rwandans soldiers, RCD-N, Hema militia;¹⁷⁶³ and does not allow to establish the status of the persons at the time of death.
616. Lastly, witness evidence establishing that upon hearing gunfire, before the fighting reached a particular location, the civilian population left, is a highly relevant consideration regarding alleged killings. At a minimum women, children and elderly left, thereby casting a doubt on the status of anyone remaining behind.¹⁷⁶⁴

A. Pluto

617. The Prosecution contends that in the course of the *First Attack* civilians were killed in PLUTO by members of the UPC.¹⁷⁶⁵

¹⁷⁵⁸ Confirmation Decision, para. 121.

¹⁷⁵⁹ PCB, paras. 336-363.

¹⁷⁶⁰ PCB, para. 331 (underline added).

¹⁷⁶¹ See Part IV, Chapt. III, Section III, (A).

¹⁷⁶² [DRC-OTP-0074-0797](#), p. 0827-0831.

¹⁷⁶³ [DRC-OTP-0074-0797](#), p. 0827-0830.

¹⁷⁶⁴ See Part IV, Chap VI, Section III.

¹⁷⁶⁵ PCB, para. 333.

618. First, pursuant to the UDCC, Mr NTAGANDA is not charged with any specific murder committed in PLUTO.¹⁷⁶⁶
619. Second, as for the Ituri Covered in Blood report,¹⁷⁶⁷ no probative value can attach to the Curse of Gold report¹⁷⁶⁸ which provides the same type of unreliable information.¹⁷⁶⁹
620. Significantly, the reference to the Curse of Gold report is preceded by the following information: “[t]he Hema of the UPC. Ugandans and the ‘Effacer le Tableau’ (MLC) came at 11:00 on Friday. They all worked together and attacked Pluto just outside of Mongbwalu”,¹⁷⁷⁰ which indicates that it refers to an entirely different context and/or is inaccurate.
621. Third, the Prosecution relies on the evidence provided by P-0887 which is neither reliable nor credible¹⁷⁷¹ as well as not on point. The evidence provided by P-0300, P-0886 and P-0894 is also not on point.¹⁷⁷² As for V-2’s testimony addressed earlier,¹⁷⁷³ it must also be disregarded as V-2 was neither a truthful nor a credible witness.

B. Mongbwalu

622. In respect of Mongbwalu, the alleged murders Mr NTAGANDA is charged with pursuant to the UDCC can be divided in four categories: murders committed during the fighting until the “taking over [of] Mongbwalu and Sayo”,¹⁷⁷⁴ prisoners killed at the *Appartements* “[a]fter taking over Mongbwalu and Sayo”,¹⁷⁷⁵ the murder of BWANALONGA¹⁷⁷⁶ and murders “[a]fter taking over Mongbwalu and Sayo”.¹⁷⁷⁷

I. Fighting until the “taking over [of] Mongbwalu and Sayo”

623. First, witnesses who testified regarding the FPLC first attempt to liberate Mongbwalu, made it clear that they left Mongbwalu upon hearing gunshots, before FPLC entered the

¹⁷⁶⁶ UDCC, paras. 63, 66, 157 and counts 1 and 2/p. 60.

¹⁷⁶⁷ PCB, para. 333, fn. 912.

¹⁷⁶⁸ PCB, para. 334.

¹⁷⁶⁹ See Part IV, Chap. III, Section III.

¹⁷⁷⁰ [DRC-OTP-0074-0797](#), p. 0828 (para. 4) (underline added).

¹⁷⁷¹ See Part IV, Chapt. III, Section II, (A).

¹⁷⁷² PCB, fn. 913.

¹⁷⁷³ See Part IV, Chapt. III, Section II, (B).

¹⁷⁷⁴ UDCC, para. 70.

¹⁷⁷⁵ UDCC, para. 70.

¹⁷⁷⁶ UDCC, para. 71.

¹⁷⁷⁷ UDCC, para. 70.

town.¹⁷⁷⁸ P-0895, not referred to by the Prosecution, stated that when “[w]e heard bullets being fired [...] [w]e took the children, we took stuff to eat and we fled.”¹⁷⁷⁹ As for the FPLC second attempt to liberate Mongbwalu, P-0017 confirmed that there were no civilians in Mongbwalu and that Mongbwalu had been evacuated when the FPLC entered the town.¹⁷⁸⁰

624. P-0017 affirmed, both in his [REDACTED] statement and in his [REDACTED] testimony, that “[i]n Mongbwalu where we opened fire, I even received orders to fire. There were only military targets”,¹⁷⁸¹ “[i]f the combatants -- if the Lendu combatants were up in trees, those were our targets”, “often our targets were the combatants firing”¹⁷⁸² thus defeating the Prosecution’s submission that no distinction was made between civilians and soldiers in Mongbwalu during the *First Attack*. Evidence provided by P-0010, P-0768, P-0907 and P-0963 must be disregarded on this issue. [REDACTED], [REDACTED] evidence regarding instructions issued in Mabanga that “the purpose was to drive out the Lendu or eliminate all of them”¹⁷⁸³ must be disregarded. Mr NTAGANDA did not address the brigade coming from Mandro in Mabanga and no such instructions were given in the presence of [REDACTED]. What is more, [REDACTED] evidence is incompatible with the powerful speech from KAHWA to the brigade coming from Mandro that the *raison d’être* of the FPLC was to protect the civilian population without discrimination.¹⁷⁸⁴

625. The Prosecution’s submission that UPC troops killed civilians as they advanced towards Mongbwalu,¹⁷⁸⁵ is not supported by the evidence. First, the evidence provided by P-0963 and V-2 cannot be relied upon as they were not present.¹⁷⁸⁶ The same conclusion applies to the evidence of P-0888 whose evidence¹⁷⁸⁷ is but a web of lies on various issues including in particular, his alleged abduction by the UPC, his age at the

¹⁷⁷⁸ P-0895:T-51,15:20-16:1; P-0912:T-148,35:18-36; P-0800:T-68:20:10-15; P-0887:T-93,12:13-21.

¹⁷⁷⁹ P-0895:T-51,15-20-16:1.

¹⁷⁸⁰ P-0017:T-61,51:7-11(“Yes, only soldiers.”)

¹⁷⁸¹ P-0017:T-63,16:17-22;T-61,54:4-5.

¹⁷⁸² P-0017:T-79.12:23-13:24.

¹⁷⁸³ [REDACTED].

¹⁷⁸⁴ [DRC-OTP-0164-0710](#),II.217-220.

¹⁷⁸⁵ PCB,para.336,fn.918.

¹⁷⁸⁶ See Part IV,Chapt.III,Section I,(C); See Part IV,Chapt.III,Section II,(B).

¹⁷⁸⁷ See Part VI,Chapt.I,Section II.

time, his participation in the SONGOLO operation and, more importantly, his participation in the FPLC operation in Mongbwalu.

626. As for P-0886, he was in Sayo at the time of the FPLC's first and *second attempt* to liberate Mongbwalu.¹⁷⁸⁸ By his own admission, P-0886 did not personally witness any murders in Mongbwalu.¹⁷⁸⁹ P-0886 heard about alleged murders from persons who themselves fled from Mongbwalu upon hearing gunfire.¹⁷⁹⁰
627. Against this backdrop, the evidence relied upon by the Prosecution concerning the presence of dead bodies in Mongbwalu¹⁷⁹¹ is not supported by reliable evidence. Setting aside the evidence provided by P-0963 as well as that provided by P-0768 who was also not present, the testimony of [REDACTED]¹⁷⁹² – allegedly [REDACTED]“[REDACTED]”,¹⁷⁹³ whose [REDACTED]¹⁷⁹⁴ and who witnessed from close eight brutal murders allegedly committed by Mr NTAGANDA¹⁷⁹⁵ but was able to escape¹⁷⁹⁶ – is far-fetched, implausible, untrue and unreliable. P-0892's testimony is also unreliable and any bodies she would have seen were killed after “taking over Mongbwalu and Sayo”.¹⁷⁹⁷
628. P-0887's testimony¹⁷⁹⁸ that she saw naked dead bodies cut in two pieces, which she could not identify on the road from Sayo to Mongbwalu when returning home¹⁷⁹⁹ following the FPLC's *first attempt* to liberate Mongbwalu¹⁸⁰⁰ is neither reliable nor of assistance in establishing murders committed by FPLC members. First, P-0887 testified that upon starting to hear shooting at around 6h00 or 7h30 in the morning, the entire population of Mongbwalu and the combatants fled to Sayo.¹⁸⁰¹ Second, the fighting during the FPLC's *first attempt* to liberate Mongbwalu lasted only a couple of hours,

¹⁷⁸⁸ P-0886:T-40,7:9-12;T-36,70:14-16.

¹⁷⁸⁹ P-0886:T-39,25:1-13.

¹⁷⁹⁰ P-0886:T-40,61:13-62:2.

¹⁷⁹¹ PCB,para.336,fn.922.

¹⁷⁹² [REDACTED]

¹⁷⁹³ [REDACTED]; [REDACTED].

¹⁷⁹⁴ [REDACTED]; [REDACTED].

¹⁷⁹⁵ [REDACTED].

¹⁷⁹⁶ [REDACTED]; [REDACTED].

¹⁷⁹⁷ UDCC,para.70.

¹⁷⁹⁸ See Part IV, Chapt.III, Section II(A).

¹⁷⁹⁹ PCB,fn922; P-0887:T-93,14:6-15.

¹⁸⁰⁰ P-0887:T-94,54:5-17.

¹⁸⁰¹ P-0887:T-94,53:11-25;T-93,13:11.

was over by noon and did not reach the centre of Mongbwalu.¹⁸⁰² Thus, if ever P-0887 saw bodies on her way back to Mongbwalu from Sayo, they were not related to these events. P-0887 left Mongbwalu before the beginning of the FPLC *second attempt* to liberate Mongbwalu.¹⁸⁰³

629. While the Prosecution claims that [REDACTED] civilians who would have been injured during the fighting,¹⁸⁰⁴ the civilian status of the three wounded he testified on is not clear. Indeed, considering that: (i) civilians left Mongbwalu before the fighting reached their location;¹⁸⁰⁵ (ii) Lendu combatants did not wear uniforms;¹⁸⁰⁶ (iii) at least one of the three persons [REDACTED] must have been a soldier;¹⁸⁰⁷ (iv) the nature of the injuries [REDACTED] is such that the three wounded [REDACTED] were not targeted;¹⁸⁰⁸ (v) and, more importantly, the source of the evidence provided by [REDACTED] is limited to that which he obtained from the wounded people [REDACTED], the evidence he provided is not probative that civilians were either present or targeted by members of the FPLC in Mongbwalu.

630. Although [REDACTED],¹⁸⁰⁹ [REDACTED]. Significantly, [REDACTED], [REDACTED].¹⁸¹⁰

631. The Prosecution's submission that "UPC troops advanced through Mongbwalu, they conducted house-by-house searches. Anyone attempting to flee was shot",¹⁸¹¹ is also not supported by reliable evidence. Indeed, P-0907 and P-0963 were not present. Moreover, not only was the evidence provided by P-0898 and P-0888 not truthful, it also establishes that they were not present. As for P-0017, even if he saw bodies, which is doubtful in light of the considerable evidence he fabricated,¹⁸¹² his evidence is limited to the fact that they were dressed in civilian clothing,¹⁸¹³ and therefore not probative.

¹⁸⁰² **P-0894**:[DRC-OTP-2076-0194](#), paras.23-24; **P-0850**:T-112,72:17-18.

¹⁸⁰³ **P-0887**:T-93,14:22-15:1.

¹⁸⁰⁴ [REDACTED].

¹⁸⁰⁵ [REDACTED].

¹⁸⁰⁶ [REDACTED].

¹⁸⁰⁷ [REDACTED].

¹⁸⁰⁸ [REDACTED].

¹⁸⁰⁹ [REDACTED]: [REDACTED]; [REDACTED].

¹⁸¹⁰ [REDACTED]: [REDACTED]; [REDACTED].

¹⁸¹¹ PCB, para.341.

¹⁸¹² See Part IV, Chapt.III, Section I, (B).

¹⁸¹³ **P-0017**:T-59,4:1.

II. *Prisoners killed at the Appartements “[a]fter taking over Mongbwalu and Sayo”*

632. The Prosecution contends that many Lendu civilians were held, interrogated and often executed at the *Appartements*.¹⁸¹⁴ The evidence relied upon is not reliable.¹⁸¹⁵ [REDACTED] testimony clearly demonstrates that he was not present at the *Appartements* after the liberation of Sayo and before leaving for Kilo, and even less so when Mr NTAGANDA was there. P-0963’s evidence, who was not present in or around Mongbwalu before or after the liberation of Sayo,¹⁸¹⁶ like that of P-0768,¹⁸¹⁷ is not worthy of belief and must be disregarded.
633. Although [REDACTED] was present at the *Appartements* at some point in December 2002, [REDACTED], his propensity to fabricate evidence – [REDACTED]– is such that it cannot be relied upon in any way regarding the holding and execution of prisoners at the *Appartements*.¹⁸¹⁸
634. The same conclusion applies to the testimony of [REDACTED] who attempted to partly corroborate [REDACTED] on this point.¹⁸¹⁹ In fact, [REDACTED] stated [REDACTED] “didn’t bother to go and see, to look in the trench to see if there were prisoners or not”¹⁸²⁰ and if they were civilians or combatant.¹⁸²¹
635. The evidence provided by P-0898, is also not worthy of belief as he was not present in Mongbwalu.¹⁸²²
636. It is noteworthy that Mr NTAGANDA testified no prisoners were held at the *Appartements*¹⁸²³ – other than BWANALONGA who was an exception – and that if enemy prisoners had been detained, it would have been at the brigade or battalion level.¹⁸²⁴ It was a normal procedure for brigades and battalions involved in operations to have dug-in detention facilities for their own soldiers to address potential

¹⁸¹⁴ PCB, paras. 343-345.

¹⁸¹⁵ See Part IV, Chapt. III, Section I, (B).

¹⁸¹⁶ See Part IV, Chapt. III, Section I, (C).

¹⁸¹⁷ See Part IV, Chapt. III, Section I, (A).

¹⁸¹⁸ [REDACTED].

¹⁸¹⁹ [REDACTED].

¹⁸²⁰ [REDACTED].

¹⁸²¹ [REDACTED].

¹⁸²² See Part VI, Chapt. I, Section III.

¹⁸²³ D-0300:T-235,84:20-85:1.

¹⁸²⁴ D-0300:T-213,84:24-85:5.

disciplinary problems related to their own soldiers.¹⁸²⁵ In addition, whenever a more serious incident happened, the alleged perpetrators were transferred back to Bunia, circumstances permitting of course.¹⁸²⁶ For example, when Mr NTAGANDA was informed of wrongdoings by ABELANGA, he personally escorted ABELANGA to Bunia where he was detained.¹⁸²⁷ When TIGER ONE captured a prisoner of war, he reported to Mr NTAGANDA who instructed him what to do.¹⁸²⁸ When members of the FPLC were suspected of rapes, Mr NTAGANDA instructed JEROME to send them to Bunia.¹⁸²⁹

III. Murder of BWANALONGA

637. Although evidence has been adduced that the body of BWANALONGA was exhumed at the *Appartements* in 2013,¹⁸³⁰ the Prosecution failed to prove that he was killed by the FPLC, let alone by Mr NTAGANDA.¹⁸³¹ As previously mentioned, [REDACTED]'s evidence on this event must be entirely disregarded.¹⁸³²
638. Mr NTAGANDA testified that BWANALONGA was taken to the *Appartements* along with the nuns by KASANGAKI who said he had found them in the bush.¹⁸³³ Even though Mr NTAGANDA was angry about BWANALONGA being taken to the *Appartements*,¹⁸³⁴ he nonetheless authorised KASANGAKI to interrogate him¹⁸³⁵ on the basis of information indicating that he was collaborating with the enemy. Mr NTAGANDA briefly met with BWANALONGA at the *Appartements* and also spoke to the three nuns reassuring them that they would be taken home following BWANALONGA's interrogation.¹⁸³⁶ Mr NTAGANDA had no reason to believe that KASANGAKI would harm BWANALONGA.¹⁸³⁷ The next day, Mr NTAGANDA briefed KISEMBO in Mongbwalu about the presence of BWANALONGA and the

¹⁸²⁵ D-0300:T-213,84:24-86:10

¹⁸²⁶ D-0300:T-218,42:16-43:13.

¹⁸²⁷ D-0300:T-218,5:4-10;T-217,81:13-14.

¹⁸²⁸ [DRC-OTP-0017-0033](#),p.0041(first)(Transl.[DRC-OTP-2102-3854](#),p.3863); [DRC-OTP-0017-0033](#),p.0209(first)(Transl.[DRC-OTP-2102-3854](#),p.4031).

¹⁸²⁹ [DRC-OTP-0017-0033](#),p.0210(third) (Transl. [DRC-OTP-2102-3854](#),p.4032).

¹⁸³⁰ PCB,para.348.

¹⁸³¹ PCB,paras.346-360.

¹⁸³² [REDACTED].

¹⁸³³ D-0300:T-237,5:15-19.

¹⁸³⁴ D-0300:T-217,72:9-11.

¹⁸³⁵ D-0300:T-237,3:23-24.

¹⁸³⁶ D-0300:T-217,72:18-21.

¹⁸³⁷ [DRC-OTP-0017-0033](#),p.0087 (third) (Transl. [DRC-OTP-2102-3854](#),p.3909).

nuns at the *Appartements* and having authorised KASANGAKI to interrogate BWANALONGA.¹⁸³⁸ Mr NTAGANDA left Mongbwalu two days later¹⁸³⁹ and did not see BWANALONGA or the nuns again before his departure.¹⁸⁴⁰

639. To this day, what happened to BWANALONGA remains unknown. P-0901, a bias witness, testified “[t]o this day I never learned the truth”.¹⁸⁴¹
640. Notably, despite evidence indicating that the body exhumed at the *Appartements* is that of BWANALONGA, there is no proof of identity, DNA or on the record. In fact, BWANALONGA appears to have been identified on the sole basis of a cross found close to the body.¹⁸⁴²
641. The Prosecution’s challenge regarding the place where BWANALONGA was arrested,¹⁸⁴³ is little more than speculation based on unreliable evidence. Indeed, as noted by the Prosecution,¹⁸⁴⁴ Mr NTAGANDA’s evidence is corroborated by KISEMBO addressing the *Servantes de Dieu* in a contemporaneous video.¹⁸⁴⁵ KISEMBO informed them that three nuns were “*sous la garde des militaires, puisqu’il y a des maisons là-bas à Kilo-Moto*” inviting them to contact the FPLC in case of problems.¹⁸⁴⁶ Although KISEMBO knew BWANALONGA was at the *Appartements*, he opted not to provide this information, which is linked to operations.
642. The Prosecution’s reliance on [REDACTED] that “we went there because some of the nuns were missing and the priest had been killed”¹⁸⁴⁷ carries no weight. There is no evidence that BWANALONGA was not alive when this visit took place and [REDACTED], [REDACTED] was certainly not informed of the purpose of KISEMBO’s visit to the nuns. While the name of one priest, Jean VIANNEY, is mentioned in the video,¹⁸⁴⁸ the name BWANALONGA is not, which suggests that [REDACTED] did not know this name at the time; a name which was not even known

¹⁸³⁸ D-0300:T-217,81:6-21.

¹⁸³⁹ D-0300:T-237,11:3-9.

¹⁸⁴⁰ D-0300:T-218,6:8-10.

¹⁸⁴¹ P-0901:T-28,57:17.

¹⁸⁴² P-0894:DRC-OTP-2076-0194-R02,para.49.

¹⁸⁴³ PCB,paras.346,350.

¹⁸⁴⁴ PCB,para.351.

¹⁸⁴⁵ DRC-OTP-2058-0251,00:59:48-01:00:51 (Transl. DRC-OTP-2102-3766,II.918-938).

¹⁸⁴⁶ DRC-OTP-2058-0251,01:00:53-01:01:12 (Transl. DRC-OTP-2102-3766,II.941-945).

¹⁸⁴⁷ [REDACTED]; [REDACTED].

¹⁸⁴⁸ DRC-OTP-2102-3766,II.1120-1121; [REDACTED].

to KISEMBO or Mr NTAGANDA. In fact, [REDACTED] mentioned the name 'BWANA LUNGWA' for the first time in his [REDACTED].¹⁸⁴⁹ What is more, [REDACTED] contradicted himself stating: "BWANA LUNGWA was the name of the priest who had been missing. He was found dead later. KISEMBO and RAFIKI went as a delegation to check and see if the sisters were safe."¹⁸⁵⁰

643. [REDACTED] also stated "I do not know if [BWANA LUNGWA] was captured by the APC, RCD/ML or FAC"; "There were many groups involved in the conflict in Mongbwalu so it is difficult to know which group killed the priest"¹⁸⁵¹ and "[t]he body of the priest was found down the road"¹⁸⁵² and [REDACTED] was "not sure if he was killed there or just found there"¹⁸⁵³ all of which raise further doubt as to the fate of BWANALONGA.

644. Although document DRC-OTP-0127-0118 suggests that BWANALONGA was arrested at the parish, no weight can be attributed to this unsigned document adduced through P-0041, a deceased witness who was not cross-examined¹⁸⁵⁴ who received it from an *Abbé* unknown in this case. As mentioned therein this document is but a non-exhaustive "*récit collecté à partir de certains témoignages recueillis par l'Abbé [REDACTED]*",¹⁸⁵⁵ which are themselves anonymous. Notably, this document establishes that as of 18 January 2003, the fate of BWANALONGA remained unknown. The bias tone of the document as well as the alleged source, "[REDACTED] *percé de couteau qui a pu parler avant sa mort*"¹⁸⁵⁶ and the information that before leaving the parish "*ils passeront aussi prendre les deux soeurs de la Charité Maternelle que l'Abbé voulait juste avertir*"¹⁸⁵⁷ also contribute to the unreliability of this document.

645. In his statement, P-0041 confirmed that he did not know about BWANALONGA's disappearance when he received this unreliable document, by mail in January 2003.¹⁸⁵⁸

¹⁸⁴⁹ [REDACTED].

¹⁸⁵⁰ [REDACTED].

¹⁸⁵¹ [REDACTED].

¹⁸⁵² [REDACTED].

¹⁸⁵³ [REDACTED].

¹⁸⁵⁴ P-0041:DRC-OTP-0147-0002;para.27.

¹⁸⁵⁵ DRC-OTP-0127-0118,p.0119(bottom).

¹⁸⁵⁶ DRC-OTP-0127-0118,p.0119,para.9.

¹⁸⁵⁷ DRC-OTP-0127-0118,p.0119,para.8.

¹⁸⁵⁸ P-0041:DRC-OTP-0147-0002;para.80.

P-0041 denounced the events related therein to MONUC,¹⁸⁵⁹ which were then referred to in various reports produced by MONUC, HRW and various NGOs.¹⁸⁶⁰

646. P-0859's evidence regarding the capture of BWANALONGA,¹⁸⁶¹ which refers to a four-by-four white Hilux belonging to the priest at a time when there was no such vehicle in Mongbwalu is unreliable.¹⁸⁶²
647. Lastly, the Prosecution's claim that Mr NTAGANDA implausibly denied learning about BWANALONGA's death until arriving at the ICC¹⁸⁶³ misunderstands Mr NTAGANDA's testimony and depends on unreliable evidence. More importantly, it does not cast doubt on the fact that he had no involvement in the death of BWANALONGA.
648. First, contrary to the Prosecution's submission, P-0901 did not learn about BWANALONGA's death from [REDACTED]. P-0901 rather testified learning about this event because "[t]he diocese of Bunia was in contact with the UPC as to the death of this priest. And after a few days, the priest's body was removed and buried by the parishioners, so everyone knew".¹⁸⁶⁴ Notably, the priest's body was not removed and buried by the parishioners in 2002. In fact, it is only in 2013 when the Catholic Church removed the corpse from the *Appartements* and buried it officially that everybody became aware of it.¹⁸⁶⁵
649. Second, Mr NTAGANDA testified that: (i) towards the end of 2003 he obtained information about a priest who was killed in Mongbwalu in November 2002;¹⁸⁶⁶ and (ii) he did consider the possibility of a link between this information and his own experience in Mongbwalu in November 2002 but did not have exact information about

¹⁸⁵⁹ **P-0041**:[DRC-OTP-0147-0002](#);para.80.

¹⁸⁶⁰ [DRC-OTP-0074-0797](#),p.0829; [DRC-OTP-0074-0628](#),p.0669-0670; [DRC-OTP-0074-0422](#),p.0457,para.124.

¹⁸⁶¹ PCB,fn.964,991.

¹⁸⁶² **P-0859**:T-51,35:15-3;[DRC-OTP-2058-0251](#),12:32:18.

¹⁸⁶³ PCB,para.349.

¹⁸⁶⁴ **P-0901**:T-28,56:22-25

¹⁸⁶⁵ **P-0901**:T-28,57:11-14.

¹⁸⁶⁶ **D-0300**:T-223,3:9-19.

that.¹⁸⁶⁷ However, Mr NTAGANDA did not follow up on this information due mainly to the severity of the situation at the time created by KISEMBO's departure.¹⁸⁶⁸

650. By the time Mr NTAGANDA was informally interviewed by P-0315 in 2010, he neither knew the name BWANALONGA nor had any specific information regarding his death.¹⁸⁶⁹ P-0315's bad character evidence¹⁸⁷⁰ related to this interview,¹⁸⁷¹ cannot be attributed any weight. Document DRC-OTP-2062-0363 is no more than a four-page summary of a three-hour interview conducted in French which Mr NTAGANDA – who spoke little French – did not have the opportunity to read.¹⁸⁷² By the time P-0315 conducted the interview, she had already concluded that Mr NTAGANDA was responsible for the death of BWANALONGA.¹⁸⁷³ P-0315 confirmed that Mr NTAGANDA volunteered for this interview, “was forthcoming with his time”¹⁸⁷⁴ and that the atmosphere was convivial.¹⁸⁷⁵ Mr NTAGANDA's recollection of the questions put to him and his answers differs from that of P-0315.¹⁸⁷⁶

651. As Mr NTAGANDA testified, he later obtained more details and was told that the priest for whom he had authorised an interrogation in November 2002 had died.¹⁸⁷⁷ Mr NTAGANDA only learned his name precisely when he saw the documents in The Hague.¹⁸⁷⁸

IV. Murders “[a]fter taking over Mongbwalu and Sayo”

652. In addition to the above three categories, the Prosecution makes submissions regarding the fate of persons who were killed or disappeared in Mongbwalu at other times “[a]fter taking over Mongbwalu and Sayo”.

653. First, pursuant to the UDCC, Mr NTAGANDA has not been charged with these specific murders. Second, the evidence relied upon by the Prosecution in support of

¹⁸⁶⁷ D-0300:T-223,T-223,3:20-25

¹⁸⁶⁸ D-0300:T-223,3:18-19;T-223,6:7-8.

¹⁸⁶⁹ D-0300:T-223,11:1-3;DRC-OTP-2062-0363,p.0363.

¹⁸⁷⁰ P-0315:T-108,62:20-63:2.

¹⁸⁷¹ [DRC-OTP-2058-0990](#); [DRC-OTP-2062-0363](#); P-0315:T-107,T-108.

¹⁸⁷² D-0300:T-239,22:24.

¹⁸⁷³ [DRC-OTP-2058-0990](#),paras.134-135.

¹⁸⁷⁴ P-0315:T-108,73:18-19.

¹⁸⁷⁵ P-0315:T-108,74:11-14.

¹⁸⁷⁶ D-0300:T-223,11:1-3; [DRC-OTP-2062-0363](#),p.0363

¹⁸⁷⁷ D-0300:T-223,6:14-17.

¹⁸⁷⁸ D-0300:T-223,6:23-24.

these alleged murders is neither credible nor reliable. This includes the evidence provided by P-0768, P-0877, P-0887, P-0892, P-0912 and P-0017.

654. More particularly, the Defence underscores that the evidence provided by P-0768 regarding the placing of personnel mines ordered of Mr NTAGANDA in and around Mongbwalu after the liberation of Sayo¹⁸⁷⁹ is pure fabrication on his part.¹⁸⁸⁰ As for P-0017, his evidence that he “heard soldiers of the UPC’s Bureau 2 (military intelligence) being ordered to execute Lendu prisoners at the ‘FOREN’”¹⁸⁸¹ falls in the same category as the narrative he concocted about prisoners killed at the *Appartements* when Mr NTAGANDA would have been present there. It cannot be relied upon in any way.

C. Sayo

655. Pursuant to the UDCC, Mr NTAGANDA is charged with the following murders when the UPC took Sayo: (i) “killed many civilians”,¹⁸⁸² and (ii) “[c]ivilians sought refuge in Sayo church and were killed”.¹⁸⁸³ Mr NTAGANDA is also charged with the following murders after taking over Sayo: (i) “killed one civilian as he returned to Sayo”;¹⁸⁸⁴ (ii) “killed workers of the Kilo-Moto company in Mongbwalu”,¹⁸⁸⁵ (iii) targeted civilians and injured Lendu fighters who were not taking part in hostilities [...] in a health clinic in Sayo.”¹⁸⁸⁶ Lastly, Mr NTAGANDA is charged with murder for firing with a heavy weapons unit on “those fleeing the attack, killing civilians”.¹⁸⁸⁷
656. Pursuant to the UDCC, Mr NTAGANDA is not charged with the following murders: (i) the [REDACTED] family killed after the UPC took over Sayo;¹⁸⁸⁸ (ii) a Lulu man, his father and his two young nephews killed some days after the UPC took over Sayo;¹⁸⁸⁹ and (iii) LUSALA killed some time later.¹⁸⁹⁰

¹⁸⁷⁹ PCB,para.342.

¹⁸⁸⁰ See Part IV, Chapt.III, Section I,(A).

¹⁸⁸¹ PCB,para.343.

¹⁸⁸² UDCC,para.69.

¹⁸⁸³ UDCC,para.69.

¹⁸⁸⁴ UDCC,para.71.

¹⁸⁸⁵ UDCC,para.71.

¹⁸⁸⁶ UDCC,para.71.

¹⁸⁸⁷ UDCC,para.68.

¹⁸⁸⁸ PCB,para.364

¹⁸⁸⁹ PCB,para.373.

¹⁸⁹⁰ PCB,para.37; [REDACTED].

657. Mr NTAGANDA testified “[s]ince I arrived here, I’ve always said to my counsel that I freed Sayo. I never denied being in Sayo, but when I was in Sayo nobody died, apart from the enemy that I spoke about who died and I filmed. But in my presence, no member of the civilian population was killed or thrown into a pit.”

V. During the combats in Sayo

658. Relying on the evidence of P-0017, P-0768, P-0898 and P-0963,¹⁸⁹¹ the Prosecution submits that “[m]any civilians from Sayo were killed as a result of the systematic shelling of the village undertaken by NTAGANDA, when he deployed his heavy weapons in Mongbwalu”.¹⁸⁹² No probative value can be attached to this evidence. Mr NTAGANDA explained how the heavy weapons were lawfully used resulting in the enemy fleeing Sayo.¹⁸⁹³

659. P-0768 did not visit Sayo on the day following Sayo’s liberation¹⁸⁹⁴ and his evidence regarding dead bodies of civilians must be disregarded.¹⁸⁹⁵

660. The Prosecution’s claim that “UPC troops continued to kill civilians as they advanced towards Sayo”¹⁸⁹⁶ must be disregarded. P-0886 confirmed that when UPC attacked Sayo he was already gone.¹⁸⁹⁷ The Prosecution’s claim that: “FPLC conducted house-by-house searches, seeking out Lendu. Anyone attempting to flee was killed” is also based on the unreliable evidence provided by P-0017 and P-0963.

661. The Prosecution further contends that “[i]n Sayo, NTAGANDA and his bodyguards found women, children, elderly people and priests hiding in a church” one of whom was shot by a bodyguard and all the other killed later with bladed weapons.¹⁸⁹⁸ P-0017 blatantly lied about this event and his evidence must be disregarded. As for the two reports relied upon by the Prosecution,¹⁸⁹⁹ the Special Report on Ituri relies on

¹⁸⁹¹ See Part IV, Chapt. III, Section I, (A), (B), (C) and See Part VI, Chapt. I, Section III.

¹⁸⁹² PCB, fn.1018-1019.

¹⁸⁹³ D-0300:T-217,49:20-51:9.

¹⁸⁹⁴ D-0300:T-217,57:15-22.

¹⁸⁹⁵ PCB, para.363.

¹⁸⁹⁶ PCB, para.364.

¹⁸⁹⁷ P-0886:T-36,70:17-23.

¹⁸⁹⁸ PCB, para.368.

¹⁸⁹⁹ PCB, fn.1044; See Part IV, Chapt. III, Section III.

information obtained by HRW¹⁹⁰⁰ from anonymous sources, which itself is based on ‘Justice Plus interviews’ for which no information whatsoever is available.

662. The same conclusion applies to the frivolous allegation regarding the killing of a woman and her baby who would have died when thrown against the wall of the dispensary in Sayo.¹⁹⁰¹ Notably, P-0017 even modified his version of this event from his statement to his testimony.¹⁹⁰² Although P-0800 testified that when fleeing Sayo he left behind a woman and a two year old child,¹⁹⁰³ he could not explain why he would leave behind a woman who could walk and her baby,¹⁹⁰⁴ at a time when according to him, the enemy was approaching [REDACTED].¹⁹⁰⁵ As for P-0886’s evidence regarding the burial of a woman and her child outside the Sayo health centre, many days after the liberation of Sayo, is wholly implausible.¹⁹⁰⁶ The evidence of P-0800, later finding out Charlotte’s body, because her arm was sticking out of the ground,¹⁹⁰⁷ is even more far-fetched.
663. Moving on to the allegation that in Sayo Mr NTAGANDA himself ordered P-0017 to fire [REDACTED] at fleeing civilians,¹⁹⁰⁸ it is not used in support of the charge of murder.¹⁹⁰⁹ The Prosecution thus concedes that no murder resulted from this event which, in and of itself, is revealing if in fact civilians had been fired at with [REDACTED] at a distance of approximately 200 meters.¹⁹¹⁰ P-0017, the sole witness on this event, fabricated his narrative.
664. Regarding: (i) the four bodies, allegedly members of the [REDACTED] family and a child of their neighbours; (ii) [REDACTED] bodies in [REDACTED]; and (iii) [REDACTED] bodies in the [REDACTED] used in support of the charge of murder, [REDACTED].

¹⁹⁰⁰ [DRC-OTP-0074-0422](#), para. 102.

¹⁹⁰¹ PCB, para. 370.

¹⁹⁰² P-0017:T-58,68:24-69:6,80:7-19;T-59,3:20-4:17;T-61,71:4-14,103:21-104:15.

¹⁹⁰³ PCB, para. 369.

¹⁹⁰⁴ P-0800:T-68,50:3-51:2; P-0886:T-39,23:14-15; P-0800:T-68,31:10-15,34:7-9;T-69,60:18-20.

¹⁹⁰⁵ P-0800:T-68,31:10-15,34:7-9,T-69,60:18-20.

¹⁹⁰⁶ P-0886:T-37,45:23-46:18,46:25,55:8-23;T-39,23:11-24:21.

¹⁹⁰⁷ P-0800:T-68,53:1-7.

¹⁹⁰⁸ PCB, para. 307.

¹⁹⁰⁹ PCB, paras. 363-374.

¹⁹¹⁰ P-0017:T-59,72:13-17.

665. First, whereas [REDACTED] initially testified having seen civilians killed in Sayo as the FPLC advanced,¹⁹¹¹ in cross-examination he admitted that when the FPLC entered Sayo he had already left.¹⁹¹² Moreover, the location where these bodies were found,¹⁹¹³ [REDACTED],¹⁹¹⁴ and more particularly the time at which [REDACTED], many days after the liberation of Sayo¹⁹¹⁵ and the securing of the town by the FPLC¹⁹¹⁶ render [REDACTED] wholly implausible. Notably, neither the [REDACTED] bodies in [REDACTED]¹⁹¹⁷ nor the [REDACTED] bodies in [REDACTED] were ever found or exhumed. As for the bodies of the [REDACTED] family, exhumations performed by the Prosecution in Sayo¹⁹¹⁸ based on information obtained by [REDACTED]¹⁹¹⁹ who himself was informed by [REDACTED]¹⁹²⁰ reveal a single DNA family match.¹⁹²¹ Considering that [REDACTED] knew the [REDACTED] family when he found them and buried them¹⁹²² this irreparably impairs its evidence.

666. Regarding the alleged killing of a Lulu man, his father and his two young nephews and LUSALA,¹⁹²³ the sole evidence relied upon by the Prosecution is [REDACTED] who was not a truthful witness and whose evidence cannot be relied upon.¹⁹²⁴ Notably, these events would have taken place some days after the UPC took over Sayo whereas the evidence reveals that Mr NTAGANDA did not return to Sayo after the town had been secured by the FPLC¹⁹²⁵ and left Mongbwalu three days later.¹⁹²⁶ Moreover, [REDACTED]'s evidence regarding the manner in which he was informed that

¹⁹¹¹ [REDACTED].

¹⁹¹² [REDACTED].

¹⁹¹³ [REDACTED].

¹⁹¹⁴ [REDACTED].

¹⁹¹⁵ [REDACTED].

¹⁹¹⁶ **D-0300**:T-217,54:14-18.

¹⁹¹⁷ PCB,para.371.

¹⁹¹⁸ PCB,paras.366,367.

¹⁹¹⁹ [REDACTED]. [REDACTED]: [REDACTED].

¹⁹²⁰ [REDACTED]; [REDACTED].

¹⁹²¹ The bodies exhumed proved not to have a similar DNA profile with LUSALA's family tree. **P-0945**:T-125,3:6-6:3,6:17-7:15. P-0945 stated that SAI1-F1-B3 "show a familiar match with the [REDACTED] family", "more likely" to be related to [REDACTED] **P-0945**:[DRC-OTP-2084-0002](#),p.0010,para.1. It could have been [REDACTED] **P-0945**:T-124,77:24-78:4,10:21-11:2

¹⁹²² [REDACTED].

¹⁹²³ In opposition, **P-0877** mentioned having seen commander AMERICAN kill ROBOT, a disabled Lendu civilian, for singing anti-Hema song: [DRC-OTP-2069-2086-R03](#),para.31; PCB,para.378; [REDACTED]: [REDACTED]; [REDACTED]; [REDACTED].

¹⁹²⁴ [REDACTED].

¹⁹²⁵ See Logbook messages dated 25,26,27,28,29,30 November 2002.

¹⁹²⁶ **D-0300**:T-241,68:2-25.

LUSALA had been killed,¹⁹²⁷ the location where [REDACTED]¹⁹²⁸ and the place and manner in which [REDACTED]¹⁹²⁹ is entirely implausible and unreliable.

667. [REDACTED]'s narrative, concerning these events including in particular that [REDACTED] when these persons were killed;¹⁹³⁰ that he believed he was himself a target;¹⁹³¹ but that he managed to avoid any personal injury¹⁹³² render his evidence not worthy of belief. His evidence must be assessed taking into consideration the false information he provided regarding the killing of [REDACTED],¹⁹³³ the evidence he provided about [REDACTED]¹⁹³⁴ and his likely motive false incriminating evidence *i.e.* that [REDACTED] was killed by Mr NTAGANDA.¹⁹³⁵

D. Nzebi

668. The Prosecution's claim that the FPLC committed murders in Nzebi rely solely on the testimony of [REDACTED].¹⁹³⁶ [REDACTED]'s evidence cannot be relied upon. First, the FPLC operation in Mongbwalu did not reach Nzebi.¹⁹³⁷ Second, [REDACTED] was not in Sayo or Nzebi the day following the liberation of Sayo;¹⁹³⁸ [REDACTED].¹⁹³⁹ [REDACTED] fabricated his narrative regarding Nzebi.

E. Kilo

669. According to Prosecution's witness P-0868, [REDACTED] – a Lendu man – was arrested in Kilo “because [the UPC] thought he was a militia, however they released him when they realised he was a student.”¹⁹⁴⁰

¹⁹²⁷ [REDACTED].

¹⁹²⁸ [REDACTED]. [REDACTED]; [REDACTED]. [REDACTED].

¹⁹²⁹ [REDACTED]; [REDACTED] [REDACTED].

¹⁹³⁰ [REDACTED]; [REDACTED].

¹⁹³¹ [REDACTED]; [REDACTED].

¹⁹³² [REDACTED], [REDACTED], [REDACTED], [REDACTED].

¹⁹³³ P-0894:DRC-OTP-2076-0194, paras.65-66; T-104, 41:2-46:5.

¹⁹³⁴ See Part IV, Chap.III, Section II.

¹⁹³⁵ P-0894:[DRC-OTP-2090-0099](#), para.1.

¹⁹³⁶ [REDACTED].

¹⁹³⁷ [REDACTED]; [REDACTED]; [REDACTED].

¹⁹³⁸ [REDACTED].

¹⁹³⁹ [REDACTED]; [REDACTED]; [REDACTED].

¹⁹⁴⁰ P-0868:T-178, 4:1-5:22.

670. Pursuant to the UDCC, “[o]n or about 6 December 2002, [...] [t]he UPC/FPLC detained, killed and beat prisoners”¹⁹⁴¹ in Kilo, which delineates the murders for which Mr NTAGANDA is charged. Thus, Mr NTAGANDA is neither charged with the murder of V-3’s [REDACTED], or that of a disabled Lendu civilian.¹⁹⁴² It must be recalled that when FPLC entered Kilo, the majority of Kilo inhabitants were from the Nyali ethnic group, closely associated to KISEMBO.¹⁹⁴³ Moreover, when the FPLC entered Kilo, it was not an attack, not a single shot was fired¹⁹⁴⁴ and the population was immediately invited to return to their houses.¹⁹⁴⁵
671. In support of its allegation, the Prosecution relies mainly on the evidence provided by P-0877, P-0022 and V-3.¹⁹⁴⁶ As argued earlier, the testimony of P-0877 who fabricated his narrative, including a chronology of events, on the basis of information obtained from [REDACTED], is unreliable.¹⁹⁴⁷
672. P-0022’s evidence admitted pursuant to 68(3)(c) without the Defence having the possibility to cross-examine her is not reliable. First, P-0022’s evidence regarding her alleged capture, treatment and observations while detained is not corroborated by reliable evidence. Second, P-0022 was first met by [REDACTED] P-0154 to whom she provided her initial version of events.¹⁹⁴⁸
673. In a first decision related to P-0154, the Chamber ordered disclosure of his identity in order to facilitate the Defence exploring his role as [REDACTED].¹⁹⁴⁹ In a subsequent decision, the Chamber considered the *prima facie* materiality of information relating to the role of P-0154 and his interaction with certain individuals to have been established.¹⁹⁵⁰ The Chamber noted the significant number of witnesses, and potential

¹⁹⁴¹ UDCC, para. 74.

¹⁹⁴² PCB, para. 378.

¹⁹⁴³ **P-0017**:T-59,40:2-4; **P-0963**:T-80,7:6-9; **V-3**:T-203,15:7-8.

¹⁹⁴⁴ **V-3**:T-203,97:13-18.

¹⁹⁴⁵ **P-0850**:T-112,54:1-11.

¹⁹⁴⁶ PCB, paras. 376-379.

¹⁹⁴⁷ See Part IV, Chap. III, Section II; DRC-OTP-2069-2086, para. 38; **P-0877**:T-109,69:8-20,70:7-16.

¹⁹⁴⁸ **P-0022**:[DRC-OTP-0077-0012](#).

¹⁹⁴⁹ P-0022 admission decision, [ICC-01/04-02/06-1029](#), para. 5.

¹⁹⁵⁰ P-0154 disclosure decision, [ICC-01/04-02/06-1539-Conf](#), para. 6; See Part V, Chap. II, Section I.

witnesses, with whom P-0154 had contact and the important role which P-0154 appeared to have played at the early stage of investigations.¹⁹⁵¹

674. Third, approximately one month later P-0022 provided a statement to the Prosecution significantly altering her narrative and adding new allegations.¹⁹⁵² Fourth, P-0022 is a “[REDACTED]”,¹⁹⁵³ a well-known Lendu combatant.¹⁹⁵⁴ In this capacity, P-0022 was provided with an opportunity to gain knowledge on various events she was not privy to. It also provided P-0022 with a reason to provide incriminating evidence.
675. Notably, P-0022’s chronology of events leads to the conclusion that she was referring to an earlier period. P-0022’s timing in relation to her account of event also points to an earlier period, namely the end of 2001, rather than November 2002.¹⁹⁵⁵
676. Lastly, whereas P-0022 appears to have been seriously injured, the information she provides in her statement is not probative that her injuries were suffered at the relevant time in Kilo. In particular, no RCD/N-UPC alliance ever existed¹⁹⁵⁶ and the UPC did not advance “*aux 4 axes – Dala – Nizi – Lipri – Nyangaray*”.¹⁹⁵⁷
677. V-3 testified that in 2002 [REDACTED] was abducted in Kilo,¹⁹⁵⁸ he heard that [REDACTED] was killed;¹⁹⁵⁹ and he never saw him again.¹⁹⁶⁰ V-3’s incriminating evidence is obviously driven by emotions arising from [REDACTED] disappearance.
678. Nonetheless, V-3’s evidence which focuses on the fate of [REDACTED] is not reliable.
679. First, Mr NTAGANDA was not in Kilo when the events V-3 described happened on [REDACTED] December 2002.¹⁹⁶¹ In particular, messages from the Ntaganda-Logbook establish that Mr NTAGANDA was not in Kilo.¹⁹⁶² Second, V-3’s evidence

¹⁹⁵¹ [ICC-01/04-02/06-1539-Conf](#), para.6; See Part V, Chapt.II, Section I,(D).

¹⁹⁵² [ICC-01/04-02/06-1029](#), para.6; **P-0022**:[DRC-OTP-0077-0012](#), ll.49-51,24,45,43; [DRC-OTP-0104-0026](#), para.47,31,45,35-36.

¹⁹⁵³ **P-0022**: [DRC-OTP-0077-0012](#), ll.10-11.

¹⁹⁵⁴ **P-0859**:T-52,16:1-2; **P-0800**:T-69,15:18-22; **P-0895**:T-52,16:1-5.

¹⁹⁵⁵ **P-0022**:[DRC-OTP-0104-0026](#), para.17-22.

¹⁹⁵⁶ **P-0022**: [DRC-OTP-0077-0012](#), ll.11-12.

¹⁹⁵⁷ **P-0022**:[DRC-OTP-0077-0012](#), ll.12-14; **D:0300**:T-242,4:18-24.

¹⁹⁵⁸ **V-3**:T-203,41:21-43:22.

¹⁹⁵⁹ **V-3**:T-203,44:15-21.

¹⁹⁶⁰ **V-3**:T-203,46:6-15.

¹⁹⁶¹ **V-3**:T-203,41:5-24.

¹⁹⁶² **D-0300**:T-237,47:24; [DRC-OTP-0017-0033](#), p.0035 (Transl.[DRC-OTP-2102-3854](#), p.3857); [DRC-OTP-0017-0033](#), p.0210 (Transl.[DRC-OTP-2102-3854](#), p.4032); [DRC-OTP-0017-0033](#), p.0200 (Transl. [DRC-OTP-](#)

that Mr NTAGANDA and KISEMBO¹⁹⁶³ were present together in Kilo for a period of more than two weeks, during which no less than five meetings took place¹⁹⁶⁴ – firmly confirmed during cross-examination by the Defence¹⁹⁶⁵ – is entirely implausible and not credible. Third, V-3 who was an obstructive and defensive witness during cross-examination,¹⁹⁶⁶ provided evidence both inconsistent¹⁹⁶⁷ and contradictory to other witnesses. In particular V-3 affirmed: (i) not knowing about other trouble, fighting or looting in his village before 2002;¹⁹⁶⁸ (ii) not being aware of combats between the APC and Lendu combatants in his village in 2001;¹⁹⁶⁹ (iii) not being aware of any looting by Lendu combatants following the departure of FPLC from Kilo;¹⁹⁷⁰ and (iv) that FPLC left when ARTEMIS arrived.¹⁹⁷¹ V-3 also testified learning about a purported top secret list containing names of Kilo leaders targeted by the UPC from FPLC soldiers less than 18 years old.¹⁹⁷² As a result, V-3's evidence is neither reliable nor probative of murders committed in Kilo.

680. As for P-0877's evidence concerning the killing of a disabled Lendu civilian,¹⁹⁷³ it is no more than hearsay.¹⁹⁷⁴ Moreover, what P-0850 heard is different from P-0877's narrative¹⁹⁷⁵ – who in all likelihood heard the story from one of the [REDACTED]¹⁹⁷⁶ – to which no probative value can attach.¹⁹⁷⁷

[2102-3854](#),p.4022); [DRC-OTP-0017-0033](#),p.0079-0080 (Transl.[DRC-OTP-2102-3854](#),p.3901-3902); See Part IV,Chapt.IV,Section II.

¹⁹⁶³ V-3:T-203,21:23-36:7-9. Messages sent by Mr NTAGANDA from Bunia, DRC-OTP-0017-0033: p.0209 (6 December,13h32); p.0208 (7 December,13h45); p.0208 (8 December 09h20); p.0208 (10 December,10h45); p.0207 (12 December,07h32); p.0206 (12 December,07h35); p.0206 (1December,08h15); p.0205 (15 December,12h35); p.0205 2 messages (17 December,10h45); p.0204 (19 December,08h45); p.0204 (19 December,13h35).

¹⁹⁶⁴ V-3:T-203,84:18-24.

¹⁹⁶⁵ V-3:T-203,84:18-24,81:7-10,83:8-10,84:2-6,84:14-17.

¹⁹⁶⁶ V-3 :T-203,62:20-66:13,75:6-77:14,79:11-80:13.

¹⁹⁶⁷ V-3:T-203,25:13-17,36:10-14.

¹⁹⁶⁸ V-3:T-203,96:22-23.

¹⁹⁶⁹ V-3:T-203,97:2-6.

¹⁹⁷⁰ V-3:T-203,98:8-15.

¹⁹⁷¹ V-3:T-203,97:25.

¹⁹⁷² V-3:T-203,22:10-21.

¹⁹⁷³ PCB,para.378.

¹⁹⁷⁴ DRC-OTP-2069-2086,para.31.

¹⁹⁷⁵ See Part IV,Chap.III,Section II.

¹⁹⁷⁶ DRC-OTP-2069-2086,para.38; P-0877:T-109,68:15-20.

¹⁹⁷⁷ See Part IV,Chap.III,Section II.

681. As for P-0850 evidence about four tied up Lendu civilians being led away by UPC soldiers,¹⁹⁷⁸ it is not corroborated by other reliable evidence and its probative value is too low to prove murder.¹⁹⁷⁹

682. Lastly, P-0850 and P-0877's evidence – [REDACTED] – regarding the finding of a mass grave in Kilo¹⁹⁸⁰ long after the events¹⁹⁸¹ is not probative of murders committed by FPLC.

F. Mr Ntaganda bears no individual criminal responsibility pursuant to Counts 1-2

683. The Prosecution failed to prove that Mr NTAGANDA killed BWANALONGA at the *Appartements* and/or that the FPLC committed the crime of murder of civilians pursuant to Counts 1-2 during the *First Attack*. The Prosecution also failed to prove that Mr NTAGANDA possessed the required Art.30 *mens rea*.

684. Mr NTAGANDA did not intend to kill civilians and even less so, BWANALONGA.¹⁹⁸²

685. Mr NTAGANDA neither ordered nor instructed FPLC members to carry out acts of murder during the *First Attack*.¹⁹⁸³ Although Mr NTAGANDA cannot be held responsible for acts of murder committed by young Hema civilians during the *First Attack*, he neither ordered, nor encouraged or provided weapons to Hema civilians to commit such acts during the *First Attack*.¹⁹⁸⁴ Quite to the contrary, Mr NTAGANDA always emphasised that protection of all civilians without discrimination was the FPLC's *raison d'être*.¹⁹⁸⁵ Mr NTAGANDA did not hesitate to punish any FPLC members, regardless of their position, for any crimes or acts of indiscipline brought to his attention.¹⁹⁸⁶ Although Mr NTAGANDA was not present in Mongbwalu when a Lendu civilian was killed by LIRIPA, a drunken Hema FPLC member, he agreed and welcomed the public execution by firing squad of the perpetrator as ordered by

¹⁹⁷⁸ PCB,para.378.

¹⁹⁷⁹ [DRC-OTP-2067-1825](#),para.46.

¹⁹⁸⁰ PCB,para.379.

¹⁹⁸¹ **P-0850**:[DRC-OTP-2067-1825](#),para.48; **P-0877**:DRC-OTP-2069-2086,para.34.

¹⁹⁸² PCB,paras.799-801.

¹⁹⁸³ Confirmation Decision,para.123; *See* Part IV,Chap.VI,Section II.

¹⁹⁸⁴ **D-0300**:T-217,34:7-9.

¹⁹⁸⁵ **D-0300**:T-223,24:15-25:7.

¹⁹⁸⁶ PCB,para.1033,fn.3217.

KISEMBO.¹⁹⁸⁷ It cannot be inferred from Mr NTAGANDA's acts and conduct prior to and during the *First Attack*,¹⁹⁸⁸ that he possessed the *mens rea* for murder.

686. Consequently, Mr NTAGANDA does not incur individual criminal responsibility under Counts 1-2 pursuant to any mode of liability charged in accordance with Art.25.

Section V - Counts 4 and 5 – Rape of civilians

687. Pursuant to the UDCC, Mr NTAGANDA is charged for the following rapes, as part of the *First Attack*: “[a]fter the takeover of Mongbwalu and Sayo” women captured during daily patrols and women held captive at Mr NTAGANDA's camp in Mongbwalu;¹⁹⁸⁹ and “[o]n or about 6 December 2002” in Kilo the rape of P-0022.¹⁹⁹⁰ Thus Mr NTAGANDA is not charged with the rape of V-2 which took place in Beba.¹⁹⁹¹ In any event, the Prosecution failed to prove any of these rapes.

688. In support of Counts 4-5, the Prosecution depends on evidence provided by P-0010, P-0017, P-0190, P-0768, P-0887, P-0888, P-0907 and P-0963,¹⁹⁹² to which no probative value can attach.

689. Significantly, the Prosecution's reference to a purported briefing by Mr NTAGANDA in Mabanga during which the term “*Piga Na Kuchaji*” was used as the genesis of the rapes committed during the *First Attack*, is baseless.¹⁹⁹³ First, Mr NTAGANDA did not brief the troops in Mabanga prior to the FPLC operation in Mongbwalu.¹⁹⁹⁴ Second, evidence firmly demonstrates that Mr NTAGANDA did not tolerate rape and did not hesitate to punish or to take measures to repress rape.¹⁹⁹⁵ Third, although the term *Kupiga na Kuchaji* might have been used by SALUMU in Lalu, P-0017 provided his

¹⁹⁸⁷ [DRC-OTP-0017-0033](#),p.0097 (Transl.[DRC-OTP-2102-3854](#),p.3919); [DRC-OTP-0017-0033](#),p.0098 (Transl.[DRC-OTP-2102-3854](#),p.3920); **D-0300**:T-222,62:19-64:21.

¹⁹⁸⁸ PCB,paras.976,1033.

¹⁹⁸⁹ UDCC,para.72.

¹⁹⁹⁰ UDCC,para.74; Confirmation Decision,para.50.

¹⁹⁹¹ Even if Mr NTAGANDA was charged with this rape, for the reasons stated earlier, V-2's evidence is unreliable and this rape was not proved; See Part IV,Chap.III,Section II.

¹⁹⁹² PCB,paras 416-431.

¹⁹⁹³ PCB,para.416.

¹⁹⁹⁴ **D-0300**:T-235,56:23-58:2.

¹⁹⁹⁵ **D-0017**:T-255,53:7-21; **D-0251**:T-260,70:6-15; **D-0300**:T-233,53:25-54:14; [DRC-OTP-0082-0016](#),25 :58-26 :04 (Transl.[DRC-OTP-0164-0710](#),ll.384-386); [DRC-OTP-0017-0033](#),p.0066 (Transl.[DRC-OTP-2102-3854](#),p.3888); [DRC-OTP-0017-0033](#),p.0203 (Transl.[DRC-OTP-2102-3854](#),p.4025).

understanding of the meaning of this term, which is unrelated to the commission of rape.¹⁹⁹⁶

690. What is more, members of SALUMU's brigade who took part in the FPLC operation in Mongbwalu were briefed and strongly warned in Mandro that rape would not be tolerated in the FPLC.

A. Mongbwalu

691. Although the Prosecution refers to rapes allegedly committed in Mongbwalu and Sayo,¹⁹⁹⁷ there is no evidence of any rapes having been committed in Sayo.

692. Regarding the alleged rape of three nuns at the *Appartements*,¹⁹⁹⁸ this is no more than part of [REDACTED]'s fabricated narrative unsupported by any reliable evidence. Even the document obtained by P-0041, which purportedly tells what happened to BWANALONGA and others, does not mention that the three nuns were raped, let alone pursuant to an order from Mr NTAGANDA.¹⁹⁹⁹ As for the other allegations related to the presence of women at the *Appartements* under coercive circumstances and the manner in which they were treated,²⁰⁰⁰ the evidence put forward does not establish the commission of rape. P-0017 was not present at the *Appartements*.²⁰⁰¹ [REDACTED] concocted their evidence [REDACTED].²⁰⁰² Neither of them witnessed a rape at the *Appartements*.²⁰⁰³ [REDACTED] did not [REDACTED] at the *Appartements*.²⁰⁰⁴ Although [REDACTED] might have seen some women going in and out of the *Appartements*, she did not see what they did;²⁰⁰⁵ did not speak to any of them;²⁰⁰⁶ did

¹⁹⁹⁶ P-0017:T-58,55:15-19;T-61,32:9-13;T-63,61:7-22 ("So when he talked about women, my understanding was that he meant that our – the social life or the condition of the soldiers was going to change and that they would be able to meet women when they – or, contact women so to speak.")

¹⁹⁹⁷ PCB,paras.419-427.

¹⁹⁹⁸ PCB,para.424.

¹⁹⁹⁹ [DRC-OTP-0127-0118](#).

²⁰⁰⁰ PCB,para.424.

²⁰⁰¹ See Part IV, Chapt.III, Section I(B); PCB,para.426.

²⁰⁰² [REDACTED].

²⁰⁰³ [REDACTED].

²⁰⁰⁴ [REDACTED].

²⁰⁰⁵ [REDACTED].

²⁰⁰⁶ [REDACTED].

not speak to TIGER ONE or other commanders;²⁰⁰⁷ and provided but her own opinion, which is notably contrary to her own situation.

693. As for the alleged rape of women captured in relation to patrols, P-0887's far-fetched and implausible evidence at least in respect to what she could have observed and heard does not establish that her neighbour was raped.²⁰⁰⁸ She did not even address the issue with her neighbour.²⁰⁰⁹ [REDACTED] did not even provide evidence on this incident.²⁰¹⁰
694. No probative value can attach to [REDACTED]'s evidence regarding the rape allegedly committed by BASARA.²⁰¹¹ According to [REDACTED], this rape happened when he arrived in Mongbwalu along with [REDACTED] and other deserters during the second FPLC attempt to liberate Mongbwalu, an event he entirely made up.
695. P-0017's evidence that upon hearing a women's screams coming from a soldier's hut at MULENDA's camp and verifying what was happening,²⁰¹² does not establish the commission of a rape.
696. The Mongbwalu video referred to by the Prosecution does not depict the presence of "undisciplined soldiers wandering around Mongbwalu, harassing women".²⁰¹³
697. As for the alleged rape of P-0912, P-0892 [REDACTED] and P-0912 [REDACTED] were not truthful witnesses and concocted their evidence [REDACTED].²⁰¹⁴ P-0912's rape – if it ever happened – did not take place in Mongbwalu in relation to the *First Attack*.
698. Lastly, [REDACTED]'s evidence that he obtained information in local dispensaries in Mongbwalu about rapes,²⁰¹⁵ must be disregarded altogether. [REDACTED] lied and fabricated incriminating evidence under oath. Amongst many, two examples clearly illustrate this. First, it is evident that [REDACTED], both on the basis of his

²⁰⁰⁷ [REDACTED].

²⁰⁰⁸ PCB, paras. 419.

²⁰⁰⁹ [REDACTED].

²⁰¹⁰ [REDACTED].

²⁰¹¹ [REDACTED].

²⁰¹² PCB, para. 420.

²⁰¹³ PCB, para. 427.

²⁰¹⁴ See Part IV, Chap. III, Section II(E).

²⁰¹⁵ PCB, para. 420.

observations there²⁰¹⁶ and [REDACTED].²⁰¹⁷ Second, [REDACTED] could not have reasonably affirmed that the FAC were present in Mongbwalu in light of his position in the FPLC.²⁰¹⁸ Third, [REDACTED] fabricated the murder of a [REDACTED] personally committed by Mr NTAGANDA in his presence [REDACTED],²⁰¹⁹ whereas the identity of [REDACTED],²⁰²⁰ the manner in which he was killed²⁰²¹ and the date on which he was killed²⁰²² clearly establish that neither [REDACTED] nor Mr NTAGANDA were involved in this crime. The Defence [REDACTED].²⁰²³

B. Kilo

699. P-0022's [REDACTED] cannot be relied upon. In respect of P-0022's evidence about her alleged rape, it is highly significant that it was mentioned in her statement to the Prosecution but entirely omitted in her initial version of events to [REDACTED] P-0154.²⁰²⁴ Approximately one month separates these statements and P-0022's failure to inform P-0154 impacts the reliability of her statement.
700. P-0017's evidence concerning commanders MULENDA, ERIC and AMERICAIN who would have sexually abused the same women in the UPC camp in Kilo must also be disregarded.²⁰²⁵ The unreliability of the incriminating evidence provided by P-0017 has been previously addressed.²⁰²⁶ Notably, in this case, his evidence is yet again not corroborated by reliable evidence. Moreover, the Prosecution omits to mention P-0017's evidence concerning a rape complaint addressed to commander AMERICAIN, which was rapidly investigated within his unit;²⁰²⁷ leading to the identification of the perpetrator.²⁰²⁸ P-0017's testimony that the local population had no choice but to endure sexual exploitation by the UPC is not more than his opinion. AMERICAIN's investigation of a rape complaint and the immediate measures taken thereafter however,

²⁰¹⁶ [REDACTED]

²⁰¹⁷ [REDACTED].

²⁰¹⁸ [REDACTED].

²⁰¹⁹ [REDACTED].

²⁰²⁰ [REDACTED].

²⁰²¹ [REDACTED].

²⁰²² [REDACTED].

²⁰²³ [REDACTED].

²⁰²⁴ P-0022:DRC-OTP-0077-0012;DRC-OTP-0104-0026,para.35.

²⁰²⁵ PCB,para.429.

²⁰²⁶ See Part IV,Chapt.III,Section I,(B).

²⁰²⁷ P-0017:T-59,34:2-10.

²⁰²⁸ P-0017:T-59,4:9-12.

must be attributed full probative value. As for P-0017's evidence concerning antibiotics brought to Kilo,²⁰²⁹ it is not probative that rapes were committed by FPLC in Kilo.

C. Mr Ntaganda bears no individual criminal responsibility pursuant to Counts 4-5

701. Mr NTAGANDA is not charged for direct perpetration (Art.25(3)(a)), ordering (Art.25(3)(b)) or inducing (Art.25(3)(b)) under Counts 4-5.²⁰³⁰ The Prosecution failed to prove that the FPLC committed rape of civilians in Mongbwalu or Kilo pursuant to Counts 4-5 during the *First Attack*.²⁰³¹

702. The Prosecution also failed to prove that Mr NTAGANDA possessed the required Art.30 *mens rea*.

703. Mr NTAGANDA did not intend for FPLC troops to rape civilians as evidenced by, *inter alia*, Chef KAHWA's address to FPLC troops in Mandro²⁰³² and the FPLC ideology developed by Mr NTAGANDA²⁰³³ as understood by P-0911:

[o]n the subject of discipline, I learnt certain things. Firstly, a soldier shouldn't steal. A soldier shouldn't rape. A soldier shouldn't harm the population. A soldier should just work with complete discipline.²⁰³⁴

704. D-0251, one of Mr NTAGANDA's [REDACTED] testified:

We considered Bosco Ntaganda as our father.²⁰³⁵

A. We were very well treated. He helped us a lot. When someone was ill or when one of our families had problems, he helped us a lot. He was a very good commander.²⁰³⁶

705. Although D-0251 was not yet one of Mr NTAGANDA's [REDACTED] during the FPLC operations in Mongbwalu, there is no evidence indicating that Mr NTAGANDA previously treated his [REDACTED] any differently.

²⁰²⁹ P-0017:T-59,38:20-39:10.

²⁰³⁰ Confirmation Decision, para. 144; p. 38-48.

²⁰³¹ See Part IV, Chapt. VI, Section V(A), (B), (C).

²⁰³² [DRC-OTP-0082-0016](#), 13:19-14:27 (Transl. [DRC-OTP-0164-0710](#), ll. 212-222).

²⁰³³ See Part IV, Chap. I, Section I; Part III, Chap. I, Section II (B).

²⁰³⁴ P-0911:T-157,17:2-6.

²⁰³⁵ D-0251:T-260,66:24.

²⁰³⁶ D-0251:T-260,40:8-10.

706. D-0017 also testified: “Q.To your knowledge, has Bosco Ntaganda ever raped any of his escorts? A.I never saw that.”²⁰³⁷
707. The Prosecution’s argument that “in the UPC rape was not considered a crime”²⁰³⁸ is inaccurate and not supported by reliable evidence. Indeed, measures were indeed taken when information related to sexual violence crimes became available.²⁰³⁹ When Mr NTAGANDA was informed that SOPICK had sexually harassed one of his female bodyguards, he immediately punished him.²⁰⁴⁰
708. Through his acts and conducts, at all times relevant to the UDCC, it cannot be inferred that Mr NTAGANDA had the required *mens rea* for the crime of rape.
709. Mr NTAGANDA testified that *kupiga na kuchaji* “means that you take all the equipment that the enemy had when fleeing.”²⁰⁴¹ He also testified that it was forbidden to take the goods that belonged to the civilians since “our objective was to protect the population and you can’t rape a woman or young girls.”²⁰⁴²

Section VI - Count 12-13 : Forcible transfer of population and displacement of civilians

710. Pursuant to the UDCC, Mr NTAGANDA is charged in relation to the *First Attack* for: “Count 12: Forcible transfer of population, a crime against humanity [...] in or around Mongbwalu and Nzebi”²⁰⁴³ and “Count 13: Displacement of civilians, a war crime [...] in or around Mongbwalu and Nzebi”.²⁰⁴⁴ Mr NTAGANDA is thus not charged with forcible transfer of population or displacement of civilians in Pluto, Sayo and Kilo.
711. Although the Prosecution addresses both counts together, the “forcible transfer of population” and the “displacement of civilians” relate to different situations altogether.
712. Article 7(1)(d) prohibits the forcible transfer of persons lawfully present in an area without grounds permitted under international law. Although the term “forcible” may

²⁰³⁷ D-0017:T-253,61:5-6;T-254,39:3-14.

²⁰³⁸ PCB,para.984.

²⁰³⁹ [DRC-OTP-0017-0033](#),p.0066(third)(Transl.[DRC-OTP-2102-3854](#),p.3888); [DRC-OTP-0017-0033](#),p.0203(third)(Transl. [DRC-OTP-2102-3854](#),p.4025).

²⁰⁴⁰ D-0300:T-214,10:8-12.

²⁰⁴¹ D-0300:T-213,9:5-11.

²⁰⁴² D-0300:T-213,9:18-25.

²⁰⁴³ UDCC,p.63-64,para.69.

²⁰⁴⁴ UDCC,p.64,para.69.

include “threat of force or coercion, such as that caused by fear of violence”,²⁰⁴⁵ the mere fact that a civilian flees out of fear does not mean, that this civilian was deported or forcibly transferred. Cryer explains in respect of forcible transfer as a crime against humanity that “if a group flees of its own genuine volition, for example, to escape a conflict zone, that would not be forced displacement.”²⁰⁴⁶ For example, civilians who fled Fallujah in large numbers in 2004 and 2007 in advance of an attack by United States were not victims of a crime against humanity committed by United States’ forces. Indeed, as held by the Prlić TC that “[c]’est l’absence de ce choix véritable qui conditionne le caractère illicite du déplacement. Afin de déterminer si les victimes d’un déplacement forcé avaient un choix véritable, il convient d’analyser les circonstances entourant leur déplacement”.²⁰⁴⁷ The possibility for the population ‘forcibly transferred’ to return is one such circumstance.

713. Article 8(2)(e)(viii) on the other hand prohibits ‘ordering the displacement of civilians’, which makes clear that “only acts which are directly aimed at removing the respective civilian population from a given area are prohibited.”²⁰⁴⁸ The drafting history of the provision reinforces this meaning.²⁰⁴⁹ Accordingly, other acts not directly aimed at removing the respective civilian population but which might lead to the same result, such as a lawful attack, is not covered by this article.

D. Mongbwalu

714. The Prosecution’s claims at paragraph 313 are not supported by reliable evidence. The evidence analysed in Part IV, Chapter VI, Section III demonstrates that the FPLC operations in Mongbwalu had a legitimate aim and were not directed at civilians.
715. Witness evidence reveals that civilians left Mongbwalu of their own genuine volition “immédiatement quand nous avons entendu les coups de feu”,²⁰⁵⁰ after having “entendu les premiers éclatements”,²⁰⁵¹ “whenever there was a gunshot, everyone fled to

²⁰⁴⁵ Elements of Crimes, fn.12.

²⁰⁴⁶ Cryer et al., 2nd ed., p.249. See Akhavan, Reconciling Crimes, p.35 (“if this conception of forcible transfer does not rest on the laws of war, it could result in the effective criminalization of combat”).

²⁰⁴⁷ Prlić, para.50.

²⁰⁴⁸ Triffterer, 3rd ed., p.566.

²⁰⁴⁹ Triffterer, 3rd ed., p.566.

²⁰⁵⁰ P-0039: [DRC-OTP-0104-0015-R03](#), paras.21-22.

²⁰⁵¹ [DRC-OTP-0104-0170-R02](#), paras.16-17.

Sayo ”,²⁰⁵² “those who heard these shots, including me, fled”.²⁰⁵³ Thus, civilians left voluntarily before the fighting reached Mongbwalu.

716. Although P-0039 [REDACTED]²⁰⁵⁴ and P-0894 [REDACTED]²⁰⁵⁵ testified “if you stayed behind and the Hema found you, you would be killed”,²⁰⁵⁶ the evidence depicts a different situation as civilians from all ethnic groups returned to Mongbwalu after the FPLC operations.²⁰⁵⁷ P-0907 and P-0963 stated that “all the ethnic groups began to come back one by one except the Lendu”.²⁰⁵⁸ The latter part of their evidence is contradicted however by P-0800 who affirmed “after the war everyone came back to Mongbwalu from all different tribes”.²⁰⁵⁹ Indeed, P-0859 a Lendu civilian²⁰⁶⁰ and others returned to Mongbwalu and settled in [REDACTED] where they used to live.²⁰⁶¹ P-0887 [REDACTED]²⁰⁶² and P-0886 [REDACTED]²⁰⁶³ also returned to Mongbwalu after the FPLC operations.

717. The Mongbwalu video²⁰⁶⁴ demonstrates the FPLC’s intention to “*mettre en oeuvre une politique qui vise à faire revenir les habitants*”.²⁰⁶⁵ In particular, the video shows non-Hema civilians who have either stayed or returned to Mongbwalu, including YVONNE.²⁰⁶⁶

718. Mr NTAGANDA who appears in the Mongbwalu video told the journalist “*les habitants commencent même à revenir, surtout celles qui avaient pris la fuite. Certains avaient été spoliés de leurs biens par les troupes des combattants et ...*”.²⁰⁶⁷

719. The FPLC intended all civilians to return to their homes when the hostilities ceased. The FPLC troops told the population to return to their homes.²⁰⁶⁸ Indeed, P-0887 and P-

²⁰⁵² [DRC-OTP-2076-0194](#),para.35.

²⁰⁵³ **P-0850**:T-112,71-21-72:2.

²⁰⁵⁴ **P:0039**:[DRC-OTP-2062-0244](#),p.0244.

²⁰⁵⁵ **P-0894**:[DRC-OTP-2076-0194](#),p.0194.

²⁰⁵⁶ **P-0859**:T-51,42:5-43:21; [DRC-OTP-0017-0033](#),p.0097 (Transl.[DRC-OTP-2102-3854](#),p.3919).

²⁰⁵⁷ [DRC-OTP-2058-0251](#),01:23:30-01:23:51 (Transl.[DRC-OTP-2102-3766](#),ll.1298-1301).

²⁰⁵⁸ **P-0907**:T-90,51:11-12; **P-0963**:T-79,18:6-18.

²⁰⁵⁹ **P-0800**:T-69,32:24-25;T-69,10:13-14.

²⁰⁶⁰ **P-0859**:T-51,7:25.

²⁰⁶¹ **P-0859**:T-51,25:19-26:6.

²⁰⁶² **P-0887**:T-93,13:3-4.

²⁰⁶³ **P-0886**:T-37,5:20-24

²⁰⁶⁴ PCB,paras.322,324.

²⁰⁶⁵ [DRC-OTP-2058-0251](#),00:53:39-00:54:06 (transl.[DRC-OTP-2102-3766](#),ll.779-783).

²⁰⁶⁶ [DRC-OTP-2058-0251](#),00:43:10-00:44:38; **P-0002**:T-172,34:8-10.

²⁰⁶⁷ [DRC-OTP-2058-0251](#),00:07:53-00:08:15 (transl.[DRC-OTP-2102-3766](#),ll.127-132).

0859 testified to the effect that the UPC soldiers “told us that we could go back to Mongbwalu”²⁰⁶⁹ while P-0886 heard that the soldiers were saying to everyone that they should return home.²⁰⁷⁰ Other inhabitants acted as *liaison* between the FPLC and the population, transmitting the FPLC’s invitation for “the civilian population to return to the village.”²⁰⁷¹ Mr NTAGANDA testified that the FPLC “wanted [the APC and the combatants] to leave the area so that the population could return”.²⁰⁷²

720. In these circumstances, it cannot be concluded that the civilian population of Mongbwalu was forcibly transferred or that civilians were displaced from Mongbwalu as a result of acts directly aimed at this purpose.

721. What is more, even if the Chamber were to find that the civilian population was forcibly transferred or that civilians from Mongbwalu were displaced, it is evident that the FPLC, let alone Mr NTAGANDA, did not harbour the required intent for these crimes.

722. In this regard, the Prosecution’s submission based on words attributed to KASANGAKI in the Mongbwalu video that the FPLC shot at the civilian population as it fled to Mongbwalu and Sayo is unfounded.²⁰⁷³ Indeed, KASANGAKI’s words referred to by the Prosecution are immediately followed by a reference to combatants as “*ils envoyaient des renforts de ce côté-là, et lorsqu’on est arrivés en ville, il y avait un camp à l’endroit où celui-là il s’était enfui*”.²⁰⁷⁴

723. As for SALONGO’s documents referred to by the Prosecution, they are not probative of any forcible transfer or displacement of civilians having taken place. However, these documents confirm the FPLC intended the return of all civilians without discrimination

²⁰⁶⁸ P-0859,T-51,38:19-39:1.

²⁰⁶⁹ P-0887:T-93,19:10-14; P-0859:T-51,38:19-24.

²⁰⁷⁰ P-0886:T-37,14:5-8;T-40,20:9-13,17:6-9:“They said that to the people, ‘Don’t be afraid. Don’t be afraid.’ And we lived together. They took their alcohol there and we lived in harmony. There weren’t troubles. When one of their soldiers committed abuses, that person was punished. That’s how we lived together.”

²⁰⁷¹ P-0850:T-112,76:25-77:3.

²⁰⁷² D-0300:T-234,43:7-15.

²⁰⁷³ PCB,paras.322,324.

²⁰⁷⁴ [DRC-OTP-2058-0251](#),00:46:43-00:46:48 (transl.[DRC-OTP-2102-3766](#),ll.675-676).

and aimed at protecting civilians and their property: ”*entendu qu’il est de son devoir de veiller également à l’ordre public et à la sécurité des personnes et de leurs biens*”.²⁰⁷⁵

E. Nzebi

724. The evidence relied upon by the Prosecution does not establish the forcible transfer of the population or the displacement of civilians from Nzebi. First, the evidence drawn from P-0877’s [REDACTED] is not reliable.²⁰⁷⁶ Second, no probative value can be attached to the evidence of civilians who left Kilo.²⁰⁷⁷ Third, as demonstrated earlier, [REDACTED]’s evidence concerning Nzebi is altogether non-reliable.²⁰⁷⁸

F. Mr Ntaganda bears no individual criminal responsibility pursuant to Counts 12-13

725. Mr NTAGANDA is not charged for direct perpetration (Art.25(3)(a)) under Counts 12-13.²⁰⁷⁹

726. The Prosecution failed to prove that the FPLC committed the crime of forcible transfer of the population or displacement of civilians in Mongbwalu or Nzebi during the *First Attack*.²⁰⁸⁰ The Prosecution also failed to prove, that Mr NTAGANDA possessed the required Art.30 *mens rea*.

727. As demonstrated, the FPLC neither intended to forcibly transfer the population – who subsequently returned to their home – nor ordered the displacement of civilians.

728. The Mongbwalu video showing KISEMBO in the company of Mr NTAGANDA addressing Hema civilians who had returned to Mongbwalu²⁰⁸¹ is clear evidence that the FPLC, its senior leadership and Mr NTAGANDA did not intend to transfer or displace the population/civilians, let alone to forcibly do so.²⁰⁸²

²⁰⁷⁵ PCB,para.321; [DRC-OTP-0092-0541](#); [DRC-OTP-0091-0709](#); [DRC-OTP-2058-0251](#),01:23:30-01:23:51 (transl. [DRC-OTP-2102-3766](#),ll.1298-1301).

²⁰⁷⁶ PCB,para.325; *See* Part IV, Chap.III, Section II.

²⁰⁷⁷ PCB,para.326.

²⁰⁷⁸ PCB,para.327,329.

²⁰⁷⁹ Confirmation Decision,para.144;p.38-48.

²⁰⁸⁰ Confirmation Decision,para.123; PCB,para.1039.

²⁰⁸¹ [DRC-OTP-2058-0251](#),01:53:42-01:55:12 (Transl.[DRC-OTP-2102-3766](#),ll.1970-2009).

²⁰⁸² *See* Part IV,Chap.VI,Section VI.

729. When Mr NTAGANDA returned to Mongbwalu on 14 February 2003, he addressed a group of civilians who recognized him. He was glad to see them and expressed his satisfaction concerning the return of normal living conditions, which illustrates that he always intended for all civilians to return.²⁰⁸³

730. Mr NTAGANDA's lack of intent to transfer or displace the population/civilians is also corroborated by his earlier actions in Mandro when he welcomed a group of Lendu civilians oppressed by Lendus combatants, in the area.²⁰⁸⁴

Section VII - Count 18 : Destroying the enemy's property

731. Pursuant to the UDCC, Mr NTAGANDA is charged in relation to the *First Attack* for "Count 18: Destruction of property, a war crime [...] in or around Mongbwalu and Sayo". More particularly, Mr NTAGANDA is charged for destroying civilian houses in Mongbwalu and Sayo by deliberately targeting them with heavy weapons.²⁰⁸⁵ Thus, Mr NTAGANDA is only charged for destruction of civilian houses during the FPLC operations and before the takeover of Mongbwalu and Sayo.

732. Heavy weapons used in Mongbwalu and Sayo included: (i) one 12.7mm, one grenade launcher and one recoilless in SALUMU's brigade;²⁰⁸⁶ and (ii) one B-10 brought to Mongbwalu by Mr NTAGANDA.²⁰⁸⁷ [REDACTED].²⁰⁸⁸ In Mongbwalu, only SALUMU's heavy weapons were used.²⁰⁸⁹ As for the Sayo operation, Mr NTAGANDA's B-10, SALUMU's 12.7 and a 60mm mortar were used with Mr NTAGANDA at the *Appartements*²⁰⁹⁰ while SALUMU's grenade launcher was located with SEYI at the *Usine*.²⁰⁹¹

²⁰⁸³ D-0300:T-220,49:19-50:18 ("I went to the head of the centre and I said I couldn't proceed without speaking to the population and the chief said that they had indeed come to see me, so I spoke to them at the marketplace. There were very many people gathered there" "I greeted them, I asked how they were. I said that I was pleased to see them going about their daily business with no problem [...] and that they were living in peace. I said that our work was to ensure their security"); See also D-0054:T-244,18:16-25,19:5-13.

²⁰⁸⁴ D-0054:T-243,76:23,89:5-7;T-244,8:19-25,7:11-13 ("Q. Why was it that Lendu people were attacking people from their own ethnic group? A.They didn't want us to be able to live together with the Hema, but we said that we would live with them"; DRC-OTP-0126-0030); D-0300:T-213,70:19-71:13;T-231,10:18-13:5.

²⁰⁸⁵ UDCC,p.64-65,paras.73(underline added).

²⁰⁸⁶ P-0017:T-58,59:19-60:10.

²⁰⁸⁷ D-0300:T-216,85:6-11.

²⁰⁸⁸ [REDACTED].

²⁰⁸⁹ D-0300:T-217,49:20-23.

²⁰⁹⁰ D-0300:T-217,48:12-20.

²⁰⁹¹ D-0300:T-217,51:15-24;T-223,43:13-16.

A. Mongbwalu

733. [REDACTED] the orders issued and the procedure related to the firing of heavy weapons when SALUMU's brigade advanced towards Mongbwalu, [REDACTED]: (i) [REDACTED] MUREFU who had a radio and communicated with the brigade commander who gave the order to fire; (ii) "Salumu designated the target";²⁰⁹² (iii) in Mongbwalu the target were the houses in the main camp;²⁰⁹³ (iv) the heavy weapons "were only used to intervene where there was strong resistance";²⁰⁹⁴ (v) "[w]hen the infantry advanced, the support weapons stayed back";²⁰⁹⁵ and (vi) "in Mongbwalu where we fired, [REDACTED]. Only military targets were there. The town was deserted."²⁰⁹⁶
734. Although the Prosecution refers to the evidence [REDACTED] in support of its claim that "[REDACTED]";²⁰⁹⁷ [REDACTED] evidence, stating: "[REDACTED], the infantry might run into some resistance.[REDACTED]"[REDACTED], [REDACTED]. [REDACTED]"²⁰⁹⁸ "[REDACTED]".²⁰⁹⁹
735. The Prosecution's submission based on P-0859's evidence that "UPC heavy weapons completely destroyed Lendu civilian dwellings in the town"²¹⁰⁰ is inapposite. First, the evidence suggests that P-0859 was a Lendu combatant.²¹⁰¹ Second, it is implausible that P-0859 would flee from the family house²¹⁰² leaving [REDACTED].²¹⁰³ Third, it stems from P-0859's evidence that he neither saw the shell nor the manner in which his house was used when the shell landed.²¹⁰⁴ More importantly, [REDACTED],²¹⁰⁵ it cannot be concluded that the shelling of the family house was intentional. Had SALUMU's

²⁰⁹² [REDACTED].

²⁰⁹³ [REDACTED].

²⁰⁹⁴ [REDACTED].

²⁰⁹⁵ [REDACTED].

²⁰⁹⁶ [REDACTED].

²⁰⁹⁷ [REDACTED].

²⁰⁹⁸ [REDACTED].

²⁰⁹⁹ [REDACTED].

²¹⁰⁰ PCB,para.403,fn.1170.

²¹⁰¹ P-0859:T-51,19:14-18;T-52,15:22-16:5,17:8-10,17:24-25.

²¹⁰² P-0859:T-52,12:6-9.

²¹⁰³ P-0859:T-51,8:7-9;T-51,16:14-17:24.

²¹⁰⁴ P-0859:T-51,16:15-19.

²¹⁰⁵ [REDACTED].

brigade intended to destroy houses in Mongbwalu, many houses could and would have been flattened using the recoilless, the grenade launcher and the mortar.

736. The Prosecution's additional submission that "[f]ollowing the attack, UPC soldiers and Hema civilians spread in Mongbwalu, looting and destroying houses and shops in the process" is not relevant as Mr NTAGANDA is not charged with this type of destruction.²¹⁰⁶ Second, the evidence provided by P-0039 refers to a different time period, namely June 2003.²¹⁰⁷ P-0859's evidence is also contradicted by P-0887 who stated that there were no damage to buildings and houses in Mongbwalu after the second attempt to liberate Mongbwalu.²¹⁰⁸ Lastly, the Mongbwalu video²¹⁰⁹ illustrates that there was no destruction in Mongbwalu following the FPLC operations, let alone 'extensive destruction'.²¹¹⁰

B. Sayo

737. It cannot be concluded on the basis of the unreliable evidence provided by P-0768, P-0963 and P-0017 that the FPLC deliberately and systematically targeted civilian houses in Sayo with heavy weapons.²¹¹¹ As for the evidence provided by P-0800, it is also not reliable. First, during his testimony, P-0800 referred to shelling taking place in Sayo over a period of two days for the very first time. He had not done so before.²¹¹² Second, P-0800 left Sayo shortly after 13h00 on Sunday,²¹¹³ which implies that he left before the FPLC secured Sayo. Third, P-0800's description of the fighting during two days, not being able to see the soldiers five Kilometres away from Sayo but being able to hear them sing, is entirely implausible.²¹¹⁴ Fourth, P-0800 testified that on the day he left Sayo "there were shells which were fired, but one of these landed on the house [REDACTED]" thereby suggesting, if such a shell was ever fired, that lack of precision was the reason.²¹¹⁵ Lastly, P-0800's evidence is contradicted by Mr NTAGANDA's evidence who explained how heavy weapons were used during the Sayo operation; the

²¹⁰⁶ UDCC,para.73.

²¹⁰⁷ PCB,fn.1172; [DRC-OTP-0104-0015-R03](#),paras.32-34; [DRC-OTP-2062-0244-R02](#),paras.59-60.

²¹⁰⁸ **P-0887**:T-93,28:15-17

²¹⁰⁹ [DRC-OTP-2058-0251](#).

²¹¹⁰ PCB,fn.1168.

²¹¹¹ UDCC,para.73, PCB,para.407.

²¹¹² **P-0800**:T-69,51:17-52:2.

²¹¹³ **P-0800**:T-69,49:13.

²¹¹⁴ **P-0800**:T-69,53:7-55:2.

²¹¹⁵ **P-0800**:T-69,51:17-19.

firing of the B-10 which resulted in the enemy fleeing; and the impact where the B-10 round impacted.²¹¹⁶

738. As for the evidence provided by P-0815 and P-0886 concerning the burning of houses and damage caused to houses,²¹¹⁷ they were not in Sayo and did not personally observe such damage being done to houses.²¹¹⁸ Their evidence is also not corroborated by other reliable evidence. What is more, Mr NTAGANDA is not charged with this type of destruction.

C. Mr Ntaganda bears no individual criminal responsibility pursuant to Count 18

739. Mr NTAGANDA is not charged for direct perpetration (Art.25(3)(a)), ordering (Art.25(3)(b)) or inducing (Art.25(3)(b)) the commission of the crime of destroying the enemy's property in Mongbwalu or Sayo under Count 18.²¹¹⁹

740. The Prosecution failed to prove that the FPLC destroyed enemy's property pursuant to Count 18 during the *First Attack*.²¹²⁰ The Prosecution also failed to prove that Mr NTAGANDA possess the required Art.30 *mens rea*.

741. Mr NTAGANDA's commander SALUMU followed targeted procedure as to avoid destruction personally.²¹²¹

742. The manner in which Mr NTAGANDA used heavy weapons in Sayo shows no intent on his part to commit such crimes. Quite to the contrary, the firing was only targeting military target²¹²² and stopped as soon as the enemy fled.²¹²³

743. It cannot be inferred from Mr NTAGANDA's conduct and/or orders he gave that he intended the destruction of property or that he knew that implementation of his orders would result in the destruction of property through the use of heavy weapons.²¹²⁴

²¹¹⁶ D-0300:T-217,49:20-51:9.

²¹¹⁷ PCB,paras.405-406.

²¹¹⁸ P-0815:T-76,56:5-8; P-0886:T-37,16:16-20.

²¹¹⁹ Confirmation Decision,p.38-58.

²¹²⁰ See Part IV, Chapter VI, Section VII, (A),(B).

²¹²¹ P-0963:T-82,16-20.

²¹²² D-0300:T-217,50:22-51:9.

²¹²³ D-0300:T-217,51:15-52:7; D-0017:T-253,39:23-41:8.

²¹²⁴ D-0300:T-215,49:20-50:11; D-0300:T-215,79:22-81:22.

744. SALUMU's instructions/orders to his heavy weapons section²¹²⁵ and his selection of target confined to military objectives demonstrate the absence of intent to destroy civilian property.
745. Moreover, the manner in which Mr NTAGANDA directed the use of heavy weapons during the Sayo operation, halting heavy weapons fire as soon as the enemy left,²¹²⁶ demonstrates that he did not intend to destroy enemy's property.
746. Consequently, Mr NTAGANDA does not incur individual criminal responsibility under Count 18 pursuant to any mode of liability charged in accordance with Art.25.

Section VIII - Count 17 : Attacking protected objects

747. Pursuant to the UDCC, Mr NTAGANDA is charged in relation to the *First Attack* for "Count 17: Attack against protected objects, a war crime [...] in or around Mongbwalu and Sayo."²¹²⁷ More particularly, Mr NTAGANDA is charged for attacks directed against the: (i) Sayo health centre;²¹²⁸ (ii) hospital in Mongbwalu "[a]fter the takeover of Mongbwalu and Sayo;²¹²⁹ and (iii) Sayo church "[a]fter the takeover of Mongbwalu and Sayo".²¹³⁰
748. The Prosecution's incorporation for this count of the "evidence of the pillaging and destruction of 'protected' property" is misguided.²¹³¹ The PTC's holdings that: "by pillaging property that they found in" "the hospital and the church in Mongbwalu" and by "pillaging goods" in the Sayo church, Mr NTAGANDA is responsible for attacking protected objects is legally unfounded.²¹³²
749. Attacking protected property as a war crime requires that the perpetrator directed one or more acts of violence against a protected object and intending the protected object to be the aim of the attack;²¹³³ during the conduct of hostilities.²¹³⁴

²¹²⁵ [REDACTED].

²¹²⁶ D-0300:T-217,51:15-52:7; D-0017:T-253,39:23-41:8.

²¹²⁷ UDCC,p.65.

²¹²⁸ UDCC,para.71.

²¹²⁹ UDCC,para.79; Confirmation Decision,para.69; The PTC's holding that Mr NTAGANDA directed an attack against the church in Mongbwalu is inaccurate.

²¹³⁰ UDCC,para.79; Confirmation Decision,para.69.

²¹³¹ PCB,para.408.

²¹³² Confirmation Decision,para.69.

²¹³³ Elements of crimes, Art.8(2)(b)(ix).

A. Mongbwalu

750. The alleged pillage at the Mongbwalu hospital ‘after the takeover of Mongbwalu’ does not constitute an attack against a protected object.²¹³⁵

B. Sayo

751. Regarding the church, the UDCC solely refers to pillaging and not to any damage cause to the church.²¹³⁶ The Decision confirming the charges incorrectly does.²¹³⁷ In any event, P-0768 was not in Sayo at the time of the FPLC operation and his evidence is unreliable.²¹³⁸ Moreover, P-0768’s evidence refers to the ‘aftermath’ of the FPLC operation, which is not comprised in the crime of attacking protected objects. As for the evidence provided by P-0898 who “saw [...] a church that had been entirely burnt down”²¹³⁹ is not only not reliable,²¹⁴⁰ it is also implausible and not corroborated by any reliable evidence. Lastly, the unreliability of P-0017 fabricated evidence regarding the church must also be dismissed.

752. As for Sayo health centre, there is no evidence that it was either targeted deliberately or hit by a heavy weapon’s fire.²¹⁴¹ Mr NTAGANDA explained how heavy weapons were used during the Sayo operation.²¹⁴² As for P-0800’s evidence about the presence of FPLC members in Sayo, less than 500 meters from him,²¹⁴³ it is implausible, not corroborated by other reliable evidence and should be disregarded as that related to P-0800 being the last one to depart from Sayo²¹⁴⁴ and leaving behind Charlotte who was in good health and could walk and her child.²¹⁴⁵ P-0800’s evidence that the FPLC moved from the church towards the health centre²¹⁴⁶ while he left towards Nzebi,²¹⁴⁷ is implausible and not corroborated by other reliable evidence. P-0800’s inconsistent and confusing evidence regarding the presence of FPLC members whom he could hear but

²¹³⁴ *Katanga* CD, paras.266-267.

²¹³⁵ *Katanga* CD, paras.266-267.

²¹³⁶ UDCC, para.72.

²¹³⁷ Confirmation Decision, para.69.

²¹³⁸ PCB, fn1188; *See* Part IV, Chapter III, Section I, A.

²¹³⁹ PCB, fn1194; **P-0898**:T-154,26:16-17.

²¹⁴⁰ *See* Part VI, Chap.I, Section III(P-0898).

²¹⁴¹ *See* Part IV, Chap.VI, Section VII..

²¹⁴² **D-0300**:T-217,49:20-51:9.

²¹⁴³ **P-0800**:T-68,31:18

²¹⁴⁴ **P-0800**:T-68,35:19-22.

²¹⁴⁵ **P-0800**:T-68,30:1-33:17.

²¹⁴⁶ **P-0800**:T-68,34:5-9;T-69,58:2-16.

²¹⁴⁷ **P-0800**:T-68,36:22-24.

could not see five Kilometres away in Mongbwalu and the timing of the FPLC's occupation of the *Usine* on the way to Sayo leads to the conclusion that P-0800 had left Sayo when the FPLC secured the town following the enemy's retreat.²¹⁴⁸

753. As for P-0800's evidence related to his observations some four months later,²¹⁴⁹ it is both implausible as well as irrelevant to proving the crime of attacking protected property.

C. Mr Ntaganda bears no individual criminal responsibility pursuant to Count 17

754. The Prosecution failed to prove that Mr NTAGANDA or the FPLC committed the crime of attacking protected objects in Mongbwalu or Sayo during the *First Attack*.²¹⁵⁰ The Prosecution has also failed to prove that Mr NTAGANDA possessed the required Art.30 *mens rea*.

755. The Prosecution's contention that witnesses saw looted goods in Mr NTAGANDA's possession²¹⁵¹ does not prove the crime of 'attacking protected objects'.²¹⁵²

756. Mr NTAGANDA's testimony regarding the briefing he received from SALUMU when arriving in Mongbwalu²¹⁵³ and his visit to the *congrégations* with KISEMBO depicted in the Mongbwalu video,²¹⁵⁴ demonstrate that Mr NTAGANDA cared for religious people and places and did not intend the destruction of protected objects.

Section IX - Count 11 : Pillaging

757. Pursuant to the UDCC, Mr NTAGANDA is charged in relation to the *First Attack* with "Count 11: Pillaging [...] in or around Mongbwalu and Sayo".²¹⁵⁵ Mr NTAGANDA is thus not charged for pillaging in Pluto, Nzebi and Kilo.

758. Pillaging refers to appropriation of certain property, without the consent of the owner, with the intent to use it for private or personal use. Military necessity is a Defence for

²¹⁴⁸ See Part IV, Chap. VI, Section VII.

²¹⁴⁹ P-0800:T-68,52:8-16,56:7-21,81:5-11;T-69,67:19-21,68:6-19.

²¹⁵⁰ Confirmation Decision, para. 141; PCB, paras. 802-805, 1040-1043.

²¹⁵¹ PCB, para. 804.

²¹⁵² See Part IV, Chap. VI, Section VIII.

²¹⁵³ D-0300:T-217,36:16-37:24.

²¹⁵⁴ [DRC-OTP-2058-0251](#),00:54:46-00:55:42 (Transl.[DRC-OTP-2102-3766](#),ll.792-823); [DRC-OTP-2058-0251](#),00:55:49-01:25:36 (Transl.[DRC-OTP-2102-3766](#),ll.844-1359).

²¹⁵⁵ UDCC,p.63.

the crime of pillaging.²¹⁵⁶ The appropriation of items such as weapons, ammunitions, medical supplies, vehicles, motorcycles, communications' equipment and food is *prima facie* justified by military necessity.²¹⁵⁷ D-0251 testified "as a soldier, we weren't allowed to go and pillage, but as for food, you could take food and eat because you can only live if you've eaten."²¹⁵⁸

A. Mongbwalu

759. The FPLC policy on looting was clear: "*nous ne voulons pas de cette armee qui ira voler les biens des habitants.*"²¹⁵⁹ It was communicated to FPLC members by UPC-RP authorities²¹⁶⁰ and senior FPLC commanders alike²¹⁶¹ and the soldiers were well aware of the potential consequences. Indeed, "*YKP: [...] tout militaire qui ira voler muni d'une arme ... il n'y aura pas de procès. Il sera fusille. Il mourra. N'est-ce pas? Soldats: Oui.*"²¹⁶² Even before the FPLC was created, when Mr NTAGANDA was informed that soldiers had started to loot in civilian houses, he immediately assembled the troops, punished them in public and had the looted goods burned.²¹⁶³ Later, when a member of the FPLC looted in the house of a Nande civilian, the most severe punishment was authorized by the President and the perpetrator was executed by firing squad, in front of the FPLC members assembled for this occasion in Camp Ndromo as well as before the victims of the looting.²¹⁶⁴

760. Mr NTAGANDA and other senior commanders did not promise looting to the troops.²¹⁶⁵ [REDACTED] made up the Mabanga meeting.²¹⁶⁶ P-0907 fabricated his interaction with [REDACTED].²¹⁶⁷ P-0010 was not present during the *First Attack*.²¹⁶⁸

²¹⁵⁶ Elements of Crimes, fn.62.

²¹⁵⁷ Nils Melzer, International Humanitarian Law, A Comprehensive Introduction, p.95; *Katanga Confirmation of Charges*, para.317; *Gotovina et al.*, para. 1779.

²¹⁵⁸ D-0251:T-260,32:18-20.

²¹⁵⁹ [DRC-OTP-0082-0016](#), 18:17-25:15 (transl. [DRC-OTP-0164-0710](#), ll.266,375).

²¹⁶⁰ [DRC-OTP-0082-0016](#), 09:53-29:37 (transl. [DRC-OTP-0164-0710](#), ll.179-440).

²¹⁶¹ D-0017:T-252,78:6-12; D-0251:T-260,27:12-20.

²¹⁶² [DRC-OTP-0082-0016](#), 25:45-25:57 (transl. [DRC-OTP-0164-0710](#), l.382).

²¹⁶³ D-0017:T-252,76:15-78:12; D-0300:T-215,7:18-8:1.

²¹⁶⁴ D-0300:T-227,83:7-22; T-242,84:17-86:16.

²¹⁶⁵ PCB, paras.382.

²¹⁶⁶ [REDACTED].

²¹⁶⁷ PCB, fn.1093; See Part IV, Chapt.III, Section I, (D).

²¹⁶⁸ PCB, fn.1095; See Part VI, Chapt.I, Section IV.

761. Neither Mr NTAGANDA nor FPLC commanders ordered troops to commit pillage.²¹⁶⁹ Mr NTAGANDA explained in detail the meaning of the term ‘*kupiga na kuchaji*’ which means ‘Attack’ and ‘Charge’, the two phases of a military operation.²¹⁷⁰ The second leg of this term refers to actions taken by the attacking force when the enemy flees, “[t]hat means that you take all the equipment that the enemy had when fleeing”,²¹⁷¹ “it means getting all the weapons that the enemy had because you had beaten the enemy.”²¹⁷² The taking of goods other than the enemy’s property, such as items belonging to civilians was forbidden and the soldiers were reminded of this during briefings preceding attacks.²¹⁷³ P-0055, with whom D-0038 agreed,²¹⁷⁴ confirmed Mr NTAGANDA’s interpretation that:

it means attack the army and after or as soon as you attack the enemy, you should dispossess the enemy of his weapon and his property. So it's a military expression. I don't know how to explain it, but it means attack and then – attack the enemy and then pillage by taking away his weapon and all his whatever he has, uniform, military attire, bayonets, whatever they possess, in fact meaning that the enemy should be disarmed. It’s a military expression.²¹⁷⁵

762. P-0017 and P-0963, who provided incriminating evidence which cannot be relied upon,²¹⁷⁶ referred to “*kupiga na kuchaji*” as implying looting. In cross-examination however, P-0017 said “Q. I put it to you that the word “kupiga” means to strike or to attack; is that correct? A. Yes. Q. And would you agree that “na kuchaji” can mean to charge; is that correct? A. Yes, indeed” and P-0963 said “that was when you prepare for war. And it's about your morale. The chief could say “kupiga na kuchaji”. That was a type of movement.”²¹⁷⁷

763. Although D-0251 might have understood the term of ‘*kupiga na kuchaji*’ to be related in some way to looting, she clearly affirmed: “our leaders didn’t want us to loot”.²¹⁷⁸

Q. What instructions did you receive from Bosco Ntaganda on this subject?

²¹⁶⁹ PCB, paras.382-383.

²¹⁷⁰ D-0300:T-213,8:11-12:22.

²¹⁷¹ D-0300:T-213,9:10-11.

²¹⁷² D-0300:T-213,9:13-14.

²¹⁷³ D-0300:T-213,9:18-10:1.

²¹⁷⁴ D-0038:T-249,18:22-20:9.

²¹⁷⁵ P-0055:T-72,10:7-13; See D-0038:T-249,18:23-19:4.

²¹⁷⁶ See Part IV, Chapt.III, Section I, (B), (C).

²¹⁷⁷ P-0963:T-81,89:1-2.

²¹⁷⁸ D-0251:T-260,99:21-23.

A. Mr Bosco was extremely strict. He didn't like people who disobeyed his orders, and he told us that he didn't want to hear of anybody looting the population property, nor setting alight to the houses of the civilian population.

Q. Were these instructions from Bosco Ntaganda only for this operation or did you hear them also on other occasions?

A. He mentioned them frequently. He wanted his troops to be disciplined and he wanted them to respect the civilian population and their property.²¹⁷⁹

764. The Prosecution's reference to the fact that FPLC members were not paid²¹⁸⁰ to demonstrate looting is misguided. For members of non-state armed groups, this is the norm and is not in and of itself an incentive to loot. FPLC members joined for other reasons. Mr NTAGANDA testified that the FPLC was their family.²¹⁸¹ When addressing the FPLC troops, Chef KAHWA promised that they would soon get a salary.²¹⁸²

765. Mr NTAGANDA did not pillage himself;²¹⁸³ did not have others commit pillage on his behalf,²¹⁸⁴ and did not organise the transport of looted goods from Mongbwalu to Bunia.²¹⁸⁵ P-0768, P-0963, P-0907, P-0901 and P-0888's evidence in this regard, previously addressed,²¹⁸⁶ cannot be attributed any probative value.

766. The evidence relied upon by the Prosecution to demonstrate that FPLC members looted in Mongbwalu is either not reliable or not probative that the crime of pillage was committed by the FPLC.²¹⁸⁷ P-0859 discovered that his house has been looted when returning at a time unknown following the FPLC second attempt to liberate Mongbwalu.²¹⁸⁸ P-0859 saw his neighbours wearing his clothes indicating that civilians were responsible for looting.²¹⁸⁹ P-0039's evidence, admitted pursuant through Rule 68(2)(b) without cross-examination is based on anonymous hearsay. Notably, P-0039 is one of the witnesses who were in contact with [REDACTED] P-0154 who appears to

²¹⁷⁹ D-0251:T-260,27:12-27(underline added).

²¹⁸⁰ PCB,fn.1094.

²¹⁸¹ D-0300:T-217,38:3-10.

²¹⁸² [DRC-OTP-0082-0016](#),17:44-18:02 (transl.[DRC-OTP-0164-0710](#),ll. 255-258).

²¹⁸³ PCB,para.397; D-0300:T-234,6:5-8.

²¹⁸⁴ D-0300:T-221,72:23-25.

²¹⁸⁵ PCB,para.805; D-0300:T-221,72:21-25.

²¹⁸⁶ See Part IV,Chapt.III,Section I, (A),(C),(D),(E).

²¹⁸⁷ PCB,paras.390-391.

²¹⁸⁸ P-0859:T-51,26:4-16.

²¹⁸⁹ P-0859:T-51,32:20-33:2.

have coached many Prosecution's witnesses.²¹⁹⁰ The evidence provided by P-0877, P-0887, P-0892 and [REDACTED] P-0912, P-0894 and V-2 addressed earlier²¹⁹¹ is unreliable.

767. The Mongbwalu video does not support the Prosecution's claim of "Hema civilian supporters under the command of NTAGANDA, [going] house-to-house searching for items to loot."²¹⁹² First, as addressed earlier, Hema civilians were neither integrated in the FPLC, nor under the command of Mr NTAGANDA, who cannot be held responsible for their actions. Second, the Mongbwalu video actually depicts a town which had not been the object of any destruction where normal life is resuming and civilians are returning peacefully with their own items.²¹⁹³

768. Although Mongbwalu is a gold mining town, gold was not an issue during the FPLC operations in Mongbwalu. In any event, no gold could have been extracted at the time, as shown by the contemporaneous Mongbwalu video.²¹⁹⁴

B. Sayo

769. The evidence relied upon by the Prosecution to demonstrate that FPLC members looted in Sayo is either not reliable or not probative that the crime of pillage was committed by the FPLC.²¹⁹⁵ P-0815 left Sayo at the beginning of the FPLC operation and did not return for months.²¹⁹⁶ His evidence on looting is based on P-0886, who provided unreliable evidence. More importantly, asked who was responsible for the looting, P-0815 testified "I do not know. It is not possible for me to identify them. It was the looters who took away that property."²¹⁹⁷ P-0886 who provided entirely implausible evidence regarding [REDACTED] and the location of the [REDACTED] family bodies, which turned out to be erroneous, was not a truthful witness.²¹⁹⁸ In cross-examination, P-0886 admitted leaving Sayo before the FPLC left the town.²¹⁹⁹ The

²¹⁹⁰ See Part V, Chapt. II, Section C.

²¹⁹¹ PCB, para. 390; See Part IV, Chap. III, Section II.

²¹⁹² PCB, para. 384.

²¹⁹³ [DRC-OTP-2058-0251](#), 00:15:07-00:16:06.

²¹⁹⁴ [DRC-OTP-2058-0251](#), 00:30:15-00:37:02 (Transl. [DRC-OTP-2102-3766](#), ll. 452-522).

²¹⁹⁵ PCB, paras. 393-397.

²¹⁹⁶ P-0815: T-76, 15:25-16-1.

²¹⁹⁷ P-0815: T-76, 58:11-12.

²¹⁹⁸ See Part IV, Chap. III, Section IV, (I).

²¹⁹⁹ P-0886: T-36, 70:17-23.

exact number of days P-0886 was away from Sayo before returning is unknown.²²⁰⁰ P-0886 did not see anyone take anything from his house.²²⁰¹ As concerns houses, P-0886 testified that he saw they were empty “from far away”.²²⁰² He also testified that he did not see any soldiers take the iron sheets allegedly looted off the roofs.²²⁰³ Significantly, the Mongbwalu video shows many houses with roofs made of corrugated iron sheets that have not been looted.²²⁰⁴ Whereas P-0886 was asked to assist in transporting goods on a vehicle, he did not see these items being looted and his evidence suggests these items were used for military purposes at the Church where they set up, at Camp Mount Adidi and at camp Goli where their HQ was.²²⁰⁵ As for P-0800 who left Sayo as the FPLC was entering the town²²⁰⁶ and who returned much later in March 2003,²²⁰⁷ his evidence regarding [REDACTED] is both implausible and not probative.

770. The FPLC policy regarding civilian property, is confirmed by KISEMBO who is seen on the Mongbwalu video addressing non-Hema civilians who have returned:

*“vous qui êtes revenus avant les autres, vous ne devez pas entrer dans les maisons d'autrui. Si vous avez laissé votre maison, c'est à cette même maison que vous devez revenir.”*²²⁰⁸

*“CFK: ...même à Bunia il y a des maisons appartenant à des Lendu, et nous avons interdit aux gens de les occuper. Hein? INI: Oui. CFK: A Bunia, est-ce que vous avez vu des Hema occuper des maisons appartenant à des Lendu? INI : Non.”*²²⁰⁹

771. Following the liberation of Sayo, when Mr NTAGANDA was informed that ABELANGA, a senior officer and battalion commander in SALUMU's brigade, was harassing the civilian population and involved in taking their property, Mr NTAGANDA immediately reacted; had ABELANGA arrested despite the important position he held; and brought him back to Bunia where he was imprisoned.²²¹⁰ As revealed by various messages in the NTAGANDA Logbook, Mr NTAGANDA did not

²²⁰⁰ P-0886:T-37,12:4-10;T-40,8:7-9:23,11:3-19,13:3-15:10.

²²⁰¹ P-0886:T-40,17:23-25.

²²⁰² P-0886:T-40,18:6-8.

²²⁰³ P-0886:T-40,19:12-18,21:23-22:1.

²²⁰⁴ [DRC-OTP-2058-0251](#),00:15:07-00:16:06.

²²⁰⁵ P-0886:T-37,18:15-17,19:5-6,19:19-20.

²²⁰⁶ P-0800:T-68,35:19-22.

²²⁰⁷ P-0800:T-68,51:17-20.

²²⁰⁸ [DRC-OTP-2058-0251](#),01:44:14-01:44:21 (transl.[DRC-OTP-2102-3766](#),ll.1673-1674).

²²⁰⁹ [DRC-OTP-2058-0251](#),01:45:30-01:45:38 (transl.[DRC-OTP-2102-3766](#),ll.1705-1709).

²²¹⁰ D-0300:T-235,57:21-58:2.

hesitate to take disciplinary measures leading to imprisonment of FPLC members.²²¹¹ Mr NTAGANDA's attitude towards theft was clear: "[REDACTED]".²²¹² JEROME applied FPLC's policy.²²¹³

772. Measures were taken to protect inhabitants' houses from looting.²²¹⁴ Messages [REDACTED] in Mongbwalu illustrate that daily patrols monitored living conditions in Mongbwalu and that the situation was under control.²²¹⁵ SALONGO, [REDACTED] Comd-SE-OpSec considered that it was his duty to protect "*veiller également à l'ordre public et à la sécurité des personnes et de leurs biens*".²²¹⁶

C. Mr Ntaganda bears no individual criminal responsibility pursuant to Count 11

773. The Prosecution failed to prove that Mr NTAGANDA or the FPLC committed the crime of pillaging in Mongbwalu or Sayo during the *First Attack*.²²¹⁷ The Prosecution also failed to prove, that Mr NTAGANDA possessed the required Art.30 *mens rea*.

774. The evidence does not show that Mr NTAGANDA "sought his own profit" and is not in and of itself "corroborating his intent".²²¹⁸ Mr NTAGANDA's personal view and the FPLC ideology he developed regarding looting was clear: it was a zero tolerance policy, as illustrated by *inter alia*: the burning of looted goods in Komanda;²²¹⁹ the public execution by firing squad of a member of FPLC who pillaged the house of a civilian in Bunia;²²²⁰ Chef KAHWA address to the troops in Mandro;²²²¹ and Mr

²²¹¹ [DRC-OTP-0017-0033](#),p.0041(third) (Transl.[DRC-OTP-2102-3854](#),p.3890); [DRC-OTP-0017-0033](#),p.0180 (first)(Transl.[DRC-OTP-2102-3854](#),p.4002); [DRC-OTP-0017-0033](#),p.0079(second)(Transl.DRC-OTP-2102-3854,p.3901); [DRC-OTP-0017-0033](#),p.0189(second) (Transl.[DRC-OTP-2102-3854](#),p.4011); DRC-OTP-0017-0033,p.0098 (first) (Transl.[DRC-OTP-2102-3854](#),p.3920); [DRC-OTP-0017-0033](#),p.0194(second) (Transl.[DRC-OTP-2102-3854](#),p.4016); [DRC-OTP-0017-0033](#),p.0098(second) (Transl.[DRC-OTP-2102-3854](#),p.3920); DRC-OTP-0017-0033,p.0191(first) (Transl.[DRC-OTP-2102-3854](#),p.4013).

²²¹² [REDACTED].

²²¹³ [DRC-OTP-0017-0033](#),p.0044(first) (Transl.[DRC-OTP-2102-3854](#),p.3866).

²²¹⁴ [DRC-OTP-0017-0033](#),p.0036(first) (Transl.[DRC-OTP-2102-3854](#),p.3858).

²²¹⁵ 14 December: [DRC-OTP-0017-0033](#),p.0053(second) (Transl.[DRC-OTP-2102-3854](#),p.3875); 15 December: [DRC-OTP-0017-0033](#),p.0054(second) (Transl.[DRC-OTP-2102-3854](#),p.3876); 16 December:DRC-OTP-0017-0033,p.0057(first) (Transl.[DRC-OTP-2102-3854](#),p.3879); 17 December:[DRC-OTP-0017-0033](#),p.0058 (first) (Transl. [DRC-OTP-2102-3854](#),p.3880).

²²¹⁶ PCB,para.321; [DRC-OTP-0092-0541](#); [DRC-OTP-0091-0709](#).

²²¹⁷ Confirmation Decision,para.140; PCB,paras.802-805.

²²¹⁸ PCB,para.1042.

²²¹⁹ **D-0300**:T-215,7:18-8:1.

²²²⁰ **D-0300**:T-215,42:9-43 :10

²²²¹ [DRC-OTP-0082-0016](#),25:46-25:58 (Transl.[DRC-OTP-0164-0710](#),ll.382-383).

NTAGANDA's messages in the Ntaganda-Logbook.²²²² Mr NTAGANDA explained that '*kupiga na kuchaji*' did not authorise the looting of civilian property.²²²³

775. Measures taken by Mr NTAGANDA to repress looting incidents brought to his attention, including in particular the arrest of ABELANGA,²²²⁴ a senior battalion commander, in Mongbwalu, demonstrate clearly that Mr NTAGANDA did not intend to loot personally or for FPLC members to loot. Mr NTAGANDA did not know that FPLC members would pillage as a result of his orders.

Section X - Count 10 : Persecution

776. Pursuant to the UDCC, Mr NTAGANDA is charged in relation to the *First Attack* with "Count 10: Persecution on ethnic grounds [...] in or around Mongbwalu, Pluto, Nzebi, Sayo and Kilo".²²²⁵

777. The case for the Defence is that neither the FPLC nor Mr NTAGANDA committed the crimes charged in counts 1-5, 7-8, 11-13 and 17-18²²²⁶ and accordingly that the crime of persecution has not been proved. More importantly, neither the FPLC nor Mr NTAGANDA acted at any time during the *First Attack* with the required discriminatory 'specific intent' against non-Hema civilians for persecution.²²²⁷

A. Specific intent requirement

778. The FPLC was a multi-ethnic armed group composed of members from various ethnic groups. Many amongst the most senior officers were not from the Hema ethnic group, including *inter alia*: Mr NTAGANDA, DILANGO, JEROME, SALONGO, [REDACTED][REDACTED],[REDACTED],[REDACTED],[REDACTED], [REDACTED].

779. Addressing the FPLC troops assembled in Mandro before their departure to Mongbwalu, Chef KAHWA, *secrétaire national adjoint à la Défense*, expressed with

²²²² [DRC-OTP-0017-0033](#),p.0212 (first) (Transl.[DRC-OTP-2102-3854](#),p.4034; [DRC-OTP-0017-0033](#),p.0178 (first) (Transl.[DRC-OTP-2102-3854](#),p.4000; See also [DRC-OTP-0017-0033](#),p.0036 (second) (Transl.[DRC-OTP-2102-3854](#),p.3858.

²²²³ D-0300:T-213,9:5-10:1.

²²²⁴ D-0300:T-233,54:7-8.

²²²⁵ UDCC,p.63.

²²²⁶ Confirmation Decision,5.8.2. Areas where article 7 is narrower than customary international law,para.58.

²²²⁷ Cassese, International Criminal Law, p.107.

conviction the UPC-RP's non-discrimination ideology and its application to the FPLC and its *raison d'être*²²²⁸ :

*”YKP: Il n'y a pas de tribalisme dans l'armée. Je ne sais pas quelle ethnie, je ne sais quoi, lorsque vous êtes arrivés ici, que ce soit les lendu ou n'importe quelle autre ethnie. que sont- ils tous ? Ce sont des Congolais ... n' est-ce pas la vérité? Soldats: Oui.”*²²²⁹

*”YKP: [...] Dans toute chose que nous faisons, nous regardons d'abord l'intérêt des habitants, la sécurité des habitants ... ainsi que leurs biens. Nous ne voulons pas non plus que cette armée soit une armée ethnique. Nous n'avons pas besoin d'une armée ethnique, c'est le tribalisme qui a tout endommagé et a même provoqué des tueries. Nous voulons que vous soyez une armée qui veille sur toutes les ethnies, une armée qui protège les habitants et leurs biens.”*²²³⁰

780. Chef KAHWA clearly identified who the FPLC's enemy was:

*”YKP: L'ennemi, cependant, c'est celui qui se dressera pour combattre, pour tuer les habitants. Celui-là sera notre ennemi, n'est-ce pas la vérité? Soldats: Oui. YKP: Et nous le combattons. Nous invitons donc tout le monde à se joindre à nous.”*²²³¹

781. Mr NTAGANDA, who assisted with the preparation of Chef KAHWA's address to the FPLC²²³², confirmed the FPLC ideology which was adopted and included in the training of FPLC members, including that of former members of the APC:

*”Well, briefly it was about getting them to understand military ideology [...] that soldiers ensure the safety and security of civilian and their property. Thirdly, a soldier must fight against other soldiers. [...] discipline and morale is the main weapon of all soldiers [...] they must show discrimination -- they must show discipline without discrimination towards civilians [...].”*²²³³

782. The operational objectives as well as the manner, in which the FPLC operations in Mongbwalu were conducted, make it clear that discrimination against non-Hema was not even a consideration. Strikingly, the brigade commanders who ordered to

²²²⁸ [DRC-OTP-0082-0016](#),19:45-20:01 (transl.[DRC-OTP-0164-0710](#),ll.288-290).

²²²⁹ [DRC-OTP-0082-0016](#),23:02-23:11 (transl.[DRC-OTP-0164-0710](#),ll.336-339).

²²³⁰ [DRC-OTP-0082-0016](#),15:38-16:17 (transl.[DRC-OTP-0164-0710](#),ll.235-240).

²²³¹ [DRC-OTP-0082-0016](#),23:12-23:18 (transl.[DRC-OTP-0164-0710](#),ll.340-342); See also [DRC-OTP-0082-0016](#),12:13-14:27 (transl.[DRC-OTP-0164-0710](#),ll.205-222).

²²³² [DRC-OTP-0082-0016](#) (Transl.[DRC-OTP-0164-0710](#),0723:375-387).

²²³³ **D-0300**:T-214,4:12-5:6; See also [DRC-OTP-0082-0016](#),20:27-20:45 (transl.[DRC-OTP-0164-0710](#),ll.297-300).

implement the FPLC operations in Mongbwalu, *i.e.* SALUMU and SEYI, are not from the Hema ethnic group. [REDACTED].

783. Significantly, as highlighted by the Prosecution, the Mongbwalu population at the time of the FPLC operations was predominantly non-Hema.²²³⁴ Yet, the primary aim of the FPLC operations was to put an end to the oppression of the Mongbwalu population.²²³⁵
784. The FPLC operations were not directed at civilians, and even less so at non-Hema civilians. FPLC commanders including Mr NTAGANDA did not issue orders targeting Lendu or non-Hemas.²²³⁶
785. Although most of the civilian population left Mongbwalu upon hearing gunshots before the FPLC entered the town,²²³⁷ they did so voluntarily as is often the case during an armed conflict.
786. The crux of the matter however is that the FPLC intended all members of the civilian population, without exception, to return to Mongbwalu.²²³⁸ As soon as Sayo was liberated, civilians who left were invited to return and in fact did return.²²³⁹ Even civilians from the Lendu ethnic group could and did return.²²⁴⁰
787. The FPLC did not commit the crime of murder. Notably, the evidence does not establish that any of the alleged murder was committed on a discriminatory ground. Any *rattissage* conducted in Mongbwalu and Sayo were conducted in accordance with military practice.²²⁴¹ The aim of *rattissage* was not to identify ‘Lendus’.²²⁴² In this

²²³⁴ PCB, para.435.

²²³⁵ **D-0300**:T-216,46:14-47:5;T-242,24:13-18;[DRC-OTP-2058-0251](#),00:09:18-00:09:39(transl.[DRC-OTP-2102-3766](#),ll.155-157).

²²³⁶ PCB, para.434.

²²³⁷ DRC-OTP-2076-0194, para.35.

²²³⁸ **P-0894**:T-104,7:22-25(“Apart from people that I know, after Mongbwalu was taken, there was a civilian population in Sayo. And Bosco came. He had a meeting. He reassured the population saying that they should return to the village”).

²²³⁹ **P-0887**:T-93,19:10-14.

²²⁴⁰ DRC-OTP-2058-0251,01:07:07-01:07:33 (transl.[DRC-OTP-0164-0710](#),ll.1018-1022); **P-0907**:T-90,51:11-12; **P-0800**:T-69,32:24-25;T-69,10:13-14; **P-0859**:T-51,7:25.

²²⁴¹ **P-0898**:T-154,26:10-13.

²²⁴² See Part IV, Chapt.III, Section I,(A),(C),(D); See Part IV, Chapt.III, Section II,(E); See Part VI, Chap.I, Section II, III; See Part IV, Chap.V, Section VI.

regard, the unreliable character of the evidence upon which the Prosecution relies demonstrates the weakness of its case.²²⁴³

788. Addressing nuns at the *Charité Maternelle congrégation* when touring Mongbwalu with Mr NTAGANDA, KISEMBO also clearly identified the FPLC's enemy, stressing that members of the Lendu ethnic group were welcome back but not Lendus combatants:

*"[...] Nous n'avons aucun problème avec les Lendu. Un Lendu n'est Lendu que parce que c'est son ethnité. Il peut revenir, il peut vivre ici, et il va y vivre sans le moindre souci. Mais les combattants, nous ne voulons pas d'eux, car ce sont eux qui agacent les habitants."*²²⁴⁴

789. In the same video, KISEMBO expressed with conviction the absence of discrimination both within the UPC-RP²²⁴⁵ and within the FPLC.²²⁴⁶

790. When a Lendu civilian, [REDACTED], was killed by a FPLC member, [REDACTED] SALONGO immediately reacted and reported the incident leading to the most severe punishment being authorised by the President.²²⁴⁷ LIRIPA was publicly executed in Mongbwalu by firing squad.²²⁴⁸

B. Mr Ntaganda bears no individual criminal responsibility pursuant to Count 10

791. The Prosecution failed to prove the commission of any crimes during the *First Attack* which could constitute persecutory acts.²²⁴⁹

792. The Prosecution also failed to prove that Mr NTAGANDA harboured the required 'specific intent', *i.e.* a discriminatory intent against non-Hema civilians.

793. The UPC-RP did not adopt a policy to attack non-Hema civilians. The UPC-RP's strategic goal was rather to protect all members of the civilian population without discrimination. Mr NTAGANDA fully adhered to the UPC-RP strategic goal.²²⁵⁰ The

²²⁴³ PCB, paras. 434, 436, 439.

²²⁴⁴ [DRC-OTP-2058-0251](#), 01:07:11-01:07:33 (transl. [DRC-OTP-2102-3766](#), ll. 1018-1022).

²²⁴⁵ [DRC-OTP-2058-0251](#), 01:01:05-01:01:11 (transl. [DRC-OTP-2102-3766](#), ll. 944); [DRC-OTP-2058-0251](#), 01:02:30-01:03:42 (transl. [DRC-OTP-0164-0710](#), ll. 960-971).

²²⁴⁶ [DRC-OTP-2058-0251](#), 01:55:58-01:56:04 (transl. [DRC-OTP-0164-0710](#), ll. 2027-2028).

²²⁴⁷ [REDACTED].

²²⁴⁸ [REDACTED].

²²⁴⁹ Confirmation Decision, para. 140; PCB, paras. 806-818.

²²⁵⁰ **D-0300**:T-229, 63:18-21.

UPR-RP's potential enemy was clearly defined; it was the 'enemy of peace'. This was disseminated top-down to all members of the FPLC:

TL: ... you go and do it. ... Our enemy is ... the one who is the enemy of peace Do we agree on that? ALL: Yes. TL: You should not have any of those tribal thoughts or "I am somebody from a certain tribe, I am from a certain tribe and so on." No. It means we ... we come here. This person here is not from my tribe. That other person is not from my tribe. I do not know the tribe of that other one. I do not even know the tribe of ... the escorts I am accompanied by. . . . But we are working for the peace and unity of the Congolese people.²²⁵¹

794. Mr NTAGANDA developed the FPLC ideology in conformity with the UPC-RP's strategic goal.²²⁵² From the moment Mr NTAGANDA first set foot in Bunia in 2000, the protection of the civilian population without discrimination was for him a driving force.²²⁵³ Through his actions and orders, Mr NTAGANDA always referred to the enemy as those attacking or firing at FPLC members.²²⁵⁴ This was recognized by his subordinates.²²⁵⁵

795. P-0769, a biased witness, stated:

[w]e were told that the UPC was not a tribal militia";²²⁵⁶ "there were classes on ideology. They told us 'We are -- we are not training you to go kill people that you're in conflict with in your country, but we are training you as real soldiers with a humanitarian mission, to protect therefore. We are not sending you to or we're not encouraging you to go and kill a tribe or an ethnic group' [...]" "there was an expression that was often repeated as far back as I remember, which was the role of a soldier is to protect a civilian and that's good. Those were words that they always repeated."²²⁵⁷

796. When a non-Hema civilian was victim of looting in Bunia, Mr NTAGANDA reacted²²⁵⁸ and the FPLC perpetrator was punished.²²⁵⁹ When a Lendu civilian was killed by a drunken FPLC member in Mongbwalu, Mr NTAGANDA fully agreed with

²²⁵¹ [DRC-OTP-0120-0293](#), 19:50-20:51 (Transl. [DRC-OTP-2101-2791](#), pp.2800-2803, ll.266-276).

²²⁵² See Part III, Chapt. I, Section II(B).

²²⁵³ **D-0300**:T-214,4:24-5:5.

²²⁵⁴ **D-0300**:T-211,8:2-15;T-212,11:7-19;T-213,7:20-8:2,10:4-12,15:5-25;T-214,61:20-25;T-219,17:8-11;T-220,25:25-26:5;T-221,42:14-19;T-230,56:12-16;T-232,38:1-7,82:5-9.

²²⁵⁵ **D-0251**:T-260,27:12-20.

²²⁵⁶ **P-0769**:T-120,31:7-11 (underline added).

²²⁵⁷ **P-0769**:T-122,35:9-36:4.

²²⁵⁸ **D-0300**:T-242,84:17-86:16.

²²⁵⁹ **D-0300**:T-227,83:7-22.

the punishment authorised.²²⁶⁰ When Mr NTAGANDA authorised KASANGAKI to interrogate BWANALONGA, he did so on the basis that he cooperated with the enemy against the civilian population,²²⁶¹ not because he was a Lendu. When LUBANGA adopted a plan to provide weapons and work with Lendu combatants to fight the UPDF, which had become the enemy, LUBANGA did not hesitate to entrust Mr NTAGANDA with the mission to deliver weapons and negotiate with them.²²⁶² When Lendu civilians who did not agree with attacks directed by Lendu combatants, sought protection in Mandro, Mr NTAGANDA welcomed them.²²⁶³ At all times, Mr NTAGANDA demonstrated the attitude of a high level military commander whose intention was to rely on a law abiding and disciplined military force to support the UPC-RP legitimate and non-discriminatory objectives.

CONCLUSION

797. Mr NTAGANDA must be acquitted for all charges laid against him for the *First Attack* pursuant to any Art.25 mode of liability.

CHAPTER VII - MR NTAGANDA DOES NOT INCUR INDIVIDUAL CRIMINAL LIABILITY PURSUANT TO ARTICLE 28

798. The Prosecution failed to prove that the FPLC committed any of the crimes charged in relation to the *First Attack*. Accordingly, Mr NTAGANDA does not incur individual criminal responsibility as a commander for any of these crimes.

Section I – Applicable law

799. Regarding the elements that must be proved pursuant to Art.28(a) the Defence agrees with the third element identified by PTCII “(c) the crimes committed by the forces (subordinates) resulted from the suspect’s failure to exercise control properly over them”.²²⁶⁴ Thus, the Prosecution must prove a causation element between the crimes committed and the failure of the commander to exercise proper control.

800. The Defence takes issue however with the fourth element identified by PTCII “(d) the suspect either knew or, owing to the circumstances at the time, should have known that

²²⁶⁰ D-0300:T-222,62:19-63:2; [DRC-OTP-0017-0033](#),p.0098(second) (Transl.[DRC-OTP-2102-3854](#),p.3920).

²²⁶¹ D-0300:T-237,2:22-3:24.

²²⁶² D-0300:T-220,68:10-70:10.

²²⁶³ D-0300:T-213,70:19-71:13;T-231,10:18-13:5; D-0300:T-213,70:19-71:13;T-231,10:18-13:5.

²²⁶⁴ Confirmation Decision,para.164.

the forces (subordinates) were committing or about to commit one or more of the crimes [...]”. The Appeals Chamber has yet to pronounce on this element of Art.28(a), which the Defence submits does not represent the state of customary international law. The ‘should have known’ standard has been rejected several times in the case law *ad-hoc* tribunals.²²⁶⁵

801. As for the fifth and sixth elements identified by PTCII, the Defence defers to and agrees with the pronouncement of the Appeals Chamber on this issue in BEMBA.²²⁶⁶

Section II – Effective command and control requirement

802. Mr NTAGANDA in his capacity as *Chef-État-major-général-adjoint – operations et organisation*, a staff officer position, did not have ‘effective command and control’ over the FPLC. Mr NTAGANDA exerted considerable influence over FPLC members, but did not exercise ‘command and control’ over them. Although Mr NTAGANDA issued orders to FPLC members, he did so on behalf of LUBANGA, Commander-in-chief-FPLC, or KISEMBO, FPLC *Chef-État-major-général*.

803. It follows that Mr NTAGANDA is thus not liable pursuant to Art.28(a) unless he was entrusted with command authority over specific forces for a specific operation. This was the case regarding the second FPLC attempt to liberate Mongbwalu. From the moment he was given command of the FPLC operation by LUBANGA²²⁶⁷ to the moment he handed over his command responsibility to KISEMBO, when briefing him upon his arrival in Mongbwalu,²²⁶⁸ Mr NTAGANDA exercised ‘command and control’ over the FPLC forces. The period during which Mr NTAGANDA exercised ‘command and control’ over the FPLC for the Mongbwalu operations, does not include the period preceding his meeting with LUBANGA upon returning from Aru.

804. Mr NTAGANDA did not exercise *de facto* effective ‘command and control’ over the FPLC forces. The evidence clearly establishes that KISEMBO exercised both *de jure*

²²⁶⁵ [Celebici AJ](#), para.241; [Hadzihasanovic TJ](#), para.31,96; [Delalic TJ](#), para.313; [Blaškić AJ](#), para.406; [Oric TJ](#), para.324; *see also Bemba AJ*, Separate Opinion, para.38.

²²⁶⁶ [Bemba AJ](#), paras.166-194.

²²⁶⁷ D-0300:T-216,46:14-23.

²²⁶⁸ D-0300:T-217,76:21-77:10,80:15-82:8.

and *de facto* `command and control` over the FPLC as a whole, at all times relevant to the UDCC. Mr NTAGANDA was not the `real Army Chief of the FPLC`. ²²⁶⁹

805. Lastly, concerning the so-called `Hema civilian supporters`, as demonstrated earlier, they were neither integrated nor under the command of the FPLC. ²²⁷⁰ Thus, Mr NTAGANDA neither exercised *de jure* nor *de facto* `effective command and control` over Hemas civilian supporters who would have committed crimes.

Section III – Knowledge requirement

806. If required, Mr NTAGANDA's knowledge must be determined taking into account that the *First Attack* unfolded over several days, ²²⁷¹ over an extensive geographical area ²²⁷² and involved numerous troops belonging to units not normally under the command and control of Mr NTAGANDA. ²²⁷³ Even though numerous measures were taken with a view to allowing FPLC units and commanders to communicate, the lack of effective means of communications is also a significant factor. ²²⁷⁴

807. Evidence of Mr NTAGANDA's knowledge is thus limited to instances where he was present, to information reported to him directly and to information transmitted to him by message via the phonie. Beyond Mr NTAGANDA's knowledge obtained by these means, it cannot be inferred that he learned additional information in particular with respect to crimes.

808. Mr NTAGANDA testified that he received reports from the field. ²²⁷⁵ He explained how messages were received via the phonie and transcribed in the Ntaganda-Logbook. ²²⁷⁶ The Prosecution's submission however that Mr NTAGANDA conceded that he "was really aware of everything that was going on at all times" ²²⁷⁷ misunderstands his testimony. Mr NTAGANDA explained why all measures taken to punish were not in the Logbook but that when such measures were in the Logbook, it worked "because the

²²⁶⁹ **D-0243**:T-257,30:13-18;**D-0251**:T-260,82:19-23;**P-0041**:[DRC-OTP-2054-5199](#),5223:19-5225:9;**P-0963**:T-78,63:17-22;**D-0038**:T-249,60:25-61:3.

²²⁷⁰ See Part IV, Chapt. VI, Section II.

²²⁷¹ See Part IV, Chapt. V.

²²⁷² See Part IV, Chapt. V.

²²⁷³ See Part IV, Chapt. V.

²²⁷⁴ **D-0300**:T-218,36:22-37:8; **D-0243**:T-257,34:20-35:4,41,42,56:7-57:6.

²²⁷⁵ **D-0300**:T-227,3:17-24.

²²⁷⁶ See Part IV, Chapt. IV, Section II.

²²⁷⁷ PCB, para. 998.

troops realised that I was aware of what was happening”²²⁷⁸ in their units. Mr NTAGANDA’s testimony must also be understood bearing in mind that very few people had access to the Logbook.²²⁷⁹

809. Moreover, the possibility for Mr NTAGANDA to acquire knowledge that a crime was committed considerably depended on whether his subordinate commanders were aware. For example, P-0963, a bias witness, testified not knowing whether UPC commanders “knew anything about”²²⁸⁰ rapes allegedly committed.

Section IV –Taking of measure to prevent or repress requirement

810. Contrary to the Prosecution’s submissions, Mr NTAGANDA and his commanders took multiple measures to prevent and repress not only misdemeanours but any and all breaches of discipline and violations/crimes brought to their attention. Measures appearing in the Ntaganda-Logbook messages are revealing in this regard.²²⁸¹ Mr NTAGANDA testified that many more measures were taken, in particular punishments imposed and other actions taken by him personally, which do not appear in the Ntaganda-Logbook.²²⁸² Notably, units had their own disciplinary board.²²⁸³

²²⁷⁸ D-0300:T-222,67:18-68:3.

²²⁷⁹ Access to the Logbook was limited to the Senior officers of the units which had the phonic and their *Signora*, see [DRC-OTP-0017-0033](#),p.0178(second) (Transl.[DRC-OTP-2102-3854](#),p.4000).

²²⁸⁰ P-0963:T-79,34:16-19.

²²⁸¹ See for example KAZUNGU: [DRC-OTP-0017-0033](#),p.0098(first) (Transl.[DRC-OTP-2102-3854](#),p.3920), [DRC-OTP-0017-0033](#),p.0109(second) (Transl.[DRC-OTP-2102-3854](#),p.3931), [DRC-OTP-0017-0033](#),p.0190(second) (Transl.[DRC-OTP-2102-3854](#),p.4012); RICKY:[DRC-OTP-0017-0033](#),p.0079(second) (Transl.[DRC-OTP-2102-3854](#),p.3901), [DRC-OTP-0017-0033](#),p.0200(second) (Transl.[DRC-OTP-2102-3854](#),p.4022) ; BYANKYA [DRC-OTP-0017-0033](#),p.0121(second) (Transl.[DRC-OTP-2102-3854](#),p.3943), [DRC-OTP-0017-0033](#),p.0193-0195 (Transl.[DRC-OTP-2102-3854](#),p.4015-4017); FREDDY [DRC-OTP-0017-0033](#),p.0132(second) (Transl.[DRC-OTP-2102-3854](#),p.3954), [DRC-OTP-0017-0033](#),p.0191 (first) (Transl. [DRC-OTP-2102-3854](#),p.4013); LIRIPA [DRC-OTP-0017-0033](#),p.0097-0098 (Transl.[DRC-OTP-2102-3854](#),p.3919-3920); NEMBE [DRC-OTP-0017-0033](#),p.0154(third)-p.0155(first) (Transl.[DRC-OTP-2102-3854](#),p.3976-3977), [DRC-OTP-0017-0033](#),p.0178(first) (Transl.[DRC-OTP-2102-3854](#),p.4000); MATEO [DRC-OTP-0017-0033](#),p.0098(second) (Transl.[DRC-OTP-2102-3854](#),p.3920); KATANAZI [DRC-OTP-0017-0033](#),p.0164-0166 (Transl.[DRC-OTP-2102-3854](#),p.3986-3988); See, *inter alia*, measures taken by Mr NTAGANDA [DRC-OTP-0017-0033](#),p.0177(first) (Transl.[DRC-OTP-2102-3854](#),p.3999); [DRC-OTP-0017-0033](#),p.0180(first) (Transl.[DRC-OTP-2102-3854](#),p.4002); [DRC-OTP-0017-0033](#),p.0194(second) (Transl.[DRC-OTP-2102-3854](#),p.4016); [DRC-OTP-0017-0033](#),p.0203(third) (Transl.[DRC-OTP-2102-3854](#),p.4025); [DRC-OTP-0017-0033](#),p.0205(first,second) (Transl.[DRC-OTP-2102-3854](#),p.4027); [DRC-OTP-0017-0033](#),p.0210(third) (Transl.[DRC-OTP-2102-3854](#),p.4032).

²²⁸² D-0300:T-222,67:15-68:3;T-217,57:23-58:5;T-215,7:18-8:1;T-237,10:3-15.

²²⁸³ [DRC-OTP-0017-0033](#),p.0101(second) (Transl.[DRC-OTP-2102-3854](#),p.3923).

811. Preventive measures comprise general measures aimed at insuring discipline at all levels and preventing breaches of discipline and violations before they take place; and specific preventive measures aimed at preventing a crime about to happen or putting an end to a crime in motion but not yet been committed. General preventive measures include ideology training, pre-operation briefings, senior leadership speeches to the troops, issuing clear orders, measures aimed at enforcing discipline and measures to repress breaches of discipline and violations alike.
812. All preventive measures taken must be considered to determine whether: (i) a commander failed to take preventive measures to prevent a crime (fifth essential element); or (ii) whether crimes committed result from the failure of the commander to take measures (third essential element).
813. Significant repressive measures taken by Mr NTAGANDA and the FPLC also constitute preventive measures, including: public execution by firing squad in two cases,²²⁸⁴ the burning of looted goods²²⁸⁵ and detention/imprisonment of many FPLC members, including senior commanders.²²⁸⁶
814. On 21 December 2002, Mr NTAGANDA ordered the arrest of members suspected of rape which reveals that he did not hesitate to order the arrest of FPLC members even before the crimes allegedly committed was proved or established.²²⁸⁷ Whereas one of the FPLC members mentioned in this message appears to have been promoted a couple of months later, Mr NTAGANDA recalled that the person promoted was not the person arrested.²²⁸⁸ It stands from the evidence that whenever Mr NTAGANDA was made aware of a breach of discipline or a violation/crime, he took the necessary and

²²⁸⁴ **D-0300**:T-215,42:9-43:4; **P-0901**:T-32,36:14-23; **D-0300**:T-222,62:19-63:2; [DRC-OTP-0017-0033](#),p.0098(second) (Transl.[DRC-OTP-2102-3854](#),p.3920).

²²⁸⁵ **D-0300**:T-215,7:18-8:1; **D-0017**:T-252,80:9-12.

²²⁸⁶ **D-0300**:KASANGAKI, PIGWA, LINGANGA, ABELANGA T-213,86:1-10;T-222,68:4-25; DILANGU T-215,42:9-43:4; KILONGOZI, AUTON, MANU, BOSS SABAYEYE, NEMBE T-222,69:14-70:25; ROY T-226,67:22-68:15; IDRIS BOBALE T-215,40:13-41:5; BEBWA, DJANGO T-233,58:4-13; JOHN, SOPHIE, SAMSON T-218,18:3-11; SALUMU T-218,53:2-12.

²²⁸⁷ [DRC-OTP-0017-0033](#),p.0203(third) (Transl.[DRC-OTP-2102-3854](#),p.4025).

²²⁸⁸ **D-0300**:T-228,78:1-79:11; [DRC-OTP-0017-0033](#),p.0066(second) (Transl.[DRC-OTP-2102-3854](#),p.3888). [DRC-OTP-0017-0033](#),p.0185(first) (Transl.[DRC-OTP-2102-3854](#),p.4007).

reasonable measures commensurate with his power and authority as *Chef-État-major-général*.²²⁸⁹

Section V – Causal link requirement

815. The Prosecution failed to prove that any crimes found to have been committed during the *First Attack* resulted from Mr NTAGANDA's failure to properly control the FPLC forces involved. Indeed, Mr NTAGANDA took multiple general preventive measures before the Second FPLC attempt to liberate Mongbwalu as well as numerous preventive measures as commander of this operation. Mr NTAGANDA did not fail in the exercise of command.

CONCLUSION

816. Mr NTAGANDA must be acquitted for all charges laid against him for the *First Attack* pursuant to Art.28.

PART V - KBL

INTRODUCTION

817. The military operation in the area of Kobu, Bambu and Lipri in February 2003 was just that: a military operation. The primary and lawful object of this operation was to take control of the vital main road connecting Bunia and Mongbwalu ("Main Road") and dislodge enemy fighters from their positions. Even assuming that any individual crimes were committed, they were not on such a scale as to transform the lawful nature of the operation. The massive and spontaneous participation of Lendu civilians in hostilities made distinction more difficult, and by the time the FPLC arrived in certain villages the only people who remained were fighters, not civilians taking no part in hostilities.

818. Testimony about the purported Kobu massacre and other violent crimes displayed substantial indications of collusion or coaching. Many witnesses were evasive or lied outright about their contacts with one another and with Intermediary P-0154. The forensic evidence raises further doubts about the veracity of witnesses who claimed

²²⁸⁹ **D-0300:**T-222,67:5-14;T-237,10:13-15.*See* Part IV,Chapt.VII,Section IV.

there was a massacre at Kobu; that there was a mass grave behind the Paradiso Hotel; and that their relatives are buried there.

819. Villages were not destroyed and pillaged. Video and satellite imagery shows strikingly little damage to an area where there was significant fighting that included Lendu fighters using the villages as cover.
820. The Ntaganda-Logbook provides compelling and objective evidence of his lack of involvement in the execution of the operation to take the Main Road, whereas KISEMBO was present on the ground. Furthermore, even biased witness P-0055 denied that Mr NTAGANDA had any role in planning the operation.
821. Mr NTAGANDA also was not informed of any crimes committed during the short period of time after they were allegedly perpetrated and the FPLC's defeat and dispersal by the UPDF on 6 March 2003. P-0055's testimony that he first learned of the Kobu massacre from MONUC officials, and then told Mr NTAGANDA, is contradicted by P-0317's testimony that MONUC had no information about any such massacre or crimes until the end of March. Other FPLC witnesses confirmed that they also did not hear about allegations of a massacre, and any participants in the event had obvious reasons to conceal it. SALUMU and many of the other interested officers never returned to the FPLC after the 6 March defeat and, therefore, could not have been disciplined by Mr NTAGANDA by the time he first heard rumours of this event in 2004.

CHAPTER I - THE KBL OPERATION AS A WHOLE WAS NOT AN ATTACK ON A CIVILIAN POPULATION

Section I - The nature of the charge

822. The UDCC alleges that the Main Road operation from 12 to 27 February 2003 was an "attack" against a civilian population.²²⁹⁰ In order to so qualify, the civilian population must be the primary, and not merely incidental, object of the attack.²²⁹¹ Relevant factors include: "the means and method used in the course of the attack, 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

²²⁹⁰ UDCC, para. 77. See also UDCC paras. 5, 39, 41, 49, 76.

²²⁹¹ [Bemba TJ](#), para. 154; [Katanga TJ](#), paras. 802, 1104.

which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war”.²²⁹²

Section II - Lendu fighters, the road, and recovering lost weapons are all legitimate objects of the Main Road operation

823. Objects of lawful attack in armed conflict include: “all persons taking a direct part in hostilities, whether military or civilian”,²²⁹³ locations, buildings or facilities where such persons are located;²²⁹⁴ and roads, if control thereof would confer a definite military advantage.²²⁹⁵ The presence of civilians or civilian objects in proximity to such objects does not preclude a military operation, but the principles of distinction and proportionality apply to the way in which such operations are carried out.

824. The purpose of the Main Road operation, even according to biased witness P-0017, was three-fold: (i) “opening up the road going through Kilo to Mongbwalu”,²²⁹⁶ (ii) destroying “the headquarters of the Lendu [...] the headquarters of Kilo, Lendu were setting up their headquarters in Bambu, and then they went to Kobu, where we were told that Kiza had taken refuge, and that after Mongbwalu he went to live in Kobu and he went to organise himself with his troops in Kobu”,²²⁹⁷ and (iii) to “go and seek heavy weaponry. The grenade launcher that had gone astray.”²²⁹⁸ Securing roads was more generally an important military objective of the FPLC,²²⁹⁹ and there can be no serious dispute that holding this principal route between Mongbwalu and Bunia²³⁰⁰ conferred a definite military advantage to whichever side held it.

825. The Prosecution concedes that seizing the Main Road was a legitimate object of attack,²³⁰¹ but ignores almost entirely the presence of Lendu fighters. These fighters were not hiding or inactive: they had set up a front-line at Shari bridge,²³⁰² prevented

²²⁹² [Katanga TJ](#), para.1104.

²²⁹³ Australia:Australia’s LOAC Manual,s.5.31. See Burundi:Burundi’s Regulations on International Humanitarian Law,p.53;Canada:LOAC Manual,s.410(1)(a);Sweden:IHL Manual,s.3.2.1.5,p.40.

²²⁹⁴ Canada:LOAC Manual,§407(2);Netherlands:Military Manual,§510.

²²⁹⁵ [Katanga Confirmation Decision](#); Netherlands:Military Manual,p.V-3; Rogers, Law on the Battlefield(1996),p.37.

²²⁹⁶ P-0963:T-79,40:21-24.

²²⁹⁷ P-0963:T-79,40:19-41:19.

²²⁹⁸ P-0963:T-79,41:13-23.

²²⁹⁹ [DRC-OTP-0109-0136](#),p.0139,0141.

²³⁰⁰ P-0901:T-31,53:23,55:5;[DRC-REG-0001-0003](#); P-0863:T-180,13:25; D-0300:T-220,79:12-13.

²³⁰¹ PCB,paras.444-445.

²³⁰² P-0863:T-181,56:23-57:4.

the FPLC from using the road;²³⁰³ harassed civilians traveling the road;²³⁰⁴ and launched periodic attacks on adjacent areas.²³⁰⁵

826. This legitimate²³⁰⁶ object is reflected in P-0017's description of the objective as being to "destroy that triangle which was a pocket of resistance to the UPC"²³⁰⁷ and "destroy their enemy force which occupied these three places."²³⁰⁸ "Lipri, Kobu and Bambu" were "the strongholds of the Lendu commanders."²³⁰⁹ P-0016 perceived the purpose of the operation as being to "*sécuriser ces villages Lendu sur la route pour pouvoir passer librement*"²³¹⁰ – which would legitimately encompass securing areas adjacent to the road from which concentrations of Lendu forces could launch attacks on the road.

827. The strength of Lendu forces around the road is hard to assess with certainty. "3000 Lendu qui montait la garde,"²³¹¹ including APC soldiers,²³¹² were perceived to be at Kobu. Lendu [REDACTED] P-0805 confirmed that these forces were located in Kobu itself.²³¹³ In Bambu "most of the young boys were combatants."²³¹⁴ At least some of them were very well-armed²³¹⁵ and managed to not only hold the front-line at Shari bridge, but also launch counter-attacks.²³¹⁶ Lipri hosted a unit called "*21e bataillon*"²³¹⁷ under the command of "Kabuli-KIZA"²³¹⁸ that included at least 40 fighters armed with guns,²³¹⁹ who may have been APC soldiers,²³²⁰ who were strong enough to repel the FPLC attack on 17 February.

²³⁰³ P-0863:T-181,56:23-57:8; P-0016:[DRC-OTP-0126-0422-R03](#),para.139; P-0901:T-31,58:20-22; D-0300:T-242,4:22.

²³⁰⁴ P-0016:[DRC-OTP-0126-0422-R03](#),para.139.

²³⁰⁵ P-0016:[DRC-OTP-0126-0422-R03](#),para.116; P-0017:T-59,46:21-25; P-0768:T-34,60:12-15.

²³⁰⁶ *Contra* PCB,para.448.

²³⁰⁷ P-0017:T-59,46:10-12.

²³⁰⁸ P-0017:T-59,61:21-22.

²³⁰⁹ P-0901:T-29,17:4-6.

²³¹⁰ P-0016:[DRC-OTP-0126-0422-R03](#),para.139.

²³¹¹ P-0016:DRC-OTP-0126-0422-R03,para.141.

²³¹² P-0017:T-59,46:6-7.

²³¹³ P-0805:T-25*bis*,34:20-23.

²³¹⁴ P-0863:T-181,58:2-5

²³¹⁵ D-0038:T-249,73:11-14.

²³¹⁶ P-0863:T-181,57:16-57:20.

²³¹⁷ [DRC-OTP-2055-1346](#),p.1347;P-0300:T-166,35:22; P-0127:T-139,31:11-12; P-0105:T-135,11:1-4; P-0017:T-59,78:12,T-60,30:3.

²³¹⁸ P-0105:T-135,10:23-25; P-0017:T-60,30:2-3; P-0300:T-166,35:22-24; P-0127:T-139,31:11-12; P-0127:T-140,4:22-23.

²³¹⁹ P-0127:T-139,4:10-11,81:21-22;T-140,11:17-18; P-105:T-135,8:20-22.

²³²⁰ P-0017:T-59,46:7; P-0105:T-134,60:18-20.

828. Concentrations of Lendu fighters also assembled around Buli, where there was a “headquarters” and “many combatants”²³²¹ including DYIKPANU commanding fifty former APC soldiers.²³²² Gutsi, under a commander MBULO/MBONGI,²³²³ was well-enough defended to successfully repel three FPLC attacks.²³²⁴

Section III - Large numbers of Lendu civilians participated directly in hostilities, making distinction difficult

829. The Prosecution asserts that “[n]o distinction was made between Lendu civilians and combatants.”²³²⁵ This misstates the true issue, which is whether fighters were distinguished from non-fighters.

830. Framing the issue properly is important in light of the massive scale of participation of Lendu civilians in hostilities. A Lendu [REDACTED] testified that when there was fighting “everybody went, the civilians went there. But there was no way to distinguish between combatants and civilians who went to war. You couldn’t distinguish the combatants. All those who were fighting were called combatants.”²³²⁶ All strong and courageous men “participated spontaneously” in fighting whenever there was an attack.²³²⁷ In Bambu, “most of the young boys were combatants, most of them; there was nothing to do” and P-0863 did not contradict a statement by a person in civilian clothing claiming to be a battalion commander from Bambu with 3000 men at his “disposition.”²³²⁸ P-0016 commented that “[s]i ces villages sont attaqués par les FPLC, toute la population se battait; il n’y a pas de distinction entre militaires et civils.”²³²⁹ A Bira person described the shocking extent to which Lendu civilians participated in at least one attack:

[REDACTED]. [...] [REDACTED].²³³⁰

²³²¹ P-0105:T-135,15:21-24,16:12-14. See P-0018:T-111,63:19-25.

²³²² P-0027:DRC-OTP-0096-0052, para.25; P-0300:T-167,70:2-6; P-0790:T-54,8:18 (“Dyikpanu played a role in Buli where we were.”)

²³²³ P-0121:T-173,5:11,34:12;T-172,65:20-21.

²³²⁴ P-0301:T-150,7:15-9:16.

²³²⁵ PCB, para.448.

²³²⁶ P-0857:T-193,89:13-19. See P-0301:T-149,28 :23-29 :2.

²³²⁷ P-0027:DRC-OTP-0096-0052, para.44.

²³²⁸ P-0127:T-140,12:21-24;DRC-OTP-1033-0222, 06:34-06:50.

²³²⁹ P-0016:DRC-OTP-0126-0422-R03, para.140.

²³³⁰ DRC-OTP-0195-2366, entries 918-922.

831. Almost no one on the Lendu side wore military uniforms.²³³¹ Even from the Lendu perspective, “*C’est seulement par après, donc, que il y a eu une différenciation claire entre ceux qui étaient des ‘combattants’ et le reste de la population civile Lendu.*”²³³²
832. The Prosecution cites sources at footnote 1296 in purported support of the claim that the FPLC followed a policy, or that there were even direct orders, to target non-fighters.²³³³ The testimony does not support this claim.
833. P-0901 did respond to a leading question that he was unaware of any specific order “to distinguish between the civilians and the combatants”;²³³⁴ but P-0901 also testified that “the clashes against the Lendu caused a great deal of confusion because the Lendus and the civilians were all clad in civilian clothing. So it’s very difficult to tell them apart, to tell who were Lendu and who were civilians.”²³³⁵ Neither the confusion nor the difficulty would have arisen if P-0901 understood that he could target anyone indiscriminately.
834. P-0901 uses the word “Lendus” in the quotation above in contradistinction to “civilians” – implying that he used the term “Lendu” as short-hand for “Lendu combatants.” Lendu witnesses, such as P-0805, used the same short-hand:

When I was in the red village I went home, and that is when war broke out. The Lendus were overcome and they fled. Q. And when you are referring to the Lendus you are referring to the members of the combatant community who were tasked with defending the village, are you not? A. They were combatants, yes.²³³⁶

835. P-0017 likewise referred to just “Lendu” in a context where it was clear that he meant Lendu fighters: “Lendu or whatever they were, and the APC on the other side [...] So we were firing at them.”²³³⁷
836. P-0017 understands that the objective was to destroy the “enemy force”²³³⁸ in the KBL triangle.²³³⁹

²³³¹ P-0105:T-135,10:22-25; P-0863:T-180,19:8-12; P-0113:T-119,54:2; P-0790:T-53,42:23; P-805:T-26,40:11-20.

²³³² P-0027:DRC-OTP-0096-0052,para.44.

²³³³ PCB,fn1296,paras.448,466,499.

²³³⁴ P-0901:T-29,17:10-12.

²³³⁵ P-0901:T-29,16:12-14.

²³³⁶ P-805:T-26,42:9-16.

²³³⁷ P-0017:T-59,67:8-10.

837. The Prosecution is egregiously wrong that P-0017's testimony was that "[t]he orders were also that all Lendu were the enemy."²³⁴⁰ P-0017 neither testified that he had received such an order, nor that this was meant as an instruction as to how to target. P-0017 did say that he considered any Lendu person to be "an enemy of the UPC,"²³⁴¹ but prefaced this comment with "For me": "For me, all the Lendu, whether man or woman."²³⁴² P-0017 did not say, however, that this meant that he understood that he could, or had been given any instructions, to indiscriminately target Lendus during a military operation. In fact, he later clarified that "It is true that the UPC was an army. And when we engaged in battle, the main targets were military camps or people who were shooting at us."²³⁴³
838. P-0017 does describe an incident in which SALUMU ordered [REDACTED] to target a group of ostensibly unarmed individuals 800 metres away who were making noise in apparent support of a group of Lendu fighters firing [REDACTED] from only 300 metres away.²³⁴⁴ SALUMU allegedly told [REDACTED] to target the group making noise, instead of the group firing from just 300 metres away.²³⁴⁵ This is, in itself, highly implausible. Even assuming it to be the case, however, targeting a group that was "there to support"²³⁴⁶ that attack is not necessarily unlawful targeting. Furthermore, it cannot be excluded that SALUMU – who purportedly gave the order – believed that he saw something different than what [REDACTED] saw.
839. Furthermore, P-0017's testimony that detainees were released on the basis of whether they had the "marks indicating that they had carried weapons, for example, on their shoulders"²³⁴⁷ makes no sense if FPLC policy was not to distinguish between fighters and non-fighters.

²³³⁸ **P-0017**:T-59,61:21-22(underline added);T-63,16:20-22("When [REDACTED] told you that it was necessary to destroy the targets he was talking about the enemy forces in those areas? A.Yes.")

²³³⁹ PCB,para.498.

²³⁴⁰ PCB,para.499.

²³⁴¹ **P-0017**:T-59,62:24-25.

²³⁴² **P-0017**:T-59,62:24.

²³⁴³ **P-0017**:T-63,47:18-19.

²³⁴⁴ **P-0017**:T-59,68:14-22;T-59,69:22-71:17.

²³⁴⁵ **P-0017**:T-59,72:16-17.

²³⁴⁶ **P-0017**:T-59,70:3.

²³⁴⁷ **P-0017**:T-60,14:13-15.

840. P-0017's terminology about civilians and "enemy" is made even more ambiguous by his reference to "inhabitants of Kobu" who were moving from "one hill to another" launching a "counter-offensive."²³⁴⁸ "Inhabitants" launching a "counter-offensive"²³⁴⁹ implies that P-0017 sometimes used words normally associated with protected status (i.e. "inhabitants") while actually referring to individuals without protected status (i.e. those launching a "counter-offensive"). This ambiguity was never clarified or explained.
841. P-0017's statement that he was never given specific instructions about how to treat Lendu²³⁵⁰ does not imply that he was supposed to engage in indiscriminate targeting, especially given that he had received professional training on how to target [REDACTED], which included the necessity of observing the principle of distinction.²³⁵¹
842. P-0963's use of the word "civilian" in saying that they "were to drive them all out"²³⁵² is also ambiguous in light of his subsequent description of "Kiza" and "the Lendu chiefs" as being amongst the civilians who had purportedly been driven out.²³⁵³ Yet Kiza was a fighter, as P-0963 implied that he knew.²³⁵⁴ P-0963's "summary" of a 30 to 45 minute discourse by SALUMU down to this single fact suggest a degree of unreliability and bias that P-0963 is testifying accurately about what SALUMU actually said. In any event, the instructions that P-0963 purportedly received were never implemented since the only Lendu he encountered when [REDACTED]²³⁵⁵ and Kobu²³⁵⁶ were fighters, which was typical of other villages as well.²³⁵⁷ Further, the suggestion that SALUMU gave instructions to target everyone indiscriminately is contrary to P-0963's own testimony that prisoners were taken at Buli (rather than killed)²³⁵⁸ and P-0017's testimony that the non-combatants were released.²³⁵⁹

²³⁴⁸ P-0017:T-59,67:23-68:2.

²³⁴⁹ P-0017:T-59,67:25. See P-0017:T-63,53:11-13("do you agree that people who counterattack are people who are involved in the conflict? A.Yes").

²³⁵⁰ P-0017:T-59,63:1-3.

²³⁵¹ P-0017:T-58,21:21-22; P-0907:T-89,32:4-10.

²³⁵² P-0963:T-79,43:2-5.

²³⁵³ P-0963:T-79,52:5-8.

²³⁵⁴ P-0963:T-79,51:16-52:10

²³⁵⁵ [REDACTED].

²³⁵⁶ P-0017:T-59,67:5(Kobu).

²³⁵⁷ P-0018:T-111,74:1-7(Jitchu); D-0038:T-249,74:1-2(Bambu);P-0105:T-135,21:11-13(Lipri).

²³⁵⁸ D-0963:T-79 ,89 :11-12.

843. The remaining sources cited by the Prosecution in footnote 1296 for the proposition that no distinction between fighters and non-fighters was drawn during the KBL operation either have no credibility (P-0010, P-0758) or do not support the proposition cited (P-0016).²³⁶⁰
844. The Prosecution argument that the operation in the Lipri area “reveals a greater plan,” because it is off the Main Road²³⁶¹ is speculative and fallacious. Lipri hosted a Lendu military presence that was a legitimate object of attack in its own right,²³⁶² and had a demonstrated capacity to launch attacks on adjacent areas (such as one on Nyangaray²³⁶³ that was attributed to the FPLC during the Ngongo pacification meeting)²³⁶⁴ which would have obviously included the Main Road.

Section IV - “Ratissage,” “Kupiga na Kuchaji,” and “Shika na Mukono” do not indicate that the object or method of attack as a whole was unlawful

845. The Prosecution suggests that “ratissage” implies misconduct or targeting of civilians.²³⁶⁵ This is incorrect. “Ratissage” means “*rechercher méthodiquement sur un secteur ou dans une zone spécifique, toutes forces ennemies qui s’y trouvent ou tous équipements, documentations, caches ou moyens de subsistance adverse*”.²³⁶⁶ This definition is consistent with P-0963’s testimony that after “take cover there was check area as usual. We had to check all the houses in Kobu to make sure that no one was hiding. [REDACTED].”²³⁶⁷ Other FPLC witnesses confirmed that it meant “search operation”²³⁶⁸ or “sweeping up”.²³⁶⁹
846. P-0907 did say, in respect of an attack on Zumbe, that this meant “spare nothing [...] because only the enemy was to be found there.”²³⁷⁰ This is not improper targeting,

²³⁵⁹ P-0017:T-60,14:13-15:2.

²³⁶⁰ See PCB,para.448,fn.1296; P-0016:DRC-OTP-0126-0422-R03,para.140.

²³⁶¹ PCB,para.447.

²³⁶² P-0016:DRC-OTP-0126-0422-R03,para.116.

²³⁶³ DRC-OTP-0017-0023(“[REDACTED]”); PCB,para.1085(relying on DRC-OTP-0017-0023).

²³⁶⁴ DRC-OTP-0164-0750,p.0758:137-138; DRC-OTP-0176-0428,p.0453:592-593; D-0300:T-237,51:18-24.

²³⁶⁵ PCB,paras.466,500,503,506,520,535,544.

²³⁶⁶ Lafaye, Exemple de contre-insurrection, para.13.

²³⁶⁷ P-0963:T-79,52:1-3.

²³⁶⁸ P-0911:T-160,40:22-24.

²³⁶⁹ P-0907:T-89,74:4-6.

²³⁷⁰ P-0907:T-89,74:4-6.

however, if a prior assessment has been made that no non-fighters are in a particular area – which was often the case in practice.²³⁷¹

847. The phrase “*kupiga na kuchaji*” provoked differing interpretations amongst Defence and Prosecution witnesses alike.²³⁷² P-0055 describes conduct that is lawful, notwithstanding the misuse of the term “pillage”:

It means attack the army and after or as soon as you attack the enemy, you should dispossess the enemy of his weapon and his property. So it's a military expression. I don't know how to explain it, but it means attack and then – attack the enemy and then pillage by taking away his weapon and all his whatever he has, uniform, military attire, bayonets, whatever they possess, in fact meaning that the enemy should be disarmed. It's a military expression.²³⁷³

848. P-0017 testified at first that it meant looting, but later acknowledged that a literal translation of the term was “to strike” and “to charge.”²³⁷⁴ P-0963 – who did not corroborate P-0017's testimony that this phrase was used at the start of the KBL operation – appeared to confirm the literal meaning of the phrase as “a type of movement.”²³⁷⁵

849. “*Shika na mukono*” means “catch with your hands.”²³⁷⁶ Mr NTAGANDA explained that the name was meant to frighten the enemy.²³⁷⁷ Nothing can be inferred from a fear-inducing name for a military operation. Amongst the names of military operations involving the participation of NATO members are “Rathunt”, “Urgent Fury”, “Carthage”, “Atilla” and “Scorched Earth.”

CHAPTER II – SPECIFIC CRIMES WERE NOT COMMITTED DURING THE KBL OPERATION

Section I - The nature of the Prosecution's investigation

A. Introduction

850. A criminal investigation in an insecure environment of ethnic polarisation is a challenge, particularly in light of the serious dangers of manipulation involved. P-0931

²³⁷¹ P-0018:T-111,74:1-7(Jitchu); D-0038:T-249,74:1-2(Bambu); P-0017:T-59,67:5(Kobu).

²³⁷² *Contra* PCB,para.382.

²³⁷³ P-0055:T-72,10:7-13. See D-0038:T-249,18:22-20:9; D-0300:T-249,18:23-19:4.

²³⁷⁴ P-0017:T-61,30:13-16.

²³⁷⁵ P-0963:T-81,89:1-2.

²³⁷⁶ D-0300:T-213,18:17-22.

²³⁷⁷ D-0300:T-213,18:19.

provides a compelling example from one of his own investigations in 2001 in which Hema and Lendu community representatives offered directly contradictory accounts of a particular attack, each side blaming the other for certain killings. Dr Garreton was even given photographs of mutilated bodies by each side, and each side claimed that they depicted victims from their own community. When Dr Garreton compared the photographs, he discovered that they were identical.²³⁷⁸

851. Four Lendu [REDACTED] – P-0300 [REDACTED], P-0790 [REDACTED], P-0792 [REDACTED] and P-0127 [REDACTED] – have had a substantial influence on the investigation that has brought many witnesses to The Hague to give testimony for the first time. They exercised this influence from the genesis of the investigation.

852. The testimony of the witnesses heard, in this case, meanwhile, betrays undeniable signs of collusion, including: (i) false denials of contacts or association with P-0154 or other witnesses; (ii) the demonstrably concocted story about the SALUMU invitations; (iii) the lies about the provenance of the massacre photos; (iv) the unrealistic recollection of details such as days of the week or exact number of prisoners; and (v) and the repetition of erroneous information. Some witnesses have even blurted out statements acknowledging that they have worked together to embellish events or enhance the reliability of their stories.

B. Crimes committed shortly before the alleged crimes required the greatest care to minimise collusion and contamination amongst witnesses

853. The danger that collusion could have a major impact on this case is enhanced by evidence that very similar crimes were allegedly committed in the same area in 2001-2002.

854. P-0792 testified that UPDF forces killed 10 people at Kobu market some time in 2001.²³⁷⁹ He claimed that the “Hema militia, the UPC” were also involved in this earlier event,²³⁸⁰ but both pre-dates the existence of UPC forces, and is irreconcilable with the witness’s description of the involvement of the UPDF and Peter KARIM.²³⁸¹ P-0790 described a very similar attack on the market square in Kobu by Ugandan and

²³⁷⁸ [DRC-OTP-2084-0408](#), para.47-48.

²³⁷⁹ P-0792:T-150,85:17-25.

²³⁸⁰ P-0792:T-150,85:19-20.

²³⁸¹ P-0792:T-150,85:17-25,87:1-7

UPC forces attacking in “one sole group.”²³⁸² He dated this event at the beginning of 2002, when LOMPONDO was still in Bunia.²³⁸³ P-0300 also described an attack by Ugandan forces alone on the Kobu market in 2002.²³⁸⁴

855. P-0790 and P-0792 both testified that this happened on a market day.²³⁸⁵ All three testified that after this incident [REDACTED].²³⁸⁶ P-0790 and P-0300 both testified that they fled to [REDACTED],²³⁸⁷ the same place they claim to have gone in [REDACTED].²³⁸⁸ As with February 2003, P-0790 claimed that civilians fled to both Gutsi and Buli; as with February 2003, that UPC forces attacked around Gutsi and Buli; as with February 2003, that UPC forces would direct fire at any fires that they saw; and as with February 2003 that all the houses had been pillaged and the corrugated iron roofing of houses had been taken.²³⁸⁹ D-0211 described stopping briefly in Kobu market square during the period of “inter-ethnic conflict” in late 2001 or early 2002, where the Ugandans and APC appeared to be in control,²³⁹⁰ and seeing “some crows coming out of the bush [...] eating something”;²³⁹¹ it was “a spectacle which drew attention and curiosity.”²³⁹² SALUMU was in the area in 2001, according to [REDACTED], “with the Ugandans,” “before the war between the Hema and the Lendu.”²³⁹³ Another witness indicated that SALUMU had previously been with the APC.²³⁹⁴

856. The UN mapping report refers to an attack similar to that described by P-0790 and P-0792, but with a higher number of victims: “35 civils lendu auraient été tués.”²³⁹⁵

²³⁸² P-0790:T-53,31:20,32:10-12,33:13.

²³⁸³ P-0790:T-53,31:10,37:11.

²³⁸⁴ P-0300:T-166,22:9-16.

²³⁸⁵ P-0792:T-150,87:5; P-0790:T-53,36:17-18.

²³⁸⁶ P-0792:T-150,87:5-6; P-0790:T-53,34:2-5; P-0300:T-166,22:16.

²³⁸⁷ P-0300:T-166,22:21; P-0790:T-53,34:1-2.

²³⁸⁸ P-0300:T-166,34:14; P-0790:T-53,34:1-2.

²³⁸⁹ P-0790:T-54,32:19-22;34:18-35:8;35:15-20;36:19-20.

²³⁹⁰ D-0211:T-247,53:18.

²³⁹¹ D-0211:T-247,52:10-24.

²³⁹² D-0211:T-247,52:22.

²³⁹³ [REDACTED].

²³⁹⁴ P-0963:T-79,61:10-11 (“Gombili was a former soldier in the APC with Salumu”).

²³⁹⁵ [DRC-OTP-1061-0212](#),p.0588.

C. The role of P-0154,P-0792,P-0790,P-0300 and P-0127 in the investigation

857. P-0300 was “[REDACTED]”, [REDACTED].²³⁹⁶ As [REDACTED] in 2002-2003,²³⁹⁷ he [REDACTED],²³⁹⁸ and remained [REDACTED] through at least [REDACTED].²³⁹⁹ P-0790 has been the [REDACTED].²⁴⁰⁰ P-0792 was [REDACTED]²⁴⁰¹ and “[REDACTED].”²⁴⁰² P-0127 was a member of the so-called “[REDACTED]”²⁴⁰³ [REDACTED] at the time of events and was perceived by MONUC as having some [REDACTED] at the time.²⁴⁰⁴ He continues to hold positions of authority in [REDACTED].²⁴⁰⁵

858. These four individuals were intimately associated from the earliest stages in the investigation that produced most of the witnesses who testified about the KBL operation before this Chamber. P-0317, who came to Bunia to investigate the massacre of Hema civilian perpetrated by FNI/FRPI forces at Bogoro,²⁴⁰⁶ was “begged” by a “Lendu man [REDACTED],”²⁴⁰⁷ who was probably [REDACTED],²⁴⁰⁸ “to go off and see the Kobu, Bambu Lipri axis,”²⁴⁰⁹ and complained that MONUC was only investigating killings of Hema.²⁴¹⁰ This meeting, which she believed was around 28 March 2003, was the first she had heard of an alleged massacre in Kobu.²⁴¹¹

859. MONUC made a first visit to Lipri on 28 March 2003.²⁴¹² [REDACTED].²⁴¹³

860. Four days later,²⁴¹⁴ P-0317 arrived in Kobu accompanied by [REDACTED] and [REDACTED],²⁴¹⁵ who had given advance notice of their arrival.²⁴¹⁶ Her near-

²³⁹⁶ [REDACTED].

²³⁹⁷ **P-0300**:T-166,25:23.

²³⁹⁸ **P-0857**:T-193,91:25; **P-0792**:T-150,39:11; **P-0300**:T-166,25:11-12.

²³⁹⁹ [REDACTED].

²⁴⁰⁰ **P-0790**:T-53,11:2.

²⁴⁰¹ [REDACTED].

²⁴⁰² [REDACTED].

²⁴⁰³ **P-0127**:T-138,108:8-19; [REDACTED].

²⁴⁰⁴ [DRC-OTP-0152-0286](#); **P-0127**:T-140,14:24-17:14.

²⁴⁰⁵ **P-0127**:T-138,108:6-7.

²⁴⁰⁶ **P-0317**:T-192,44:3-12.

²⁴⁰⁷ **P-0317**:T-192,45:4-6.

²⁴⁰⁸ [REDACTED]; **P-0317**:T-192,49:17-18.

²⁴⁰⁹ **P-0317**:T-191,19:19.

²⁴¹⁰ **P-0317**:T-192,49:1-3.

²⁴¹¹ [DRC-OTP-0195-2366](#), entries 1009-1011 (Mandro visit on 28 March); **P-0317**:T-192,46:4.

²⁴¹² [DRC-OTP-0195-2366](#), entries 949-1004 (Geoffrey Mbato in Lipri on 28 March 2003); **P-0317**:T-193,6:1-4.

²⁴¹³ [REDACTED].

²⁴¹⁴ See [DRC-OTP-0195-2366](#), entries 54-61 (P-0046 in Kobu, 2 April).

²⁴¹⁵ [REDACTED].

contemporaneous report states that “[REDACTED] and Colonel Ngudjolo, the Chief of Staff of the Lendu armed groups were among the persons who gave the security clearance to proceed to Lendu villages.”²⁴¹⁷ A public discussion was held about the alleged Kobu massacre, and no private interviews were conducted in Kobu that day.²⁴¹⁸

861. Prosecution intermediary P-0154 involved P-0300, P-0792, and P-0790 in finding, choosing and maintaining contact with many Kobu massacre witnesses heard by this Chamber. P-0300 invited P-0105 to be interviewed by the OTP, which he did after having “spent the whole day” [REDACTED] alone.²⁴¹⁹ The Prosecution says that P-0300 introduced himself as P-0154’s assistant,²⁴²⁰ and confirms that he was paid money to reimburse him for [REDACTED] P-0105.²⁴²¹ The Prosecution says that, knowing that P-0300 was a [REDACTED], it ceased direct co-operation with him “out of an abundance of caution;”²⁴²² conspicuously, no indication has been provided that P-0154 was instructed to stop using [REDACTED] [REDACTED].
862. P-0300 indignantly denied as “unbelievable”²⁴²³ that he had ever presented himself as P-0154’s assistant, that he had [REDACTED] with the OTP, that he had ever received money from the OTP, or that P-0105 [REDACTED] prior to the interview.²⁴²⁴ P-0300 did acknowledge that he “[REDACTED]”²⁴²⁵ and that “[REDACTED].”²⁴²⁶ When pressed for details, P-0300 became obstructionist and hostile.²⁴²⁷ He gave evasive answers about his name on P-0154’s [REDACTED].²⁴²⁸ P-0300 was specifically involved in [REDACTED] with P-0100.²⁴²⁹
863. P-0790 was also involved in P-0154’s work, as the Prosecution knew no later than its receipt of a 2006 “[REDACTED]” which indicated that the “[REDACTED]” for six

²⁴¹⁶ [REDACTED] (“[REDACTED]”).

²⁴¹⁷ [REDACTED].

²⁴¹⁸ **P-0317**:T-191,46:3-4;T-192,53:8-15; [REDACTED].

²⁴¹⁹ [REDACTED].

²⁴²⁰ [REDACTED].

²⁴²¹ [REDACTED] (“[REDACTED]”).

²⁴²² [DRC-OTP-2090-0406](#).

²⁴²³ **P-0300**:T-167,44:22.

²⁴²⁴ [REDACTED] (“[REDACTED]”).

²⁴²⁵ **P-0300**:T-167,46:16-17.

²⁴²⁶ [REDACTED].

²⁴²⁷ **P-0300**:T-167,50:12-13(“PRESIDING JUDGE FREMR: Mr Witness, what I don't like is that you are very often evasive”).

²⁴²⁸ **P-0300**:T-167,52:7-57:9.

²⁴²⁹ **P-0100**:T-132,49:7-10.

witnesses – [REDACTED] – was none other than P-0790.²⁴³⁰ In other words, P-0790 knew that these six individuals were ICC witnesses, [REDACTED] [REDACTED] .

864. P-0790 worked closely with P-0792 in preparation for [REDACTED]. P-0790 prepared some notes for a “workshop” that they held together in [REDACTED], which includes a list of individuals “[REDACTED].”²⁴³¹ [REDACTED] and four other unidentified individuals are listed. P-0792 responded “Yes, of course” when asked whether he had “discussed the sequence of events that had occurred in February 2003 with [these witnesses] before introducing them to [P-0154]”;²⁴³² “[t]hey explained their circumstances to me, there were some that I was familiar with, and then we would cross-check.”²⁴³³ P-0100 admitted that P-0154 interviewed him [REDACTED], with P-0792 present.²⁴³⁴

865. Most KBL witnesses downplayed, lied or became evasive when asked about P-0154. P-0018 – with whom P-0154’s name could not be used because the Prosecution resisted disclosure until ordered by the Chamber²⁴³⁵ – falsely denied that anyone had facilitated her initial contact with the Prosecution,²⁴³⁶ and became chronically forgetful when asked about whether she ever signed “[REDACTED]”: “I think I’ve forgotten. I have forgotten”;²⁴³⁷ “I don’t remember”;²⁴³⁸ “All this information you’re speaking about I don’t remember”;²⁴³⁹ “No, I don’t remember what happened in [REDACTED].”²⁴⁴⁰ P-0018 signed at least three of these “[REDACTED]”.²⁴⁴¹ P-0018 was also one of the five witnesses mentioned in an OTP memo when P-0154 purportedly tried to receive an illegitimate reimbursement based on a false claim that the witnesses preferred to

²⁴³⁰ [DRC-OTP-2092-0325](#).

²⁴³¹ [REDACTED].

²⁴³² [REDACTED].

²⁴³³ **P-0792**:T-151,17:8-9.

²⁴³⁴ **P-0100**:T-132,48:5-12.

²⁴³⁵ See Application seeking disclosure of the identity of P-0154, [ICC-01/04-02/06-1435](#);T-115,41:24-43:22(oral decision); **P-0019**:T-116,56:9-12.

²⁴³⁶ **P-0018**:T-111,49:23-50:8(“Q.I’m merely asking if there was someone other than the investigator, someone outside of the Office of the Prosecutor, who facilitated your contacts with the investigators? A.[...] THE INTERPRETER: [...] the answer was ‘No.’”);T-112,12:14(Q.Did someone alert you to the fact that they were coming? A.No, nobody informed me that they were coming. Nobody told me anybody was coming”).

²⁴³⁷ **P-0018**:T-112,20:19.

²⁴³⁸ **P-0018**:T-112,23:15-25.

²⁴³⁹ **P-0018**:T-112,24:18-25:1.

²⁴⁴⁰ **P-0018**:T-112,25:2-4.

²⁴⁴¹ [DRC-OTP-2092-0319](#)(February 2007); [DRC-OTP-2092-0321](#)(June 2007); [DRC-OTP-2092-0323](#)(November 2007).

[REDACTED].²⁴⁴² Although P-0018 implied at the end of her testimony that she would not have been able to know the difference between [REDACTED] ([REDACTED]) and an OTP investigator,²⁴⁴³ other witnesses had no such difficulty.²⁴⁴⁴

866. P-0019 denied meeting any other witnesses in P-0154's presence,²⁴⁴⁵ while a note from P-0154 to the Prosecution refers to "*nos entretiens avec les victimes durant cette visite qui a réuni les victims suivantes*: [P-0019], [REDACTED], [P-0100], [REDACTED], [REDACTED], [REDACTED], [P-0027], [P-0108], [REDACTED]."²⁴⁴⁶ P-0113 denied a note suggesting that one of these meetings had even been held at [REDACTED]: "The meeting with the clients took place at [REDACTED] with eight individuals: [REDACTED] [P-0027], [REDACTED], [REDACTED] [P-0106], [REDACTED] [P-0113], [REDACTED] [P-0100], [C REDACTION], et [REDACTED]."²⁴⁴⁷ P-0019 was present for at least three such meetings, as reflected in the [REDACTED] dated [REDACTED],²⁴⁴⁸ [REDACTED]²⁴⁴⁹ and undated.²⁴⁵⁰ P-0019 also falsely denied knowing P-0113, whereas P-0113 confirmed that she knew P-0019 and [REDACTED].²⁴⁵¹

867. P-0113 was apparently [REDACTED] around [REDACTED] because he suspected her of [REDACTED] that he believed had been provided by P-0154.²⁴⁵² Even though this must have been a memorable event, P-0113 denied any knowledge of it, or of any meetings with P-0100, P-0113, P-0019, P-0106 and other potential witnesses.²⁴⁵³ P-0113 also denied having been [REDACTED] by P-0154²⁴⁵⁴ around the time of her first interview with the OTP.²⁴⁵⁵ P-0113 signed [REDACTED];²⁴⁵⁶ but denied any knowledge of these meetings with other witnesses.²⁴⁵⁷

²⁴⁴² **P-0018**:T-112,14:21; [DRC-OTP-2090-0407](#) (the Prosecution note does not disclose which three were willing to participate in P-0154's scheme).

²⁴⁴³ **P-0018**:T-112,36:8-17.

²⁴⁴⁴ *E.g.* **P-0019**:T-116,56:15-25.

²⁴⁴⁵ **P-0019**:T-117,5:1-6.

²⁴⁴⁶ [DRC-OTP-2092-0229](#) (referring to a note of [REDACTED]) (underline added).

²⁴⁴⁷ [REDACTED].

²⁴⁴⁸ [DRC-OTP-2092-0229](#).

²⁴⁴⁹ [DRC-OTP-2092-0325](#); [DRC-OTP-0198-0072](#).

²⁴⁵⁰ [DRC-OTP-2092-0207](#); **P-0019**:T-117,18:5-7,20-25.

²⁴⁵¹ **P-0113**:T-119,38:4-13.

²⁴⁵² [DRC-OTP-2092-0319](#); **P-0113**:T-119,35:1-36:8.

²⁴⁵³ [DRC-OTP-0198-0072](#); **P-0113**:T-119,32:15-34:5.

²⁴⁵⁴ **P-0113**:T-119,24:2-3.

²⁴⁵⁵ **P-0113**:T-119,22:2-9;23:19-20,26:20-22.

868. P-0301 flatly denied even knowing P-0154,²⁴⁵⁸ even though P-0301's name appears on several [REDACTED]²⁴⁵⁹ and the Prosecution indicates that he was introduced to the Prosecution by P-0154.²⁴⁶⁰ Furthermore, P-0301 confirmed that he received information from at least one other person on the [REDACTED] about information allegedly in the Prosecution's possession about him²⁴⁶¹ -- an acknowledgement that reveals that these individuals were discussing matters related to their contacts with the ICC.
869. P-0027 [REDACTED] by P-0154 one day before his OTP interview, [REDACTED] to his OTP statement.²⁴⁶²
870. P-0154, as a Prosecution note acknowledges, created a story about witnesses preferring [REDACTED] "[REDACTED]"²⁴⁶³ [REDACTED]. The dishonest practice motivated by greed may not, as such, be of great concern; [REDACTED]. It is a short step from there to suggesting what needs to be said in order to remain attractive as a witness.
871. The Prosecution continued to use P-0154 for years, and the Prosecution refused disclosure of his name until so ordered by the Trial Chamber. The Defence still has none of the communications as he wrote them to the Prosecution, instead receiving only summaries. His pervasive influence on the KBL investigation is reflected in the witnesses whom he introduced to the OTP, or with whom he was otherwise involved: P-0018, P-0019, P-0027, P-0039, P-0100, P-0103, P-0104, P-0105, P-0106, P-0107, P-0108, P-0113, P-0120, P-0300, P-0301, and P-0792.²⁴⁶⁴
872. Many of these witnesses are also closely connected by kinship. [REDACTED] appears to be [REDACTED];²⁴⁶⁵ [REDACTED];²⁴⁶⁶ and [REDACTED].²⁴⁶⁷

²⁴⁵⁶ [DRC-OTP-0198-0072](#); [DRC-OTP-2092-0319](#); **P-0113**:T-119,32:15-39:2.

²⁴⁵⁷ **P-0113**:T-119,23:11-38:15.

²⁴⁵⁸ [REDACTED] ("[REDACTED]").

²⁴⁵⁹ [DRC-OTP-2092-0213](#).

²⁴⁶⁰ [DRC-D18-0001-0414](#).

²⁴⁶¹ [REDACTED] ("[REDACTED]").

²⁴⁶² [REDACTED] "[REDACTED]".

²⁴⁶³ [REDACTED] ("[REDACTED]").

²⁴⁶⁴ [DRC-D18-0001-0414](#).

²⁴⁶⁵ [REDACTED].

²⁴⁶⁶ [REDACTED].

²⁴⁶⁷ [REDACTED]

D. Specific indications that contamination or coaching impacted testimony

I. The falsehoods surrounding the purported Salumu invitations

873. [REDACTED] acknowledged that the source [REDACTED] the SALUMU invitation letters was a [REDACTED], [REDACTED].²⁴⁶⁸ Just one page after the purported Salumu correspondence appears, [REDACTED], what purports to be a UPC “manifesto” that purportedly instructs: “*Il faut détruire toutes leurs maisons ou les brûler. Il faut tuer tous les intellectuels [...] Il faut aussi tuer les chefs de groupement, les chefs de localités [...] Il faut aussi tuer tous les militaires Lendu et leurs combattants pour qu'ils ne protègent pas leurs populations.*”²⁴⁶⁹ The passage may have some link with [REDACTED] claim that he found two documents in [REDACTED] lost by UPC soldiers: a “*PROCEDURE DE LA GUERRE DE CONQUETE DES TUTSI “BAHEMA” AU ZAIRE/CONGO,*” described grandiosely by [REDACTED] as “*une décalogue d'actions criminelles à mener pour assurer la domination de l'ethnie Hema*”; and an attack plan purportedly signed by SALUMU, but which [REDACTED] inexplicably left behind.²⁴⁷⁰
874. The Salumu correspondence is no less a product of propaganda than the absurd manifesto. They fall into a typical pattern of propaganda: the original documents are always lost,²⁴⁷¹ yet the UPC is always exposed as brutal and devious. P-0317 claims that someone showed her the SALUMU invitation letter,²⁴⁷² but this demonstrates no more than that [REDACTED] of the purported invitation letter²⁴⁷³ and viewed her as a target of manipulation.
875. There is abundant other evidence that the Salumu ambush story is a fabrication. [REDACTED] flatly denied²⁴⁷⁴ in his early statements [REDACTED];²⁴⁷⁵ prevaricated throughout his testimony as to whether he really did [REDACTED];²⁴⁷⁶ offered contradictory explanations for not acknowledging [REDACTED],²⁴⁷⁷ which culminated

²⁴⁶⁸ [REDACTED].

²⁴⁶⁹ [DRC-OTP-2055-1346](#), p.1354.

²⁴⁷⁰ [REDACTED].

²⁴⁷¹ [REDACTED].

²⁴⁷² P-0317:T-191,47:13-16.

²⁴⁷³ [DRC-OTP-0065-0003](#).

²⁴⁷⁴ [REDACTED] (“[REDACTED]”); T-167,14:3-18:9.

²⁴⁷⁵ [REDACTED] (“[REDACTED]”).

²⁴⁷⁶ [REDACTED].

²⁴⁷⁷ [REDACTED].

in the belated explanation that the [REDACTED] was afraid to do so²⁴⁷⁸ (but apparently not afraid to [REDACTED]).

876. [REDACTED] indicating place names on these concocted transcriptions, showing that SALUMU's invitation of the 27th and [REDACTED] response of the 28th were both written in Ngabulo.²⁴⁷⁹ [REDACTED] tried to explain this on the basis that "the village is extended" and [REDACTED].²⁴⁸⁰ [REDACTED] contradicted this far-fetched claim, stating that SALUMU was in Kobu at the time, not Ngabulo.²⁴⁸¹

877. The Prosecution's FPLC witnesses uniformly contradict that SALUMU laid a trap for the Lendu leadership, suggesting that it was instead the Lendu fighters who either deliberately or unintentionally gave the impression that they were going to attack.²⁴⁸² The uniform willingness of Lendu witnesses to go along with this fabrication reflects negatively on their credibility.

II. The falsehoods surrounding the photographs

878. Several photos purporting to depict the Kobu massacre have been admitted as evidence.²⁴⁸³ No purported photographer offered testimony; on the contrary, numerous lies were heard concerning the provenance of the photos.

879. [REDACTED].²⁴⁸⁴ [REDACTED], which accounted for the appearance of overlapping imagery on the photos.²⁴⁸⁵ [REDACTED] the film had been developed before its second use and needed to be "developed a second time," and that before this second development, [REDACTED] exposed it to "sunlight" and "held it up to see what was in it."²⁴⁸⁶ [REDACTED] in developing four or five of these "negatives", and had multiple prints made, some taken by [REDACTED].²⁴⁸⁷

²⁴⁷⁸ [REDACTED].

²⁴⁷⁹ [DRC-OTP-0065-0003](#).

²⁴⁸⁰ [REDACTED].

²⁴⁸¹ [REDACTED] ("[REDACTED]").

²⁴⁸² P-0017:T-63,55:3-5;P-0017:T-59,47:4-9;P-0963:T-79,60:20-61:3.

²⁴⁸³ [DRC-OTP-0072-0473-R01](#); [DRC-OTP-0077-0292](#); [DRC-OTP-0077-0293](#); [DRC-OTP-0077-0294](#); [DRC-OTP-0077-0295](#); [DRC-OTP-0152-0239](#); [DRC-OTP-0152-0240](#); [DRC-OTP-2058-1106](#); [DRC-OTP-2058-1107](#); [DRC-OTP-2058-1108](#); [DRC-OTP-2058-1109](#); [DRC-OTP-2058-1110](#); [DRC-OTP-2058-1111](#); [DRC-OTP-2058-1112](#); [DRC-OTP-2058-1113](#); [DRC-OTP-2069-0012-R01](#) ("Massacre Photos").

²⁴⁸⁴ [REDACTED].

²⁴⁸⁵ [REDACTED].

²⁴⁸⁶ [REDACTED].

²⁴⁸⁷ [REDACTED].

880. [REDACTED] showed some of the Massacre Photos (DRC-OTP-2058-1110 and DRC-OTP-2058-1111) during a [REDACTED], [REDACTED].²⁴⁸⁸
881. [REDACTED] certain *notables* [REDACTED] “pressurized” him to obtain evidence of crimes committed by the UPC in Kobu.²⁴⁸⁹ [REDACTED] asked [REDACTED] – whom [REDACTED] named as the photographer²⁴⁹⁰ – to [REDACTED] to [REDACTED],²⁴⁹¹ who then ostensibly handed them over to the [REDACTED] notables, to [REDACTED], and to [REDACTED].²⁴⁹²
882. [REDACTED] was then confronted with two investigation notes – one of an [REDACTED] denying having taken the Massacre Photos,²⁴⁹³ and another with [REDACTED] indicating that [REDACTED] was the photographer²⁴⁹⁴ – that unleashed a series of extraordinary statements, including: “[REDACTED].”²⁴⁹⁵ The witness then denied that he had any [REDACTED], whereas he did, and at a [REDACTED].²⁴⁹⁶ The Prosecution, which put this very contradiction to [REDACTED], recorded his reaction as follows: ““The witness looks at the document and asks what he should say.””²⁴⁹⁷
883. P-0790 testified that he saw “[REDACTED]” at the gravesite but only heard later that he had taken pictures.²⁴⁹⁸ P-0792 likewise heard about the photographs only later from “[REDACTED].”²⁴⁹⁹ P-0301 implausibly claimed that there were multiple photographers on site, including [REDACTED]²⁵⁰⁰ – [REDACTED] of having taken any photos.
884. The indications that these photographs of a massacre are not actually a reflection of any scene in Kobu is reinforced by P-0976’s testimony – conspicuously similar to the

²⁴⁸⁸ [DRC-OTP-1002-0006-R01](#), 11:10-13:08; [REDACTED].

²⁴⁸⁹ [REDACTED] (“[REDACTED]”).

²⁴⁹⁰ [REDACTED].

²⁴⁹¹ [REDACTED].

²⁴⁹² [REDACTED].

²⁴⁹³ [REDACTED].

²⁴⁹⁴ [REDACTED].

²⁴⁹⁵ [REDACTED].

²⁴⁹⁶ [REDACTED].

²⁴⁹⁷ [REDACTED].

²⁴⁹⁸ **P-0790**:T-54,19:19-20.

²⁴⁹⁹ **P-0792**:T-150,73:12-74:12.

²⁵⁰⁰ **P-0301**:T-149,63:6-17.

modus operandi described by Dr Garreton – that [REDACTED] “took pictures of massacres, but not of the Kobu” massacre, and [REDACTED] “other negatives.”²⁵⁰¹

885. Numerous implausible identifications were made on the photographs, raising further suspicions of collusion and contamination. P-0301 claimed to identify [REDACTED] on one of the photos,²⁵⁰² whereas P-0790 identified the same figure as someone else.²⁵⁰³ P-0301 also failed to recognise the Massacre Photos as being what he saw in Wadza during his [REDACTED] OTP interview.²⁵⁰⁴ He tried to explain that this was because of the poor quality of the photos he was shown,²⁵⁰⁵ whereas it is much more likely that [REDACTED] told him what the photos were when he informed P-0301 that the OTP had a photograph of [REDACTED].²⁵⁰⁶
886. P-0805 likewise did not recognise the Massacre Photos when they were first shown to him, but did so during his testimony.²⁵⁰⁷ P-0792 at first said that he had seen these photos “[REDACTED]” [REDACTED],²⁵⁰⁸ but later stated that “it is through [REDACTED] that I saw those images for the first time, the images that had been developed [...] [REDACTED].”²⁵⁰⁹ Assuming that P-0792 is [REDACTED] with a person from MONUC, the likely inference is that P-0792 learned that these photos were purportedly of a massacre at Kobu based on viewing that video. P-0792 testified that the image “captures what had happened.”²⁵¹⁰
887. P-0805,²⁵¹¹ P-0301,²⁵¹² and P-790²⁵¹³ said they could identify DYIKPANU on various photos, even though his face is not visible in any of them. The implausibility of a recalled identification based only on underwear,²⁵¹⁴ is increased by P-0121’s testimony

²⁵⁰¹ **P-0976**:T-152,62:6-8.

²⁵⁰² **P-0301**: [REDACTED].

²⁵⁰³ **P-0790**: [REDACTED].

²⁵⁰⁴ **P-0301**:T-150,23:9-24:10.

²⁵⁰⁵ **P-0301**:T-150,23:3-8.

²⁵⁰⁶ **P-0301**:T-150,19:8-22.

²⁵⁰⁷ **P-0805**:T-26,55:4-20.

²⁵⁰⁸ **P-0792**:T-150,74:1-4,12.

²⁵⁰⁹ **P-0792**:T-151,11:14-22.

²⁵¹⁰ **P-0792**:T-150,74:1-4.

²⁵¹¹ **P-0805**:T-26,15:19-24.

²⁵¹² **P-0301**:T-149,66:5(“the person who is wearing red underwear, that’s Dyikpanu”).

²⁵¹³ [DRC-OTP-0152-0240](#); **P-0790**:T-54,22:15(“Here I see Dyikpanu. I recognize – I recognize him by his underwear”).

²⁵¹⁴ **P-0301**:T-149,66:5;**P-0790**:T-54,23:16-24:2.

that DYIKPANU was buried the night²⁵¹⁵ before²⁵¹⁶ the photograph was taken.²⁵¹⁷ By the time the photo was taken, “Dyikpanu had already been buried.”²⁵¹⁸

888. These are not just discrepancies, but trends. They provide serious grounds to believe that witnesses have extensively discussed these photographs, shared them amongst themselves, and co-ordinated their testimony to falsely claim that these are photos depicting the aftermath of the purported Kobu massacre.

III. Identifications without being able to see faces

889. Several witnesses purported to identify individuals on the Massacre Photos by name despite their faces being visible. Any correspondence of identification might therefore be taken as corroboration that individuals were able to make an identification while present at the banana field, and then able to identify on the photos based on their recollection of the event. If there was no evidence of contamination or collusion, this would be a valid analysis.

890. This analysis is incorrect, however, because of [REDACTED].²⁵¹⁹ In that interview, he gives three key pieces of information: (i) 59 people had been killed; (ii) they were “bien ligotés.”²⁵²⁰ and (iii) identifies of Dyikpanu, Lonema and Lombu. In fact, [REDACTED] and identifies the person in red underpants as “Dyikpanu”,²⁵²¹ he then points and [REDACTED] and identifies two different individuals as “Lonema”²⁵²² and another as “Lombu”.²⁵²³ The journalist does not ask how he could make such an identification without seeing the faces.

891. In this context, the identifications of Dykipanu by P-0301 and P-0790 on the basis of the “red underwear”²⁵²⁴ are indicative of contamination.

²⁵¹⁵ P-0121:T-173,8:7-10;10:1.

²⁵¹⁶ P-0121:T-173,33:11-12:20.

²⁵¹⁷ P-0121:T-173,8:7-10;33:9-21;34:19-24;34:24.

²⁵¹⁸ P-0121:T-173,34:25.

²⁵¹⁹ P-0792:T-151,11:13-24(indicating that he saw the photos for the first time during a video).

²⁵²⁰ [REDACTED] (“bien ligotés”).

²⁵²¹ [REDACTED] (“Dyikpanu ... un commerçant”).

²⁵²² [REDACTED],18:40-19:00.

²⁵²³ [REDACTED],19:27.

²⁵²⁴ P-0301:T-149,66:5;P-0790:T-54,18:5-18:15.

IV. The ability to remember days of the week and dates

892. Many witnesses constructed their narrative around days of the week or dates in a manner that is suggestive of contamination and coaching.

893. P-0792 offered “That's the chain of events that I know; Tuesday, rendezvous in Sangi, a meeting, Wednesday, searching the bush. And we were in Kobu and found the bodies. That must have been on Friday. If there are mistakes that's because it happened a long time ago, but that's the chain of events when I review what happened.”²⁵²⁵ This sequence corresponds with [REDACTED], which appears to have brought together a number of witnesses.²⁵²⁶ As during his testimony, there is the “*appel de Salumu*” on “25/02/2003” (a Tuesday); the “*chasse de l'UPC*” on “26/02/2003” (a Wednesday); “[REDACTED]” on “27/02/2003” (a Thursday); and “burial” on “28/02/2003”.²⁵²⁷ The dates do not correspond exactly, but close enough to demonstrate that the witness was attempting to tell a story not from memory, but from a script. P-0127 [REDACTED] sets out a similar sequence, referring to the pacification meeting and “*attaque sur Buli*” as occurring “*le mardi le 25/2/2003*” and a wider attack occurring on “*le mercredi 26/2/2013*”.²⁵²⁸ P-0105 stayed more or less on script as well, recalling with precision that “[REDACTED] Sangi on 25 February.”²⁵²⁹

894. P-0018 insisted that the meeting in SANGI occurred on a Wednesday, with no plausible explanation for this precision.²⁵³⁰ P-0019, who could not say how many days she had spent in the bush after the flight from her home, asserted that she could say that the SALUMU invitation was received on a Monday.²⁵³¹ P-0113 likewise asserted that “it was a Monday on which they came to [REDACTED]. We went to [REDACTED] and we were there till Tuesday. Then on Wednesday we were dispersed and it is on that day that [REDACTED].”²⁵³²

²⁵²⁵ P-0792:T-151,5:16-20.

²⁵²⁶ [DRC-OTP-2058-0164](#),p.0187.

²⁵²⁷ [DRC-OTP-2058-0164](#),p.0187.

²⁵²⁸ [DRC-OTP-2055-1346](#),p.1352.

²⁵²⁹ P-0105:T-135,31:11.

²⁵³⁰ P-0018:T-110,63:7-10.

²⁵³¹ P-0019:T-116,35:15-25.

²⁵³² P-0113:T-118,21:7-10.

V. The repetition of erroneous information

895. Numerous witnesses erroneously²⁵³³ claimed that the Main Road operation was part of, or followed, an operation called “*effacer le tableau*.” Though insignificant in itself, the transmission of the same incorrect information to P-0300,²⁵³⁴ P-0121,²⁵³⁵ P-0792,²⁵³⁶ P-0018,²⁵³⁷ and P-0103²⁵³⁸ suggests the extent to which these witnesses share information, even when it is false, rather than relying on independent knowledge.²⁵³⁹
896. Many witnesses were at pains to describe the Motorola device in Gutsi, with P-0301 going out of his way to assert that [REDACTED]²⁵⁴⁰ – as if he had heard of the existence of the KBL audio and wished to account for its existence.

VI. Adoption of numbers of victims from other sources

897. P-0113 claimed, after being purportedly [REDACTED], that she took the time while cooking a meal to count that there were 47 detainees because “they were civilians in the middle of soldiers. That’s what made me count them.”²⁵⁴¹ P-0121 testified that the number of casualties at his house was “49 bodies to be specific.”²⁵⁴²
898. P-0863 asserted that [REDACTED] had been murdered at Kobu, but subsequently clarified that he learned this information from [REDACTED], P-0300 in some time after April 2003.²⁵⁴³

Section II – Murder

A. Lipri

899. The UDCC alleges that Mr NTAGANDA, through co-perpetrators or subordinates, murdered at least 30 civilians in Lipri on or about 18 February 2003.²⁵⁴⁴

²⁵³³ P-0315:T-108,16:7-15;P-0046:T-101,72:10-13.

²⁵³⁴ P-0300:T-166,29:12-13.

²⁵³⁵ P-0121:T-172,66:24;68:14-15;69:7.

²⁵³⁶ P-0792:T-150,44:10-13.

²⁵³⁷ P-0018:T-111,72:25-73;T-110,63:9-13;T-110,71:6-10.

²⁵³⁸ P-0103:[DRC-OTP-0104-0170-R02](#),para.17.

²⁵³⁹ P-0315:T-108,17:23-25(hypothesizing that that the error might have come from the experience of refugees in Beni who might have been exposed to that operation).

²⁵⁴⁰ P-0301:T-149,35:13-17.

²⁵⁴¹ P-0113:T-119,19:15-20:4.

²⁵⁴² P-0121:T-173,12:12-13,16:8(“49 behind the house”).

²⁵⁴³ P-0863:T-181,37:2-39:5.

900. P-0105 and P-0127 both confirm that there was substantial fighting in Lipri on 17 and 18 February 2003, which caused at least one death on the FPLC side,²⁵⁴⁵ and may have led to other non-criminal intentional killings of Lendu fighters or unintentional killings of Lendu non-fighters.
901. P-0127 mentions two deaths at Lipri during the fighting,²⁵⁴⁶ without providing any details as to who told him about these deaths, the circumstances of death, or how and where the victims are buried.²⁵⁴⁷ P-0105 also says that two died: (i) a combatant; and (ii) a “woman of Bira ethnicity who had died.”²⁵⁴⁸ No information was provided concerning the circumstances of Bira woman’s death, her name, or the source of this information, which appears to have been hearsay. P-0105 also refers to a “[REDACTED]” who was “burnt to death in his house,” but then the same or different “[REDACTED]” is mentioned as being killed when he “went to fetch some crops in his farm and ran into UPC troops and was killed.”²⁵⁴⁹ No source is provided for the alleged death of either one, or two, “[REDACTED],” the name is not even mentioned in P-0317’s database. P-0105 also refers to an unidentified “mentally ill individual” who was killed “during that period”²⁵⁵⁰ with no specificity as to source, identity, or place. Alleged killings of three girls in Mastaki²⁵⁵¹ is discussed in the section on rape.
902. A reference in a MONUC report to “a UPC-RP attack against Lendus in Lipri”²⁵⁵² indicates nothing other than that there was fighting in the area of Lipri “but no direct information.”²⁵⁵³ Other MONUC reports use the short-hand “Lendus” to refer to combatants.²⁵⁵⁴
903. P-0317’s [REDACTED] report are not a reliable basis on which to find that anyone was unlawfully killed. The sources are all anonymous, having been deliberately withheld by

²⁵⁴⁴ UDCC, para. 79.

²⁵⁴⁵ Part V, Chap. I, Section II; **P-0105**:T-135,10:12-11:18 (“[t]here were a lot of combatants”), T-135,21:11 (“these were combatants [...] There were a lot of them. As civilians, we just fled.”); **P-0127**:T-140,11:17-24.

²⁵⁴⁶ **P-0127**:T-139,16:8-13.

²⁵⁴⁷ **P-0127**:T-139,16:14 (implying that the information was hearsay).

²⁵⁴⁸ **P-0105**:T-133,54:20.

²⁵⁴⁹ **P-0105**:T-133,55:6-7.

²⁵⁵⁰ **P-0105**:T-133,55:8.

²⁵⁵¹ **P-0105**:T-133,54:22-23.

²⁵⁵² PCB, para. 589, fn. 1753; [DRC-OTP-2067-1945](#).

²⁵⁵³ **P-0317**:T-192,45:21-22.

²⁵⁵⁴ [DRC-OTP-0005-0027](#), para. 1; [DRC-OTP-0005-0030](#), para. 7; [DRC-OTP-0005-0095](#), para. 9;

P-0127:T-140,15:5-6.

the UN; the information provided is often vague and unspecific about circumstances; no corroboration is provided; and the shambolic scene visible on the Lipri video,²⁵⁵⁵ which is the basis for the information in the [REDACTED],²⁵⁵⁶ demonstrates its unreliability.

B. Bambu

904. The UDCC charges Mr NTAGANDA with the murder of “at least” 12 civilians in Bambu “on or about 19 February 2003,”²⁵⁵⁷ which the Prosecution now says is 15: six by artillery shell, and nine massacred at the Bambu hospital.²⁵⁵⁸

905. The testimony concerning the shell, even taken at its highest, does not substantiate murder. P-0863 and V-1 testified only that a single shell fired from some distance²⁵⁵⁹ landed on a house two kilometres from Bambu,²⁵⁶⁰ killing five²⁵⁶¹ or six²⁵⁶² inhabitants.²⁵⁶³ P-0863 implies that this shell was fired as part of combat.²⁵⁶⁴ No evidence has been adduced that this single shell – not a barrage of shelling – was part of pattern of indiscriminate shelling, or even direct targeting of civilians. The photographic evidence discussed elsewhere shows that Bambu was not the object of indiscriminate targeting, and even P-0863’s misleading testimony referred to only two shells having been fired on Bambu.²⁵⁶⁵

906. P-0863’s testimony about a gruesome massacre at Bambu hospital, which is uncorroborated,²⁵⁶⁶ was not even mentioned in his [REDACTED] statement to the Prosecution.²⁵⁶⁷ The witness’s attempted explanations for this omission were unconvincing,²⁵⁶⁸ and his description was inconsistent.²⁵⁶⁹ Finally, the Prosecution produced no forensic evidence, despite the witness’s precise claim about

²⁵⁵⁵ [DRC-OTP-1033-0221](#), 40:06-44:40.

²⁵⁵⁶ [DRC-OTP-0152-0286](#); [DRC-OTP-0195-2366](#).

²⁵⁵⁷ UDCC, para. 81.

²⁵⁵⁸ PCB, paras. 590-591.

²⁵⁵⁹ V-1: T-201, 23:17-18.

²⁵⁶⁰ V-1: T-201, 71:1; P-0863: T-180, 27:25.

²⁵⁶¹ P-0863: T-180, 27:24-25.

²⁵⁶² V-1: T-201, 20:15.

²⁵⁶³ P-0863: T-180, 28:23; 29:2; V-1: T-201, 68:10; 68:17.

²⁵⁶⁴ P-0863: T-180, 29:14-16; UDCC, para. 81.

²⁵⁶⁵ [DRC-D18-0001-2928](#) vs. P-0863: T-180, 26:13 (“[REDACTED]”).

²⁵⁶⁶ The other sources cited by the Prosecution are irrelevant: PCB, fn. 1760.

²⁵⁶⁷ P-0863: T-181, 24:4-26:14.

²⁵⁶⁸ P-0863: T-180, 22:16-17; T-181, 24:4-16.

²⁵⁶⁹ P-0863: T-181, 27:20-30:21.

[REDACTED] nine murder victims in the Bambu hospital courtyard.²⁵⁷⁰ P-0863 is [REDACTED].²⁵⁷¹

C. Kobu and Sangi

907. **Sangi.** The UDCC alleges that NTAGANDA is responsible for an unspecified number of murders in Sangi on or about 25 February.²⁵⁷² There is little to no evidence of unlawful killings at Sangi. No corroboration has been provided for P-0018's testimony that [REDACTED].²⁵⁷³ P-0019 made no mention of an execution similar to that described by P-0018.²⁵⁷⁴ Substantial doubts about P-0018's and P-0019's reliability must be entertained, as discussed elsewhere, in light of their testimony about rape.²⁵⁷⁵
908. **Kobu.** The UDCC alleges approximately fifty murders in Kobu on or about 26 February.²⁵⁷⁶ P-0790's testimony about the purported death of [REDACTED]²⁵⁷⁷ during the initial attack on Kobu is not charged.
909. Ten witnesses, insider and Lendu, testified that the Kobu massacre victims were killed by bladed weapons, including "bladed weapons only",²⁵⁷⁸ "a machete and a knife of some 30 to 40 centimetres which was also covered in blood",²⁵⁷⁹ "machetes and knives",²⁵⁸⁰ "all the four people had been killed with knives, while two others were killed with a bayonet",²⁵⁸¹ "machetes",²⁵⁸² "using batons, knives, machetes",²⁵⁸³ "cut up with machetes",²⁵⁸⁴ and "knifed with a bayonet".²⁵⁸⁵
910. These descriptions are irreconcilable with the forensic evidence. Twelve out of the fourteen bodies at the Paradiso gravesite had blunt force trauma, two had ballistic

²⁵⁷⁰ **P-0863:**T-181,18:10-11,22:2-6.

²⁵⁷¹ **P-0863:**T-181,30:7-15.

²⁵⁷² UDCC,paras.83-84.

²⁵⁷³ **P-0018:**T-111,10:11;30:20.

²⁵⁷⁴ **P-0019:**T-115,30:17-18.

²⁵⁷⁵ Part V,Chap.II,Section III.

²⁵⁷⁶ UDCC,para.89.

²⁵⁷⁷ PCB,para.592.

²⁵⁷⁸ [REDACTED].

²⁵⁷⁹ [REDACTED].

²⁵⁸⁰ [REDACTED].

²⁵⁸¹ **P-0100:**T-131,51:1-2.

²⁵⁸² **P-0105:**T-134:20:24;**P-0108:**T-185,57:6;**P-0301:**T-149,77:10-13,78:17-20.

²⁵⁸³ **P-0113:**T-118,49:13-14.

²⁵⁸⁴ **P-0300:**T-166,52:13.

²⁵⁸⁵ **P-0106:**T-44,47:20-21.

trauma and zero had sharp force trauma.²⁵⁸⁶ Dr Martrille found no sharp force trauma on any of the bodies from the Kobu burial site.²⁵⁸⁷ Dr Martrille further elaboration is worthy of full quotation:

We know that cutting trauma can leave no trace on the bones. So as the cause of death you can say it's by cutting, slicing, stabbing instrument without any trace. That is compatible. But after that, indeed, if I am told that there were multiple stabs with a bayonet on the whole body, in the skull for example, well, that would be very surprising indeed [to find no sharp force trauma] because a bayonet is sufficiently heavy that which often leaves significant injuries. And if the witness says there were numerous injuries with such a bayonet, indeed, you should – find traces of it on the bones. But if it's a knife cut or several cuts, that that's totally possible.²⁵⁸⁸

911. When asked about “the strike of a machete on a limb,” Dr Matrille stated that:

Normally there, too, we would look at the impact where you'd see a quite a clear sharp force trauma impact, even if there are fractures which are added due to the force trauma very likely you will have seen specific traces of the cutting object in the bones.²⁵⁸⁹

912. The extent of injuries described by witnesses included: “some bodies where their heads had been cut off”,²⁵⁹⁰ “the head was cut off from the rest of the body”,²⁵⁹¹ “her head was pierced with a bayonet”,²⁵⁹² and “stabbed with a bayonet in her head”.²⁵⁹³ One witness said that [REDACTED] was “decapitated” but then clarified that he meant that her “throat was slit” but then he reverted to the word “decapitated” again, leaving some ambiguity as to what he meant.²⁵⁹⁴ This ambiguity did not arise with the other witnesses.

²⁵⁸⁶ DRC-OTP-2081-0674,p.708,DRC-OTP-2075-0312,p.316;KOB-F1-B1:DRC-OTP-2072-0253,p.0256;DRC-OTP-2081-0674,p.0682;KOB1-F1-B2:DRC-OTP-2081-0674,p.0686;KOB1-F1-B3:DRC-OTP-2081-0674,p.0690;KOB1-F2-B1:DRC-OTP-2075-0140,p.0145;KOB1-F2-B2:DRC-OTP-2075-0173,p.0177;KOB1-F2-B3:DRC-OTP-2081-0674,p.0693;KOB1-F2-B4:DRC-OTP-2081-0674,p.0698;KOB1-F3-B1:DRC-OTP-2081-0674,p.0703;KOB1-F3-B2:DRC-OTP-2081-0674,p.0714;KOB1-F4-B1:DRC-OTP-2075-0205,p.0209;KOB1-F4-B2:DRC-OTP-2075-0235,p.0239;KOB1-F4-B3:DRC-OTP-2075-0265,p.0269(undetermined); P-0935:T-133,22:25-23:4.

²⁵⁸⁷ P-0935:T-133,22:25-23:4,24:23-24(“On none of the bodies were we able to find sharp force trauma traces”).

²⁵⁸⁸ P-0935:T-133,243:8-17.

²⁵⁸⁹ P-0935:T-133,24:10-13.

²⁵⁹⁰ P-0805:T-26,7:10-11.

²⁵⁹¹ P-0301:T-149:62:17.

²⁵⁹² P-0106:T-44,47:20-21.

²⁵⁹³ P-0106:T-44,48:11-14.

²⁵⁹⁴ P-0106:T-44,47:24-25:7.

913. Dr Martrille testified that there was “no trace at all” of decapitation on any of the bodies he examined. The [REDACTED] whose remains are [REDACTED] testified at first that her throat had been “been slit,” but then said “there was only a little bit of her neck left to make it possible for her body to be identified”.²⁵⁹⁵ He also went on to say that a “bayonet had been used to hack her body.”²⁵⁹⁶ Dr. Matrille testified that he would have seen signs of such an injury if it had been inflicted.²⁵⁹⁷
914. This is just the most objective of a number of deficiencies in the evidence regarding an alleged massacre at Kobu, starting with the circumstances of the pacification meeting. The FPLC witnesses, including P-0963, asserted that an initial pacification meeting between SALUMU and the Lendu side took place in Sangi,²⁵⁹⁸ that after their return to Kobu, [REDACTED], which transpired;²⁵⁹⁹ that KISEMBO ordered [REDACTED] a counter-attack²⁶⁰⁰ that took place the following day, which involved serious combat, during which²⁶⁰¹ “46 to 47 persons were taken prisoner”²⁶⁰² in Buli.
915. P-0017 agrees that the initiative for negotiations came from an emissary sent by the Lendu side,²⁶⁰³ but that SALUMU sent a battalion commander with the call sign [REDACTED]²⁶⁰⁴ [REDACTED]²⁶⁰⁵ [REDACTED]. [REDACTED] “[REDACTED]” [REDACTED] “[REDACTED].”²⁶⁰⁶ [REDACTED],²⁶⁰⁷ [REDACTED].²⁶⁰⁸ [REDACTED],²⁶⁰⁹ [REDACTED].”²⁶¹⁰ [REDACTED],²⁶¹¹ [REDACTED].”²⁶¹²
916. The “KBL audio” gives the most direct, albeit limited, window on events. A voice is heard saying “*Lorsqu’ils sont arrivés, nous étions des amis [...] ensuite ils ont vu la*

²⁵⁹⁵ [REDACTED].

²⁵⁹⁶ [REDACTED].

²⁵⁹⁷ **P-0935**:T-133,26:19-24.

²⁵⁹⁸ **P-0963**:T-79,52:5-6,11-53:8.

²⁵⁹⁹ **P-0963**:T-79,60:20-64:3.

²⁶⁰⁰ **P-0963**:T-79,64:16-64:25.

²⁶⁰¹ **P-0963**:T-79,65:1-66:17.

²⁶⁰² **P-0963**:T-79,68:5.

²⁶⁰³ **P-0017**:T-59,77:15-16,78:1-3.

²⁶⁰⁴ **P-0017**:T-59,81:12-14.

²⁶⁰⁵ **P-0017**:T-59,81:20.

²⁶⁰⁶ **P-0017**:T-60,9:15-17.

²⁶⁰⁷ **P-0017**:T-60,10:7-11:4.

²⁶⁰⁸ **P-0017**:T-60,11:10.

²⁶⁰⁹ **P-0017**:T-60,12:17,13:10.

²⁶¹⁰ **P-0017**:T-60,12:24(“The troops who were taken and made prisoner were not armed”).

²⁶¹¹ **P-0017**:T-60,19:11.

²⁶¹² **P-0017**:T-60,19:6-24.

personne changer en deux secondes,”²⁶¹³ which may imply some perceived change of attitude by the Lendu interlocutors.

917. Voices are also heard saying “*INI1: Papa Oscar va venir vous chercher. INI2: Euh. Il s’est dirigé vers cet endroit, et il va vous secourir. INI1: Ensuite nous allons poursuivre avec des frappes sérieuses.*”²⁶¹⁴ References are made to “Kaburi,”²⁶¹⁵ and the statement “*Nous voulons toutes les armes [...] aussi les armes kagourou euh ... ils ont trouvé là-bas, y compris les G2, et d’autres ... s’ils ne sont pas encore retrouvés, moi je vais continuer avec les frappes.*”²⁶¹⁶ A reference is made to “*quarante.*”²⁶¹⁷

918. Someone says “*je ramènerai ces personnes-ci là-bas*”; “*ils avaient voulu enlever un et je les comprends très bien.*” Shortly after there is the following exchange:

*INI: Ligote-les avec une corde. INI5: Qu’ils comprennent, ils comprendront.
INI2: Il faut bien les ligoter. INI5: Ils vont voir ... ce sont des prisonniers de guerre. INI2: Oui ... des prisonniers de guerre.*²⁶¹⁸

919. The prisoners are referred to as “*prisonniers de guerre*” three times in the audio.²⁶¹⁹ The speakers distinctly express their belief that the group are combatants: “*ils sont allées ranger leurs armes*”²⁶²⁰ – to which the response is given “*désarmez-les.*”²⁶²¹ Lendu witnesses referred to those who were captured as “young people”²⁶²² (an expression frequently used by Lendu witnesses as a euphemism for combatants)²⁶²³ including DYIKPANU²⁶²⁴ (a well-known Lendu commander).²⁶²⁵

920. These passages suggest that about 40 prisoners were detained; that they were believed to be combatants; that they were “*prisonniers de guerre*” who should be properly

²⁶¹³ [DRC-OTP-2101-2958](#),I.18.

²⁶¹⁴ [DRC-OTP-2101-2958](#),II.11-12.

²⁶¹⁵ [DRC-OTP-2101-2958](#),II.10,36-37,42.

²⁶¹⁶ [DRC-OTP-2101-2958](#),II.31-33.

²⁶¹⁷ [DRC-OTP-2101-2958](#),I.30.

²⁶¹⁸ [DRC-OTP-2101-2958](#),II.67,68,201.

²⁶¹⁹ [DRC-OTP-2101-2958](#),II.201.

²⁶²⁰ [DRC-OTP-2101-2958](#),I.229.

²⁶²¹ [DRC-OTP-2101-2958](#),I.233.

²⁶²² **P-0106**:T-44,34:6-7.

²⁶²³ **P-0790**:T-54,8:5-16;**P-0121**:T-173,5:10-13;**P-0792**:T-150,40:3-8;**P-0857**:T-194,55:17-21;**P-0300**:T-167,70:10-11(“Combatants, those are young people in the village who are organized”);**P-0301**:T-149,28:19-20(“young people would organise themselves into self-defence groups to repel the enemy”).

²⁶²⁴ **P-0106**:T-44,37:11;**P-0790**:T-54,11:3.

²⁶²⁵ **P-0300**:T-167,69:24-70:6;**P-0790**:T-54,7:25-8:2.

restrained (which is an appropriate measure for prisoners of war);²⁶²⁶ and that they should be brought to some location. These exchanges are direct and compelling evidence that there was no pre-meditated intention or standing order,²⁶²⁷ to kill combatants *hors de combat* during the KBL operation.

921. Most of the rest of the fragmentary discussion amongst multiple interlocutors is about combat, interspersed with references to the prisoners. As the passage above shows, the pre-occupation of the speakers is getting back the “*kangourou*” and “G2”.²⁶²⁸ Operations are being pursued against targets perceived to be combatants:

*INI: Les combattants sont la? [...] INI8: Les combattants sont la. INI: Euh ... encerclez tous ces buissons-la, encerclez toutes ces maisons et qu'ils y lancent une bombe s'ices gens s'imaginent qu'il s'agit d'une plaisanterie.*²⁶²⁹

...
*INI: Nous t'avons dit d'étendre les troupes ... et qu'elles soient sur une file unique. L'ennemi est en train de prendre la fuite.*²⁶³⁰

...
*INI6: De l'endroit ou ils se trouvaient, ils sont allees de l'autre cote. Maintenant il faut que nous allions de l'autre cote, ensuite nous allons continuer a fouiller l'endroit ou ils se trouvaient. [...] INI: chasse-les a l'aide d'une bombe [...] Fouillez aussi la foret dans laquelle vous vous trouviez.*²⁶³¹

...
*INI: Des gens sont en train de te prendre des choses et ils ... s'ils fuient avec ces armes dans la foret, suivez-les.*²⁶³²

...
*INI: Commence à avancer et combattez tres bien.*²⁶³³

922. A “INI” (who may not be the same INI as recorded previously in the transcript) states in the context of this discussion about combat: “*Ils sont tous morts*” and “*Tuez les gens.*”²⁶³⁴ This cannot be a reference to the prisoners, since there are subsequent references to “*ligotez et ensuite amenez-les chez moi*” and “*ligotez-les.*”²⁶³⁵ Nothing in these references, which are fragmentary and without the context of the interlocutor’s

²⁶²⁶ [DRC-OTP-2101-2958](#), ll.64,66,158,200,201,313,320,485.

²⁶²⁷ *Contra PCB*, para.597.

²⁶²⁸ [DRC-OTP-2101-2958](#), ll.32-33.

²⁶²⁹ [DRC-OTP-2101-2958](#), ll.167,170.

²⁶³⁰ [DRC-OTP-2101-2958](#), ll.254-255.

²⁶³¹ [DRC-OTP-2101-2958](#), ll. 268-269.

²⁶³² [DRC-OTP-2101-2958](#), ll.342-343.

²⁶³³ [DRC-OTP-2101-2958](#), l.482.

²⁶³⁴ [DRC-OTP-2101-2958](#), ll.444,447.

²⁶³⁵ [DRC-OTP-2101-2958](#), ll.485,491.

responses, suggests that the killings being referred to are of civilians rather than combatants engaged in fighting.

923. [REDACTED] the prisoners arrive in Kobu around “4 or 5 pm”.²⁶³⁶ They were then interrogated to determine which of them were soldiers, which involved checking their bodies for marks to see whether they had been carrying weapons, and that seven were then released.²⁶³⁷
924. [REDACTED]²⁶³⁸ [REDACTED],²⁶³⁹ [REDACTED].²⁶⁴⁰ [REDACTED]²⁶⁴¹ [REDACTED] “[REDACTED].”²⁶⁴² [REDACTED].²⁶⁴³
925. [REDACTED],²⁶⁴⁴ is manifestly unreliable for reasons set out in the discussion of her testimony [REDACTED]. Her recollection of having [REDACTED] prisoners while [REDACTED] is very difficult to believe,²⁶⁴⁵ and her account differed from that of others, including that the prisoners were [REDACTED] either when they came to Kobu, or when executed.²⁶⁴⁶
926. The estimates of the number of cadavers encountered at the banana field vary: 47 according to what P-0317 reported she was told;²⁶⁴⁷ 49 for P-0121²⁶⁴⁸ and P-0805,²⁶⁴⁹ which P-0792 [REDACTED];²⁶⁵⁰ 53 for P-0857;²⁶⁵¹ 54 for P-0105,²⁶⁵² which is the same number given in [REDACTED] then the five bodies mentioned has having been found by the road and in the market are included;²⁶⁵³ 57 for P-0790, who appears to

²⁶³⁶ [REDACTED].

²⁶³⁷ [REDACTED].

²⁶³⁸ [REDACTED].

²⁶³⁹ [REDACTED].

²⁶⁴⁰ [REDACTED].

²⁶⁴¹ [REDACTED].

²⁶⁴² [REDACTED].

²⁶⁴³ [REDACTED].

²⁶⁴⁴ PCB, para.601.

²⁶⁴⁵ [REDACTED]

²⁶⁴⁶ [REDACTED].

²⁶⁴⁷ [DRC-OTP-0152-0286](#),p.0300.

²⁶⁴⁸ **P-0121**:T-173,16:8;19:18.

²⁶⁴⁹ **P-0805**:T-26,7:13.

²⁶⁵⁰ **P0792**:T-151,16:2;[DRC-OTP-2058-0164](#),p.0184.

²⁶⁵¹ **P-0857**:T-193,78:25-79:1.

²⁶⁵² **P-0105**:T-134,21:8.

²⁶⁵³ [DRC-OTP-2058-0164](#),p.0184.

have been referring to other nearby locations as well;²⁶⁵⁴ 59 for [REDACTED];²⁶⁵⁵ and P-0100 was ostensibly told by others that 70 or 75 had been counted.²⁶⁵⁶

927. Only fourteen sets of human remains are buried in the Paradiso mass grave site. Two, each in their own grave, were likely killed by ballistic force.²⁶⁵⁷ This means that there are twelve sets of remains at the Paradiso site for which the cause of death was determined to be blunt force trauma.²⁶⁵⁸ Despite extensive searching, no other mass graves were located.
928. The discrepancy may be explained by the witnesses who said that some bodies were taken away by relatives and buried elsewhere. This possibility is not incompatible, however, with P-0317's unequivocal contemporaneous report that "she was shown two mass graves, one of them reportedly containing 47 bodies of civilians killed by the UPC."²⁶⁵⁹ 53 additional bodies, which may have been those that were taken away, were said to have been buried elsewhere.²⁶⁶⁰ P-0103 testified that he counted 45 bodies even after some bodies had been taken away.²⁶⁶¹ P-0121 explained that his count was because "[REDACTED]"²⁶⁶² – implying that the [REDACTED] were simultaneous. P-0792 [REDACTED] also give the impression that 49 bodies [REDACTED], not merely that they had been killed there. Locals were telling P-0420 right up to the moment of excavation that there were two more mass graves in the vicinity with 27-29 more bodies.²⁶⁶³ None of this turned out to be the case.
929. Even assuming that a large number of bodies were removed from the site and buried elsewhere, the [REDACTED] is inconsistent with the forensic evidence.

²⁶⁵⁴ **P-0790**:T-54,18:2-5.

²⁶⁵⁵ [DRC-OTP-1002-0006](#),10:15-12:05;**P-0976**:T-152,70:14-71:6.

²⁶⁵⁶ **P-0100**:T-132,53:23-54:2.

²⁶⁵⁷ **P-0935**:T-133,27:21-25;[DRC-OTP-2072-0211](#),p.0225;[DRC-OTP-2081-0674](#),p.0708;[DRC-OTP-2075-0312](#),p.0316.

²⁶⁵⁸ KOB-F1-B1;[DRC-OTP-2072-0253](#),p.0256;[DRC-OTP-2081-0674](#),p.0682; KOB1-F1-B2;[DRC-OTP-2081-0674](#),p.0686; KOB1-F1-B3;[DRC-OTP-2081-0674](#),p.0690; KOB1-F2-B1;[DRC-OTP-2075-0140](#),p.0145; KOB1-F2-B2;[DRC-OTP-2075-0173](#),p.0177;KOB1-F2-B3;[DRC-OTP-2081-0674](#),p.0693;KOB1-F2-B4;[DRC-OTP-2081-0674](#),p.0698;KOB1-F3-B1;[DRC-OTP-2081-0674](#),p.0703;KOB1-F3-B2;[DRC-OTP-2081-0674](#),p.0714;KOB1-F4-B1;[DRC-OTP-2075-0205](#),p.0209;KOB1-F4-B2;[DRC-OTP-2075-0235](#),p.0239;KOB1-F4-B3;[DRC-OTP-2075-0265](#),p.0269(undetermined); **P-0935**:T-133,22:25-23:4.

²⁶⁵⁹ [DRC-OTP-0152-0286](#),para.51.

²⁶⁶⁰ [DRC-OTP-0152-0286](#).

²⁶⁶¹ **P-0103**;[DRC-OTP-0104-0170-R02](#),para.47.

²⁶⁶² **P-0121**:T-173,19:12-14.

²⁶⁶³ [DRC-OTP-2072-0211](#),p.0227; **P-0420**:T-123,106:15-107:15;[DRC-OTP-2072-0211](#),p.0215.

Witness	[REDACTED] Buried	[REDACTED]	[REDACTED]	Forensic Results
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] ²⁶⁶⁴	[REDACTED]
P-0792	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
P-0018	[REDACTED]	[REDACTED] ²⁶⁶⁵	[REDACTED]	[REDACTED]
P-0019	[REDACTED]	[REDACTED] ²⁶⁶⁶	[REDACTED] [REDACTED] ²⁶⁶⁷	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] ²⁶⁶⁸	[REDACTED] [REDACTED] ²⁶⁶⁹	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] ²⁶⁷⁰	[REDACTED]	[REDACTED]
Total	12		[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] ²⁶⁷¹	[REDACTED] Adult Males [REDACTED] Adult Female [REDACTED] Adolescent Males [REDACTED] Adolescent Undetermined Sex

930. The forensic evidence shows that every one of the bodies with blunt force trauma is accounted for just by the six witnesses who testified – which is implausible. P-0019 and P-0100 must have lied[REDACTED], and that some other lie must have been told to

²⁶⁶⁴ [REDACTED].

²⁶⁶⁵ P-0018:T-111,22:13.

²⁶⁶⁶ P-0019:T-115,54:11;21-23,13:25,15:6-8.

²⁶⁶⁷ P-0019 claimed, however, that [REDACTED], implying that they were unfindable. P-0019:T-116,31:1-4. P-0420 did not testify that anyone told him that a house had been built on any mass grave.

²⁶⁶⁸ P-0100:T-131,52:3-9(“[REDACTED]”).

²⁶⁶⁹ [REDACTED] (“[REDACTED].”)

²⁶⁷⁰ [REDACTED] (“[REDACTED].”)

²⁶⁷¹ KOB1-F1-B1: [REDACTED],p.0254;KOB1-F1-B2: [REDACTED],p.0683;KOB1-F1-B3: [REDACTED],p.0688;KOB1-F2-B1: [REDACTED],p.0162;KOB1-F2-B2: [REDACTED],p.0192-0193;KOB1-F2-B3: [REDACTED],p.0691;KOB1-F2-B4: [REDACTED],p.0696;KOB1-F3-B1: [REDACTED],p.0701;KOB1-F3-B2: [REDACTED],p.0712;KOB1-F4-B1: [REDACTED],p.0226;KOB1-F4-B2: [REDACTED],p.0255;KOB1-F4-B3: [REDACTED],p.0268;KOB1-F5-B1: [REDACTED],p.0705;KOB-F6-B1: [REDACTED],p.0315.

exceed the total in the Adult Female category. P-0857 also lied or gave incorrect testimony when he said that [REDACTED] was buried at Paradiso with “4 other women”²⁶⁷² – which in itself exceeds the total number of all Adult Females found in all graves, let alone a single grave.

931. The possibility that these bodies may relate to an entirely different event than the alleged Kobu massacre is not excluded by forensic evidence of burial date, which was not inconsistent with burial going back to as early as 1994²⁶⁷³ – well before the previous violence in Kobu that had reportedly killed dozens. P-0810 – who did “a lot of analysis on the Wadza church area”²⁶⁷⁴ on the basis of Prosecution instructions²⁶⁷⁵ that were later dropped²⁶⁷⁶ – was unable to see any mass grave consistent with the digging of five multiple-body graves on the available satellite images.²⁶⁷⁷
932. There is no “match”²⁶⁷⁸ of blue trousers between the photos and the artefacts exhumed from the banana field. The most that can be said is that this one item looks similar to what was exhumed; yet there is no “match” between any of the numerous other exhumed items and the photos.²⁶⁷⁹ Contrary to P-0937’s testimony, the articles of clothing are not so generic that any other match or pattern of matches would be overlooked.
933. The possibility that numerous witnesses have exaggerated the scale of the Kobu massacre is made more plausible given the willingness of witnesses to lie on issues large and small. [REDACTED]²⁶⁸⁰ – a claim unsupported by any witness or even the Prosecution. P-0018, P-0019 and P-0113 lied extensively, as discussed in the section on rape. P-0857 lied that [REDACTED] in the banana field and that he managed to

²⁶⁷² P-0857:T-194,32:8-33:2.

²⁶⁷³ [DRC-OTP-2072-0211](#),p.0232p.0233; P-0420:T-123,71:18-25.

²⁶⁷⁴ P-0810:T-176,28:20-31:8(“Yes. I mean, the only location that we ended up analysing was the Kobu-Wadza or around the Wadza church. At the time, so far as I understood, there was a field mission going to the Wadza church area, and that was the only area we did, I did a lot of analysis on indicating the areas of bare soil, so it was to support that field mission. That was the only location we ended up doing it. I can't quite recall why. But I did do an awful lot of location--or an awful lot of analysis on the Wadza church area. Whatever happened with the field mission, I never really, really learned”)(underline added).

²⁶⁷⁵ [DRC-OTP-2099-0216](#),p.0218; [DRC-OTP-2062-0329](#),p.0331,fn.4;

²⁶⁷⁶ [DRC-OTP-2084-0443](#),p.0445;

²⁶⁷⁷ P-0810:T-176,31:3-11.

²⁶⁷⁸ PCB,para.610.

²⁶⁷⁹ P-0937:T-127,65:4-9,[DRC-OTP-2075-0235](#).

²⁶⁸⁰ [REDACTED].

[REDACTED] – a claim so manifestly untruthful that the Prosecution properly did not elicit it on direct examination.²⁶⁸¹

934. P-0790,²⁶⁸² P-0301²⁶⁸³ and [REDACTED]²⁶⁸⁴ all tried to conceal that DYIKPANU was a combatant.²⁶⁸⁵ Other contradictions include (i) whether the prisoners were brought from Sangi to Kobu on the day that they were detained,²⁶⁸⁶ or whether they were detained overnight in Sangi;²⁶⁸⁷ (ii) the identity of GOMBILI as a part of the UPC forces²⁶⁸⁸ or a neutral party;²⁶⁸⁹ (iii) whether DYIKPANU's body was identifiable on pictures²⁶⁹⁰ that had been taken after his body had already been taken away;²⁶⁹¹ and (iv) the interval of time between the pacification meeting and the massacre.²⁶⁹² Minor in themselves, viewed cumulatively and in the context of the extent of witness contamination described previously, they are indicative of a made-up or exaggerated story.

935. Precious insight into the origin of this exaggeration can be seen on the Lipri video, just one month after the alleged Kobu massacre. [REDACTED] that he has already contacted families of victims and has, on the basis of information provided by them, come up with a figure of about 62 “*capturées et massacres. A BOLI [BULI], tout comme dans la forêt de Jichu. Puisque l'attaque a continué.*”²⁶⁹³ No mention is made of Kobu as the killing site or of a mass grave in Kobu.²⁶⁹⁴ When the MONUC investigator asks if it is possible to have a list of the names of the victims, [REDACTED] a discussion with the man to his left about obtaining such a list from the [REDACTED] in Kobu.²⁶⁹⁵ This man bears a striking resemblance to [REDACTED] that he was actually present at the banana field, yet there is still no mention of a massacre in Kobu or of a mass grave in Kobu.

²⁶⁸¹ P-0857:T-194,19:3-21:25.

²⁶⁸² P-0790:T-54,8:8(“[REDACTED]”).

²⁶⁸³ P-0301:T-150,11:5-8(“[REDACTED]”).

²⁶⁸⁴ [REDACTED] (“[REDACTED]”).

²⁶⁸⁵ [REDACTED] (“[REDACTED]”).

²⁶⁸⁶ P-0113:T-118,14:4-5(“[REDACTED]”); P-0019:T-115,29:13-15(“[REDACTED]”).

²⁶⁸⁷ P-0018:T-111,16:17-18(“[REDACTED]”).

²⁶⁸⁸ [REDACTED] (“[REDACTED]”); [REDACTED] (“[REDACTED]”).

²⁶⁸⁹ [REDACTED] (“[REDACTED]”); [REDACTED] (“[REDACTED]”).

²⁶⁹⁰ [REDACTED].

²⁶⁹¹ [REDACTED].

²⁶⁹² [REDACTED].

²⁶⁹³ [REDACTED].

²⁶⁹⁴ [REDACTED].

²⁶⁹⁵ [REDACTED].

936. Four days later, P-0317 and P-0046 arrive in Kobu and are told about 100 dead bodies in the area, of which 47 are said to be buried behind Paradiso. However, they are provided with only 14 names of victims,²⁶⁹⁶ not 62 [REDACTED] indicated had already been collected.²⁶⁹⁷ These 14 include DYIKPANU, BUROMBI and KABULI; but they also include two girls ages 2 and 4, and a boy aged 5 – none of whose names have ever been mentioned in this case.²⁶⁹⁸

937. The extent of contradictory information, manifest lies, indications of coaching, indications of a broad scheme of collusion to present a particular version of events, and testimony that is simply incompatible with forensic evidence raises reasonable doubt that any massacre occurred in Kobu or, if so, on what scale. Even assuming that some event is at the foundation of the testimony of the variety of witnesses heard by the Chamber, reasonable doubt remains as to the number of victims and their identity.

Section III – Rape and Sexual Slavery

INTRODUCTION

938. The evidence adduced by the Prosecution of rape and sexual enslavement during the Main Road operation is deficient. P-0019 and P-0113's testimony, in particular, bear all the hallmarks of coaching or contamination. P-0018's testimony is also deficient in certain core elements that raise reasonable doubt about her veracity.

A. Lipri

939. The UDCC contains no specific allegation of rape in Lipri,²⁶⁹⁹ and no direct evidence was adduced of rape there, or at Nyangaray. The only evidence heard concerned a rape and execution of three individuals in a [REDACTED] field close to Nyangaray purportedly witnessed at a distance by someone named [REDACTED];²⁷⁰⁰ and a rape of which he was informed by an unidentified village chief²⁷⁰¹ of two pregnant women, who purportedly subsequently [REDACTED].²⁷⁰²

²⁶⁹⁶ [DRC-OTP-0195-2366](#), entries 54-66.

²⁶⁹⁷ [REDACTED].

²⁶⁹⁸ [DRC-OTP-0195-2366](#), ll. 86, 87, 97.

²⁶⁹⁹ UDCC, para. 79.

²⁷⁰⁰ **P-0105**:T-134,24:9-11.

²⁷⁰¹ **P-0105**:T-134,24:24.

²⁷⁰² **P-0105**:T-134,24:13-22.

940. The evidence is hearsay and anonymous hearsay. No testimony was heard from the victims or witnesses to these events. P-0317's 20 June 2003 report makes no reference to rape at all, let alone at Lipri.²⁷⁰³ P-0127, a person who was purportedly [REDACTED], made no suggestion of rape having been committed at Lipri.

B. Bambu

941. The UDCC contains no specific allegation of rape at Bambu. Three sources are now cited in support of the allegation of rape in Bambu: P-0863; the UN Mapping Report; and P-0317's 20 June 2003 report.²⁷⁰⁴ The LRV2, notably, makes no submissions on rape in Bambu.²⁷⁰⁵

942. P-0317's report makes no reference to rape or sexual violence anywhere. The UN Mapping Report uses the conditional tense – "*auraient tué et violé un nombre indéterminé de civils lors d'attaques*"²⁷⁰⁶ – and provides no information about the source of the information. The Report does not even indicate in general terms whether the alleged source is an eyewitness or merely reporting tenth-hand hearsay – i.e. blind rumour.

943. P-0863 provided little to no information about the acts perpetrated against the two women whose corpses he encountered, [REDACTED]. His claim that he could identify "dried semen" suggests an over-eagerness to incriminate,²⁷⁰⁷ reinforced by the subsequent contradiction that "her thighs were covered with a pagne,"²⁷⁰⁸ and his concoction of details that he could not have known ("she wasn't able to run and she was caught").²⁷⁰⁹ [REDACTED], raising the possibility, as he at one point seemed to suggest,²⁷¹⁰ that they were covering up their own crime. This possibility is enhanced by P-0863's failure to recall [REDACTED] name, which also suggests that he was shielding his story from further inquiry or investigation.²⁷¹¹ Notably, in this regard, no

²⁷⁰³ [DRC-OTP-0152-0286](#), para.53. See PCB, para.571.

²⁷⁰⁴ PCB, para.572.

²⁷⁰⁵ 10th Victims' Report, [ICC-01/04-02/06-2296-Corr](#), fn.5.

²⁷⁰⁶ See [DRC-OTP-1061-0212](#), para.756.

²⁷⁰⁷ P-0863:T-180,30:7 ("[REDACTED] also saw – observed some dried semen on her thighs.")

²⁷⁰⁸ P-0863:T-180,56:25-57:1.

²⁷⁰⁹ P-0863:T-180,59:1-14.

²⁷¹⁰ P-0863:T-180,56:23-25 ("they hit me"); 60:10-12.

²⁷¹¹ P-0863:T-181,70:3-7.

[REDACTED] evidence was adduced despite the witness's precise recollection of [REDACTED].²⁷¹²

C. Kobu, Buli, Sangi and Jitchu

944. The UDCC alleges that women held captive at SANGI and KOBU were raped. The principal evidence is the testimony of P-0018, P-0019 and P-0113, who claim to have been raped and to have seen rapes.

945. **P-0018.** P-0018 testified at first that she “deduced” that other women being taken “[REDACTED]”²⁷¹³ were being raped because they were screaming,²⁷¹⁴ then later testified that she could “see” “the penis” “penetrat[ing] the woman.”²⁷¹⁵ The descriptions are contradictory, and P-0018 gave similarly inconsistent answers in relation to [REDACTED], whom she at first said she saw being raped,²⁷¹⁶ then later clarified she could not see being raped.²⁷¹⁷

946. P-0018, like P-0019 and P-0113, did not mention having been raped in her [REDACTED] Statement to the Prosecution, but did so in her [REDACTED] Statement.²⁷¹⁸ P-0018 explained that this was because of “the way in which the questions were put” during the second interview, that “made me reveal my secret. It was no longer possible to keep that secret.”²⁷¹⁹ P-0018 later acknowledged that she became more forthcoming not during her interview with the Prosecution investigators, but rather during [REDACTED].²⁷²⁰ The coincidence of P-0018, P-0019 and P-0113 all making no allegation in [REDACTED] of having been raped, but then doing so in [REDACTED], raises serious doubts about whether they were all influenced in the same way by someone such as P-0154 or some other community leader intent on ensuring the conviction of Mr NTAGANDA.²⁷²¹

²⁷¹² **P-0863:**T-180,56:10.

²⁷¹³ **P-0018:**T-111,10:6.

²⁷¹⁴ **P-0018:**T-111,11:13-24;15:10-17.

²⁷¹⁵ **P-0018:**T-111,12:13-17.

²⁷¹⁶ **P-0018:**T-111,30:17-20.

²⁷¹⁷ **P-0018:**T-111,30:25-31:6.

²⁷¹⁸ **P-0018:**T-111,31:11-32:20.

²⁷¹⁹ **P-0018:**T-111,32:6-8.

²⁷²⁰ [DRC-OTP-2093-0052](#),p.0054; **P-0018:**T-112,28:4-30:10.

²⁷²¹ [DRC-OTP-2090-0407](#); [DRC-OTP-2092-0319](#); [DRC-OTP-2092-0321](#); [DRC-OTP-2092-0323](#); [DRC-OTP-2092-0207](#); [DRC-OTP-2092-0213](#); [DRC-OTP-2092-0215](#); [DRC-OTP-2092-0319](#); [DRC-OTP-2090-0407](#); **P-0019:**T-117,6:7-22; [REDACTED].

947. P-0018 testified at first that her attacker raped and shot her [REDACTED] (“[REDACTED]”);²⁷²² then that there “were [REDACTED]”.²⁷²³ This contradiction has added significance in light of the claim in earlier statements that it was one of the other attackers [REDACTED], whereas during her testimony she insisted that it was [REDACTED].²⁷²⁴ On the one occasion when P-0018 made a statement without being able to consult her prior statements, she stated she had been shot by a [REDACTED].²⁷²⁵
948. The prospect of proper medical care²⁷²⁶ – [REDACTED] – would have been a powerful inducement to lie, and keep lying.²⁷²⁷ P-0939 was unable to say [REDACTED] in 2003 or significantly earlier.²⁷²⁸
949. P-0018’s honesty is called into question by her categorical denial of PTSD symptoms to the [REDACTED],²⁷²⁹ while stating the contrary to P-0938.²⁷³⁰
950. **P-0019.** P-0019 testified that UPC troops raped women [REDACTED] Sangi,²⁷³¹ on the basis that the women taken “were shouting, screaming”.²⁷³² Few to no details were provided, including the identity of a single alleged victim, whether the required acts for rape occurred, or the identity of a single perpetrator.²⁷³³
951. P-0019 testified that she was herself raped in Kobu by LINGANGA, saw his face, and saw him coming and going.²⁷³⁴ P-0019 was, however, unable to identify his face on a photo-board shown in court.²⁷³⁵ She testified that LINGANGA raped her [REDACTED],²⁷³⁶ whereas in her [REDACTED] statement he had done so [REDACTED].²⁷³⁷ P-0019 did not say that she had been raped at all when interviewed

²⁷²² **P-0018:**T-112,4:18.

²⁷²³ **P-0018:**T-112,6:3.

²⁷²⁴ **P-0018:**T-111,81:4-9;T-112,6:4-9.

²⁷²⁵ [DRC-OTP-2059-0231](#),p.5; **P-0939:**T-143,39:8-16.

²⁷²⁶ **P-0018:**T-111,23:14-23.

²⁷²⁷ **P-0018:**T-112,16:12-17:8.

²⁷²⁸ **P-0939:**T-143,38:17-20.

²⁷²⁹ [DRC-OTP-2093-0052](#),p.0054(“[REDACTED]”).

²⁷³⁰ **P-0938:**T-114,6:20-22.

²⁷³¹ **P-0019:**T-115,30:7-15.

²⁷³² **P-0019:**T-115,30:17.

²⁷³³ **P-0019:**T-115,30:7-31:18.

²⁷³⁴ **P-0019:**T-116,6:23-7:11.

²⁷³⁵ **P-0019:**[DRC-D18-0001-1753](#);**P-0019:**T-116,62:5-11.

²⁷³⁶ **P-0019:**T-115,38:18-22.

²⁷³⁷ **P-0019:**T-116,44:6-45:2.

by two women in [REDACTED], but did so in front of four individuals, including two men, during her [REDACTED] interview.²⁷³⁸ The tardy revelation of P-0019's rape allegation coincides with similar revelations by P-0018 and P-0113.²⁷³⁹

952. P-0019 contradicted herself concerning the setting in which she was raped, testifying that it was in a [REDACTED] house, while previously affirming that it had been a [REDACTED] house in which other rapes were also happening.²⁷⁴⁰ She testified in court that soldiers had used sticks to rape women – a previously unheard allegation.²⁷⁴¹ In her statement, she had seen three men being raped,²⁷⁴² whereas during her testimony many were raped.²⁷⁴³ This tendency to inflate allegations is also reflected in her unprecedented and uncorroborated detail that “[s]ome [men] had their genitals cut off [REDACTED].”²⁷⁴⁴
953. P-0019 told [REDACTED] she wants to “receive a house upon her return to her village,”²⁷⁴⁵ then falsely denied having made this statement.²⁷⁴⁶
954. Her strategies of deception were also on full display when, after having committed to the claim that [REDACTED] and [REDACTED] “[REDACTED]” [REDACTED],²⁷⁴⁷ [REDACTED],²⁷⁴⁸ [REDACTED].²⁷⁴⁹
955. **P-0113.** P-0113 testified that she was raped on several occasions: at the time she was kept as prisoner in [REDACTED], while she had gone to [REDACTED] cook,²⁷⁵⁰ on their way from [REDACTED], when they were forced to carry goods;²⁷⁵¹ and, when being held prisoner by UPC troops in [REDACTED] where she was raped by [REDACTED],²⁷⁵² [REDACTED].²⁷⁵³

²⁷³⁸ P-0019:T-116,23:3-12.

²⁷³⁹ [DRC-OTP-2092-0207](#); [DRC-OTP-2092-0213](#); [DRC-OTP-2092-0215](#); [DRC-D18-0001-0414](#).

²⁷⁴⁰ P-0019:T-116,45:21-46:12.

²⁷⁴¹ P-0019:T-116,46:13-47:7.

²⁷⁴² P-0019:T-116,48:11-20.

²⁷⁴³ P-0019:T-115,45:10-46:3.

²⁷⁴⁴ P-0019:T-116,5:2-12;T-117,26:8-14.

²⁷⁴⁵ P-0019:T-117,25:12-24; [DRC-OTP-2094-0289](#).

²⁷⁴⁶ P-0019:T-117,26:13-14.

²⁷⁴⁷ P-0019:T-115,54:18-23(“All these bodies are buried in one place”).

²⁷⁴⁸ P-0019:T-116,30:22-35:4.

²⁷⁴⁹ [DRC-OTP-2099-0166](#),p.0207.

²⁷⁵⁰ P-0113:T-118,36:1-10.

²⁷⁵¹ P-0113:T-118,46:4-8.

²⁷⁵² PCB,para.578; P-0113:T-118,50:23-51:7.

956. P-0113 testified that [REDACTED],²⁷⁵⁴ died “during the events” that she narrated during her testimony,²⁷⁵⁵ yet her [REDACTED] statement says: “[REDACTED].”²⁷⁵⁶ P-0113 affirmed again that had been [REDACTED], explaining she had not reported having been raped in her first statements because she was “[REDACTED].”²⁷⁵⁷ She affirmed [REDACTED] when she reported that [REDACTED] for not having passed on money ostensibly received from [REDACTED].²⁷⁵⁸
957. This trend was repeated for [REDACTED]. [REDACTED].²⁷⁵⁹ In a [REDACTED] request for assistance from the Prosecution, P-0113 mentioned the names of a number of [REDACTED] who were allegedly in the house at the time which, again, happened to coincide with the names of [REDACTED].²⁷⁶⁰ This resulted in the witnesses acknowledging that over the course of the last 15 years, [REDACTED] “two people named [REDACTED], two people named [REDACTED], two people named [REDACTED] and two people named [REDACTED].”²⁷⁶¹
958. P-0113’s description of her relationship with [REDACTED], moreover, does not appear to have been forthright. She claims that he raped her, but he also [REDACTED] “[REDACTED]”²⁷⁶² [REDACTED].²⁷⁶³ [REDACTED],²⁷⁶⁴ whereas in her previous statements to the Prosecution she said that she [REDACTED],²⁷⁶⁵ which is consistent with her [REDACTED].²⁷⁶⁶ She gave directly contradictory answers one after the other concerning whether she could see [REDACTED],²⁷⁶⁷ and unrealistically claimed that she had ever received any money from anyone with the ICC.²⁷⁶⁸
959. P-0019’s, P-0113’s and P-0963’s descriptions of the scene in Kobu while rapes were purportedly committed there are irreconcilable. P-0019 described horrifying scenes of

²⁷⁵³ P-0113:T-119,64:3-7.

²⁷⁵⁴ P-0113:T-118,10:11-12;T-119,7:21-23.

²⁷⁵⁵ P-0113:T-119,61:16-21.

²⁷⁵⁶ P-0113:T-119,8:2-10,9:22-10:6.

²⁷⁵⁷ P-0113:T-119,10:14-18.

²⁷⁵⁸ P-0113:T-119,35:11-15;[DRC-OTP-2092-0319](#).

²⁷⁵⁹ P-0113:T-119,14:3-15:4.

²⁷⁶⁰ P-0113:T-119,15:7-16:5.

²⁷⁶¹ P-0113:T-119,16:1-5.

²⁷⁶² P-0113:T-118,56:12-14.

²⁷⁶³ P-0113:T-118,56:23-25.

²⁷⁶⁴ P-0113:T-118,37:12-14.

²⁷⁶⁵ P-0113:T-119,43:12-44:10.

²⁷⁶⁶ P-0113:T-118,37:15(“[REDACTED]”);T-119,42:7-43:12.

²⁷⁶⁷ P-0113:T-119,51:12-17.

²⁷⁶⁸ P-0113:T-119,18:10-25.

mass rape, cannibalism, and mutilation carried out “[REDACTED]”;²⁷⁶⁹ P-0963, who was at that precise location, and testified that he saw where the prisoners were being held, described no such scenes.²⁷⁷⁰ P-0113, who said that [REDACTED] who had previously been arrested,²⁷⁷¹ “in the centre of Kobu,”²⁷⁷² also described no such scenes.²⁷⁷³ In fact, P-0113, unlike P-0963 and P-0019, [REDACTED].²⁷⁷⁴

D. Hearsay and circumstantial evidence of rape

960. P-0453’s claim that 28% of households attributed rape to the UPC within the time-frame of 2000-2005²⁷⁷⁵ is as unreliable as her assertion that 8% of the population of Ituri is “Hemba,”²⁷⁷⁶ and that 41% of perpetrators of rape were female.²⁷⁷⁷
961. P-0863’s and P-0790’s hearsay testimony of rape²⁷⁷⁸ should be accorded no or very low probative value. The alleged sources of these allegations, with one exception, are anonymous.²⁷⁷⁹ The hearsay descriptions provide no basis to know whether they are credible or not. The one hearsay source who is identified, “[REDACTED],” was not called as a witness.
962. Hearsay allegations of rape of Lendu women recounted by Lendu men should be treated with particular caution. P-0938 observed that “in my experience, it is often easier to report a stranger rape because that fits more closely into the stereotype of how rapes happen rather than the truth of how rapes happen.”²⁷⁸⁰ P-0790 acknowledged that women “would not talk about these things openly because they were ashamed of doing

²⁷⁶⁹ **P-0019**:T-116,45:3-20;47:15.

²⁷⁷⁰ **P-0963**:T-79,73:11.

²⁷⁷¹ **P-0113**:T-118,48:7-25.

²⁷⁷² **P-0113**:T-118,50:12.

²⁷⁷³ **P-0113**:T-119,51:18-52:12.

²⁷⁷⁴ **P-0113**:T-118,48:4-49:14.

²⁷⁷⁵ [DRC-OTP-2084-0523](#),p.0570.

²⁷⁷⁶ **P-0453**:T-179,32:18-35:25(claiming that 8.1% of all households in Ituri were “Hemba” – a result arising from the suggestive inclusion of this unknown ethnic group on her questionnaire for respondents);**P-0863**:T-181,72:1.

²⁷⁷⁷ [DRC-OTP-2084-0523](#),p.0537(reporting that 40% of female victims of rape reported that their attacker was female);**P-0453**:T-179,37:23-40:9(testifying that this figure was “reliable”).

²⁷⁷⁸ PCB, para.581;**P-0863**:T-180,55:2-56:3;**P-0790**:T-54,32:2-24.

²⁷⁷⁹ **P-0790**:T-54,32:10(“Three women whose names I do not know”);**P-0863**:T-180,55:21(“I don’t know their names.”)

²⁷⁸⁰ **P-0938**:T-114,75:9-10. See **P-0453**:T-179,30:8-23.

so,”²⁷⁸¹ and yet “chanced upon” a “woman talking to other people about it.”²⁷⁸² The “other people” are not identified, but is suggestive of the meetings held by P-0154, which included P-0018, P-0019 and P-0113.²⁷⁸³

963. P-0017’s testimony²⁷⁸⁴ concerning SIMBA’s alleged sexual enslavement of an 11-year old is infected by his profound unreliability.²⁷⁸⁵ The incident is uncorroborated, even by hearsay and no information was provided about the name or identity of the victim.²⁷⁸⁶

964. P-0121’s lies about the massacre site generally render his specific testimony about the condition of the sexual organs of the purported victims unreliable.²⁷⁸⁷

Section IV - Destruction and Pillage

INTRODUCTION

965. Pillage under Article 8(2)(e)(v) of the Statute requires a “somewhat large-scale appropriation of all types of property, such as public or private, movable or immovable property, which goes beyond mere sporadic acts of violation of property rights.”²⁷⁸⁸ The appropriation must be “for private or personal use.”²⁷⁸⁹

966. Destruction or seizure is not unlawful under Article 8(2)(e)(xii) where the object, by its “nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.”²⁷⁹⁰

A. Lipri

967. P-0317’s 2004 Report says that the UPC attacked, amongst other villages, Lipri and “burn[ed] all the houses.”²⁷⁹¹ She contradicted this claim during her testimony, stating

²⁷⁸¹ **P-0790**:T-54,34:2-3. See **P-0113**:T-118,63:12-19;**P-0018**:T-111,31:18-21;32:9-18;**P-0019**:T-116,54:1-4;**P-0938**:T-113,49:10-13;T-114,3:6-12;**P-0365**:T-147,34:11-35:1;**P-0912**:T-148,77:9-14(referring to the reasons why they would not discuss rape publicly).

²⁷⁸² **P-0790**:T-54,34:12-17.

²⁷⁸³ **P-0790**:T-54,32:10-21.

²⁷⁸⁴ PCB,para.582.

²⁷⁸⁵ Part IV,Chap.3,Section I(B).

²⁷⁸⁶ **P-0017**:T-60,28:13-14;28:19-29:6.

²⁷⁸⁷ PCB,para.583.

²⁷⁸⁸ [Bemba CD](#),para.317.

²⁷⁸⁹ Elements of Crimes, 8(2)(e)(v); [Bemba TJ](#), para.120.

²⁷⁹⁰ [Katanga TJ](#), para.893.

²⁷⁹¹ [DRC-OTP-0074-0422](#),para.69.

that she “did not see massive destruction.”²⁷⁹² She implausibly claimed at first that she had only spoken to individuals on the outskirts of Lipri,²⁷⁹³ then later admitted that she had gone to “Lipri market and spent a few hours there,”²⁷⁹⁴ which P-0127 identified as “the centre of Lipri.”²⁷⁹⁵ P-0317’s contradictory recollections and opinions, especially in light of the condition of Lipri apparent on video and photographic images, undermines her reliability in respect of pillage in general.

968. P-0127 testified that the UPC was “burning all the houses”²⁷⁹⁶ and “burnt down all the huts with thatched roofs,”²⁷⁹⁷ and that “99.9% of the houses, of the huts, were – had thatched roofs. We’re talking about huts.”²⁷⁹⁸ He testified that his own house, which apparently had a thatched roof, was also burnt down. P-0105 testified that when he returned to Lipri “there was nothing left in the village”; that the “straw houses had been burnt down”; that “roofs of houses had been removed”; and that farms had been “looted and destroyed.”²⁷⁹⁹ P-0055 also testified that Hema civilian “combatants” “burnt down houses” in Lipri and “took the roofs off houses.”²⁸⁰⁰
969. The panoramic views of Lipri visible on the video shot on 28 March 2003 show no visible signs of physical damage, fire or pillage of any house in Lipri.²⁸⁰¹ This includes thatched roof buildings on the Lipri video, and there are no visible signs of arson anywhere.²⁸⁰² More generally, if UPC forces were intent on causing destruction to prevent the return of the civilian population, they would not have concentrated on burning isolated thatched-roof huts instead of the large number of wood-frame houses in the town – all of which appear intact.²⁸⁰³
970. The video also depicts sheeting on the rooftops of many houses,²⁸⁰⁴ contradicting P-0055’s, P-0105’s and P-0127’s claim that this roofing had been looted by the FPLC.

²⁷⁹² **P-0317**:T-192,90:18-19.

²⁷⁹³ **P-0317**:T-192,91:5-6.

²⁷⁹⁴ **P-0317**:T-192,91:2-12.

²⁷⁹⁵ **P-0127**:T-139,68:16(“this video only shows the centre of Lipri”).

²⁷⁹⁶ **P-0127**:T-139,7:24.

²⁷⁹⁷ **P-1027**:T-139,5:5-7;61:10-13;63:16-17.

²⁷⁹⁸ **P-0127**:T-139,64:20-22.

²⁷⁹⁹ **P-0105**:T-133,50:2-22;T-133,51:12.

²⁸⁰⁰ **P-0055**:T-71,46:17-20.

²⁸⁰¹ [DRC-OTP-1033-0221](#),07:35-07:39,14:10-14:15,14:54-14:59,21:48-21:54,22:00-22:13,24:53-25:00.

²⁸⁰² [DRC-OTP-1033-0221](#),07:34-07:38,14:06-14:15,21:43-21:51,22:05-22:13,24:52-25:00.

²⁸⁰³ [DRC-OTP-1033-0221](#),07:35-07:42.

²⁸⁰⁴ [DRC-OTP-1033-0221](#),07:38-07:40,14:10-14:16,16:46-16:56,21:50-21:53,22:12,24:16-25:23.

The sight of plastic sheets on a few houses does not imply pillage, and is inconsistent with theft on the scale necessary for pillage. Satellite imagery from 22 May 2003 likewise shows no indication of burned houses – whether with metal or thatched roofs – and no indication of removed roofing.²⁸⁰⁵ On the contrary, Lipri appears to be a village that has suffered no significant damage at all.²⁸⁰⁶

971. 15 possible clearings with no structures and four areas of likely structural remains, do not change that overall impression.²⁸⁰⁷ The assumption clearings or remains reflect houses recently destroyed is highly speculative in the absence of “before” and “after” photographs,²⁸⁰⁸ especially given substantial physical destruction from previous periods of fighting.²⁸⁰⁹ But even assuming that each and every clearing reflects a destroyed structure, the damage is not so manifestly disproportionate given the scale of fighting described by P-0127 and P-0317.²⁸¹⁰
972. Any damage as did occur, moreover, has not been shown to have been the result of unlawful targeting, which cannot be merely assumed in light of evidence that Lendu combatants had fought from positions inside the town itself.
973. P-0105’s claims of looting of farms around Lipri were unspecific, uncorroborated, and unreliable in light of his false claims about the destruction of Lipri itself. P-0127 could not describe any pillaging,²⁸¹¹ and conceded in respect of his own belongings that “[t]here wasn’t much of value that would be worthy of mention.”²⁸¹²

²⁸⁰⁵ [DRC-OTP-2059-0225](#)(satellite image) in [DRC-OTP-2059-0207](#)(CD admitted into evidence). The satellite image file number, geographical coordinates and screenshot are in Annex G Lipri.

²⁸⁰⁶ [DRC-OTP-2099-0166](#),p.0199, Figure 12.

²⁸⁰⁷ [DRC-OTP-2099-0166](#),p.0199,0182 (“Multiple areas adjacent to the LoI and further away with possible indications of destroyed structures”).

²⁸⁰⁸ **P-0810**:T-175,95:10-12;T-175,94:8-95:18;T-176,40:22-44:1,T-176,43:22-44:1.

²⁸⁰⁹ **P-0317**:T-192,96:8; [DRC-OTP-0185-0879](#),para.25.

²⁸¹⁰ **P-0317**:T-192,98:5-8.

²⁸¹¹ **P-0127**:T-139,10:1-2.

²⁸¹² **P-0127**:T-139,10:12.

B. Kobu

974. Most witnesses confirmed that most if not all houses in Kobu remained intact,²⁸¹³ but also claimed that thatched roof houses had been burned, and that metal roofing had been stolen.²⁸¹⁴
975. No damage to any structure can be seen on satellite imagery of Kobu centre taken on 22 May 2003. Only one location is identified by P-0810 as possible structural remains,²⁸¹⁵ which could have been destroyed at any time, and no removed or damaged roofing can be seen on any houses, whether with metal or thatched roofs.²⁸¹⁶ An image of fields outside Kobu shows four cleared areas and three sets of possible structural remains, a small fraction of all houses visible in the area as a whole.²⁸¹⁷ These images undermine P-0963 and other witnesses' claims that metal roofing was removed from buildings in these localities.²⁸¹⁸
976. Claims of lost building supplies, houses or gold by individuals who are also claiming compensation for those losses must be assessed with particular caution,²⁸¹⁹ particularly in light of the extensive contamination and co-ordination of witnesses previously discussed.²⁸²⁰ P-0857's role as a former [REDACTED], with all the contamination that implies, raises particular concerns.²⁸²¹ The claim that luxuriously large houses had been destroyed²⁸²² is contrary to the prevailing evidence, and that 300 grams of gold had been left behind²⁸²³ is inconsistent with evidence that it took FPLC forces "a few hours" to take Kobu,²⁸²⁴ and that the civilian population had taken everything of value

²⁸¹³ **P-0963**:T-79,78:10-13("Kobu was intact");**P-0113**:T-118,53:4-5("In the city centre the houses were not burnt");**P-0121**:T-173,80:25-81:2("Q. I understand your explanation for houses on this map not having been destroyed, the fact that according to you the UPC found them to be useful. Do I understand your explanation correctly? A, Yes, thank you, that's what I said").

²⁸¹⁴ **P-0805**:T-26,14:20-21("A. Yes. There were some houses the roof had been taken off, and others were undamaged. These were -- there were straw huts that had been burned").

²⁸¹⁵ [DRC-OTP-2099-0166](#), p.0207,0183.

²⁸¹⁶ Annex G Kobu, [DRC-OTP-2059-0329](#)(satellite image) in [DRC-OTP-2084-0146](#)(CD admitted).

²⁸¹⁷ [DRC-OTP-2099-0166](#), p.1297,0166 ("Possible indications of destruction within 200m of the LoI though uncertainty is high")

²⁸¹⁸ **P-0963**:T-79,77:14-6.

²⁸¹⁹ P-0805, P-0857, P-0863, P-0100 and P-0790 are dual status witnesses.

²⁸²⁰ See Part V, Chap. II, Section I.

²⁸²¹ **P-0857**:T-194,10:7-14.

²⁸²² **P-0121**:T-173,11:25-12:19.

²⁸²³ **P-0790**:T-54,38:8; **P-0113**:T-118,53:4.

²⁸²⁴ **P-0963**:T-79,50:18-23.

with them.²⁸²⁵ P-0113 did not confirm that metal roofing was pillaged from Kobu, saying only that she carried a foam mattress on the orders of [REDACTED].²⁸²⁶

977. P-0113 saw Hema civilians pillaging, but without indicating what they took, or whether they were acting in collusion with the FPLC.²⁸²⁷ P-0790 testified, however, that Hema civilians had no role in Kobu during the February 2003 operation, but that they had been involved in attacks in earlier years.²⁸²⁸ This highlights the potential conflation of the KBL operation with earlier events.

C. Bambu

978. The UDCC alleges that the Bambu Hospital was “pillaged and destroyed.”²⁸²⁹ P-0317 started by saying that when she visited the Bambu hospital it was “desolation, destruction, pillaging,”²⁸³⁰ but later acknowledged, along with P-0863, that neither the structure nor the roof of the Bambu Hospital had been damaged or taken away.²⁸³¹ “Sterilising equipment”, “a small stock of medication”, “equipment for the dentistry” and “chemicals from the laboratory” had been stolen.²⁸³² Neither the value nor the ultimate use of the products was established. Furthermore, [REDACTED] assumption is just that: an assumption. He ignores his own evidence that Lendu combatants had previously [REDACTED], have a motivation to steal items, whether to treat their wounded or for self-enrichment.²⁸³³

979. P-0863’s primary example of purportedly indiscriminate use of “bombs” against Bambu was the fact that the “roof of the stadium in Bambu was destroyed by a bomb.”²⁸³⁴ P-0863 denied that this was an exaggeration when shown a photograph of the largely intact roof because “[w]hat matters basically is to demonstrate that a bomb was launched in that direction.”²⁸³⁵ The only other “demonstration” offered by P-0863

²⁸²⁵ P-0963:T-79,77:13-14.

²⁸²⁶ P-0113:T-118,54:6.

²⁸²⁷ P-0113:T-118,53:6-8;P-0113:T-118,53:20-22.

²⁸²⁸ P-0790:T-53,35:19-25,39:22-25.

²⁸²⁹ UDCC,para.81.

²⁸³⁰ P-0317:T-191,42:21.

²⁸³¹ P-0317:T-192,90:2-5.

²⁸³² [REDACTED].

²⁸³³ [REDACTED].

²⁸³⁴ P-0863:T-180,26:13;T-181,7:10-8:1.

²⁸³⁵ P-0863:T-181,10:20-22,11:17-18,[DRC-D18-0001-2928](#).

was an unspecified amount of damage to the courthouse roof.²⁸³⁶ The scale of damage to Bambu does not appear, accordingly, to have been extensive and no evidence was adduced that it was the result of deliberate or intentional targeting of protective objects. P-0038, possibly describing an earlier operation, testified that the Lendu forces in Bambu were “very well armed” including being able to “launch some rockets and shells,” and possessing AK-47, G2 and other weapons.”²⁸³⁷

980. P-0317’s testimony concerning Kilo Moto, based on hearsay and a hand-written note is unreliable and, in any event, does not establish exactly what was stolen or its value.²⁸³⁸

981. P-0810’s showcase analysis of buildings destroyed in an image with a large title “Bambu (Main Thoroughfare)”²⁸³⁹ is not Bambu at all, but, as indicated by the small print caption under the photo, “650 metres southwest of the ICC LoI.”²⁸⁴⁰ A map elsewhere in the report²⁸⁴¹ shows that the photo is actually to the west of Bambu, towards the Shari bridge, where P-0863 said there was the long-established front-line.²⁸⁴² The circumstances in which these buildings were destroyed has not been established, and it cannot be assumed that they were unlawfully targeted.

982. P-0317 claimed that all the houses in Bambu had had their metal roofs removed.²⁸⁴³ Satellite imagery of Bambu itself²⁸⁴⁴ suggests the contrary. Two images comparing two locations in Bambu before²⁸⁴⁵ and after²⁸⁴⁶ the KBL events provide strong evidence that the village was not indiscriminately targeted and that roofing was not pillaged.

983. The amount of “foam” that P-0963 said had been looted²⁸⁴⁷ was never specified. P-0863’s testimony about looted pots, plates and mugs manifestly does not meet the

²⁸³⁶ **P-0863**:T-180,26:16-17.

²⁸³⁷ **D-0038**:T-249,73:11-14.

²⁸³⁸ **P-0317**:T-191,53:20-54:17;[DRC-OTP-0065-0006](#);T-191,59:16-21(“as to the content extent, we will be very much reserved”).

²⁸³⁹ [DRC-OTP-2099-0166](#),p.0190. Also pictured at p.0178.

²⁸⁴⁰ [DRC-OTP-2099-0166](#),p.0190.

²⁸⁴¹ [DRC-OTP-2099-0166](#),p.0185.

²⁸⁴² **P-0863**:T-180,62:1-12,T-181,56:24-57:21;[DRC-REG-0001-0050](#).

²⁸⁴³ **P-0317**:T-191,56:2-10.

²⁸⁴⁴ Annex G Bambu,[DRC-OTP-2059-0225](#)(satellite image) in [DRC-OTP-2059-0206](#)(CD admitted).

²⁸⁴⁵ Annex G Bambu,[DRC-OTP-2059-0225](#)(satellite image) in [DRC-OTP-2059-0206](#)(CD admitted),26 January 2003.

²⁸⁴⁶ Annex G Bambu,[DRC-OTP-2059-0224](#)(satellite image) in [DRC-OTP-2059-0207](#)(CD admitted),22 May 2003.

²⁸⁴⁷ **P-0963**:T-79,80:5-19.

minimum threshold for pillage.²⁸⁴⁸ No direct evidence was heard about who stole the chalice and other religious items,²⁸⁴⁹ and the assumption that it was the FPLC is unsafe especially in light of P-0863's testimony of misconduct by the Lendu militia in Bambu,²⁸⁵⁰ or even the possibility that a Lendu civilian stole these items in the chaos. The circumstantial evidence is not definitive enough to conclude beyond a reasonable doubt that the theft of those items is attributable to the FPLC.

D. Buli, Ngabulo, Jitchu, Sangi, Gola

984. P-0317 and P-0046 did not travel to these locations, meaning that the SIT report is based on anonymous hearsay only.²⁸⁵¹

985. **Sangi.** The testimonial evidence of a scorched earth policy in Sangi is contradicted by satellite imagery. P-0790 testified unequivocally, supported to varying degrees by P-0018, P-0019, P-0105 and P-0113,²⁸⁵² that “[a]ll the houses had been burnt down. There was nothing.”²⁸⁵³

986. Yet P-0810's analysis of “after-only” photographs around Sangi shows only seven “cleared areas”²⁸⁵⁴ compared to a large number of undamaged structures.²⁸⁵⁵ Widening the perspective on Sangi using P-0810's imagery shows even more undamaged buildings, including large numbers of thatched roof houses.²⁸⁵⁶ The overall impression is of a place remarkably undamaged by conflict at all.

987. The testimony of witnesses who lied about the destruction of Sangi is also unreliable in respect of pillage.²⁸⁵⁷

988. **Buli.** P-0963 testified that “[REDACTED] Buli, we torched the entire village.”²⁸⁵⁸ P-0790 testified that “there were only a few spots in Buli where there were a few houses

²⁸⁴⁸ **P-0863:**T-180,48:1-19.

²⁸⁴⁹ **P-0863:**T-180,48:1-19.

²⁸⁵⁰ **P-0863:**T-181,66:3-18.

²⁸⁵¹ **P-0317:**T-192,48:8-11,52:17-53:1;[DRC-OTP-0152-0286](#),0303,paras.51-52.

²⁸⁵² **P-0018:**T-110,80:15-16;P-0019:T-115,32:19-24;**P-0105:**T-134,18:17-18(“The villages were set alight”);**P-113:**T-118,43:19-20;**P-0018:**T-110,80:7-16.

²⁸⁵³ **P-0790:**T-54,15:19-20.

²⁸⁵⁴ [DRC-OTP-2099-0166](#),p.0204.

²⁸⁵⁵ [DRC-OTP-2099-0166](#),p.0204.

²⁸⁵⁶ See DRC-OTP-2059-0208 in DRC-OTP-2084-0146(CD admitted), Annex G Sangi, in particular, image 03MAY22081418_S2AS_053210945010_01_P001.TIF, 188651.63:199971.61 (E/N).

²⁸⁵⁷ **P-0105:**T-134,18:17.(“Buli, Sangi [...]were pillaged”);**P-0019:**T-115,34:24-25.

²⁸⁵⁸ **P-0963:**T-79,78:17.

here and there.”²⁸⁵⁹ P-0018 and P-0105 testified that “a lot of houses were set on fire” there.²⁸⁶⁰ P-0027 testified that part of the Catholic church was destroyed by a bomb.²⁸⁶¹

989. Satellite imagery shows a substantial number of apparently undamaged buildings with thatched and metal roofs alike.²⁸⁶² P-0810 managed to identify only four clearings and two examples of “apparent structural remains,”²⁸⁶³ which do not even necessarily indicate recent destruction. The only reasonable inference, given the sharp difference between the testimony and photographic images, is that these witnesses lied deliberately about destruction in Buli.
990. P-0113 claims a double-mattress, two bags of beans, corrugated iron, and part of a sofa were taken by FPLC soldiers from Buli.²⁸⁶⁴ Her account is undermined by general indications of unreliability discussed previously²⁸⁶⁵ and her description, in any event, does not appear to meet the threshold of pillage.
991. **Ngabulo/Ngabuli.** P-0790 testified that “the houses had all been burnt down, Sangi, Ngabulo.”²⁸⁶⁶ P-0113 testified that the houses in Ngabuli were burnt.²⁸⁶⁷
992. P-0810’s satellite image speaks for itself.²⁸⁶⁸ There are virtually no indications of even possible damage to the village, let alone its complete destruction. The image used by P-0810 only indicated two possible destroyed structures/clear areas and one area of structural remains, a tiny fraction of all visible structures.²⁸⁶⁹
993. **Jitchu and Gola.** P-0790, P-0018 and P-0100’s testimony that the houses in Jitchu were “set alight”,²⁸⁷⁰ P-0027’s claims that the Catholic church in Jitchu was burned²⁸⁷¹

²⁸⁵⁹ **P-0790:**T-54,15:25. There is some doubt as to the date of the photograph which is entitled “26 JANUARY 2003”. [DRC-OTP-2099-0166](#),p.0192.

²⁸⁶⁰ **P-0018:**T-110,79:19; **P-0105:**T-134,18:17-18.

²⁸⁶¹ **P-0027:**[DRC-OTP-0096-0052-R04](#),p.0063,para.52.

²⁸⁶² [DRC-OTP-2099-0166](#),0192(Figure 5).

²⁸⁶³ [DRC-OTP-2099-0166](#),0192(Figure 5).

²⁸⁶⁴ **P-0113:**T-118,42:12-13,23-25.

²⁸⁶⁵ Part V,Chap.II,Section III(D).

²⁸⁶⁶ **P-0790:**T-54,17-16-2(“the houses had all been burnt down, Sangi, Ngabulo”).

²⁸⁶⁷ **P-0113:**T-118,43:14-15.

²⁸⁶⁸ [DRC-OTP-2099-0166](#),0201.

²⁸⁶⁹ [DRC-OTP-2099-0166](#),0201.

²⁸⁷⁰ **P-0790:**T-54,13:8-19; **P-0018:**T-110,77:16(“When they arrived Jitchu, I saw houses had been set on fire, gunfire”); **P-0100:**T-131,33:5-6.

²⁸⁷¹ **P-0027:**[DRC-OTP-0096-0052-R04](#),p.0063,para.52.

and P-0106's claim that the houses in Gola "had been burnt down"²⁸⁷² and "all the houses in the village had been burned down"²⁸⁷³ is also untrue.

994. Although P-0810 provided no images of Jitchu or Gola as such in his reports,²⁸⁷⁴ he and his team thoroughly reviewed the area in which these villages appear at least twice²⁸⁷⁵ and found no signs of destruction. The area of Jitchu and Gola are close walking distance to Buli, Ngabulo and Sangi.²⁸⁷⁶

995. P-0018's claim that she had to carry mattresses and cases of clothing that were pillaged in Jitchu²⁸⁷⁷ is further unreliable in light of her willingness to lie about Jitchu being burned.

996. **Ngongo.** P-0127's uncorroborated testimony cannot be accepted in light of the unreliability of his testimony concerning Lipri.²⁸⁷⁸ P-0810's analysis of the after-only photograph is speculative and appears to have focused in only one part of Ngongo, rather than providing an overview of all structures in the village. No conclusion can be drawn beyond a reasonable doubt that any structures were damaged.

Section V – Protected Objects

997. All aspects of pillage in Bambu, to which the UDCC is limited,²⁸⁷⁹ have been previously addressed, including of protected objects. The Prosecution, in addition, incorrectly asserts that P-0317's report indicates that "electronic devices, archives and medical equipment" were damaged "in the hospital" at Kilo Moto.²⁸⁸⁰ On the contrary, the report refers to "destroyed electronic devices, archives and medical equipment" immediately following a reference to "a tour of the offices" of the Kilo Moto company,²⁸⁸¹ which is not a protected object.

²⁸⁷² P-0106:T-44,32:12.

²⁸⁷³ P-0106:T-44,43:21-44-5.

²⁸⁷⁴ Gola [DRC-OTP-2099-0216](#),0234; Jitchu [DRC-OTP-2099-0166](#),0172(Map 1).

²⁸⁷⁵ P-0810:T-176,27:13-21; P-0810:T-176,39:1-5,20-21.

²⁸⁷⁶ P-0106:[DRC-REG-0001-0007](#);P-0018:[DRC-OTP-0096-0128](#),[DRC-OTP-0096-0128](#);P-0113:T-119,24-25;T-118,23:9;P-0019:T-115,21:7-15;P-0106:T-45,10:21-11:14.

²⁸⁷⁷ P-0018:T-110,78:12-19.

²⁸⁷⁸ *Contra* PCB, para.619.

²⁸⁷⁹ Count 17.

²⁸⁸⁰ PCB, para.562.

²⁸⁸¹ [DRC-OTP-0152-0286](#),para.64.

Section VI - Forcible Transfer and Persecution

INTRODUCTION

998. Article 8(2)(e)(viii) prohibits “ordering the displacement of the civilian population for reasons related to the conflict.”²⁸⁸² The phrase “ordering the displacement” makes plain that “only acts which are directly aimed at removing the respective civilian population from a given area are prohibited.”²⁸⁸³ The plain meaning is reinforced by the drafting history of the provision.²⁸⁸⁴

999. Article 7(1)(d) prohibits “[d]eportation or forcible transfer of population.” The term “forcible” may include “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.”²⁸⁸⁵

1000. The flight of a civilian in advance of combat does not mean, however, that they have been deported or forcibly transferred. Cryer explains that “if a group flees of its own genuine volition, for example, to escape a conflict zone, that would not be forced displacement.”²⁸⁸⁶ Civilians who fled Fallujah in large numbers in 2004 and 2007 in advance of an attack by United States were not victims of a crime against humanity committed by United States’ forces, even though they undoubtedly fled out of fear of violence. The violence, however, must be directed against them unlawfully, which is regulated by the law of armed conflict. The Elements of Crimes also specifies that the conduct in question must have been “committed as part of a widespread or systematic attack directed against a civilian population,”²⁸⁸⁷ which could arise from combat only in the case of systematic unlawful targeting. A pre-condition of liability, accordingly, is that the Main Road operation be part of such an attack.

1001. Persecution requires severe deprivation of a person’s fundamental rights, carried out with a discriminatory motive. The same deprivation that the Prosecution asserts were the means of expulsion likewise appear to be the basis for persecution.

²⁸⁸² Article 8(2)(e)(viii).

²⁸⁸³ Triffterer, 3rd ed., p.566.

²⁸⁸⁴ Triffterer, 3rd ed., p.566.

²⁸⁸⁵ Elements of Crimes, fn.12.

²⁸⁸⁶ Cryer et al., 2nd ed., p.249. See Akhavan, *Reconciling Crimes*, p.35; Pictet Commentary, 1958, p.279.

²⁸⁸⁷ Underline added.

A. Kisémbó did not order forcible transfer

1002.P-0963's summary of KISEMBO's instruction: "Drive out of Lendu. Drive the Lendu out of that place, push them out of there" is preceded by the words: "You're going to Kobu to fight and destroy the headquarters in Kiza, take weapons [...] get the grenade launcher that Kiza has and open the road because we can't do anything, Kabakaba is far away. We need that road. We need to go that way."²⁸⁸⁸ The implication in this context is that "Lendu" is meant in this context as a reference to fighters.

1003.This interpretation is fortified by KISEMBO's own public pronouncements calling Lendu civilians back to areas of conflict, while making clear that combatants were not welcome.²⁸⁸⁹ More generally, the UPC made frequent calls for displaced civilians, including Lendu, to return to their homes.²⁸⁹⁰

B. Other operational measures were not designed to expel

1004.The Prosecution relies on SALUMU's order [REDACTED] to target cooking fires in the hills surrounding Kobu as a means of unlawfully expulsion.²⁸⁹¹ But P-0017 refers to these same individuals moving "from one hill to another" as the ones who started a "counter-offensive"²⁸⁹² – reflecting his understanding that these were fighters.²⁸⁹³

1005.P-0017's assertion that he did "not believe that any Lendu civilian could have returned to these areas"²⁸⁹⁴ is ambiguous. He was not asked to explain why, which is highly relevant to assessing whether forcible transfer is performed or intended.

²⁸⁸⁸ PCB,para.516; **P-0963**:T-79,46:21-25.

²⁸⁸⁹ [DRC-OTP-2058-0251](#),01:07:20(Trans. [DRC-OTP-2062-1333](#),p.1363:1018-1021)("CFK:Nous n'avons aucun problème avec les Lendu. Un Lendu n'est Lendu que parce que c'est son ethnie. Il peut revenir, il peut vivre ici, et il va y vivre sans le moindre souci. Mais les combattants, nous ne voulons pas d'eux, car ce sont eux qui agacent les habitants").

²⁸⁹⁰ **P-0887**:T-93,19:11-14("When we were in the bush, we moved towards the road and we saw some soldiers. They were the ones who told us that we could go back to Mongbwalu [...] They were UPC soldiers"); **P-0886**:T-37,12:23-13:8("Go get your parents and tell them to come home. Go tell all the civilians to come home");**P-0850**:T-112,76:25-77:3("he asked the civilian population to return to the village");[DRC-OTP-2058-0251](#),01:22:43(Trans. [DRC-OTP-2062-1333](#),p.1370:1281-1283) ("CFK: Alors, il est un plutôt difficile de savoir le sort des gens qui ont pris la fuite. Mais ce que nous voulons, c'est que les gens sortent de là, qu'ils ne restent pas dans la brousse, et qu'ils regagnent leurs maisons");[DRC-OTP-2058-0251](#),49:54(Trans. [DRC-OTP-2062-1333](#),p.1355:728-733) ("[REDACTED] ").

²⁸⁹¹ PCB,para.517.

²⁸⁹² **P-0017**:T-59,67:25;T-63,53:11-13.

²⁸⁹³ **P-0017**:T-59,67:23-68:2.

²⁸⁹⁴ **P-0017**:T-63,46:7.

1006. The civilian population of Kobu, the Lipri area, and Bambu all appeared to have fled in advance of fighting. This was the testimony of Lendu and FPLC witnesses alike in respect of Kobu²⁸⁹⁵ and Bambu.²⁸⁹⁶ The population of Lipri and Tsili, according to P-0105 and P-0127, appears to have fled the area somewhat in advance of the fighting on 18 February 2003, when the FPLC successfully seized control of Lipri.²⁸⁹⁷

C. Persecution

1007. The deprivations that the Prosecution alleges caused forcible transfer, including of property rights, are unsubstantiated for the same reasons as in respect of forcible transfer. The evidence also fails to show that these acts were performed with the necessary discriminatory intent.

Section VII - Intentionally directing attacks against the civilian population

1008. The war crime of intentionally directing attacks against the civilian population as such, or against individual civilians not taking a direct part in hostilities, can be committed even when there is a concurrent lawful justification for a military operation.²⁸⁹⁸ However, individual crimes in the conduct of a military operation,²⁸⁹⁹ or even a military attack that is carried out disproportionately,²⁹⁰⁰ does not amount to an attack on a civilian population. Proof is required beyond a reasonable doubt, as held in *Katanga*, “that the primary object of the attack was the civilian population or individual civilians.”²⁹⁰¹

1009. The *Katanga* Chamber was able to find that the “predominantly Hema civilian population of Bogoro” had been attacked in the course of an operation lasting a single

²⁸⁹⁵ **P-0017**:T-59,67:5 (“By that time there was nobody there”); **P-0790**:T-57,40:12-13 (“All the members of the population had fled already.”)

²⁸⁹⁶ **D-0038**:T-249,74:1-2 (“at that time the civilians had left, they had abandoned that area.”); **P-0863**:T-180,15:5-6.

²⁸⁹⁷ **P-0105**:T-135,21:12-13; **P-0127**:T-139,11:1-2.

²⁸⁹⁸ *Katanga TJ*, para. 802; *Mbarushimana CD*, para. 142.

²⁸⁹⁹ *Mbarushimana CD*, para. 265 (“Further, as found in the War Crimes Section, the 5 occasions on which war crimes were found to have been committed are scattered over a 6 month period [...] the 4 attacks against the civilian population that the Chamber found to have been committed [...] were mostly carried out in retaliation for attacks carried out by the FARDC/Mai Mai on the FDLR and/or Rwandese civilians, and were all launched with the aim of targeting both military objectives (FARDC positions in those villages and surroundings) and the civilian population or individual civilians not taking direct part in the hostilities, who were perceived as supporting the FARDC. Accordingly, such attacks cannot be considered to be part of any larger organised campaign specifically designed to be directed against the civilian population”).

²⁹⁰⁰ *Mbarushimana CD*, para. 142.

²⁹⁰¹ *Katanga TJ*, para. 802.

day at a single village on the basis of a series of striking findings and circumstances, which included the complete encirclement of the village and the killing of large numbers of individuals knowing that they were civilians not taking direct part in hostilities.²⁹⁰² The presence of a UPC military base in Bogoro, though a legitimate military target of the operation, did not outweigh the overwhelming indications that the primary target of the attack was civilians. Hence, the crime was found to have been committed in *Katanga* in respect of an operation conducted on a single day, against a single village where a UPC military camp was located, but in the course of which many civilians were killed without any attempt to distinguish them from combatants.

1010. The Main Road operation, as much as the Prosecution wishes to characterise it as an encirclement,²⁹⁰³ involved an operation against an extended geographic object (the Main Road); over an extended period; involving a large number of Lendu combatants who were spread out and quite capable of launching counter-attacks and resisting effectively. The operation bears no resemblance to the situation of Bogoro and the manner in which the operation was carried out does not transform it into an attack on the civilian population.

CHAPTER III – MR NTAGANDA’S KNOWLEDGE AND INVOLVEMENT IN FPLC OPERATIONS DURING THE PERIOD FROM JANUARY UNTIL HIS RETURN FROM RWANDA TO BUNIA ON 17 FEBRUARY 2003

1011. KISEMBO’s relocation to Mongbwalu in November 2002 changed neither his position as FPLC *Chef-d’État-major-général*, nor his command of the FPLC. NTAGANDA, meanwhile, continued as *Chef-d’État-major-général-adjoint* based in Bunia where his main assignment, as directed by KISEMBO, was to oversee FPLC operations in the Mahagi region and the Komanda axis.

Section I – Mr Ntaganda’s activities and whereabouts during this period

1012. KISEMBO returned to Mongbwalu²⁹⁰⁴ upon LUBANGA’s return from Goma on 11 January 2003,²⁹⁰⁵ and was still there when the Ugandan delegation visited Bunia on 23 January 2003.²⁹⁰⁶ KISEMBO ordered Mr NTAGANDA to remain in Bunia with

²⁹⁰² [Katanga TJ](#), paras.859,862,866,869,878.

²⁹⁰³ PCB,para.503.

²⁹⁰⁴ D-0300:T-219,33:2-6.

²⁹⁰⁵ See Part III.

²⁹⁰⁶ D-0300:T-219,33:7-9.

responsibility for overseeing the security situation in the areas connecting Bunia with Komanda and Mahagi.²⁹⁰⁷

1013. This was, to say the least, an all-consuming responsibility.²⁹⁰⁸ The APC was threatening to attack the Komanda axis from BENI;²⁹⁰⁹ the UPDF was a potential threat from Kasenyi and BOGA;²⁹¹⁰ and KAHWA's newly-formed military forces in UGANDA were preparing to attack and threatening Kasenyi and Tchomia.²⁹¹¹

1014. From January 2003, the UPDF was openly preparing for battle, digging trenches to consolidate their positions and deploying forces in positions²⁹¹² suggestive of a potential attack on the FPLC.²⁹¹³ The FPLC also learned during this period that Ugandan forces were in the midst of creating an alliance with Lendu combatants, and about to launch a joint operation with the APC and FAC in Mahagi.²⁹¹⁴

1015. On 18 January 2003, Mr NTAGANDA sent a message asking JEROME to continue operations against Kpandroma to prevent it from being used as a base of enemy operations, and to seize the initiative. The security situation in Aru, Mahagi and Komanda was a matter of great attention and concern for Mr NTAGANDA at this time.²⁹¹⁵

1016. On 24 January 2003, JEROME halted attacks on Kpandroma because "THE CHIEF EMG IS WITH THE COMMANDER OF KPANDROMA."²⁹¹⁶ This meeting was the beginning of negotiations between the FPLC, Ugandan rebels and the Lendu combatants.²⁹¹⁷ KISEMBO's presence there as principal negotiator of the FPLC did not detract from Mr NTAGANDA's continuing responsibility for security along the MAHAGI-Bunia axis. An agreement was reached to provide the Lendu combatants with weapons from Mongbwalu.²⁹¹⁸ However, insecurity along that road interrupted the

²⁹⁰⁷ D-0300:T-219:32:21-33:1.

²⁹⁰⁸ D-0300:T-219,16:20-17:2.

²⁹⁰⁹ D-0300:T-219,17:3-7.

²⁹¹⁰ D-0300:T-219,17:8-11.

²⁹¹¹ D-0300:T-219,17:12-23; [DRC-OTP-0017-0033](#),0127(second) (Trans. [DRC-OTP-2102-3854](#),3949).

²⁹¹² D-0300:T-219,18:22-19:4.

²⁹¹³ D-0300:T-219,18:25-19:4.

²⁹¹⁴ D-0300:T-219,45:12-48:4; [DRC-OTP-0017-0033](#),0144(second) (Trans. [DRC-OTP-2102-3854](#),3966).

²⁹¹⁵ D-0300:T-227,8:17-9:13; [DRC-OTP-0017-0033](#),0198(Trans. [DRC-OTP-2102-3854](#),4020).

²⁹¹⁶ D-0300:T-219,52:12-53:7; [DRC-OTP-0017-0033](#),0120(second)(Trans. [DRC-OTP-2102-3854](#),3942).

²⁹¹⁷ See Part III.

²⁹¹⁸ D-0300:T-220,68:20-23.

delivery of weapons²⁹¹⁹ that Mr NTAGANDA was later charged with delivering.²⁹²⁰ It was a secret operation, shared only with a few FPLC officers.²⁹²¹

Arrest of LINGANGA

1017. While the Uganda delegation was in Bunia, Mr NTAGANDA heard of an exchange of fire between a patrol under Bn Comd LINGANGA's command in Mwanga,²⁹²² and APC forces in Ngongo.²⁹²³ LUBANGA ordered Mr NTAGANDA to stop or arrest LINGANGA immediately, as it was an unauthorised operation in a period of pacification.²⁹²⁴ Mr Ntaganda, when cross-examined on the basis of an uncross-examined statement of LINGANGA that is not in evidence, explained that LINGANGA's account is not credible because he would not have ordered LINGANGA to launch an operation in Lipri and then arrested him for having doing so.²⁹²⁵

1018. Mr NTAGANDA had LINGANGA arrested by the [REDACTED]²⁹²⁶ and detained in Mandro, where he was not free to move around.²⁹²⁷ [REDACTED].²⁹²⁸ LINGANGA was released only when the clashes with the Ugandans occurred in March.²⁹²⁹

1019. Mr NTAGANDA, with KISEMBO's approval,²⁹³⁰ appointed BOSCO ("ZERO ONE") as interim Comd-Bn in Mwanga. He had recently joined the FPLC from RCD-Goma.²⁹³¹

Mr NTAGANDA's trip to Kasenyi at the end of January 2003

1020. The only occasion Mr NTAGANDA travelled away from the Bunia area, between his 14 February trip to Rwanda and the 23 January Ugandan visit,²⁹³² was when he went to

²⁹¹⁹ **D-0300:**T-219,53:17-22. MANU was supposed to transport the weapons to Mongbwalu in order to join his new post. He went with SALOMON but he wasn't able to get the weapons to destination. **D-0300:**T-219,55:10-15.

²⁹²⁰ See Part V, Chap. IV, Section I.

²⁹²¹ [DRC-OTP-0017-0033](#), 0142(second), 0140(first), 0189(first)(Trans. [DRC-OTP-2102-3854](#), 3964, 3962, 4011).

²⁹²² **D-0300:**T-219,31 :12-15.

²⁹²³ **D-0300:**T-219,31:3-11.

²⁹²⁴ **D-0300:**T-219,31:16-25.

²⁹²⁵ **D-0300:**T-238,4:7-5:17.

²⁹²⁶ **D-0300:**T-219,32:1-3.

²⁹²⁷ **D-0300:**T-238,7:6-13.

²⁹²⁸ [REDACTED].

²⁹²⁹ **D-0300:**T-238,9:16-17.

²⁹³⁰ **D-0300:**T-219,32:16-20.

²⁹³¹ **D-0300:**T-219,32:9-15.

²⁹³² See Part III.

Kasenyi. During this trip, he met with MUGISA MULEKE, whose Bn was deployed in Kasenyi and Tchomia. He spent two nights at his HQ.²⁹³³

1021. On his way back to Bunia, he was stopped in Bogoro by a FPLC commander there. Mr NTAGANDA was informed by civilians coming from Bunia that enemy troops were coming from Zumbe. Mr NTAGANDA deployed his advance party to verify the situation and there was indeed an ambush.²⁹³⁴ CLAUDE, the company commander responsible for Mr NTAGANDA's bodyguards who led the advance party,²⁹³⁵ reported to Mr NTAGANDA by Motorola, saying that they fought and the enemy had fled towards a closeby hill.²⁹³⁶ Mr NTAGANDA was about 200 meters behind the advance party.²⁹³⁷

1022. When arriving where the ambush had taken place, Mr NTAGANDA fired a 60 mortar shell at the fleeing enemy before continuing his road.²⁹³⁸ None of his men were injured during that ambush and he does not know if there was casualty among the enemy.²⁹³⁹ Since Mr NTAGANDA had passed some UPDF troops on his way, he assumed that it was the UPDF who had leaked the information of his presence on that road.²⁹⁴⁰

The death of ZERO ONE and subsequent meeting

1023. Mr NTAGANDA's bodyguards informed him on his return to Bunia²⁹⁴¹ that ZERO ONE had been killed and about the loss of a *saba saba*.²⁹⁴² Mr NTAGANDA sought TCHALIGONZA, brigade commander of ZERO ONE, for additional information.²⁹⁴³

1024. [REDACTED]. Mr NTAGANDA was very angry, as it was a great loss for the FPLC.²⁹⁴⁴ TCHALIGONZA explained that he had not given the order to attack Lipri; that ZERO ONE had been drinking alcohol; and that he had himself launched an engagement between his Bn and Lendu combatants close to Lipri that led to his

²⁹³³ D-0300:T-219,33:24-25,34:9-15.

²⁹³⁴ D-0300:T-219,34:19-35:1,35:22-36:3,39:18-23.

²⁹³⁵ D-0300:T-219,36:16-17.

²⁹³⁶ D-0300:T-219,36:23-37:3,37:10-12.

²⁹³⁷ D-0300:T-219,37:7-9.

²⁹³⁸ D-0300:T-219,37:13-17,38:1-13,38:10-14.

²⁹³⁹ D-0300:T-219,37:18-21.

²⁹⁴⁰ D-0300:T-219,39:24-40:4.

²⁹⁴¹ D-0300:T-219,39:7-14.

²⁹⁴² D-0300:T-219,38:18-23,42:10-19;43:4-6,43:14-44:10.

²⁹⁴³ D-0300:T-219,42:13-14,20-22.

²⁹⁴⁴ D-0300:T-219,42:23-43:6.

death.²⁹⁴⁵ KAREKA, the S4, and some of his bodyguards, also died in the ambush.²⁹⁴⁶
 [REDACTED].²⁹⁴⁷ After this incident, TCHALIGONZA nominated BEBWA
 CHADRAK to replace ZERO ONE.²⁹⁴⁸

1025. When cross-examined on his recollection of events during the period from January until
 [REDACTED], P-0055 repeatedly testified not being in a position to date these
 events.²⁹⁴⁹ However, P-0055 suddenly remembered significant events for the first time
 – which he did not mention during his examination-in-chief – such as [REDACTED]
²⁹⁵⁰ and [REDACTED] Mr NTAGANDA who was in Fataki, two or three days before
 the clashes between UPDF and FPLC, in March 2003.²⁹⁵¹

1026. In cross-examination P-0055 also recalled that following the arrest of LINGANGA: (i) a
 battalion commander was appointed to replace LINGANGA along with another
 officer;²⁹⁵² (ii) both commanders were involved in an ambush in Lipri during which
 they actually died;²⁹⁵³ and (iii) a type 12 weapon was captured by the enemy during this
 ambush,²⁹⁵⁴ which was launched by both officers who were drunk at the time.²⁹⁵⁵

1027. The only difference between the testimony of Mr NTAGANDA and P-0055 on this
 event relates [REDACTED], which is not material.²⁹⁵⁶

1028. This event sheds light on P-0055's testimony concerning [REDACTED].²⁹⁵⁷
 [REDACTED]²⁹⁵⁸ [REDACTED].

1029. Asked about the timing between the “Lipri and Bambu operation” and the 6 March
 clashes, P-0055 affirmed that the clashes happened “one month or one and a half month
 after”.²⁹⁵⁹

²⁹⁴⁵ D-0300:T-219,43:7-10.

²⁹⁴⁶ D-0300:T-219,43:11-13.

²⁹⁴⁷ [REDACTED].

²⁹⁴⁸ D-0300:T-219,45:1-4.

²⁹⁴⁹ P-0055:T-74,48:9-18.

²⁹⁵⁰ P-0055:T-74,47:10 et ss.

²⁹⁵¹ P-0055:T-74,73:2 et ss.

²⁹⁵² P-0055:T-74,48:1-4.

²⁹⁵³ P-0055:T-74,44 :24-45:1 (“[REDACTED]”).

²⁹⁵⁴ P-0055:T-74,47:2-9.

²⁹⁵⁵ P-0055:T-74,46 :20-23.

²⁹⁵⁶ P-0055:T-71,40 :23;T-74,44:24-45:1.

²⁹⁵⁷ P-0055:T-71,42:20-43:1.

²⁹⁵⁸ P-0055:T-74,45:17-21.

1030. P-0055's response suggests that he is confusing the January Lipri ambush he recalled with the FPLC main road operation which took place in February. [REDACTED],²⁹⁶⁰ this meeting is unrelated to the main road operation, which took place in February.

1031. In addition, P-0055 testified that "when the attack on Lipri was planned and the attack on Bambu and Kobu, Ntaganda was not in Bunia. I don't know where he was, whether he was somewhere else. I do remember that Ntaganda was not in Bunia. Those operations were planned by Kisémbó"²⁹⁶¹ and that "[he] was not there when the operation was planned [he] do[es] not know which direction they used."²⁹⁶² This conclusion is corroborated by P-0901's evidence, who said that he was not present when the orders were given for the operation to reopen the road [REDACTED].²⁹⁶³ [REDACTED].

1032. As Mr NTAGANDA's logbook messages show, his main preoccupations from early-February to March 2003 was increasing pressure and potential threats from the UPDF, FAC and FIPI.²⁹⁶⁴

The visit of RCD-Goma between 6 and 8 February 2003

1033. Between 6 and 8 February, an RCD-Goma delegation came to Bunia to formalise their alliance with the UPC-RP signed in January. KISEMBO came to Bunia from Mongbwalu for the event, and Mr NTAGANDA was also present.²⁹⁶⁵ Following the RCD-Goma's departure, LUBANGA gathered all UPC-RP and FPLC personnel involved at his residence, [REDACTED] to express his appreciation.²⁹⁶⁶ No operations were discussed on that occasion, following which LUBANGA travelled to Dar es Salaam and KISEMBO returned to Mongbwalu.²⁹⁶⁷

²⁹⁵⁹ **P-0055**:T-71,60:14-22. He also did not deny the suggestion that the events occurred in January, T-74,48 :6-8.

²⁹⁶⁰ **P-0055**:T-74,40:25-42:5;T-71:35:11-16,40:21-22.

²⁹⁶¹ **P-0055**:T-71:21-24.

²⁹⁶² **P-0055**:T-74,58:6-8.

²⁹⁶³ **P-0901**:T-29,11:8-10;T-32,21:5-11.

²⁹⁶⁴ [DRC-OTP-0017-0033](#),0144,0146(first), 0148(first)(Trans.[DRC-OTP-2102-3854](#),3966);**D-0300**:T-243,51:22-52:5.

²⁹⁶⁵ See Part III.

²⁹⁶⁶ [REDACTED].

²⁹⁶⁷ **D-0300**:T-220,8:20-9:1,12:17-18.

1034. On 11 February 2003, Mr NTAGANDA informed JEROME about several promotions.²⁹⁶⁸ At the time, Mr NTAGANDA was on standby, getting ready to visit his son in RWANDA.²⁹⁶⁹

1035. On 12 February 2003, Mr NTAGANDA accompanied LUBANGA to visit the Rwampara training centre²⁹⁷⁰ and the new FPLC members who had recently completed their training²⁹⁷¹ which is reflected in the Rwampara Video.²⁹⁷²

1036. On the same day, Mr NTAGANDA communicated the new *mise en place* prepared by KISEMBO via phonie “to all stations”. The aim of the new *mise en place* was to ensure that everyone knew their titles and place in the chain of command, thereby taking the FPLC one step further on the road to becoming an organised and effective military force. KISEMBO appointed the commanders, and Mr NTAGANDA sent the directives to the people responsible for the administration.²⁹⁷³ The Prosecution’s assertion that NTAGANDA’s distribution of this document demonstrates his responsibility for appointments, including that of SALONGO²⁹⁷⁴ is misleading. NTAGANDA’s role in promulgating the new “*mise en place*” on 12 February 2003 does not mean that he appointed SALONGO to any position, let alone that he conferred upon him any tasks in relation to the Main Road operation.

1037. Restructuring and appointing commanders was KISEMBO’s prerogative, not NTAGANDA’s.²⁹⁷⁵ NTAGANDA could appoint a company commander, but could only nominate battalion or brigade commanders for KISEMBO’s approval.²⁹⁷⁶

1038. The *mise en place* organization, reflected in DRC-D18-0001-5528, was not fully implemented before the FPLC’s defeat on 6 March, but the creation of the NE-OpSec

²⁹⁶⁸ D-0300:T-228,71:16-73:14; [DRC-OTP-0017-0033](#),0198 (first) (Trans. [DRC-OTP-2102-3854](#),4020).

²⁹⁶⁹ D-0300:T-220,31:23-32:3(“I was on standby at the time because I was getting ready to go and see my son. So I went in order that he be received by – in a proper military fashion, and he was received in that way”).

²⁹⁷⁰ D-0300:T-220,24:20-24; [DRC-D18-0001-0463](#).

²⁹⁷¹ D-0300:T-220,43:8-13.

²⁹⁷² [DRC-D18-0001-0463](#).

²⁹⁷³ D-0300:T-220,13:12-15:9;[DRC-OTP-0017-0033](#),0183-0184(Trans.[DRC-OTP-2102-3854](#),4006);T-228,67:2-69:22.

²⁹⁷⁴ PCB,para.450,fn.1300.

²⁹⁷⁵ D-0300:T-228,48:6-14.

²⁹⁷⁶ D-0300:T-228,49:3-17;50:6-16.

and SE-OpSec were officialised. [REDACTED]; [REDACTED].²⁹⁷⁷ Messages were sent to follow-up on certain aspects of the *mise en place*.²⁹⁷⁸

1039. To avoid flying directly to RWANDA from the UPDF-controlled Bunia airport, Mr NTAGANDA travelled to Mongbwalu with RAFIKI and his bodyguards with RAFIKI's red vehicle via the Nyangaray road,²⁹⁷⁹ on 14 February 2003.²⁹⁸⁰ Upon arrival, he met with KISEMBO, Dr SALOMON and RAFIKI²⁹⁸¹ and discussed where Mr NTAGANDA was going, and finding a solution for getting the weapons to the Lendu rebels in Kpandroma.²⁹⁸² Mr NTAGANDA had no discussion with KISEMBO at this time about FPLC operations,²⁹⁸³ and there is no evidence that he did. This was Mr NTAGANDA's last meeting and conversation with KISEMBO until they spoke by Thuraya [REDACTED].²⁹⁸⁴ After this meeting, on his way to the airport, Mr NTAGANDA addressed members of the population who had recognised him, at the marketplace in the centre of Mongbwalu.²⁹⁸⁵

I greeted them, I asked how they were. I said that I was pleased to see them going about their daily business with no problem. I said that the problems of discrimination which had existed between the Hema and the other ethnic groups seems to have dispersed and that they were living in peace. I said that our work was to ensure their security [...].²⁹⁸⁶

1040. Mr NTAGANDA, who was in Mongbwalu for only a couple of hours,²⁹⁸⁷ then immediately departed for KIGALI by plane.²⁹⁸⁸

1041. Mr NTAGANDA spent his first night at a friend's house,²⁹⁸⁹ then stayed at a hotel with his son for two nights,²⁹⁹⁰ from 14 to 17 February 2003. Mr NTAGANDA left KIGALI

²⁹⁷⁷ [REDACTED].

²⁹⁷⁸ **D-0300**:T-220,21:1-7; [DRC-OTP-0017-0033](#),0182-0181 (second) (Trans. [DRC-OTP-2102-3854](#),4004-4003).

²⁹⁷⁹ **D-0300**:T-220,46:6-9;47:22-48:3,T-239,86:22-88:12; **D-0017**:T-253,45:13-46:17.

²⁹⁸⁰ Mr NTAGANDA left Bunia after sending a message at 11.40:**D-0300**:T-220,58:17-59:3,[DRC-OTP-0017-0033](#),0179(second).

²⁹⁸¹ **D-0300**:T-220,48:11-15;**D-0017**:T-253,46:23-47:1.

²⁹⁸² **D-0300**:T-220,48:16-49:10.

²⁹⁸³ **D-0300**:T-220,49:11-13.

²⁹⁸⁴ [REDACTED].

²⁹⁸⁵ **D-0300**:T-220,49:19-50:10.

²⁹⁸⁶ **D-0300**:T-220,50:13-17.

²⁹⁸⁷ **D-0300**:T-220,48:11-50:18.

²⁹⁸⁸ **D-0300**:T-220,50:11-18.

²⁹⁸⁹ **D-0300**:T-220,51:23-9;T-238,27:20-21("I got to Kigali on the 14th. I spent the night with a friend's place, Dr Michel's place").

²⁹⁹⁰ **D-0300**:T-220,52:9-13,53 :5-7.

at dawn on 17 February,²⁹⁹¹ switched planes in Mongbwalu,²⁹⁹² then continued immediately to Bunia.²⁹⁹³ In Mongbwalu, Mr NTAGANDA was informed that KISEMBO had gone to Kilo with TIGER ONE.²⁹⁹⁴ Transiting through Mongbwalu concealed from the UPDF that he was coming from Rwanda.²⁹⁹⁵

1042.No “out” messages are recorded in Mr NTAGANDA’s Logbook during his visit to Kigali, as he did not have his *phonie* and *signora* with him. A document headed “Bunia, le 16 Février 2003” with NTAGANDA’s name under the signature block is signed by his secretary “P/O.”²⁹⁹⁶

1043.The Prosecution appears to dispute that Mr NTAGANDA was in KIGALI during these dates, but offers no alternative account or evidence of his whereabouts during those three days,²⁹⁹⁷ and equivocated during NTAGANDA’s cross-examination as to whether it disputed his presence in Kigali, or only his stated reasons for having been there.²⁹⁹⁸ No Prosecution witness contradicted this account, and the Prosecution’s reliance on [REDACTED]. Mr NTAGANDA’s evidence concerning this trip is also corroborated by [REDACTED].²⁹⁹⁹

1044.The Prosecution argues³⁰⁰⁰ that two logbook messages dated 17 and 18 February suggest that NTAGANDA was not in RWANDA between 14 and 17 February.³⁰⁰¹ First, the content of those messages is in no way inconsistent with his trip to KIGALI. Mr NTAGANDA explained both the use of the past tense in the 17 February message³⁰⁰² as well as the relationship between this message and the situation on the ground: this message must be read in conjunction with other messages on the same

²⁹⁹¹ D-0300:T-220,54:4-7.

²⁹⁹² D-0300:T-220,53:8-12,54 :12-16.

²⁹⁹³ D-0300:T-220,59:8-11.

²⁹⁹⁴ D-0300:T-220,55:4-10.

²⁹⁹⁵ D-0300:T-220,46:10-13;54:12-55:3.

²⁹⁹⁶ [DRC-D01-0003-5896](#);D-0300:T-223,47:5-12;T-238,25:7-11.

²⁹⁹⁷ PCB, paras.487-490.

²⁹⁹⁸ D-0300:T-238,38:11-15.

²⁹⁹⁹ [REDACTED].

³⁰⁰⁰ PCB,para.490.

³⁰⁰¹ PCB,para.490;[DRC-OTP-0017-0033](#),0177(third)(Trans.[DRC-OTP-2102-3854](#),3999),0166(third) (Trans.[DRC-OTP-2102-3854](#),3988)

³⁰⁰² D-0300:T-228,61:1-63:25.

topic and considered in the context described by Mr NTAGANDA that he had already assigned a battalion to LIEVIN.³⁰⁰³

1045. As for the 18 February message, it is of no assistance and Mr NTAGANDA was not even asked to comment on it.

1046. The hotel receipts, whose admission was sought by neither party for any purpose, do not undermine NTAGANDA's credibility.³⁰⁰⁴ The Prosecution's assumptions³⁰⁰⁵ about the reasons for the non-reliance on those receipts are unfounded, speculative and misguided.

1047. Mr NTAGANDA left KIGALI at dawn,³⁰⁰⁶ switched planes in Mongbwalu³⁰⁰⁷ and arrived in Bunia very early on 17 February.³⁰⁰⁸ In Mongbwalu, Mr NTAGANDA recalled meeting with BANGA SAFARAI who informed him that KISEMBO had gone to Kilo with TIGER ONE.³⁰⁰⁹ Landing on a flight from Mongbwalu allowed Mr NTAGANDA to avoid drawing the UPDF's attention.³⁰¹⁰

Section II – Mr Ntaganda's knowledge of the location and operations conducted by FPLC units under the direct command of Kisembo during this period

1048. From the liberation of Mongbwalu and his arrival at the *appartements* until the 6 March debacle, KISEMBO made only two trips to Bunia: for the New Year's celebrations, and for the RCD-Goma's visit.³⁰¹¹ Mr NTAGANDA also met KISEMBO in Mongbwalu on 14 February 2003 on his way to Rwanda.³⁰¹² On these occasions, they did not discuss FPLC operations on the Mongbwalu-Kilo-Nyangaray-Bunia axis, nor did they discuss the long-standing objective to re-open either the small Kilo-Nyangaray-Bunia road or the main Kilo-Kobu-Bambu-Nizi road.

³⁰⁰³ D-0300:T-228,61:1-63:25;DRC-OTP-0017-0033,0183 ("COMD BN 2nd: LIEVIN").

³⁰⁰⁴ See Decision on Prosecution request for presentation of evidence in rebuttal, [ICC-01/04-02/06-2197-Conf](#) and related filings, 26 February 2018, [ICC-01/04-02/06-2249](#), para.32.

³⁰⁰⁵ PCB, para.487,489.

³⁰⁰⁶ D-0300:T-220,54:4-7.

³⁰⁰⁷ D-0300:T-220,53:8-12,54:12-16.

³⁰⁰⁸ D-0300:T-220,59:8-11.

³⁰⁰⁹ D-0300:T-220,55:4-10.

³⁰¹⁰ D-0300:T-220,46:10-13;54:12-55:3.

³⁰¹¹ See Part III.

³⁰¹² See Part V, Chap.III, Section I.

1049. Mr NTAGANDA was aware, however, that opening these roads was a long-standing objective for KISEMBO and the FPLC.³⁰¹³ For instance KISEMBO said, when addressing civilians in the Mongbwalu video: “*Même au cas où les choses ne marchent pas à Bunia ou ailleurs, au moins nous nous sommes installés ici. [...] Nous nous sommes installés, nous allons ouvrir les routes, de gré ou de force.*”³⁰¹⁴

1050. In his capacity as *Chef d'état major general*, KISEMBO commanded all FPLC units and personnel. Moreover, the forces present on the Mongbwalu-Kilo- Nyangaray-Bunia axis, immediately beside inaccessible territories under the control of Lendu combatants around LIPRI and the Main Road going through Kobu and Bambu were under his command and control. He also exercised command and control over the FPLC from Mongbwalu.

1051. In his capacity as *Chef-d'État-major-général*, Mr NTAGANDA was aware that KISEMBO commanded the FPLC from Mongbwalu and that he directly supervised the FPLC operations on the Kilo-Nyangaray-Bunia axis.

1052. In February 2003, Mr NTAGANDA knew that SALUMU 409 Bgde was in Kilo. As for TIGER ONE, Mr NTAGANDA knew he was either in Kilo or in Mongbwalu. Both of them reported to KISEMBO who was based in Mongbwalu.³⁰¹⁵ Accordingly Mr NTAGANDA had only limited communications with these units: out of 138 messages received by Mr NTAGANDA between 15 January and 16 February 2003, only 1 concerned the situation on the road Mongbwalu-Kobu-Bambu-Bunia.³⁰¹⁶ Similarly, out of 47 messages sent by Mr NTAGANDA between 15 January and 14 February, no message concerned the situation on the main road area.³⁰¹⁷

³⁰¹³ D-0300:T-220,79:5-18.

³⁰¹⁴ [DRC-OTP-2058-0251](#), (Trans. [DRC-OTP-2102-3766](#),3819:1859-1864) See also 01:09:15-01:09:50 (Trans. [DRC-OTP-2102-3766](#),3796:1041-1045) (“Les habitants réclamaient souvent que la route d’ici soit rouverte, que la route de Bunia soit rouverte pour que les gens puissent circuler. Mais les ennemis de la paix ne veulent pas accepter que cette route soit libre, et c’est ça qui justifie la guerre dans laquelle nous sommes engagés. Voilà mes sœurs, la signification de cette guerre”).

³⁰¹⁵ D-0300:T-220,79:15-25.

³⁰¹⁶ [DRC-OTP-0017-0033](#),0160(second).

³⁰¹⁷ [DRC-OTP-0017-0033](#),0176(third and fourth). Including the 19 February 2003 message which is discussed in details below.

1053. The only information Mr NTAGANDA received was on 13 February and concerned clashes at Kilo-Mission, and that APC soldiers had taken the Kobu road in the direction of SALUMU. Three soldiers were killed during the attack and persons were injured.³⁰¹⁸

1054. Mr NTAGANDA received 137 messages and sent 46 on other subjects, principally in relation to the main areas of operation that had been assigned to him by KISEMBO.³⁰¹⁹

CHAPTER IV – MR NTAGANDA’S LACK OF KNOWLEDGE OF CRIMES ALLEGEDLY COMMITTED DURING THE MAIN ROAD OPERATION IN FEBRUARY 2003

Section I – Mr Ntaganda’s activities and whereabouts following his return from Rwanda to Bunia on 17 February until his departure to Goma with Lubanga

1055. The Prosecution’s characterization of NTAGANDA’s departure from Bunia at the start of the main road operation as “implausible” ignores the overwhelming evidence — objectively confirmed by the Logbook messaging just described — that NTAGANDA’s responsibilities lay elsewhere. It also imports a retrospective simplicity to the situation that is unrealistic. The operation, though important, was hardly the only matter of concern to the FPLC at the time, which also included securing the vital Komanda-Bunia axis thereby preventing an APC advance from Beni, and maintaining the FPLC positions in Mahagi area close to the Uganda-DRC borders.³⁰²⁰

1056. The Prosecution’s plausibility argument also disregards KISEMBO’s physical presence in Mongbwalu and command over the Main Road operation. He possessed, as *Chef-d’État-major-général*, direct command authority over these units,³⁰²¹ and was on the spot to exercise that command. Given these circumstances, it is not implausible that NTAGANDA would undertake missions, as necessary and as directed by LUBANGA, to discharge his responsibilities as *Chef-d’État-major-général-adjoint*, including overseeing the Komanda axis and Mahagi territory.³⁰²²

1057. Upon arriving in Bunia very early on 17 February, Mr NTAGANDA met with LUBANGA at the first available opportunity.³⁰²³ LUBANGA, who requested Mr NTAGANDA to shorten his trip to Kigali to undertake a highly sensitive mission,

³⁰¹⁸ T-223,13:3-4,14-14:4;T-238,17:6-18:5;[DRC-OTP-0017-0033](#),0160(Trans.[DRC-OTP-2102-3854](#),3982).

³⁰¹⁹ [DRC-OTP-0017-0033](#),0105 et ss.

³⁰²⁰ See Part V,Chap.III,Section I;See also [DRC-OTP-0109-0136](#),p.0138.

³⁰²¹ D-0300:T-238,14:2-8.

³⁰²² D-0300:T-238,12:3-5.

³⁰²³ D-0300:T-220,58:1-2.

entrusted Mr NTAGANDA with the mission to deliver the weapons that had been promised by the FPLC to the Ugandan rebels and Lendu combatants located in Kpandroma.³⁰²⁴ The need for secrecy and discretion – and therefore giving the task to no less an authority than Mr NTAGANDA – arose from the potentially disastrous consequences that would ensue if the UPDF were to learn that the FPLC was providing assistance to rebels seeking to overthrow MUSEVENI.³⁰²⁵

1058. The logbook shows exactly where NTAGANDA was, and what he was doing, and what he was informed of, from 17 to 22 February. Starting from 08:31³⁰²⁶ on 17 February Mr NTAGANDA sent five messages from his compound³⁰²⁷ to JEROME concerning officers to be appointed in various positions.³⁰²⁸ None are addressed or copied to Main Road operation commanders KISEMBO, TIGER ONE or SALUMU;³⁰²⁹ and none concern the operation³⁰³⁰ to reopen the main road between Mongbwalu and Bunia.

1059. Mr NTAGANDA received 6 messages from JEROME on 17 February related to the situation and movement in his sector.³⁰³¹ He was also copied in a message from the 9th Bn commander to the 201st Bgde commander, MUNYALIZI. The 9th Bn had its HQ on the BENI road, and BENI was the enemy's bastion.³⁰³² It is the only message Mr NTAGANDA received on 17 February 2003 from the South East Sector. No messages are recorded concerning the KBL operation on 17 February and he did not receive any indication of an operation about to be launched on Kobu.³⁰³³

1060. On 18 February 2003, while in Bunia preparing for the delivery of weapons to LIBI,³⁰³⁴ Mr NTAGANDA received 8 messages. Seven were sent by JEROME, reporting on the situation in his sector.³⁰³⁵

³⁰²⁴ D-0300:T-220,68:10-19.

³⁰²⁵ D-0300:T-219,58:22-25.

³⁰²⁶ D-0300:T-220,59:4-11;[DRC-OTP-0017-0033](#),0178(first)(Trans.[DRC-OTP-2102-3854](#),4000).

³⁰²⁷ D-0300:T-220,61:9-16.

³⁰²⁸ [DRC-OTP-0017-0033](#),0177,0176(first)(Trans.[DRC-OTP-2102-3854](#),4000,3999);D-0300:T-220,60:1-61:4.

³⁰²⁹ D-0300:T-228,50:17-19.

³⁰³⁰ Contra PCB,para.459.

³⁰³¹ [DRC-OTP-0017-0033](#),0163-0165(First)(Trans.[DRC-OTP-2102-3854](#),3985-3987);D-0300:T-220,61:17-64:7;66:7-14.

³⁰³² D-0300:T-220,66:14-23;[DRC-OTP-0017-0033](#),0165(second)(Trans.[DRC-OTP-2102-3854](#),3987).

³⁰³³ D-0300:T-238,11:18-20.

³⁰³⁴ D-0300:T-220,72:22-24.

³⁰³⁵ [DRC-OTP-0017-0033](#),0165(last),0166-0168(first)(Trans.[DRC-OTP-2102-3854](#),3987-3989);D-0300:T-220,70:11-72:10;72:25-73:4("I had the task of supervising this region, since that I was – since the time I was in

1061. The eighth message is from TIGER ONE³⁰³⁶ to SALUMU as Comd-409-Bde³⁰³⁷ with NTAGANDA as INFO addressee. This message concerned AMERICAIN's refusal to advance because of his fear that a weapon previously seized by Lendu forces would be used against them.³⁰³⁸ AMERICAIN's refusal to advance was a disciplinary matter of institutional importance for the FPLC that attracted Mr NTAGANDA's attention, prompting him to send a message to SALUMU, the immediate commander involved, copied to TIGER ONE: "TU ES INFORME SUITE AU MESSAGE SELON LEQUEL IL Y A UN COMD QUI A REFUSE DE ADVANCE (-) AVANCER (-) CELA N'EST PAS ENCORE ARRIVE DANS L'ARMEE (-) IL N'Y A AUCUN COMD QUI A LE POUVOIR DE REFUSER UN ORDRE VENANT D'EN HAUT".³⁰³⁹

1062. Mr NTAGANDA explained that he intervened:

Because this was a disciplinary matter, indiscipline. I said to you earlier, when I was made aware of a case of indiscipline, I did not hesitate. And this is my reply. Any commander receiving such a message must realise that it's shameful. We're talking about a commander's refusal to follow an order. I have never heard of a subaltern junior commander refusing to carry out an order from his hierarchical superior. I did not want that, that to happen.³⁰⁴⁰

1063. The message does not show that NTAGANDA had operational control over the main road operation;³⁰⁴¹ on the contrary, it is the exceptionality of this message that stands out. Moreover, it is consistent with Mr NTAGANDA duties and practice concerning discipline.³⁰⁴²

Messages of 19 February 2003

1064. On 19 February 2003, before leaving for LIBI, Mr NTAGANDA received 5 messages.³⁰⁴³ The last of these messages is followed by a 20 February message, at page 0170 of the logbook. Yet, at page 0171 appears another 19 February 2003 message: "LE TRAVAIL DE OPS DE RESTER A LIPRI (-) BAMBU ET KOBU (-) LES

Mongbwali, I was responsible for the sector in the – where there was the Komanda road. This is why I received all the messages on that subject").

³⁰³⁶ D-0300:T-220,73:16-18; [DRC-OTP-0017-0033](#),0168(second)(Trans. [DRC-OTP-2102-3854](#),3990).

³⁰³⁷ D-0300:T-220,73:13-15.

³⁰³⁸ D-0300:T-220,73:5-23.

³⁰³⁹ [DRC-OTP-0017-0033](#),0176(third) (Trans. [DRC-OTP-2102-3854](#),3998); D-0300:T-220,73:24-74:11.

³⁰⁴⁰ D-0300:T-220,74:13-18.

³⁰⁴¹ *Contra* PCB,para.460.

³⁰⁴² See Part III and IV.

³⁰⁴³ D-0300:T-220,74:1-75:25; [DRC-OTP-0017-0033](#),0168 (third),0169,0170 (second) (Trans. [DRC-OTP-2102-3854](#),3990-3992).

TROUPES SONT DEJA ARRIVEES DANS CHAQUE ZONE (-) VOUS SEREZ INFORMES DE LA SUITE (-)(-)".³⁰⁴⁴

1065. Mr NTAGANDA explained that this message is an error: “[y]ou can’t have the 19th in between two messages sent on the 20th”.³⁰⁴⁵ Moreover, it is indicated that this message was sent by Mr NTAGANDA: “CHEF EMG OPS AND ORG”. Accordingly, it should not appear in the “in” section of the log.³⁰⁴⁶ The same message also appears in the “out” section of the logbook,³⁰⁴⁷ a further indication of error.³⁰⁴⁸

1066. Moreover, on 19 February 2003, Mr NTAGANDA and LUBANGA were both in Bunia. Accordingly, had Mr NTAGANDA sent this message, he would not have sent this message to LUBANGA as an info addressee,³⁰⁴⁹ whereas this was logical for KISEMBO, who was in Kilo. Furthermore, LUBANGA met with Mr NTAGANDA on 17 February, during which Mr NTAGANDA was given the sensitive mission to deliver the weapons to Ugandan rebels and Lendu combatants. LUBANGA and Mr NTAGANDA knew that the latter would be absent from Bunia. It was thus not possible and there would have been no reason for Mr NTAGANDA to inform the President that: “VOUS SEREZ INFORME DE LA SUITE”.

1067. [REDACTED] the message on page 0176,³⁰⁵⁰ he was not shown the identical message at page 0171 (“in” section) during his testimony.³⁰⁵¹ [REDACTED] does not support the claim that Mr NTAGANDA sent the message.³⁰⁵²

1068. [REDACTED].

1069. Actually, considering that the message on page 0171 (“in” section) was transcribed in the Logbook after a 20 February message suggests that the message on page 0176 is actually the “error” which was corrected when the message on page 0171 was written on 20 February 2003. Mr NTAGANDA would not have noticed this, as he rarely

³⁰⁴⁴ [DRC-OTP-0017-0033](#), 0171 (first) (Trans. [DRC-OTP-2102-3854](#), 3993).

³⁰⁴⁵ [D-0300](#):T-220,77:1-8.

³⁰⁴⁶ [D-0300](#):T-220,77:9-17.

³⁰⁴⁷ [DRC-OTP-0017-0033](#), 0176 (fourth) (Trans. [DRC-OTP-2102-3854](#), 3998).

³⁰⁴⁸ [D-0300](#):T-220,78:19-79:4;T-238,48:22-49:14 (“It’s the operator who committed an error that can be seen relating to other messages. My message can’t be seen as an out message and an in message at the same time”).

³⁰⁴⁹ See Part III and IV.

³⁰⁵⁰ [REDACTED].

³⁰⁵¹ Cf [REDACTED].

³⁰⁵² *Contra* PCB, para. 485 referring to [REDACTED].

reviewed the “out” section of his log.³⁰⁵³ This would also explain why the numbering on the message on page 0176 is in the right sequence, since it was mistakenly considered as an “out” message by the *signora*.

1070. Mistakes in the logbook are not uncommon.³⁰⁵⁴ For instance, messages appear in the “out” section of Mr NTAGANDA’s logbook whereas he is copied as INFO addressee in the message.³⁰⁵⁵ Another example can be found at page 175, where a message from “CHEF EMG” appears in the “out” section of the log³⁰⁵⁶ and also in the “in” section of the log.³⁰⁵⁷

1071. Mr NTAGANDA did not send the 19 February message. The area concerned, namely Lipri, Bambu and Kobu was not under his supervision.³⁰⁵⁸ Yet, the content of the message was no surprise to Mr NTAGANDA, as the FPLC had the intention of opening the main road.³⁰⁵⁹ SALUMU commanded the 409 Bde in Kilo.³⁰⁶⁰ His superior was Comd-SE-OpSec TIGER ONE, who both reported to KISEMBO.³⁰⁶¹

Delivery of weapons, second attempt

1072. From 19 to 20 February 2003, Mr NTAGANDA was away from Bunia delivering weapons in LIBI. Mr NTAGANDA’s testimony on this point was not challenged.

1073. Mr NTAGANDA left Bunia on 19 February at night, charged with responsibility³⁰⁶² for delivering the promised, but as yet undelivered,³⁰⁶³ weapons to the Lendu combattants and Ugandan rebels in LIBI.³⁰⁶⁴ The weapons had been brought from Mongbwalu to Bunia by SALOMON,³⁰⁶⁵ and Mr NTAGANDA took the Fataki-BARRIERE road to

³⁰⁵³ D-300:T-216,80:24-81:5.

³⁰⁵⁴ D-0300:T-220,80:6-10(“when we were talking about signaller, I realised that there was an error, that there are others too. I’ve also seen other errors”).

³⁰⁵⁵ D-0300:T-220,59:12-21;[DRC-OTP-0017-0033](#),0178(second)(Trans.[DRC-OTP-2102-3854](#),4000). *See also* [DRC-OTP-0017-0033](#),0193 (first).

³⁰⁵⁶ [DRC-OTP-0017-0033](#),0175 (third) (Trans.[DRC-OTP-2102-3854](#),3997);D-0300:T-220,80:14-24(“When the chief of general staff send a message, you will see it as a message in. You won’t see it without messages”).

³⁰⁵⁷ [DRC-OTP-0017-0033](#),0171 (third) (Trans.[DRC-OTP-2102-3854](#),3993);D-0300:T-220,81:2-14.

³⁰⁵⁸ D-0300:T-220,77:18-78:1.

³⁰⁵⁹ D-0300:T-220,79:5-13.

³⁰⁶⁰ D-0300:T-220,79:14-18.

³⁰⁶¹ D-0300:T-220,79:19-25.

³⁰⁶² D-0300:T-220,68:10-19;T-223,13:6-8.

³⁰⁶³ D-0300:T-220,68:24-25.

³⁰⁶⁴ D-0300:T-220,69:1-13;T-219,54:2-10,58:14-25

³⁰⁶⁵ D-0300:T-220,69:14-19.

LIBI,³⁰⁶⁶ arriving “in Libi towards midnight, 1 o’clock in the morning.”³⁰⁶⁷ NTAGANDA then met the Lendu Chief, who “said that for him this was an unforgettable date. (...) That’s to say that the pacification became reality.”³⁰⁶⁸ D-0017 corroborated the trip.³⁰⁶⁹

1074. After the weapons were unloaded, Mr NTAGANDA went to Fataki to rest with the missionaries.³⁰⁷⁰ He also called LUBANGA to tell him that the mission had been accomplished.³⁰⁷¹ Mr NTAGANDA stayed in Fataki on 20 February,³⁰⁷² intending to meet again with the Lendu combatants to put in place a plan to fight the UPDF.³⁰⁷³ In the evening, however, LUBANGA called Mr NTAGANDA to tell him that there was an emergency and that he should covertly return to Bunia as soon as possible.³⁰⁷⁴ NTAGANDA did so, remaining in his compound that night and the next day, 21 February.³⁰⁷⁵

1075. LUBANGA ordered Mr NTAGANDA to escort Colonel MUZORA, who had just deserted from the UPDF to join those who were fighting against MUSEVENI.³⁰⁷⁶ It was a dangerous mission, as MUZORA was well known in the UPDF, and the FPLC would have been attacked if they knew LUBANGA was protecting him.³⁰⁷⁷

1076. On 21 February 2003, Mr NTAGANDA received 3 messages from JEROME, reporting that the UPDF was likely to attack in Bunia,³⁰⁷⁸ concerning FIPI,³⁰⁷⁹ and concerning the assignment of ranks in the UPC.³⁰⁸⁰ The last message was addressed to KISEMBO, who had responsibility for assigning ranks to officers.³⁰⁸¹

³⁰⁶⁶ D-0300:T-220,69:1-8.

³⁰⁶⁷ D-0300:T-220,69:20-70:2;81:15-19.

³⁰⁶⁸ D-0300:T-220,70:6-9.

³⁰⁶⁹ D-0300:T-220,81:15-82:10; D-0017:T-253,47:21-48:24.

³⁰⁷⁰ D-0300:T-221,4:4-6.

³⁰⁷¹ D-0300:T-221,4:21-24.

³⁰⁷² D-0300:T-221,5:2-5.

³⁰⁷³ D-0300:T-221,4:10-15.

³⁰⁷⁴ D-0300:T-221,5:6-9.

³⁰⁷⁵ D-0300:T-221,7:5-13,8:8-12.

³⁰⁷⁶ D-0300:T-221,5:19-25.

³⁰⁷⁷ D-0300:T-221,6:23-7:4;7:14-17.

³⁰⁷⁸ D-0300:T-221,8:15-21; [DRC-OTP-0017-0033](#),0172(first)(Trans.[DRC-OTP-2102-3854](#),3994).

³⁰⁷⁹ [DRC-OTP-0017-0033](#),0172(second)(Trans.[DRC-OTP-2102-3854](#),3994).

³⁰⁸⁰ [DRC-OTP-0017-0033](#),0172(third)(Trans.[DRC-OTP-2102-3854](#),3994);D-0300:T-221,10:16-11:4.

³⁰⁸¹ D-0300:T-221,11:5-8.

1077. Mr NTAGANDA replied on the same day. He tried to reassure JEROME that they were taking care of the UPDF threat.³⁰⁸² He also explained that ranks would be assigned by the high commanders in due course.³⁰⁸³ From his return to Bunia until leaving again with MUZORA, Mr NTAGANDA did not obtain information on the whereabouts of KISEMBO. For Mr NTAGANDA, this was normal as the *Chef-d'État-major-général* did not report to him.³⁰⁸⁴

Mr NTAGANDA's second mission to Libi and Mahagi area

1078. On 21 February, Mr NTAGANDA left Bunia again for Libi, charged with responsibility for escorting MUZORA. NTAGANDA did not return to Bunia until 3 March. The Prosecution did not challenge Mr NTAGANDA's evidence regarding his absence from Bunia during this period.

1079. Mr NTAGANDA arrived in Libi around midnight or 1,³⁰⁸⁵ where they met with colleagues of MUZORA and Lendu combatants.³⁰⁸⁶ Following the meeting, Mr NTAGANDA travelled again to Fataki where he planned to stay at missionaries³⁰⁸⁷ and waited for a meeting to be convened with the Lendus combatants to establish a strategy to drive the UPDF out.³⁰⁸⁸ At some point, he visited Thomas SAVO in Bule close to Fataki.³⁰⁸⁹

1080. Mr NTAGANDA recalled that following this visit he travelled to Drodro where he stopped at some missionaries friends' place. He met with LIEVIN, whose Bn HQ was in Drodro.³⁰⁹⁰

1081. In the meantime, certain Lendu combatants betrayed the other group and leaked the information to the Ugandans concerning the presence of rebels and the FPLC-Lendu combatants association in the making.³⁰⁹¹

³⁰⁸² D-0300:T-221,11 :9-12 :4;[DRC-OTP-0017-0033](#),0174(first)(Trans.[DRC-OTP-2102-3854](#),3996).

³⁰⁸³ D-0300:T-221,12 :5-22;[DRC-OTP-0017-0033](#),0174(second)(Trans.[DRC-OTP-2102-3854](#),3996).

³⁰⁸⁴ D-0300:T-221,12 :23-13 :5.

³⁰⁸⁵ D-0300:T-221,13:6-11.

³⁰⁸⁶ D-0300:T-221,13:12-21.

³⁰⁸⁷ D-0300 :T-221,13:22-24.

³⁰⁸⁸ D-0300:T-221,14:15-20.

³⁰⁸⁹ D-0300:T-221,14:11-14.

³⁰⁹⁰ D-0300:T-221,16:3-10.

³⁰⁹¹ D-0300:T-221,15:19-16:2

1082. This prompted the UPDF to bomb the Uganda rebels and Lendu combatants' position in Kpandroma towards the end of February 2003, thereby defeating the FPLC's plan to work with the Lendu combatants against the UPDF.³⁰⁹²

1083. As a result, the follow-up planning meeting Mr NTAGANDA expected to have with the Lendu combatants did not materialise. Mr NTAGANDA learned about the bombing when returning to SAVO's place.³⁰⁹³

[REDACTED]

1084. On or about [REDACTED]. It is only during [REDACTED].³⁰⁹⁴ [REDACTED].³⁰⁹⁵ [REDACTED].

1085. [REDACTED],³⁰⁹⁶ [REDACTED].³⁰⁹⁷ [REDACTED].³⁰⁹⁸

1086. Mr NTAGANDA recalled his conversation with KISEMBO: *"Il m'a parlé de la situation qui était très mauvaise. Il m'a dit qu'il ne voulait pas ce que ... chercher l'UPDF, que l'UPDF avait tué deux de nos militaires, parmi ceux qui avaient reçu l'instruction d'utiliser les armes d'appui. Et il y avait une compagnie qui était déployée tout près du président Toms, et on pensait que ce détachement avait une mauvaise intention. Il a dit qu'il n'allait rien faire de mal à Kale Kayihura mais qu'il fallait enlever ce détachement sur place"*.³⁰⁹⁹

1087. KISEMBO also ordered Mr NTAGANDA to put together a Bn and bring it quickly to Bunia, as fighting was going to take place anytime.³¹⁰⁰

1088. The information received from KISEMBO during this conversation is corroborated by MONUC document DRC-OTP-2067-1976.³¹⁰¹

³⁰⁹² D-0300:T-221,14:21-24;[DRC-OTP-0081-0006](#)(Trans.[DRC-OTP-0180-0434](#),0437:76-81).

³⁰⁹³ D-0300:T-221,15:12-18.

³⁰⁹⁴ [REDACTED].

³⁰⁹⁵ [REDACTED].

³⁰⁹⁶ [DRC-OTP-2078-0202](#),p.0203("[REDACTED]").

³⁰⁹⁷ [REDACTED].

³⁰⁹⁸ [REDACTED].

³⁰⁹⁹ D-0300:T-221-ENG,17:16-22;T-221-FRA,17:15-21.

³¹⁰⁰ D-0300:T-221,18:4-8,22:7-13.

³¹⁰¹ [DRC-OTP-2067-1976](#),para.1-2;D-0300:T-221,18:9-13,19:8-21:7.

1089. Complying with KISEMBO's order, Mr NTAGANDA contacted 505-Bde and spoke to ODONGO, MUGISA PAUL's 2I/C³¹⁰² requesting that a Bn be made ready. COBRA was assigned to command this Bn³¹⁰³ which was transported to Fataki on two lorries, where he met Mr NTAGANDA.³¹⁰⁴ They travelled to Bunia the following day, arriving in MUDZIPELA at night.³¹⁰⁵ Mr NTAGANDA informed KISEMBO that the Bn had arrived and KISEMBO sent a liaison officer to integrate COBRA's men into KISEMBO's available forces.³¹⁰⁶ Mr NTAGANDA returned to his compound.³¹⁰⁷

4 March attack on Mandro

1090. On 4 March 2003, Mr NTAGANDA participated in combat in Mandro following which he met with KISEMBO and LUBANGA. The Prosecution did not challenge Mr NTAGANDA's account of his activities on that day.

1091. A few hours later, around 5 a.m. on 4 March 2003,³¹⁰⁸ Mr NTAGANDA heard RPG shells and mortars falling over Mandro.³¹⁰⁹ He immediately assembled his bodyguards and set out for Mandro.³¹¹⁰ He arrived on a hill looking down on Mandro, where he received information from the local commander, BRAVO HOTEL, that Mandro was now occupied by the enemy. They started firing with the 12.7 mm.³¹¹¹ Another company, led by MUREFU was sent in support and Mr NTAGANDA mounted a counter-attack.³¹¹² Mr NTAGANDA saw the enemy: "I saw combatants, they were there. I also saw soldiers that looked like UPDF soldiers. And I saw APC in military uniforms which looked like UPDF uniforms. That was the coalition that had attacked Mandro."³¹¹³

³¹⁰² D-0300:T-221,22:19-25.

³¹⁰³ D-0300:T-221,23:1-14.

³¹⁰⁴ D-0300:T-221,22:18,23:9-14.

³¹⁰⁵ D-0300:T-221,22:14-18.

³¹⁰⁶ D-0300:T-221,23:13-16.

³¹⁰⁷ D-0300:T-221,23:13-16.

³¹⁰⁸ D-0300:T-221,25:1-9.

³¹⁰⁹ D-0300:T-221,23:17-24.

³¹¹⁰ D-0300:T-221,24:1-4.

³¹¹¹ D-0300:T-221,24:5-19.

³¹¹² D-0300:T-221,25:10-14.

³¹¹³ D-0300:T-221,25:25-26:5.

1092. The fighting lasted all day. The FPLC lost one soldier. No wounded or dead were observed on the enemy's side.³¹¹⁴ Mandro inhabitants had fled to KATOTO, houses were set on fire and some civilians died or were wounded.³¹¹⁵

1093. Mr NTAGANDA returned to Bunia that night.³¹¹⁶ He first reported to KISEMBO about the combat in Mandro, stressing the participation of UPDF, APC and Lendu combatants.³¹¹⁷ KISEMBO informed Mr NTAGANDA that a meeting would take place the next day to discuss the situation.³¹¹⁸ KISEMBO then requested Mr NTAGANDA to report and describe his observations to LUBANGA, which he did.³¹¹⁹ The operation to reopen the main road, having ended some days ago when SALUMU's Bde returned to Bunia,³¹²⁰ was not discussed during this meeting.

5 March meeting

1094. The next day, on 5 March,³¹²¹ the meeting took place at LUBANGA's residence.³¹²² [REDACTED].³¹²³

1095. The meeting's objective was to set up a plan to attack the UPDF, to defend the FPLC.³¹²⁴ "If the UPDF were to attack us, the troops would have harmed us because they had equipment which we didn't have. We wanted to get ahead of this, because if they had attacked, it would have been a true catastrophe for us and we would have been blocked in the town."³¹²⁵ Everyone was assigned a specific responsibility and went to their position to spend the night.

1096. [REDACTED] the operation to reopen the main road was not discussed³¹²⁶ during the meeting [REDACTED],³¹²⁷ [REDACTED].³¹²⁸ [REDACTED].³¹²⁹ [REDACTED]³¹³⁰

³¹¹⁴ D-0300:T-221,25:15-24.

³¹¹⁵ D-0300:T-221,26:11-16.

³¹¹⁶ D-0300:T-221,27:9-10.

³¹¹⁷ D-0300:T-221,27:10-13.

³¹¹⁸ D-0300:T-221,27:9-22.

³¹¹⁹ D-0300:T-221,27:17-22.

³¹²⁰ [REDACTED].

³¹²¹ D-0300:T-221,36:22-24.

³¹²² D-0300:T-221,28:15-18.

³¹²³ [REDACTED].

³¹²⁴ D-0300:T-221,27:23-28:8,28:19-22.

³¹²⁵ D-0300:T-221,30:23-31:1.

³¹²⁶ [REDACTED].; D-0300:T-221,29:15-22.

³¹²⁷ D-0300:T-221,28:24-29:2.

³¹²⁸ D-0300:T-221,31:2-6.

[REDACTED] the next day, the attack took place and the FPLC was chased from Bunia by the UPDF.

1097. [REDACTED]. [REDACTED].³¹³¹

1098. [REDACTED].³¹³²

1099. The plan was to attack in two steps as the UPDF had two positions: one in DELE and one at the airport.³¹³³ First, TIGER ONE, TCHALIGONZA and SALUMU were deployed in DELE, to attack the UPDF position.³¹³⁴ Meanwhile, Mr NTAGANDA near MUDZIPELA and KASANGAKI at camp NDROMO were to ensure that the UPDF would not attack from the airport and reinforce their troops in DELE or into the town. KISEMBO was coordinating the attack.³¹³⁵

6 March operation

1100. On 6 March 2003,³¹³⁶ around 5 a.m. the FPLC launched the operation against the UPDF in their camp at DELE. The operation was initially successful.

1101. However, everything changed when the Lendu combatants suddenly arrived in Bunia from Zumbe to reinforce the UPDF.³¹³⁷ In reaction, Mr NTAGANDA communicated with TIGER ONE to tell him which direction he should take towards Mandro.³¹³⁸ KASANGAKI fought for a short while but then made contact with the UPDF and deserted. THE UPDF then attacked KISEMBO who left.³¹³⁹ TIGER ONE withdrew to Mandro with SALUMU and some forces³¹⁴⁰ while Mr NTAGANDA went to CENTRALE,³¹⁴¹ upon instructions from KISEMBO.³¹⁴²

³¹²⁹ [REDACTED].

³¹³⁰ [REDACTED].

³¹³¹ [REDACTED].

³¹³² [REDACTED].

³¹³³ D-0300:T-221,30:1-2.

³¹³⁴ D-0300:T-221,30:2-6.

³¹³⁵ D-0300:T-221,30:7-13.

³¹³⁶ D-0300:T-221,36:25-37:2.

³¹³⁷ D-0300:T-221,35:14-16;[DRC-OTP-2067-1989](#), para. 1 (“[REDACTED]”).

³¹³⁸ D-0300:T-221,32:15-17.

³¹³⁹ D-0300:T-221,32:7-9.

³¹⁴⁰ D-0300:T-221,33:12-14.

³¹⁴¹ D-0300:T-221,32:5-13.

³¹⁴² D-0300:T-221,33:4-11.

1102. Mr NTAGANDA's description of the attack is corroborated by MONUC document DRC-OTP-2067-1989.³¹⁴³ The document also reports that Lendu combatants were looting into town, including NGO offices.³¹⁴⁴ It further demonstrates that the pillage and damage to buildings and houses during the 6 March combat cannot be attributed to the FPLC.

1103. During the fighting, a UPDF commander called Mr NTAGANDA, using KASANGAKI's Motorola,³¹⁴⁵ to inform him that KASANGAKI and TCHALIGONZA had deserted along with their troops;³¹⁴⁶ and to ask Mr NTAGANDA to join them as well.³¹⁴⁷

1104. When the FPLC retreated, Mr NTAGANDA met with LUBANGA, LONEMA, RAFIKI, KISEMBO and TIGER ONE in CENTRALE.³¹⁴⁸

1105. Since the UPDF was approaching fast, the meeting lasted some 20 minutes.³¹⁴⁹ It was decided that KISEMBO, TIGER ONE and the remaining troops available would go to Mongbwalu, while Mr NTAGANDA would accompany LUBANGA to BULE.³¹⁵⁰ It was the last time Mr NTAGANDA and KISEMBO were together until Mr NTAGANDA's returned to Bunia in early June.

1106. In BULE, Mr NTAGANDA was not in contact with KISEMBO and his forces.³¹⁵¹ One week later, Mr NTAGANDA learned via Radio Candip that KISEMBO had been chased from Mongbwalu by the UPDF.³¹⁵²

1107. During this period, the UPDF continued their attacks on any and all UPC-RP and FPLC targets including LUBANGA, who decided to go to Goma.³¹⁵³

1108. LUBANGA's delegation, including Mr NTAGANDA travelled to Blukwa *in extremis*.³¹⁵⁴ Weapons and ammunitions were received by plane from RCD Goma, which

³¹⁴³ D-0300:T-221,34:1-35:4; [DRC-OTP-2067-1989](#), para.1.

³¹⁴⁴ D-0300:T-221,35:5-13; [DRC-OTP-2067-1989](#), para.1.

³¹⁴⁵ D-0300:T-221,33:15-19.

³¹⁴⁶ D-0300:T-221,32:20-23.

³¹⁴⁷ D-0300:T-221,32:14-19;33:20-23.

³¹⁴⁸ D-0300:T-221,37:24-38:8.

³¹⁴⁹ D-0300:T-221,38:17-21.

³¹⁵⁰ D-0300:T-211,38:14-16; 39:18-40:2.

³¹⁵¹ D-0300:T-221,40:21-41:3.

³¹⁵² D-0300:T-221,41:8-20.

³¹⁵³ D-0300:T-221,43:17-22.

allowed Mr NTAGANDA and LUBANGA's wives to leave.³¹⁵⁵ LUBANGA, Mr NTAGANDA and the others flew to Goma the following day.³¹⁵⁶

1109. LUBANGA's delegation remained in GOMA until June 2003.³¹⁵⁷ Between March and June 2003, Mr NTAGANDA and the others were internally displaced persons, who had fled the war.³¹⁵⁸ During this period, Mr NTAGANDA had no contact with members of the FPLC or UPC-RP in ITURI.³¹⁵⁹ He does not know if LUBANGA was in contact with anyone from the FPLC or UPC-RP.³¹⁶⁰ The only information Mr NTAGANDA obtained from ITURI was through public broadcasts.³¹⁶¹

Section II – Mr Ntaganda neither exercised command, nor had any kind of control over the FPLC troops involved and did not take part in the Main Road operation in February 2003

A. Mr Ntaganda was not present during the conduct of the operation

1110. No evidence direct or circumstantial, establishes Mr NTAGANDA's presence in any of the localities where the purported Second Attack unfolded. Mr NTAGANDA was also not involved in FPLC operational communications during this period.

1111. The closest Mr NTAGANDA was to the relevant area was on 14 February, when he travelled by road from Bunia to Mongbwalu where he met with KISEMBO and onwards to Rwanda by air. FPLC operations on the Mongbwalu–Kilo–Nyangary–Bunia and on the Mongbwalu–Kilo–Nizi–Bambu–Bunia axis were not discussed during their encounter.³¹⁶²

1112. Upon his return from Rwanda on 17 February, Mr NTAGANDA left Bunia from 19 to 20 February, and from again 21 February to 3 March.³¹⁶³ The operation was finished by then. Notably, when cross-examining Mr NTAGANDA, the Prosecution neither asked

³¹⁵⁴ D-0300:T-221,45:3-4.

³¹⁵⁵ D-0300:T-221,43:8-16.

³¹⁵⁶ D-0300:T-221,45:5-7(“President Thomas asked that an aeroplane be sent from Goma to get us. The aeroplane arrived and I boarded that plane with him and we flew to Goma”);45:10-13.

³¹⁵⁷ D-0300:T-221,45:14-16.

³¹⁵⁸ D-0300:T-211,45:17-22.

³¹⁵⁹ D-0300:T-221,46:3-5.

³¹⁶⁰ D-0300:T-221,45:23-46:2.

³¹⁶¹ D-0300:T-221,46:12-20.

³¹⁶² See Part V, Chap. III, Section I.

³¹⁶³ See Part V, Chap. III, Section I; Chap. IV, Section I.

any question nor challenged his account regarding his travel to Libi, Fataki and the Mahagi region from 19 February to 3 March.

B. Mr Ntaganda did not communicate with FPLC members involved in the operation to re-open the road

I. Motorola

1113. There is no evidence that Mr NTAGANDA heard or transmitted on the FPLC VHF radio network. No witness testified having heard Mr NTAGANDA on the network. The Prosecution alleges that only other officers were able to follow the operations via the VHF radio network.³¹⁶⁴

1114. The Prosecution reference to P-0901's testimony at paragraph 473 is unfounded: P-0901 could not hear VHF communications from [REDACTED]. Moreover, P-0901 [REDACTED] when the operation to reopen the road took place, [REDACTED].³¹⁶⁵

1115. When traveling to Libi from 19-20 February and to the Mahagi region from 21 February to 3 March, Mr NTAGANDA could not communicate with FPLC members involved in the operation to re-open the road via VHF radio.

II. Short wave phonic communications

1116. Messages in the "in" section of the NTAGANDA logbook demonstrate that when Mr NTAGANDA travelled with MUZORA on 21 February 2003, he did not bring his phonic. [REDACTED] claimed that he did,³¹⁶⁶ but if this were the case, there would have been no need [REDACTED].³¹⁶⁷

1117. [REDACTED] Mr NTAGANDA communicated with SALONGO on a daily basis³¹⁶⁸ is unreliable,³¹⁶⁹ as reflected by his erroneous descriptions of those conversations. Notably the Ntaganda-Logbook shows no message exchanged between Mr NTAGANDA and officers involved in the operation to re-open the road.

³¹⁶⁴ PCB, para. 473.

³¹⁶⁵ P-0901:T-29,11 :8-17("[REDACTED].") [REDACTED] ("[REDACTED]").

³¹⁶⁶ PCB, para. [REDACTED].

³¹⁶⁷ See [REDACTED].

³¹⁶⁸ PCB, para. 469.

³¹⁶⁹ See Part IV, Chap. III, Section I(D).

1118. No message in the Logbook leading up to or during this entire period records information about the main road operation. As previously mentioned, information obtained by Mr NTAGANDA until 22 February 2003 concerning the area is very limited, and does not suggest that Mr NTAGANDA was aware of any details regarding the operation to reopen the main road, and certainly not suggest that he had daily contacts with the commanders on the field.

III. Thuraya

1119. There is no evidence that Mr NTAGANDA used his Thuraya to contact FPLC officers involved in the operation to open the main road.

1120. [REDACTED], TCHALIGONZA did not have a Thuraya.³¹⁷⁰ Moreover, [REDACTED], and not to the operation to reopen the main road.

C. Mr Ntaganda did not issue any order in relation to the operation

1121. There is no evidence of orders issued by Mr NTAGANDA to anyone involved in the operation to reopen the road. In this regard, the Prosecution misunderstands Mr NTAGANDA's functions in the FPLC at the time. In his capacity as FPLC *Chef-d'État-major-général-adjoint* and accordingly the main staff officer in the FPLC, Mr NTAGANDA was not in a position to issue orders. KISEMBO, *Chef-d'État-major-général*, exercised direct command and control over the FPLC sector commanders and units, not Mr NTAGANDA. While Mr NTAGANDA indeed commanded certain FPLC operations when specifically empowered to do so, this was not the case between January and March 2003 when he was responsible for overseeing the operations in at least two areas and conducted several discrete missions.

1122. No message in the NTAGANDA Logbook indicate that he issued any orders in relation to the operation. *A contrario*, for the Mongbwalu operation, Mr NTAGANDA was entrusted with the command of the operation and clearly issued the order to launch the operation on 19 November 2002.³¹⁷¹

³¹⁷⁰ [REDACTED]; P-0901:T-28,20:8-12.

³¹⁷¹ See Part IV.

1123. P-0055 testified that “[he] cannot tell [the Chamber] what type of order [Mr NTAGANDA] gave because [REDACTED]” and he personally “was not present when he might have given any orders to soldiers in the field in Kobu.”³¹⁷² [REDACTED] “[REDACTED]. [REDACTED]. [REDACTED].”³¹⁷³ [REDACTED]. [REDACTED].³¹⁷⁴

1124. The Prosecution’s submission based on P-0055’s evidence that “Mr NTAGANDA briefed the troops on the conduct of operations and “everything that had to do with operations was handled by Ntaganda”³¹⁷⁵ are not probative of any order issued by Mr NTAGANDA in reaction to the operation to reopen the main road. P-0055’s observations must be addressed on the basis of the the evidence related to Mr NTAGANDA’s whereabouts at the time and on the basis of his own testimony concerning the whereabouts of troops at the time.³¹⁷⁶ As for P-0055’s evidence about [REDACTED], it is unsupported by other reliable evidence as well as implausible.

1125. P-0907’s evidence is unreliable and yet he testified that “[REDACTED].”³¹⁷⁷

1126. As for P-0901’s very general supposition that “[i]t must have been General Kisembo and his deputy Afande Bosco who decided that that particular road would be reopened”³¹⁷⁸ it is not probative of any order issued by Mr NTAGANDA in relation to the operation to reopen the main road. Significantly, P-0901 testified that [REDACTED]: “[REDACTED].”³¹⁷⁹ [REDACTED], and the Prosecution did not put any question to him in this regard.

Section III – Following his return from Rwanda until his departure to Goma, Mr Ntaganda’s neither knew nor acquired any information concerning crimes allegedly committed during this operation

1127. There is no reliable direct or circumstantial evidence that Mr NTAGANDA learned of crimes purportedly committed during the Second Attack, particularly the alleged Kobu massacre.

³¹⁷² P-0055:T-71,44 :4-8.

³¹⁷³ [REDACTED].

³¹⁷⁴ [REDACTED].

³¹⁷⁵ PCB, para.454.

³¹⁷⁶ P-0055:(“ [REDACTED]”).

³¹⁷⁷ P-0907:T-90,61:9-12.

³¹⁷⁸ P-0901:T-29,10:18-20.

³¹⁷⁹ P-0901:T-29,11:9-11.

1128. The only direct evidence the Prosecution relies upon stems from P-0055 and P-0016. P-0055's testimony that he learned about the massacre based on information provided [REDACTED]. P-0016's uncross-examined and hearsay statement is vague and unsuitable as proof of knowledge of a massacre.

1129. Furthermore, several witnesses in a position similar to NTAGANDA testified that they did not know about the Kobu massacre allegations until significantly later. In fact, it is both sound and reasonable to infer based on the circumstances at the time that Mr NTAGANDA neither knew nor acquired information concerning crimes allegedly committed during the operation to reopen the main road, including the purported Kobu massacre.

A. There is no direct evidence that Mr Ntaganda acquired information concerning crimes allegedly committed during the operation to reopen the road

I. The evidence from P-0016 is unreliable

1130. The Prosecution's reliance on P-0016³¹⁸⁰ is misplaced. P-0016, who left the FPLC in [REDACTED] 2002³¹⁸¹ and appears to have learned about allegations of a massacre from a former [REDACTED],³¹⁸² provides no basis for his claim that NTAGANDA knew about the massacre. He was not a FPLC member during the main road operation and the information he purportedly obtained about Mr NTAGANDA's knowledge is entirely based on hearsay.

1131. P-0016's uncross-examined statement is also replete with information that is demonstrably erroneous, including: that Mr NTAGANDA took back Mongbwalu right after the Kobu massacre;³¹⁸³ that the operation on Kobu and Bambu was planned in order to assist Mr NTAGANDA during the take over of Mongbwalu in February 2003;³¹⁸⁴ that SALUMU called a pacification meeting when a similar meeting was going on in Mongbwalu, at the initiative of Mr NTAGANDA;³¹⁸⁵ that Mr NTAGANDA called SALUMU from Mongbwalu to Kobu with a Motorola, which is

³¹⁸⁰ PCB,fn.1377.

³¹⁸¹ P-0016:DRC-OTP-0126-0422,para.87.

³¹⁸² P-0016:DRC-OTP-0126-0422,para.155("[REDACTED] ").

³¹⁸³ P-0016:DRC-OTP-0126-0422,para.163.

³¹⁸⁴ P-0016:DRC-OTP-0126-0422,para.153.

³¹⁸⁵ P-0016:DRC-OTP-0126-0422,para.161.

demonstrably incorrect;³¹⁸⁶ and that the victims in Kobu were shot.³¹⁸⁷ An uncross-examined statement of this nature cannot be relied upon as proof of a fact as incriminating and specific as whether NTAGANDA knew about a massacre

II. P-0055's evidence is unreliable

1132.[REDACTED]³¹⁸⁸ [REDACTED] LUBANGA who had himself been informed by officials from “the armed wing of MONUC”.³¹⁸⁹ [REDACTED] – [REDACTED]³¹⁹⁰ – as being [REDACTED].³¹⁹¹ P-0055 ostensibly then conducted an investigation and obtained information about the massacre from [REDACTED]. P-0055 claimed that [REDACTED],³¹⁹² [REDACTED].³¹⁹³ [REDACTED].³¹⁹⁴

1133.First, P-0317 testified that she learned about allegations of a massacre in Kobu only after she arrived in Bunia on 24 March 2003. She confirmed that “[t]he reports of the military observers were available to us.”³¹⁹⁵ She was also “in contact with Congolese NGOs.”³¹⁹⁶ It is on the basis of these two sources of information that she learned about the a massacre of Hema civilians in Bogoro on or about 24 February, which prompted her to travel to Bunia on 24 March 2003 to investigate further.³¹⁹⁷ P-0317 testified that she learned about allegations of a massacre in Kobu only after she had arrived in Bunia on 24 March 2003.³¹⁹⁸ P-0317 denied having any recollection – even after her arrival in Bunia – that any MONUC official knew about the Kobu massacre or other crimes:

Q.*[Et lorsque vous êtes arrivée à Bunia, est-ce que les observateurs militaires]* or anyone else in MONUC tell you that they had information about an attack in Kobu or a massacre in Kobu? A.Well, I should point out that there were six military observers at the time in Bunia and they were afraid to leave town. They had some vague information regarding attacks on the villages but no

³¹⁸⁶ P-0016:[DRC-OTP-0126-0422](#), para.163.

³¹⁸⁷ P-0016:[DRC-OTP-0126-0422](#), para.157.

³¹⁸⁸ [REDACTED].

³¹⁸⁹ [REDACTED].

³¹⁹⁰ [REDACTED].

³¹⁹¹ [REDACTED].

³¹⁹² P-0055:T-74,60:9-15.³¹⁹³ P-0055:T-71,52,22-23.

³¹⁹³ P-0055:T-71,52,22-23.

³¹⁹⁴ P-0055:T-71,52:7-9(“[REDACTED]”).

³¹⁹⁵ P-0317:T-192,44:18.

³¹⁹⁶ P-0317:T-192,44:19.

³¹⁹⁷ P-0317:T-192,44:3-8.

³¹⁹⁸ P-0317:T-192,44:20-23.

direct information. Q.that any information about a massacre in Kobu had been reported to them; is that right? A.I don't believe so.³¹⁹⁹

1134. Consequently, LUBANGA cannot have obtained information about an alleged massacre in Kobu from MONUC officials and [REDACTED]. [REDACTED] either did not take place or in any event refers to a meeting which happened in a different context. It follows that P-0055's evidence [REDACTED], is a straightforward lie. P-0055 also lied about his subsequent [REDACTED], which moreover does not even correspond to the alleged Kobu massacre but rather to rumours circulating as to what happened at some point during the operation.

1135. P-0055's testimony [REDACTED] was not a mistake. P-0055 gave precise testimony about what could only have been a memorable event: the one and only time, according to P-0055, that [REDACTED].³²⁰⁰ P-0055's lie provided him with the necessary details to fabricate his story and make it look real, even though he could not provide obvious information such as the name of [REDACTED] who actually told him about the Kobu massacre.³²⁰¹ A witness willing to lie and to fabricate such a narrative would be willing to lie on anything in order to incriminate.

1136. Second, his evidence should be disregarded or the sole basis of the sequence of events he testified about. First, P-0055 acknowledged for the first time in cross-examination he had [REDACTED].³²⁰² Consequently, it is impossible that P-0055 [REDACTED].³²⁰³ [REDACTED].

1137. P-0055's story is a fabrication, with obvious motives to fabricate. He is a witness who [REDACTED] as a result of [REDACTED].³²⁰⁴ He did not show up on the day his testimony was scheduled and only accepted to testify later after [REDACTED]. [REDACTED], relying on false allegations [REDACTED]³²⁰⁵ [REDACTED].

³¹⁹⁹ **P-0317**:T-192-CONF-FRA,44:10-19. The complete question was not captured in the English transcript, *see* T-192-CON-ENF,45:18-25.

³²⁰⁰ [REDACTED].

³²⁰¹ **P-0055**:T-74,56:8-10,58:11-25,66:2-7.

³²⁰² **P-0055**:T-74,71:25-72:4(“[REDACTED]? [REDACTED]. [REDACTED] [REDACTED].), [REDACTED] (“[REDACTED] [REDACTED]. [REDACTED][REDACTED] [REDACTED].”)

³²⁰³ **P-0055**:T-71,52:7-9(“[REDACTED]”).

³²⁰⁴ T-41,16:19-20.

³²⁰⁵ T-41,11:21-13:3;T-42;T-43,2:11-7:24.

1138. During the period from 17 February, [REDACTED]. Thereafter, P-0055 and Mr NTAGANDA [REDACTED].³²⁰⁶ [REDACTED] affirmed that [REDACTED]: “[they] didn’t say anything about Kobu, Bambu and Lipri. That was already over and done with.”³²⁰⁷ [REDACTED].³²⁰⁸

1139. [REDACTED].³²⁰⁹ [REDACTED].³²¹⁰

B. There is no circumstantial evidence that Mr Ntaganda acquired information concerning crimes allegedly committed during the operation to reopen the road

I. *It is reasonable to conclude that Mr Ntaganda was not aware of the crimes allegedly committed during the Second Attack*

1140. Attempting to demonstrate that Mr NTAGANDA knew or acquired knowledge of the crimes allegedly committed during the Second Attack, the Prosecution relies on insider witnesses who testified that what happened in Kobu was widely known in Bunia and amongst FPLC soldiers and officers.³²¹¹

1141. Notably, the evidence provided by these witnesses who confirmed having participated in the Second Attack demonstrates that they neither knew nor obtained information on the crimes allegedly committed during the Second Attack. In fact, it stems from the evidence of these witnesses that whatever they know originated either from rumours circulating at the time or from the KBL Audio recording they listened to when meeting with the Prosecution to provide a statement or at the time of their testimony.

1142. P-0901, who supplemented his own information based on speaking with those who participated, described an operation,³²¹² but no massacre:

The civilians who fled Mongbwalu took shelter in the villages of Kobu, Bambu and elsewhere. Those villages were also attacked and the same civilians fled, headed towards Buli and they took refuge on a hill. And they were surrounded. But the president gave the order not to attack them. So that is how it came to be

³²⁰⁶ See Part V, Chap. IV, Section III.

³²⁰⁷ P-0055:T-74,83:20-25.

³²⁰⁸ [REDACTED].

³²⁰⁹ [REDACTED].

³²¹⁰ [REDACTED].

³²¹¹ PCB, para. 475-477.

³²¹² P-0901:T-29,10:12-18:19.

that there was a withdrawal. And the civilians also left that hill. So there were no other operations conducted on that hill by the FPLC.³²¹³

1143.P-0901, far from confirming a massacre of civilians, says the opposite. Once the KBL audio was played, P-0901 reflected only what can be heard on the audio itself — names that about 40 individuals were taken prisoner.³²¹⁴ Although P-0901 confirmed having obtained information from (i) commanders involved; as well as from (ii) other persons after the events,³²¹⁵ he did not testify about any massacre.

1144.P-0190, [REDACTED] also did not testify about the Kobu massacre, even though he heard about attacks committed in Lipri and Kobu from soldiers.³²¹⁶

1145.P-0055's story about learning from [REDACTED] confirms that [REDACTED], was not informed about allegations of a massacre until this information was provided by an outside source.³²¹⁷

1146.The lack of contemporaneous knowledge [REDACTED] contradicts the possibility that everyone in Bunia knew about the Kobu massacre allegations once Salumu's forces returned to Bunia. On the contrary, the lack of such information is consistent with the likely desire of anyone involved to conceal any crimes in which they had been involved.

II. *There is no evidence that Mr Ntaganda obtained information from any other source*

1147.LUBANGA did not provide Mr NTAGANDA with information regarding crimes allegedly committed in Kobu.³²¹⁸ Contrary to the Prosecution's submissions,³²¹⁹ nothing in a 24 February 2003 video suggests that anyone other than Lendu fighters are the targets of fighting in that area.³²²⁰ : “Les combats sont arrêtés maintenant donc du côté de Kobu, LIPRI [...] Parce que nous les informations qu'on a également c'est que bon, apparemment vos adversaires là-bas ont fui dans la forêt et... maintenant en fait, ils

³²¹³ P-0901:T-29,15:6-11.

³²¹⁴ P-0901:T-29,29:23-39:17.

³²¹⁵ P-0901:T-29,11:8-25,12:1-5,13:23 et ss.

³²¹⁶ P-0190:T-97,22:3-12,23:3-8,24:3-5.

³²¹⁷ See Part V,Chap.IV,Section III(B)(I).

³²¹⁸ D-0300:T-223,16:18-17:4.

³²¹⁹ PCB,para.483,fn.1397 referring to [DRC-OTP-0127-0061](#),01:29:09-01:33:09 (Transcription DRC-OTP-2082-1033,1075:1447-1077:1518).

³²²⁰ PCB,para.483,fn.1397 referring to [DRC-OTP-0127-0061](#),01:29:09-01:33:09 (Transcription DRC-OTP-2082-1033,1075:1447-1077:1518).

n'ont même plus ... ils ne sont plus en train de se défendre, ils ont fui. Mais ils seraient pourchassés tout ça..." Furthermore, LUBANGA clarifies that he does not wish to see non-combatants fleeing: "Non, non, ça c'est ... ça c'est très faux. Nous avons ... on a ... on a réussi à maîtriser ces gens-là. Ils ne sont pas partis d'un ... on les a récupéré [...] et on les a ... on leur a demandé de se réinstaller." In any event, no evidence suggests that LUBANGA shared this information with Mr NTAGANDA.

1148. During the period from [REDACTED] conversation until clashes with UPDF on 6 March, Mr NTAGANDA and KISEMBO did not discuss the killing of civilians in Kobu by FPLC troops.³²²¹ Moreover, from 6 March until June 2003 when Mr NTAGANDA returned to Bunia, he and KISEMBO did not have any contact.³²²² From Mr NTAGANDA's return to Bunia in June until December 2003, Mr NTAGANDA and KISEMBO also did not discuss the alleged killing of civilians in Kobu by FPLC troops in February or March 2003.³²²³

1149. Mr NTAGANDA's last contact with TCHALIGONZA before 5 March 2003 was when he reprimanded him in relation to the death of ZERO ONE in LIPRI.³²²⁴ After 5 March 2003, their next contact occurred when he joined the FARDC in 2009 or 2010.³²²⁵ Up until then, they never discussed the alleged killing of civilians by members of the FPLC in Kobu in February or March 2003.³²²⁶

1150. Mr NTAGANDA's last contact with TIGER ONE before the 5 March planning meeting was from 6 to 8 February 2003 when the delegation from RCD-Goma visited Bunia.³²²⁷ After 6 March 2003, TIGER ONE joined JEROME,³²²⁸ before joining Mr

³²²¹ [REDACTED].

³²²² **D-0300**:T-221,46:3-8("Q.And for your own part, during the period that you were in Goma, did you have contact with members of the FPLC or the UPC-RP in Ituri? A.No. Q.Did you still have your Thuraya telephone with you? A.Yes, but I kept it in a bag. I didn't have a charging unit. And also the cost of units was high, and I didn't have money at that time").

³²²³ **D-0300**:T-223,17:13-19.

³²²⁴ **D-0300**:T-223,20:2-16.

³²²⁵ **D-0300**:T-223,20:17-20.

³²²⁶ **D-0300**:T-223,20:21-24.

³²²⁷ **D-0300**:T-223,21:3-21.

³²²⁸ **D-0300**:T-223,22:2-4.

NTAGANDA again in 2004/2005.³²²⁹ Mr NTAGANDA never received information from TIGER ONE concerning the civilians allegedly killed in Kobu by the FPLC.³²³⁰

1151. SALUMU was also present at the 5 March meeting.³²³¹ After this meeting, Mr NTAGANDA never talked to him.³²³² He saw him once again in 2010 after joining the FARDC but did not speak to him.³²³³ Before the 5 March 2003 meeting, the last time Mr NTAGANDA spoke to SALUMU was in January, when he reprimanded TCHALIGONZA about the circumstances in which ZERO ONE had died.³²³⁴ Mr NTAGANDA did not obtain information from SALUMU regarding civilians allegedly killed in Kobu in February or March 2003.³²³⁵

1152. Mr NTAGANDA's testimony, and willingness to testify, on these matters is entitled to substantial weight. His denial that he was informed of any crimes in the short time between the end of the KBL operation and the 6 March defeat is credible.³²³⁶ Indeed, NTAGANDA was present in Bunia for only three days before the crushing defeat inflicted by UDPF forces that dispersed the FPLC.

1153. It is highly significant in this regard that when Mr NTAGANDA surrendered in the custody of the ICC, he did not even know that over and above the charges laid against LUBANGA, there was a second arrest warrant against him dealing with KBL and Mongbwalu.³²³⁷

Section IV – Mr Ntaganda first obtained information about crimes allegedly committed during the 2003 FPLC operation to reopen the road ‘Mongbwalu-Kilo-Kobu-Bambu-Nizi-Bunia’ in 2004

1154. No evidence was adduced showing that NTAGANDA learned about any alleged KBL crimes while he was in GOMA. He had no active military role while there, and had no

³²²⁹ D-0300:T-223,20:25-21:2;22:5-10.

³²³⁰ D-0300:T-223,22:11-15.

³²³¹ D-0300:T-221,28 :9-14.

³²³² D-0300:T-223,17:20-24.

³²³³ D-0300:T-223,18:6-18.

³²³⁴ D-0300:T-223,18:19-22.

³²³⁵ D-0300:T-223,18:23-19:2.

³²³⁶ D-0300:T-243,33:13-34:1.

³²³⁷ [REDACTED].

communication capabilities with FPLC or UPC-RP members, except for Thomas LUBANGA.³²³⁸

1155.P-0317 testified that she did not inform anyone in the UPC-RP about any alleged KBL operation crimes.³²³⁹

1156.The HRW Reports from July 2003³²⁴⁰ and April 2005³²⁴¹ make no mention of crimes committed during the main road operation. When P-0315 interviewed Mr NTAGANDA on 17 November 2010, she asked no questions about any alleged crimes during the main road operation.³²⁴²

1157.Mr NTAGANDA first heard allegations about KBL operation crimes in 2004, after the end of the temporal scope of the charges, from media reports of a massacre at Kobu and that there was a mass grave.³²⁴³ Mr NTAGANDA questioned DEBA, whom he knew to have been a member of SALUMU's brigade at the time, about these allegations.³²⁴⁴ DEBA asserted that the allegations were false, explaining that they had been attacked by the enemy in Kobu, and they had to fiercely fight back until the enemy fled.³²⁴⁵

1158.During his testimony, Mr NTAGANDA explained that:

If that truly occurred, then it is something quite shameful for me. It is also awful. When I saw the pictures saying that the FPLC had killed members of the civilian population, I personally did not think that would have been possible. The way in which the members of the population were killed shows me that this was the modus operandi of the Lendu combatants. In prison there were members of the Lendu population, I talked to Ndjabu Floribert myself and he said that what is on this photo is absolutely not true. (...) this is information that I received, that this photograph was not of Kobu and that I got from the president of the FNI by the name of Floribert Ndjabu. Because you were asking me what I feel about Kobu, Bambu, Lipri, this is most regrettable for me as a commander. I know that I fought to protect the civilian population without

³²³⁸ See Part V, Chap.IV, Section III.

³²³⁹ P-0317:T-193,33:1-4("Q.So none of the propositions or allegations that are contained in your reports take into account or are formulated with the benefit of the point of view of the party being blamed for these actions; is that fair to say? A.No, we weren't able to meet the UPC").

³²⁴⁰ [DRC-OTP-0074-0797](#).

³²⁴¹ [DRC-OTP-0074-0628](#).

³²⁴² [DRC-OTP-2062-0363](#);P-0315:T-108,9:1-9.

³²⁴³ D-0300:T-223,14:13-21;22:16-23:1.

³²⁴⁴ D-0300:T-223,14:22-15:24.

³²⁴⁵ D-0300:T-223,15:25-16:14.

discrimination, and if this truly occurred, then it would be extremely regrettable and that would be very much a dishonourable fact to me.³²⁴⁶

CONCLUSION

1159. In light of his absence of knowledge of any of the crimes discussed above, Mr NTAGANDA is not criminally responsible for any crime alleged to have been committed as part of the *Second Attack* pursuant to Article 25. He is also not responsible under Article 28 as none of the alleged perpetrators were under his effective command and control, either *de jure* or *de facto*.³²⁴⁷ In any event, he had no capacity to investigate or punish any of the alleged crimes given the dispersion of forces on 6 March and the non-return of SALUMU and others alleged perpetrators.

PART VI – NO INDIVIDUAL CRIMINAL RESPONSIBILITY IN RELATION TO THE PRESENCE OF SOLDIERS BELOW THE AGE OF 15 IN THE FPLC

INTRODUCTION

1160. Only four witnesses were presented in this case as alleged former child soldiers with UPC forces, a reduction from the 12 who appeared in the *Lubanga* case. The lies told by these witnesses provide a chilling indication of the likely unreliability of the indirect evidence in which this case is primarily based. The quality of these witnesses – the best direct evidence that could be presented after ten years of investigations – is strongly indicative that the secondary evidence is untrue or unreliable.

1161. The video evidence before the Trial Chamber cannot sustain a finding of anyone being within the ranks of the FPLC who was under 15 years of age. None of the individuals pictured on those low-quality videos appears so manifestly under the age of 15 as to satisfy the margin of doubt applicable in a criminal trial given the uncertainties inherent to visual age assessment. Any individuals who might appear to be under 15 on the Rwampara video have not been shown to have trained with, let alone joined, the FPLC. On the contrary, the video itself is indicative that the youngest individuals have not started their training, and the Prosecution adduced no evidence that they did train, let alone graduate into the ranks of the FPLC.

³²⁴⁶ D-0300:T-223,23:19-25:7.

³²⁴⁷ Part IV, Chap. VII.

1162. The documentary evidence shows a genuine effort to demobilise anyone under 18, either who had managed to enter the ranks of the FPLC, particularly while LUBANGA and NTAGANDA had been away from Bunia between March and June 2003, or who was present amongst local defence forces. The documents about demobilisation are merely one aspect of the UPC's and FPLC's efforts to bring these defence forces under control, some of which retained autonomy.

1163. The indirect evidence heard by the Chamber of age should be accorded little to no weight. Its volume does not remedy its opacity and lack of verifiability.

1164. Finally, Mr Ntaganda is not criminally responsible for any such conscription, enlistment or use of child soldiers as may have occurred. The FPLC adopted genuine policies to evaluate the age of recruits and to prevent those who were too young – which certainly included those under 15 – into their ranks. Any exceptions that have been established were so isolated that there can be no inference that Mr Ntaganda was aware of them, let alone intended the enlistment of such individuals.

CHAPTER I - TESTIMONY OF ALLEGED CHILD SOLDIERS

Section I - P-0758 was not a child soldier

A. Introduction

1165. P-0758 testified that she was abducted by UPC soldiers “mid school year” in 2002 in MUDZIPELA and taken to LINGO training camp,³²⁴⁸ where she was raped repeatedly, including by [REDACTED] and [REDACTED].³²⁴⁹ P-0758 claimed that she was born on [REDACTED]³²⁵⁰ and, accordingly, was 13 at the time of these events.

1166. This testimony is contradicted by information she gave during two separate interviews in [REDACTED] about her birth-date³²⁵¹ and the timing of events³²⁵² making her 15 years old at the time. This changed only after: (i) the First Victim Application had been rejected by the ICC on the basis of age;³²⁵³ (ii) [REDACTED], [REDACTED], had, on

³²⁴⁸ P-0758:T-160,78:1-23;88:21.

³²⁴⁹ P-0758:T-161,7:22-24;34:8.

³²⁵⁰ P-0758:T-160,71:3.

³²⁵¹ P-0758:T-162,33:25-34:1.

³²⁵² P-0758:T-162,13:3-19:2;20:17-21:3;23:2-6.

³²⁵³ P-0758:T-162,21:16-23.

the very day of that rejection, [REDACTED] giving a later date of birth;³²⁵⁴ and (iii) [REDACTED] while filling out a second victim application form in [REDACTED].³²⁵⁵ P-0758's description of events, aside from being contradictory, corresponds to 2003, not 2002.

1167. Her testimony is also substantially inconsistent with [REDACTED], the latter of whom has evidently influenced her testimony. Her testimony about rape is likewise unreliable given her overall credibility, and given her failure to visually identify either of her named attackers.

B. P-0758, under the influence [REDACTED], changed her account of her date of abduction and birth date to qualify as a child soldier

1168. P-0758's first victim application form, from [REDACTED], indicates that she was born on [REDACTED],³²⁵⁶ and abducted in "August 2003."³²⁵⁷ This yields an age of 15 years, 4 months. P-0758 provided the same or similar information during an entirely separate interview with [REDACTED], to whom she is reported to have stated that she was "currently 18 years old but at the time of the events she was 15."³²⁵⁸

1169. On [REDACTED], P-0758's first victim application was rejected by the ICC on the basis of age.³²⁵⁹

1170. That very day, [REDACTED] [REDACTED] in [REDACTED]. The date of this request is known because P-0761 testified that he made this request on the same day [REDACTED],³²⁶⁰ which bears the date [REDACTED].³²⁶¹

1171. [REDACTED] asserted under oath that this request had nothing to do with the rejection of the First Victim Application, claiming instead that: (i) [REDACTED] told him that the [REDACTED] was necessary to facilitate medical services for P-0758;³²⁶² (ii)

³²⁵⁴ [REDACTED].

³²⁵⁵ [REDACTED].

³²⁵⁶ P-0758:T-162,33:22-34:1.

³²⁵⁷ P-0758:T-162,20:17-21.

³²⁵⁸ P-0758:T-162,29:15.

³²⁵⁹ P-0758:T-162,21:13-23.

³²⁶⁰ [REDACTED] ("[REDACTED] [REDACTED]").

³²⁶¹ [REDACTED]; P-0761:[DRC-OTP-2054-8283](#), para.8 ("[REDACTED]. P-0761 also affirmed expressly that he made this request [REDACTED]:T-163,5:3-4.

³²⁶² [REDACTED].

[REDACTED] never mentioned the existence of a P-0758's victim application;³²⁶³ and (iii) that he never assisted P-0758 in preparing such an application.³²⁶⁴

1172. [REDACTED] doubled-down on this denial, claiming that when he went with P-0758 to [REDACTED] it was only so that she could receive "assistance and treatment."³²⁶⁵ He claimed that he had never been present while P-0758 filled out any victim application form, and that he heard about her applications "for the first time here."³²⁶⁶

1173. These were lies. [REDACTED] was forced to admit, when shown [REDACTED] on P-0758's Second Victim Application Form, that [REDACTED] she filled out that application in [REDACTED] in [REDACTED].³²⁶⁷

1174. [REDACTED] also knew, contrary to his testimony, about P-0758's first application as is revealed by [REDACTED] why she had given purportedly inaccurate information on her first victim application.³²⁶⁸ [REDACTED] falsehoods not only show his lack of credibility, but is also indicative of a desire to hide his influence on P-0758.

1175. P-0758's narrative of events also corresponds with 2003, not 2002. First, Camp LINGO did not exist until 2003.³²⁶⁹ Second, P-0758's description of having seen "[REDACTED]" to "[REDACTED]"³²⁷⁰ [REDACTED] "[REDACTED]" [REDACTED] who had been held "by the UPC [REDACTED]."³²⁷¹ [REDACTED] is not far from [REDACTED].³²⁷² Third, [REDACTED] could not confirm that P-0758 had been abducted in 2002, indicating that it "could be about 2002 or 2003."³²⁷³ Fourth, P-0761, [REDACTED] before the rejection of P-0758's First Victim Application,

³²⁶³ [REDACTED] ("[REDACTED][REDACTED]").

³²⁶⁴ [REDACTED].

³²⁶⁵ [REDACTED].

³²⁶⁶ [REDACTED].

³²⁶⁷ [REDACTED]("[REDACTED]"), [REDACTED].

³²⁶⁸ [DRC-OTP-2066-0154](#), p.0176 ("[REDACTED]").

³²⁶⁹ **P-0758**:T-161,7:22-24;16:6; [REDACTED] ;**P-0055**:T-71,78:4-5 ("[REDACTED]" "[REDACTED]"); [REDACTED]; [REDACTED] ("[REDACTED]"); [REDACTED].

³²⁷⁰ **P-0758**:T-160,87:13-17.

³²⁷¹ [REDACTED].

³²⁷² **D-0080**:[DRC-D18-0001-6163](#), para. 80; [DRC-OTP-0006-0459](#), para.2.

³²⁷³ [REDACTED].

likewise indicated that the abduction had occurred in 2003.³²⁷⁴ P-0761, confronted with this discrepancy, called the interpreters “enemies.”³²⁷⁵

1176. [REDACTED] malign influence also extends to P-0758’s testimony about her birth-date. He sought out P-0758’s [REDACTED] on the very day her victim application was rejected by the ICC. [REDACTED], furthermore, inconsistent concerning her place of birth – the first indicating “[REDACTED],”³²⁷⁶ the second “[REDACTED].”³²⁷⁷ This raises doubts as to whether [REDACTED] have been issued on the basis of any authentic archival records, or whether they merely reproduce the information that [REDACTED].³²⁷⁸ This possibility is reinforced by P-0761’s bizarre prevarication [REDACTED] was actually born in [REDACTED]³²⁷⁹ or [REDACTED].³²⁸⁰ [REDACTED] provided by the applicant alone,³²⁸¹ and the Prosecution never itself obtained [REDACTED], nor otherwise confirmed that any original record exists.

1177. [REDACTED] claim that he did not seek [REDACTED] rejected victim application is even less credible if it turns out that [REDACTED] – whose name is redacted from the Defence and the Chamber³²⁸² – that assisted P-0758 fill out her victim application forms.³²⁸³

1178. P-0758 only changed her age at the time of the events after [REDACTED],³²⁸⁴ and there are abundant indications of his ongoing influence over her. [REDACTED],³²⁸⁵ a fact both highly material and that was never disclosed to the Defence.³²⁸⁶ Second, P-0758 denied any recollection of [REDACTED] involvement in the Second Victim Application, even though they had travelled [REDACTED] together for that purpose:

³²⁷⁴ [REDACTED].

³²⁷⁵ [REDACTED].

³²⁷⁶ [DRC-OTP-2051-2066](#).

³²⁷⁷ [DRC-OTP-2054-8289](#).

³²⁷⁸ **P-0761**:T-163,5:18-21 (“[REDACTED]”),32:15-33:15.

³²⁷⁹ [REDACTED] (“[REDACTED]”).

³²⁸⁰ [REDACTED] (“[REDACTED]”), 56:17 (“[REDACTED]”), 57:2 (“[REDACTED]”), 57:11 (“[REDACTED]”), 57:18 (“[REDACTED].”)

³²⁸¹ **D-0150**:[DRC-D18-0001-6146](#), paras.12-16; **D-0163**:[DRC-D18-0001-6159](#), paras.10-16.

³²⁸² [REDACTED]; [REDACTED].

³²⁸³ [REDACTED].

³²⁸⁴ [REDACTED].

³²⁸⁵ [REDACTED] (“[REDACTED]”).

³²⁸⁶ [REDACTED].

³²⁸⁷ “I don't know”, “No, I don't know,” “I wasn't thinking straight”, “I no longer remember whether he was there when we filled in this form”, “I don't remember all that anymore”, “I’ve forgotten all that”, or “I’ve forgotten everything.”³²⁸⁸

1179. Further evidence of [REDACTED] tendency to manipulate and lie was on full display for the Chamber when he lied about [REDACTED];³²⁸⁹ about P-0758 being [REDACTED];³²⁹⁰ and about P-0758 [REDACTED] ³²⁹¹ – possibly to fortify [REDACTED].³²⁹²

C. The extent of the discrepancies in P-0758’s description of her abduction raises doubt about her veracity and reliability

1180. [REDACTED] told the OTP in [REDACTED] that P-0758 was abducted not from [REDACTED], but from [REDACTED], and that this was based on detailed information from [REDACTED].³²⁹³ P-0758 denied P-0806’s detailed description of the abduction from her house.³²⁹⁴ P-0758’s Third Victim Application Form gives yet another location of her abduction, [REDACTED].³²⁹⁵

1181. P-0758 testified that if the UPC had known that [REDACTED] was Lendu, she would have been killed,³²⁹⁶ but is also reported to have said in an interview from [REDACTED] that her abductors [REDACTED].³²⁹⁷ This suggests that her abductors were Lendu militia or the APC. This possibility is reinforced by her description that her abductors were in uniform, and the only soldiers wearing uniforms in Bunia before the end of the 2001-2002 school year were APC or Ugandan forces. This possibility is further suggested by P-0758’s description of participating in a battle at [REDACTED] that corresponds to the description of an attack by Lendu combatants.³²⁹⁸

³²⁸⁷ [REDACTED] (“[REDACTED] [REDACTED]”), [REDACTED]([REDACTED]: “[REDACTED] [REDACTED]. [REDACTED] [REDACTED]”).

³²⁸⁸ [REDACTED].

³²⁸⁹ [REDACTED] (“Q. [REDACTED]? [REDACTED]”).

³²⁹⁰ [REDACTED] (“[REDACTED]”).

³²⁹¹ [REDACTED] (“[REDACTED]”); [REDACTED] (“[REDACTED]? [REDACTED]”).

³²⁹² [REDACTED].

³²⁹³ **P-0773:DRC-OTP-2057-0127**, paras.13,16.

³²⁹⁴ **P-0758:T-162,29:5-7** (“[REDACTED]”).

³²⁹⁵ **P-0758:T-162,30:4-31:7** (“[REDACTED]”).

³²⁹⁶ **P-0758:T-162,4:17-19**.

³²⁹⁷ **P-0758:T-162,6:8-10** (“[REDACTED]”).

³²⁹⁸ **DRC-OTP-0109-0215**, p.0217; **P-0758:T-162,41:1-42:19**.

[REDACTED], as well as the prospect of compensation in this case, are motives for such a false attribution.

1182.P-0758 also mis-identified a person on a video as “Bosco,”³²⁹⁹ despite claiming to have seen Mr Ntaganda give a speech that she claims to remember well enough that she was able to describe details about other persons present.³³⁰⁰

1183.School records also suggest that P-0758 may have lied dramatically about her age and schooling. DRC-OTP-2082-0187 shows a “[REDACTED]” completing her primary school studies in the [REDACTED] school year,³³⁰¹ and DRC-OTP-2054-8488 shows a “[REDACTED]” completing – on schedule three school years later – her third year of secondary education in [REDACTED].³³⁰² P-0758 denied completing primary school or attending secondary school, but both [REDACTED] and P-0758 testified that they did not know of anyone else named “[REDACTED]”.³³⁰³ These school records are also consistent with [REDACTED] first statement to the OTP – which she later retracted only after having talked to P-0758 about the issue³³⁰⁴ – that P-0758 had completed [REDACTED] before her abduction.³³⁰⁵

D. P-0758’s uncorroborated testimony concerning rape is unreliable

1184.P-0758 claimed that she was raped by six different perpetrators, or sets of perpetrators: (i) before arrival at LINGO, by an unidentified soldier at “[REDACTED]” [REDACTED],³³⁰⁶ (ii) an unidentified “high-ranking officer” at LINGO who was called [REDACTED] who raped her in his hut;³³⁰⁷ (iii) by a “Rwandan” whose title was [REDACTED],³³⁰⁸ [REDACTED]; (iv) after completion of training,³³⁰⁹ by the [REDACTED], named [REDACTED],³³¹⁰ with whom she lived and was a bodyguard for at least a month;³³¹¹ (v) “all the commanders” at [REDACTED],³³¹² and (vi)

³²⁹⁹ P-0758:T-162,50:20, [REDACTED].

³³⁰⁰ P-0758:T-161,16:18-21.

³³⁰¹ [REDACTED].

³³⁰² [REDACTED].

³³⁰³ P-0758:T-162,14:25-15:4; [REDACTED].

³³⁰⁴ [REDACTED].

³³⁰⁵ [REDACTED].

³³⁰⁶ P-0758:T-160,84:6-21.

³³⁰⁷ P-0758:T-161,5:14-6:8.

³³⁰⁸ P-0758:T-161,7:25-8:21.

³³⁰⁹ P-0758:T-161,7:22.

³³¹⁰ P-0758:T-161,7:24.

³³¹¹ P-0758:T-161,32:14-15;34:3-8;76:6;77:8.

[REDACTED] “filthy people” at [REDACTED] that rendered her unconscious.³³¹³ P-0758 also testified that other girls were raped at “[REDACTED]”,³³¹⁴ that a girl of nine named [REDACTED] was raped and died at LINGO Camp,³³¹⁵ and that all the other female recruits at LINGO were raped.³³¹⁶

1185. “Corroboration is neither a condition nor a guarantee of reliability”,³³¹⁷ but can “have a role to play when assessing a witness’s credibility and the reliability of his or her testimony.”³³¹⁸ Corroboration is particularly important in the case of a witness, such as P-0758, where there may be “reservations” about a witness’s overall credibility based on other testimony.³³¹⁹ The lack of corroboration is significant in light of other available witnesses from whom corroboration was not sought. [REDACTED], for example, was present at Camp LINGO [REDACTED] during the relevant period, yet the Prosecution asked no questions about P-0758’s account.³³²⁰

1186. P-0758’s descriptions were noticeably devoid of detail. She failed, with one exception,³³²¹ to describe the acts with sufficient particularity to prove the elements of rape.

1187. She also failed to identify, or misidentified, her alleged rapists. She described one of her rapists as being [REDACTED],³³²² “a Rwandan, but he didn’t look like a Rwandan,”³³²³ [REDACTED]; “[REDACTED]”,³³²⁴ [REDACTED].³³²⁵ The description corresponds to the biography and position of [REDACTED] during this time period,³³²⁶ who identified himself visually on video [REDACTED],³³²⁷ and who can be seen again at [REDACTED]. This video was shown to P-0758 twice during

³³¹² P-0758:T-161,53:17-54:18.

³³¹³ P-0758:T-161,55:7-56:5.

³³¹⁴ P-0758:T-160,86:23-25.

³³¹⁵ P-0758:T-160,89:14-25.

³³¹⁶ P-0758:T-161,6:15;20:13-18.

³³¹⁷ [Ngudjolo AJ](#), fn.302.

³³¹⁸ [Bemba et al AJ](#), para.1084.

³³¹⁹ [Ngudjolo AJ](#), para.168.

³³²⁰ [REDACTED].

³³²¹ P-0758:T-160,84:6-8.

³³²² P-0758:T-161,8:1.

³³²³ P-0758:T-161,8:20.

³³²⁴ P-0758:T-161,8:3-8.

³³²⁵ P-0758:T-162,48:11-12 (“[REDACTED]”).

³³²⁶ [REDACTED] (“[REDACTED]”).

³³²⁷ [REDACTED] (“[REDACTED]”), [REDACTED].

witness preparation³³²⁸ and three times in court.³³²⁹ P-0758 – after a pause of 33 seconds after the penultimate showing of the video, prompting the Presiding Judge’s intervention -- did not identify any alleged rapist.³³³⁰ On the contrary, the witness, apparently guessing, misidentified a person as being Mr Ntaganda.³³³¹

1188. The other alleged rapist named by P-0758 was [REDACTED] the “[REDACTED].”³³³² She served as his “bodyguard”³³³³ for “more than a month”³³³⁴ accompanying him “everywhere” and living “in his house”.³³³⁵ Two videos other than that previously mentioned were shown to P-0758 during witness proofing.³³³⁶ The first video was shown twice, and the second three times. The witness had her attention drawn to specific individuals on the video and asked whether she recognised them.³³³⁷ Despite the highly suggestive nature of the exercise,³³³⁸ P-0758 did not identify her rapist.³³³⁹ The lack of identification following this exercise should not be “disregard[ed],”³³⁴⁰ despite the Defence’s failure to obtain a positive identification of the person’s shown on the video. There was no video or photographic identification of [REDACTED] and it may be inferred that the Prosecution possesses such an image. The absence of identification, accordingly, is relevant to the reliability of her account, particularly when viewed in conjunction with her failure to identify [REDACTED].³³⁴¹

³³²⁸ P-0758:T-162,49:21-22.

³³²⁹ P-0758:T-162,49:14-50:20.

³³³⁰ P-0758:T-162,50:1-20.

³³³¹ P-0758:T-162,50:20, [REDACTED].

³³³² P-0758:T-161,7:23-25,32:19-33:10

³³³³ P-0758:T-161,32:13-15.

³³³⁴ P-0758:T-161,76:6.

³³³⁵ P-0758:T-161,33:9-14,77:7-11.

³³³⁶ P-0758:T-161,71:13-72:15 ([REDACTED]); P-0758:T-161,72:16-21 ([REDACTED]).

³³³⁷ P-0758:T-161,71:2-5 (“Q.Can you remember that when the clips were played to you, there were individuals who were pointed out to be the focus of your attention? Can you remember that? A.Yes”); 72:8-15 (“Q.Minutes [REDACTED] were replayed and the witness was asked to focus on [REDACTED]”); 73:2-8 (“Minutes [REDACTED] were replayed and the witness was asked to focus on [REDACTED]. Asked whether she recognised anyone, the witness stated that she did, but she does not remember the name. Asked how she knows the person she recognised, the witness stated that she cannot remember who he is or where she knows him. The witness was informed that the excerpt would be replayed and that she could indicate which person she recognised”).

³³³⁸ P-0933:T-87,46:7-16.

³³³⁹ P-0758:T-161,72:12 (“Q‘The witness did not recognize anyone.’ Madam Witness, is that what happened, as best you can recall, last week when you were shown this video? Yes”), 73:12-21 (“‘The witness stated that she recognized the two persons but was not sure [...] she does not remember their names or from where she knows them.’ [...] Is that what you said when you were shown the video three times? A.Yes”).

³³⁴⁰ *Contra* PCB,para.727.

³³⁴¹ [REDACTED]

1189.P-0758's testimony that there were no women residing at LINGO camp who were not recruits,³³⁴² contradicted immediately by her claim that women allegedly forced to become wives of soldiers lived in LINGO camp,³³⁴³ illustrates the extent to which she navigated through her testimony seeking to provide incriminating testimony rather than describing real events.

E. Conclusion

1190.P-0758 did have a "motive to lie."³³⁴⁴ She is unemployed³³⁴⁵ and seeking compensation in this case. She exhibited a demeanour in court suggesting that she is "vulnerable to manipulation."³³⁴⁶ Her testimony as a whole, and about her age, recruitment, training and rape, is unreliable.

Section II - P-0883 was not a child soldier

A. Introduction

1191.P-0883 testified that she was abducted by UPC troops on [REDACTED] at the age of 12,³³⁴⁷ taken successively to Camp [REDACTED] [REDACTED]and [REDACTED] Camp;³³⁴⁸ trained;³³⁴⁹ fought in a battle in [REDACTED]in March 2003;³³⁵⁰ was injured and [REDACTED]for treatment;³³⁵¹ and then returned to civilian life.³³⁵² She claimed that others of a similar age were abducted with her at the same time,³³⁵³ and that she and others were raped repeatedly by commanders.³³⁵⁴

³³⁴² **P-0758:**T-161,21:1-2.

³³⁴³ **P-0758:**T-161,22:23-23:9.

³³⁴⁴ PCB,para.724.

³³⁴⁵ **P-0758:**T-160,71:17.

³³⁴⁶ [Lubanga TJ](#), para.482.

³³⁴⁷ **P-0883:**T-167,95:17 ("[REDACTED]").

³³⁴⁸ **P-0883:**T-168,14:24-15:21; T-169,17:16 ("[REDACTED]").

³³⁴⁹ **P-0883:**T-170,20:11-21 ("PRESIDING JUDGE FREMR: [...] [c]ould you estimate how long did your training as a recruit last? THE WITNESS: I no longer remember exactly. The day I entered until the day I left, if you look at the dates, the date on which I entered and the date on which I left, then you can find an estimate. PRESIDING JUDGE FREMR: Yes, but Madam Witness, for me it would be even sufficient to say one month, two months, half of the year. Just, really, I am not asking for the precise, precise dates, just a rough estimation. Are you able to provide me with that? THE WITNESS: Your Honour, I'm not able to count the time that I spent there").

³³⁵⁰ **P-0883:**T-168,37:6-11.

³³⁵¹ **P-0883:**T-168,34:23-36:4.

³³⁵² **P-0883:**T-168,39:23-40:7;42:7-44:11.

³³⁵³ **P-0883:**T-168,4:17-5:4;7:5-6.

³³⁵⁴ **P-0883:**T-168,12:4-14:21;31:22-34:22;39:13-17.

1192.P-0883's testimony is decisively undermined by: (i) previous statements identifying her abductors as the APC; (ii) strong indications that she procured false evidence; (iii) school records inconsistent with her description of her background; and (iv) her outright lies about her capacity to read, which was evidently designed to obstruct cross-examination. She has previously requested substantial compensation from the Court³³⁵⁵ that is suggestive of her motivation to lie.

B. The witness's central claim – that she was abducted by UPC forces – is contradicted by her own prior statement

1193.P-0883's first two victim application forms identify the APC, not the UPC, as her abductors: "*j'étais capturé et acheminée au [REDACTED]avec APC (2 mois)*".³³⁵⁶ They are also identified as those who raped her: "*par jour et nuit 2 ou 3 miliciens couchaient avec moi (tous étaient de l'APC)*".³³⁵⁷ Only subsequent to these events, according to her first application, was she transferred from the APC to the UPC: "[REDACTED]".³³⁵⁸

1194.P-0883 recanted these statements during her testimony, asserting that she was never abducted by the APC, and refusing to acknowledge having been at a place called [REDACTED].³³⁵⁹ Her explanation for this contradiction was that the person preparing the victim application forms "didn't read out what was written" and that "there will be a lot of contradictions, because I can't read."³³⁶⁰

1195.This explanation is not credible. The APC is mentioned several times in two different victims application forms, prepared [REDACTED]apart, by two different sets of individuals. The same error would not likely have been made in two different application forms that are far from copies of one another.³³⁶¹ The references are numerous, and appear as part of an integrated narrative about (1) being abducted by the "APC"; (2) being taken to [REDACTED] by the "APC"; (3) being integrated into the

³³⁵⁵ [DRC-OTP-2079-1430](#),p.1435("me construire une maison").

³³⁵⁶ [DRC-OTP-2090-0085](#),p.0085(Victim Application Form,[REDACTED])(underline added). See also [DRC-OTP-2079-1430](#),p.1441(Victim Application Form,[REDACTED]).

³³⁵⁷ [DRC-OTP-2079-1430](#),p.1440(Victim Application Form,[REDACTED])(underline added).

³³⁵⁸ [DRC-OTP-2079-1430](#),p.1440(Victim Application Form,[REDACTED])(underline added).

³³⁵⁹ P-0883:T-169,14:2-5.

³³⁶⁰ P-0883:T-169,13:17-19.

³³⁶¹ [DRC-OTP-2079-1430](#),p.1434(spent one month with the APC ; present at [REDACTED] for one week); [DRC-OTP-2090-0085](#),p.0085(spent one week with the APC; present at [REDACTED] for one month).

UPC after – and because – the “APC” was defeated by UPC forces. These references are not the product of mistake, and her denials are indicative of deception.

C. The witness denied that she could read, but then revealed a selective capacity to read when she deemed it helpful to her testimony

1196.P-0883 asserted repeatedly that she could not read when asked to explain contradictions with her previous statements.³³⁶² She even claimed that her reading skills were so poor that she needed to have her birth certificate read to her.³³⁶³ However, when this same document was shown to her during cross-examination, she embarked on an unsolicited explanation that demonstrated that she was quite comfortable reading: “Well, when I see that, I can see the name of a child, its weight, the birth weight, the weight when the child left the hospital, 2 kilos and 950 grams, and then it says ‘Done in[REDACTED]’.”³³⁶⁴

1197.P-0883 later managed to read a complex school record, when she found it convenient – rather than inconvenient – for her credibility: “Look at the example here. Somebody is said to have passed with 57 per cent, whereas the first half of the year had not even begun.”³³⁶⁵

D. There are indications that the witness procured false documents, or documents with information that she knew to be false

1198.P-0883 testified that she was born on[REDACTED], and that she attended “[REDACTED]” in [REDACTED] from [REDACTED] until the day of her abduction on[REDACTED].³³⁶⁶ However, documents obtained from[REDACTED]: (a) do not reflect her name as she originally gave it to the OTP; (b) do not match the dates or level of schooling described by P-0883 described during her testimony; and (c) bear indications of tampering.

³³⁶² P-0883:T-169,13:17-18.

³³⁶³ P-0883:T-168,46:12.

³³⁶⁴ P-0883:T-169,67:16-18.

³³⁶⁵ P-0883:T-169,73:19-20.

³³⁶⁶ P-0883:T-167,91:6-8(“I was born in [REDACTED]93:24(“the date was [REDACTED]95:12(“I was in that class from[REDACTED]”).

1199.(a) The name that P-0883 gave on her two application forms and first two meetings with the Prosecution (which were [REDACTED]) is “[REDACTED].”³³⁶⁷ The Prosecution checked the “almost complete and very well conserved” [REDACTED] archives, and found no such name.³³⁶⁸ P-0883 then visited [REDACTED] and was shown some school records.³³⁶⁹ Only then did she identify herself to the Prosecution as “[REDACTED],”³³⁷⁰ a name that does appear amongst those records. Curiously, however, P-0883 was unable to give any of the names listed in the school records for the parents of “[REDACTED].”³³⁷¹

1200.(b) The birth-date for the person on the school record is “[REDACTED]”³³⁷² – more than a year different from that given by P-0883. This person started school in [REDACTED], failed twice, attended school after the war, and graduated from primary school.³³⁷³ None of this corresponds, even remotely, with P-0883’s description of her educational progress.³³⁷⁴ P-0883, rather than providing any credible explanation or expressing contrition for her dishonesty, only complained that she was “rather surprised to be looking at these documents and to note that they have come all the way to the Court.”³³⁷⁵

1201.(c) The birth-date on one of the two sets of otherwise identical school records obtained by the Prosecution has been visibly altered to read “[REDACTED]” instead of “[REDACTED].”³³⁷⁶ Someone, in between the date when the first set of documents was obtained and the second set, has altered the date of birth on the original.

1202. Other documents related to P-0883 appear to have been tampered with or falsified. P-0883 claimed under oath that [REDACTED] a “*Certificat de naissance*” (DRC-OTP-2094-0656)[REDACTED]. However, the document bears a date of issuance

³³⁶⁷ [DRC-OTP-2079-1430](#), p.1431; [DRC-OTP-2090-0085](#), p.0085; **P-0883**:T-169,30:21-31:6;31:21-33:6.

³³⁶⁸ [DRC-OTP-2098-0572](#) (“[REDACTED]”).

³³⁶⁹ **P-0883**:T-169,52:21-23;T-168,54:10,54:16-17,54:23,55:10.

³³⁷⁰ **P-0883**:T-169,38:22-39:8;[DRC-OTP-2082-0368](#), l.7952.

³³⁷¹ **P-0883**:T-169,39:23-40:6(the names that P-0883 could not give during her telephone conversation with the OTP are “[REDACTED]” and “[REDACTED]”; she indicated that her father’s names were “[REDACTED]”, and that her mother was known as “[REDACTED]”).

³³⁷² [DRC-OTP-2082-0368](#), l.7952.

³³⁷³ [DRC-OTP-2098-0572](#).

³³⁷⁴ **P-0883**:T-169,71:10-72:16; T-167,95:15; T-168,58:25.

³³⁷⁵ **P-0883**:T-168,60:9-11.

³³⁷⁶ [DRC-OTP-2097-0540](#), p.0541.

[REDACTED]1990,³³⁷⁷ whereas the witness testified that[REDACTED].³³⁷⁸ D-0148, who had responsibility for issuing such documents, affirmed that she had only ever received two requests for duplicates of birth certificates; had never retro-dated a duplicate birth certificate; and that DRC-OTP-2094-0656 otherwise did not appear in the usual format.³³⁷⁹ D-0148 also declared that there is no register of births preceding the year 2000, thus making the *post facto* issuance of birth certificates prior to that date impossible.³³⁸⁰ P-0883 not only procured a false document, but constructed an elaborate lie in saying that she was told at the hospital that “there were a lot of documents since 1990 and that it would take some time to look for this certificate.”³³⁸¹

1203. The second “*attestation de naissance*” also appears to have been falsified.³³⁸² First, D-0150 affirmed that he did not recognise his hand-writing on the document, even though it is his responsibility to complete such forms. Second, D-0150 affirmed that he did not recognise the signature on the document as being that of issuing officer, with which he is familiar. Third, the purported signature of issuing officer on the document is manifestly different than on two other documents.³³⁸³ Fourth, D-0150 did not find any “[REDACTED]” in the Birth Register.³³⁸⁴ Fifth, P-0883 was unable to explain why she told the Prosecution by telephone in July [REDACTED] that she had already obtained this document, whereas it is dated [REDACTED]August[REDACTED].³³⁸⁵ Sixth, D-0150³³⁸⁶ and D-0163³³⁸⁷ affirmed that *attestations de naissance* can be issued based on information provided solely by the claimant. Discrepancies between information on the attestations and the birth certificate contradicts P-0883’s claim that the former was issued on the basis of the latter.³³⁸⁸ The Electoral Card provides no corroboration, as it was issued on the basis of information that P-0883 acknowledges she herself provided orally.³³⁸⁹

³³⁷⁷ [DRC-OTP-2094-0656](#).

³³⁷⁸ **P-0883**:T-169,66:5-12.

³³⁷⁹ [DRC-OTP-2097-0455](#), paras.16,18; [DRC-D18-0001-6141](#), paras.17-19.

³³⁸⁰ [DRC-OTP-2097-0455](#), para.18 (“[REDACTED]”); [DRC-D18-0001-6141](#), paras.17-19.

³³⁸¹ **P-0883**:T-169,65:18-19 (underline added).

³³⁸² [DRC-OTP-2094-0655](#).

³³⁸³ [DRC-D18-0001-5891](#); [DRC-D18-0001-5892](#); [DRC-D18-0001-6146](#), paras.18-21.

³³⁸⁴ [DRC-D18-0001-6146](#), paras.22.

³³⁸⁵ **P-0883**:T-169-FRA,56:1-20,T-169-ENG,50:16-51:6.

³³⁸⁶ [DRC-D18-0001-6146](#), paras.12-16.

³³⁸⁷ [DRC-D18-0001-6159](#), paras.10-16.

³³⁸⁸ **P-0883**:T-169,59:4-60:23.

³³⁸⁹ **P-0883**:T-169,29:12-18.

1204. The witness even gave an incorrect birth-date during witness preparation³³⁹⁰ and, when asked her date of birth during cross-examination, answered “I don't know.”³³⁹¹ During re-direct, the witness said “I don't even remember the other ways in which I answered.”³³⁹²

E. Witness P-0883's testimony concerning how she could identify FPLC soldiers was unreliable or a fabrication

1205. When pressed to explain how she could distinguish between APC and UPC soldiers the witness testified that “[o]n the sleeves the clothes of the UPC, they have written ‘UPC.’”³³⁹³ No image of the many FPLC soldiers on videos and photographs in this case shows any such “UPC” insignia.³³⁹⁴ “APC”, however, did appear on the uniforms of that force.³³⁹⁵ The insignia “FPLC”, not “UPC”, did appear on those uniforms, but only from 2004 onwards – long after P-0883 claims she was abducted by UPC forces.³³⁹⁶

F. Witness P-0883 did not correctly identify the name of the commander of Bule camp

1206. P-0883, despite claiming to have been at Camp [REDACTED] for some time,³³⁹⁷ incorrectly identified those responsible for training as being “[REDACTED],”³³⁹⁸ and that the “person in charge of [REDACTED] camp was Bosco Ntaganda,”³³⁹⁹ whereas the commander was [REDACTED].³⁴⁰⁰

³³⁹⁰ P-0883:T-169,70:18-20.

³³⁹¹ P-0883:T-169,70:22-24.

³³⁹² P-0883:T-170,18:7-11.

³³⁹³ P-0883:T-169,12:1-10. *See also* T-168,4:9-14.

³³⁹⁴ [DRC-D18-0001-0504](#); [DRC-D18-0001-0505](#); [DRC-D18-0001-0506](#); [DRC-OTP-0128-0020](#); [DRC-OTP-0185-0810](#); [DRC-D18-0001-0463](#) (“[REDACTED]”) at 03:59; 04:16; 07:26; 23:49; 32:33 and 52:18; [DRC-D18-0001-0431](#) at 01:50:39 and 01:52:52; [DRC-OTP-2058-0251](#) (“[REDACTED]”) at 46:46. *See also* video [DRC-OTP-0127-0064](#) at 47:10-47:23 showing the “FPLC” insignia in 2004 when ranks were attributed in the course of a ceremony in [REDACTED].

³³⁹⁵ D-0172: T-245,27:1-4 (“Q. And did that uniform have any marks or letters or insignias on it? A. Yes. There was writing. Q. What did the writing say? A. It was written ‘APC’”).

³³⁹⁶ [DRC-OTP-0127-0064](#) at 47:10-47:23 showing the “FPLC” insignia in 2004 when ranks were attributed in the course of a ceremony in [REDACTED].

³³⁹⁷ P-0883:T-168,15:21 (arriving in Bule Camp one day after being abducted); 37:7 (leaving Bule to go fight in a battle in [REDACTED] that ended on [REDACTED]).

³³⁹⁸ P-0883:T-168,16:5.

³³⁹⁹ P-0883:T-168,18:16.

³⁴⁰⁰ [REDACTED]

G. Witness P-0883's testimony about rape is unreliable

1207.P-0883 gave inconsistent statements about the nature of her sexual and personal relations with various individuals. In both of her victim application forms, the witness indicated that she had a lengthy relationship with someone named Commander [REDACTED];³⁴⁰¹ during her testimony, however, P-0883 testified that “[REDACTED] didn't touch me” and that any such relationship would have been impossible because of her age.³⁴⁰²

1208.P-0883 also gave inconsistent accounts of her relations with [REDACTED]. P-0883, during her direct examination, was asked “What other camps did you used to go with him? A. We left [REDACTED] for camp [REDACTED]. And then we separated during the fighting in [REDACTED].”³⁴⁰³ Then later, the witness stated that “at [REDACTED] and [REDACTED] were there. Commander [REDACTED] was with us before.”³⁴⁰⁴ Since P-0883 testified that she spent only one day at [REDACTED] before going to [REDACTED], it is unclear how [REDACTED] could have raped the witness, or when he was beaten and punished for this alleged crime.³⁴⁰⁵

H. Conclusion

1209.P-0883's testimony is worthy of no regard, except as an indication of the lengths to which witnesses in this case will go to falsely incriminate Ntaganda.³⁴⁰⁶

Section III - P-0888

A. Introduction

1210.P-0888 testified that, at the age of 14,³⁴⁰⁷ he was abducted early one morning [REDACTED] by UPC forces;³⁴⁰⁸ taken for training in MANDRO;³⁴⁰⁹

³⁴⁰¹ [DRC-OTP-2079-1430](#), p.1434(“Commander [REDACTED] was my partner [...]”); [DRC-OTP-2079-1430](#), p.1440 (“C’est à cette occasion que j’ai eu le partenaire[REDACTED], l’un des commandant de l’UPC avec qui j’ai passé une année”).

³⁴⁰² **P-0883**:T-170,14:18;16:23-25(“Was [REDACTED] your partner; yes or no? A. I was a child. I was only 12 years old. [REDACTED]was already an adult. Do you think he was going to go out with a minor?”).

³⁴⁰³ **P-0883**:T-168,34:3-5.

³⁴⁰⁴ **P-0883**:T-170,6:20-21.

³⁴⁰⁵ **P-0883**:T-168,33:20-23(“They punished [REDACTED], he was beaten. But in spite of that he came back and did the same thing”).

³⁴⁰⁶ [DRC-OTP-2079-1430](#), p.1435; **P-0883**:T-168,65:17-19(“to this day, I don't have a house”).

³⁴⁰⁷ **P-0888**:T-105,18:11(“[...] myself at the time I was 14, if I recall correctly”).

³⁴⁰⁸ **P-0888**:T-105,13:10-14.

³⁴⁰⁹ **P-0888**:T-105,16:17-18.

[REDACTED];³⁴¹⁰ and fought successively in battles at SONGOLO,³⁴¹¹ MONGBWALU³⁴¹² and BUNIA³⁴¹³ before escaping from the UPC.³⁴¹⁴ P-0888 said he witnessed various bloody horrors, including being ordered to kill civilian women, old people, children³⁴¹⁵ and “babies who couldn't even walk”;³⁴¹⁶ to destroy their houses;³⁴¹⁷ the execution, on Mr NTAGANDA's direct order, of a UPC recruit who tried to desert;³⁴¹⁸ rapes and beatings of recruits;³⁴¹⁹ and the [REDACTED] one of Mr NTAGANDA's vehicles in MONGBWALU.³⁴²⁰

1211. P-0888's testimony was replete with lies and contradictions. Baptismal and school records show that he lied about his date of birth by a magnitude of four years; failed to identify almost anyone with whom he served in the UPC; contradicted himself as to whether close friends had been killed in fighting; offered a description of events in Mongbwalu that misstates basic events and circumstances; flatly contradicted the account of his movements given by [REDACTED], [REDACTED], who claimed they were together; and, frequently contradicted the account of events he previously gave to the OTP.

B. P-0888 lied about his age

1212. P-0888 testified that he was born [REDACTED] 1988³⁴²¹ and that at the time of his alleged abduction he was 14.³⁴²² The first and only documentary indication of the witness's age is a a hand-written “Residential I.D.” card from 2013 purportedly written [REDACTED] on the basis of information provided orally by P-0888 himself.³⁴²³ The card has no space for a birth date, but hand-written on the card is

³⁴¹⁰ P-0888:T-105,62:7-9.

³⁴¹¹ P-0888:T-105,46:7-47:14.

³⁴¹² P-0888:T-105,74:1-75:11.

³⁴¹³ P-0888:T-105,85:21.

³⁴¹⁴ P-0888:T-105,88:23-89:4.

³⁴¹⁵ P-0888:T-105,46:15-47:14;54:24-25;75:15-23;79:15-21;80:11-81:18.

³⁴¹⁶ P-0888:T-105,54:25.

³⁴¹⁷ P-0888:T-105,46:15-47:14;57:19-23;58:11-24;77:7-15;82:17-83:8.

³⁴¹⁸ P-0888:T-105,41:17-42:5.

³⁴¹⁹ P-0888:T-105,33:19-34:13;39:7-40:2.

³⁴²⁰ P-0888:T-105,76:10-25.

³⁴²¹ P-0888:T-105,8:20-9:9.

³⁴²² P-0888:T-105,18:11.

³⁴²³ [DRC-OTP-2075-0644](#); P-0888:T-105,9:20-10:3 (“I was the one who gave all the information to the person who issued this card”).

“[REDACTED]1988.”³⁴²⁴ P-0888 attributed the incorrect day to the “person who wrote it down.”³⁴²⁵

1213. The baptismal records from [REDACTED] parish³⁴²⁶ list a “[REDACTED]” (which the witness confirmed is his baptismal name)³⁴²⁷ and correctly identifying his parents’ names.³⁴²⁸ The pages of the relevant record were photographed in colour and authenticated by D-0134, [REDACTED].³⁴²⁹ D-0134 also recognised the signature of the priest who recorded the entry for “[REDACTED]”.³⁴³⁰ The Prosecution’s objection to the reliability of this document on the basis that it should have been photocopied in full to see whether there was another entry for a person with a similar name³⁴³¹ is speculative and without merit.

1214. The entry indicates that this [REDACTED] was baptised on [REDACTED] 1998,³⁴³² and was born “[REDACTED] 84.”³⁴³³ P-0888 acknowledged that he was baptised in [REDACTED].³⁴³⁴ He testified, further, that he was baptised “in the [REDACTED] year of primary school,”³⁴³⁵ and [REDACTED] “[REDACTED],”³⁴³⁶ which he repeated.³⁴³⁷ A record for the school year [REDACTED] shows P-0888 failing or being “excluded” at the end of [REDACTED].³⁴³⁸ The school register for the school year [REDACTED] also shows [REDACTED] witness’s name.³⁴³⁹ These two [REDACTED] documents therefore show that P-0888’s [REDACTED] school were [REDACTED] and [REDACTED]. P-0888, accordingly, was [REDACTED] Primary

³⁴²⁴ [DRC-OTP-2075-0644](#).

³⁴²⁵ **P-0888**:T-105,10:8-9.

³⁴²⁶ [DRC-D18-0001-1464](#).

³⁴²⁷ **P-0888**:T-106,69:8-12.

³⁴²⁸ **P-0888**:T-106,69:18-24.

³⁴²⁹ **D-0134**:[DRC-D18-0001-5822](#).

³⁴³⁰ [REDACTED]

³⁴³¹ PCB,para.733.

³⁴³² [DRC-D18-0001-1464](#),p.1467,ln.30554, [REDACTED] “[REDACTED]”;**P-0888**:T-106,70:16-21.

³⁴³³ [DRC-D18-0001-1464](#),p.1466, entry 30563.

³⁴³⁴ **P-0888**:T-106,70:10.

³⁴³⁵ **P-0888**:T-106,70:10-12.

³⁴³⁶ **P-0888**:T-109,26:13.

³⁴³⁷ **P-0888**:T-109,29:21-24(“At [REDACTED] I was studying in the same class the [REDACTED]. The first year I failed, and then I went back and I did another year in the same class”).

³⁴³⁸ [DRC-OTP-0118-0043](#),p.0046.

³⁴³⁹ [DRC-D01-0003-4868](#).

in [REDACTED] – meaning that the baptismal record accords with his testimony.³⁴⁴⁰
[REDACTED].³⁴⁴¹

1215. None of the others being baptised with P-0888 were born anywhere near as late as 1988: the latest date of birth amongst P-0888's group as reflected in the records was January 1987, and the rest were born in 1986 (3), 1985 (2), 1984 (5), and 1983 (2).³⁴⁴²

C. P-0888 invented the circumstances of his abduction

1216. P-0888 claimed that he was abducted when he and his friends “went to fetch some water, and we were getting ready to go to school, because, you see, that day it was my turn to go and fetch water before school.”³⁴⁴³ This was after, but during the same year, that LOMPONDO was chased from Bunia.³⁴⁴⁴ P-0888 asserted that he was attending [REDACTED] at the time, and that his studies there were interrupted by his alleged abduction.³⁴⁴⁵

1217. School records for [REDACTED] for the years [REDACTED] and [REDACTED] show no record of P-0888 having been registered or abandoned his studies.³⁴⁴⁶ Indeed, the school record for [REDACTED], which could only have been P-0888's second attempt to pass [REDACTED], shows that he was amongst those who at the end of the year “*sont exclus*” – for “*age + conduite*”.³⁴⁴⁷ Furthermore, the first battle in which P-0888 claims he fought was at SONGOLO, which the Prosecution asserts was “on or about 31 August 2002.”³⁴⁴⁸ Whether based on timeline or school record, P-0888's testimony that he was abducted while going to “fetch water before school”³⁴⁴⁹ is false.

³⁴⁴⁰ P-0888:T-106,70:10-12.

³⁴⁴¹ [REDACTED].

³⁴⁴² See [DRC-D18-0001-1464](#), pp.1466-1469.

³⁴⁴³ P-0888:T-105,16:7-8.

³⁴⁴⁴ P-0888:T-105,14:23-15:11.

³⁴⁴⁵ P-0888:T-105,13:10.

³⁴⁴⁶ [DRC-OTP-0118-0020](#); [DRC-OTP-0118-0003](#).

³⁴⁴⁷ [REDACTED].

³⁴⁴⁸ PCB, para.162.

³⁴⁴⁹ P-0888:T-105,16:7-8.

D. P-0888 was unable to describe the names of companions within the UPC, and invented the names of those with whom he was allegedly abducted

1218. P-0888 testified that he was [REDACTED] from prior to the fighting at SONGOLO,³⁴⁵⁰ until the UPC was routed in Bunia. P-0888 was unable to recall the name of [REDACTED] with whom he served for these six months, with the exception of [REDACTED], “[REDACTED].”³⁴⁵¹ He was also unable to recall the name of: any recruit at Mandro, with the exception discussed below; any UPC commanders other than those whose identities are notorious; any commander at SONGOLO; or the name of any alleged rapist at Mandro.³⁴⁵²

1219. The one exception to this forgetfulness was his ability to remember the names of three friends with whom he was abducted: “[REDACTED].”³⁴⁵³ “[REDACTED]” was “a friend” of P-0888, but he could not recall his last name, the school he went to, or the names of any siblings.³⁴⁵⁴ P-0888 testified on direct that “[REDACTED]” had died at [REDACTED];³⁴⁵⁵ but when asked during cross-examination where [REDACTED] was living when he was abducted, P-0888 spontaneously offered: “At that time [REDACTED]. I don't know where he lives now.”³⁴⁵⁶

1220. “[REDACTED]” was also a “close friend,”³⁴⁵⁷ but not close enough that P-0888 could remember his family name, name of any siblings, the school that he attended,³⁴⁵⁸ or to consistently identify at which of two battles that occurred more than six months apart he was allegedly killed.³⁴⁵⁹ P-0888 was likewise unable to identify “[REDACTED]”’s family name, any other name, the names of any siblings, the school that he attended, or at which of two battles more than six months apart he was allegedly killed.³⁴⁶⁰

³⁴⁵⁰ P-0888:T-105,62:6.

³⁴⁵¹ P-0888:T-105,64:11,21.

³⁴⁵² P-0888:T-105,38:2-5,39:12-17,60:2-5.

³⁴⁵³ P-0888:T-105,21:1-6.

³⁴⁵⁴ P-0888:T-106,37:15-38:10.

³⁴⁵⁵ P-0888:T-105,48:8-19.

³⁴⁵⁶ P-0888:T-106,37:17(underline added).

³⁴⁵⁷ P-0888:T-106,39:1-2.

³⁴⁵⁸ P-0888:T-106,39:3-13.

³⁴⁵⁹ P-0888:T-105,48:12-13(“He died during the operation in [REDACTED]”); T-106,39:24(“[REDACTED] and [REDACTED] died in [REDACTED]”).

³⁴⁶⁰ P-0888:T-106,40:11-41:8.

E. P-0888 described events that he would have known did not occur if he had been present at Mongbwalu, and concocted false and incriminating stories

1221.P-0888 claimed that Mr NTAGANDA participated physically in the first unsuccessful attack on Mongbwalu,³⁴⁶¹ and that KISEMBO participated physically in both attacks in November 2002.³⁴⁶² P-0888 implied that he saw this with his own eyes,³⁴⁶³ yet the well-substantiated evidence is that Mr NTAGANDA was nowhere near MONGBWALU during the first unsuccessful operation;³⁴⁶⁴ and that KISEMBO was not present until after the second attack was over.³⁴⁶⁵

1222.P-0888 and [REDACTED] both asserted that FPLC forces collaborated during the attack with “other soldiers called *effacer le tableau*”³⁴⁶⁶ – an operation having nothing to do with Mongbwalu.³⁴⁶⁷ If P-0888 ([REDACTED]) had participated in that operation, they would not have made such an obvious mistake.³⁴⁶⁸

1223.P-0888 also failed to: describe the road to Mongbwalu,³⁴⁶⁹ even asserting that he travelled all the way to Mongbwalu in a pick-up truck;³⁴⁷⁰ give any description of where he arrived or where he went in Mongbwalu;³⁴⁷¹ describe any specific feature of Mongbwalu;³⁴⁷² locate the headquarters of SALUMU;³⁴⁷³ accurately locate where Bosco NTAGANDA was based;³⁴⁷⁴ or identify any place known as “*les Appartements*”³⁴⁷⁵ despite claiming that [REDACTED].

1224.P-0888’s uncorroborated story about [REDACTED] attached to one of Mr NTAGANDA’s vehicles is a clichéd fabrication based on elements from the well-

³⁴⁶¹ **P-0888**:T-105,74:4-18(“we went with Bosco and other soldiers [...] we failed. We returned to [REDACTED]”); T-107,14:12(“We were together”).

³⁴⁶² **P-0888**:T-107,14:20-23;T-105,74:17-21;T-107,18:18-21.

³⁴⁶³ **P-0888**:T-105,81:25;74:1-21;76:1-2; T-107,14:24-15:2;16:24-17:6.

³⁴⁶⁴ **P-0017**:T-58,62:9-10; **D-0017**:T-253,38:25-40:10; **P-0901**:T-28,40:14-18.

³⁴⁶⁵ [DRC-OTP-2058-0251](#),2:53-4:02.

³⁴⁶⁶ **P-0888**:T-105,75:17; T-107,18:3-12;[REDACTED].

³⁴⁶⁷ **P-0046**:T-101,72:7-13; **P-0315**:[DRC-OTP-2058-0990](#),para.126.

³⁴⁶⁸ [REDACTED]“[REDACTED].” ([REDACTED]). Cf. **P-0315**:DRC-OTP-2058-0990,para.126 ([REDACTED]).

³⁴⁶⁹ **P-0888**:T-107,11:19-12:18.

³⁴⁷⁰ **P-0888**:T-107,11:12-13(“[REDACTED]”).

³⁴⁷¹ **P-0888**:T-107,13:6-9.

³⁴⁷² **P-0888**:T-107,15:12-14.

³⁴⁷³ **P-0888**:T-107,15:12-14;19:6(“[REDACTED].”)

³⁴⁷⁴ **P-0888**:T-107,18:18-19:1; cf.**D-0017**:T-253,41:24-42:1; **P-0002**:[DRC-OTP-2060-0002](#),para.59; **D-0300**:T-217,46:13-47:24.

³⁴⁷⁵ **P-0888**:T-107,19:13(“[REDACTED]”).

known story of [REDACTED], who drove around Bunia with a [REDACTED]³⁴⁷⁶ [REDACTED].

F. P-0888 narrative was substantially inconsistent

1225. P-0888 gave a fine-grained description during his testimony of having been taken to “[REDACTED]” [REDACTED]³⁴⁷⁷ in [REDACTED]³⁴⁷⁸ after being abducted; [REDACTED] “[REDACTED]” [REDACTED],³⁴⁷⁹ [REDACTED]³⁴⁸⁰ [REDACTED],³⁴⁸¹ and that he remained at [REDACTED] for two days, during which time they sang songs to raise morale,³⁴⁸² before being transported to Mandro once [REDACTED] recruits had been assembled.³⁴⁸³ This description contradicts his prior statement to the Prosecution, in which he stated that at the moment of abduction he was “thrown into the back of a black pickup” and that “it took us two hours to get there”³⁴⁸⁴ (i.e. to Mandro). A two-day stop at [REDACTED] was also thrown into his itinerary after leaving Mandro for Songolo,³⁴⁸⁵ without any such stop being mentioned in his prior statement to the Prosecution.³⁴⁸⁶ These coincidental errors are instead the hallmark of a fabricated story – which was reinforced by the witness’s insistence that he had said all this during his interview with the Prosecution.³⁴⁸⁷

1226. P-888 also misidentified RWAMPARA as Mandro,³⁴⁸⁸ which is an unlikely mistake given the substantial differences in topography and vegetation, as is visible on the videos themselves.

G. P-0888’s testimony is irreconcilable with that of [REDACTED]

1227. [REDACTED],³⁴⁸⁹ who introduced him to the OTP.³⁴⁹⁰ They also, according to [REDACTED], [REDACTED] for a time.³⁴⁹¹ P-0888 at first denied that he had even

³⁴⁷⁶ P-0888:T-107,20:12-18.

³⁴⁷⁷ [REDACTED]

³⁴⁷⁸ [REDACTED]

³⁴⁷⁹ [REDACTED]

³⁴⁸⁰ [REDACTED] (“[REDACTED]”); [REDACTED] (“[REDACTED]”).

³⁴⁸¹ [REDACTED] (“[REDACTED]”).

³⁴⁸² P-0888:T-105,19:14-20.

³⁴⁸³ P-0888:T-105,16:16-18;T-106,49:5.

³⁴⁸⁴ P-0888:T-106,51:24-52:5.

³⁴⁸⁵ [REDACTED].

³⁴⁸⁶ P-0888:T-107,21:20-22:12.

³⁴⁸⁷ P-0888:T-107,22:8-20 (“If I remember correctly, I said that we had spent [REDACTED] at [REDACTED] before we went to [REDACTED]”).

³⁴⁸⁸ P-0888:T-107,22:22-23:22.

seen [REDACTED] after his interviews with the OTP, but then conceded that [REDACTED] had taken him to the hospital shortly afterwards.³⁴⁹² Despite the familiarity implied by such assistance, and despite living as [REDACTED],³⁴⁹³ P-0888 implausibly denied that he has had any contact with [REDACTED] ever since.³⁴⁹⁴ P-0888's only explanation was that he does not "have money to pay for transportation" to [REDACTED], who "was living at his end and I was at my own end."³⁴⁹⁵ P-0888 even categorically denied at one point that he had ever discussed the events of 2002-2003 with [REDACTED],³⁴⁹⁶ although elsewhere he says otherwise,³⁴⁹⁷ as does [REDACTED].³⁴⁹⁸

1228. Despite these indications of concealment of collusion, [REDACTED] and P-0888 could not get their stories aligned in respect of fundamental elements of their overlapping chronology:

- P-0888 testified that he participated in both operations in Mongbwalu,³⁴⁹⁹ whereas [REDACTED] testified that [REDACTED] did not participate in any operation after SONGOLO, and that [REDACTED];³⁵⁰⁰ and
- P-0888 testified that he never [REDACTED]"was not in touch with him at that time",³⁵⁰¹ whereas [REDACTED] said that [REDACTED].³⁵⁰²

H. P-0888's motives and opportunity to lie

1229. P-0888, at the time of his testimony, [REDACTED].³⁵⁰³ [REDACTED]. P-0888's absolute denials of discussions with [REDACTED] on any topic³⁵⁰⁴ is suggestive that [REDACTED].

³⁴⁸⁹ P-0888:T-106,4:21-22.

³⁴⁹⁰ P-0888:T-106,66:14-67:12;73:19-74:10.

³⁴⁹¹ [REDACTED].

³⁴⁹² P-0888:T-106,78:7-20.

³⁴⁹³ P-0888:T-105,9:20-24; [REDACTED].

³⁴⁹⁴ P-0888:T-106,66:10-67:19;72:23-74:23;77:9-78:5;78:6-81:7;81:13-82:5; T-107,4:24-6:6;36:23-37:11.

³⁴⁹⁵ P-0888:T-106,75:23.

³⁴⁹⁶ P-0888:T-106,77:2-4.

³⁴⁹⁷ P-0888:T-107,6:7-7:24.

³⁴⁹⁸ [REDACTED].

³⁴⁹⁹ P-0888:T-105,74:1-21.

³⁵⁰⁰ [REDACTED].

³⁵⁰¹ P-0888:T-106,76:1-4.

³⁵⁰² [REDACTED]; P-0888:T-107,7:25-9:14.

I. Conclusion

1230.P-0888 lied knowingly and repeatedly in collusion with [REDACTED] about his age and involvement with UPC forces.

Section III - P-0898 and P-0911's Mandro Lists

A. Introduction

1231.P-0898 claimed that he was trained by and served in UPC forces for most of the 2002-2003 school year, only re-commencing his studies “at the end of the month of [REDACTED]”,³⁵⁰⁵ or in [REDACTED], [REDACTED].³⁵⁰⁶

1232.School records show, however, that P-0898 not only passed the 2002-2003 school year, but received periodic marks during the first semester. P-0898 claimed that school officials had inserted marks for the first semester based on averaging marks from the second. This possibility was denied by D-0201, [REDACTED];³⁵⁰⁷ by [REDACTED] P-0551, who explained that such an absence would mean that the student would have “had to wait for the following school year in order to take up school again”.³⁵⁰⁸

1233.Doubts about P-0898's story are reinforced by his description of his movements within the UPC which are (i) internally contradictory; (ii) irreconcilable in major respects with the testimony of [REDACTED], P-0911; and (iii) inconsistent with facts that are well-established by other evidence. The “Mandro List” [REDACTED] is a well-executed, but nevertheless an obvious forgery.

1234.The doubts concerning the main elements of P-0898's testimony also make his claim that he re-joined [REDACTED] forces for a short period [REDACTED] in retaking Bunia unreliable. Contemporaneous photographs purporting to show the witness with a rifle were not shown to P-0911 and P-0918 for identification.

³⁵⁰³ P-0888:T-106,87:5.

³⁵⁰⁴ P-0888:T-106,87:20-24.

³⁵⁰⁵ P-0898:T-155,44:24-25.

³⁵⁰⁶ P-0898:T-155,43:21,45:8-9.

³⁵⁰⁷ [REDACTED]

³⁵⁰⁸ [REDACTED]

B. Authentic school records raise reasonable doubt about P-0898's veracity

1235. P-0898's testimony is that he was continuously absent for at least [REDACTED]³⁵⁰⁹ (if not [REDACTED])³⁵¹⁰ months out of a ten-month 2002-2003 school year,³⁵¹¹ while he was serving in, or being trained by, UPC forces. He also testified that [REDACTED] registered him for the 2002-2003 school year either at the end of [REDACTED] 2003, or in [REDACTED] 2003.³⁵¹²

1236. P-0898's claim of a [REDACTED] continuous absence from school while associated with UPC forces is flatly contradicted by the existence of authenticated school records showing that he received grades in the first and second semester, and successfully completed, the 2002-2003 school year [REDACTED].³⁵¹³ P-0898 did not contest the authenticity of these records, but said: "in the first semester I was not studying [...] when I went back to school during the second semester, the marks that I had at the end of the semester were taken into consideration and they inserted them in the first semester boxes"³⁵¹⁴ – "they took into consideration the marks from the first – from the second term and they put them on the first term so that that area of the report would not be empty."³⁵¹⁵

1237. P-0898's explanation is not credible. First, the record itself shows that for the twelve subjects for which grades are given, only one reflects a grade in the first semester that is the same, or even similar to, a grade in the second semester.³⁵¹⁶ There is no discernible "averaging." [REDACTED].³⁵¹⁷ Third, D-0201³⁵¹⁸ and P-0551,³⁵¹⁹ [REDACTED], both

³⁵⁰⁹ **P-0898**:T-155,44:4,44:24-25([REDACTED]"at the end of the month of [REDACTED]").

³⁵¹⁰ **P-0898**:T-153,43:5("in the month of [REDACTED]"),44:23("you stated you went back to school in [REDACTED]; is that right? A.Yes, indeed");45:2("I went back to school in the month of [REDACTED]"); T-154,42:5-9("right up until [REDACTED], when you decided to go back to school. That is your testimony, correct? A. Yes");T-155,43:20-21 ("I began my studies again in the month of [REDACTED], I resumed my studies in the month of [REDACTED]").

³⁵¹¹ [REDACTED].

³⁵¹² **P-0898**:T-153,43:6 ("re-register at school"); T-155,45:8-9("It was after the UPC that [REDACTED] registered me at school"); [REDACTED]("[REDACTED]").

³⁵¹³ [REDACTED]

³⁵¹⁴ **P-0898**:T-153,44:4-8.

³⁵¹⁵ **P-0898**:T-153,43:8-10; T-155,47:21("the criteria was to see how the student or pupil studied during the second semester").

³⁵¹⁶ [DRC-OTP-2082-0572](#).

³⁵¹⁷ [REDACTED]("[REDACTED].")

³⁵¹⁸ **D-0201**:T-246,72:10-12("about eight days").

³⁵¹⁹ **P-0551**:T-197,38:15-18 ("30 days").

testified that an extended period of absence would result in a student being removed from the school rolls and/or failing that school year.

1238. The Prosecution asserts that P-0551's testimony supports the possibility that the *bulletin scolaire* is a "falsification"; that school officials might overlook absences of those participating in militia of their ethnicity; or that long absences might be overlooked because school was so frequently interrupted by insecurity.³⁵²⁰

1239. P-0551 did testify that there was – and still is – a problem with documents being forged using stolen school seals and stolen blank school forms, scanning tools, or even bribing school principals to issue documents.³⁵²¹ P-0551 rejected, however, that it would be feasible even for a school principal to forge a school "*bulletin*" corroborated by a "*palmarès*" which, according to P-0551, is subject to supervision and verification by a variety of separate actors and committees.³⁵²² Furthermore, [REDACTED];³⁵²³ [REDACTED].³⁵²⁴

1240. P-0551 also rejected the Prosecution's suggestion that a student could be in school and at the same time a member of an armed group.³⁵²⁵ He allowed that a school principal might be inclined to give favourable treatment, but that this would be limited to registration for the subsequent year, but that this could not overcome the extent of absence described by P-0898: "[w]hen a child had deserted during a particular school year X, then the child could not come back to school to ask to be registered in the same year, no. He had to wait for the following school year in order to take up school again".³⁵²⁶

1241. D-0201 corroborated this testimony, asserting that in his experience [REDACTED], service in a military group would not constitute a justified absence.³⁵²⁷

1242. This possibility also does not arise on the facts. P-0918, [REDACTED] did not inform the school about his purported association with UPC forces because she "didn't want

³⁵²⁰ PTB, para. 701.

³⁵²¹ P-0551: [DRC-OTP-1054-0031](#), paras. 43, 44, 46; [DRC-OTP-2095-0376](#), para. 47.

³⁵²² P-0551: [DRC-OTP-1054-0031](#), para. 45.

³⁵²³ [DRC-OTP-2082-0572](#); [DRC-D18-0001-2434](#), [REDACTED]

³⁵²⁴ [REDACTED] ("[REDACTED]").

³⁵²⁵ P-0551: [DRC-OTP-2095-0376](#), para. 39; T-197, 39:4-12.

³⁵²⁶ P-0551: T-197, 72:18-21.

³⁵²⁷ D-0201: T-246, 73:22-74:1 ("[REDACTED]").

that to become known.”³⁵²⁸[REDACTED], “[REDACTED]”³⁵²⁹ [REDACTED].³⁵³⁰ D-0201³⁵³¹ and P-0551³⁵³² also confirmed that any such requests would have to come from the parents.

1243. Schooling was interrupted in 2002-2003 school year by attacks, but not of such duration as to permit a student to miss between [REDACTED] and [REDACTED] months of the school year and still continue. The main attacks on [REDACTED] ([REDACTED])³⁵³³ and after 5 March [REDACTED] ([REDACTED]).³⁵³⁴ [REDACTED].³⁵³⁵ P-0898’s purported absence from school falls squarely within this period of relative calm in [REDACTED]. D-0057 testified that all registered students in his [REDACTED] school attended class in the 2002-2003 school year or had valid reasons for non-attendance.³⁵³⁶ Furthermore, the 2002-2003 [REDACTED] shows [REDACTED].³⁵³⁷ Extended absences in 2002-2003, accordingly, were noted by school authorities and resulted in abandonment of studies.

1244. P-0201’s inability to [REDACTED]³⁵³⁸ is irrelevant³⁵³⁹ given the documentary evidence. Those records were not only authenticated, but all purported explanations for their existence compatible with P-0898’s claimed absence from school were rejected by D-0201 and P-0551.

C. P-0898’s testimony is internally contradictory, contradicted by other witnesses on key elements, and incompatible with other evidence of events in which he claims to have participated

1245. P-0898’s testimony was internally inconsistent and materially contradicted to a degree that cannot be explained by faulty memory:

³⁵²⁸ P-0918:T-158,23:10-17.

³⁵²⁹ P-0898:T-155,45:9.

³⁵³⁰ P-0898:T-155,90:11.

³⁵³¹ [REDACTED]

³⁵³² [REDACTED] (“[REDACTED].”)

³⁵³³ See [REDACTED]

³⁵³⁴ See [REDACTED]

³⁵³⁵ [REDACTED]

³⁵³⁶ [REDACTED]

³⁵³⁷ [REDACTED]

³⁵³⁸ [REDACTED]

³⁵³⁹ *Contra* PCB, para. 705.

- a. Testifying that it was “Bosco who led the attack” during Mongbwalu 1,³⁵⁴⁰ and that he could “still see the image in [his] mind” of Bosco Ntaganda doing so,³⁵⁴¹ even though Mr Ntaganda was nowhere near Mongbwalu at the time;³⁵⁴²
- b. Testifying that he participated in Mongbwalu 2, including being “personally” present in SAYO,³⁵⁴³ despite [REDACTED] testimony³⁵⁴⁴ that P-0898 “never put [his] foot in Mongbwalu” during Mongbwalu 2;³⁵⁴⁵
- c. Testifying that he had participated in Mongbwalu 1 and entered the town of Mongbwalu,³⁵⁴⁶ despite [REDACTED] that [REDACTED] and they had stayed “behind”;³⁵⁴⁷
- d. Repeatedly testifying that he remained with UPC forces until [REDACTED] 2003,³⁵⁴⁸ but then shortening the time period to [REDACTED] 2003 after being shown the contradictory school records;³⁵⁴⁹
- e. Testifying that upon arrival at Mandro, recruits had to provide “name, the names of your parents, where you come from, your level of education, and your date of birth. That was the information required for the registration list which was held by the admin”;³⁵⁵⁰ but then, [REDACTED], saying that the registration occurred “when we completed our training,”³⁵⁵¹ thus attempting to reconcile his statements³⁵⁵² with date of the Mandro Lists; the witness

³⁵⁴⁰ The witness not only described this as the first attack on Mongbwalu, but gave a description of events that is compatible only with Mongbwalu 1: **P-0898**:T-154,9:17 (“We entered into the town and we spent two days, and afterwards the Lendu drove us out.”)

³⁵⁴¹ **P-0898**:T-154,10:12-16 (underline added).

³⁵⁴² See Part IV.

³⁵⁴³ **P-0898**:T-154,26:10-13.

³⁵⁴⁴ [REDACTED] (“[REDACTED]”), 32:23 (“[REDACTED].”); [REDACTED] (“[REDACTED]”); **P-0911**:T-157,30:17.

³⁵⁴⁵ [REDACTED] (“[REDACTED]”).

³⁵⁴⁶ **P-0898**:T-154,9:10-25,11:16-20.

³⁵⁴⁷ [REDACTED] (“[REDACTED]”); [REDACTED] (“[REDACTED]”).

³⁵⁴⁸ T-153,43:5;44:23;45:2; T-154,42:5-9;T-155,43:20-21.

³⁵⁴⁹ **P-0898**:See T-155,43:12-44:25.

³⁵⁵⁰ **P-0898**:T-153,59:1-5.

³⁵⁵¹ **P-0898**:T-153,59:11-12.

³⁵⁵² **P-0898**:T-155,10:11-16.

ultimately testified, implausibly, that there was registration at both the beginning and end of training,³⁵⁵³

- f. Describing that amongst his own group of recruits who trained briefly in [REDACTED] at [REDACTED], some were sent to Rwampara,³⁵⁵⁴ even though Rwampara training centre did not yet exist;³⁵⁵⁵ and
- g. Providing a host of inaccurate information about Mandro, including: (i) seeing the airdrop of weapons³⁵⁵⁶ that occurred prior to his arrival;³⁵⁵⁷ (ii) failing to identify ABELANGA on a video,³⁵⁵⁸ despite having given extensive testimony about him;³⁵⁵⁹ and (iii) misidentifying the Mandro video as being the moment of distribution of uniforms,³⁵⁶⁰ whereas it was in fact the marshalling of troops to be sent to Mongbwalu.³⁵⁶¹

1246. The details that P-0898 did manage to provide are not a significant indication that he actually was with UPC forces given his acknowledgement that he [REDACTED]³⁵⁶² that included “[REDACTED].”³⁵⁶³ The same events upon which P-0898 testified are discussed in [REDACTED], in some cases in great detail.³⁵⁶⁴ The [REDACTED] is said to be based on interviews with some thirty individuals, including former FNI combatants, UPDF commander [REDACTED], Witness [REDACTED], and alleged victims at Kobu.³⁵⁶⁵

1247. [REDACTED] did not question the authenticity of the 2002-2003 school report³⁵⁶⁶ and, in fact, was often unable or unwilling to say that P-0898 had been absent from school during the 2002-2003 school year. [REDACTED] testified that P-0898 joined the UPC

³⁵⁵³ **P-0898**:T-155,20:3-8; [REDACTED]

³⁵⁵⁴ **P-0898**:T-155,7:16-8:4.

³⁵⁵⁵ **P-0901**:T-29,50:25-51:1;**D-0300**:T-220,25:1-22.

³⁵⁵⁶ **P-0898**:T-155,40:4-15;40:25-41:3.

³⁵⁵⁷ See Part IV, Chap. II, Section III.

³⁵⁵⁸ **P-0898**:T-155,24:8-25:9;[REDACTED].

³⁵⁵⁹ **P-0898**:T-153,73:18;74:7;75:9.

³⁵⁶⁰ **P-0898**:T-155,29:1-30:7.

³⁵⁶¹ **D-0300**:T-216,7:20-24. See Part III, Chap. I, Section II.

³⁵⁶² **P-0898**:T-154,45:18-20.

³⁵⁶³ **P-0898**:T-154,54:4-11.

³⁵⁶⁴ See e.g. **P-0898**:T-154,56:13-25.

³⁵⁶⁵ **P-0898**:T-154,58:5-64:11.

³⁵⁶⁶ [REDACTED]

when he “was going to start the [REDACTED]”³⁵⁶⁷ and that this was when P-0898 had “just finished the [REDACTED][...] after the holidays he was supposed to start the [REDACTED]”.³⁵⁶⁸ After substantial questioning by the Prosecution steering [REDACTED] towards 2002, [REDACTED] again affirmed that this event had occurred prior to P-0898’s “[REDACTED]”: “He was due to enter the [REDACTED] and during those school holidays that had commenced in the month of June and they were due to continue until – that’s when he made the most of that opportunity to join the UPC.”³⁵⁶⁹ Ultimately, [REDACTED] professed a general lack of knowledge of the details as to when P-0898 was or was not in school:

The school had started up again, but it hadn’t opened its doors on a regular basis, so people went to school from time to time and his studies were interrupted from that time. I think about, what, 18 months over that particular period. [...] and that’s why he went to school and sometimes he didn’t go to school because of the upheavals. I can’t remember the details. That’s all I can tell you.³⁵⁷⁰

1248. P-0911 provides no meaningful corroboration of P-0898’s testimony; on the contrary, their testimony is contradictory. P-0918 testified that P-0898 returned from service with [REDACTED]³⁵⁷¹ whereas P-0898 made no mention [REDACTED]. [REDACTED] testified in emotional language that she [REDACTED];³⁵⁷² P-0898 affirmed sarcastically that he did [REDACTED].³⁵⁷³

1249. Any corroboration, moreover, is outweighed by the indications of collusion between P-0898, P-0911 and P-0918, [REDACTED]. [REDACTED],³⁵⁷⁴[REDACTED].³⁵⁷⁵ [REDACTED],³⁵⁷⁶ [REDACTED], “[REDACTED]”³⁵⁷⁷ [REDACTED] “[REDACTED]” [REDACTED] “[REDACTED]”³⁵⁷⁸ [REDACTED].³⁵⁷⁹ [REDACTED] “[REDACTED]”.³⁵⁸⁰

³⁵⁶⁷ [REDACTED]

³⁵⁶⁸ [REDACTED]

³⁵⁶⁹ [REDACTED]

³⁵⁷⁰ [REDACTED].

³⁵⁷¹ [REDACTED] (“[REDACTED]”).

³⁵⁷² [REDACTED]

³⁵⁷³ [REDACTED]

³⁵⁷⁴ [REDACTED]. [REDACTED]

³⁵⁷⁵ [REDACTED]

³⁵⁷⁶ [REDACTED] (“[REDACTED]”)

³⁵⁷⁷ [REDACTED]

³⁵⁷⁸ [REDACTED] (“[REDACTED].”)

1250.P-0911 denied that he had been [REDACTED] or that[REDACTED].³⁵⁸¹ These denials suggest that [REDACTED].

1251.D-0207 knew [REDACTED] well enough to know that he had been[REDACTED]³⁵⁸² but never heard that he subsequently joined or fought with UPC forces.³⁵⁸³

D. The “Mandro Lists” are not authentic

1252.First, the date appearing on the three documents – 27 August 2002 – is not compatible with [REDACTED].³⁵⁸⁴ [REDACTED], [REDACTED], but not between.³⁵⁸⁵ The latter date is incompatible with the [REDACTED] of having served [REDACTED] “[REDACTED]” [REDACTED]³⁵⁸⁶ [REDACTED] “[REDACTED]”³⁵⁸⁷ – [REDACTED]. Accordingly, the [REDACTED] can correspond only [REDACTED] – which is two full months before the date on the “Mandro lists.”³⁵⁸⁸

1253.Second, the circumstances of the hand-over of the documents to the Prosecution raise serious doubts about their provenance. He travelled [REDACTED] for the express purpose of meeting the Prosecution, yet only handed over the first two Mandro lists on the third day of interviews.³⁵⁸⁹ [REDACTED] also had difficulty explaining why he [REDACTED] only three lists, [REDACTED].³⁵⁹⁰ [REDACTED] that the three lists were the “only lists” [REDACTED]³⁵⁹¹ but later affirmed that he [REDACTED]“other lists.”³⁵⁹² When asked about the eleven-day interval between providing the first two and the third list, [REDACTED] offered a convoluted story about going “to [REDACTED] to get the third list”,³⁵⁹³ [REDACTED] and there I was able to get the documents.”³⁵⁹⁴

³⁵⁷⁹ [REDACTED]

³⁵⁸⁰ [REDACTED]

³⁵⁸¹ [REDACTED]

³⁵⁸² **D-0207:T-261,49:15-18.**

³⁵⁸³ **D-0207:T-261,28:8-24**(“[REDACTED] .”)

³⁵⁸⁴ [REDACTED](“[REDACTED]”; [REDACTED](“[REDACTED]”),[REDACTED].

³⁵⁸⁵ [DRC-OTP-0051-0210](#),para.3; [DRC-OTP-0051-0184](#),para.9.

³⁵⁸⁶ [REDACTED](“[REDACTED].”); [REDACTED] (“[REDACTED]”), [REDACTED](“[REDACTED].”)

³⁵⁸⁷ [REDACTED](“[REDACTED]”); [REDACTED](“[REDACTED]”).

³⁵⁸⁸ [DRC-OTP-2081-0003](#)(“le 27/08/2002”);[REDACTED].

³⁵⁸⁹ [REDACTED]; *see* [REDACTED]; [REDACTED]([REDACTED].)

³⁵⁹⁰ [REDACTED](“[REDACTED]”)

³⁵⁹¹ [REDACTED]

³⁵⁹² [REDACTED]

³⁵⁹³ [REDACTED]

³⁵⁹⁴ [REDACTED]

[REDACTED] then purportedly obtained the third list “together with some photos”³⁵⁹⁵ but was unable to obtain any other documents subsequently because, inexplicably, “[t]here is nothing left in [REDACTED].”³⁵⁹⁶ [REDACTED] also failed to provide any plausible explanation for [REDACTED] documents that he asserted would endanger his security, claiming that he had done so because he had been taught [REDACTED].³⁵⁹⁷

1254. Third, two of the “Mandro Lists” bear the notation “FPLC” or “*Force Patriotique pour la libération du Congo*.” This would make the documents the first ever to bear the expression “FPLC.” Other official documents from this same time period – notably a series of documents issued on 11 September 2002 – refer instead to “*L’armée de l’UPC-RP*.”³⁵⁹⁸ The first appearance of “FPLC” is in a document of 26 September 2002,³⁵⁹⁹ and the acronym was still unfamiliar enough on 21 October 2002 to require the clarification “*notre branche armée, en sigle ‘FPLC’*.”³⁶⁰⁰

1255. Fourth, several witnesses – including of the Prosecution – disputed the accuracy of the biographical information on the “Mandro lists.” [REDACTED] recognised a name similar to his own on [REDACTED], but testified that he was born on [REDACTED],³⁶⁰¹ not “[REDACTED]”; that his mother’s name was “[REDACTED]”³⁶⁰² not “[REDACTED]”; and that the name of his father – [REDACTED]³⁶⁰³ – [REDACTED].³⁶⁰⁴ [REDACTED] also testified that he started training [REDACTED].³⁶⁰⁵ [REDACTED] also denied that this information had been asked of him upon his arrival at Mandro.³⁶⁰⁶ D-0038 testified that he personally knew that [REDACTED],³⁶⁰⁷ [REDACTED],³⁶⁰⁸ [REDACTED]³⁶⁰⁹ [REDACTED]³⁶¹⁰ never

³⁵⁹⁵ [REDACTED]

³⁵⁹⁶ [REDACTED]

³⁵⁹⁷ P-0911:T-157,50:12-13.

³⁵⁹⁸ DRC-OTP-0037-0266; See [DRC-OTP-0037-0268](#).

³⁵⁹⁹ DRC-OTP-0092-0436,p.0440. See D-0300:T-233,14:2-4,35:3-24.

³⁶⁰⁰ [DRC-OTP-0029-0274](#).

³⁶⁰¹ [REDACTED]

³⁶⁰² [REDACTED]

³⁶⁰³ [REDACTED] (“[REDACTED].”)

³⁶⁰⁴ [REDACTED].[REDACTED].[REDACTED].

³⁶⁰⁵ [REDACTED] (“[REDACTED]”).

³⁶⁰⁶ [REDACTED]

³⁶⁰⁷ D-0038:T-249,67:12 (“Singo Chavalire never did military service”).

³⁶⁰⁸ D-0038:T-249,68:7-9 (“Do you think somebody who was trained in [REDACTED] needed to be trained in [REDACTED] ? He was already a soldier, a trained soldier. He didn't need that”).

³⁶⁰⁹ D-0038:T-249,69:10-12.

trained at [REDACTED]. This is corroborated by D-0172, who denied that he ever trained or was a trainer at Mandro, and testified that most of his biographical information is incorrect, including the name of the school that he attended,³⁶¹¹ the level of educational attainment,³⁶¹² his place of birth,³⁶¹³ his year of birth,³⁶¹⁴ and his mother's name.³⁶¹⁵ Furthermore, [REDACTED] of [REDACTED] has a name strikingly similar to [REDACTED] – “[REDACTED].” [REDACTED] denied that this was his own name, attempting to explain that [REDACTED] was in fact a twin brother,³⁶¹⁶ [REDACTED].³⁶¹⁷ Yet [REDACTED] became unrealistically evasive when asked questions about this twin.³⁶¹⁸

1256. The Mandro Lists do reflect some accurate biographical details of the persons named, including: [REDACTED] place of birth, his father's name, and his education institution; and D-0172's father's name, possible origin, and an alternate date of birth for [REDACTED] that was published in a newspaper in 2003.³⁶¹⁹ [REDACTED].³⁶²⁰ The degree of detail found in the Mandro Lists, accordingly, is outweighed by the numerous and substantial inaccuracies that cannot be attributable to mere mistake.

E. P-0898's testimony that he participated in combat in [REDACTED] is unreliable

1257. P-0898 claimed that when the [REDACTED] and there was “a surprise attack” by [REDACTED], P-0898 and others were re-armed [REDACTED] and other UPC commanders to regain control of Bunia.³⁶²¹ He claims that he is pictured [REDACTED].³⁶²²

1258. The Prosecution failed, however, to show [REDACTED] purportedly of P-0898 to two witnesses in a position to corroborate his self-identification: P-0911 and P-0918.

³⁶¹⁰ [DRC-OTP-2081-0003](#), ll.32,36; [DRC-OTP-2081-0072](#), ll.16,19; 70:21.

³⁶¹¹ D-0172:T-245,37:11.

³⁶¹² D-0172:T-245,37:14.

³⁶¹³ D-0172:T-245,15:15.

³⁶¹⁴ D-0172:T-245,15:9.

³⁶¹⁵ D-0172:T-245,37:9.

³⁶¹⁶ [REDACTED]

³⁶¹⁷ [REDACTED]

³⁶¹⁸ [REDACTED]

³⁶¹⁹ [DRC-OTP-0134-0626](#), p.0638.

³⁶²⁰ [REDACTED] (“[REDACTED]”).

³⁶²¹ P-0898:T-154,29:13-20;32:17-33:12.

³⁶²² [REDACTED]

Further, D-0201 failed to identify P-0898 [REDACTED],³⁶²³ and D-0207 [REDACTED].³⁶²⁴[REDACTED].³⁶²⁵ [REDACTED] commented that “[i]t seemed to me that they were Lendu combatants, judging by their size and the way they looked.”³⁶²⁶

1259.[REDACTED]. [REDACTED],³⁶²⁷ [REDACTED] “[REDACTED]” [REDACTED],³⁶²⁸ [REDACTED] “[REDACTED].”³⁶²⁹

F. Conclusion: P-0898 lied about being a child soldier

1260.P-0898 lied about being a child soldier. It cannot be excluded that he may have gone to Mandro for some short period before returning to school in September 2002, but the school records, internal contradictions, and indications that the Mandro Lists are forgeries [REDACTED] raise serious doubts about this veracity.

Section IV - P-0010

A. Introduction

1261.P-0010 was an untruthful witness. She gave at least four different dates of birth, and concocted belated and false allegations [REDACTED]. She offered manifestly incorrect or no details about events at which she claimed to have been present. P-0010 demonstrated time and again that she was a stubborn and biased witness, unconstrained by the truth.

B. P-0010’s testimony regarding the group by which she was initially recruited was untruthful

1262.P-0010 gave an interview to a MONUC Child Protection Advisor on [REDACTED] 2003, nearly contemporaneous with the events she described³⁶³⁰ stating that she enlisted with the APC at the end of 1999. Numerous details are provided about this APC recruitment, including location (“[REDACTED]”); by whom (“[REDACTED]”); with

³⁶²³ D-0201:T-246,75:9-76:3.

³⁶²⁴ [REDACTED]

³⁶²⁵ [REDACTED]

³⁶²⁶ [REDACTED] (“it’s as if those people were Lendus, if you go by their, their looks”).

³⁶²⁷ [REDACTED]

³⁶²⁸ [REDACTED]

³⁶²⁹ [REDACTED]

³⁶³⁰ [DRC-OTP-0206-0120](#);P-0046:T-100,81:17-89:19.

whom (“[REDACTED]”); being trained at [REDACTED] for nine months (“[REDACTED]”), by [REDACTED] (“[REDACTED]”); and, a detailed account of the locations of her subsequent deployments (“[REDACTED]”, “[REDACTED]”) and the APC commanders at those locations (“[REDACTED]”, “[REDACTED]”).³⁶³¹

1263. These details are corroborated by extrinsic evidence that the APC: (1) had a military training camp with Ugandan trainers at Rwampara in 1999;³⁶³² (2) was involved in the only known attack on Kparnganza;³⁶³³ and (3) included commanders Alex MUNYALIZI and DIDIER.³⁶³⁴ P-0010 also testified that a “Commander PEPE” was the commander of RWAMPARA,³⁶³⁵ who was an APC, not UPC, commander.³⁶³⁶ Further corroboration that P-0010 was recruited by the APC is provided by [REDACTED], [REDACTED] and [REDACTED].³⁶³⁷

1264. P-0010 lied during her testimony that she “was never part of the APC”³⁶³⁸ and that the “only armed group that I know that I participated in was the UPC.”³⁶³⁹ Her interview as recorded by MONUC was “lies.”³⁶⁴⁰ P-0010 tried to give as few details as possible about the circumstances of her alleged abduction by the UPC, claiming repeatedly that she could not remember anything about who abducted her, how many they were, what they said,³⁶⁴¹ or even the name of a single other UPC recruit or trainer with whom she allegedly trained at Rwampara.³⁶⁴²

1265. P-0010 could not help contradicting herself, however. In her first VAF, she declared that she was allegedly abducted “[REDACTED],”³⁶⁴³ whereas during her testimony it was while fleeing to BENI from Bunia.³⁶⁴⁴ In her second VAF, whose accuracy is high given that it was prepared with OPCV’s assistance, she was (i) “ramenés à

³⁶³¹ [DRC-OTP-0206-0120](#), p.0120-0121.

³⁶³² **P-0014**:[DRC-OTP-2054-0429](#), p.0490:15-20 (“Rwampara centre. It was run by the UPDF from Uganda [...] That was around, 1999”); **P-0016**:[DRC-OTP-0126-0422](#), para.207; **P-0190**:T-96,18:9-14.

³⁶³³ [DRC-OTP-0037-0512](#); [DRC-OTP-0037-0536](#); [DRC-OTP-0214-0116](#), p.0120, p.0121 and 0123.

³⁶³⁴ [REDACTED]; **D-300**:T-215,26:17-20.

³⁶³⁵ **P-0010**:T-46,32:4-8;35:8-23;38:13-14.

³⁶³⁶ **P-0901**:T-30,56:17-25; [DRC-OTP-0033-0058](#), p.006; [DRC-OTP-0066-0047](#).

³⁶³⁷ [REDACTED] (“[REDACTED]”); [REDACTED] (“She said that she was part of the APC”); [REDACTED]; [REDACTED]; [DRC-OTP-0221-0375](#), ll.152,217.

³⁶³⁸ **P-0010**:T-50,12:12.

³⁶³⁹ **P-0010**:T-49,71:24-25.

³⁶⁴⁰ **P-0010**:T-49,71:25.

³⁶⁴¹ **P-0010**:T-46,30:1-10;40:17;41:19-20.

³⁶⁴² **P-0010**:T-46,40:17 (“I have already forgotten their names”), 42:16-18.

³⁶⁴³ [DRC-OTP-0206-0255](#), p.0264.

³⁶⁴⁴ **P-0010**:T-46,29:12-19.

[REDACTED], puis dans un centre de formation à Mandro” for 2 weeks immediately after being abducted; (ii) then taken to Rwampara for two weeks; (iii) then taken back to Mandro where she was given a weapon [REDACTED]; and (iv) fought in battles at MONGBWALU, TCHOMIA and MBAU.³⁶⁴⁵ Her testimony asserts a different sequence of events: (i) being taken first to Rwampara, where she received training for one month;³⁶⁴⁶ (ii) then Mandro for further training;³⁶⁴⁷ (iii) then back to Rwampara where she received “weapons and military uniform”,³⁶⁴⁸ (iv) traveling to ARU [REDACTED];³⁶⁴⁹ (v) [REDACTED];³⁶⁵⁰ before (vi) participating in various battles.

1266.P-0010’s recruitment into the APC and serving with that force for at least two years could not be forgotten. Her stubborn unwillingness to acknowledge this recruitment indicates an intent to mislead.

C. P-0010 lied about her age, date and place of birth

1267.P-0010 testified before this Trial Chamber under oath and without hesitation that she was born in [REDACTED] on [REDACTED] 1989.³⁶⁵¹

1268.This is at least the sixth different date of birth provided by the witness: (i) the MONUC interview indicates birth in the year [REDACTED];³⁶⁵² (ii) the *attestation de naissance* from [REDACTED], dated [REDACTED] 2005, says “[REDACTED] 1988” at “[REDACTED]”,³⁶⁵³ (iii) a *carte d’électeur*³⁶⁵⁴ and *extrait d’identité*³⁶⁵⁵, which appears to be dated [REDACTED], give the date and place of birth as “[REDACTED] 1986” and “[REDACTED]”; and (iv) a VAF of [REDACTED] declares that P-0010 was born on [REDACTED]1989.³⁶⁵⁶

³⁶⁴⁵ [DRC-OTP-0206-0255](#),p.0281.

³⁶⁴⁶ P-0010:T-49,7:18-23.

³⁶⁴⁷ P-0010:T-46,41:11-18.

³⁶⁴⁸ P-0010:T-46,31:2-42:21.

³⁶⁴⁹ P-0010:T-47,20:21(“At that time I wasn’t [REDACTED]”).

³⁶⁵⁰ P-0010:T-47,20:24; T-50,7:21-23.

³⁶⁵¹ P-0010:T-46,28:16-18; T-50,27:23-28:1

³⁶⁵² [REDACTED];[DRC-OTP-0206-0120](#),p.0120,para.145.

³⁶⁵³ [DRC-OTP-0132-0012](#).

³⁶⁵⁴ [DRC-D01-0003-5482](#).

³⁶⁵⁵ [DRC-OTP-0231-0275](#).

³⁶⁵⁶ [DRC-OTP-2078-2252](#).

1269. P-0010 also gave inconsistent statements about her age at the time of events, stating in her first VAF that she had just turned 15 at the time of abduction,³⁶⁵⁷ but then testifying in this Trial Chamber that “I was aged 13.”³⁶⁵⁸

1270. D-0211, who knew P-0010 well,³⁶⁵⁹ testified that P-0010 told her that she had been born in [REDACTED].³⁶⁶⁰ D-0251 [REDACTED] were, by appearance, roughly the same age³⁶⁶¹ and that none appeared to be under 15 years old.³⁶⁶²

1271. The witness never answered “I don’t know” or “I’m not sure” in relation to any of these questions before this Trial Chamber. The witness is undoubtedly aware that [REDACTED].³⁶⁶³ Her testimony about her age demonstrates an evident and alarming disregard for the truth.

D. P-0010’s testimony about [REDACTED] is not credible

1272. P-0010’s testimony about [REDACTED] is untruthful, unreliable and contradictory. In her 2003 interview with MONUC, P-0010 declared [REDACTED] “[REDACTED]”; [REDACTED].³⁶⁶⁴ The story about being raped by “[REDACTED]” finds no echo in her future statements or testimony, which includes only the general allegation “that [REDACTED] would rape girls,” but without suggesting that he had raped her.³⁶⁶⁵ In her [REDACTED] interview with the Prosecution, P-0010 [REDACTED] denied that he had acted in any way improperly in this regard: “Commandant BOSCO avaient donnés des ordres précis de ne pas nous importuner.”³⁶⁶⁶

1273. Further indications of fabrication are revealed by her inability to describe the events consistently. P-0010 testified on direct that she was raped “[REDACTED] [...] before entering Mongbwalu.”³⁶⁶⁷ This contradicted her previous statement to the Prosecution that the rape occurred “after we had fought in Mongbwalu” when they had “finished the

³⁶⁵⁷ [DRC-OTP-0206-0255](#), p.0263 (“J’avais à peine 15 ans d’âge”).

³⁶⁵⁸ **P-0010**:T-46,31:14.

³⁶⁵⁹ [REDACTED]; [DRC-OTP-0221-0375](#), l.152,217.

³⁶⁶⁰ [REDACTED]

³⁶⁶¹ [REDACTED]

³⁶⁶² [REDACTED] (“[REDACTED]”).

³⁶⁶³ [REDACTED].

³⁶⁶⁴ [DRC-OTP-0206-0120](#), p.0121.

³⁶⁶⁵ **P-0010**:T-47,36:12-13.

³⁶⁶⁶ **P-0010**:[DRC-OTP-0126-0122](#), para.38.

³⁶⁶⁷ **P-0010**:T-47,32:2-3 (underline added).

fighting and were going back to Bunia.”³⁶⁶⁸ P-0010 went back to this version during cross-examination, affirming that the version in her statement “is the truth.”³⁶⁶⁹ This latter version of events, aside from being inconsistent with her own testimony, [REDACTED].³⁶⁷⁰ [REDACTED].³⁶⁷¹

1274. P-0010’s [REDACTED] allegations of rape are similarly [REDACTED] unconvincing. The 2003 MONUC interview and [REDACTED] formal statement make no reference to rape by [REDACTED] or [REDACTED]. These omissions are not a consequence of her unwillingness to discuss such allegations as both refer to sexual violence, including the allegation against “[REDACTED]” and an unsuccessful attempted rape by [REDACTED].³⁶⁷² Her description of rape by [REDACTED] is devoid of any meaningful detail.³⁶⁷³

1275. P-0010’s story is also contradicted by [REDACTED], whom P-0010 testified had been raped [REDACTED]. [REDACTED] denied that Mr NTAGANDA ever had sexual relations with her or any other bodyguard.³⁶⁷⁴ The Prosecution theory that [REDACTED] covered up her own rape by [REDACTED] because of feelings of “financial indebtedness” and “obedience to his order”³⁶⁷⁵ is implausible speculation and unjustifiably demeans [REDACTED].

1276. [REDACTED], who was at that time [REDACTED]’s boyfriend,³⁶⁷⁶ also denied that [REDACTED] raped [REDACTED] and denied P-0010’s testimony³⁶⁷⁷ that he had [REDACTED].³⁶⁷⁸ [REDACTED] contradicted P-0010’s claim that [REDACTED].³⁶⁷⁹ [REDACTED] also testified that P-0010 did not complain of having been raped.³⁶⁸⁰

³⁶⁶⁸ [DRC-OTP-2079-2011](#), para.21.

³⁶⁶⁹ **P-0010**:T-50,41:24-42:5.

³⁶⁷⁰ [REDACTED]; [REDACTED]

³⁶⁷¹ See [REDACTED]; [REDACTED]

³⁶⁷² [DRC-OTP-0126-0122](#), para. 38; [DRC-OTP-0206-0120](#), p.0121.

³⁶⁷³ **P-0010**:T-50,44:5-10.

³⁶⁷⁴ [REDACTED]

³⁶⁷⁵ [REDACTED]

³⁶⁷⁶ **P-0010**:T-47,33:1-4.

³⁶⁷⁷ **P-0010**:T-50,39:22-40:5; [DRC-OTP-2079-2011](#), para.25.

³⁶⁷⁸ [REDACTED]

³⁶⁷⁹ [REDACTED]

³⁶⁸⁰ [REDACTED]

E. P-0010 lied in identifying herself on the Rwampara Video

1277. P-0010 purported to recognise herself on the RWAMPARA video,³⁶⁸¹ but at the same time acknowledged that she had no memory of the event,³⁶⁸² and was unable to offer any salient details about when it occurred³⁶⁸³ or what happened.³⁶⁸⁴ She was also unable to identify NGWAPE,³⁶⁸⁵ RAFIKI,³⁶⁸⁶ TINANZABO,³⁶⁸⁷ KASANGAKI³⁶⁸⁸ or ZIMULENDA³⁶⁸⁹ on the video, and misidentified [REDACTED] as KIZA.³⁶⁹⁰ [REDACTED],³⁶⁹¹ [REDACTED]³⁶⁹² and D-0300³⁶⁹³ all identified the person whom she identified as herself as being [REDACTED].

F. P-0010 lied about having been present at the November 2002 Mongbwalu Battle

1278. P-0010 incorrectly asserted that UPC forces going to fight in the November 2002 battle in Mongbwalu took “the Kobu road”,³⁶⁹⁴ that KISEMBO was present during the attack in which she participated, even though it is well-established that he arrived later;³⁶⁹⁵ failed to spontaneously identify “Sayo” as a location where fighting occurred;³⁶⁹⁶ failed to describe either herself or Mr NTAGANDA as having participated in fighting at SAYO;³⁶⁹⁷ failed to spontaneously identify or recognise a location known as “*les appartements*”,³⁶⁹⁸ failed to identify Mr NTAGANDA’s residence in Mongbwalu,³⁶⁹⁹

³⁶⁸¹ P-0010:T-49,23:6-12.

³⁶⁸² P-0010:T-49,18:13-15; 17:19-20.

³⁶⁸³ P-0010:T-49,7:4-6;7:14-17;7:24-8:3 (unable to recall how long after the end of her training she was present at Rwampara).

³⁶⁸⁴ P-0010:T-49,13:4-5;14:17-20;15:2-3;15:8-9(unable to recall Lubanga addressing troops, how long she had been there or what happened before his arrival, where she went afterwards and whether LUBANGA and Bosco NTAGANDA left together).

³⁶⁸⁵ P-0010:T-49,18:24-19:13; D-0080:[DRC-D18-0001-6163](#),para.61(c).

³⁶⁸⁶ P-0010:T-49,19:22-20:5; [REDACTED]

³⁶⁸⁷ P-0010:T-49,20:6-16;D-0080:[DRC-D18-0001-6163](#),para.61(e); [REDACTED];P-0005:T-189,8:25-9:12 in video [DRC-OTP-0120-0294](#).

³⁶⁸⁸ P-0010:T-49,20:17-25; [REDACTED].

³⁶⁸⁹ P-0010:T-49,36:1-12;D-0080:[DRC-D18-0001-6163](#),para.60.

³⁶⁹⁰ P-0010:T-49,35:17-18;[DRC-D18-0001-0463](#) at 17:03; [REDACTED]

³⁶⁹¹ [REDACTED]

³⁶⁹² [REDACTED]

³⁶⁹³ [REDACTED]

³⁶⁹⁴ P-0010:T-47,10:2.

³⁶⁹⁵ P-0010:T-50,17:2-3.

³⁶⁹⁶ P-0010:T-47,10:19-16:5; T-50,19:2-13.

³⁶⁹⁷ P-0010:T-50,19:3-9.

³⁶⁹⁸ P-0010:T-47,19:8-9.

³⁶⁹⁹ P-0010:T-47,12:19-22.

until being guided to that answer;³⁷⁰⁰ failed to name any commander who instructed “*kupiga na kuchaji*”,³⁷⁰¹ and incorrectly [REDACTED].³⁷⁰²

1279. [REDACTED] testified that he first met P-0010 [REDACTED].³⁷⁰³ The Prosecution argues that [REDACTED] said otherwise until he was “guided by Defence Counsel” [REDACTED]. [REDACTED]’s statement negates this argument,³⁷⁰⁴ which is ironic in light of the number of times that P-0010 was led to details different than those she spontaneously recalled.

G. P-0010 was a combative, biased and uncooperative witness

1280. P-0010 was not a witness whose repeated self-contradictions and evasiveness can be attributed to mental or emotional fragility. Even when instructed by the Presiding Judge to answer a particular question, for example, P-0010 pronounced that “If there are any questions concerning me, he can put them to me, but with regard to the period after my leaving the army, I do not want him to put questions to me in this regard.”³⁷⁰⁵ When a portion of what she had told the Prosecution was read to her, P-0010 answered pugnaciously: “Those who took down that information, do they know my father? Do they know my mother? It is only my parents who know the date on which I was born.”³⁷⁰⁶

1281. The Prosecution’s claim that [REDACTED] “[REDACTED]”³⁷⁰⁷ [REDACTED] “[REDACTED]”³⁷⁰⁸ [REDACTED].³⁷⁰⁹ [REDACTED]³⁷¹⁰ [REDACTED].³⁷¹¹ [REDACTED]’s testimony was consistent and credible, including her forthright acknowledgement that she had lied about being associated with an armed group to enter [REDACTED].

H. Conclusion

³⁷⁰⁰ P-0010:T-47,19:1-14.

³⁷⁰¹ P-0010:T-47,15:3-5.

³⁷⁰² [REDACTED]

³⁷⁰³ [REDACTED].

³⁷⁰⁴ [REDACTED].

³⁷⁰⁵ P-0010:T-48,57:22-58:4.

³⁷⁰⁶ P-0010:T-50,28:6-11.

³⁷⁰⁷ PCB, para. 745.

³⁷⁰⁸ [DRC-OTP-0221-0375](#), l. 152.

³⁷⁰⁹ [DRC-OTP-0221-0375](#), l. 217.

³⁷¹⁰ [REDACTED]

³⁷¹¹ [REDACTED]

1282.P-0010 lied repeatedly about her date of birth and age of recruitment. Not even the Prosecution stands behind her testimony that she was a child soldier.³⁷¹² She is a witness whose testimony is entirely unreliable and whose right to participate in these proceedings, [REDACTED], should be revoked.

CHAPTER II – VIDEO AND PHOTOGRAPHIC EVIDENCE OF CHILD SOLDIERS IN THE FPLC

Section I - Introduction

1283. The video and photographic evidence does not show any FPLC or UPC soldier who can be assessed with confidence, let alone beyond reasonable doubt, as being under 15 years of age. The volume of individuals who might be under 15 does not overcome the insufficiency: a 60% probability that a person committed each of five separate murders no more meets the standard of the standard of proof in a criminal trial than a 60% probability of a single murder. Proof beyond reasonable doubt has also not been established by corroboration: with the exception of P-0010's unreliable evidence about the age of the person whom she erroneously identified as herself, and the age and identification of [REDACTED], the Prosecution adduced no evidence about the age of the subjects on the videos.

1284. The Rwampara video shows that none of the youngest individuals at the assembly are holding the *batons* that are characteristic of being a trainee. D-0080 and Mr. NTAGANDA's uncontradicted testimony is that the youngest were subsequently turned away. The visible difference in apparent age between the youngest recruits without *batons* and those who are seen graduating on the Rwampara video is strong direct evidence that individuals who were too young were, at some stage prior to graduation, rejected.

1285. The eleven other videos cited by the Prosecution are supported by no submissions: no subjects alleged to be under 15 are specified; no attempt is made to identify when the same person appears in different images; no age-range is proffered; and no substantiation of age estimates is offered. While some of the individuals on these photographs may attract age estimates straddling the age of 15, not a single one can be given an age estimate by a court of law that excludes 15 or above as unreasonable.

³⁷¹² PCB, para. 742.

Section II - Age assessments based on video and photographic imagery alone are subject to a wide margin of error

1286. Age is not an observable fact like the colour of a car. Assessment of age involves both opinion and estimation. Even when the full spectrum of “physical, developmental, psychological, environmental and cultural factors” are available to be evaluated such as during an interview, “age assessment is not an exact science and a considerable margin of uncertainty will always remain inherent in any procedure.”³⁷¹³ Even age assessments based on medical testing is understood as involving a margin of error of at least two years.³⁷¹⁴

1287. This does not mean that estimation of age based on visual observation of the subject is impossible. The *Lubanga* Appeals Chamber held that a video image of a subject “can be relied upon to establish the element of age”, but also warned of the “limitations of determining age on the basis of physical appearance”.³⁷¹⁵ The Trial Chamber had been “not unreasonable”, in making findings on the basis of images on a video where the subject was “‘clearly’ under the age of fifteen years.”³⁷¹⁶ Judge Ušacka, in dissent, did not agree that the Trial Chamber had applied the “clearly” standard to the evidence,³⁷¹⁷ and the majority observed that the Trial Chamber’s reasoning “in that regard could have been more extensive, which [...] would have facilitated appellate review.”³⁷¹⁸ The Appeals Chamber did not specify what margin exactly is required by “clearly”, but cited a Canadian trial judge who opined that he could not confidently distinguish in his judicial capacity between a 15-year old and an 18-year old,³⁷¹⁹ and an American decision that a court could reliably distinguish between a “prepubescent” and an adult – a margin of six to eight years.³⁷²⁰

1288. Age assessment is not unique to the issue of child soldiers. Other contexts demonstrate how legal presumptions inter-act with doubt about precise age. UK courts have held, in respect of asylum seekers who benefit from an international right to the “benefit of the

³⁷¹³ [Separated Children in Europe Programme](#), para.D.5.1 (underline added).

³⁷¹⁴ V. Feltz, p.3 [V. De Sanctis, A.T. Soliman](#), p.6.

³⁷¹⁵ [Lubanga AJ](#), paras.221-222.

³⁷¹⁶ [Lubanga AJ](#), para.222.

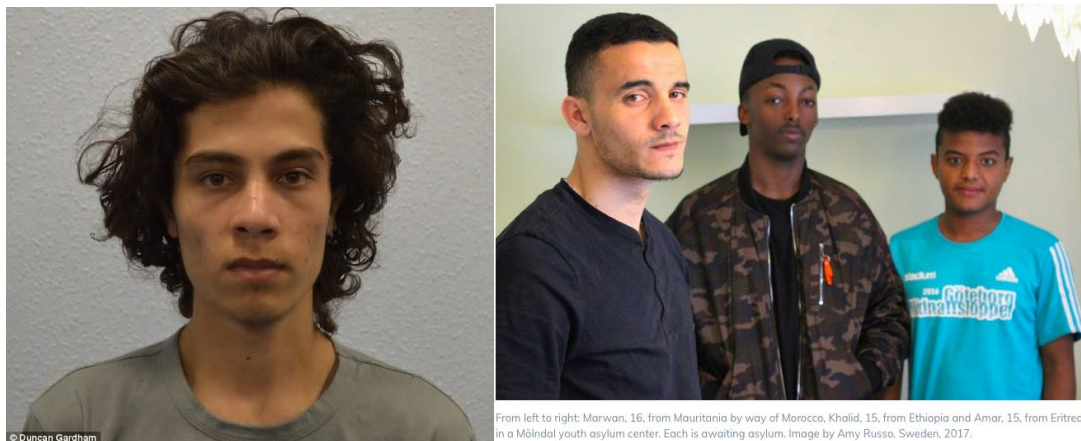
³⁷¹⁷ Ušacka dissent, para.44.

³⁷¹⁸ [Lubanga AJ](#), para.222.

³⁷¹⁹ [Loring](#), para.15 (“[c]onfidence is in no way enhanced if I am asked to distinguish between an eighteen year old and a fifteen, sixteen or seventeen year old”), cited in [Lubanga AJ](#), para.221.

³⁷²⁰ [Katz](#), para.21; [Amboss](#) (“on average puberty begins at the age of 11 in girls and 13 in boys”).

doubt,”³⁷²¹ that “except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant.”³⁷²² The physical appearance required to overcome the benefit of the doubt is illustrated by photographs of individuals for whom the benefit of the doubt has operated to find that they are not older than 17:³⁷²³



From left to right: Marwan, 16, from Mauritania by way of Morocco, Khalid, 15, from Ethiopia and Amar, 15, from Eritrea, in a Mölndal youth asylum center. Each is awaiting asylum. Image by Amy Russo, Sweden, 2017.

1289. Although the legal presumption works in the opposite direction from the presumption in a criminal prosecution relating to child soldiers, these photographs illustrate the extent to which intuitive age assessments must defer to the benefit of the doubt. All of the individuals pictured above may be perceived by a reasonable person as being over 17; but assessments that would be made “in the street”³⁷²⁴ are very different from the

³⁷²¹ UN Committee on the Rights of the Child, para.31 (“the benefit of the doubt such that if there is a possibility that the individual is a child, [s/he] should be treated as such”).

³⁷²² [Merton](#), para.37 (underline added).

³⁷²³ These images appear in larger format in Annex A, with details of the countries in which they were accepted as being under 18.

³⁷²⁴ P-0046:T-103,26:10.

assessment that is required in a courtroom consistent with the benefit of the doubt and inherent subjectivity of the exercise.

1290. P-0046, who possesses a superior level of experience in such matters, refused to offer any age estimate at all on the basis of a photographic image, asserting that “it would depend on so many factors that I find the exercise useless”.³⁷²⁵ The Presiding Judge expressed apparent agreement: “I get the point”.³⁷²⁶ P-0887 likewise testified that she could not “estimate someone’s age from a photograph”.³⁷²⁷ P-0116 testified that even in the context of live observation – *i.e.* not just photos or videos – of another African subject, and without mentioning the impact of any legal presumptions or legal standards of certainty, he would apply a 3-4 year margin of error to a visual assessment: “I think I would be able to determine a child between 11 and 13 and another between 16 and 18”.³⁷²⁸

1291. Estimates of persons of African descent by non-Africans is particularly subject to error, even when live observation is involved, to say nothing of the age-estimates based on photographic or video images.³⁷²⁹

1292. An even more stringent approach to age must be adopted by the Chamber than that articulated by P-0116 or the asylum caselaw described above because: (i) the age assessment that the Chamber is called upon to make is not based on an interview or live observation, but only a video or photograph; (ii) some of these videos are of very poor quality and show the individuals incompletely or indistinctly; (iii) the cross-cultural context increases the margin of error; and (iv) the applicable standard of certainty is “beyond reasonable doubt” not just the “benefit of the doubt” as in the asylum context. The least that should be required for a judicial determination that a person is under 15 is that the subject appear pre-pubescent, which would exclude an age estimate of 15 or above as unreasonable.

³⁷²⁵ P-0046:T-103,24:8-9.

³⁷²⁶ P-0046:T-103,26:6-11.

³⁷²⁷ P-0887:T-94,95:24.

³⁷²⁸ P-0116:T-196,39:9-10.

³⁷²⁹ [Merton](#), para.24 (“The difficulties are compounded when the young person in question is of an ethnicity, culture, education and background that are foreign, and unfamiliar, to the decision maker”).

Section III - The Rwampara video (DRC-OTP-0120-0293-Ex01 and DRC-D18-0001-0463)

A. Introduction

1293. The Prosecution's claim that the Rwampara video shows "numerous children who are clearly under the age of 15"³⁷³⁰ is wrong. The vast majority of individuals appear to be clearly over 15. A small minority may be estimated as appearing around 15 years of age. There are four who might reasonably be estimated as being under 15 years of age, but none so clearly that the Chamber can make a judicial determination of their age. Even if the Chamber decides otherwise, the Prosecution did not prove beyond a reasonable doubt that those four individuals were trained at Rwampara, let alone that they were ever accepted into the FPLC.

B. Visual assessment does not show that anyone on the Rwampara video is under 15

1294. The assembly at Rwampara commences with individuals lined up in the formation of three sides of a rectangle.³⁷³¹ Aside from the recruits in uniform who are graduating, everyone else is wearing civilian clothing, or wearing what appear to be unofficial uniforms. The left side of the rectangle ("Left Group") from the point of view of the camera, can be seen at the beginning of the assembly standing at attention and holding *batons* on the shoulders in a disciplined fashion.³⁷³² No one in the group on the right side of the rectangle from the point of view of the camera ("Right Group") has *batons*,³⁷³³ and the group straight ahead ("Middle Group") also appears to have no *batons*.³⁷³⁴

1295. As the camera pans from the Right Group to the Left Group, everyone in the former can be seen clapping, and everyone in the latter banging their *batons* on the ground, in time to the singing.³⁷³⁵ The Middle Group is mostly clapping, although some towards the left appear to have *batons*.³⁷³⁶ The contrast between the Right Group and the Left Group, in

³⁷³⁰ PCB, para. 681.

³⁷³¹ [DRC-D18-0001-0463](#), 00:32-00:35, 02:50-03:22.

³⁷³² [DRC-D18-0001-0463](#), 00:36-00:44. Images of this group to the left are seen again frequently in the videos: [DRC-OTP-0120-0293-Ex01](#), 07:08-07:13, 07:25-07:30, 11:10-11:30.

³⁷³³ Images of this group to the right are seen again frequently in the videos, including that none appear to be holding *batons*: [DRC-OTP-0120-0293-Ex01](#), 13:45-13:58, 16:26-17:10, 17:22-17:35.

³⁷³⁴ [DRC-OTP-0120-0293-Ex01](#), 2:50-3:22.

³⁷³⁵ [DRC-OTP-0120-0293-Ex01](#), 00:45-02:30.

³⁷³⁶ [DRC-OTP-0120-0293-Ex01](#), 00:45-02:30.

terms of posture and possession of *batons*, is clear at 09:56 to 10:12 and at 16:30 to 17:35, with the middle group appearing at approximately 17:08-17:22.³⁷³⁷ All three groups are seen again at 30:20-30:27.³⁷³⁸

1296. No one in the Left Group, with the *batons*, can receive an age estimate based on appearance that excludes 15 or higher at the upper end of the spectrum. From 4:15-4:16³⁷³⁹ the camera pans across six of the youngest-looking members of the Left Group. The maximum reasonably possible ages of any of the five individuals does not fall below 15 for any of them; some of them might be as old as 19.³⁷⁴⁰ The boy to the left of the man with the red beret is the youngest-looking of the entire Left Group,³⁷⁴¹ and he is the only person from the entire Left Group for whom the Prosecution asked D-0017 to give an estimation of age.³⁷⁴² D-0017's reasonable response was that the "image on the screen is not clear, so it's difficult for me to give you an estimate of this person's age".³⁷⁴³ A reasonable estimate of the person's age based on appearance is that he is around 15 with a wide margin of error, which falls far short of what is required to make a judicial determination that he is under 15.

1297. The vast majority of the individuals in the Right Group also appear to be 18 or over. There is a small minority who could be described as appearing around 15 years of age, with a wide margin of error.³⁷⁴⁴ At 16:17-16:25,³⁷⁴⁵ a man appears wearing a green shirt with a floral pattern. To the left of that man appears a line of six boys wearing successively beige, yellow, beige, camouflage, and 2 cream-coloured t-shirts. These boys are seen repeatedly in subsequently excerpts.³⁷⁴⁶ No reasonable age range would exclude 15 or over for any of these individuals. Any or all of them, based on appearance, could be 15, 16, 17, or even 18 years of age at the upper end of a reasonable age estimate.

³⁷³⁷ [DRC-OTP-0120-0293-Ex01](#), 9:56-10:12, 16:30-17:45.

³⁷³⁸ [DRC-OTP-0120-0293-Ex01](#), 30:20-30:27.

³⁷³⁹ [DRC-OTP-0120-0293-Ex01](#), 4:15-4:16.

³⁷⁴⁰ [DRC-OTP-0120-0293-Ex01](#), 4:15-4:16.

³⁷⁴¹ [DRC-OTP-0120-0293-Ex01](#), 11:10-11:30 (showing most of the left group, who are visibly substantially older).

³⁷⁴² D-0017: T-253, 80:8-24.

³⁷⁴³ D-0017: T-253, 80:25-81:12.

³⁷⁴⁴ See e.g. [DRC-OTP-0120-0293-Ex01](#), 16:24 (boys to the left of the man with the flower-print shirt could be assessed as being around 15 years of age, but not under 15 with any degree of confidence).

³⁷⁴⁵ [DRC-OTP-0120-0293-Ex01](#), 16:17-16:25.

³⁷⁴⁶ [DRC-OTP-0120-0293-Ex01](#), 18:40-19:00, 19:56-20:11, 21:30-21:45, 28:30-29:00.

1298. The same is true of the youngest-looking in the Middle Group. The camera pans across the Middle Group from 24:16 to 24:34, with the three individuals on the far left (24:33-24:34) having the youngest appearance.³⁷⁴⁷ Their facial features are indiscernible and their height and physique do not permit an age-range estimate that excludes 15 or above with any confidence.

1299. There are four individuals amongst the Right Group that appear the youngest: two individuals to the right of the man with the green shirt with a floral pattern, one of whom is wearing a green singlet;³⁷⁴⁸ a person with a bright green shirt at 16:54;³⁷⁴⁹ and a person with a cocked head at 17:01 who may be wearing a grey shirt.³⁷⁵⁰

1300. Although these individuals look young, they are not pre-pubescent. A reasonable estimate of the person in the bright green shirt – which was in fact given by D-0017³⁷⁵¹ – is 13 years of age. It cannot be said with any confidence – let alone the standard of confidence required in a criminal trial – that it is unreasonable to state that the person might be 15. He or she has oddly pronounced facial features and a body that does not appear to be pre-pubescent. The person may be a pygmy. Dr. Lawry's report suggests that 7.4% of the population of Ituri is pygmy,³⁷⁵² and Prosecution witnesses mentioned pygmies amongst recruits and FPLC soldiers.³⁷⁵³ P-0190 specifically remarked that the presence of pygmies would make it difficult to assess age based on height alone, and asserting that his knowledge of under-age children was based instead on where they were recruited from.³⁷⁵⁴

1301. The person with the cocked head is too hard to see for a meaningful age-estimate to be given. The two boys to the right of the man with the floral shirt are not so young that it would be unreasonable to give them an age estimate that includes the age of 15. In short, none of these four individuals – who appear to be the youngest amongst the entire assembly – can be safely found to be under the age of 15.

³⁷⁴⁷ [DRC-OTP-0120-0293-Ex01](#), 24:16-24:34.

³⁷⁴⁸ [DRC-OTP-0120-0293-Ex01](#), 16:26. These two also are visible at [DRC-OTP-0120-0293-Ex01](#), 10:27-10:30, 10:43-45, 18:21-59.

³⁷⁴⁹ [DRC-OTP-0120-0293-Ex01](#), 16:54, 24:08.

³⁷⁵⁰ [DRC-OTP-0120-0293-Ex01](#), 17:01, 24:12.

³⁷⁵¹ **D-0017**:T-253, 73:20-74:02.

³⁷⁵² [DRC-OTP-2084-0523](#), p.0565.

³⁷⁵³ **P-0017**:T-59, 44:7 (as recruits at Kilo); **P-0300**:T-166, 34:20, T-167, 65:4-8.

³⁷⁵⁴ **P-0190**:T-97, 15:22 (there "was not a single pygmy" in the FPLC) but also T-96, 88:21-22 ("there are Pygmies in our country, I can't tell by looking at people, just because somebody is short doesn't mean they're a child").

C. Even if anyone pictured on the video is under 15, it is unproven that they trained with the FPLC, let alone were ever allowed to join the FPLC

1302. The Rwampara video shows individuals at three different stages in relation to training:

(i) individuals without any *batons* indicating that they may have not commenced their training; (ii) individuals with *batons* indicating that they are in the middle of training, but have not yet graduated;³⁷⁵⁵ and (iii) individuals wearing uniforms and holding a weapon or a *baton* who have completed the training. A person traverses the threshold from trainee to soldier only once the third stage is reached.³⁷⁵⁶

1303. The Prosecution's assertion that all of these individuals are "within the ranks" of the UPC is unsubstantiated, and contrary to what is plain from the video itself. The only individuals who have graduated to the ranks of the UPC are those in uniform.³⁷⁵⁷ Their status as graduates is further confirmed by their appearance later on the video at NDROMO.³⁷⁵⁸ Not a single one of them appears to be under 15; almost all look obviously 18 or over. Their physique is well-visible at 6:51-7:01, and at 31:19-36:40.³⁷⁵⁹ The physical appearance of these graduates is, in itself, compelling evidence that the FPLC did apply an appropriate age threshold for becoming a soldier.

1304. No adverse inference can be drawn from the fact that none of the morale-boosting speeches included an order for the youngest individuals to be removed.³⁷⁶⁰ The absence of specific reference to age in these speeches does not reduce the plausibility of NTAGANDA and D-0080's testimony that [REDACTED]. The Prosecution's other argument, that knowledge of songs indicates that everyone present had already begun their training,³⁷⁶¹ is contradicted by Prosecution testimony that these songs were also popular amongst civilians.³⁷⁶²

³⁷⁵⁵ P-0883:T-168,15:23-16:3;P-0016: [REDACTED],P-0005:T-189,41:14-25,57:9-58:4.

³⁷⁵⁶ P-0055:T-71,79:24-82:3-16;P-0010:T-48,14:21-23;P-0963:T-78,52:12-16;P-0016:[DRC-OTP-2054-1447](#),57:10-13,57:22-25;D-0017:T-252,70:16-19.

³⁷⁵⁷ D-0080:[DRC-D18-0001-6163](#),para.61(b),(j).

³⁷⁵⁸ [DRC-D18-0001-6692](#),p.6702,11:235-239; [DRC-D18-0001-0463](#),51:17-54:20;D-0300:T-220,38:23-39:4;D-0080:[DRC-D18-0001-6163](#),para.59;D-0017:T-255,46:10-15.

³⁷⁵⁹ [DRC-OTP-0120-0293-Ex01](#),6:51-7:01,31:19-36:40.

³⁷⁶⁰ PCB,para.682.

³⁷⁶¹ PCB,para.682.

³⁷⁶² [REDACTED]

1305.D-0080 and NTAGANDA both affirmed that Mr NTAGANDA [REDACTED] were not of a suitable age for training.³⁷⁶³ [REDACTED] had already been informed that they would be returned to their villages, and that this was subsequently done.³⁷⁶⁴ Some had arrived as recently as the previous day and, accordingly, had not yet been sent home.³⁷⁶⁵ He also indicated that it was standard procedure to reject recruits deemed not physically suitable for training, either at the initial screening, during their first few days of training or, unusually, even after they had received a *baton*.³⁷⁶⁶ This testimony was corroborated by Mr NTAGANDA,³⁷⁶⁷ and is also supported by the visible difference in age between the graduates in uniform and the youngest members of the Right Group.

D. Age is not corroborated for anyone on the video

1306.P-0010's testimony concerning the age of anyone on the video is unreliable in light of her willingness to lie about her own age and other issues. Her testimony about [REDACTED] age³⁷⁶⁸ is contradicted by substantial evidence³⁷⁶⁹ and the image itself.

1307.P-0046's "Histoires Individuelles," based on interviews at Rwampara some six weeks after the video, provide no corroboration. No one on the video can be assumed to be the same individuals who are interviewed at Rwampara at the end of March 2003, many of whom indicate that they were recruited long before February 2003. Even if such an assumption was possible, the comment of one of the few who indicated that he joined the UPC in February 2003 was that he did not receive "real training": "[REDACTED]".³⁷⁷⁰ This further confirms that those who were perceived as too young were not trained, and certainly were not integrated into the ranks of the FPLC.

³⁷⁶³ [REDACTED]

³⁷⁶⁴ [REDACTED]

³⁷⁶⁵ D-0300:T-240,38:7("Some of them arrived the day before");D-0300:T-220,31:25-32:3.

³⁷⁶⁶ [REDACTED]; D-0300:T-220,38:9-10; [REDACTED].

³⁷⁶⁷ [REDACTED]

³⁷⁶⁸ P-0010:T-48,11:18("[REDACTED] was younger than me, but I don't know exactly how old she was").

³⁷⁶⁹ P-0010:T-47,59:11,62:16, T-48,11:9,12:7; [REDACTED];D-0251:T-260,18:8-9,19:19-20:7,8:3,96:14-15;D-0017:T-253,33:23-34:03,67:25

³⁷⁷⁰ [DRC-OTP-2082-1832](#),p.10.

Section IV - Other videos do not show anyone who can be judicially determined as under 15

A. Introduction

1308. The Prosecution cites, in a single footnote, excerpts from eleven videos to “show[] the obvious presence of children under the age of 15 within the ranks of the UPC”.³⁷⁷¹ The Prosecution does not specify who is under 15, what characteristics substantiate this conclusion, or even a general age range that the Prosecution considers as within the margins of reasonableness. These cursory submissions should be summarily dismissed, along with consideration of the videos.

1309. Most of the video excerpts are of poor quality; do not permit reasonable discernment of facial features; do not permit a proper evaluation of height, for whatever limited value that would have; and seldom give an extended opportunity of observation. These deficiencies widen the reasonable age range estimate. Although these estimates may straddle 15 for the youngest-looking subjects, none appear so young as to exclude 15 or above as unreasonable. Experienced witness P-0046 indicated that she was unable to provide an age estimate based on images of subjects.³⁷⁷² Judge Ušacka’s opinion in *Lubanga* opinion demonstrates, even in dissent, that an assessment that no one on the videos is under 15 is not unreasonable, which is the necessary standard.³⁷⁷³

B. DRC-OTP-0127-0058

1310. The excerpt at 00:50 ([REDACTED]) plainly does not include anyone for whom a reasonable assessment of the upper end of the age-range does not include 15 or higher. The face of the subject can be seen, but not body-size or height, nor the sizes or height of anyone in proximity. The Prosecution has offered no submissions explaining why the contrary is true.

1311. The image at 02:42 cannot sustain a narrow age-range estimate of the presumed subject, who is in the background, never fully visible, and without discernible facial features. The Prosecution makes no submissions as to whether the subject is the same as the person in the foreground at 00:50, who could reasonably be estimated as being

³⁷⁷¹ PCB, para. 678, fn. 2043.

³⁷⁷² P-0046: T-103, 24:14-26:11.

³⁷⁷³ *Lubanga AJ*, dissenting opinion, para. 67 (none of the videos “speaks for itself or shows individuals that are ‘manifestly underage’”).

18. No estimate of age could exclude as unreasonable 15 or above at the upper end of the range.

1312. No subject is identified by the Prosecution amongst the numerous individuals seen at 28:42, which should lead to summary rejection of the Prosecution's submission. No faces are visible and physique is difficult to evaluate. No age estimate is possible of anyone pictured that excludes 15 years of age or above.

C. DRC-OTP-0127-0061

1313. No one in excerpt 35:35-36:27 is specified by the Prosecution as under 15. The failure is unsurprising because there is no one in this excerpt for whom an age estimate can be given that does not include 15 years or above. The video is of poor quality and dark, making evaluation of facial features impossible or difficult.³⁷⁷⁴ The person at 35:26 ([REDACTED]) could be reasonably assessed as 18 years of age or above, and no one else on the videos is of an appearance that would exclude as unreasonable the possibility that they were 15 or above.

1314. No precision is given amongst the various individuals at 1:52:56 to 1:54:38 ([REDACTED]) as to which person is alleged to be under 15. The individuals are seated, giving no perspective on height or body movement. No age assessment of the seated person wearing a beret at 01:53:02 could reasonably exclude at least 25 or above at the upper end of the range.

1315. The subject standing by the door from 1:53:21 to 1:54:38 with the red beret is leaning. The close up at 1:54:27 does not reasonably permit to assess the age to be under 15 with sufficient certainty. The individual could plausibly be 16, 17 or 18 years old.

1316. Excerpt 1:52:56 to 1:54:38, which is relied on by the Prosecution, appears to show some of the same subjects as appear at 1:48:41 to 1:49:01, which is not. The absence of such cross-referencing subjects is a serious deficiency in the Prosecution's submissions, and is particularly puzzling given that the Prosecution placed reliance on 1:48:41 to

³⁷⁷⁴ [Lubanga AJ](#), dissenting opinion, para. 59 referring to EVD-OTP-00574; *Lubanga* Prosecution's Notice, para. 1.

1:49:01 in *Lubanga*, and Judge Ušacka commented that this “is, compared to all other excerpts, the strongest one”.³⁷⁷⁵

1317. In the expectation that the Prosecution would rely on 1:48:41 to 1:49:01, the Defence adduced testimonial evidence concerning the apparent age of the subject from two witnesses: one estimate straddled the age of 15;³⁷⁷⁶ the other was inconclusive.³⁷⁷⁷ Judge Ušacka did not find the image to be inconsistent with the proposition (which originated from the subject but was not relied on as evidence) that the person was 19 or 20.³⁷⁷⁸

1318. The subjects at 1:52:56 to 1:54:38 cannot be estimated with any confidence as being under 15. A Prosecution witness in this case could not do so, and nor could a judge in the *Lubanga* Appeal. These age estimates cannot be rejected as unreasonable.

D. DRC-OTP-0080-0002

1319. The excerpts (36:20-36:30 and 52:04-52:14) are of very poor quality, facial features are not discernible, and heights are difficult to assess in the absence of some objective reference point, and many subjects in uniforms have physiques that are more robust than those in the background, including with well-developed arms.³⁷⁷⁹ As stated by Judge Ušacka in *Lubanga*, “[w]hile there are some very tall persons compared to the surrounding individuals and to the person in question, it is unclear whether this is because they are older or because of other reasons”.³⁷⁸⁰ No finding can be made with any confidence that any of these individuals are under 15.

E. DRC-OTP-0120-0294

1320. The Prosecution does not specify who amongst the numerous individuals in any of these excerpts is under 15. No one visible at 02:02:43-02:02:46 even appears to be under 15. No facial features, especially of the person in the foreground can be

³⁷⁷⁵ [Lubanga AJ](#), dissenting opinion, para.53.

³⁷⁷⁶ **P-0030**:T-146,68:04-06,70:10-11(“between 14 and 15 years old”).

³⁷⁷⁷ **P-0887**:T-94,94:20-95:02(“I’ve said several times that it’s difficult for me to assess somebody’s age just by looking at a photograph. This is a very difficult task. The person has to be actually in front of me in real life for me to do that”).

³⁷⁷⁸ [Lubanga AJ](#), dissenting opinion, para.55.

³⁷⁷⁹ **P-0014**:T-138,89:15-20; [Lubanga AJ](#), dissenting opinion, para.59 referring to EVD-OTP-00410/EVD-OTP-00676; [REDACTED]([REDACTED]). See also [DRC-OTP-0080-0002](#), 52:04.

³⁷⁸⁰ [Lubanga AJ](#), dissenting opinion, para.66 referring to EVD-OTP-00410/00676(00:52:14); **P-0758**: [REDACTED] ([REDACTED]).

discerned. All of the individuals at 02:22:49-52 are sitting or crouching, making assessment of physical size impossible. The video is too dark to discern facial features. The one person standing appears to be over 18. None of the individuals at 02:44:18-02:44:25 appear to be under 15, and certainly no estimate of age could reasonably exclude 15 or above. The person at 02:47:14-20 is never fully visible.

1321.No age estimate could exclude as unreasonable an age of at least 19 – a proposition³⁷⁸¹ that was not rejected as unreasonable by Judge Ušacka in *Lubanga*.³⁷⁸²

F. DRC-OTP-1008-0008

1322.No age estimate for anyone visible in uniform at 11:35-11:58 could exclude 15 or above as unreasonable. Even the close-up at 11:49 ([REDACTED]) does not exclude facial features consistent with a person 15 years of age or older. The person's height can be misjudged, as is apparent from 11:45, where the perspective changes to show the person standing on lower ground. The Prosecution further does not address whether the subject sitting down at 12:58 is the same as at 11:49, which could alter assessment of age. Facial features cannot be discerned for anyone at 32:33 to 32:43. None of the subjects in these excerpts can be assessed to be clearly under the age of 15. Facial features are likewise obscured for many individuals at 34:59, and anyone for whom they are not obscured appears to be over 18. No indication is provided by the Prosecution whether these subjects are the same as those appearing in DRC-OTP-1001-0010, which might affect age assessment.

G. DRC-OTP-1001-0010

1323.No one appearing in these excerpts appears to be under 15, and certainly cannot exclude a reasonable assessment that would include 15. The eyes are not visible at 45:13 ([REDACTED]) and his size is impossible to assess. The subject could easily be 16 or 17.

1324.Excerpt 46:29 to 46:30 consists of two seconds where the face of the subject cannot be seen because it is turned and covered by a large hat. Even with this partial view, it

³⁷⁸¹ [Lubanga AJ](#), dissenting opinion, para.54.

³⁷⁸² [Lubanga AJ](#), dissenting opinion, para.55.

appears that the person is largely taller than the people around him. This subject is not pre-pubescent and no reasonable age assessment could exclude 15.

H. DRC-OTP-0102-0009

1325. The subject's face is not visible and he is wearing a cap. No reasonable age assessment could exclude as old as 18 years of age, at the least.

I. DRC-OTP-2058-0251

1326. No age assessment could exclude any of the three individuals at 13:49-13:52 being 18 or over.

1327. [REDACTED] ([REDACTED]) was assessed by P-0017 as showing someone "15 years old or older".³⁷⁸³ This image shows the same person as the person identified by P-0010 on the Rwampara video as "[REDACTED],"³⁷⁸⁴ who was described by numerous witnesses as being 16 and 20.³⁷⁸⁵ The deficiency of the Prosecution's submissions in general are illustrated by its failure to identify the same subjects on different excerpts that may be relevant to the age assessments that this Trial Chamber can and should make.

J. DRC-OTP-0103-0008

1328. There is no indication that the individuals at [REDACTED] are affiliated with the FPLC, some other group, or are simply armed individuals. "[REDACTED]"³⁷⁸⁶ [REDACTED]. The two individuals in uniform do not, by appearance, seem to be under 15. [REDACTED] "[REDACTED]"³⁷⁸⁷

1329. Neither of the individuals at [REDACTED] is wearing a uniform, and neither can be presumed to be affiliated with the FPLC. Neither can be presumed to be of an ethnicity typically associated with UPC forces. The person on the right is clearly well over 18. The person on the left appears young, but not so young to exclude as unreasonable the

³⁷⁸³ P-0017:T-62,52:11-53:6.

³⁷⁸⁴ [REDACTED]

³⁷⁸⁵ P-0010:T-47,59:11,62:16; T-48,11:9,12:7; [REDACTED]D-0251:T-260,18:9,19:19-20:5,8:3,96:14-15; D-0017:T-253,33:23-34:03,67:25.

³⁷⁸⁶ [REDACTED]

³⁷⁸⁷ [REDACTED]

possibility that he is 15. [REDACTED],³⁷⁸⁸ [REDACTED]. [REDACTED].³⁷⁸⁹
[REDACTED].³⁷⁹⁰

K. DRC-OTP-0082-0016

1330. The video is of such poor quality that no meaningful age assessment is possible. The video quality is fuzzy and seems to be filmed from a vehicle passing by when it is dark and rainy. Nothing can be said about any of the subjects in this excerpt.

L. DRC-OTP-0164-0910

1331. This video provides no indication of the armed group to which these individuals might be affiliated; no testimony was heard about the content of this video or its narration. Not all individuals who were armed in Bunia in May 2003, especially those without uniforms, can be presumed to have been members of the FPLC.³⁷⁹¹

CONCLUSION

1332. Neither the Rwampara video nor any of the other videos shows anyone for whom an estimate of 15 years of age or above is unreasonable. This excludes a judicial determination to the contrary, consistent with the appropriate burden of proof and inherent uncertainties associated with age determination. Even if there is anyone on the Rwampara video for whom such an assessment is possible, it has not been proven that any of those individuals were enlisted into the FPLC.

CHAPTER III – DOCUMENTARY EVIDENCE OF INDIVIDUALS UNDER 15

Section I - Introduction

1333. The Prosecution claims that UPC and FPLC documents directing and ordering the demobilisation of children “prove” the presence of children under 15 amongst UPC forces, and “prove” Mr NTAGANDA’s knowledge of their presence.³⁷⁹²

1334. The argument is unsustainable. First, the demobilisation documents address demobilisation of children under 18, not under 15.

³⁷⁸⁸ [REDACTED]

³⁷⁸⁹ [REDACTED]

³⁷⁹⁰ [REDACTED].

³⁷⁹¹ D-0013: [DRC-D18-0001-6475](#), pp.6504-6505, 16:10-17:10.

³⁷⁹² PCB, para.625.

1335. Second, the repeated issuance of orders for demobilisation demonstrates an openness to acknowledge an intractable problem, in particular, amongst the village-level auto-defence groups formed under the *comités de paix*. These groups continued to exist in some places. Their “fierce opposition”³⁷⁹³ to disarming, including those who were 15 to 17 years of age, in light of the fears that were tragically justified in Bogoro³⁷⁹⁴ and Drodoro.³⁷⁹⁵

1336. Little or no weight should be placed on the 12 February 2003 document from a UPC education official announcing the creation of a DDRRR program for “*des Enfants-Soldats, âgés de 10 à 15/16 ans [...] qui sera très bientôt réalisé.*”³⁷⁹⁶ Nothing was heard from the author, directly or indirectly, about why he used this formulation or what it was based on. [REDACTED] even suggested that he may himself have been the source of this formulation,³⁷⁹⁷ in which case the document has no value independent of [REDACTED] testimony.

Section II - The demobilization documents do not demonstrate the presence of children under the age of 15 within UPC forces

A. UPC presidential order of 21 October 2002

1337. Less than a month after the first reference to the FPLC as a formal entity,³⁷⁹⁸ on 21 October 2002, the “Presidence” of the UPC prohibited the “*enrôlement des mineurs*” in the FPLC. The decree acknowledges a practice to the contrary in unnamed “combat forces and in certain revolutionary armies”:

*Ces derniers jours, il se développe, contrairement à notre idéologie, une pratique d'enrôlement des mineurs des deux sexes au sein des forces combattantes et dans certaines armées de caractère révolutionnaire en vue d'accroître les effectifs de leurs soldats aux fronts.*³⁷⁹⁹

1338. The presidential decree purports to ban the practice within the armed group under the control of the UPC: “En ce qui concerne notre branche armée, en sigle ‘FPLC’,

³⁷⁹³ DRC-D01-0003-5896.

³⁷⁹⁴ [Katanga TJ](#), paras.1,841.

³⁷⁹⁵ [DRC-OTP-0074-0422](#),p.0446(reporting the killing by Lendu militias of 408 civilians).

³⁷⁹⁶ [DRC-OTP-0113-0070](#).

³⁷⁹⁷ [REDACTED]

³⁷⁹⁸ [DRC-OTP-0092-0436](#)(26 September 2002).

³⁷⁹⁹ [DRC-OTP-0029-0274](#).

j'interdis formellement cette pratique qui va à l'encontre de nos anciennes activités avec l'ONG « [REDACTED] », dans le cadre de la démobilisation des enfants soldats.”

1339. Regardless whether this statement is read as addressing a concern about a potential problem within the newly-formed FPLC, the practice and the prohibition alike relate to “mineurs”. [REDACTED]“[REDACTED].”³⁸⁰⁰ The document is not probative of children under 15 within the FPLC.

B. FPLC Chief of Staff Order of 30 October 2002

1340. Chief of Staff Floribert KISEMBO’s follow-up order of 30 October 2002 confirms that “mineur” was intended to cover anyone under 18. Addressed to “Cmds. U. (TOUS)”, the order requires that “vous devez désarmer endéans 2 (deux) semaines tous les enfants, c’est à dire moins de 18 ans.”³⁸⁰¹ The practice to which the prohibition was responding was the enrolment of individuals under 18 years of age. Accordingly, these two documents are not indicative that the practice that needed to be prohibited was the enrolment of children under 15, as opposed to children between 15 and 17.

1341. KISEMBO’s 30 October 2002 order also sheds light on where the practice was perceived as being prevalent, instructing that the disarmament must occur “même dans les FORCES D’AUTO-DEFENSE.”³⁸⁰² D-0013 confirmed that the main reason for the 21 October 2002 Presidential directive was that the “village self-defence committees [...] tended to enrol people of all ages” and that the rationale of his directive was to “point out to the chiefs of staff that children were not to be enlisted” in the FPLC.³⁸⁰³

1342. The village-based “forces d’auto-défense”, controlled by the “comités de paix”, had been created starting at least as early as 1999.³⁸⁰⁴ They were “groups which arose spontaneously, self-defence groups in certain villages [...] spontaneously created groups in villages to defend themselves against attacks”.³⁸⁰⁵ The fighting was

³⁸⁰⁰ [REDACTED].

³⁸⁰¹ [DRC-D01-0003-5894](#).

³⁸⁰² [DRC-D01-0003-5894](#).

³⁸⁰³ [REDACTED].

³⁸⁰⁴ P-0017:T-60,61:17-64:17; D-0038:T-249,13:3-14:8,39:20-50:18; P-0116:T-196,14:1-14; P-0792:T-150,40:5-43:4; D-0013 [REDACTED]

³⁸⁰⁵ P-0116:T-196,14:10-14. See also P-0190:T-96,85:13-14.

vicious,³⁸⁰⁶ “really a wild war”³⁸⁰⁷ and “truly radical.”³⁸⁰⁸ Some villages had “eight to ten Kalachnikovs” purchased by traders in the village,³⁸⁰⁹ others had four purchased from “the Ugandans.”³⁸¹⁰ These village-based groups were “not part of any armed group.”³⁸¹¹ The same phenomenon occurred in Lendu villages.³⁸¹²

1343. Some of these auto-defence groups may have been absorbed by the FPLC or UPC forces when they came into existence, but not all. As stated by P-0317, referring to June 2003: “The Hema militia were those villages, in fact, that the UPC soldiers had armed for their protection, for their personal protection, for the protection of their village, for example, without being in the hierarchy of the UPC.”³⁸¹³ P-0017 testified that “the majority joined, but not all” and that “I know that the UPC had difficulties with those people because they always wanted to work in their places of origin.”³⁸¹⁴ P-0317 confirmed that these Hema militias had other sources of arms as well.³⁸¹⁵ P-0317 used the expression “Hema militia” as distinct from “UPC forces” in a 20 June 2003 [REDACTED] to which she contributed.³⁸¹⁶

1344. The uneven control of the self-defence groups was confirmed by Mr Ntaganda:

In the villages populated by Hema, the members of those forces joined the army, but I can't say that all of those groups ceased to exist. As regards us, wherever we were deployed there were no longer self-defence groups there, but where our forces were not present those self-defence groups protected themselves. So wherever we weren't they continued to protect themselves, defend themselves, but I can't really answer your question as to when they ceased to exist. At some point in time, those self-defence groups were no longer active. But each time they thought that combatants were going to attack them, they would rise to defend themselves again, but they were small groups and they were located where we were not present.³⁸¹⁷

³⁸⁰⁶ **P-0105**:T-134,59:21-25.

³⁸⁰⁷ **D-0038**:T-249,50:1-2.

³⁸⁰⁸ **P-0017**:T-60,64:14.

³⁸⁰⁹ **P-0017**:T-60,63:23-25.

³⁸¹⁰ **D-0038**:T-249,42:2.

³⁸¹¹ **P-0017**:T-60,63:20-23.

³⁸¹² [Katanga TJ](#), paras.526-533;**D-0300**:T-225,33:14-18;T-225,36:2-22;**P-0190**:T-96,85:6-10;**P-0105**:T-135,11:1-7;**P-0127**:T-139,81:8-23;**P-0365**:T-147,13:6-14.

³⁸¹³ **P-0317**:T-193,41:16-18.

³⁸¹⁴ **P-0017**:T-63,36:7-9.

³⁸¹⁵ **P-0317**:T-193,41:23.

³⁸¹⁶ [DRC-OTP-0152-0286](#),p.0300.

³⁸¹⁷ **D-0300**:T-225,34:21-25.

1345. The continued reality of the *Comités de paix* and auto-defence groups is also reflected in the documents below.

C. G-5 Monthly Report, 6 November 2002

1346. The FPLC staff officer responsible for, *inter alia*, civilian affairs reports that in many places the civilian population outside Bunia still felt “*menacée par les ennemis chaque jour*,” to the extent of fearing working in their fields, conducting business, or traveling along main roads.³⁸¹⁸ Travel along the roads from BUNIA to MABANGA, AMÉ, and LARGU, as well as other roads in the interior,³⁸¹⁹ is described as dangerous, and he proposes “*un système de convoit qui est devenu courant et cela avec les militaires*.”³⁸²⁰ Against this backdrop, the G-5 describes complaints from the “*comités*” about seizures of their weapons by the FPLC, and the FPLC’s failures to protect them: “*Les Doléances Recues: [...] Les armes qui la sécurisent (dans le Comité) qui a mis UPC [...] Insuffisance de force dans tous ces milieux pour Bien se défendre contre les ennemis qui viennent massacrer, piller et détruire [sic]*.”³⁸²¹

1347. The report also refers to disputes at BLUKWA and BULE with the “*comité*” concerning who exercises command over certain soldiers there.³⁸²² The G-5 resolved these disputes, but suggests their potentially explosive nature in saying that, at least at BULE, “*c’était passé dans le calme*.”³⁸²³

D. UPC Decree for registration of arms, 10 December 2002

1348. LUBANGA writes to KISEMBO expressing his concern about the “illicit” purchase of weapons in villages and their distribution amongst the civilian population, which he considers “*contre la securite du camp adverse, mais aussi contre celle des siens et de soi-meme*.”³⁸²⁴ At the same time, his letter reflects prudence about attempting to seize such weapons and being seen to deprive villages of their right to defend themselves.³⁸²⁵

³⁸¹⁸ [DRC-OTP-0109-0136](#),p.0137.

³⁸¹⁹ [DRC-OTP-0109-0136](#),p.0139.

³⁸²⁰ [DRC-OTP-0109-0136](#),pp.0137,0141.

³⁸²¹ [DRC-OTP-0109-0136](#),pp.0139-140.

³⁸²² [DRC-OTP-0109-0136](#),pp.0139-140(“*Sur place à Blikwa [sic] et Largu nous avons rglé [sic] le conflit entre comité et Collectivité qui considèrait les éléments de Blikwa comme étant les sien. Ce même travail est fait à Bule et c’était passé dans le calme*”).

³⁸²³ [DRC-OTP-0109-0136](#),p.0140.

³⁸²⁴ [DRC-OTP-0093-0121](#).

³⁸²⁵ [DRC-OTP-0093-0121](#).

He therefore issues a less confrontational instruction in the less confrontational order, “avec le concours des notabilités et forces vives de la place,” to take a census of weapons. The letter reveals the reality of local forces, the reason they still exist, and the difficulty confronting the UPC and FPLC in trying to deprive them of weapons that they had independently obtained.

E. UPC Decree dissolving the *comités de paix*, 10 January 2003

1349. John TINANZABO, the UPC’s *Secrétaire national à la pacification et de réconciliation*, purports to abolish the *comités de paix* on 10 January 2003.³⁸²⁶ The reason for doing so reflects their evident recalcitrance in following the policies of the UPC-RP:

*Attendu que les Comités de paix anciennement institués dans les localités et villages ne cadrent pas avec la philosophie et le programme de Pacification de l’UPC-RP; Attendu que l’existence de ces Comités de paix parallèlement au Comité Vérité, Paix, et Réconciliation risqué de porter atteinte aux objectifs que s’est assignés l’UPC-RP [...] Article 1er: Sont dissous tous les comité de paix dans leur ancienne formule sur toute l’étendue du territoire sous contrôle de l’UPC-RP.*³⁸²⁷

F. Presidential order for report, 27 January 2003

1350. LUBANGA requests a report from KISEMBO on the implementation of his 21 October 2002 instruction on 27 January 2003. After referring to his instruction of 21 October 2002 specifically, LUBANGA “vous demande de me faire parvenir, dans un meilleur délai, le rapport détaillé sur cette question à laquelle j’attache toute l’importance.”³⁸²⁸

G. National education secretary’s letter to G5 of FPLC, 12 February 2003

1351. This letter, whose specific content is addressed below in more detail, provides further confirmation of the concern for demobilisation “au nom de l’UPC-RP et de son Président.” The letter invites the G5 to appoint 13 officers to attend a workshop to be held by “SAVE CHILDREN” on 17 and 18 February 2003.

³⁸²⁶ [DRC-OTP-0092-0466](#).

³⁸²⁷ [DRC-OTP-0092-0466](#).

³⁸²⁸ [DRC-OTP-0029-0275](#).

H. Mr Ntaganda's report of 16 February 2003

1352. This document appears to be signed by “Peter Dztho,” “P.O.” (par ordre) of Mr NTAGANDA, as *Chef-d'État-major-général-adjoint*.³⁸²⁹ The addressee is the “AGS/UPC” – the “*administrateur générale de sécurité*.”³⁸³⁰ The document refers to the presidential directive of 21 October 2002 and the UPC President's request for a report, as well to a meeting that “*vous avez tenu avec l'EMG le 08 Février sur le souci du Président de l'UPC concernant le Désarmement des Enfants*”. Mr NTAGANDA recalled the meeting as having occurred after a meeting in Bunia with a delegation from the RCD-Goma.³⁸³¹

1353. The letter indicates, as had the previous documents, that the auto-défense groups were not always fully cooperative with the FPLC: “*Nos U. se butent à une farouche opposition de la part des Responsables des Forces d'Auto-Défense à démobiliser et désarmer les Enfants de leur Groupe*.”³⁸³²

I. Presidential decree, 1 June 2003

1354. This decree immediately demobilises anyone under 18 from the FPLC.³⁸³³ The decree confers responsibility for execution on the National Secretary responsible, and on the Chief of Staff of the FPLC.

1355. This decree was issued very shortly after LUBANGA's (and Mr NTAGANDA's) return to Bunia for the first time since the FPLC was routed by the UPDF on 6 March 2003. D-0013 explained that the impetus for this decree was his visual observation at a rally in Bunia armed individuals who appeared to be under 18 years of age.³⁸³⁴ D-0013 was not sure of the affiliation of these individuals, but suspected that they may have been individuals who had been armed by PUSIC or the UPDF.³⁸³⁵ MONUC also reported during this period that PUSIC was recruiting children.³⁸³⁶ LUBANGA deemed

³⁸²⁹ [DRC-D01-0003-5896](#); D-300:T-223,47:5-12.

³⁸³⁰ D-0300:T-239,26:11-12.

³⁸³¹ D-0300:T-223,47:19-25.

³⁸³² [DRC-D01-0003-5896](#).

³⁸³³ [DRC-OTP-0151-0299](#).

³⁸³⁴ [REDACTED].

³⁸³⁵ [REDACTED]

³⁸³⁶ [DRC-OTP-0001-0033](#), p.0035.

it appropriate to issue this decree to ensure that such individuals were not integrated into the FPLC.

1356. This decree was broadcast on the radio no later than 2 June 2003.³⁸³⁷

J. Kisembo Order, 5 June 2003

1357. KISEMBO promptly implemented the preceding decree by way of an order to all brigade commanders to “*procéder à la démobilisation de tout élément dans nos rangs âgé de moins de 18 ans, suivant la procédure ordinaire*”.³⁸³⁸

K. Notes and *compte rendu* of 16 June 2003 meeting

1358. The Prosecution contests the authenticity of the type-written *compte rendu* of a meeting of the General Staff dated 16 June 2003,³⁸³⁹ but does not question the authenticity or reliability of hand-written notes of the same meeting.³⁸⁴⁰ Any differences are immaterial to the issue of demobilisation: both documents reflect that any “enfants soldats” must be immediately “disarmed” or “demobilised.”³⁸⁴¹ The reference in the hand-written notes to “disarming” child soldiers implies that FPLC forces are to disarm anyone they find carrying a weapon who is under 18, reinforced by the instruction in the type-written *compte rendu* that “[o]ù vous les trouvez, ramenez-les aux ONG.”³⁸⁴²

L. Conclusions concerning documentary evidence on demobilisation

1359. The foregoing demobilisation documents are not probative of any “existing practice”³⁸⁴³ of enrolling children under the age of 15 in the UPC forces. They are indicative, rather, of the potential presence of individuals under 18 in the FPLC and of the actual presence of such individuals in the local self-defence groups.

1360. The documents also demonstrate the UPC’s and FPLC’s willingness to forthrightly acknowledge and confront this issue. If all this was nothing but propaganda to “ease

³⁸³⁷ [DRC-OTP-0001-0033](#), p.0035; [DRC-OTP-0203-0319](#), p.0323 (“tous les individus âgés de moins de 18 ans sont à dater de ce jour démobilisés du FPLC”).

³⁸³⁸ [DRC-OTP-0014-0254](#).

³⁸³⁹ [DRC-D01-0003-5900](#).

³⁸⁴⁰ [DRC-OTP-0091-0888](#); PCB, paras.103-104. The meeting is also referred to at [DRC-OTP-2102-0512](#), 01:25:12-01:27:38 (transcript [DRC-OTP-2102-0512](#), ll.142-168).

³⁸⁴¹ [DRC-OTP-0091-0888](#).

³⁸⁴² [DRC-D01-0003-5900](#), p.5901.

³⁸⁴³ PCB, para.669.

pressure from local and international actors,”³⁸⁴⁴ then P-0046 and P-0116 would have been its intended audience, yet they never heard about it.³⁸⁴⁵

1361. P-0046’s testimony that she observed no genuine UPC effort at demobilisation until 2003³⁸⁴⁶ must be viewed in light of her testimony that it was appropriate to “freeze in place” the situation for children until demobilisation programs were set up;³⁸⁴⁷ that no such programs were available in March 2003;³⁸⁴⁸ that there were serious delays – which she criticised in her reports – in setting up the national DDR program;³⁸⁴⁹ that there were not enough CTO spots in Bunia at least through the end of September 2003;³⁸⁵⁰ and her testimony that [REDACTED].³⁸⁵¹ It is contradictory to, on the one hand, criticise the UPC for not demobilise fast enough while at the same time failing to make available the apparatus that P-0046 claimed was a prerequisite for such demobilisation.

1362. P-0976’s opinion that these orders could not have been genuine because of what he saw in Bunia thereafter³⁸⁵² is based on the erroneous assumption that anyone seen with a weapon in BUNIA after March or May 2003 must have been a member of the UPC forces. PUSIC had split from the UPC and was actively recruiting children;³⁸⁵³ the *comité de paix* must have resumed or continued their activities in the absence of the UPC forces, who were soundly defeated on 6 March 2003 by the UPDF;³⁸⁵⁴ and there

³⁸⁴⁴ PCB, paras. 224, 624, 625, 754.

³⁸⁴⁵ **P-0116**: T-196, 15:7 (“I have never seen this document, sir”); **P-0046**: T-102, 33:7 (“Q. [REDACTED], do you have any knowledge of this document? A. Not at all”).

³⁸⁴⁶ **P-0046**: T-103, 76:17-23; **P-0976**: T-152, 19:18-20:7; [REDACTED].

³⁸⁴⁷ **P-0046**: T-102, 26:11-15.

³⁸⁴⁸ **P-0046**: T-100, 37:7-20; **P-0031**: [DRC-OTP-2054-3939](#), 3940:12-3941:13; [DRC-OTP-2054-4308](#), p. 4341:5-11.

³⁸⁴⁹ **P-0046**: T-101, 48:17-50:2; T-102, 27:2-23; [DRC-OTP-0001-0033](#), p. 0036 (“We can not just afford to wait for the national programme to be operational”).

³⁸⁵⁰ **P-0046**: T-101, 44:2-45:21.

³⁸⁵¹ [DRC-OTP-0001-0046](#), p. 0048.

³⁸⁵² **P-0976**: [REDACTED]; T-152, 89:1-17; T-153, 3:9-24.

³⁸⁵³ [DRC-OTP-0001-0033](#), p. 0035 (“An information to be confirmed is the forced recruitment of 200 persons including children [...] by PUSIC elements one month ago. PUSIC would have passed in all villages taking men and young boys by force”); [DRC-OTP-0074-0422](#), p. 0463 (“As late as July 2003, there were allegations of PUSIC transferring more than 200 children from Tchomia to UPDF training camps in Rwebisengo and at Kibuku in Uganda”).

³⁸⁵⁴ [DRC-OTP-0107-0223](#), p. 0238 (report of the Ituri Pacification Commission, dated 14 April 2003, calling expressly for the cessation of recruitment of children by « forces d’auto-défense locales » : “Arrêt de toute forme de recrutement, volontaire ou forcé, d’enfants âgés de moins de 18 ans, au sein de forces et groupes armés, de milices et de forces d’auto-défense locales [...]”); p. 0262 (“Arrêt du recrutement/re-recrutement des enfants âgés de moins de 18 ans – que ce soit volontaire ou forcé – dans les forces et groupes armés, dans les milices et dans les forces d’auto-défense locales”).

were reports of the UPDF distributing weapons in Bunia prior to their withdrawal.³⁸⁵⁵ P-0976 also acknowledged that he may not have been informed of demobilisation efforts by UPC forces.³⁸⁵⁶

1363. P-0365, incidentally, disagreed with P-0046's and P-0976's opinions, commenting that the demobilisation decrees "tall[y] with what he [LUBANGA] promised [REDACTED]. He had promised to disarm the children, and after that promise I saw children being sent to the CTOs [REDACTED]. So this is in line with what he had promised."³⁸⁵⁷ P-0911 and P-0769 also both testified about demobilisation efforts long before 2003.³⁸⁵⁸

1364. P-0046's opinion about the insincerity of the FPLC demobilisation efforts should also be viewed in light of the biased attitude reflecting her knee-jerk denial that the commander whom she met at Rwampara "did not agree" to conservatory measures,³⁸⁵⁹ [REDACTED] "[REDACTED]."³⁸⁶⁰ P-0046 corrected her answer, but could not explain why she had given this testimony.³⁸⁶¹ Later, P-0046 tried to minimise a purported UPC commander's active support for demobilisation as being that he "did not object."³⁸⁶² In her [REDACTED] report, P-0046's negative attitude towards the UPC is reflected when commenting on the UPCs 2 June *Radio Candip communiqué* calling for demobilisation, remarking that "[REDACTED]."³⁸⁶³ The decree does exist and is in evidence,³⁸⁶⁴ and P-0046 made this remark despite having had a French transcription and translation of the decree in her possession at the time.

1365. In conclusion, the demobilisation documents do not demonstrate any "existing practice" of enrolling children under 15 in the UPC forces. The documents demonstrate a frank acknowledgement of a potential problem, and a practice that was prevalent amongst the

³⁸⁵⁵ [REDACTED]; [DRC-OTP-0074-0422](#), p.0434 ("Following its commitment to the Luanda Agreement, UPDF withdrew from Ituri in May 2003. Since then, it has continued to give open support to PUSIC and FAPC, both spun off from UPC in order to weaken it").

³⁸⁵⁶ **P-0976**:T-153,3:22 ("It is possible that I was not fully informed"); T-152,100:8 ("I can only talk about what I know").

³⁸⁵⁷ **P-0365**:T-148,12:7-10.

³⁸⁵⁸ **P-0911**:T-157,39:24-41:14; **P-0769**:T-120,46:18-48:12.

³⁸⁵⁹ **P-0046**:T-102,39:23.

³⁸⁶⁰ [DRC-OTP-2082-1832](#), p.1833.

³⁸⁶¹ **P-0046**:T-102,40:1-10.

³⁸⁶² **P-0046**:T-102,43:5-8.

³⁸⁶³ [DRC-OTP-0203-0319](#).

³⁸⁶⁴ [DRC-OTP-0151-0299](#).

self-defence forces for reasons that were, moreover, completely justified given the ongoing threat of massacres of civilians by Lendu forces. The imperfect execution of these decrees and orders, as is openly acknowledged in Mr NTAGANDA's letter of 16 February 2003,³⁸⁶⁵ is no indication that these decrees and orders were a "sham." Interpreting these documents as an admission of criminal responsibility is not only factually wrong, it sends a dangerous message to leaders who actually try to take responsibility for problems, rather than washing their hands of them.

Section III - The plan to set up a program for the benefit of child soldiers "âgés de 10 à 15/16 ans"

1366. This letter is an invitation to the G5 of the FPLC to designate officers to participate in a workshop on DDRRR to be held at Save the Children.³⁸⁶⁶ The letter is dated 12 February; an initial workshop for all 13 officers is scheduled for 17 and 18 February; a second workshop for the officers who will be trainers at the CTO is scheduled for 24 to 26 February; and start of the program itself is foreseen for the end of March 2003.³⁸⁶⁷

1367. The lengthy introductory sentence of the letter reads:

J'ai l'honneur et l'avantage de porter à votre connaissance que le Secrétariat National à l'Éducation Nationale (SN/EDN) au nom de l'UPC-RP et de son Président, a initié un programme de Démobilisation, Désarmement, Rééducation, Réinstallation et de Réinsertion (DDRRR) en faveur des Enfants-Soldats, âgés de 10 à 15/16 ans, qui acceptant volontiers leur retour à la vie civile pour une réorientation conforme de leur avenir."³⁸⁶⁸

1368. The key question is whether the use of the phrase "*âgés de 10 à 15/16 ans*" is probative of the presence of children of that age **within the UPC forces**. It is not, or only to an extremely limited extent.

1369. First, the author of the document, Marcel ADUBANGO BIRI, was not called as a witness. Very little to no information was adduced concerning who Mr ADUBANGO was, let alone whether he had contact with UPC armed forces between July 2002 and the date of the letter. No witness confirmed that they saw this document at the time.

³⁸⁶⁵ [DRC-D01-0003-5896](#)

³⁸⁶⁶ [DRC-OTP-0113-0070](#),p.0072.

³⁸⁶⁷ [DRC-OTP-0113-0070](#),pp.0071-0072.

³⁸⁶⁸ [DRC-OTP-0113-0070](#).

[REDACTED].³⁸⁶⁹ [REDACTED] “[REDACTED].”³⁸⁷⁰ The Chamber has no information allowing it to know what ADUBANGO based his age range on. The Prosecution’s failure to adduce this information is striking in light of the decisive importance that this document assumed in the *Lubanga* case. According to the Appeals Chamber, there was only “one piece of documentary evidence” relied on in the *Lubanga* Trial Judgement, and this is it.³⁸⁷¹ Yet no information was adduced in this case to assist the Trial Chamber in evaluating its basis.

1370. Second, the age range appearing in this document may simply have been inserted at the suggestion of [REDACTED]. [REDACTED] “[REDACTED].”³⁸⁷² When asked whether the age range in the letter corresponded to P-0031’s opinion about the age range of children amongst UPC forces, P-0031 answered: “That does correspond with it, because there were even children who were nine years old, and then he took ten years old, but there were children who were nine years old”.³⁸⁷³ [REDACTED] “[REDACTED]” [REDACTED]. [REDACTED] “[REDACTED].”³⁸⁷⁴ As the Prosecution has itself argued in respect of other documents: “The context in which this document was drafted is extremely unclear [...] Only the author of the letter can clarify the context of its creation.”³⁸⁷⁵

1371. Third, the author’s choice of upper age limit (“15/16”) raises doubts about the reliability and significance of the lower age limit. Following the Prosecution’s logic, the document implies that there were no 17 year olds amongst UPC forces.

1372. Fourth, the letter nowhere indicates the author’s understanding that the recruits under 15 years of age are to originate from the UPC forces. The letter’s purpose is to invite FPLC officers to be trained in DDRRR and to act as trainers at the eventual CTO.³⁸⁷⁶ This does not imply that the eventual students at the CTO must be drawn from the UPC forces. Other potential sources include: (i) Lendu child soldiers for whom the UPC might be particularly interested in having available demobilisation programs; (ii) local

³⁸⁶⁹ [REDACTED]; [REDACTED]

³⁸⁷⁰ [REDACTED]

³⁸⁷¹ *Lubanga* AJ, para. 188 (underline added).

³⁸⁷² [REDACTED].

³⁸⁷³ P-0031:T-174,44:23-25.

³⁸⁷⁴ [REDACTED].

³⁸⁷⁵ Defence request for the admission of evidence, ICC-01/04-02/06-2128-Conf,p.18.

³⁸⁷⁶ [DRC-OTP-0113-0070](#) (“*atelier de formation et d’information [...] séminaire de formation est programmé pour les seuls Officiers futurs formateurs du Centre transit*”).

auto-defense forces; and (iii) PUSIC, which had split from the UPC around December 2002.³⁸⁷⁷ The Prosecution's claim that the letter calls for a selection of children "from within the UPC"³⁸⁷⁸ is a gloss that is not found in the text of the letter.

1373. Finally, the most likely meaning of the letter is that the author, rather than making a statement of fact, is simply indicating that no potential candidate for the program is to be excluded on the basis of a lower age limit. The letter contains not the slightest suggestion that the author has identified under 15 within the ranks of the FPLC to be demobilised, and should not be so read.

A. The use of the words "mtoto", "children", "enfant" and "kadogo" are not probative of children under 15 years of age amongst UPC forces

1374. The Prosecution asserts that the words "enfant" or "child" is probative of under 15.³⁸⁷⁹ The evidence shows the contrary.

1375. **P-0315's Notes of an interview with Mr NTAGANDA.**³⁸⁸⁰ P-0315's note³⁸⁸¹ of conversation with Mr NTAGANDA in 2010 is inaccurate. P-0315 misunderstood what Mr NTAGANDA said in respect of the ages amongst UPC forces.³⁸⁸² Even assuming that the notes do accurately record Mr NTAGANDA referring to "children in the UPC," he is also recorded as having referred to himself as having been a "child soldier" at age 16. Any reference to "children" must accordingly refer to the threshold between childhood and adulthood – *i.e.* 18 or 19 years of age.

1376. **FPLC logbook references to "mtoto".**³⁸⁸³ The Prosecution implies that the use of the term "mtoto" as used in the logbook implies a specific age³⁸⁸⁴ – albeit without indicating whether this age is 18, 15 or some other age entirely. The interpretation is unsustainable. If true, this would mean that all of the soldiers ambushed in NYANGARAY were under a certain age³⁸⁸⁵ – which is belied by the very next message

³⁸⁷⁷ [REDACTED]; D-0300:T-218,60:5-7; [REDACTED] .

³⁸⁷⁸ PCB, para.673.

³⁸⁷⁹ PCB, para.674.

³⁸⁸⁰ PCB, para.677.

³⁸⁸¹ [DRC-OTP-2062-0363](#).

³⁸⁸² D-0300:T-224,71:3-76:18.

³⁸⁸³ [DRC-D18-0001-5748](#), p.5760 (Transl. [DRC-D18-0001-5778](#), p.5790); [DRC-OTP-0017-0033](#), p.0208, 0048, 0093, 0095, 0167 (Transl. [DRC-OTP-2102-3854](#), p.4030, 3870, 3915, 3917, 3989).

³⁸⁸⁴ PCB, para.674.

³⁸⁸⁵ [DRC-OTP-0017-0033](#), p.0048 (First) (Transl. DRC-OTP-2102-3854, p.3870).

which refers to the same group as simply “*les militaires*.”³⁸⁸⁶ Hence, the Prosecution itself occasionally translates “mtoto” as “*soldat*” in the logbook.³⁸⁸⁷ Another potentially accurate translation is “youth.”³⁸⁸⁸ Video DRC-OTP-0102-0009 shows KISEMBO being invited to come speak to his “children,” which is an assembled crowd of all ages, including adults, civilian and military.³⁸⁸⁹ Another video shows LUBANGA giving a speech to a crowd of all ages whom he addresses as “*Enfants de l’Ituri, bonjour à tous*”.³⁸⁹⁰ The Governor of ITURI refers in a speech to the entire FPLC as “our children.”³⁸⁹¹ P-0055 testified that the expression “children of Ituri” refers to people born in ITURI.³⁸⁹² Mr NTAGANDA testified that commanders viewed those under their command, of whatever age, as “children” and would refer to them accordingly.³⁸⁹³ P-0815 testified that he used the word “children” in respect of individuals of 18 or 20 years old.³⁸⁹⁴ Lendu witnesses referred to combatants as “young people” without apparent regard to age;³⁸⁹⁵ and P-0857 referred to himself in the context of being a fighter that at the age of 17 he was “a little child” relative to the village elders who would decide whether they fight.³⁸⁹⁶

1377. [REDACTED] testimony that the term “children” in one logbook entry means “children – and nothing else”³⁸⁹⁷ is unilluminating. [REDACTED] was never asked and never gave an age limit for this term, and was asked this question in relation to only a single excerpt of the logbook. The relevance of this answer to other entries is not established. Moreover, his testimony is contradicted by P-0016 who testified that “the rank and file soldiers, could be called children because that was our habit of speaking.”³⁸⁹⁸

1378. **Kadogo.** The word “*kadogo*” does not appear in the logbook. P-0055 defined the term as someone who was “under 18 years of age; in other words, someone who is not yet an

³⁸⁸⁶ [DRC-OTP-0017-0033](#),p.0048(Second)(Transl.DRC-OTP-2102-3854,p.3870).

³⁸⁸⁷ [DRC-D18-0001-5748](#),p.5760 (Transl.DRC-D18-0001-5778,p.5790). See PCB,fn.2023.

³⁸⁸⁸ [DRC-OTP-0109-0136](#),p.0141.

³⁸⁸⁹ [DRC-OTP-0102-0009](#) at 01:38:25-01:40:37.

³⁸⁹⁰ [DRC-OTP-0124-0002](#) at 23:05-25:21(Transl.[DRC-OTP-0176-0027](#),ll.261-281). See also [DRC-OTP-0127-0062](#) at 12:13-12:34 ;Transl.[DRC-OTP-0177-0106](#),ll.260-265);[DRC-OTP-0080-0002](#) at 00:41:30-00:42:12 (Transl.[DRC-OTP-0165-0012](#),ll.675-694).

³⁸⁹¹ [DRC-OTP-0080-0002](#), Transl.[DRC-OTP-0165-0012](#),ll.178-202.

³⁸⁹² **P-0055**:T-72,33:9-35:6.

³⁸⁹³ **D-0300**:T-218,37:9-18.

³⁸⁹⁴ **P-0815**:T-76,39:6-11.

³⁸⁹⁵ **P-0790**:T-54,8:3-4;P-0300:T-167,70:10.

³⁸⁹⁶ **P-0857**:T-193,91:22.

³⁸⁹⁷ [REDACTED].

³⁸⁹⁸ [REDACTED]

adult.”³⁸⁹⁹ P-0014 gave a slightly different threshold between adulthood and childhood, stating in reference to the word “*kadogo*” that “anybody who is aged 18 or under is a child.”³⁹⁰⁰ Kadogo could also have a vaguer connotation, such as “small” or “young.”³⁹⁰¹ The term could also be used metaphorically, to refer to someone smaller than oneself.³⁹⁰² Some witnesses used “*kadogo*” to refer simply to soldiers, as when P-0030 described the soldiers trying to stop looting at the Bunia market in May 2003, who do not appear to be under 18, as “soldiers, UPC kadogos.”³⁹⁰³ The terminology appears not dissimilar from the expression “our boys” when used to refer to soldiers in English.³⁹⁰⁴

1379. No contemporaneous references to children, *enfant*, *kadogo* or *mtoto* are suggestive of anyone under 15 being amongst UPC forces.

B. Other contemporaneous documents

1380. The Prosecution’s reliance³⁹⁰⁵ on a list of recruits at LINGO is misplaced, as the document contains no indication of age.³⁹⁰⁶

1381. The FARDC “*liste nominative des ELM (miliciens) de l’Ituri*” from November 2005 does not show, as the Prosecution claims, “the significant presence of children under the age of 15 who were still in the UPC.”³⁹⁰⁷ Quite to the contrary, out of 207 former UPC soldiers for whom dates or years of birth are indicated: two were born in [REDACTED],³⁹⁰⁸ none were born in 1991 or 1990, three were born in [REDACTED]³⁹⁰⁹ and eleven were born in [REDACTED].³⁹¹⁰ The rest are older, or are indicated as being “*moins de 18 ans*” but with no indication of age or year of birth, meaning they could have been born as early as 1987. The document therefore shows

³⁸⁹⁹ P-0055:T-71,68:21-22.

³⁹⁰⁰ P-0014:T-136,38:14.

³⁹⁰¹ P-0014:T-136,38:9-14. See also D-0300:T-240,8:2-3 (“A.Kadogo means something, well, something that is small or a person who is small”).

³⁹⁰² D-0300:T-240,7:18-23.

³⁹⁰³ P-0030:T-146,20:14.

³⁹⁰⁴ [Eisenhower Speech](#) (“We do not want to send our boys off into the Armed Services to serve in foreign lands.”)

³⁹⁰⁵ PCB,para.643,fn.1922.

³⁹⁰⁶ [REDACTED]

³⁹⁰⁷ PCB,para.634.

³⁹⁰⁸ [DRC-OTP-0138-0027](#),#14 and #24.

³⁹⁰⁹ [DRC-OTP-0138-0027](#),#17,#570 and #586.

³⁹¹⁰ [DRC-OTP-0138-0027](#),#55,#62,#68,#85,#99,#121,#481,#494,#506,#515 and #545.

only that two individuals out of 207 were under the age of 15 when they were with the UPC forces. Little or no weight can be placed on this document, however, since it was tendered from the bar table with no information whatsoever about how it was created or by whom.³⁹¹¹ This failure is puzzling since the document is signed by two named individuals as members of FARDC. Given the inherent difficulties associated with age assessment described above, and the absolute lack of information as to how this list was created, it must be given no weight.

CHAPTER IV – TESTIMONIAL ESTIMATES OF AGE CANNOT RELIABLY SUSTAIN A FINDING OF ANY PERSON UNDER 15 WITHIN UPC FORCES

Section I - Introduction

1382. Testimony was heard from witnesses who claimed that they: (i) met subjects who told them that they had been members of the FPLC or its predecessor UPC forces when they were under 15, corroborated by visual appearance at the time that this hearsay information is communicated (*e.g.* P-0046, P-0116, P-0976, P-0031); or (ii) observed the subject amongst those forces (as bodyguards, being trained, etc.) whom they believed, based on appearance or behaviour, were under 15 (*e.g.* P-0963, P-0190, P-0768).

1383. Both categories of evidence should be treated with great caution and, when not supported by corroboration in relation to the age of the subject, found insufficient to prove that the person was under 15 at the relevant time.

1384. First, testimony from a witness about the age of a person who is not before the Court is subject to a wider margin of error than the Trial Chamber's own direct observation. The Chamber has no opportunity to observe the subject, cannot know what standard of certainty the observer applied, and cannot know with specificity how the observer arrived at their estimate. The primary evidence heard in this case and in *Lubanga* confirms the need to treat this secondary evidence with greater, not less, concern for reliability. P-0046's claim that no one had lied to her about age reveals her *naïveté*. P-0769, to take but one amongst many examples, not only lied about his age to obtain assistance, but was encouraged to do so by one of P-0046's [REDACTED].³⁹¹²

³⁹¹¹ Decision on admission of documentary evidence, [ICC-01/04-02/06-1838](#), para.71.

³⁹¹² P-0769:T-122,42:9-21,43:8-14.

1385. Second, P-0046's database lists 50 unnamed individuals who claim to have been under 15 when they were associated with UPC forces or the FAPC. Amongst those 50, all but ten are said to have been 14 or 13 at the time of their association. A qualitative assessment shows that none of those 50 entries can be safely relied upon to reach a judicial finding that any of them were recruited, conscripted or used with the UPC. P-0046 admitted that she did nothing to verify the ages of these 50 individuals;³⁹¹³ that her "cross-checking" – when it did occur – consisted only of seeking other opinions about age;³⁹¹⁴ that school or birth records or parents views were not checked;³⁹¹⁵ that she did not test the credibility of subjects;³⁹¹⁶ that information in her databases was often collected by others;³⁹¹⁷ and that the standard for inclusion on her lists is broader than the legal definition applicable under the Rome Statute.³⁹¹⁸

1386. Third, P-0046's refusal to disclose highly exculpatory and essential information in her possession – the names of the subjects who gave her the information that was the basis of her testimony – compels this Chamber not to rely on her testimony.³⁹¹⁹ No fair trial can be based on information presented in this manner, which is inherently unreliable. The Chamber has no way of knowing whether the subjects in her database include those who testified unreliably in this case and in *Lubanga*.

1387. Fourth, the testimony of other workers in the field of demobilisation does not reliably establish the presence of under-age children amongst UPC forces. P-0116 was not present in BUNIA at the relevant time. P-0976, who appears to be [REDACTED], provided no specific information on anyone whom he claims was re-recruited. [REDACTED]. [REDACTED], [REDACTED], [REDACTED].³⁹²⁰

1388. Fifth, witness testimony of age, based on visual assessments of age alone are not sufficiently reliable to be accorded any weight. The subjects were never identified. The criteria or methodology of visual assessment applied by these witnesses provides no meaningful guarantee of accuracy in respect of the specific age determination to be

³⁹¹³ P-0046:T-102,55:16-56:13.

³⁹¹⁴ P-0046:T-100,24:8-18; T-102,92:2("[t]hey would notice if something was apparently not true or incorrect").

³⁹¹⁵ P-0046:T-102,91:16-92:2("I don't think that the protection agencies particularly did investigate").

³⁹¹⁶ P-0046:T-103,63:3-4("I don't remember of having come across a child who told me he was associated and for whom I questioned what he said").

³⁹¹⁷ P-0046:T-102,57:2.

³⁹¹⁸ P-0046:T-102,60:1-2.

³⁹¹⁹ P-0046:T-100,87:15-17.

³⁹²⁰ [REDACTED].

made by the Chamber. Testimony was often adduced in highly suggestive circumstances, especially after multiple contacts in relation to the *Lubanga* case, further diminishing probative value and reliability. In almost no cases, furthermore, is sufficient information provided to know whether or not any of the information is corroborated.

Section II - The indirect evidence of age must be treated with extreme caution

1389. The evidence of individuals under the age of 15 in UPC forces addressed in this section is: (i) testimony of witnesses who received information from subjects that they had previously been in UPC forces; (ii) testimony of witnesses who purportedly saw individuals participating with UPC forces whom they estimated to have been under 15. The age-assessment in the first category involves primary reliance on hearsay information about association and age, supplemented by visual assessment, sometimes during an interview; the second involves direct observation of association, but only visual assessment of age usually without hearsay confirmation.

1390. The inherent difficulties of age estimation have already been discussed in relation to the Chamber's own visual evaluation. The margin of error must be set even wider when the Chamber is asked to rely on the visual evaluation of another. The Chamber should be particularly sceptical of those witnesses testimony who did not acknowledge an appropriate range of uncertainty.³⁹²¹ For most witnesses, estimates of age were not elicited in relation to control images, so that the Chamber would have some idea as to how the witnesses were assessing age in practice, and their propensity for error.

1391. Hearsay information from the subjects does not significantly enhance reliability given the particular circumstances of interviews by P-0046 and others. P-0769 testified that he lied about his age, with the encouragement of the NGO that was assisting him.³⁹²² D-0172 testified that some recruits with whom he was demobilised were as old as 25, falsely claiming that they were under 18.³⁹²³ P-0046's own notes show, in one of the rare cases where her estimate was double-checked by a colleague, a person whom she

³⁹²¹ Cf. P-0116:T-196,39:10-11; D-0211:T-248,39:25-40:3.

³⁹²² P-0769:T-122,42:9-43:14 (“we did reduce your age to 16,17’ [...] as I really wanted to leave Bunia and return, then I signed”).

³⁹²³ D-0172:T-245,32:1-7; [DRC-OTP-2103-0390](#) (“UNICEF-led team finds 163 Congolese child soldiers in Uganda”).

had noted as being 15 was, in reality, 18.³⁹²⁴ P-0046 acknowledged that she took self-reports of age at face-value, without making any effort to test these assertions.³⁹²⁵ The track record of witnesses before the ICC is abundant evidence of widespread efforts at deception in respect of allegations of child soldiers.

1392. The hearsay evidence must also be given extremely low weight in light of its anonymous nature. Almost no one who is alleged to be under 15 was actually identified, and none of the individuals who spoke to P-0046 were identified. Anonymous hearsay, though not inadmissible, must be treated with the utmost caution even when not deliberately withheld,³⁹²⁶ as it was in this case.³⁹²⁷

1393. The standard of proof beyond reasonable doubt should not be lowered as a compensation for the absence of direct evidence. On the contrary, direct evidence is available in abundance. Sixteen individuals claiming to have been under 15 when associated with UPC forces have testified at the ICC – 12 in *Lubanga*, and four in this case. 280 are registered as alleged victims. Many more should be available if it is true that a “significant minority” of the alleged 3,200 minors in UPC forces were under 15.³⁹²⁸

1394. There has been an unfortunate shift in this case, as compared to the *Lubanga* case, towards indirect evidence. The number of Prosecution child soldier witnesses had been reduced from nine to four. The number of Victim child soldier witnesses has dropped from three to zero. Estimates of age have often been elicited without even attempting to obtain the subject’s name or identity.³⁹²⁹ Objections have been raised when the Defence

³⁹²⁴ [DRC-OTP-0208-0284](#), p.0319-0320; **P-0046**:T-103,17:1-25.

³⁹²⁵ *Merton*, para.37 (“except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision maker must seek to elicit the general background of the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant’s statement as to his age, the decision maker will have to make an assessment of his credibility, and he will have to ask questions designed to test his credibility”).

³⁹²⁶ [Ndindabahizi AJ](#), para.115; [Bagasora TJ](#), para.890; [Gotovina TJ](#), Vol. I, para.241; [Haradinaj TJ](#), para.317.

³⁹²⁷ See *Gbagbo* Decision adjourning CoC, para. 29

³⁹²⁸ PCB, para.633; [DRC-OTP-0074-0422](#), p.0461.

³⁹²⁹ See e.g. **P-0768**:T-36,50:19-51:5 (no attempt to adduce name of subjects); **P-0907**:T-89,25:7-13 (no attempt to adduce the names of children purportedly under 15); **D-0172**:T-245,82:3-22 (no questions asked by the Prosecution about the identity of friends of D-0172 who went to train at Mandro, “some” of whom were “about 14”); **P-0769**:T-120,25:1-6,38:1-14,39:21-40:12.

did so.³⁹³⁰ The lesson that appears to have been learnt from *Lubanga* is that hearsay is better than direct testimony, and that quantity is preferable to quality. This is an unfortunate trend for this Court, and directly contrary to Judge Ušacka's urging at the end of the *Lubanga* case that the Prosecution "adduce more direct and more convincing evidence and preserve the fairness of proceedings, which lies at the heart of criminal prosecutions and should not be sacrificed in favour of putting historical events on the record."³⁹³¹

1395. The indirect evidence should be evaluated in light of the direct evidence that has been heard before this Court. Of the twelve alleged child soldiers who testified in *Lubanga*, zero were found reliable. Eight were so deliberately misleading that their victim status was revoked.³⁹³² None of the five alleged child soldier witnesses heard in this case, [REDACTED],³⁹³³ is credible. This brings to 15 the number of lying or unreliable child soldier witnesses presented to this Court. These are the best – out of the alleged thousands – that can be presented to the Chamber after more than a decade of investigations.

1396. The danger of a repetition of the rampant lying in the *Lubanga* case has not been diminished by making an example of those who lied, or those who encouraged them to lie. The *Lubanga* Trial Chamber did formally refer information for that purpose to the Prosecution, but no prosecutions of former Prosecution intermediaries or witnesses have been undertaken.³⁹³⁴

1397. Meanwhile, the Rome Statute age threshold is, by now, extremely well-known in ITURI as a pre-condition for receiving compensation or vilifying the UPC in these criminal proceedings. This is exactly the type of influence noted by Dr YUILLE (P-0933) as liable to contaminate investigations and even lead to widespread false allegations.³⁹³⁵

³⁹³⁰ See e.g. **D-0057**:T-246,39:10-42:18 (repeated objections to obtaining details about the timing and circumstances of under-age individuals ostensibly demobilized by the UPC).

³⁹³¹ [Lubanga AJ](#), Ušacka dissent, para. 79.

³⁹³² [REDACTED]

³⁹³³ [REDACTED]

³⁹³⁴ [Lubanga TJ](#), para. 483.

³⁹³⁵ **P-0933**:T-87,34:18-35:8,37:17-24;T-88,18:21-19:16.

1398. All of these factors weigh in favour of treating this indirect, observational evidence with the utmost caution and scepticism. When this approach is adopted, it turns out that there is very little evidence of anyone within the ranks of the FPLC or UPC forces being under 15 years of age. Such evidence as there is does not meet the criminal threshold of proof.

Section III - Testimony of age and association with an armed group based on reporting by the subjects, supplemented by visual observation: P-0046, P-0116, P-0976, P-0031

A. P-0046

1399. P-0046 at first testified that the number of individuals whom she had identified as associated with UPC forces under the age of 15 during the relevant time period was approximately 167,³⁹³⁶ but then later recognised – based upon a passage of her *Lubanga* testimony showing figure different than that shown by the Prosecution – that the number was actually 71.³⁹³⁷

1400. The latter figure corresponds roughly with P-0046's database, DRC-OTP-0208-0284. This document consists of 172 entries, almost all of which relate to individuals purportedly associated with the UPC. However, those notes show that P-0046 overstated the number of subjects under 15.³⁹³⁸ Of the 172 interviews recorded on the document: [REDACTED].³⁹³⁹ [REDACTED].³⁹⁴⁰

1401. This leaves fifty entries, not 71, with ages at date of recruitment as follows:

Age on date of recruitment	Number	Note Entry #
14	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]
Total	[REDACTED]	

³⁹³⁶ P-0046:T-100,45:10,46:3,46:8.

³⁹³⁷ The Prosecution showed P-0046 her testimony from 7 July 2009 (T-100,42:25-44:2), whereas she corrected these figures on 8 July 2009: P-0046:T-100,100:8-101:16 (“[a]mong the 167 cases, 167 interviews I had with the children, 71 of the children were under 15 when recruited”).

³⁹³⁸ P-0046:T-101,99:9-10.

³⁹³⁹ [REDACTED]

³⁹⁴⁰ [REDACTED]

1402. These numbers are far from indicative of an overwhelming presence of under-age children in the UPC forces, especially when viewed in light of the following factors.

1403. First, P-0046 and her colleagues were identifying “children associated with armed groups.”³⁹⁴¹ P-0046 acknowledged that this was “much larger than the term sometimes used of child soldiers,”³⁹⁴² and would include even individuals who were “cooks”³⁹⁴³ or who had “washed dishes.”³⁹⁴⁴ This is a particularly significant consideration in respect of the 11 and 12 year olds identified in DRC-OTP-0208-0284, for half of whom (#7a,7b,88,113 and 136) no description is provided of any military function.

1404. Second, P-0046 explained that her “aim was not, you know to identify exactly how old were the children.”³⁹⁴⁵ Her aim was to establish “trends.”³⁹⁴⁶ Accordingly, she did little or nothing to verify the ages of many of individuals.³⁹⁴⁷ Her “cross-checking with other colleagues”³⁹⁴⁸ consisted of: (i) finding out from colleagues whether information in a chronology of events was “apparently not true or incorrect”;³⁹⁴⁹ and (ii) making a follow-up inquiry with the CTO to which they were referred when she “had questions about the age.”³⁹⁵⁰ [REDACTED] contradicted P-0046 in this regard, testifying that it was actually P-0046’s job to verify ages and affiliation of children.³⁹⁵¹ This contradictory testimony suggests that neither engaged in any meaningful verification or correction at all.

1405. The reality as far as the documents show is that not only did neither MONUC nor the NGO’s engage in any meaningful verification process, they did not even consult with one another. Amongst the 172 entries in her notes, only six contain a notation “*mise à jour*” after referral to a CTO.³⁹⁵² The subjects, according to her, had “no reason [...] to lie”³⁹⁵³ and she did not believe that any amongst the 200 whom she or her colleagues

³⁹⁴¹ P-0046:T-100,15:10;19-24.

³⁹⁴² P-0046:T-100,15:23.

³⁹⁴³ P-0046:T-101,104:11.

³⁹⁴⁴ P-0046:T-102,60:1.

³⁹⁴⁵ P-0046:T-102,58:6-7.

³⁹⁴⁶ P-0046:T-100,24:1;25:15; T-101,102:16.

³⁹⁴⁷ P-0046:T-102 55:16-56:13.

³⁹⁴⁸ P-0046:T-100,46:22.

³⁹⁴⁹ P-0046:T-102,92:2.

³⁹⁵⁰ P-0046:T-101,102:19-24.

³⁹⁵¹ [REDACTED] (“[REDACTED]”).

³⁹⁵² [DRC-OTP-0208-0284](#), Entries #81,82,86,113,116.

³⁹⁵³ P-0046:T-101,104:1.

interviewed in 2003 had lied to her.³⁹⁵⁴ This is contrary to the testimony of [REDACTED] and [REDACTED], both of whom acknowledged having been aware of having been told lies about age,³⁹⁵⁵ and testimony that many individuals under-stated their age at TCHAKWANZI.³⁹⁵⁶ P-0769 testified that one of P-0046's NGO partners, [REDACTED], falsified his age on documents to provide him with assistance.³⁹⁵⁷

1406. The "cross-checking" in respect of age, even when it did occur, consisted of nothing more than seeking a second opinion from the CTOs to which the person had been referred.³⁹⁵⁸ [REDACTED]'s testimony about [REDACTED] falsifying his age demonstrates that NGO's were motivated to lie, as were the subjects themselves.³⁹⁵⁹ The individuals making these corroborating estimates are anonymous to the Chamber.³⁹⁶⁰ No record of these second opinions is to be found in P-0046's notes other than the "*mise à jour*" concerning six out of her 172 entries. P-0046 claimed that she followed up "in most cases" but only "where we were unclear or unsure",³⁹⁶¹ leaving open the possibility that no second-opinion was obtained in the vast majority of cases. P-0046 confirmed that neither she nor the CTOs "cross-checked" school or birth records, or even made inquiries with relatives about the age of the subjects.³⁹⁶²

1407. The "cross-checking" of the chronologies given by children, to assess their overall credibility, was extremely limited. The entries in her database contain a host of implausible claims that, as best P-0046 could recall, did not flag any doubts about the credibility of her subjects.³⁹⁶³ The lack of "cross-checking" for credibility is reflected in her statements that her role was simply to "record[] their stories as they came out,"³⁹⁶⁴ to just "record[] the – the child's words"³⁹⁶⁵ and not to "grill" the subjects.³⁹⁶⁶ P-0046

³⁹⁵⁴ **P-0046:**T-102,63:3-4.

³⁹⁵⁵ [REDACTED]

³⁹⁵⁶ **D-0172:**T-245,94:7-21;**P-0116:**T-195,5:15-20,56:1-3.

³⁹⁵⁷ **P-0769:**T-122,42:9-21.

³⁹⁵⁸ **P-0046:**T-102,55:19-20("I don't see what we could have done. And we de-briefed afterwards, we discussed cases").

³⁹⁵⁹ **P-0769:**T-122,42:9-21,43:8-14.

³⁹⁶⁰ **P-0046:**T-100,24:8-18;T-102,92:2("[t]hey would notice if something was apparently not true or incorrect").

³⁹⁶¹ **P-0046:**T-103:18:15-19:3.

³⁹⁶² **P-0046:**T-102,55:8("we did not go back to their village to request for their birth certificate, no");91:16-92:2("I don't think that the protection agencies particularly did investigate").

³⁹⁶³ **P-0046:**T-103,6:3-12:8;15:4-16:10(notes referring to a "Commander Awesome," recruitment before the UPC existed, a 10-year old claiming to have walked 80 kilometres).

³⁹⁶⁴ **P-0046:**T-103,8:25.

³⁹⁶⁵ **P-0046:**T-103,16:7-8.

did not ask her subjects the obvious questions to test whether these claims were true,³⁹⁶⁷ did not ask other sources about their claims to determine their accuracy,³⁹⁶⁸ and apparently made no effort to ask questions to test suggestibility.³⁹⁶⁹ In this context, it is unsurprising that she never doubted any of their claims.³⁹⁷⁰

1408. Third, the manner in which P-0046's notes are recorded raise doubts about their accuracy in respect of age. Birth-dates are never recorded, which is a curious omission given that the exact dates of interview is scrupulously recorded and in light of P-0046's assertion that her subjects always provided an exact age³⁹⁷¹ -- a claim contradicted by Prosecution and Defence witnesses alike³⁹⁷² and as was even manifest during this trial.³⁹⁷³ P-0046 indicated that she "cleaned" her notes regularly.³⁹⁷⁴

1409. Fourth, many entries are not the result of P-0046's own observations. Entries #3,4,9,12,18,19,21,22,24,27,30,35,38,39 and 40 were interviewed by unidentified NGO workers.³⁹⁷⁵ These NGO-recorded entries include the very rare indications of 11 and 12 year olds as having been associated with the UPC. Many entries in DRC-OTP-0208-0284 were collected by the "ACPA," whom P-0046 refused to identify and who did not testify before the Chamber.³⁹⁷⁶ P-0046 demonstrated limited knowledge of the information contained in these entries.³⁹⁷⁷ The document withholds other highly salient details, such as the names of responsible commanders.³⁹⁷⁸

³⁹⁶⁶ **P-0046**:T-102,56:8-10("For the specific ones in Rwampara I'm afraid no -- I mean, no, I'm not afraid, but we did not -- I mean I did not think it would have been appropriate for the children to be grilled").

³⁹⁶⁷ **P-0046**:T-102,93:23-25.

³⁹⁶⁸ **P-0046**:T-102,94:8-95:8.

³⁹⁶⁹ **P-0933**:T-88,6:3-14.

³⁹⁷⁰ **P-0046**:T-103,63:3-4("I don't remember of having come across a child who told me he was associated and for whom I questioned what he said").

³⁹⁷¹ **P-0046**:T-102,57:15-16.

³⁹⁷² **P-0031**:T-175,18:20-19:16.

³⁹⁷³ See e.g. **D-0172**:T-245,19:11-16; **P-0758**:T-160,73:24("I don't know why we didn't celebrate my birthday"); **P-0018**:T-111,51:6-9("Most people don't know their date of birth. Even a mother doesn't necessarily know the date of birth of her child"); **P-0113**:T-119,55:8-11("It's hard for me to give birth dates precisely, that's why I mentioned different dates").

³⁹⁷⁴ **P-0046**:T-103,13:1.

³⁹⁷⁵ **P-0046**:T-102,53:16-54:16;59:5("I'm not the one who interview the child [...] I don't have a clue").

³⁹⁷⁶ **P-0046**:T-100,87:15-17;T-103,17:5("No, I'm not at liberty to say. I would just bring the attention of the Court to the restriction made by the UN during the previous trial"). See e.g. Entries #148,155,156.

³⁹⁷⁷ **P-0046**:T-102,60:1-2.

³⁹⁷⁸ A comparison of entry on [DRC-OTP-0208-0284](#) with [DRC-OTP-0223-0117](#) reveals that the redactions extend to place of birth, the location of imprisonment at a particular time, and the identity of a commander by whom she was allegedly raped. Redactions of this type appear repeatedly, but not consistently, throughout [DRC-OTP-0208-0284](#).

1410. Fifth, P-0046 was oddly reluctant to acknowledge that the prospect of assistance might be a motivation for her subjects to lie,³⁹⁷⁹ asserting that she could discern “no reason [for them] to lie.”³⁹⁸⁰ P-0046 was wrong. Children formerly associated with armed groups did receive special benefits such as “reintegration kits”,³⁹⁸¹ medical treatment,³⁹⁸² payment of school fees,³⁹⁸³ agricultural supplies,³⁹⁸⁴ tools to take up a trade,³⁹⁸⁵ and vocational training.³⁹⁸⁶ D-0172 and D-0211 both confirmed that they told lies about having previously been associated, or about re-associating, with armed groups to receive assistance as former child soldiers.³⁹⁸⁷ P-0116 acknowledged that “there were some who wanted to benefit from favours for social reinsertion who said that they were younger than they were.”³⁹⁸⁸ The expectation of “favours” apparently continues to this day given the parade of witnesses who lied even while under oath in the *Lubanga* case, and specifically in respect of the 15 years-of-age threshold. P-0046’s failure to acknowledge this motivation, and her failure to recall even a single subject having been not believable, raises serious doubts about the reliability of her records.³⁹⁸⁹

1411. Sixth, P-0046 inappropriately telegraphed her expectations to her impressionable interview subjects:

As an introduction when we were meeting with children, we would explain that we needed information from them because we were first explaining that the association of children with armed groups or forces was something that was not allowed, it was contravening to children basic rights. So we were explaining them that the situation they were – that *their experience in these armed groups was something that we were trying to prevent, that it’s something that was not right, and that we were aiming at getting information from them so that we could set up appropriate protection mechanisms [...] and that we were documenting their experience so that we could provide as much as possible appropriate responses to those who had been victims of such violations. We

³⁹⁷⁹ P-0046:T-102,96:1-104:25.

³⁹⁸⁰ P-0046:T-101,104:1.

³⁹⁸¹ P-0116:T-195,19:20-20:25.

³⁹⁸² P-0116:T-195,20:21.

³⁹⁸³ P-0116:T-195,20:12-13;D-0172:T-245,34:20-21;D-0057:T-246,31:18-21; [REDACTED]; P-0031:T-177,23:8-24:6.

³⁹⁸⁴ P-0976:T-152,83:3-25; [REDACTED].

³⁹⁸⁵ P-0116:T-195,20:8-11; [REDACTED].

³⁹⁸⁶ P-0976:T-152,83:6-25;P-0116:T-196,6:25(“professional reinsertion programme in a centre – a woodworking centre with a priest”);35:5.

³⁹⁸⁷ D-0172:T-245,35:7-8(“we even lied, saying ‘If you don’t return us to school, we’re going to go back to the army’”);D-0211:T-247,17:24-25.

³⁹⁸⁸ P-0116:T-195,56:2-3.

³⁹⁸⁹ P-0046:T-102,64:10.

were introducing the conversation by explaining the children that they had been victims of a violation.³⁹⁹⁰

1412. Dr YUILLE warned of the danger of contamination arising from this type of questioning, especially of young subjects.³⁹⁹¹

1413. Finally, P-0046's testimony in respect of child soldiers, as well as DRC-OTP-0208-0284 and other associated documents, should be accorded no weight because of the deliberate and systematic redaction of sources.³⁹⁹² Assessing reliability is impossible without this information. Entry #146, for example, appears somewhat reliable on its face: with the name unredacted, as it exceptionally was,³⁹⁹³ the Chamber knows that the source has expressly disavowed its content and even challenged that she gave any such interview to the United Nations.³⁹⁹⁴ The Chamber has no way of knowing whether other entries are based on interviews with alleged child soldiers who have testified and been found unreliable before this Court.

1414. The identity of the sources who claim to have been victims falls squarely within Article 67(2). The fact that the Prosecution has not violated Article 67(2) because it received the information in this form [REDACTED] does not diminish the profound damage to the integrity of proceedings that would be caused by relying on information in this form. Furthermore, the practice that has been followed in this case should not be condoned for future investigations. The scrubbing of "confidential" information provided to the Prosecution is nothing less than an end-run around Article 54(3)(e) which led to two stays of proceedings in the *Lubanga* case.³⁹⁹⁵ [REDACTED].³⁹⁹⁶ Allowing such a procedure would also send the worst signal to States about the minimum requirements of a fair trial, apparently permitting excusing the with-holding of exculpatory information as long as the with-holding is not done by the prosecutorial authority. Such a practice cannot be condoned, [REDACTED].

³⁹⁹⁰ P-0046:T-100,40:16-41:3.

³⁹⁹¹ P-0933:T-87,44:10-45:13;T-88,8:2-14.

³⁹⁹² P-0046:T-100,80:1-5;T-103,33:21 ("[n]o, in any way, I will not");37:6-12.

³⁹⁹³ Entry #146 is redacted in [DRC-OTP-0208-0284](#), but was disclosed separately as [DRC-OTP-0223-0117](#) without redaction.

³⁹⁹⁴ D-0211:T-247,44:13-48:3.

³⁹⁹⁵ *Lubanga*, Reasons for Oral Decision lifting the stay of proceedings, [ICC-01/04-01/06-1644](#); Decision on the consequences of non-disclosure of exculpatory materials, [ICC-01/04-01/06-1401](#).

³⁹⁹⁶ See e.g. [DRC-OTP-0208-0284](#), pp.0330-0331, omitting the entry disclosed separately and in full as [DRC-OTP-0206-0120-R02](#).

B. P-0116

1415. The Prosecution asserts that P-0116 “attested to the presence of children in the UPC” on the basis that he had “direct contact with such children for weeks and sometimes months.”³⁹⁹⁷

1416. This claim is incorrect to the extent that it means to refer to anyone under 15.

1417. P-0116 testified that after he left BUNIA in [REDACTED] 2002³⁹⁹⁸ he had some hearsay information and received reports (none of which were ever produced)³⁹⁹⁹ about events in BUNIA. Rather than affirming that he heard that under-15s were being recruited into UPC forces, P-0116 testified that – with one exception – he heard that the people joining the UPC forces were not under 15: “They didn't say they were 12, 13, or 14 years old, but they were children of their age, they would say. So that means under the age of 18 because they were still participating in our program.”⁴⁰⁰⁰ P-0116 emphasised more than once that his definition of “child” was “someone who was not yet past their 18th birthday.”⁴⁰⁰¹

1418. [REDACTED] “[REDACTED].” P-0116 testified that this was the youngest person he met who had been demobilised from TCHAKWANZI in 2001, and was about 13 years old.⁴⁰⁰² [REDACTED].”⁴⁰⁰³ [REDACTED].⁴⁰⁰⁴

1419. D-0172 testified that his name is “Zawadi Bahati Richard”,⁴⁰⁰⁵ that at TCHAKWANZI he was known as “Bahati Richard”,⁴⁰⁰⁶ that after demobilisation from TCHAKWANZI [REDACTED]; [REDACTED],⁴⁰⁰⁷ which would have made him 13 years old at the time of his demobilisation. [REDACTED].⁴⁰⁰⁸ D-0172 told the person there, whose

³⁹⁹⁷ PCB, para. 691.

³⁹⁹⁸ **P-0116**:T-195,29:4-9;50:16-24 (“Q. During that period after you had [REDACTED], between [REDACTED] 2002 and April 2003, when you went back for [REDACTED] in the context of [REDACTED], did you ever visit Bunia? A. During that period, no, sir, I did not”).

³⁹⁹⁹ See e.g. **P-0116**, T-195,34:8-35:23.

⁴⁰⁰⁰ **P-0116**:[DRC-OTP-2054-4494](#), 4550:15-17.

⁴⁰⁰¹ **P-0116**:T-195,37:6; **P-0116**:[DRC-OTP-2054-4494](#), 4550:12-13.

⁴⁰⁰² **P-0116**:T-195,37:10 (“The youngest I met had – was 13”).

⁴⁰⁰³ [REDACTED]

⁴⁰⁰⁴ [REDACTED]

⁴⁰⁰⁵ **D-0172**:T-245,14:20.

⁴⁰⁰⁶ **D-0172**:T-245,32:19 (“They didn't know my name of Bahati Richard Zawadi. They just called me Bahati Richard”).

⁴⁰⁰⁷ **D-0172**:T-245,15:9.

⁴⁰⁰⁸ [REDACTED]

name he could not recall, that “we were spending time at the village without studying. We said that – we even lied, saying ‘If you don’t return us to school, we’re going to go back to the army.’ That was a way of pushing them to return us to school as quickly as possible.”⁴⁰⁰⁹ D-0172 denied that he ever rejoined any armed group.⁴⁰¹⁰

1420. The Prosecution asserts that D-0172 lied in denying that he had joined the UPC, relying on three documents that purportedly prove the contrary.⁴⁰¹¹ DRC-OTP-2104-0358, a DDR “*fiche d’identification*” records that D-0172 was demobilised from the UPC-RP on 2 March 2005, having been recruited on 27 December 2002. DRC-OTP-0160-0190,p.0200, is a page from a notebook purportedly created at a demobilisation CTO in BUNIA, saying that D-0172 arrived there on 21 May 2004 from the APC. DRC-OTP-2081-0072 is one of the three purported “Mandro Lists,” purportedly created at the end of August 2002, listing “Zawadi Richard.”

1421. D-0172’s testimony, despite these documents, still raises doubt about P-0116’s testimony that a “Bahati Richard” joined the UPC some time in 2002 at the age of 13 or 14. The three documents are not consistent with one another or with other documents. The biographical information for D-0172 on the “Mandro List” is mostly incorrect – including date of birth, place of birth, and school attended.⁴⁰¹² The recitation of other, correct information is a further indication that [REDACTED] to fabricate plausible, but false, lists of recruits at MANDRO. The DDR “*fiche*” records an entirely different date of birth than that appearing on the MANDRO List – 1 January 1987⁴⁰¹³ – which is different again from the date of birth on the witness’s electoral card.⁴⁰¹⁴ The “*fiche*” and the CTO document give different dates of demobilisation: the former, on 2 March 2005,⁴⁰¹⁵ the latter on 21 May 2004.⁴⁰¹⁶ The “*fiche*” says that D-0172 was demobilised from the “UPC-RP”, whereas DRC-OTP-0160-0190 says that he was demobilised from the APC.⁴⁰¹⁷ The “*fiche*” and “Mandro List” also give different dates of recruitment: the

⁴⁰⁰⁹ [REDACTED]

⁴⁰¹⁰ D-0172, T-245,35:25;41:12-13 (“I was demobilized in Uganda and I never returned to the army thereafter”).

⁴⁰¹¹ PCB, para.110.

⁴⁰¹² D-0172, T-245:36:9-37:19 (incorrectly recording date of birth as “09.7”. Year reads “86” or “88”).

⁴⁰¹³ [DRC-OTP-2104-0358](#).

⁴⁰¹⁴ [DRC-D18-0001-5353](#) (“01/02/1986”).

⁴⁰¹⁵ [DRC-OTP-2104-0358](#).

⁴⁰¹⁶ [DRC-OTP-0160-0190](#), p.0200, #165; [DRC-OTP-0160-0002](#), p.0014, #112.

⁴⁰¹⁷ [DRC-OTP-0160-0190](#), p.0200, #165.

former on exactly 27 December 2002, the latter no later than 27 August 2002.⁴⁰¹⁸ Little to no information was adduced by the Prosecution concerning the circumstances of creation of the CTO document or the *fiche*: [REDACTED]; the latter, which was ostensibly printed less than a month before D-0172's testimony, offers no information about who recorded the information, or from whom or when. Particular doubt about the authenticity of this document arises from the witness's testimony that the photograph corresponds to that taken of him by UNICEF when he demobilised from TCHAKWANZI in 2001.⁴⁰¹⁹ It cannot be excluded that corrupt officials, motivated by greed, included individuals from previous demobilisations to inflate their numbers to receive increased funding. A circumstantial indication of this is the CTO document indicating that D-0172 was demobilised from the "APC" – which was true, except almost three years earlier than indicated on the document, during the TCHAKWANZI demobilisation.

1422. If the Chamber accepts, contrary to these arguments, that D-0172 was recruited into the ranks of the UPC forces in 2002, the documents raise serious doubt about D-0172's age at the time. UNICEF recorded D-0172's year of birth upon demobilisation from TCHAKWANZI as 1986,⁴⁰²⁰ which would have made him 16 years old in 2002. D-0172 confirmed that it was only in 2006 that his father informed him that he had been born two years later, in 1988.⁴⁰²¹ Curiously, the MANDRO List reflects precisely the same confusion, with an "88" written over what appears to be "86" in the year of birth.⁴⁰²² The witness's own hesitation as to his exact date of birth⁴⁰²³ raises further doubts. The DDR "*fiche*," if taken at face value, indicates that D-0172 was recruited at 15 years of age minus four days – hardly a margin of error that could safely be relied upon to conclude that he was conscripted or recruited, let alone used, under the age of 15. P-0116's estimate of [REDACTED] age based on physical appearance (13 at some point in 2001) falls well within the margin of error of 15 years of age in 2002, especially in light of D-0038's [REDACTED] comments that D-0172 was of small

⁴⁰¹⁸ [DRC-OTP-2081-0003](#) ("le [REDACTED]"); [REDACTED]("[REDACTED] [REDACTED]").

⁴⁰¹⁹ **D-0172**:T-245,38:10-11.

⁴⁰²⁰ [DRC-OTP-0134-0626](#),p.0638 ("né en 1986").

⁴⁰²¹ **D-0172**:T-245,65:25-65:1.

⁴⁰²² [DRC-OTP-2081-0072](#).

⁴⁰²³ **D-0172**:T-245,15:10-11 ("Q. Do you know the exact month or day in 1988 when you were born? A. I've forgotten it").

stature.⁴⁰²⁴ No reliable finding can be made that D-0172 was born in 1988 rather than 1986, which is the difference in 2002 between being recruited into UPC forces at age 14 or at age 16.

1423.P-0116 offered negative generalisations⁴⁰²⁵ about Mr NTAGANDA and the UPC that are entitled to no weight and whose unsubstantiated repetition demonstrates his bias. P-0116 shockingly tried to blame Mr NTAGANDA for the “massacres in the villages of BOGORO where his presence had been pointed out.”⁴⁰²⁶ When it was suggested that the massacre at BOGORO had been a slaughter of Hema civilians by Lendu combatants,⁴⁰²⁷ P-0116 acknowledged that “it’s possible” he was confused, that “we weren’t able to follow everything,” and that “you will understand that my memory is not so fresh as in order to give you the exact tenor of events.”⁴⁰²⁸ P-0116’s tendency to guess was also on display when, after testifying that Mr NTAGANDA had been the Chief of Staff of UPC forces,⁴⁰²⁹ upon being shown the 30 October 2002 demobilisation order from KISEMBO as “Chef d’Etat Major”, P-0116 did not hesitate to assert that Mr NTAGANDA had been chief of staff “before this date, well before the – the date of October of this year that you are referring to here.”⁴⁰³⁰ P-0116’s biased approach influenced by information obtained subsequent to events was also reflected in his affirmation that the UPC had sent recruits to TCHAKWANZI, despite having stated in his first interview to OTP investigators, in line with overwhelming evidence, that those recruits had been sent by the authority of the day in Bunia, the RCD-K/ML.⁴⁰³¹

1424.P-0116’s testimony [REDACTED] “[REDACTED]” [REDACTED] any other child was recruited into the UPC forces is uninformed and unreliable. It is entitled to no weight.

⁴⁰²⁴ **D-0038**:T-249,29:25-30:1 (“Well, if you take a look at Zawadi Richard, he is the same as he was at that time; he is still a smallish man and slender”);

⁴⁰²⁵ **P-0116**:T-195,23:18-36:24.

⁴⁰²⁶ **P-0116**:T-196,8:22-9:6.

⁴⁰²⁷ *Katanga* TJ, paras.1,841 (“the death toll of 60 constituting a minimum”).

⁴⁰²⁸ **P-0116**:T-196,8:23-9:24.

⁴⁰²⁹ **P-0116**:T-195,32:1-6.

⁴⁰³⁰ **P-0116**,T-196,13:20-21.

⁴⁰³¹ **P-0116**,T-195,45:1-11 (“168 children under 18 who had been enrolled [sic] by the RCD-K/ML and transported by plane to Tchakwanzi”); [REDACTED] (“[REDACTED]”); **D-0172**:T-245,28:2 (Q.can you tell us who it was who came and addressed you at that ceremony at the completion of your training? A. It was Mr Tibasima”);41:18(“we were given uniforms with the APC written on those uniforms”).

C. P-0976

1425.P-0976 testified that [REDACTED], [REDACTED], [REDACTED]. The children in the program were between 8-and-a-half and 18, which P-0976 knew based on what the children themselves and their families said;⁴⁰³² what was recorded on their “data sheet”,⁴⁰³³ and his observation of their “stature.”⁴⁰³⁴

1426.By September 2001, 80 of the 130 individuals in the program had already re-joined armed groups.⁴⁰³⁵ P-0976 acknowledged that UPC forces did not exist as of this date, and that the 80 had joined “Hema combatant forces organised according to regional or municipal grouping or whatever.”⁴⁰³⁶ P-0976 asserted that these individuals subsequently became “UPC soldiers” after the “UPC took over”⁴⁰³⁷ but acknowledged that he was “unable to tell you here if the local groups, by collectivity or by locality, remained back”⁴⁰³⁸ and that he was “not privy to this information.”⁴⁰³⁹ P-0976’s testimony is, accordingly, ambiguous as to whether he testified that anyone under 15 joined the FPLC or UPC forces; how many; or where they joined; or who they were. P-0976 failed to provide the name of a single person whom he could affirm was under 15 at the time they joined the FPLC or UPC forces.⁴⁰⁴⁰ P-00976’s age assessments based on visual observation and bias are discussed below.

D. P-0031

1427.P-0031’s testimony and the documents that he provided to the Prosecution are unreliable for proof of the specific proposition that there were children under 15 amongst UPC forces.⁴⁰⁴¹

1428.P-0031 received [REDACTED],⁴⁰⁴² following a period of reported financial difficulty.⁴⁰⁴³ [REDACTED].⁴⁰⁴⁴

⁴⁰³² P-0976:T-152,19:14-17.

⁴⁰³³ P-0976:T-152,19:3-11; [REDACTED]

⁴⁰³⁴ P-0976:T-152,19:9.

⁴⁰³⁵ P-0976:T-152,84:2-16.

⁴⁰³⁶ P-0976:T-152,84:17-85:9; [REDACTED]

⁴⁰³⁷ P-0976:T-152,84:17-85:9; [REDACTED]

⁴⁰³⁸ P-0976:T-152,88:10-11.

⁴⁰³⁹ P-0976:T-152,99:1-2.

⁴⁰⁴⁰ P-0976:T-152,89:20-25.

⁴⁰⁴¹ PCB,para.634,fn.1897; [DRC-OTP-0140-0510](#).

⁴⁰⁴² [DRC-D18-0001-2473](#).

1429.P-0031's willingness to make up facts he considered incriminating is demonstrated by his testimony that he participated in a visit [REDACTED].⁴⁰⁴⁵ P-0031 gives a vivid description of child soldiers as young as 9 or 10,⁴⁰⁴⁶ performing sentry duty or lined up in a parade;⁴⁰⁴⁷ [REDACTED];⁴⁰⁴⁸ [REDACTED],⁴⁰⁴⁹ [REDACTED].⁴⁰⁵⁰

1430.P-0031 made the mistake [REDACTED] – of affirming that [REDACTED] had been present during this visit.⁴⁰⁵¹ [REDACTED], however, testified [REDACTED].⁴⁰⁵² P-0031's mission database makes no reference to [REDACTED].⁴⁰⁵³ [REDACTED] did not testify that she ever met Mr NTAGANDA, [REDACTED]. Neither Mr NTAGANDA nor KISEMBO were anywhere near [REDACTED] at the time of [REDACTED] visit because [REDACTED].⁴⁰⁵⁴ P-0031's testimony is more than just embellishment: it is a calculated attempt to mislead the Chamber by placing Mr NTAGANDA at an event that P-0031 knows perfectly well was not attended by Mr NTAGANDA. P-0031 concocted what he thought was a plausible story based on rumour and having seen videos [REDACTED].⁴⁰⁵⁵

1431.P-0031 also lied in asserting that there was a UPC training "centre in [REDACTED]"⁴⁰⁵⁶ visited [REDACTED]⁴⁰⁵⁷ starting from the summer of 2003,⁴⁰⁵⁸ and that there were discussions with "the commander in charge of the camps."⁴⁰⁵⁹ P-0046 testified, however, that there was no UPC training camp at [REDACTED] by the time she visited.⁴⁰⁶⁰

⁴⁰⁴³ **P-0031**:T-177,31:20-24.

⁴⁰⁴⁴ [REDACTED]

⁴⁰⁴⁵ [REDACTED] ("[REDACTED]"); [REDACTED].

⁴⁰⁴⁶ [REDACTED] ("[REDACTED]").

⁴⁰⁴⁷ [REDACTED]

⁴⁰⁴⁸ [REDACTED]

⁴⁰⁴⁹ [REDACTED]; [REDACTED] [REDACTED]

⁴⁰⁵⁰ [REDACTED]

⁴⁰⁵¹ **P-0031**:T-174,107:15 (Q. I'd like to have the names of people that you remember were present on that occasion? A. I can give you [REDACTED]. Q. Can you spell [REDACTED]. We know [REDACTED] well, but the other name, could you spell it for us please?).

⁴⁰⁵² [REDACTED]

⁴⁰⁵³ [DRC-OTP-0195-2366](#).

⁴⁰⁵⁴ **P-0031**:T-175,44:5-45:5.

⁴⁰⁵⁵ [REDACTED] ("[REDACTED]").

⁴⁰⁵⁶ **P-0031**:T-174,107:8.

⁴⁰⁵⁷ [REDACTED] ("[REDACTED]").

⁴⁰⁵⁸ [REDACTED] ("[REDACTED]. [REDACTED].[REDACTED]");[REDACTED].

⁴⁰⁵⁹ [REDACTED]

⁴⁰⁶⁰ **P-0046**:T-100,71:14 ("We thought that we could find a training camp, a UPC training camp at that time, but there was nothing, there were no children there").

1432.P-0031 denied that any Hema civilians were killed in MUDZIPELA on 6 and 7 August 2002. He instead claimed that the only victims there were Lendu,⁴⁰⁶¹ offered vastly inflated number of those killed at the sous-region, and mischaracterised the nature of the fighting.⁴⁰⁶² This testimony suggests bias.

1433.P-0031 has also been accused of serious dishonesty by others [REDACTED], and of having lied [REDACTED] about threats and break-ins in order to [REDACTED].⁴⁰⁶³ This was before [REDACTED] from [REDACTED], during which time he had contacts with numerous [REDACTED].⁴⁰⁶⁴

1434.P-0031's testimony about the ages of demobilised children with whom he had contact cannot be relied upon given the lies and bias indicated above. [REDACTED].⁴⁰⁶⁵

1435.The documents conveyed by P-0031 to the Prosecution after a delay of several months⁴⁰⁶⁶ are, likewise, entitled to no weight. First, P-0031 was not involved in the creation of the documents and therefore could not vouch directly for the manner in which they were created or their content.⁴⁰⁶⁷ Second, most of the documents do not specify the groups with which the individuals were associated.⁴⁰⁶⁸ Third, there are positive indications that the documents are not reliable. [REDACTED]⁴⁰⁶⁹ – [REDACTED].⁴⁰⁷⁰ One person listed on P-0031's documents as 14 years old in July 2004⁴⁰⁷¹ is listed on other documents as having been born in 1988.⁴⁰⁷² Fourth, P-0031's description of how information concerning three alleged under-age soldiers affiliated with the UPC⁴⁰⁷³ was verified – that this was done by MONUC⁴⁰⁷⁴ – is contradicted by P-0046's description of MONUC's role. Fifth, D-0038, [REDACTED], was unable to recognise any of the names listed on DRC-OTP-0160-0190 as having come from

⁴⁰⁶¹ P-0031:T-175,50:19 (“You are trying to falsify history here”).

⁴⁰⁶² P-0031:T-175,51:10-54:12.

⁴⁰⁶³ P-0031:T-177,26:3-31:18.

⁴⁰⁶⁴ [REDACTED]

⁴⁰⁶⁵ [REDACTED] : [REDACTED]

⁴⁰⁶⁶ P-0031:T-177,7:2-22.

⁴⁰⁶⁷ [DRC-OTP-0162-0056](#),para.5 (P-0031 “was not in a position to specify the origin and nature of such documents”).

⁴⁰⁶⁸ See [DRC-OTP-0140-0510](#),pp.0150-0516,0519; P-0031 [REDACTED] : [REDACTED]

⁴⁰⁶⁹ [REDACTED]

⁴⁰⁷⁰ [REDACTED] ([REDACTED]).

⁴⁰⁷¹ [REDACTED](“[REDACTED]).

⁴⁰⁷² [REDACTED](“[REDACTED]).

⁴⁰⁷³ [REDACTED] : [REDACTED]

⁴⁰⁷⁴ [REDACTED] : [REDACTED]

[REDACTED].⁴⁰⁷⁵ D-0172 also testified that some of the information was clearly wrong and that he had never been in the demobilisation program of the named organisation.⁴⁰⁷⁶ Importantly, however, D-0172's information was apparently available within the NGO community, raising the possibility that his information was recycled [REDACTED], [REDACTED] to inflate the numbers of individuals enrolled in the programs. Sixth, P-0031's testimony in support of one of the documents that he claimed was a list of individuals enlisted by UPC forces at MONGBWALU in August 2002 is unreliable. UPC forces were not in control of MONGBWALU in August 2002,⁴⁰⁷⁷ nor after March 2003.⁴⁰⁷⁸ The witness's error as to date raises doubt as to these individuals were recruited by the FAPC rather than the UPC. Seventh, P-0031 curiously insisted throughout his testimony [REDACTED].⁴⁰⁷⁹

1436. Doubts about P-0031's reliability specifically in providing documents caused the Prosecution to suspend contacts with him for a period.⁴⁰⁸⁰

1437. This Trial Chamber should [REDACTED]⁴⁰⁸¹ in [REDACTED] no weight to P-0031's documents. [REDACTED] should be taken as representative of the reasonable doubt that must infect these and other documents relied on by the Prosecution. The inclusion of names, such as those from [REDACTED] and D-0172, is also suggestive of a systematic practice of fraud.

1438. P-0031 had a systematic role in [REDACTED]. [REDACTED].⁴⁰⁸² This is a witness who should be treated [REDACTED]⁴⁰⁸³ but as a liar who displayed open disrespect for the Court during his testimony.⁴⁰⁸⁴ The pervasive role of this person must be taken into consideration in assessing the secondary evidence relied on by the Prosecution's in lieu of credible direct evidence.

⁴⁰⁷⁵ D-0038:T-250,13:14-17:11.

⁴⁰⁷⁶ D-0172:T-245,40:8-43:11.

⁴⁰⁷⁷ [REDACTED] : [REDACTED].

⁴⁰⁷⁸ D-0300:T-221,42:22-43:7 (KAKWAVU officially deserted the UPC at the time of the fighting on 6 March 2003); P-0901:T-32,21:5-11 (KAKWAVU deserted the day before the fight between the UPDF and the FPLC on 6 March 2003").

⁴⁰⁷⁹ P-0031:[DRC-OTP-2054-4308](#),4381:8-4383:13.

⁴⁰⁸⁰ P-0031:T-174,84:24-85:5.

⁴⁰⁸¹ [REDACTED]

⁴⁰⁸² [REDACTED] : [REDACTED]

⁴⁰⁸³ [REDACTED]

⁴⁰⁸⁴ P-0031:T-175,40:11-25.

Section IV - The testimony of visual observation of alleged child soldiers

1439. **P-0046.** P-0046 did not estimate that anyone she saw with the FPLC was under 15 based on visual assessment only. P-0046 purportedly saw individuals in September 2002 whom she suspected of being associated with UPC forces as being “very young, which is in my mind probably like 13,14,15. Yeah, I had the feeling that they were very young, but again, I cannot tell you that I thought at that time that they were below 15 or – but, yes, when I say very young, it means that I did not think that they were 16,17. For sure not. No, it was – it was shocking.”⁴⁰⁸⁵ During a visit to LUBANGA’s residence at the end of May 2003, P-0046 testified she saw someone whom “we all thought was below 15.”⁴⁰⁸⁶ When questioned by the Presiding Judge, P-0046 changed this estimate to “Okay, he was below 18, that’s for sure. I don’t remember exactly now.”⁴⁰⁸⁷ P-0046, when asked whether she could estimate on the basis of appearance as reflected on photographs was over or under the age of 15, answered that her answer would be a “guess.”⁴⁰⁸⁸

1440. **P-0317.** P-0317, who was present in BUNIA in May and June 2003, also declined to assert that she observed anyone under 15 years of age:

“Could you clarify more precisely the age range of these people that you saw who appeared to be below 18?” And then your answer was: “I would say between 14 and 17 years.” And at the French transcript, page 96, line 16, we see that you used the expression (Interpretation) “I would say between 14 and 16 years old.” Do I understand that this age range that you gave in your testimony on Friday is an estimate? A. Yes, that’s an estimate. Q. So these individuals whom you saw could have been a little bit younger or a little bit older; is that correct? A. Yes.”⁴⁰⁸⁹

1441. **P-0976.** P-0976 [REDACTED], [REDACTED] by two armed “*kadogo*” who were “about 10,11,12.”⁴⁰⁹⁰ [REDACTED], P-0976 testified that they must have “12, at most 13 years old.”⁴⁰⁹¹ In response to a question about the basis for this estimation, the witness said: “their physical appearance pointed to the fact that they were not more than

⁴⁰⁸⁵ **P-0046:**T-100,58:13-19.

⁴⁰⁸⁶ **P-0046:**T-101,16:12,18:1.

⁴⁰⁸⁷ **P-0046:**T-101,17:22-23.

⁴⁰⁸⁸ **P-0046:**T-103,24:19 (“I would not want to speak – I mean, to guess”);24:25 (“I would rather not guess”);26:22 (“[s]ame answer”).

⁴⁰⁸⁹ **P-0317:**T-193,34:16-35:5.

⁴⁰⁹⁰ [REDACTED]

⁴⁰⁹¹ **P-0976:**T-153,6:1.

14 years old or that maybe they were just about 14 years old, but I don't think they had turned 14 yet.”⁴⁰⁹² [REDACTED]. The Chamber disallowed further questions on the witness's estimate of maximum age, ruling that “even for the Chamber, frankly saying, the relevance of those estimation is really limited.”⁴⁰⁹³

1442. The lack of reliability of P-0976's estimate is illustrated by the control photograph that he was shown in court, which to him pictured a person “between 11 and 13 years old.”⁴⁰⁹⁴ The Defence suggests that no judicial determination could be made on the basis of the photograph that the person is below 15.

1443. P-0976 also testified that he saw children “between 9 and 18” “wearing military garb, and they were carrying Kalashnikovs and other weapons.”⁴⁰⁹⁵ No information was provided about where or when this observation was made, or of whom. Such general and unspecific testimony is unreliable for the specific purpose of determining age. There are indications of P-0976's partiality against Mr. NTAGANDA, including his defensive remark that he was “never a true member of the [REDACTED]” and his acknowledgement of [REDACTED],⁴⁰⁹⁶ whom HRW accuses of responsibility for a [REDACTED].⁴⁰⁹⁷

1444. **P-0907.** P-0907's estimation that there were children who were “10,12,17,16. They were all mixed up [...] You also had some who were 16 or 14”⁴⁰⁹⁸ at MANDRO and elsewhere was inconsistent and unreliable. His inconsistency was reflected in his affirmation “yes” in response to the question “whether there were children under the age of 15” participating in the KOMANDA attack, following by testimony referring to the participation of a single “child” whom he identified as being “15 or 16 years old” at the time.⁴⁰⁹⁹ When asked whether he could name any of the children under 15, he gave five names: [REDACTED],⁴¹⁰⁰ [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁴¹⁰¹ P-0907 claimed that [REDACTED] he was able to estimate their

⁴⁰⁹² **P-0976:**T-153,6:21-23 (underline added).

⁴⁰⁹³ **P-0976:**T-153,7:17-18.

⁴⁰⁹⁴ **P-0976:**T-153,10:13, referring to [DRC-D18-0001-0506](#).

⁴⁰⁹⁵ [REDACTED]

⁴⁰⁹⁶ **P-0976:**T-153,17:24-25.

⁴⁰⁹⁷ [DRC-OTP-0074-0628](#),p.0675.

⁴⁰⁹⁸ **P-0907:**T-89,25:9-13.

⁴⁰⁹⁹ **P-0907:**T-89,51:19-20.

⁴¹⁰⁰ **P-0907:**T-89,55:10-11.

⁴¹⁰¹ **P-0907:**T-89,52:19-25.

age based on “their size [...] [t]he voice, the face and the behaviour.”⁴¹⁰² “[REDACTED],” which appears to be a very uncommon name judging by how infrequently it appears on school and other records, is listed on a MONUC database as having been 16 years old in [REDACTED].⁴¹⁰³ “[REDACTED],” also extremely uncommon, is listed on an FPLC document as having been born in 1984⁴¹⁰⁴ – which would make this person 18 years of age in 2002. This casts serious doubt on the reliability of P-0907’s estimates not only of these two “children,” but also of all the other children with whom he was less familiar. P-0907 testified that both [REDACTED] and [REDACTED] are still alive and identified where they live, yet neither testified.⁴¹⁰⁵

1445. **P-0190.** P-0190 did not identify anyone by name whom he estimated to be under 15 years of age. [REDACTED], whom he named, he affirmed that two were 15.⁴¹⁰⁶ [REDACTED], whom he said was “a victim” and was “14 years old” when supposedly “kidnapped” by Mr NTAGANDA.⁴¹⁰⁷ P-0190 wavered later in his direct examination, stating that [REDACTED] “was 14, 15 years old. 14, he was 14.”⁴¹⁰⁸ [REDACTED] testimony contradicted P-0190’s in significant respects concerning his alleged military career with UPC forces. P-0190’s visible attempt to tailor his testimony to the 15-year threshold for the benefit of [REDACTED] indicates that he is not a truthful witness, and was willing to lie about age.

1446. A further evident lie was of a mass kidnapping carried out at a primary school in [REDACTED] with “a lot of noise and a lot of shouting and wailing,”⁴¹⁰⁹ which was flatly contradicted by Witness D-0057.⁴¹¹⁰ P-0190’s testimony of kidnapping of “little girls who were fetching water,”⁴¹¹¹ of obtaining “shoes for children [...] of 12, 13, 14

⁴¹⁰² **P-0907:**T-89,53:11.

⁴¹⁰³ [DRC-OTP-0138-0106](#), [REDACTED]

⁴¹⁰⁴ [DRC-OTP-0138-0027](#), [REDACTED]

⁴¹⁰⁵ **P-0907:**T-89,53:1,56:1-3. The “[REDACTED]” identified by P-0907 is married and has three children, which does not correspond to the biography of the alleged child soldier called “[REDACTED]” who [REDACTED].

⁴¹⁰⁶ **P-0190:**T-97,53:24-25 (“Both of them were 15 years old. They used to stay with me. And they were 15 years old at the time, as I knew it”).

⁴¹⁰⁷ **P-0190:**T-96,88:24;90:11-13.

⁴¹⁰⁸ **P-0190:**T-97,41:11.

⁴¹⁰⁹ **P-0190:**T-96,89:17-23;T-97,34:16-17;38:1-5.

⁴¹¹⁰ [REDACTED]

⁴¹¹¹ **P-0190:**T-97,34:5.

years”⁴¹¹² and of Mr NTAGANDA taking “small girls forcibly as his wives”⁴¹¹³ should be recognised for the uncorroborated sensationalist nonsense that it is.

1447. None of the remainder of P-0190’s allegations of individuals under 15 amongst UPC forces can be accorded any weight in light of his evident willingness to lie about age. The lack of reliability is enhanced further by P-0190’s failure to name a single person other than [REDACTED] ([REDACTED]) whom he claimed to have been under-age.

1448. **P-0963.** P-0963 could not remember the names of any of his friends [REDACTED] who went for training with him in Mandro, saying that “[t]hat was a long time ago,”⁴¹¹⁴ but not so long ago to prevent him from remembering that the recruits were ostensibly “16,15,14,13.”⁴¹¹⁵ The witness was ambiguous as to whether this estimate of age was based on appearance or because of what the children said.⁴¹¹⁶ P-0963 could not remember the name of [REDACTED]’s bodyguard or anyone else within the UPC whom he assessed to be under 15.⁴¹¹⁷

1449. P-0963 was one of the very few – if not the only – witness to assert that “*kadogo*” meant “less than 15”⁴¹¹⁸ instead of, at the youngest, under 18. The deviation is indicative of deliberate lying to incriminate and/or the ingrained influence [REDACTED] who told P-0963 that “he was looking for children, child soldiers”.⁴¹¹⁹ [REDACTED] met P-0963 both before and after interviews with the OTP and discussed extensively the subjects on which the Prosecution was seeking testimony.⁴¹²⁰ This is precisely the type of contact condemned by Professor YUILLE as having the potential to contaminate.⁴¹²¹ The witness’s testimony is reliable evidence of only a scheme to tell lies in this case about the age of UPC soldiers.

1450. **P-0031.** P-0031’s testimony that he saw children between 9 and 15 [REDACTED] in

⁴¹¹² **P-0190:**T-97,48:4-5.

⁴¹¹³ **P-0190:**T-97,48:15.

⁴¹¹⁴ **P-0963:**T-78,31:20.

⁴¹¹⁵ **P-0963:**T-78,31:12-13.

⁴¹¹⁶ **P-0963:**T-78,35:20-21.

⁴¹¹⁷ **P-0963:**T-80,35:19.

⁴¹¹⁸ **P-0963:**T-80,10:7-8,35:7-8.

⁴¹¹⁹ **P-0963:**T-82,58:3-4.[REDACTED].

⁴¹²⁰ **P-0963:**T-82,57:6-7;58:3-4;58:15-18;65:12-13;75:3-24.

⁴¹²¹ **P-0933:**T-88,19:10.

October 2002⁴¹²² should be rejected as unreliable because of his overall lack of reliability. He failed to identify any of the individuals by name or provide any description of them whatsoever. This testimony is an insufficient basis to know whether the individuals were part of the FPLC, and whether they were really under 15 years of age.

1451.**P-0887.** P-0887, [REDACTED], testified that she saw a FPLC bodyguard [REDACTED] in MONGBWALU named, [REDACTED], who “might have been 12 or 13 years old.”⁴¹²³ P-0887 did not identify anyone else as being under 15, stating only that one other bodyguard was “14 or 15.”⁴¹²⁴ P-0887 provided no indication of how she knew [REDACTED]’s age (i.e. whether it was based on physical appearance alone or whether he told her his age); did not further elaborate what she meant by the phrase “might have been”; and gave no physical description of [REDACTED]. Other documents mention a “[REDACTED]” as being affiliated with [REDACTED].⁴¹²⁵ P-0031 testified about a “[REDACTED]” living in Bunia;⁴¹²⁶ despite this person’s apparent availability, there is no indication that he was ever interviewed by the prosecution, and he did not testify. P-0887’s unsubstantiated description is an insufficient basis on which to determine this person’s age.

1452.**P-0768.** P-0768, as discussed elsewhere, was a biased and unreliable witness, which disqualifies reliance on his vague testimony about unidentified individuals whom he believed were under 15. His unreliability and bias is reflected in his assertion that the person in [REDACTED] was “under 15”⁴¹²⁷, which he ascertained by “just looking at him.”⁴¹²⁸ The picture of this person suggests otherwise, as was confirmed by Prosecution witnesses who assessed the age of that same person as “15 or above.”⁴¹²⁹ As explained elsewhere, [REDACTED] who was described by several witnesses as between 16 and 20.⁴¹³⁰ This error in respect of a control subject raises doubts about the

⁴¹²² [REDACTED]

⁴¹²³ P-0887:T-93,37:9.

⁴¹²⁴ P-0887:T-93,37:16.

⁴¹²⁵ [DRC-OTP-0138-0027](#),p.0039.

⁴¹²⁶ [REDACTED]

⁴¹²⁷ P-0768:T-34,47:18.

⁴¹²⁸ P-0768:T-34,47:20.

⁴¹²⁹ P-0017:T-62,52:22.

⁴¹³⁰ [REDACTED]

reliability of any age estimates by P-0768.⁴¹³¹

1453. **P-0055.** P-0055 broadly confirmed that he did not observe children whom he would assess as being under 15 with the FPLC. He testified that “*kadogo*” means under 18.⁴¹³² He testified that he saw “*kadogo*” in the FPLC, but could not say that anyone he saw, including at Rwampara, was under 15.⁴¹³³ His estimate of Mr NTAGANDA’s escorts’ age was only that “[s]ome may have been 14 or 15 years old”,⁴¹³⁴ emphasising that this was an “approximation”⁴¹³⁵ which is insufficient – even on its face – to conclude that any of them were under 15.

1454. P-0055 gave an age estimate of under 15 for only one person within the ranks of the FPLC: [REDACTED]. P-0055 testified that this person was “about 12 or 13 years old”,⁴¹³⁶ but was unable to recall his name or provide any other identifying information.⁴¹³⁷ The Prosecution elicited no details from P-0055 as to the basis of his age-estimate of [REDACTED], and did not even ascertain where he had been trained. This information is insufficient to know whether P-0055’s age assessment is correct, and insufficient to exclude the reasonable possibility that [REDACTED] was at least 15.

1455. **P-0290.** P-0290 was ambiguous, uncertain and inconsistent in his age estimates. He testified that individuals under 18 were associated with the FPLC, but generally did not affirm that he saw anyone who was under 15.

1456. [REDACTED], he testified that [REDACTED] as being “15 or so,”⁴¹³⁸ and those [REDACTED] being “maybe 16 or 17 years old.”⁴¹³⁹ [REDACTED] were “not yet 18.”⁴¹⁴⁰ He could not be more specific about their exact age⁴¹⁴¹ and did not know how

⁴¹³¹ **P-0768:**T-34,55:18-56:2.

⁴¹³² **P-0055 :**T-71,68:21-22.

⁴¹³³ **P-0055:**T-71,68:8-12 (“I was not in a position to know that because I had never asked anyone at all [...] I never asked the recruits”); T-71,70:6-8;76:22-77:1 (“I am not in a position to tell you their ages. I didn’t know whether they were 12 years old or not. All I know is that there were child soldiers there, kados”).

⁴¹³⁴ **P-0055:**T-71,84:10-11.

⁴¹³⁵ **P-0055:**T-71,84:9.

⁴¹³⁶ **P-0055:**T-71,85:15.

⁴¹³⁷ **P-0055:**T-71,86:22 (“I’ve forgotten his name”).

⁴¹³⁸ **P-0290:**T-65,41:3.

⁴¹³⁹ **P-0290:**T-65,41:6.

⁴¹⁴⁰ **P-0290:**T-65,42:7.

⁴¹⁴¹ **P-0290:**T-65,42:14-15.

old was the youngest one [REDACTED].⁴¹⁴² The Prosecution attempted to impeach this testimony with a prior inconsistent statement indicating that two [REDACTED] were under 15, which led the witness to remark that “whether it’s 16 or 17 years, what I said is that I cannot be specific as to their age”⁴¹⁴³ and that “it was not easy to determine their ages. You could look at someone's size and height, but it was not easy to determine their age. However, their appearance and their behaviour led me to the conclusion that they were too young, they were not mature. A 15 year old child is not as mature as a 17 year old child.”⁴¹⁴⁴

1457. P-0290’s illustrates that the manner in which questions are asked can have a substantial impact on the nature of the age estimates given, and that witnesses’ impressions of age are extremely tentative. As D-0211 explained in respect of a similar discrepancy:

I can say 14, 15, 16, 17. Now, somebody can be estimated to be 17, 18 or 19 years old. It’s an estimate. Somebody might be 12 years old but estimated to be 12 or 14 years old. Somebody can be 15 and estimated to be 16 or even 18 years old. Somebody can be 17 years old and be estimated to have 18 [...] or even up to 20 years old. So to my mind there is not too much of a discrepancy.⁴¹⁴⁵

1458. After a “really leading”⁴¹⁴⁶ question by the Prosecution, P-0290 testified that there were guards at Mr NTAGANDA’s compound who “may have been 13 years old.”⁴¹⁴⁷ P-0290 tried to explain this age-estimate, asserting that “appearance isn’t determinative of age” and that he relied on behaviour.⁴¹⁴⁸ P-0290 then conceded that he did not observe the behaviour of these guards and that he based his age assessment on “their physiognomy.”⁴¹⁴⁹ The only possible conclusion is that P-0290’s age assessment is tentative and uncertain. At the entrance to Chief of General Staff’s residence P-0290, after expressing various qualifications about age, said only that they were “a maximum of 15 years old.”⁴¹⁵⁰ P-0290 named none of these individuals.

⁴¹⁴² P-0290:T-65,44:25-45:3.

⁴¹⁴³ P-0290:T-65,59:23-60:21.

⁴¹⁴⁴ P-0290:T-65,60:22-61:18.

⁴¹⁴⁵ D-0211:T-248,39:25-40:3.

⁴¹⁴⁶ P-0290:T-67,3:24 (“PRESIDING JUDGE FREMR: [...] but this question is really leading”).

⁴¹⁴⁷ P-0290:T-67,4:6.

⁴¹⁴⁸ P-0290:T-67,7:14.

⁴¹⁴⁹ P-0290:T-67,10:2.

⁴¹⁵⁰ P-0290:T-67,12:5.

1459.P-0290 also testified repeatedly that height is not a sufficient indicator upon which to determine age,⁴¹⁵¹ and that the size of uniforms is neither a necessary nor sufficient indicator of being under 15.⁴¹⁵²

1460.P-0290 did not affirm, for the most part, that he had seen anyone under 15 with the FPLC. The few occasions when he did were elicited through leading questions, was ambiguous, and unsupported by any details. This testimony does not support the conclusion that anyone under 15 was associated with the FPLC.

1461.**P-0014.** The accuracy of P-0014's age estimates is called into doubt by his claim that there were child soldiers at the UPC's Bunia HQ as young as [REDACTED].⁴¹⁵³ His tendency to make fabulous claims is illustrated by his assertion that [REDACTED];⁴¹⁵⁴ and that recruits engaged in target practice inside classrooms.⁴¹⁵⁵

1462.P-0014 was present in Bunia from [REDACTED] July 2002 and left on [REDACTED] August 2002 only, never to return.⁴¹⁵⁶ The basis for any of his observations was, accordingly, limited. Despite this limited opportunity, he gave the curiously specific estimate that 30% of UPC soldiers were 15 or under and that 20% were under 15.⁴¹⁵⁷ This testimony suggests that P-0014 was just guessing. P-0014 never gave the name of anyone within this 20%; the Prosecution did not even try to elicit this information.⁴¹⁵⁸

1463.P-0014's purported recollection of having seen five of Mr NTAGANDA's escorts who were "between 13 and 18 years"⁴¹⁵⁹ is contradicted by numerous witnesses, Prosecution and Defence alike, who testified that Mr NTAGANDA did not have any bodyguards who were under 15.⁴¹⁶⁰ P-0014's ability to remember these specific individuals, or that they appeared between 13 and 18, is implausible.⁴¹⁶¹

⁴¹⁵¹ **P-0290:**T-65,39:19-22.

⁴¹⁵² **P-0290:**T-65,43:2-3.

⁴¹⁵³ [REDACTED].

⁴¹⁵⁴ [REDACTED]

⁴¹⁵⁵ **P-0014:**T-138,24:3-31:8.

⁴¹⁵⁶ [REDACTED] .

⁴¹⁵⁷ [REDACTED]

⁴¹⁵⁸ **P-0014:**T-136,36:10-14.

⁴¹⁵⁹ **P-0014:**T-136,36:13-14.

⁴¹⁶⁰ **P-0190:**T-99,14-17;**P-0758:**T-161,16:19-21;**D-0300:**T-243,29:12-18;T-243,27:1-3;**D-0243:**T-259,50:20-22;**D-0251:**T-260,23:6-8;**D-0017:**T-253,67:22-25.

⁴¹⁶¹ **P-0014:**T-136,34:20-24.

1464. P-0014's casual approach to truth and accuracy was also illustrated by his claim to having seen soldiers within UPC forces in [REDACTED] – after KAKWAVU had split from the FPLC.⁴¹⁶² P-0014 would have known that this was untrue if his implausible claim that [REDACTED] of KAKWAVU's soldiers [REDACTED].⁴¹⁶³

1465. P-0014's indulgence of speculation was also illustrated by his false assertions that Mr NTAGANDA was the first sector commander in Mongbwalu;⁴¹⁶⁴ that Mr NTAGANDA was not part of the military high command, contrary to the Prosecution position, unless specifically invited because he was not very smart⁴¹⁶⁵; and, that there was training at the UPC HQ in Bunia while the city was under the APC's control.⁴¹⁶⁶

1466. P-0014's attention-seeking testimony is entitled to no weight, and his estimates of age can be given no credit. No meaningful information was provided to substantiate that any of the subjects he claimed he saw were actually under 15.

1467. **P-0769.** P-0769's testimony giving estimates of age at NDROMO and MANDRO is undermined by his claim that there were not only recruits, but instructors, who were as young as nine years old.⁴¹⁶⁷ Aside from its facial implausibility, no testimonial, documentary or visual evidence comes close to corroborating this claim. The inference that should be drawn is that P-0769 was prone to intentional or unintentional understatement of age.

1468. P-0769's credibility about training is generally undermined by his claim of having been trained successively at [REDACTED] in [REDACTED] (2 days), Camp [REDACTED], and then marching to [REDACTED], where training continued.⁴¹⁶⁸ P-0769 asserted specifically that the RCD was in control of BUNIA when he joined UPC forces⁴¹⁶⁹ but that the UPC was in control of camp [REDACTED], where he trained.⁴¹⁷⁰

⁴¹⁶² [REDACTED] **D-0300**:T-221,42:20-23.

⁴¹⁶³ **P-0014**:[DRC-OTP-2054-1086](#),1102:3-1103:5.

⁴¹⁶⁴ **P-0014**:T-136,41:5-7;T-138,92:3-93:24.

⁴¹⁶⁵ **P-0014**:T-138,77:1-79:6 ; **D-0300**:T-225,41:21-4.

⁴¹⁶⁶ **P-0014**:[DRC-OTP-2054-0429](#),0490:21-25;0493:22-24;[DRC-OTP-2054-0961](#),1020:8-25;[DRC-OTP-2054-0429](#),0514:7-12;[DRC-OTP-2054-0612](#),0629:1-4; T-138,11:3-14;42:16-43:24;44:13-23.

⁴¹⁶⁷ **P-0769**:T-120,38:1-4;44:19 (“there were the little children who were our instructors there”).

⁴¹⁶⁸ **P-0769**:T-120,22:22,27:19,28:10.

⁴¹⁶⁹ **P-0769**:T-120,11:22-24.

⁴¹⁷⁰ **P-0769**:T-120,29:10-11.

This is impossible since the RCD/APC forces were in control of [REDACTED] up until the day that LOMPONDO was chased from BUNIA.⁴¹⁷¹

1469. The only age estimates that were reinforced by hearsay information from the subjects was in respect of two individuals whom P-0769 estimated to be “14, 13 years old,” whom he claimed said they had been in the fifth primary and first secondary when they joined UPC forces.⁴¹⁷² P-0769 did not “know their story” and the Prosecution abandoned a question about how long prior to joining UPC forces they had been in Fifth Primary.⁴¹⁷³ P-0551 testified that a student could be as old as 15 in 6th primary.⁴¹⁷⁴ P-0769 gave no names for these individuals, other than that one was called “[REDACTED]”,⁴¹⁷⁵ a common name. No “[REDACTED]” referred to in evidence in this case was under 15.⁴¹⁷⁶

1470. Aside from this one name, P-0769 failed to identify a single person whom he asserted was under 15 while associated with UPC forces. This failure contrasted with his ability to recall the names of five of his friends with whom he joined the UPC forces and various commanders.⁴¹⁷⁷

1471. P-0769’s testimony is manifestly insufficient to find that any of the subjects about whom he testified were really under 15.

1472. **P-0030.** P-0030 testified that the youngest bodyguards whom he saw at LUBANGA’s residence were 9 or 10 years old,⁴¹⁷⁸ but also acknowledged his prior statement to the Prosecution – which he then seemed to accept – that his age estimate of the youngest was that they were “between 14 and 15.”⁴¹⁷⁹

1473. P-0030’s estimate of the ages of Mr NTAGANDA’s bodyguards was that “[s]ome of them were 12, 13, 14, 15 and some of them were 18 or even 25.”⁴¹⁸⁰ Instead of asking

⁴¹⁷¹ **P-0014:**[DRC-OTP-2054-0816](#),0829:18-22.

⁴¹⁷² **P-0769:**T-121,6:21-7:7.

⁴¹⁷³ **P-0769:**T-121,8:7.

⁴¹⁷⁴ **P-0551:**T-197,33:8.

⁴¹⁷⁵ **P-0769:**T-121,8:1.

⁴¹⁷⁶ See [DRC-OTP-0138-0106](#) and [DRC-OTP-0138-0027](#). In [DRC-OTP-0141-0009](#), no age or birth’s date are registered.

⁴¹⁷⁷ **P-0769:**T-120,22:24-24:16.

⁴¹⁷⁸ [REDACTED] : [REDACTED]

⁴¹⁷⁹ [REDACTED] : [REDACTED]

⁴¹⁸⁰ **P-0030:**T-144,34:12-14.

whether the witness was giving an age-range estimate of the youngest amongst Mr NTAGANDA's bodyguards, the Prosecution assumed that the witness was testifying that there were bodyguards who were 12 to 14: "Q. Referring specifically to the guards with Bosco who you said were 12, 13 and 14 [...]." ⁴¹⁸¹ The Prosecution prefaces the next four questions with this formula, even though the witness never explained whether he meant to give an estimate of age that excluded the possibility that they were actually as old as 15. The degree to which these numbers are an estimate is also illustrated by [REDACTED] that amongst Mr NTAGANDA's escorts "some were 13; some were 15; some were older." ⁴¹⁸² These estimates must be viewed in light of the witness' own acknowledgement that "[i]t's difficult to evaluate the age" ⁴¹⁸³ and the margin of error that he himself would build into these estimates, to say nothing of the margin of error that the Chamber should impute to such estimates.

1474. The Prosecution adduced no testimony from P-0030 about the identity of anyone whom he evaluated as being under 15, even assuming that he ever gave such an estimate. His testimony, read with due regard to his own acknowledgement of the likelihood of error, does not even affirm that he saw anyone within the ranks of the FPLC who was less than 15.

1475. **P-0901.** P-0901 offered inconsistent and variable estimates of age, none of which were specifically precise to be probative of his observation of anyone under 15 within UPC forces. ⁴¹⁸⁴ The most assertive estimate he offered was that he did "not believe that he was 15" ⁴¹⁸⁵ which should be given no weight.

1476. **P-0016.** P-0016 testified that he saw children at Mandro "who were 13, 14, 15, 16 17 years old." ⁴¹⁸⁶ After a confused exchange of question and answer with translation difficulties intervening, the witness appears to have asserted that 50 per cent of the approximately 100 trainees ⁴¹⁸⁷ that he saw at Mandro were under 15. ⁴¹⁸⁸ The witness does not identify – the exception of the two examples cited below – and of the 50

⁴¹⁸¹ **P-0030:**T-144,34:23.

⁴¹⁸² [REDACTED]:[REDACTED]

⁴¹⁸³ **P-0030:**T-144,34:11.

⁴¹⁸⁴ **P-0901:**T-29, 55:20,56:4-5,57:5-6

⁴¹⁸⁵ **P-0901:**T-29,54:18-55:8. *See also* T-29,54:14-15 (KISEMBO and Mr NTAGANDA's escorts "might be aged 13, 14, or 15 years of age").

⁴¹⁸⁶ [REDACTED]

⁴¹⁸⁷ [REDACTED].

⁴¹⁸⁸ [REDACTED]

individuals whom he estimated were 13 and 14. The number is implausibly large and is, in any event, unreliable in the absence of further information.

1477. The reliability of P-0016's statistical descriptions is called into question by his inconsistent testimony about the ages and numbers of children he claimed to have seen in the Presidential Protection Unit. In his statement he testified that this unit consisted of 400 individuals, but during his testimony that there were 60.⁴¹⁸⁹ He at first testified that amongst these 60 "not more than 20 of them were over 15"⁴¹⁹⁰ but then later said that "the youngest could have been 14 but was still fairly husky,"⁴¹⁹¹ before settling on the position that "there were no more than four" who were "14-year-olds and the 13-year-olds."⁴¹⁹² The variability of these estimates, in addition to the absence of identification or description of any kind, are further factors suggesting that this testimony is not reliable for the purpose of establishing that anyone in that unit was under 15.

1478. P-0016 did exceptionally identify two individuals by name whom he believed were under 15. The first, "[REDACTED]", estimated as being 13, would "get cigarettes, anything I wanted or peanuts for me, from a little village behind Mandro [...] this young one assisted us a bit. [...] There wasn't just one such child. There were others".⁴¹⁹³ P-0016 did not clarify whether this person was also engaged in training or whether he – and the "others" – were only performing tasks such as running errands for the trainees and soldiers. P-0016 also testified about a "[REDACTED]" who "was small. He must have been not even 15."⁴¹⁹⁴ P-0016 testified that he became a lieutenant in the FARDC,⁴¹⁹⁵ yet this person was not called as a witness and no corroborating evidence was adduced about his age. P-0016's description of this 13-year old "[REDACTED]" subsequently becoming a bodyguard successively for Mr NTAGANDA, KISEMBO and then the Presidency⁴¹⁹⁶ is not consistent with any

⁴¹⁸⁹ [REDACTED].

⁴¹⁹⁰ [REDACTED]

⁴¹⁹¹ [REDACTED]

⁴¹⁹² [REDACTED]

⁴¹⁹³ **P-0016** [REDACTED] : [REDACTED]

⁴¹⁹⁴ **P-0016** [REDACTED] : [REDACTED]

⁴¹⁹⁵ [REDACTED] : [REDACTED]

⁴¹⁹⁶ [REDACTED] : [REDACTED]

testimony about the names of Mr NTAGANDA's bodyguards,⁴¹⁹⁷ and is inconsistent with the testimony that Mr NTAGANDA's youngest bodyguard was 16.⁴¹⁹⁸

1479. P-0016's testimony was vague, implausible, uncorroborated, and inconsistent with the Mandro video and other elements on which the Chamber has other testimony.

1480. **P-0365.** Who had contact with demobilised children from a variety of armed groups identified almost none from the UPC forces or FPLC as being under 15. This testimony is actually probative of the absence of individuals under 15 amongst UPC forces. The only two individuals whom she identified as possibly being under 15 involved two incidents when she was threatened, first in "March" 2003⁴¹⁹⁹ not far from [REDACTED] and the second in September 2003 at an unspecified location. P-0365's estimate of age for both individuals was particular tentative: "I would imagine that he was less than 15 years of age",⁴²⁰⁰ "I would say under 15 years of age."⁴²⁰¹ Furthermore, if the witness's recollection is correct that the first incident occurred in "March" 2003, then the person in question could not have been FPLC, which had been routed from Bunia and was no longer controlling the road between Bunia and KOBU, as the Chamber saw on the video of P-0317's visit to LIPRI. The description given by P-0365 would fit any of the individuals standing guard with Kalachnikovs while P-0317 and her team conducted interviews.⁴²⁰² P-0365 confirmed that the youngest person [REDACTED], a 13 year old, had been a member of the FNI.⁴²⁰³ In saying that [REDACTED]-- which even included people who had been girlfriends of soldiers⁴²⁰⁴ -- encompassed "13, 14, 15, up to 16, 17,"⁴²⁰⁵ she never specified that any of the others who were 13 or 14 had come from the FPLC.

1481. **P-0918.** P-0918, [REDACTED], testified that she saw children of "12, 13, 14, and some even of 16" grouped in front of [REDACTED] to be sent for training, but

⁴¹⁹⁷ **P-0901:**T-29,55:24-56:2;56:22-25; **P-0017:**T-58,33:21-24; **P-0907:**T-89,66:3-9; **P-0898:**T-154,23:2-3;[REDACTED]; **D-0017:**T-253,43:11-12; **D-0251:**T-260,18:9-11.

⁴¹⁹⁸ **P-0758:**T-161,16:19-21;[REDACTED];**D-0251:**T-260,23:6-8.

⁴¹⁹⁹ **P-0365:**T-147,51:16.

⁴²⁰⁰ **P-0365:**T-147,50:2.

⁴²⁰¹ **P-0365:**T-147,50:11.

⁴²⁰² See e.g. DRC-OTP-1033-022113:41-14:04,14:10-14:47,23:51-24:20;24:54-25:09.

⁴²⁰³ **P-0365:**T-147,40:2-9.

⁴²⁰⁴ **P-0365:**T-147,39:5.

⁴²⁰⁵ **P-0365:**T-147,40:21-23.

hastened to add: “But this is an estimation on my part.”⁴²⁰⁶ The degree of variability or doubt is unknown, and no control photograph was shown to the witness to have a sense of how she estimates age. She named no one whom she thought might be under 15, and she has no basis to know whether these individuals were, or were not, subsequently taken for training; whether they were actually trained; or whether they ever joined the ranks of the FPLC. She never visited Mandro or any other training location, and did not testify that she later saw these same individuals in uniform. The testimony has no probative value.

1482. **P-0012.** P-0012 referred frequently to children without offering any specific definition of what age range he meant.⁴²⁰⁷ In respect of [REDACTED], he testified that he was not in a position to estimate specific ages beyond distinguishing between “minors” and “adults”.⁴²⁰⁸ He gave no specific age estimate of a certain [REDACTED], and did not indicate whether he was PUSIC or UPC forces.⁴²⁰⁹

1483. P-0012 testified to encountering a child on 12 May 2003 during the takeover of Bunia by KISEMBO’s forces whom he estimated to be 12, based on physical appearance alone.⁴²¹⁰ The affiliation of the person, who was wearing civilian clothing, was never established.⁴²¹¹ [REDACTED].⁴²¹² [REDACTED].⁴²¹³

1484. **P-0041.** “Child” or “children” was seldom defined during P-0041’s statement and testimony, admitted under Rule 68.⁴²¹⁴ He underscored that age was difficult to assess, and that physical appearance “back home” could be misleading.⁴²¹⁵ [REDACTED] was

⁴²⁰⁶ **P-0918:**T-155,82:25-83:3.

⁴²⁰⁷ [REDACTED]

⁴²⁰⁸ [REDACTED]

⁴²⁰⁹ [REDACTED] .

⁴²¹⁰ [REDACTED]

⁴²¹¹ [REDACTED] **P-0901:**T-28,56 :14-15 (“I discussed with the commanders when they got there. And I can also say that the FPLC soldiers wore military uniforms [...]); **P-0769:**T-120,62:3-8; **D-0057:**[DRC-OTP-0150-0354](#),para.129; **P-0030:**[DRC-OTP-0151-0645](#),para.4-6;T-144,71:8-11.

⁴²¹² [REDACTED]

⁴²¹³ [REDACTED]

⁴²¹⁴ **P-0041:** [REDACTED].

⁴²¹⁵ [REDACTED]. [REDACTED]

“about 14 or 15 years old.”⁴²¹⁶ His attainment of *4e littéraire* (namely 4th year of secondary school)⁴²¹⁷ is strongly suggestive that he was at least 15, if not older.⁴²¹⁸

1485. Furthermore, when testifying that three quarters of the soldiers were minors and that the latter were between 9 and 17 years old, P-0041 gave to explanation in support of this estimation.⁴²¹⁹ His testimony in this regard as well as concerning the age of LUBANGA, KISEMBO and Mr NTAGANDA’s escorts,⁴²²⁰ rests on the sole observations he allegedly made at the time, which in light of the explanations he gave above regarding the difficulty of assessing the age of a child, is largely insufficient to lead to the conclusion that there actually were child soldiers under the age of 15 within the rank of the FPLC.

1486. **P-0886. P-0892. P-0877. P-0113. P-0912.** These five dual-status Lendu witnesses have ample motivation to exaggerate their estimates of age. They also, given their situation, seldom had a significant opportunity to assess the subjects whose age they were estimating.

1487. **P-0886** allegedly saw children in uniform within the ranks of the FPLC during and after the attack on SAYO.⁴²²¹ However, he gave no specific regarding their age except for stating that they were “more or less of the same age as my children [...]”.⁴²²² His opportunity of observation was limited, as he “could not talk to them”⁴²²³ and “no one dared go close to them”.⁴²²⁴ P-0886’s was noticeably evasive.⁴²²⁵

1488. **P-0892**’s and P-0912’s testimony that there were child soldiers within the ranks of the FPLC during the second attack on Mongbwalu lacks precision is vague and inconsistent. The former’s estimate that she saw FPLC soldiers who were 8 to 10 years

⁴²¹⁶ [REDACTED]

⁴²¹⁷ [REDACTED] .

⁴²¹⁸ **P-0551**:T-197,32:23-33:21.

⁴²¹⁹ .

⁴²²⁰ [REDACTED] .

⁴²²¹ **P-0886**:T-37,10:4-12;64:22-65:1.

⁴²²² **P-0886**:T-40,45:4-8.

⁴²²³ **P-0886**:T-40,44:24-45:3.

⁴²²⁴ **P-0886**:T-38,7:5-8.

⁴²²⁵ **P-0886**:T-37,6:6-12 (“[...] so that is why please try just to give her the briefer responses and make responses just responding to the question put to you, okay?”).

of age⁴²²⁶ is unrealistic and contrary to the weight of evidence. P-0892 appeared confused regarding the armed groups involved in the fighting⁴²²⁷ and the date of the events.⁴²²⁸ The basis of her observations is unknown. [REDACTED].⁴²²⁹ No objective yardstick for the witness's manner of assessing age was established that would permit the Chamber to understand who she arrived at age assessments or whether they are reasonable.

1489. **P-0877** testified that [REDACTED] who allegedly was 13 years old at the time had been recruited by the UPC in [REDACTED].⁴²³⁰ However, he gave no information in support of his knowledge of [REDACTED] age and when asked during his testimony to assess the age of other young persons in UPC forces he stated: "I am not able to give you their specific age".⁴²³¹ While explaining that he could give a list 50 children who allegedly were within the UPC in KILO, he did not.⁴²³² P-0850 testified that the UPC soldiers in KILO were 14-18 years old,⁴²³³ but clarified that that was "an estimation based on stature, size, facial appearance. And if one said that they were 15 or 16 years old, that would only be an approximation because I cannot confirm those figures with specificity".⁴²³⁴ P-0877's testimony is also tarnished by the fact that he had been [REDACTED] between [REDACTED] and [REDACTED],⁴²³⁵ and as such [REDACTED].⁴²³⁶

1490. **P-0113**'s assessed the youngest FPLC soldiers she saw as being 14 or 15 years old⁴²³⁷ or about 14 years old⁴²³⁸ and confirmed that the kadogo she saw could have been 15 years old.⁴²³⁹

⁴²²⁶ **P-0892**:T-85,20:1-2 ("No, I did not witness any other activities on their part. I only saw them go up guava trees and harvest some guavas and then leave. I didn't see them do anything else").

⁴²²⁷ **P-0892**:T-83,13:25-14:1 ("I really didn't have enough information, but I heard that the UPC was fighting against Lompondo, but I do not know to which armed group Lompondo belonged").

⁴²²⁸ **P-0892**:T-83,18:11-12 ("PRESIDING JUDGE FREMR: Madam Witness, you provided us with exact number that it was on 9 November that the UPC entered Mongbwalu. Do you also remember the year? THE WITNESS: (Interpretation) I believe that it was in 2003, 2002 or 2003. I really no longer remember the precise year").

⁴²²⁹ [REDACTED].

⁴²³⁰ **P-0877**:T-109,48:7-49:3

⁴²³¹ **P-0877**:T-109,49:9-15.

⁴²³² **P-0877**:T-109,49:1-3.

⁴²³³ **P-0850**:T-112,84,1-2.

⁴²³⁴ **P-0850**:T-112,83:25-85:5.

⁴²³⁵ **P-0877**:[DRC-OTP-2069-2086-R03](#),para.30; T-109,70:7-16.

⁴²³⁶ **P-0877**:T-109,70:23-71:2.

⁴²³⁷ **P-0113**:T-118,51:19;50:24-51:1,51:13-19;55:21-57:8.

1491. **P-0790.** P-0790's estimate, when asked the age of Salumu's bodyguards, coincided conspicuously with the threshold prescribed by Article 8(2)(e)(vii) of the ICC Statute: "they were younger than 15."⁴²⁴⁰ This formulation suggests coaching which, combined with his overall lack of credibility, diminishes the already low probative value of his exclusively observational estimate of unidentified individuals.

CHAPTER V – HEARSAY TESTIMONY

1492. A distinct category of hearsay, in the absence of direct evidence, was whether a particular individual joined the FPLC or UPC forces. Evidence of this nature is of limited value as the source is not available to be questioned.⁴²⁴¹ Such evidence is of even lower value when the source is anonymous,⁴²⁴² thus impairing even further the Chamber's ability to assess the quality of the information received.⁴²⁴³

Section I - P-0046's hearsay of reporting of cases of "very young children"

1493. The "various sources"⁴²⁴⁴ of reports received by P-0046 of "some" individuals under 15 being recruited in September 2002 are unidentified.⁴²⁴⁵ No details are provided concerning who, how many, where, when, or by whom seen. The evidence is entitled to no weight.⁴²⁴⁶

1494. P-0046 does not provide information as to whether the anonymous sources informed her specifically that the children were recruited by the UPC or if P-0046 deducted this information. Furthermore, P-0046 does not seem to make a distinction between any Hema militia and the UPC. In fact, she claims that the Hema militia represented the

⁴²³⁸ **P-0113:**T-118,57:7-8.

⁴²³⁹ **P-0113:**T-118,54:6-13.

⁴²⁴⁰ **P-0790:**T-53,56:21.

⁴²⁴¹ [Katanga TJ](#), para.90.

⁴²⁴² *Gbagbo* Decision adjourning CoC, para. 28 ("Although there is no general rule against hearsay evidence before this Court, it goes without saying that hearsay statements in the Prosecutor's documentary evidence will usually have less probative value. Reliance upon such evidence should thus be avoided wherever possible. This is all the more so when the hearsay in question is anonymous, in the sense that insufficient information is available about who made the observation being reported or from whom the source (irrespective of whether the source is a witness interviewed by the Prosecutor or a documentary item of evidence) obtained the information").

⁴²⁴³ *Gbagbo* Decision adjourning CoC, para. 29.

⁴²⁴⁴ **P-0046:**T-100,50:15, ("We had received a serious allegation by various sources of children, but not only children, but I think for what I was concerned about, of children, young children and adolescent").

⁴²⁴⁵ **P-0046:**T-100,50:19-22.

⁴²⁴⁶ *Gbagbo* Decision adjourning CoC, para. 29.

UPC.⁴²⁴⁷ Whether this emanates from the anonymous sources is unknown. As discussed elsewhere, the Hema militia or self-defence groups were autonomous and not under the control of the UPC.

Section II - D-0172's hearing young people around 14 years old went to Mandro

1495. The Prosecution inexplicably claims that D-0172 “confirmed” that former trainees from TCHAKWANZI went to Mandro “with him [...] for separate military training between June and August 2002”.⁴²⁴⁸ D-0172 denied that he ever trained at Mandro, and denied that he rejoined any military force after TCHAKWANZI.⁴²⁴⁹

1496. D-0172 testified that friends of his from IGA BARRIÈRE who had trained at TCHAKWANZI who went for training in Mandro were “about 14.”⁴²⁵⁰ This testimony does not exclude that they were 15. Indeed, D-0172 later confirmed that he — aged 14 in 2002 — [REDACTED].⁴²⁵¹ [REDACTED] was also confirmed by [REDACTED].⁴²⁵² This implies that anyone else who had been at TCHAKWANZI must have been somewhat older than 14 in 2002. D-0172's answer to the Prosecution compound question about re-recruitment of “children under the age of 15, 16 and 18 were re-recruited by the UPC and FPLC”⁴²⁵³ is ambiguous as to which of the three thresholds was intended by the question.

Section III - [REDACTED]

1497. D-0172 testified that [REDACTED] was recruited by the FNI after having been at [REDACTED].⁴²⁵⁴ The Prosecution's suggestion that this is impossible because of

⁴²⁴⁷ **P-0046:T-100-ENG,50:17-18, T-100-FRA,48:24-25** (“par ceux à l'époque on appelait la milice hema ou l'UPC, qui représentait donc l'UPC”).

⁴²⁴⁸ PCB, para.865, fn.2716 (underline added).

⁴²⁴⁹ **D-0172:T-245,81:1** (“Well, I refused to go there, but the others went. I had already been disappointed by those people since the time in Uganda and I was no longer going to be part of that service”); 82:11 (“Yes, but I wasn't there”); 82:23-83:1 (“Q. All right. Now, you've--you've already said, you've testified, you've said that you never joined the UPC, you've never joined any armed group; that's your testimony, isn't it? A. Yes”).

⁴²⁵⁰ **D-0172:T-245,82:16-19.**

⁴²⁵¹ **D-0172:T-245,110:3-4** (“those of us who were the youngest were at [REDACTED], two of us, but the others who were older were also there and elsewhere.”)

⁴²⁵² [REDACTED]

⁴²⁵³ **D-0172:T-245,103:16-20.**

⁴²⁵⁴ **D-0172:T-245-FRA-CT2,106:19-25.**

ethnicity⁴²⁵⁵ is contradicted by P-0046's testimony that she had heard of such cases. In fact, P-0046 described a case of someone having switched from the FNI to the "opposite group":

And I remember also the case of one child who belonged to the FNI claim – claiming that he was from his mother's side or father, whatever, and then he move – he join the opposite group stating that he was from the ethnicity of his father – almost, I don't recall but he used this.⁴²⁵⁶

1498. This testimony also assists in explaining why [REDACTED]'s appears on a purported FPLC "Liste nominative" from [REDACTED].⁴²⁵⁷ In any event, this document has low probative value. It was tendered from the bar table; no witness was asked about its origins; and, despite Mr NTAGANDA's signature purportedly appearing at the bottom, the Prosecution asked Mr NTAGANDA no questions about this document. The list also contains certain fanciful entries, raising doubts about its reliability.⁴²⁵⁸ The Chamber has no basis in evidence to know who drafted the list, on what basis, for what purpose. Importantly, the document does not indicate when [REDACTED] purportedly joined the FPLC, including whether he had switched from the FNI, as exemplified by P-0046's testimony.

Section IV - D-0057's testimony about demobilised person whom he heard had been with the UPC

1499. D-0057 testified that [REDACTED] received around than demobilised UPC recruits [REDACTED]. P-0551 testified that students could be as old as 15 years of age in 6th Primary.⁴²⁵⁹ Even assuming that the level of schooling is probative of a younger age, D-0057 explained that these individuals arrived [REDACTED] before the start of either the 2001-2002 or the 2002-2003 school year. Either way, but particularly taking the former, this means that any association with any armed group preceded the period of the charges in the DCC,⁴²⁶⁰ and probably relates to the Tchakwanzi demobilisation.

⁴²⁵⁵ PCB, para. 110.

⁴²⁵⁶ P-0046: T-102, 79:15-20.

⁴²⁵⁷ [DRC-OTP-0141-0009](#), at 111 (#53).

⁴²⁵⁸ D-0038: T-251, 41:6-43:4.

⁴²⁵⁹ P-0551: T-197, 33:4-11.

⁴²⁶⁰ D-0057: T-246, 37:20-38:10 ("And what about the 10 students who returned from UPC, they also attended the school without any problem? They did the school year as normal. They completed their studies. And the sixth went on to the secondary and those who were in fifth year moved into the sixth class").

1500.D-0057 also clarified that he had no information about whether these individuals had actually been enrolled or trained in UPC forces, or whether they had been rejected immediately.

Section V – The myth of the Kadogo Unit

1501.P-0907, P-0963 and P-0017 offered inconsistent accounts of the supposed “Kadogo Unit.”⁴²⁶¹ P-0017 and P-0907 claimed that it existed from the beginning of KISEMBO’s time in Bunia,⁴²⁶² whereas P-0963 explained that this group was formed in, and brought from, MAMEDI when KISEMBO returned to Bunia in May 2003.⁴²⁶³ KISEMBO’s explanation, confirmed by Mr NTAGANDA in the course of his testimony, concerning this unit was that civilian children originally from Mongbwalu, mostly orphans, had tagged along with KISEMBO’s forces whose objective was to re-take Bunia.⁴²⁶⁴ [REDACTED].⁴²⁶⁵ These children were never recruited or used by the FPLC, but it is possible that outside observers perceived this to be the case given the circumstances of their arrival in Bunia with KISEMBO.

1502.Even assuming that this was a “unit” that participated in fighting, Mr NTAGANDA was nowhere near MAMEDI at the time, or Bunia when they arrived there. He had no knowledge that these individuals were being incorporated into KISEMBO’s forces.⁴²⁶⁶ D-0013 testified that[REDACTED], [REDACTED], [REDACTED], saw some individuals whom they thought might be under 18 in Bunia whom they perceived might be affiliated with the FPLC, [REDACTED] a demobilisation decree.⁴²⁶⁷ This decree was read on the radio and is in evidence.

Section VI - An age threshold was applied to join the ranks of UPC forces and the FPLC

1503.The Prosecution asserts that recruitment indiscriminate of age was carried out because the UPC had an overwhelming need for manpower to carry out the criminal plan of driving out the non-Hema population of ITURI. The evidence shows that, on the

⁴²⁶¹ PCB,para.658.

⁴²⁶² P-0017:T-60,31:21-24;P-0907:T-89,29:13-21.

⁴²⁶³ P-0963:T-80,31:12-16.

⁴²⁶⁴ D-0300:T-242,26:21-27:3.

⁴²⁶⁵ [REDACTED] D-0300:T-221,72 :10-15; T-242,27:17-23; T-242,28:16-22.

⁴²⁶⁶ D-0300:T-221,45:16-47:11.

⁴²⁶⁷ [DRC-OTP-0151-0299](#).

contrary, there was as abundance of recruits arriving for training at Mandro and elsewhere because of the dire security situation in ITURI, and that the UPC training centres rejected people on the basis of age either prior to or shortly after the commencement of their training.

1504. Insecurity in the villages of ITURI meant that there was no shortage of recruits seeking to be trained, including those who were too young. P-0116 described parents not wanting to receive back their children who were under 18 from TCHAKWANZI in 2001 because of a fear – which P-0116 acknowledged was “well founded”⁴²⁶⁸ – of extermination by Lendu combatants.⁴²⁶⁹ D-0038 described the ethnic wars prior to 2002 as having been “wild” and involving Lendu combatants killings “civilians, children, elderly persons and everyone they came across.”⁴²⁷⁰ D-0210 “wanted to join the army just as everybody else was doing.”⁴²⁷¹ D-0017 went to train from Mongbwalu because people were being “killed in broad daylight” and that “we feared that the killings would actually come to our doorstep.”⁴²⁷² D-0172 was also motivated to join the army in 2000 because the Lendu were killing people here and there, and so [he] had to go to Tchakwanzi to do military service”.⁴²⁷³ D-0057 explained that “young people said they wanted to go. They said they wanted to join the army first and partly because of the massacres by the Lendu”.⁴²⁷⁴ P-0016 explained that there was no conscription of any children, and that many of those at Mandro were orphans.⁴²⁷⁵

1505. The enthusiasm of those seeking training is also reflected in the apparent resistance of those who may have been under 18 to demobilise. P-0911,⁴²⁷⁶ P-0769,⁴²⁷⁷ and P-0016⁴²⁷⁸ described an attempted demobilisation at Mandro that was resisted by the recruits. The event appears to have been in response to the October 2002 demobilisation orders from LUBANGA and KISEMBO for anyone under 18 to be

⁴²⁶⁸ **P-0116**:T-196,21:2-3 (“Yes, in my opinion, indeed they were certainly founded because there was violence at the time, intercommunal violence”).

⁴²⁶⁹ **P-0116**:[DRC-OTP-2054-4494](#),p.4594:16-24; T-196,20:23-21:1.

⁴²⁷⁰ **D-0038**:T-249,49:16-17.

⁴²⁷¹ **D-0210**:T-207,14:4.

⁴²⁷² **D-0017**:T-252,46:20-23.

⁴²⁷³ **D-0172**:T-245,23:3-5.

⁴²⁷⁴ **D-0057**:T-246,13:8-10.

⁴²⁷⁵ [DRC-OTP-0126-0422-R03](#),para.251; [DRC-OTP-2054-1447](#),1461:21-25.

⁴²⁷⁶ **P-0911**:T-157,39:24-40:4 (“they refused to go”).

⁴²⁷⁷ **P-0769**:T-120,47:5-48:7.

⁴²⁷⁸ **P-0016**:[DRC-OTP-2054-1625](#),p.1688:12-21.

demobilised.⁴²⁷⁹ Recruits who were 16 and 17 years old were told to leave Mandro, but many “fled into the bush” and returned to the army later.⁴²⁸⁰ This demonstrates the extent to which people under 18 were motivated to seek and continue military training to protect themselves, their families and their communities.

1506. Second, P-0911, D-0210, D-0038, D-0017, P-0055, and D-0080, all described an age threshold being in place that was enforced either at the commencement of the training, or once training had begun and a person’s physical capacity became more apparent. P-0911 testified that [REDACTED] instructions not to accept anyone under 18.⁴²⁸¹ D-0038 explained that his village organised recruits for training at Mandro and that they only recruited people “who confirmed that they were 18”⁴²⁸² and that he was obliged to reject “many people” on the basis that they did not meet this threshold.⁴²⁸³ Biographical information was also collected again, according to D-0038, upon arrival at Mandro and those who did not meet the necessary criteria were rejected.⁴²⁸⁴ D-0210 and his friends, who went to Mandro independently, were turned away from Mandro and told “[w]e’re not training little children like you here, you have to go home.”⁴²⁸⁵ D-0210 was about 14-and-a-half at the time, and saw no one who appeared younger than himself being trained.⁴²⁸⁶ D-0017 also witnessed people being turned away from Mandro because of their age.⁴²⁸⁷

1507. This standard is visible from the Rwampara and Mandro videos. The vast majority of those in uniform are visibly 18 years of age or older, and none appear to be even close to under 15.⁴²⁸⁸ If recruitment was carried out without regard to age, as the Prosecution claims, there should be numerous subjects in uniform who are visibly under 18. The

⁴²⁷⁹ [DRC-OTP-0029-0274](#); [DRC-D01-0003-5894](#); **P-0769**:T-120,47:5-6.

⁴²⁸⁰ **P-0911**:T-157,40:1 (“the order was given to drive them out, but they refused to go”); **P-0769**:T-120,48:5-7 (“they were told, ‘Right, now we’re going to accompany you home to your families. Line up. We’re going’” and they were taken out of the camp. But in the evening they returned”); **P-0016**:[DRC-OTP-2054-1625](#),p.1688:17-21.

⁴²⁸¹ **P-0911**:T-157,19:18,19:20 (“[w]hen a young person arrives under 18, then you have to make that person return home”), [REDACTED] (“[REDACTED]”).

⁴²⁸² **D-0038**:T-249,62:1.

⁴²⁸³ **D-0038**:T-249,55:12-14 (“Did you, yourself, reject anyone on the basis that they were too young to receive the training at Mandro ? Yes, we rejected many people.”)

⁴²⁸⁴ **D-0038**:T-249,64:12-14.

⁴²⁸⁵ **D-0210**:T-206,47:1.

⁴²⁸⁶ **D-0210**:T-206,49:16.

⁴²⁸⁷ **D-0017**:T-252,55:17-18 (“Yes. I can recall a group of four young people who were rejected in front of me. I was there at the time.”)

⁴²⁸⁸ Mandro’s video: [DRC-OTP-0082-0016](#); OTP’s version of Rwampara video: [DRC-OTP-0120-0293](#); Defence’s version of Rwampara video version: [DRC-D18-0001-0463](#).

Rwampara video shows, on the contrary, a conspicuous difference in age between those graduating and those presenting themselves for training.

1508.P-0055, who was not involved in recruitment or training, was “never told” whether there was an age limit for recruits⁴²⁸⁹ and testified that he saw “*kadogo*” (under 18)⁴²⁹⁰ amongst the recruits at Rwampara.⁴²⁹¹ However, when P-0055 [REDACTED] of a 12-year old being trained at a purported training camp at [REDACTED], he ordered that the child be brought to his office and, after seeing him, released him immediately without checking with anyone “because there was no problem with it. I did not report to anyone, and no one asked me about what I had done in that particular case”.⁴²⁹² The implication is that it was FPLC policy – and that P-0055 knew that it was FPLC policy – not to allow training of such individuals. The unofficial nature of any training that was occurring at [REDACTED]⁴²⁹³ may explain why this person was taken in for training there.

1509.D-0080, who was [REDACTED], testified that he had received instructions that he should not train anyone under 18. He verified age, in the absence of documentation, on the basis of physical appearance and capacity at the moment of inscription or during the first two to three days of training.⁴²⁹⁴

1510.P-0046 claimed that very few children told her that they had been asked their age before commencing training,⁴²⁹⁵ but also could not recall anyone having told her that they were trained after having told their recruiter or commander that they were under 15.⁴²⁹⁶ P-0046 explained that she had little information about either phenomenon because she did not ask this question of her subjects, and let them recount their stories using open questions only.⁴²⁹⁷ One of the stories told in response to these open questions was of a child who “had given a false age in order to be able to enter the

⁴²⁸⁹ P-0055:T-71,68:6-7.

⁴²⁹⁰ P-0055:T-71,68:21-22.

⁴²⁹¹ P-0055:T-71,70:6-8,76:25-77:1.

⁴²⁹² P-0055:T-71,88:23-24.

⁴²⁹³ No witness testified that they saw this purported training camp. [REDACTED]

⁴²⁹⁴ D-0080:[DRC-D18-0001-6163](#),p.6169,para.49 (“En raison de leur taille, certains parmi ceux qui se présentaient au centre étaient refusés dès leur arrivée. D’autres pouvaient être refusés au cours des deux ou trois premiers jours de leur formation si je m’apercevais qu’ils ne remplissaient pas les critères minimaux”)

⁴²⁹⁵ P-0046:T-102,66:14-18.

⁴²⁹⁶ P-0046:T-102,67:6-11.

⁴²⁹⁷ P-0046:T-102,66:14-67:18.

armed group [...] he said that first he had been sent away and that he [...] came back several times to have the opportunity to join and that at the end the commander in charge, I don't remember his name, gave up and gave him something to do.”⁴²⁹⁸ A different example recorded in P-0046's notes is of a child identified by an NGO as 15 years old on 27 March 2003 purportedly joining UPC forces in June 2003 “after two unsuccessful attempts.”⁴²⁹⁹

1511. P-0116 testified that children did – and still do – over-state their age to join or remain in the armed forces. Even today “in the Congo we have cases in [REDACTED] where we have found children under 18 who have wanted to [...] join the army and they have stated they were adults, we have found out they are not and we have sent them back to their families”.⁴³⁰⁰ P-0116 confirmed that “this was a problem that one would always encounter when working with children, especially when working with this category of children. One always encounters such problems. A child will say, Yes, I'm older, so that he would stay where he was found, for example”.⁴³⁰¹

1512. Mr NTAGANDA himself described the application of the age threshold in practice, explaining that: (i) asking the recruits their age was “obligatory”;⁴³⁰² (ii) the main way of confirming age in the absence of documents was whether they were physically apt⁴³⁰³ which, in practical terms, meant being capable of “transport[ing] his comrade” in battle, and being able to carry a weapon and a box of ammunition;⁴³⁰⁴ (iii) candidates who were too young sometimes did present themselves for training at Mandro, whether sent by the peace committees or arriving independently, but were always sent away;⁴³⁰⁵ and (iv) Mr NTAGANDA specifically instructed ZIMULENDA, which was also confirmed by D-0080, that the minimum age of recruitment was 18.⁴³⁰⁶ Mr NTAGANDA did not deny that some individuals under 18 may have managed to satisfy these checks, and did not recall whether demobilisations of under 18 such as

⁴²⁹⁸ P-0046:T-102,65:3-5.

⁴²⁹⁹ [DRC-OTP-0152-0274](#),p.0274.

⁴³⁰⁰ P-0116:T-195,56:10-13.

⁴³⁰¹ P-0116:[DRC-OTP-2054-4494](#),p.4530:13-17.

⁴³⁰² D-0300:T-239,13:12-17.

⁴³⁰³ D-0030:T-213,79:17-80:3.

⁴³⁰⁴ D-0300:T-213,73:21; T-214,33:9-11 (“a person who would be able to carry a weapon and a box of ammunition or one of their comrades who is injured at the battlefield would be somebody who cannot be less than 18”);

⁴³⁰⁵ D-0300:T-213,80:6-81:3.

⁴³⁰⁶ D-0300:T-220,30:12-13.

those described by P-0911 and P-0769 at Mandro had taken place.⁴³⁰⁷ He did recall that there was a demobilisation of young individuals who had joined KISEMBO before re-taking Bunia in May 2003, when Mr NTAGANDA was not present.⁴³⁰⁸

1513. In conclusion, numerous witnesses testified to the existence of screening for age at FPLC training camps. This screening, in the context of the absence of identification documents and recruits willing to lie about their age, could not absolutely exclude everyone who was under 18. Nevertheless, the least subjective evidence available to the Chamber – the videos of Rwampara and Mandro – provide strong evidence that the screening was in place and largely achieved its purpose.

CHAPTER V – NTAGANDA IS NOT INDIVIDUALLY CRIMINALLY LIABLE

Section I – Introduction

1514. The evidence does not show that Mr NTAGANDA intended or contributed knowingly to the recruitment or conscription of individuals under 15, or failed to exercise proper control over his subordinates knowing that they were committing, or were about to commit, this crime.

1515. The presence of children under 15 in UPC forces or the FPLC was not so widespread that Mr NTAGANDA must have been aware of conscription or recruitment of such individuals. Complaints or demobilisation orders about individuals under 18 cannot be equated with notice or knowledge of the presence of individuals under 15. No reliable evidence has been adduced that anyone in Mr NTAGANDA's immediate proximity or whom he saw – such as his escorts, soldiers or trainees – were so “manifestly below” 15⁴³⁰⁹ that he would have known that to be the case. On the contrary, the evidence concerning his own escorts, the soldiers on videos where Mr NTAGANDA can be seen, and the lack of proof that there was anyone under 15 in the ranks of the FPLC – let alone a substantial number – raises reasonable doubt as to whether he had any such knowledge, let alone intent.

Section II – Applicable law

⁴³⁰⁷ D-0300:T-239,16:2-7.

⁴³⁰⁸ D-0300:T-239,15:18-25,16:5-7,30:16-24.

⁴³⁰⁹ Confirmation Decision, para.133.

1516. Mr NTAGANDA is charged with (i) committing (Art. 25(3)(a)) the crimes of conscripting, recruiting or using child soldiers under 15 years of age; (ii) contributing to the commission of these crimes by a group, with the aim of (Art. 25(3)(d)(i)), or in the knowledge that (Art. 25(3)(d)(ii)), the assistance would further the commission of the crimes (Art. 25(3)(d)); and (iii) failing to exercise proper control over subordinates committing these crimes (Art. 28(a)).

1517. Article 30 prescribes that a person shall be criminally responsible only if the material elements are committed “with intent and knowledge.” Intent arises where the person “means to engage in the conduct” or bring about a consequence, or at least knows that the prohibited consequence will “occur in the ordinary course of events.”⁴³¹⁰ The latter requires, according to the Appeals Chamber, foreseeability equivalent to “virtual certainty.”⁴³¹¹ The outcome must be “the almost inevitable outcome of [the accused’s] acts or omissions.”⁴³¹² A person who detonates a bomb intending to kill only one specific person is guilty of the murder of everyone killed on the airplane because the deaths of all is a virtual certainty. This is known as “*dolus directus* in the second degree.”⁴³¹³

1518. Commission of a crime “jointly” – i.e. as part of a group or organisation – requires no lower standard of intent. The “reciprocal imputation” of liability for acts of the group to each other is justified when “common plan”⁴³¹⁴ that involves “a critical element of criminality.”⁴³¹⁵ The common plan “ties the co-perpetrators together and [...] justifies” criminal liability.⁴³¹⁶ Liability cannot be imputed to others unless the commonly held plan includes this shared criminal intent, and cannot be imputed if the crime is different from the intended crime. Hence, a shared intent to commit persecution but not murder permits imputation of acts of persecution only, but not murder. Mere foreseeability that murders might be committed is insufficient.

⁴³¹⁰ ICC Statute, art. 30(2).

⁴³¹¹ [Lubanga AJ](#), paras. 6, 447.

⁴³¹² *Bemba* CD, para. 359.

⁴³¹³ *Bemba* CD, para. 359.

⁴³¹⁴ [Lubanga AJ](#), para. 445; *Bemba et al.* AJ, para. 136; ICC Statute, art. 30(1)(d) (refers to “common purpose” rather than common plan).

⁴³¹⁵ *Bemba et al.* AJ, paras. 133-134.

⁴³¹⁶ *Bemba* AJ, para. 132; *Lubanga* AJ, para. 445.

1519. The latter proposition is a corollary of Article 30, which requires nothing less than *dolus directus*, in the first or second degree. As stated by the *Bemba* Pre-Trial Chamber, “*dolus eventualis* as the third form of *dolus*, recklessness or any lower form of culpability [...] are not captured by article 30 of the Statute.”⁴³¹⁷ The law of the ICC diverges in this respect from that of the ICTY, where “JCE III” extends liability on a *dolus eventualis* (“advertent recklessness”) standard.⁴³¹⁸ Hence, individuals at the ICTY were not infrequently convicted found to share a common intent with others to commit forcible transfer, but then also convicted for murders, rapes or other crimes whose perpetration could be foreseen as a by-product of the forcible transfer operation.⁴³¹⁹

1520. Liability on this basis is not permissible under Article 30 of the ICC Statute. The perpetrator, even when acting as part of a group, must always possess *dolus directus*. Consequences that are merely foreseeable are not enough for liability; the consequences must, in fact, be intended. Liability for conscription, enlistment and use of child soldiers must be intended, not merely foreseeable, for liability to arise on the basis of an alleged common plan. The Prosecution has pleaded no less, asserting in the DCC that all the crimes with which Mr NTAGANDA is charged were intended as part of the “Common Plan.”⁴³²⁰

1521. The Elements of Crimes purports to lower the standard prescribed by Article 25(3)(a) and Article 30 from “knowledge” that the subjects were under 15, to “should have known”. The Elements, whose remit is only to “assist” interpretation of the Statute, may not “clearly deviate[.]”⁴³²¹ from a standard prescribed by the Statute.⁴³²² Knowledge that the person is under 15 is the minimum requirement for commission of the crime.

1522. Article 25(3)(d) also requires, at the least, knowledge that assistance is being provided to others who intend to conscript, enlist or use subjects whom they know are under 15.

⁴³¹⁷ *Bemba* CD, para. 360.

⁴³¹⁸ *Stakic* AJ, para. 103 (“the concept of *dolus eventualis* (or ‘advertent recklessness’) is clearly ‘required for the third form of joint criminal enterprise’”).

⁴³¹⁹ See e.g. *Stanisic & Zupljanin* TJ, paras. 521; *Prlic* AJ, para. 3001-3010 (JCE III imposed for murders, sexual abuse and other crimes); *Mladić* TJ, fn. 13437 (“the first form of the JCE requires intent in the sense of *dolus directus* and that recklessness or *dolus eventualis* does not suffice”).

⁴³²⁰ DCC, para. 1.

⁴³²¹ Triffterer, p. 527.

⁴³²² Cf. *Lubanga* TJ, para. 1015.

1523. Liability cannot arise under Article 28 unless the subordinate commits the crime based on the “knowledge” standard. Hence, the commander’s liability on the “should have known” standard can arise only if the subordinate knew that the subject recruited, enlisted or used was under 15. Where the commander should have known that this crime was being, or was about to be, committed failure to prevent or punish such recruitment, enlistment or use may give rise to liability under Article 28.

Section III – The evidence does not establish Mr Ntaganda’s *mens rea* or his substantial contribution

A. The Prosecution’s reliance⁴³²³ on conduct prior to the existence of the crime is misplaced and factually unfounded

1524. First, the evidence does not establish that children under 15 were part of Chui Mobile Force, or that Mr NTAGANDA had knowledge of any in the Chui Mobile Force who was under 15. Similarly, the Prosecution has failed to show that Mr NTAGANDA had any awareness that anyone there was under 15. The evidence shows that very few, if anyone, at TCHAKWANZI was under 15. Of the 59 children listed in the 2003 newspaper article as having been demobilised from TCHAKWANZI, only five are indicated as having been under 15 at the start of the training in 2000.⁴³²⁴ Only two are so young that it could be inferred that their appearance alone would indicate that they were under 15.⁴³²⁵ Mr NTAGANDA was almost never at TCHAKWANZI and, in any event, has not been shown to have had any role in the selection of recruits, or any command relationship in respect of those recruits whatsoever. The evidence does not show that Mr NTAGANDA had any awareness of anyone under 15 being enlisted or conscripted for TCHAKWANZI.

1525. Second, recruiting, conscripting or using of children under 15 in an armed group was not a crime until 1 July 2002. States were obliged under Article 77 of API prior to this date to “take all feasible measures” to prevent children under the age of 15 from taking a direct part in hostilities.⁴³²⁶ The view of the United States at the ICC Preparatory

⁴³²³ PCB, para. 1015.

⁴³²⁴ [DRC-OTP-0134-0626](#), p. 0638; **D-0038**:T-249,33:8 (training starts in 2000).

⁴³²⁵ Born in 1992 and 1989.

⁴³²⁶ Art. 77 API, 1977 (“The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities”).

Committee meetings was that this obligation “had not been criminalised under customary international law.”⁴³²⁷ Imputing criminal intent to Mr NTAGANDA based on conduct that was not criminal at the time infringes *nullem crimen sine lege*.

1526. Third, the training at Mandro commenced prior to the existence of the criminal prohibition. Evidence of anyone under 15 at Mandro must be assessed with care to ensure that a conviction is not based, directly or indirectly, on evidence of conduct that was not criminal at the time. The timing of the entry into force of this prohibition is also relevant to assessing the timeliness of demobilisation orders in respect of children under 18, such as that issued on 21 October 2002.

B. None of Mr Ntaganda’s bodyguards were under 15

1527. The testimony of those with the best opportunity to observe Mr NTAGANDA’s escorts was that they were 16 or up. D-0251, [REDACTED], testified that the youngest [REDACTED] was 16.⁴³²⁸ D-0243 recalled that they were “adults”, and when asked whether it was possible that any were under 15, he answered “No, there weren’t any, to tell you the truth. I did not see any children among the bodyguards.”⁴³²⁹ D-0017 testified that amongst Mr NTAGANDA’s bodyguards whom he knew, “there was no one who was below 16 or 17.”⁴³³⁰ P-0290 testified that [REDACTED] were “15 or so” and that those who remained [REDACTED] were “maybe 16 or 17.”⁴³³¹ Mr NTAGANDA himself testified that all of his escorts were over 18 and he named many of them for the Chamber.⁴³³²

1528. Some Prosecution witnesses gave age estimates that were inconclusive. P-0055 said of Mr NTAGANDA’s escorts only that “[s]ome may have been 14 or 15 years old.”⁴³³³ P-0901 thought that the youngest was “approximately 14 or 15.”⁴³³⁴

1529. The few witnesses who gave estimates of Mr NTAGANDA’s bodyguards’ age falling below 15 were either manifestly not credible, or were observational witnesses with an

⁴³²⁷ Triffterer, 3rd ed., p. 521.

⁴³²⁸ D-0251:T-260,23:10-12 (“[W]ith regard to the people in Bosco Ntaganda’s compound, there was nobody, nobody under the age of 15. The youngest was probably -- the youngest would have been 16”).

⁴³²⁹ D-0243:T-259,51:2-3.

⁴³³⁰ D-0017:T-253,67:25.

⁴³³¹ P-0290:T-65,41:3-6.

⁴³³² D-0300:T-214,55:3.

⁴³³³ P-0055:T-71,84:10-11.

⁴³³⁴ P-0901:T-29,55:18-56:10.

inferior opportunity of observation. P-0010, upon whom the Prosecution still places heavy reliance,⁴³³⁵ lied about her own age. She was willing to lie about the ages of others as demonstrated by her testimony about [REDACTED] age, which was contradicted by several other witnesses.⁴³³⁶ Her claim that Mr NTAGANDA had a nine-year old escort⁴³³⁷ was uncorroborated, contradicted by several other witnesses, and a stark reminder of the willingness of witnesses to tell lies in this case.

1530. The individuals in Bosco NTAGANDA's vicinity on the videos, whom he either had some opportunity to observe or some of whom might be identified as escorts, do not appear to be under 15 years of age. The vast majority appear to be adults who might be inferred to be his bodyguards. On any of the videos they can be reasonably estimated – let alone estimated beyond a reasonable doubt – as being under 15. Some of the individuals visible on the Rwampara video were identified as Mr NTAGANDA's escorts; none of them appear to be visibly under 15.

C. Mr Ntaganda did not forcibly recruit children at a [REDACTED] primary school⁴³³⁸

1531. P-0190's direct testimony⁴³³⁹ about children being forcibly taken by Mr NTAGANDA amidst great clamour from a primary school in [REDACTED] – to which there should have been many witnesses – went uncorroborated. D-0057, who was in a position to know, denied that any such event ever took place.⁴³⁴⁰ P-0014's vague hearsay of Mr NTAGANDA being “a specialist in abduction,”⁴³⁴¹ and of unidentified children telling him about alleged abductions at unspecified times and locations,⁴³⁴² appears to be nothing but a corny attempt by someone who wants to make themselves a useful witness for the Prosecution.

⁴³³⁵ PCB, para. 824.

⁴³³⁶ [REDACTED]; P-0010:T-48,11:18; P-0010:T-47,59:11,62:16, T-48,11:9,12:7; [REDACTED] D-0251:T-260,18:8-9,19:19-20:7,8:3,96:14-15; D-0017:T-253,33:23-34:03,67:25.

⁴³³⁷ P-0010:T-47,6:23-24.

⁴³³⁸ PCB, paras. 819, 1016.

⁴³³⁹ P-0190:T-97,31:6-17.

⁴³⁴⁰ D-0057:T-246,11:17-12:1.

⁴³⁴¹ P-0014:T-136,44:25-45:1.

⁴³⁴² P-0014:T-136,43:10-12.

D. Purported meetings with Mr Ntaganda and demobilisation orders reflect no knowledge of children under 15 amongst the ranks of the FPLC

1532. No reliance can be placed on [REDACTED]'s [REDACTED] about a meeting between Mr NTAGANDA and P-0046,⁴³⁴³ of which the latter had no apparent recollection, and of which there is no record. P-0315's notes, which are unreliable, in any event, do not reflect that Mr NTAGANDA acknowledged the presence of children under 15 amongst the ranks of the FPLC.⁴³⁴⁴ The MONUC report of 2 October 2002 – which does not actually specify that the “commander Bosco” in question was Mr NTAGANDA -- likewise does not suggest that the “underage children” are under 15, instead of the standard definition of under 18. Indeed, the memo is ambiguous as to whether this topic was raised with the “commander Bosco” or someone else.⁴³⁴⁵

1533. The demobilisation orders,⁴³⁴⁶ which refer expressly or implicitly to the 18-year threshold, were neither a shame nor indicative of any consciousness of guilt. They were genuine attempts to confront a complex problem without, incidentally, any proper DDRR program having been put in place by the NGOs or the national government.

E. Mr Ntaganda did not give speeches encouraging recruitment of anyone under 18, let alone under 15

1534. It was not criminal, let alone wrong, to give speeches encouraging young people to take up arms, especially given the dire threat facing the non-Lendu population of Ituri. Even the use of the word “children” is not an indication of attempt to recruit individuals under 15: numerous witnesses testified that the word *kadogo* or “child” referred to anyone up to 18 years of age⁴³⁴⁷ and, depending on the context, could refer even to adults.⁴³⁴⁸

1535. The testimony concerning the content of Mr NTAGANDA's speech in MABANGA comes from P-0010, who is a thoroughly untruthful witness. Mr NTAGANDA's own account of the event is credible and not undermined by P-0010's testimony.

⁴³⁴³ [REDACTED].

⁴³⁴⁴ [REDACTED].

⁴³⁴⁵ [DRC-OTP-2067-1914](#), p.1916, para.10.

⁴³⁴⁶ PCB, paras.625,1017.

⁴³⁴⁷ P-0901:T-31,42:15.

⁴³⁴⁸ P-0901:T-31,42:18-20.

F. No reliance should be placed on unadmitted information

1536. The Prosecution has sought to rely on a particularly scurrilous and unfounded allegation by P-0046 that NTAGANDA executed six children.⁴³⁴⁹ The Trial Chamber excluded the document⁴³⁵⁰ on which this claim was based, no reliance should be placed on it.

G. The age of individuals being trained, and graduating from training, is not indicative of Mr Ntaganda's knowledge of the presence of any child soldiers amongst the ranks of the FPLC

1537. The Mandro and Rwampara videos do not demonstrate that Mr NTAGANDA saw anyone who appeared to be under 15 during his visits to these centres. No one holding a baton appears to be under 15, and no one wearing a uniform in any of these videos appears to be under 18. The huge majority, with only a few exceptions, are clearly well over 15.

1538. Mr NTAGANDA and D-0080 both describe the youngest individuals on the Rwampara video as having just arrived, and that [REDACTED]. Mr NTAGANDA can be heard commenting on the video that they “‘have come recently.’”⁴³⁵¹ The mere presence of these individuals at the assembly does not demonstrate any intent by Mr NTAGANDA to recruit children under 15; the measures that he [REDACTED] took to ensure that the youngest amongst the crowd shows that he had no such intent.

H. Any child soldiers as may have managed to enter the ranks of the FPLC is not indicative of any intent to recruit child soldiers

1539. Some individuals under 15 may have managed to enter the ranks of the FPLC in one capacity or another. Testimony was heard about many young individuals, especially orphans, hanging around military camps⁴³⁵² hoping to be trained or looking for protection or work.⁴³⁵³ Some of these individuals may have been kept out of the ranks

⁴³⁴⁹ PCB, para.1016, fn.3143.

⁴³⁵⁰ P-0894:T-104,30:4 (“the Chamber sustains the Defence objection and document DRC-OTP-0152-0256 is not admitted into evidence”).

⁴³⁵¹ DRC-D18-0001-6681; D-0300:T-220,36:18,

⁴³⁵² P-0046:T-102,26:4-7 (“Q. And there were many children who were orphans and had no families to return to; is that correct? A. There was a significant proportion of children who had lost one or two of their parents, this is correct”); P-0031:T-174,25:15-17 (A. Yes. His answer was he going to deal with it, but his children are orphans, and that’s why the UPC was training them and the enlistment was voluntary”).

⁴³⁵³ P-0116:DRC-OTP-2054-4494, p.4594:16-24; T-196,20:23-21:1; D-0210:T-207,14:4; D-0017:T-252,46:20-23; D-0172:T-245,23:3-5; D-0057:T-246,13:8-10.

of the FPLC, but nevertheless used as assistants or helpers.⁴³⁵⁴ Others may have been allowed to train or accepted as escorts possibly with benevolent motivations, as illustrated by [REDACTED]⁴³⁵⁵ or [REDACTED],⁴³⁵⁶ who took [REDACTED] whom they thought they would assist. Some may have succeeded in giving false ages in order to be allowed to train. Others still – especially after March 2003 when the FPLC was routed – may have had the appearance of being affiliated with the FPLC, but were not. Not every individual carrying a weapon in ITURI can be presumed to be a member of the FPLC.

1540. The few cases of escorts or other individuals within the ranks of the FPLC who may have been under 15 does not change the overall picture. The evidence has not borne out the claim that the FPLC was “an army of children.”⁴³⁵⁷ The overwhelming majority of FPLC soldiers, as the available videos show, were visibly well above 15. Any who may have been younger are not so obviously younger than 15, and certainly not so numerous, as to constitute an adequate basis for inferring that Mr NTAGANDA intended to recruit children under 15.

CHAPTER VII - COUNT 6 AND 9: RAPE AND SEXUAL ENSLAVEMENT OF CHILD SOLDIERS

Section I - The scope of the charges and elements of proof

1541. The UDCC does not contain any description of which alleged rapes or acts of sexual enslavement are purportedly charged under Counts 6 and 9. This violates Regulation 52(b) of the RoC. No conviction can be entered under these counts as there are no “facts and circumstances” on the basis of which the Trial Chamber may enter a conviction under Article 74(2).

1542. The Confirmation Decision, however, refers to four events on the basis of which it confirmed the counts: (i) rape of P-0758 and other child soldiers at Camp Lingo; (ii) rape by Abelanga of a girl under 15 at Mandro between November 2002 until May 2003; (iii) rapes of young girls at Mandro Camp between mid-August and mid-September; and (iv) rape of a girl aged 13 by Kisembo “until he was killed in

⁴³⁵⁴ P-0887:T-93,49:3;P-0046:T-101,68:21-22:3;T-102,60:1-2.

⁴³⁵⁵ [REDACTED]; [REDACTED].

⁴³⁵⁶ [DRC-OTP-0074-0797](#),p.0851.

⁴³⁵⁷ [DRC-OTP-0074-0797](#),p.0851.

Mongbwalu”.⁴³⁵⁸ Even assuming that these allegations form part of the charges – which they do not, having been omitted from the UDCC – these are the only facts and circumstances on which a conviction could conceivably be entered.

1543. The victims as defined in Count 6 and 9 are defined as “child soldiers,” thus excluding anyone older than that, and requiring proof beyond reasonable doubt of the requisite age.

1544. The pronouncement in *Lubanga* concerning inability of children to consent concerned entry to military service,⁴³⁵⁹ not sexual relations.⁴³⁶⁰ No customary or treaty norm defines an international age threshold for consent to sexual relations.

Section II - The evidence does not establish that any of the charged events occurred; if any did occur, there was no nexus to the armed conflict

A. P-0758

1545. P-0758’s testimony about rape, as already discussed,⁴³⁶¹ is unreliable. P-0758 lied extensively about her age and circumstances of abduction. Her allegations of rape or even the general conditions at Lingo were not corroborated – including by [REDACTED], [REDACTED] – and she failed to visually identify her named or described assailants. These and other deficiencies in her testimony, as previously discussed,⁴³⁶² raise doubt about the reliability.

1546. The alleged rapes were also not sufficiently related to the armed conflict to constitute a war crime.⁴³⁶³ The Appeals Chamber has held that “a rigorous application of the nexus requirement” is necessary to prevent any potential “undue expansion” of war crimes law, and identified the following factors as relevant:

the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and

⁴³⁵⁸ Confirmation Decision, para. 82.

⁴³⁵⁹ [Lubanga AJ](#), para. 303.

⁴³⁶⁰ PCB, para. 764.

⁴³⁶¹ Part VI, Chap. I, Section I(D).

⁴³⁶² Part VI, Chap. I, Section I(C).

⁴³⁶³ Elements of Crimes, p. 3 (“the conduct took place in the context of and was associated with an armed conflict.”)

the fact that the crime is committed as part of or in the context of the perpetrator's official duties.⁴³⁶⁴

1547. P-0758 was not a non-combatant; not a member of the opposing party; and not raped in circumstances that served any goal of the military campaign. The rapes occurred in camp, and not during operations.⁴³⁶⁵ The circumstances are typical of the type of sexual abuse widespread in armed forces around the world,⁴³⁶⁶ but that is not properly a matter of international war crimes jurisdiction as currently defined. If anything, her testimony that rape was committed “after battles rather than before” because of the belief that “anyone who had sex before fighting would be killed on the battlefield”⁴³⁶⁷ diminishes the nexus even further.

1548. Finally, P-0758 was not a child soldier⁴³⁶⁸ and, accordingly, does not fall within the scope Counts 6 and 9 as the Prosecution chose to plead those counts.

1549. P-0758’s testimony concerning alleged rapes at Lingo of other persons,⁴³⁶⁹ as previously discussed, is vague and unreliable.

B. Rape by Abelanga at Mandro, or rapes at Mandro more generally

1550. The Prosecution has offered no specific submissions⁴³⁷⁰ on these events. P-0888’s testimony, aside from being unreliable for reasons previously discussed,⁴³⁷¹ is unspecific about the age of anyone whom he “heard” was raped.⁴³⁷²

1551. P-0017 offered hearsay testimony that [REDACTED] (“[REDACTED]”) told him that ABELANGA had sexually abused two of his escorts,⁴³⁷³ whom P-0017 visually assessed as being “12 or 13 years old” based on visual assessment of physique and the fact that “they played” only.⁴³⁷⁴ P-0017 offered no further details, and no other

⁴³⁶⁴ Appeal on jurisdiction, para. 68.

⁴³⁶⁵ Part VI, Chap. I, Section I(D).

⁴³⁶⁶ DoD Releases Annual Report on Sexual Assault in Military, online: U.S. Department of Defense <<https://www.defense.gov/News/Article/Article/1508127/dod-releases-annual-report-on-sexual-assault-in-military/>> (referring to 5,277 reports of sexual abuse by service members in 2017).

⁴³⁶⁷ PCB, para. 768, **P-0758**:T-161,68:12-69:2.

⁴³⁶⁸ See Part VI, Chap. I, Section I, (A).

⁴³⁶⁹ P-0758:T-161,6:13-22,20:13-23.

⁴³⁷⁰ PCB, paras. 763-790.

⁴³⁷¹ Part VI, Chap. I, Section III.

⁴³⁷² **P-0888**:T-105,39:7-11; PCB, para. 777.

⁴³⁷³ **P-0017**:T-58,51:18-23.

⁴³⁷⁴ **P-0017**:T-58,51:25-52:1.

evidence was heard to corroborate that ABELANGA had raped these alleged victims or their ages. The evidence is insufficient to make a determination that this event occurred.

C. Rape by Kisémbó of a 13 year-old

1552. P-0887 and P-0907 refer to an alleged rape of one of KISEMBO's bodyguards named [REDACTED] in [REDACTED] that occurred after FPLC forces had been defeated and dispersed after the defeat inflicted by the UPDF on 6 March 2003.⁴³⁷⁵ P-0907 testified that he learned this information from KISEMBO when he announced, in front of a large crowd, that "hence forth, whoever slept with [REDACTED] was going to be punished and he will shoot that person".⁴³⁷⁶ KISEMBO also purportedly said: "'You see, this child is still young, no more than 12 years old. From now on, no one should touch her because she is not even a teenage girl'".⁴³⁷⁷ P-0887 could not give a precise age estimate, but said she was "still very young".⁴³⁷⁸

1553. The hearsay testimony and visual observation of "[REDACTED]" is an insufficient basis for a judicial finding that this "[REDACTED]" was under 15. P-0887 would not give any age estimate for [REDACTED], and did not confirm that she was under 15.

1554. Neither P-0887 nor P-0907 suggested that KISEMBO had raped "[REDACTED]".⁴³⁷⁹ P-0887 did not say that she had been raped at all.⁴³⁸⁰ KISEMBO's motives and extent of his knowledge of any misconduct by his subordinates is also unclear from the pronouncement as described, as well as uncertainty about whether P-0887 or P-0907 would have been aware of any other punishments that KISEMBO might have prescribed. The evidence is inadequate to determine whether "[REDACTED]" was raped, whether any rapist was not punished, and her age. P-0907 testified, notably, that [REDACTED] was still alive [REDACTED].⁴³⁸¹

⁴³⁷⁵ P-0907:T-89,55:8-57:10; P-0887:T-93,39:23-41:14.

⁴³⁷⁶ P-0907:T-89,63:21-25.

⁴³⁷⁷ P-0907:T-89,57:5-7.

⁴³⁷⁸ P-0887:T-93,40:2-3.

⁴³⁷⁹ P-0887:T-93,40:6-16.

⁴³⁸⁰ P-0887:T-93,40:16("I'm not in a position to know that").

⁴³⁸¹ This "[REDACTED]" is not [REDACTED], who is not "married and has three children", as described by P-0907. P-0907:T-89,56:1-3.

D. Uncharged Events

1555. The Prosecution relies [REDACTED] showing “the pervasive sexual violence that existed, at the highest level”.⁴³⁸² Any attempt to indirectly rely on such profoundly incriminating uncharged allegations should be firmly and expressly repudiated,⁴³⁸³ [REDACTED].

1556. P-0046’s and P-0365’s sweeping testimony⁴³⁸⁴ is based entirely on anonymous hearsay that was not corroborated by any reliable testimonial evidence. The interpretation of the song, and its discussion about consensual relationships,⁴³⁸⁵ is speculative and wrong. Witnesses D-0251, D-0017 and D-0211 offered a very different picture of the attitude towards women in the FPLC.⁴³⁸⁶

1557. P-0883’s allegations do not fall within the scope of any of the charges and do not reveal any nexus to the armed conflict. In any event, none of her testimony is worthy of belief in light of her sustained lying and fabrication of evidence discussed previously.⁴³⁸⁷

Section III - Mr NTAGANDA is not criminally responsible for any alleged rapes of child soldiers

1558. The Prosecution submissions, for the most part, do not address Mr NTAGANDA’s mental state in relation to the charged events, as opposed to non-charged events.⁴³⁸⁸ The Elements of crimes states that the “material elements” – which are circumscribed by Article 74 – be “committed with intent and knowledge.”⁴³⁸⁹ Evidence of other events may, of course, provide circumstantial evidence of the relevant mental state, which

⁴³⁸² PCB, para.778.

⁴³⁸³ Part VI, Chap.I, Section IV.

⁴³⁸⁴ PCB, paras.771,781-783.

⁴³⁸⁵ PCB, para.770.

⁴³⁸⁶ **D-0251**:T-260,33:25-34:4(“Q.During your association with UPC, to the best of your knowledge, were you aware of any rapes committed by UPC soldiers other than the bodyguards of Bosco Ntaganda? A.In the UPC we lived in love and agreement. The authorities were very strict. I never heard anyone speak of such stories”); **D-0251**:T-260,40:8-18(“We were very well treated. He helped us a lot. When someone was ill or when one of our families had problems, he helped us a lot. He was a very good commander. Q.To the best of your recollections, was Bosco Ntaganda close to his--both male and female escorts? A.Bosco Ntaganda was a very good commander, he was a brave man, he knew how to talk to his soldiers and escorts and he really led us very well. And it's very unfortunate that he left because we could no longer see him”); **D-0017**:T-252,69:4-5(“During that training I never heard anyone speak of rape and I didn't hear of any rumours involving rape”); **D-0211**:T-248,34:24-35: (“she said that she enrolled voluntarily and [...] was very satisfied with the military service”).

⁴³⁸⁷ Part VI, Chap.I, Section II.

⁴³⁸⁸ PCB, paras.1020-1021.

⁴³⁸⁹ Elements,p.1,para.2.

must nevertheless always be in relation to the charged *actus reus*. Furthermore, the knowledge and intent must exist in relation to each of the necessary elements which, in the case of Counts 6 and 9, includes that the victim was under 15.

1559. The evidence does not sustain any inference that Mr NTAGANDA intended under Article 25(3)(a), or willingly assisted others who intended under Article 25(3)(d), to rape anyone, let alone anyone under 15 years of age. No evidence has been heard that Mr NTAGANDA had knowledge or intention of the alleged rapes of the foregoing victims. The Prosecution's assumption that pregnancy implies rape, and that "*guduria*" meant "sexual enslavement,"⁴³⁹⁰ is unsubstantiated and contrary to D-0251's testimony.⁴³⁹¹ P-0768's testimony about Mr NTAGANDA's failure to punish MUSEVENI⁴³⁹² comes from a thoroughly biased witness,⁴³⁹³ whose testimony on this point was also uncorroborated and implausible.

1560. The evidence shows, on the contrary, that the UPC/FPLC repeatedly taught soldiers that rape was not permitted and that there would be serious punishment doing so.⁴³⁹⁴ P-0055's story about a soldier named "[REDACTED]" who murdered a PMF (for which he was subsequently arrested) whom he suspected was going to complain about having been raped illustrates that soldiers feared such allegations.⁴³⁹⁵ Mr NTAGANDA was alert to the need,⁴³⁹⁶ and did, punish any serious infractions including rape.⁴³⁹⁷

⁴³⁹⁰ PCB, paras.1018-1019.

⁴³⁹¹ **D-0251**:T-260,33:25-34:4("Q.During your association with UPC, to the best of your knowledge, were you aware of any rapes committed by UPC soldiers other than the bodyguards of Bosco Ntaganda? A.In the UPC we lived in love and agreement. The authorities were very strict. I never heard anyone speak of such stories");**D-0251**:T-260,38:8-9("Since we were happy to be married, he gave us the opportunity to be in a relation and go ahead with our future").

⁴³⁹² **P-0768**:T-34,55:23-56:13.

⁴³⁹³ Part IV, Chap.III, Section I(A).

⁴³⁹⁴ **P-0365**:T-148,17:6-22 citing [DRC-OTP-0164-0710](#),p.0723:375-386("Chief Kahwa: Any soldier who will rape a women or take girls and rape them will be killed by a bullet, is that not the case? Soldiers:Yes"); **P-0017**:T-60,81:4-12.

⁴³⁹⁵ **P-0055**:T-71,95:25-96:14.

⁴³⁹⁶ **D-0300**:T-238,78:10-25("If it was a situation of rape, I would have sent a clear message.[...] the person responsible for that offence be arrested and put in prison").

⁴³⁹⁷ **D-0300**:T-211,49:17-24,T-213,7:20-25,T-213,9:19-23;T-237,10:14-24;T-239,46:23-47:1;T-214,9:13-21;T-233,42:6-17("[...] This was the responsibility of each commander to ensure that all his troops were disciplined from the lowest ranking upwards");**P-0017**:T-59,43:20-44:8("[...] a UPC soldier had been punished for rape");**P-0055**:T-71,95:25-96:14;**P-0815**:T-76,41:16-19("And those who raped were arrested");**D-0300**:T-228,74:16-75:12("And I took measures very swiftly [...] I asked that Moyi be struck");T-214,10:6-12("Mave came and said that Sopick had tried to rape her. I arrested Sopick and flogged him in front of all my troops, in front of all my bodyguards");T-214,9:18-20("[...] a young man attempted to rape a woman. This young man's name was Brandon. That young man was arrested"); **D-0017**:T-254,32:4-33:5,T-255,53:14-21.

CONCLUSION

1561. In light of the above, the Defence submits that Mr NTAGANDA should be acquitted on all counts.