

1 International Criminal Court

2 Pre-Trial Chamber II - Courtroom 1

3 Situation: Democratic Republic of Congo

4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06

5 Presiding Judge Ekaterina Trendafilova, Judge Hans-Peter Kaul and Judge Cuno

6 Tarfusser

7 Confirmation of Charges Hearing

8 (The hearing starts in open session at 2.30 p.m.)

9 THE COURT USHER: All rise.

10 PRESIDING JUDGE TRENDAFILOVA: Please be seated. We are now in session.

11 The confirmation hearing proceeds in the afternoon sessions and we shall proceed
12 with the presentation of the Prosecutor.

13 Is everyone in his or her seat? Fine.

14 Now we have Ms ...?

15 MS LUPING: Ms Diane Luping, Madam President.

16 PRESIDING JUDGE TRENDAFILOVA: Luping. Thank you.

17 MS LUPING: Yes. Madam President, your Honours, if you could give me a
18 moment?.

19 Madam President, your Honours, we've been advised that the Defence are seeking to
20 raise a procedural issue. I'm not sure if my colleague Mr Desalliers wishes to raise it
21 now before my presentation?

22 PRESIDING JUDGE TRENDAFILOVA: Well, the Chamber will not mind, but still
23 there was -- if we are strictly to follow the schedule, there was a time for procedural
24 issues, unless there is something urgent that has to be resolved right now. Mr
25 Desalliers, if your issue is not of such an urgent nature, then before you start with

1 your presentation, you can raise it, but it depends what is -- what is actually the
2 issue at stake.

3 MR DESALLIERS: (Interpretation) Yes, Madam President, I really apologise
4 because I didn't want to interrupt my learned
5 colleague's presentation. I had asked for leave to mention a point that I forgot this
6 morning. It will take only one minute, and I can do that right now with your leave.
7 Application 250 that we filed relating to the admissibility of exhibits. I forgot to tell
8 you that we received an email from the OTP yesterday informing us that two other
9 Prosecution witnesses had died.

10 So before yesterday, that is Witnesses 103 and 106 are now dead, we were not aware
11 of that. So we simply wanted to add an addendum to our filing 250 to include this
12 issue, because the death of a witness is one of the grounds for excluding certain
13 charges. So I forgot to mention that this morning, and if you grant us leave to do so,
14 we will be able to file something by the end of the week.

15 PRESIDING JUDGE TRENDABILOVA: Yes, Mr Desalliers. Actually, you have such
16 a part in your submission, your filing to the Chamber, and you would like -- with
17 regard to dead witnesses, as far as my recollection is correct, and you would like to
18 add these two witnesses to this part of your application. I understand you. Of
19 course this has to be reflected in the record of the case. The matter is resolved. How
20 we are going to handle it, this is something else, but for -- from a formal point of
21 view, the matter is resolved.

22 Now, Ms Luping, you have the floor.

23 MS LUPING: Thank you, Madam President, your Honours. Before I start, I simply
24 want to announce also that the Prosecution's team has been joined by my colleague,
25 Mr Pascal Turlan, who is a judicial co-operation advisor.

1 And I would ask if the court officer could please let me access the visual aid that I
2 will be using from the very start of my presentation. Thank you.

3 Madam President, your Honours, I'll be addressing the contextual elements for both
4 crimes against humanity and war crimes. I'll be analysing the key evidence proving,
5 on substantial grounds to believe, the contextual elements of crimes against
6 humanity as well as the contextual elements for war crimes.

7 Dealing first with crimes against humanity. Your Honours, it's useful to recall the
8 contextual elements to be proven on substantial grounds to believe. Under Article 7
9 for crimes against humanity, the contextual elements are that, first, that there was a
10 widespread or systematic attack. Secondly, that that attack was directed against a
11 civilian population. And this has been further defined as meaning a course of
12 conduct involving the multiple commission of acts and pursuant to or in furtherance
13 of an organisational policy.

14 Thirdly, the require of a nexus between the conduct and the attack and that the
15 conduct in this case, murders, rape, sexual slavery, forcible transfer or deportation
16 and persecution were committed as part of a widespread and systematic attack.

17 And finally, that the perpetrator, Bosco Ntaganda, knew that the prohibited conduct
18 was part of or intended that that conduct be part of the attack.

19 Madam President, your Honours, dealing with the first, second and third contextual
20 elements, I will analyse the key evidence proving on substantial grounds to believe
21 that there was indeed a widespread or systematic attack, that it was directed against
22 the civilian population, and that the conduct was committed as part of a widespread
23 or systematic attack.

24 Before turning to that evidence, it's useful to recall what is the scope of the attack as
25 alleged by the Prosecution. The Prosecution submits that there are substantial

1 grounds to believe that from about 2 July 2002 to approximately 31 December 2003,
2 UPC forces and/or supporting Hema civilians committed a widespread or systematic
3 attack directed against the non-Hema civilian population. Throughout this period
4 the UPC forces and supporting Hema civilians engaged in a course of conduct
5 involving a multiple commission of acts that intentionally targeted the non-Hema
6 civilian population in Ituri. It was pursuant to an organisational policy, and it was
7 done with knowledge of the attack.

8 Bosco Ntaganda, as deputy chief of staff and operational commander, was
9 responsible for commanding the assaults of the UPC forces and Hema civilians that
10 took place during this time period. In addition, in several of these assaults he was
11 physically present and/or directed the assaults.

12 As a result of this attack of the UPC forces and Hema civilians on the non-Hema
13 civilian population in Ituri during this time period from 2002 to 2003, hundreds of
14 Lendu and other non-Hema civilians were murdered, raped, abducted and kept as
15 sex slaves. Hundreds of civilian structures were damaged or destroyed, including
16 private homes, protected civilian objects such as hospitals, health centres, churches,
17 as well as schools. Their goods were also pillaged. In addition, civilians, mostly
18 Lendu, were injured.

19 Now, these assaults that were carried out by the UPC forces and the supporting
20 Hema civilians were so frequent that during this period the non-Hema civilian
21 population were forced to leave their homes and to live in the bush or forests on a
22 semi-permanent basis. Thousands of people were displaced by the series of these
23 assaults. The non-Hema civilian population were persecuted on ethnic grounds,
24 either because they were Lendu-Ngiti or because they were perceived to be, and I
25 quote, "non-originares" of Ituri. And these non-originares were, according to the

1 Hema population, said to include the Lendu-Ngiti, Nande and Bira, and others
2 targeted were the allies of the Lendu-Ngiti.

3 For instance, former UPC military insider, Witness 16, described how those deemed
4 to be non-originaires of Ituri included the Lendu and the Ngiti.

5 According to Witness P-12, a PUSIC political insider, and Witness P-43, a Congolese
6 judge, the Hema community deemed the non-originaires of Ituri to include Lendu
7 allies such as the Nande.

8 Witness P-315, an international NGO researcher, describes how during one assault
9 Bira were also being considered non-originaires and how these Bira were forced to
10 assist the Hema militia in attacking Lendu and then were subsequently killed
11 themselves.

12 The broader attack against the civilian population that took place during the course
13 of the year from 2002 to 2003 is constituted by multiple acts that amount to a course
14 of conduct taking place during eight assaults. First, two assaults that took place in
15 the Banyali-Kilo collectivité between about November 2002 until December 2002
16 and, secondly, in the Walendu-Djatsi collectivité between about February 2003 until
17 March 2003 in respect of which the underlying acts committed have been charged.
18 And secondly, by six other assaults only relevant for contextual purposes but also
19 for the child related -- soldier related charges that took place in Bunia, Songolo,
20 Zumbe and along the axis of Mambasa, Komanda and Eringeti. All of the multiple
21 acts arising in these eight assaults must be assessed as a whole as a course of conduct
22 that constitutes the widespread or systematic attack.

23 In any event, in the Prosecution's submission, the acts perpetrated during the two
24 assaults taking place in Banyali-Kilo and Walendu-Djatsi, both individually and
25 collectively, are sufficient in and of themselves to constitute that attack against the

1 civilian population. And the multiple acts arising during the course of the other six
2 assaults can be viewed at the very least as evidence supporting the existence of the
3 widespread or systematic attack.

4 The Prosecution recalls that it's necessary to assess the evidence of all of the
5 examples of these multiple acts arising from all of the different assaults in totality.
6 They should not be considered separately or in isolation from one another.

7 Madam President, your Honours, I will now turn to the key evidence in relation to
8 these eight assaults to demonstrate how they prove on substantial grounds to believe
9 the widespread or systematic attack directed against the non-Hema civilian
10 population. I would just observe that my colleague, Mr van der Werf, who will be
11 presenting the detail of the evidence related to the intentional targeting of the
12 civilian population during the course of the two assaults in Banyali-Kilo and
13 Walendu-Djatsi, will be addressing that detail and that this evidence is also relevant
14 to demonstrating the manner in which the attack was directed against the civilian
15 population during the two assaults in those areas.

16 I will review only in detail the evidence relating to the six other assaults. However, I
17 shall be presenting the Prosecution's analysis of what we submit is the common
18 course of conduct evident from all eight of the assaults.

19 Finally, your Honours, Madam President, I will be reviewing the evidence of the
20 many, many other UPC acts committed against the non-Hema civilians, including
21 during UPC other assaults taking place during this period of 2002 until 2003 that
22 also provides evidence supporting both the existence of that widespread or
23 systematic attack directed against civilians as well as evidence of the protracted
24 nature of the armed conflict relevant to war crimes.

25 Madam President, your Honours, now turning to the evidence of the multiple acts

1 perpetrated during the eight assaults that together amount to a course of conduct
2 that constitutes that widespread or systematic attack directed against the civilian
3 population. And I'll ask my colleague to bring a map up of Ituri. It's a visual aid.
4 Your Honours, before you now is a map of the Ituri region and indicated are the five
5 main territories that Ms Samson described this morning in her presentation as an
6 introduction.

7 Bunia is the first assault that I'll be addressing that took place between 6 and 9
8 August of 2002. From July 2002 Bosco Ntaganda and his co-perpetrators within the
9 UPC militia planned the takeover of Bunia, the capital of Ituri, as well as the
10 expulsion of the non-Hema civilian population living in -- living in Bunia.
11 Witness P-12, the PUSIC political insider, was told by the UPC Bunia sector
12 commander, Tchaligonza, how Tchaligonza had attended a pre-planning meeting
13 with Bosco Ntaganda and other co-perpetrators to agree on how the assault on
14 Bunia of August 2002 was to be conducted. This meeting took place not long after a
15 shipment of weapons and ammunition arrived in UPC military camp at Mandor.
16 Military insider, Witness P-16, who at the time of this assault on Bunia was a senior
17 commander within the APC forces, describes how prior to that assault he heard that
18 the Hema were unhappy with the non-originares and wanted Molondo Lompondo,
19 who headed the APC army, to be ousted from Ituri, to leave Ituri for the Iturians.
20 Witness P-16 describes how he saw posters left by Hema community within Bunia
21 threatening the non-originares to leave. Witness P-16 was part of those APC forces
22 present in Bunia and defending the civilian population when not long after those
23 posters first appeared within Bunia combined UPC forces and other Hema militia
24 and allies as well as elements of the Ugandan People's Defence Force, known as the
25 UPDF, attacked Bunia.

1 On or about 6 to 9 August 2002 the UPC, allied with elements of UPDF, indeed did
2 attack Bunia. Bosco Ntaganda was one of the senior military commanders of the
3 UPC forces who was present and was leading forces during this assault.

4 Both Witness P-14, a journalist also present in Bunia at this time, as well as former
5 UPC insider Witness P-10 confirm that Bosco Ntaganda was amongst the armed
6 dissidents who took over Bunia.

7 Witness P-46, a UN investigator and a child protection officer, confirms that UN staff
8 and investigators present in Ituri at the time also collected information relevant to
9 this assault on Bunia.

10 UN investigator P-317, who headed investigations conducted by UN MONUC,
11 confirms that the UN MONUC conducted nine investigations into events in Ituri
12 involving interviews with 1,600 individuals. Information that was collected
13 included information relating to the August 2002 assault.

14 The UN investigators concluded in various reports written not long after these
15 events and based on these contemporaneous accounts that Bosco Ntaganda led UPC
16 forces as well as supporting Hema civilians who deliberately attacked non-Hema
17 civilians in specific parts of Bunia, including Mudzipela, Bigo and Sayo, from 7 to 10
18 August 2002. Bosco Ntaganda was also reported in local media at the time as being
19 a key commander leading the UPC forces in Bunia.

20 Witness P-315, an international NGO researcher, also investigated this incident and
21 met with eye-witnesses not long after the events. According to the accounts of the
22 various eye-witnesses, such as journalist Witness P-14 as well as survivors
23 interviewed by the UN investigators and the NGO researcher Witness P-315, the
24 UPC forces and the supporting Hema civilians, including those under Bosco
25 Ntaganda's command, deliberately hunted down Lendu and other ethnic groups

1 perceived at the time as allies of the Lendu or non-originaires of Ituri such as the
2 Nande and the Bira. They hunted them down in public places. They hunted them
3 down in their very homes.

4 Former UPC child soldier Witness P-758 participated in hostilities during this
5 assault. She explains, and I quote, "Before we went we were told everyone had to be
6 killed, and many civilians were killed on this day. Other soldiers pillaged and burnt
7 houses. They told us words such as 'do you want Congo to be ruled by somebody
8 else?' We answered 'no.' And they continued, 'So die for your country UPC
9 soldiers.'"

10 According to information collected by the UN investigators also supported by
11 information collected by Witness P-315, the accounts of survivors confirm that the
12 UPC forces did indeed kill. They killed at least 100 non-Hema civilians. Some killed
13 by armes blanches, including machete, including civilians attempting to flee at
14 roadblocks. Civilians were arbitrarily arrested. According to survivors, the UPC
15 had a predetermined list of people they wanted to eliminate, and many were
16 eliminated according to that list during this assault.

17 They also confirmed that UPC raped non-Hema women and forcibly expelled the
18 non-Hema civilian population from their homes, destroying their property.

19 Witness P-56, a UN staff member, confirms that during this assault two young
20 Lendu girls aged 12 and only -- and just 14 years old at this time came to his office.
21 They sought his help. They told him that they had been repeatedly raped by
22 multiple UPC soldiers whilst being detained over a period of time in a house being
23 used by the UPC in Bunia which had been Thomas Lubanga's former residence.
24 UPC child soldier P-758 and journalist P-14, who were both present during this
25 assault, also confirm that UPC soldiers pillaged and destroyed civilian property.

1 Witness P-14 saw soldiers that he knew to be close to Bosco Ntaganda also carrying
2 out pillaging and property destruction.

3 The UN investigators concluded after their contemporaneous investigations that as a
4 result of this assault thousands of non-Hema civilians had to flee Bunia. The APC
5 forces were defeated and the UPC took control of the town. Just days after the
6 assault, Thomas Lubanga, who headed the UPC's forces as president of the UPC,
7 issued a declaration confirming that they had taken control of Bunia.

8 I now turn to the second assault that I'll be addressing, and that is the assault on
9 Songolo on 31 August 2002.

10 On 31 August 2002 UPC forces, including those commanded by Bosco Ntaganda,
11 attacked Songolo, a predominantly Lendu-Ngiti village and they intentionally
12 targeted the non-Hema civilian population.

13 On 26 August 2002 in a handwritten order signed, and I quote, "Commandant Bosco
14 Ntaganda," Bosco Ntaganda ordered two UPC commanders, Commanders Germain
15 and Byaruhanga, to be ready to attack and ambush. A UPC military insider was
16 interviewed by the UN investigators. He participated in the Songolo assault. He
17 confirms that Commander Germain was one of the key commanders physically
18 present and directing the Songolo assault on 31 August 2002.

19 A witness interviewed by UN investigators stated that he had seen the written order
20 from Bosco Ntaganda to launch the assault on Songolo. There is another
21 handwritten document provided by Witness P-245 also signed by, and I quote,
22 "Commandant Bosco Ntaganda" with what appears to be a similar signature.

23 Witness P-315, the international NGO researcher who was investigating events in
24 Ituri at this time, also met with eye-witnesses and survivors of the Songolo assault.
25 The UN also included conclusions regarding this assault based on their

1 investigations.

2 In the written order dated 26 August 2002, Bosco Ntaganda referred to the fact that
3 he has provided Commanders Germain and Byaruhanga with both mortars and
4 rockets. Now, according to the information provided by witnesses to the UN
5 investigators and Witness P-315, during the assault on Songolo the UPC did indeed
6 use heavy weapons, including mortars and rockets, which they used to target houses
7 and fleeing civilians. Survivors also described how attackers used armes blanches.
8 According to these individuals interviewed by Witness P-315, the UPC, with support
9 from Bira and Hema civilians, surrounded the village, posted themselves on
10 footpaths and cut off the escape routes. These survivors and eye-witnesss informed
11 Witness P-315 that the UPC forces and their allies killed at least 140 non-Hema
12 civilians, some whilst they tried to flee. Bodies of civilians were found on the roads
13 and in the forest in Songolo.

14 According to the information provided by witnesses to UN investigators and P-315,
15 anybody found was killed, including women and children and including in their
16 very homes. No distinction was being made as between civilians and fighters.

17 The UN investigators interviewing a UPC military insider in 2004 who was present
18 during the Songolo assault reported that this UPC military insider said:

19 (Interpretation) "UPC soldiers shot at houses, and some of them entered into the
20 houses and killed people. The Bira and Hema civilian combatants pillaged and
21 killed civilians who had stayed back, as well as burning down houses."

22 (Speaks English) The UN investigators further concluded that women and girls were
23 raped, some taken away to be kept as sex slaves. Survivors interviewed by both UN
24 investigators and Witness P-315 confirmed that UPC soldiers pillaged the village,
25 including from the health centre, the church, the school and destroyed civilian

1 property by setting fire to many of their homes. Some of the survivors who later
2 returned to Songolo were killed by land mines that had been deliberately laid by
3 UPC forces.

4 On 15 November 2002, not long after the Songolo assault, Lendu community leaders
5 wrote to the president of RCD-K/ML appealing for his help. In that letter the
6 community leaders refer to a number of assaults against non-Hema, in particular
7 Lendu civilians, perpetrated by the, as they define it, UPC/RP forces and their allies,
8 including during this assault on Songolo and those areas neighbouring Songolo,
9 such as Anyozo, Mula and Nyamabo on 31 August 2002.

10 In that letter written by the Lendu community leaders they estimated that in this
11 assault against Songolo locality that there were potentially as many as 787 dead, 53
12 injured, hundreds of the civilians' cows and other livestock had been pillaged. The
13 community leaders described the systematic pillaging of the health centre, the
14 schools, churches and burning of a school.

15 Your Honours, I now turn to the third assault, and this is the assault that took place
16 between 15 and 16 October 2002 in Zumbe.

17 On 15 and 16 October 2002 UPC forces, with support from Hema civilians as well as
18 elements of the UPDF, attacked Zumbe locality which had predominantly Lendu
19 population and was a headquarters of the Lendu militia.

20 One moment, Madam President.

21 Bosco Ntaganda, who was operational commander at the time of the assault on
22 Zumbe, commanded these UPC forces who participated in this assault.

23 Witness P-46, the UN child protection officer and investigator, interviewed a child in
24 March 2003 who described how he took part of -- sorry, how he took part in this
25 assault on Zumbe in October 2002 as one of the UPC forces.

1 UN human rights investigators conducted a site visit at Zumbe and interviewed
2 survivors not long after the assault in December 2003. Another group of UN
3 investigators further investigated the incident in 2009. Both groups of UN
4 investigators in two separate reports concluded that the Hema militia, including
5 UPC forces, occupied Zumbe village for two days, that they killed over 180 civilians,
6 including by use of the armes blanches, and that again they planted anti-personnel
7 mines.

8 They further concluded that the UPC forces pillaged and burnt the village, including
9 the Zumbe health centre, church, school, and homes, and that they also burnt the
10 surrounding villages. They concluded that during the assault on Zumbe at least 50
11 females were raped by UPC soldiers.

12 Lendu community leaders in a list of victims also recorded that some of the
13 survivors returning to Zumbe were then injured or killed by the land mines
14 deliberately laid by the UPC forces.

15 The Lendu community leaders who had written the letter of 15 November 2002 to
16 the president of RCD-K/ML reported that the UPC forces and their allies launched
17 an attack on Zumbe locality as well as surrounding areas, including Kambutso,
18 Likoni, Masu, Zaba and Buy-Hu. The community leaders estimated that 215
19 civilians were killed, 62 injured, including by land mines, and that there was
20 systematic pillaging and burning of property, including two health centres, six
21 schools, four churches, as well as all of the homes in the localities.

22 I now turn to the fourth assault, and that is the assault from October to December
23 2002 along the Mambasa, Komanda and Eringeti axis.

24 Between October and December 2002 the UPC forces carried out a series of joint
25 assaults with the Mouvement de Libération Congolais, known as the MLC, and

1 Rassemblement Congolais pour la Démocratie/National, known as the RCD-N
2 forces, on Mambasa, Komanda and Eringeti. This assault is often referred to as
3 Opération Effacer le Tableau.

4 Bosco Ntaganda was again the operational commander at this time and commanded
5 UPC forces involved in this assault. Witness P-46, the UN child protection
6 officer/investigator, interviewed a former UPC soldier who said he saw Bosco
7 Ntaganda executing a soldier for refusing to participate in the Komanda assault.
8 Former UPC military insider senior commander Witness P-16 confirms that in late
9 2002 a map of the Mambasa area was given to Bosco Ntaganda who was in charge of
10 operations and that Bosco Ntaganda used the various maps provided to him to
11 organise UPC operations in the areas.

12 Witness P-46, the UN child protection officer/investigator, was also involved in UN
13 investigators -- sorry, UN investigations into this assault on Mambasa, Komanda
14 and Eringeti. She also assisted in drafting of the reports and confirmed that these
15 were drawn from contemporaneous accounts of survivors.

16 The UN investigators concluded that in October 2002 from the very start of this
17 assault UPC forces together with their allies, the MLC and RCD-N, first took over
18 Mambasa and subsequently took over Komanda and Eringeti.

19 At the end of November and in December 2002, whilst the UPC's allies, the MLC and
20 RCD-N troops, again took over Mambasa, the UPC advanced from Komanda, and I
21 quote, "Systematic lootings continued as well as frequent rapes. In addition to these
22 abuses, there was systematic violence towards Pygmies forcing them to flee from the
23 forest. Murders, both on the Komanda axis by UPC elements as well as on the
24 Mambasa axis by MLC and RCD-N and anthropophagi cases were more frequent."

25 The UN investigators further concluded, based on these investigations, that UPC

1 forces were responsible for the majority of the crimes committed in Komanda in
2 particular, which included deliberate acts of murder, including acts of cannibalism,
3 rapes, many of the victims also being abducted of the non-Hema civilian population.
4 Their goods were also pillaged. The UN investigators also concluded that UPC
5 forces committed property destruction and that non-Hema civilians were forced to
6 flee.

7 UN investigators concluded that the acts perpetrated during Opération Effacer le
8 Tableau were designed to take over the territory, to expel the RCD-K/ML forces as
9 well as the non-Hema civilian population by, and I quote, "... a premeditated
10 operation and the use of looting, rape and summary execution as tools of warfare."

11 Witness P-46 also interviewed survivors of UPC perpetrated rapes, including child
12 victims and eye-witnesses of the UPC commission of murder, including acts of
13 cannibalism. Witness P-46 said that she raped -- sorry, that most of the rape victims,
14 rather, that she interviewed were Lendu, Bira as well as Nande.

15 Witness P-46 confirmed that the UN investigators were told by eye-witnesses and
16 survivors about the abduction and rapes of two children by UPC in Komanda just as
17 one example and another example of how a pregnant woman was taken by UPC
18 soldiers, her body cut open and the embryo taken out.

19 The UN investigators concluded that this assault known as Opération Effacer le
20 Tableau was particularly notorious in terms of the level of violence against the
21 civilian population. The crimes committed were well known.

22 I now turn to the next series of incidents, your Honours, and this relates to
23 Banyali-Kilo and Walendu-Djatsi collectivités.

24 Now, as I explained, my colleague, Mr van der Werf, will deal in more detail with
25 the precise parameters of the UPC assault commanded by Bosco Ntaganda against

1 Mongbwalu and other parts of the Banyali-Kilo collectivité in November and
2 December 2002 as well as the Walendu-Djatsi collectivité in February and March
3 2003.

4 However, it's important to note that the attacks that my colleague will be dealing
5 with were not the first and nor were they the last assaults carried out by UPC forces
6 in these areas. According to UN contemporaneous reports prepared by UN staff
7 present at this time, UPC forces, for instance, launched an assault on Mongbwalu in
8 October 2002 although they were pushed back by Lendu combatants and APC
9 soldiers.

10 In Walendu-Djatsi collectivité these same UN staff collected information that Bosco
11 Ntaganda led a similar assault on Kobu village in April 2002 during the course of
12 which about 100 civilians were killed, and almost all of the homes in the village were
13 burnt.

14 Witness 792, a Lendu community leader, describes how even in 2001 Hema militia
15 under Bosco Ntaganda attacked the Lendu villages of Kobu, Gutsi and surrounding
16 areas.

17 Witness P-46, the UN investigator, also confirms, as detailed in the UN Special
18 Report on Ituri, that they collected information about a UPC attack on Lipri that took
19 place in October 2002.

20 Witness P-127, another Lendu community leader who wrote a contemporaneous
21 account of events that took place and provided that report to UN investigators, also
22 confirmed in his contemporaneous report that in January 2003 there were prior UPC
23 assaults on Lipri and near Kobu.

24 Your Honours, I now turn to the assault on Bunia again in March 2003. On 6 March
25 2003 UPC forces were used to oust the UPDF and Lendu allies from Bunia whilst at

1 the same time intentionally targeting the non-Hema civilian population. Prior to this
2 assault, the Hema civilian population was warned leave Bunia or risk being
3 considered an enemy like the Lendu.

4 A UPC military insider interviewed by UN investigators confirmed that, and I quote,
5 (Interpretation) "Kisembo's group ordered the Hema to leave Bunia for Centrale. All
6 the Lendus, Ngitis and non-originares, whether civilians or not, were considered as
7 the enemy."

8 (Speaks English) According to Witness P-12, the PUSIC political insider, as well as
9 the UPC military insider interviewed by the UN investigators and other UN sources,
10 it was Bosco Ntaganda together with co-perpetrators who decided to attack Bunia in
11 March 2003 and who planned this assault. Former UPC soldier, Witness P-10, was
12 amongst UPC forces together with Bosco Ntaganda during this assault. She heard
13 Bosco Ntaganda directing the assault, including by ordering troops to take position
14 and telling them what to target.

15 Mid-level UPC military insider P-17 was part of the heavy weapons unit
16 participating in this assault. He saw Bosco Ntaganda in Bunia during this assault
17 and was part of the group ordered by Bosco Ntaganda to first target the airport. He
18 later saw Bosco Ntaganda in another part of Bunia, Mudzipela, before he fled.

19 The UPC military insider interviewed by UN investigators describes how most of
20 the civilians in Mudzipela were forced to flee. The UPC military insider interviewed
21 by UN investigators also saw Bosco Ntaganda and other UPC leaders withdrawing
22 from Bunia when the UPC forces were overwhelmed by the combined forces of the
23 UPDF and allied Lendu-Ngiti militia.

24 The UN investigators investigating the assault in Bunia of March 2003 concluded in
25 a report written not long after these events that the UPC forces destroyed homes,

1 pillaged, killed approximately 52 non-Hema civilians and injured others, some
2 through heavy artillery shelling of homes.

3 Now, turning to the next assault which was again on Bunia, this time in May 2003.

4 After the withdrawal of UPD force -- UPDF forces from Bunia on 6 May 2003, the
5 UPC forces, this time allied with PUSIC forces, fought for control of Bunia once
6 again.

7 Two groups of UN staff conducted investigations into this May 2003 assault. In
8 addition, researches from an international NGO conducted interviews with
9 survivors.

10 According to Witness P-12, the PUSIC political insider, and the conclusions of the
11 UN investigators who met with survivors, the UPC managed to take over Bunia in
12 May 2003. The UN investigators further concluded, on the basis of these interviews
13 with eye-witnesss, that Bosco Ntaganda assisted in obtaining weapons and
14 ammunition prior to this assault.

15 UN investigators concluded that Bosco Ntaganda commanded UPC forces
16 participating during this assault.

17 The UN investigators concluded that again UPC forces conducted a hunt for Lendu
18 and others considered to be non-originares such as the Nande and the Bira, and any
19 of them that were captured were killed or disappeared whilst the others were forced
20 to flee.

21 The UN investigators concluded on the basis of their interviews with witnesses that
22 UPC forces killed at least 160 non-Hema civilians. This conclusion was supported by
23 contemporaneous local media accounts of this assault. Similarly, researchers from
24 an international NGO concluded after their interviews with survivors of the assault
25 and also interviews with UN MONUC political staff present in Bunia at the time that

1 UPC forces intentionally targeted the non-Hema population, in particular Lendu,
2 Bira and Nande, and that the survivors describe accounts of how these groups were
3 separated from Hema civilians before being attacked.

4 Witness P-315, the international NGO researcher, and UN investigators concluded
5 that there was large-scale rape of non-Hema civilians by the UPC forces during this
6 assault in May 2003. Witness P-315 estimated, based on her interviews of survivors,
7 that there were approximately 125 women and girls raped by UPC forces.

8 UN investigators also met survivors who were victims of rape. And I quote, "The
9 team received reports of 18 cases of rape, some of the victims as young as 11,
10 committed by UPC soldiers after the ceasefire was signed. Most of the victims were
11 abducted whilst they were out looking for food or water and they were taken to
12 military places or private houses for sexual abuse."

13 UN investigator P-46 who herself was present in Bunia during this assault describes
14 how she saw as well as learnt that UPC forces also pillaged homes, businesses and
15 livestock. Witness P-300, a Lendu community leader who had fled to Bunia after the
16 assault on Walendu-Djatsi collectivité in February to March 2003, described how
17 after the assault on Bunia many Lendu and non-originaires, including Nande and
18 Bira, were forced to flee.

19 Madam President, your Honours, these acts continued after the UPC took control
20 over Bunia. Witness 46, the UN investigator, described how she saw and she learnt
21 about the UPC forces taking over Bunia and how she learnt that the UPC continued
22 to systematically -- systematically target the non-Hema civilian population.
23 She concluded from speaking to survivors and also from what she learnt from other
24 sources that after the UPC took control of Bunia, many non-Hema civilians were
25 raped. She also described how she herself met with victims of rape in this period of

1 time during the UPC occupation and described the accounts of rape as perhaps only
2 being two or three on any given day, but together she concluded indicating a
3 systematic course of conduct.

4 Witness P-46 also describes the accounts from survivors confirming that UPC forces
5 killed non-Hema civilians after taking over Bunia and how UPC forces threatened,
6 intimidated, as well as summarily executed the non-Hema. While she was present
7 in Bunia at this time, Witness P-46 also learnt of instances of torture perpetrated by
8 UPC forces against non-Hema civilians and saw and learnt of accounts of pillaging
9 by UPC forces.

10 The UN investigators concluded, including on the basis of these firsthand
11 observations of UN staff in Bunia at the time, which included Witness P-46, that the
12 threats and the level of violence forced as many as 200,000 people to flee from Bunia
13 and the surrounding villages.

14 The UN investigators, including P-46, and the international NGO researchers,
15 including Witness P-315, concluded from the interviews with survivors and from
16 their other investigations that even after a ceasefire agreement was signed between
17 the UPC, FPLC and the FNI-FRPI forces, even after this agreement was signed, that
18 the UPC forces continued to commit acts of rapes, pillaging, torture, abductions and
19 murder.

20 Madam President, your Honours, before I move on to describe various other acts
21 committed against civilians during the relevant period as charged, I would like to
22 just show as simply as an example, an example of property destruction -- potential
23 property destruction and damage as evidenced by a satellite image of the village of
24 Songolo.

25 Now, this -- these two satellite images, your Honours, have been analysed by the

1 witness -- UN witness, Mr Lars Bromley from UNOSAT, and you will see both a -- if
2 you like, a before image of Songolo dated 15 June 2002 -- so that's only
3 approximately two months before the assault on Songolo locality -- as well as a
4 satellite image of Songolo dated 23 May 2003 -- sorry, 22 May 2003.

5 And what Mr Bromley has -- has done is indicate, using these two satellite images,
6 the areas of potential property damage and destruction evident from these two
7 different satellite images taken both shortly before and sometime after this key
8 assault on Songolo village.

9 There are other examples of satellite images indicating property destruction, but for
10 the purposes of this presentation, your Honours, the Prosecution is simply seeking
11 to present Songolo as one example of an indication of property destruction taking
12 place after this UPC assault on Songolo village.

13 PRESIDING JUDGE TRENDABILOVA: Judge Kaul would like to pose a question.

14 MS LUPING: Certainly, your Honour.

15 JUDGE KAUL: Well, looking at these two satellite pictures -- maybe they can
16 reappear once more -- I must say that I am unable to identify the destruction on this.
17 Maybe it's a measure of the scale and of the satellite images, but it is quite clear that
18 if you want to convince the Chamber and the Judges, we expect, of course, images
19 which in a more -- in a more graphic way indicate indeed that there are destructions
20 which have taken -- which have taken place.

21 So maybe you could consider this. And I don't want to extend this for now, but
22 maybe you can discuss whether you are able to show this in a more -- in a more
23 graphic manner so that we are not left with a picture from which personally I
24 cannot -- I cannot see the allegations as being confirmed.

25 MS LUPING: Thank you, your Honour. The difficulty with these images is that

1 these are actually extracted from Mr Bromley's report, and the quality,
2 unfortunately, diminishes of the image when it's extracted from a static report.
3 However, one solution might be to ensure that your Honours receive a better quality
4 of these two images is to ensure that you also similarly receive, as the -- as did the
5 Defence, a version of the satellite images, which are a better quality image, by way of
6 CD-ROM that enables your Honours to access the better quality images.

7 Your comments are duly noted, your Honour.

8 PRESIDING JUDGE TRENDAFILOVA: Please proceed, Ms Luping.

9 MS LUPING: Thank you, Madam President.

10 Madam President, your Honours, I now turn to the evidence of acts perpetrated
11 against civilians taking place during this period of time in addition to the eight
12 assaults as previously described.

13 In addition to the eight key assaults in the period from about July 2002 until
14 December 2003 there were other prohibited acts committed, including instances of
15 murder, rape, sexual slavery, forcible displacement and persecution that supports
16 the evidence of the attack directed against the non-Hema civilian population.

17 Whilst many of these -- sorry, whilst many of these acts perpetrated against civilians
18 took place during the course of a UPC military assault, not all of them were. Some
19 were perpetrated at other times. The Prosecution submits that all such acts amounts
20 to an attack directed against the civilian population.

21 The Prosecution recalls that the attack against the civilian population can include
22 instances where there is no connection to any military assault and that such acts do
23 not require any physical violence even. An example being the crime against
24 humanity of persecution.

25 Starting first with examples of other UPC assaults perpetrated during this period of

1 a year in which the non-Hema civilian population was targeted. One example is the
2 UPC -- UPC assault on Tchomia village on 31 October 2003. UN MONUC staff
3 present in Ituri reported at this time that there was a UPC planned assault on
4 Tchomia and that they had sent reinforcements by way of troops to prevent fighting
5 between the militias and confirmed that this avoided a loss of lives.

6 Political insider Witness P-12 confirms that the Hema community were warned just
7 days before the planned UPC assault on Tchomia that it was going to take place.

8 However, whilst lives were thankfully saved, the UPC were still able to pillage and
9 destroy civilian property during this assault.

10 The special interim administration of Ituri reported that a delegation of that
11 administration travelled to Tchomia after this assault and that they saw the
12 destruction of civilian homes as well as of the hospital. They described how before
13 the assault that there had been tens of thousands of cattle, obviously of great
14 importance for livelihood of communities living of Tchomia, but that when they
15 came to Tchomia there were none to be found.

16 Chef Kahwa, one of the former UPC commanders who later became the leader of the
17 PUSIC forces, described for the interim administration delegation that during the
18 UPC assault on Tchomia on 31 October the UPC had indeed pillaged and burnt
19 homes.

20 Another example drawn from reports of UN MONUC staff present in Ituri is that on
21 26 November 2003 they received eye-witness accounts of a UPC assault on the
22 Lendu of Lingabo during which several people were killed.

23 Your Honours, I will now turn to a second example of the types of acts that were
24 being perpetrated at this -- at this time. These are examples of deliberate acts
25 perpetrated against the non-Hema civilian population that were taking place outside

1 of any specific UPC military assaults but which still formed part of a course of
2 conduct of directing an attack against the non-Hema civilian population.

3 By way of example, Witness P-55, a former senior UPC military insider, describes
4 how he spoke to Bosco Ntaganda about a complaint that had been made by a UPDF
5 officer complaining that UPC soldiers in Bosco Ntaganda's convoy travelling to
6 Kasenyi, some time after the takeover of Mongbwalu in November 2002, that these
7 UPC soldiers in Bosco Ntaganda's convoy killed Lendu civilians, women and girls in
8 a small market close to a place called Drele.

9 Witness P-55 reported that Bosco Ntaganda responded to this comment about the
10 UPDF officer's complaint that, and I quote, "The UPDF have started changing sides.
11 They are now on the side of the Lendus and against the UPC. He told me that
12 indeed he told his escorts to go and to do them in, those Lendus. He said the term
13 for it in Swahili, Kuwafanyia, do them in. The Ugandan soldiers had told me that
14 they were just women on their way to the market. Ntaganda told me that the
15 Ugandans had now allowed the Lendus to come into the UPC area. He just killed
16 them because they were Lendus coming into our area. I tried to explain to him that
17 he hadn't done a good thing because he was just in front of the UPDF and they saw
18 what he did, that it wasn't a good idea to continue killing people in the daytime. But
19 if you try to advise or to tell Ntaganda something that he's done wrong, he appears
20 to agree with you, but a little bit later on you hear already that he's killed somebody
21 else. It was around that time that they gave him the nickname 'The Terminator'."

22 There are other examples. For example, UN MONUC investigators interviewed a
23 Lendu leader who described on 22 August 2003 six Lendu civilians coming from
24 Kobu towards Mbau were also killed by UPC elements at Nizi.

25 Some of the prohibited acts such as the crime of persecution and the crime of forcible

1 transfer or deportation are, in the Prosecution's submission, acts of a continuing
2 nature. In addition, UPC forces continued to perpetrate all of the various prohibited
3 acts throughout this period from July 2002 until December 2003.

4 Witness P-46, the UN investigator, for example, describes how there were continued
5 acts targeting the non-Hema civilian population well after the UPC took over Bunia
6 in May of 2003, including acts of rape, murder, enforced disappearances and torture.

7 She heard numerous accounts from survivors, including in June of 2003 that the
8 UPC were torturing people that they viewed as enemies in the Bunia residences.

9 Witness P-809, a Lendu, also describes how the Lendu or anybody perceived as
10 being against the UPC would be detained and that -- and then killed and that, and I
11 quote, "Anyone who was taken to Ntaganda's camp in Lopa was killed."

12 In a UN child protection report authored by Witness P-46, she describes how she
13 was told by a father that his young daughter and her two uncles were brought to a
14 UPC camp where she was raped. They were brought to the camp after UPC soldiers
15 came to their house accusing one of their family members of collaborating with the
16 Lendu. P-46 also reported examples of other rapes, in one instance of three young
17 girls of non-Hema origin, Bira and Alur, by UPC soldiers and officers.

18 In another report that Witness P-46 authored at the time, she concludes on the basis
19 of contemporaneous accounts from witnesses that the UPC on a UPC commander's
20 orders abducted girl children in Dala, and that, for example, on 30 November 2003
21 two girl children aged 14 and 15 respectively were taken and used as sex slaves.

22 UN investigators who investigated the events in Ituri concluded in their report, the
23 UN Special Report on Ituri, that in August 2003 there was a, and I quote, "UPC
24 manhunt" of specific individuals of non-Hema ethnicity, including the Lendu and
25 the Bira. They found that, and I quote, "Several Lendu were abducted and taken to

1 the houses of Bosco, Bagonza or Lubanga."

2 Similarly, Witness P-315, an international NGO researcher, in her contemporaneous
3 reports provides an example of a photograph of a Lendu man who described how he
4 was held in detention by UPC in July 2003. She concluded after various interviews
5 with survivors that, and I quote: "The UPC frequently carried out campaigns
6 searching for Lendu after taking control of an area. Known locally as 'the manhunt'
7 individuals detained during such campaigns are often subjected to torture and then
8 executed."

9 Madam President, your Honours, that completes the analysis of the evidence, and I
10 now lead -- that leads me now to an analysis of the patterns that are evident from
11 these various assaults as described against the non-Hema civilian population.

12 PRESIDING JUDGE TRENDAFILOVA: Thank you, Ms Luping. Maybe we should
13 take the break now and start at 4.25 in order for you to be able to start anew and to
14 close up your final presentation.

15 MS LUPING: Thank you, Madam President.

16 PRESIDING JUDGE TRENDAFILOVA: So we shall resume at 4.25.

17 THE COURT USHER: All rise.

18 (Recess taken at 3.54 p.m.)

19 (Upon resuming in open session at 4.29 p.m.)

20 THE COURT USHER: All rise.

21 JUDGE TRENDAFILOVA: Please be seated.

22 On behalf of the Chamber, I would like to present our -- to
23 excuse ourselves for being five minutes late, but there was some other
24 urgent judicial matters to resolve. So the floor is over to you,
25 Ms Luping, and you proceed or your colleague?

1 MS LUPING: I will be proceeding, Madam President. Thank you.

2 JUDGE TRENDAFILOVA: Okay. Yes.

3 MS LUPING: I have approximately 45 minutes left.

4 JUDGE TRENDAFILOVA: Until 6.00 we have.

5 MS LUPING: Yes, indeed.

6 Madam President, your Honours, before I begin, I would just like
7 to introduce my colleagues, Mr van der Werf, who is a legal assistant on
8 the team and who will, in fact, be providing you with the next
9 presentation, the next submissions of the Office of the Prosecutor.

10 JUDGE TRENDAFILOVA: So this is the new face in your team?

11 MS LUPING: Indeed, Madam President.

12 And, Madam President, your Honours, before I start also, I wanted
13 to respond further to Judge Kaul's comment relating to the Songolo
14 satellite images. Just to mention that Mr Lars Bromley is actually on
15 the list of experts -- the Registry's list of experts as an expert on
16 remote sensing and satellite imagery. I mean, we appreciate -- we accept
17 that satellite imagery is obviously an art -- satellite imagery analysis
18 is an art and a science in and of itself and we hope that Mr Bromley's
19 report that he prepared, which details quite extensively the methodology
20 that he adopted as well as an explanation of the manner in which property
21 destruction can be identified and can be seen in the report perhaps might
22 be of some assistance to the Judges, in addition to providing a better
23 version of the satellite images themselves. We hope that Mr Bromley's
24 analysis -- his expert analysis will be of some assistance in your own
25 conclusions.

1 JUDGE TRENDAFILOVA: Thank you very much.

2 You can proceed now.

3 The comment of Judge Kaul is much more related to -- you said you
4 will see the destruction and the scope of destruction. Actually, there
5 were red scratches exactly equal in the -- in the two satellite pictures.
6 That's why.

7 MS LUPING: I understand, Madam President. And just a brief
8 explanation that the way the expert conducts his analysis is he takes the
9 satellite image and indicates whereby -- by the arrow where he has
10 identified potential property destruction and damage, and he uses a -- in
11 this instance for Songolo, he was able to access an image of -- an image
12 before the events and after the events, and he sought to correlate these
13 corresponding points in the images by virtue of these arrows.

14 JUDGE TRENDAFILOVA: Thank you.

15 MS LUPING: Thank you.

16 JUDGE TRENDAFILOVA: It's clear that that was the point.

17 Thank you so much. Now you proceed with the presentation.

18 MS LUPING: Thank you, Mr President.

19 If I could ask the court officer to allow us to access our visual
20 aid once more.

21 Madam President, your Honours, I will now be providing the
22 Prosecution's analysis of the various patterns that we submit prove on
23 substantial grounds to believe that the attack that was conducted and
24 directed against the civilian population was indeed widespread or
25 systemic.

1 And my colleague will take us through the images and the -- of
2 various attacks that took place as I've already described. And here what
3 we have depicted are essentially the various figures for killings alone
4 in relation to the eight assaults that I've already been describing.

5 What you're seeing here in the various tables with numbers of
6 killings are the figure -- in blue are the figures in the document
7 containing the charges, which were essentially an average or conservative
8 estimate of the numbers of killings based on the average of sources. The
9 other column for each these assaults, shaded in pink, is essentially the
10 maximum number of killings mentioned in various sources. So it's just to
11 illustrate that on the basis of the various sources that we obtained for
12 all eight assaults that the Prosecution sought to provide a very
13 conservative estimate of numbers of those killed.

14 You'll see that essentially it amounts to the minimum figures for
15 each of these assaults of those potentially killed. We will be filing
16 this visual aid with our presentation so that it's a matter of the
17 record, and so we hope that this will also be -- will be clearer for the
18 Judges to see these various numbers that are set out in this chart.

19 Madam President, your Honours, based on the evidence of these
20 various assaults, the Prosecution submits that the conduct was indeed
21 committed as part of a widespread or systemic attack. The widespread
22 nature of the attack is demonstrated on substantial grounds to believe,
23 by the following: First, the lengthy duration of a multiple commission
24 of the acts against the civilian population during the period of the
25 charges from 2002 until 2003.

1 Secondly, the high intensity of these attacks as perpetrated by
2 UPC forces in that period of time.

3 Thirdly, by the sheer numbers of victims affected by these acts;
4 for instance, a minimum figure of at least 740 individuals killed,
5 victims of rapes, victims of pillaging and property destruction. And
6 again, taking a minimalist view, in Walendu-Djatsi and Banyali-Kilo
7 alone, there were at least 140.000 non-Hema civilians forcibly displaced,
8 that figure not including the other assaults as described to you. This
9 is a figure only based on the two assaults in Banyali-Kilo and
10 Walendu-Djatsi alone.

11 Fourthly, the widespread nature of the attack is seen by the
12 broad geographic distribution of the attack throughout Ituri, including
13 in the densely populated area of Bunia, including in Songolo, in the
14 Walendu-Bindi collectivité in Irumu territory, and as well as Zumbe and
15 the surrounding areas in Walendu-Djatsi collectivité. The villages
16 including Lipri, Kobu, Bambu and others, effected in Walendu-Djatsi
17 collectivité and the many towns and villages in Banyali-Kilo, including
18 Mongbwalu, Pluto and Nzebi, Sayo and Kilo, all in the Djugu territory.

19 The Prosecution submits that the systemic nature of the attack is
20 demonstrated on substantial grounds to believe by the following factors:

21 First, the fact that the UPC forces carried out numerous
22 assaults, in some instances acting jointly with allied armed forces and
23 Hema civilian supporters.

24 Secondly, that the fact that the violence perpetrated by UPC
25 forces was by no means random. Rather, victims were being deliberated

1 targeted because of their non-Hema ethnicity. In particular, the
2 Lendu-Ngiti population who were perceived to be the enemy.

3 Thirdly, the systemic nature of the attack can be seen in the way
4 the individual assaults followed a very regular pattern in that they
5 contained one or more of the following elements: Villages, where the
6 predominantly non-Hema population were the objects of targeting. The
7 villages were surrounded to prevent individuals from being able to
8 escape, including by the attackers closing off exit routes, shooting at
9 fleeing civilians, and setting up roadblocks to capture civilians who
10 were then raped and killed.

11 The systemic nature of these individual attacks, the regular
12 pattern, can also be seen by the heavy and indiscriminate shelling and
13 deliberate targeting of civilians and civilian areas with heavy weapons.
14 It can also be seen by the facts that there were incursions on foot by
15 attackers using armes blanche as well as other small weapons to kill all
16 including the civilians without distinction. It can also be seen by the
17 deliberate attempts to identify the non-Hema civilian population who, in
18 some instances as described, could be raped, could be tortured, could be
19 murdered.

20 Other features, regular features of these individual assaults
21 further include sexual violence that was used to persecute the non-Hema
22 civilians at the same time as boosting UPC troops' morale. Also the
23 purging, the burning of homes, the destruction or damaging of other
24 civilian infrastructure such as hospitals and health centres, as well as
25 taking of other measures such as deliberately laying land-mines all, in

1 our submission, to make it difficult for the survivors to return to these
2 UPC-occupied areas. And finally, what we see as a regular pattern in
3 these assaults, is the killing of survivors who attempted to return.

4 Turning now to the element -- the contextual element of
5 Bosco Ntaganda's knowledge.

6 The Prosecution submits that even before the attacks in
7 Banyali-Kilo of November to December 2002 and Walendu-Djatsi of February
8 to March 2003, Bosco Ntaganda well knew that this conduct was part of or
9 intended that conduct to be part of a widespread or systemic attack
10 directed against the civilian population. And he was further aware of
11 the factual circumstances that established the existence of an armed
12 conflict.

13 First and foremost, this is seen because of his role within the
14 UPC forces: He was the deputy chief of staff; he was the UPC operational
15 commander; he was also involved physically in many of these assaults
16 himself. Second, quite apart from Bosco Ntaganda's personal role within
17 the UPC forces and involvement in these assaults against the non-Hema
18 civilians, the UPC's criminal activities over the years were publicly and
19 officially exposed. They were well known. It was no secret. So that
20 Bosco Ntaganda must have known that the conduct was part of a widespread
21 or systemic attack. For instance, between 2002 and 2003, the
22 UN Security Council was expressing concerns about the military activities
23 of the UPC in Ituri who were characterised as a threat to peace in the
24 region and a cause of insecurity and a threat to the local civilian
25 population. The criminal activities were also being reported by local as

1 well as international media, by numerous respected and independent local
2 and international nongovernmental organisations who were consistently and
3 repeatedly reporting on the catalogue of abuses committed by UPC forces
4 against the non-Hema civilian population in Ituri.

5 In conclusion, your Honours, in relation to these first three
6 elements of the contextual elements of the crimes against humanity, the
7 Prosecution submits that the evidence proves on substantial grounds to
8 believe that there was a widespread or systemic attack directed against
9 the civilian population and that the conduct was committed as part of
10 that attack and with knowledge of the attack.

11 As described, a number of the acts were perpetrated during or
12 after UPC military assaults. Other prohibited acts were being
13 perpetrated at other times. All of these acts constitute an attack on
14 the civilian population. As again the Prosecution recalls that a
15 prohibited act can take place outside any military assault.

16 The Prosecution further recalls that an attack as, under
17 Article 7 of the Statute, directed against the civilian population
18 whenever that attack intentionally targets civilians because of the --
19 and I quote from the Prosecution and Blaskic: "The absolute prohibition
20 on targeting of civilians in customary international law." The
21 Prosecution recalls that during a military assault there can be a
22 military or other personal motive along beside the intentional targeting
23 of the civilian population but that this does not modify the nature of
24 the attack. If civilians are being deliberately targeted, this amounts
25 to directing an attack against civilians for the purposes of crimes

1 against humanity.

2 Madam President, your Honours, now turning to the evidence of the
3 organisational policy.

4 The Prosecution first submits that there are substantial grounds
5 to believe that the UPC forces constituted an organisation within the
6 terms of Article 7 in that, first, the UPC forces had the capability to
7 commit a widespread or systemic attack against the civilian population.

8 Secondly, that the UPC forces had an established hierarchy
9 wherein its senior leadership jointly held de jure and de facto authority
10 command and control over the organisation with Thomas Lubanga as the
11 president; Floribe Kisembo as chief of staff; and Bosco Ntaganda as the
12 deputy chief of staff in charge of operations.

13 Thirdly, by the fact that the UPC forces operated with an
14 established structure, with a communication system where the orders to
15 UPC forces and information about events on the ground were being
16 transmitted and being received.

17 And finally, the nature of this organisation can be seen by the
18 fact that the UPC forces had the means to carry out the overall attack.
19 They had access to financing, to weapons, to ammunition.

20 I will be dealing with key evidence regarding the aspects of the
21 UPC organisation when dealing with the Prosecution's submissions under
22 Article 25(3)(A). Now, whilst there -- in our submission, there are
23 different legal requirements under these provisions in terms of the
24 concept of an organisation, the underlying evidence being relied upon in
25 the section of modes of liability is, in our submission, is also relevant

1 for accessing the concept of the organisation under Article 7, so I shall
2 not repeat the evidence that I will be dealing with at this point in time
3 at a later stage.

4 Secondly, turning to the actual policy to attack the non-Hema
5 civilian population.

6 In the Prosecution's submission, there are substantial grounds to
7 believe that the UPC forces, the organisation, adopted a policy to attack
8 the non-Hema civilian population and to expel them from their areas. The
9 existence and the nature of this policy can be first inferred from
10 several factors. First, as already detailed, between about July 2002
11 until December 2003 UPC forces committed multiple co-ordinated assaults
12 against the non-Hema civilian population. These attacks intentionally
13 targeted non-Hema civilians, following a regular pattern and modus
14 operandi, including the forcible transfer of civilians, large scale
15 killings, often employing the same means, sexual violence, pillaging,
16 property destruction, and destruction of protected objects. The attacks
17 covered a broad geographic area within Ituri.

18 Moreover, the policy to target the non-Hema civilian population
19 must be seen in the context of the historical ethnic conflict that
20 intensified from 1999 between the Hema communities and the Lendu-Ngiti
21 communities as well as other groups such as the Nande and Bira viewed by
22 the Hema community as being non-originares, and the assaults against
23 civilians that took place by both sides during that ethnic conflict.

24 As an example, Witness P46, the UN child protection officer
25 investigator, travelled to Bambu with other investigators and she saw,

1 along with the other investigators, the property destruction that had
2 taken place not long after this assault. She describes what had taken
3 place at the hospital in Bambu and how everything, even the mattresses
4 had been stripped away, and how there had clearly been deliberate
5 destruction of the civilian infrastructure.

6 The UN investigators, including Witness 46, concluded that this
7 deliberate targeting of the civilian infrastructure was an attempt to
8 prevent civilians from coming back. UN investigator 46 and UN staff
9 member P56 further describe how humanitarian aid workers were being
10 either put under pressure or coming under attack by the UPC and they
11 believed that the motive of this was to prevent aid from reaching the
12 non-Hema civilian populations whom they were seeking to support.

13 In addition to the various factors that can be used to infer the
14 policy, the second factor that can be used to infer the policy is the
15 fact that Bosco Ntaganda and his co-perpetrators planned and implemented
16 multiple assaults aimed at taking over areas where the non-Hema civilian
17 population was living, with the use of the UPC forces, to gain control of
18 Ituri and to oust the non-Hema civilians living in those areas.

19 Thirdly, the fact that during these attacks there was recruitment
20 and training of armed forces and deployment of a significant number of
21 troops and transporting of weapons, ammunition, and other supplies in a
22 co-ordinated fashion.

23 Fourthly, in addition to the UPC forces, Hema civilian supporters
24 who accompanied and assisted the UPC forces also committed crimes in a
25 structured and systemic fashion; typically, after the UPC cleared an area

1 following combat, Hema civilian supporters that followed behind would
2 commit further crimes, such as pillaging and property destruction and
3 murder. Bosco Ntaganda incited and ordered Hema youth to kill Lendu.

4 Commonly referred to as combattants or cadre, this cohort of Hema
5 civilians, whilst not actively participating in the combat, were
6 committing crimes in concert with the UPC forces both in the course of
7 the UPC attack on the non-Hema civilian population and in the course of
8 its armed conflict with Lendu forces. My colleague, Ms Solano, will
9 present the key evidence of the Prosecution -- in the Prosecution's
10 submission that relates to Bosco Ntaganda's command over these Hema
11 civilian supporters when she deals with Mr Ntaganda's criminal
12 responsibility under Article 28.

13 Finally, whilst it's not necessary to prove that Bosco Ntaganda
14 himself personally ascribed to this organisational policy, there are
15 specific instances in which his own statements and his own actions
16 further evidence the organisational policy to attack the non-Hema
17 civilian population and to oust them from their areas. For example, as
18 previously described, former senior UPC military insider, Witness P55,
19 had described how Bosco Ntaganda admitted killing some Lendu civilian
20 women near a market simply because he believed they were Lendu seeking to
21 return to UPC areas.

22 Similarly, former senior UPC commander Witness P768 heard
23 Bosco Ntaganda saying to UPC forces, especially the young Hema, that the,
24 and I quote: "Lendu were our enemies and that we needed to exterminate
25 them, to make them disappear and chase them away from those territories

1 that we were occupying." As my colleague Mr van der Werf will detail,
2 Bosco Ntaganda gave orders before the Walendu-Mongbwalu assault to kill
3 everybody, including civilians, so that they could take over Mongbwalu.

4 Other witnesses confirmed the UPC's organisational policy to
5 attack the non-Hema civilian population and oust them from their areas.
6 For example, former UPC military insider, Witness P16, heard recruits and
7 instructors at the UPC military training camp in Mandro singing songs
8 about exterminating the Lendu. He further describes the war waged by the
9 UPC forces against the Lendu, such as clandestine missions ordered by UPC
10 commanders, including Bosco Ntaganda, to assassinate or to abduct Lendu.
11 Witness P16 also confirmed that most of the villages attacked by the UPC
12 forces were Lendu or Ngiti villages and that the whole of the population
13 was considered the enemy. Nobody would be spared.

14 Former UPC military insiders, both Witnesses P17 and P55,
15 confirmed that during UPC assaults Lendu were automatically identified as
16 the enemy whether they were armed or not. Similarly, former UPC military
17 insider, Witness P38, describes how there was essentially a standing
18 order within the UPC forces to kill any Lendu prisoners bearing in mind
19 the ethnic conflict.

20 Survivors from the Mongbwalu told an international NGO
21 researcher, Witness P315, that the Lendu were considered the enemy of the
22 UPC and couldn't return to Mongbwalu. She concludes from her interviews
23 with the survivors that, and I quote: "Once the UPC was in control, they
24 deliberately targeted Lendu whom they considered the enemy, including by
25 arbitrarily arresting many of them and torturing or cruelly mistreating

1 them. Witnesses testified that this manhunt, as they termed it, occurred
2 in different areas, including Bunia, Mongbwalu, Mahagi, and Aru."

3 Madam President, your Honours, I now turn to the contextual
4 elements of war crimes.

5 The Prosecution submits that there is substantial grounds to
6 believe that the contextual elements for war crimes have also been met;
7 namely, that there was a protracted armed conflict amongst organised
8 armed groups and that the conflict was of a non-international character.
9 Secondly, that there was a nexus between the conduct and that armed
10 conflict. And finally, that Bosco Ntaganda knew of factual circumstances
11 that established the existence of an armed conflict.

12 Dealing with the first element. There are substantial grounds to
13 believe that there was a protracted armed conflict existing in Ituri, as
14 evidenced by the various assaults perpetrated by the UPC in the
15 predominantly non-Hema civilian areas as previously described in the
16 presentation on evidence regarding crimes against humanity. In addition
17 to the various assaults as described, the Prosecution also refers to the
18 investigative conclusions of the UN investigators, including Witness P317
19 and the UN Special Report on Ituri and of the international NGO
20 researcher, Witness P315, in her two contemporaneous reports.

21 In their respective reports they detail various military assaults
22 perpetrated by both sides including in the period from 1999 to 2003.

23 Secondly, the Prosecution submits that there are substantial
24 grounds to believe that the various parties to the conflict in Ituri,
25 including the UPC, FPLC, the APC, PUSIC, and the Lendu militia, including

1 the FNI and FRPI, were all organised armed groups that demonstrated the
2 ability to carry out protracted armed violence; for instance, the UN
3 investigators detailing conclusions of their investigations on various
4 assaults and attacks refer to military offensives conducted by Lendu
5 militia as well as their allies, the APC, on predominantly Hema areas in
6 that period 1999 to 2003.

7 Examples of large-scale Lendu-Ngiti militia offensives in Ituri
8 as described include the attacks on Dhendro, on 14 September, 1999;
9 Nyandunde town, in both January 2001 and 5 September, 2002; Bogoro
10 village, on the 24th of February, 2003; and the various attacks on
11 Tchomia, Kasenyi, and Fataki, in 2003.

12 On 16th September, 2002, APC and Lendu militia from Kpandroma
13 located not far from Mongbwalu, launched an attack against Mahagi 53
14 kilometres from Bunia. On the 6th of January, 2003, Lendu militia allied
15 with RCD-K/ML forces, the APC, managed to capture Rethy and Kpandroma,
16 during military operations against the UPC.

17 The Lendu-Ngiti militia and their allies were also able in a
18 number of instances to successfully occupy locations after they were
19 attacked, including in Nyankunde, Bogoro, Tchomia, Kasenyi, Fataki, Rethy
20 and Kpandroma. They were also able to successfully repel certain UPC
21 military assaults. For example, as previously detailed, Lendu combatants
22 and APC soldiers were able to repel UPC forces attempting to first attack
23 Mongbwalu in October 2002.

24 Lendu combatants were also able to repel UPC forces seeking to
25 attack Lipri and Nyangaray in January 2003.

1 Third, Madam President, your Honours, there are substantial
2 grounds to believe that the conflict was of a non-international
3 character, and I have three arguments on this point; two legal, one
4 factual. The first argument is that any involvement of Rwanda, Uganda,
5 or the Congolese government does not render the conflict international.
6 An international conflict only exists where the armed forces of two or
7 more states are engaged in military hostilities against each other, and I
8 refer to this customary norm as reflected in common Article 2 of the
9 Geneva Conventions in the International Committee of the Red Cross
10 commentaries to the conventions and in the practice of many states.

11 States can oppose each other directly through their own armed
12 forces or indirectly through proxy forces which are subject to the
13 overall control of the state. In the absence of any such direct or
14 indirect state-on-state hostilities, the characterisation of the
15 situation is a non-international armed conflict.

16 Now in this present case, there was some direct intervention by
17 Ugandan armed forces during the armed conflict in the DRC, but at no
18 stage during the period covered by the charges did the Ugandan forces
19 directly fight against either Rwandan or Congolese government forces, nor
20 did they at any time have overall control over Thomas Lubanga's forces or
21 any other armed group.

22 From late 2002, the UPC/FPLC shifted its alliance away from
23 Uganda to Rwanda. In the battle for Bunia in March 2003, the Lendu and
24 Ngiti militias fought against the UPC. Hypothetically, if these UPC
25 forces had been operating under the overall control of Rwanda, only then

1 could the conflict be seen as international during that particular
2 battle. However, the evidence does not show that there was any such
3 overall control. And I refer to the Appeals Chamber in Prosecutor and
4 Tadic where it held, and I quote: "It is not sufficient for the group to
5 be financially or even militarily assisted by a state. The state must
6 have a role in organising, co-ordinating, or planning the military
7 actions of the military group." The lack of evidence of either direct or
8 indirect state-on-state hostilities leads to the conclusion that the
9 UPC/FPLC was engaged in a non-international armed conflict for the period
10 of duration of these charges.

11 The second argument, your Honours, is that Uganda's occupation
12 has no consequence for the legal characterisation of the conflict. If
13 any armed conflict is occurring within or in close proximity to
14 militarily occupied territory, the legal character of that conflict must
15 still be determined by reference to the identity of the parties to the
16 conflict. As already submitted, an international armed conflict only
17 occurs when two or more states engage in hostilities with each other,
18 whereas an occupation occurs when territory is actually placed under the
19 effective authority of a hostile army.

20 They are, in our submission, not one and the same. And there is
21 no contradiction in finding that an occupying power is under one set of
22 legal obligations vis-à-vis its occupation and under another set of
23 obligations if it engages militarily in hostilities with organised armed
24 groups. In this case, the armed conflict here involved multiple armed
25 groups and not state-on-state hostilities. The conflict was not

1 connected to the occupation and its legal character is not determined by
2 the law applicable to that occupation.

3 Your Honours, I turn to the third argument. Our factual
4 argument.

5 During the period of the charges, Uganda's occupation as such was
6 limited to the area of Bunia airport and possibly certain parts of Bunia
7 city. Because of this highly limited territorial scope, the occupation
8 could not have altered the character of the separate armed conflict
9 occurring across the wide geographic area. Article 42 of The Hague
10 Regulations of 1907, which is the authoritative definition of a military
11 occupation, provides, and I quote: "Territory is considered occupied
12 when it is actually placed under the authority of the hostile army. The
13 occupation extends only to the territory where such authority has been
14 established and can be exercised." The Ugandan occupation did not extend
15 beyond this very tiny pocket of Ituri.

16 First, by mid-October 2002 almost all Ugandan troops had
17 withdrawn from Ituri save for one reinforced battalion in Bunia. Second,
18 a number of massacres of civilians by various non-state armed groups
19 occurred elsewhere in Ituri during this period when Uganda was in
20 occupation of Bunia airport. As indicated by the evidence of the
21 assaults on civilians, hostilities occurred in a number of locations also
22 outside of Bunia. These factors all indicate that Uganda was not
23 exercising effective authority over Ituri outside of Bunia airport and
24 specific parts of the city of Bunia.

25 Now this area of Uganda's occupation is approximately

1 one-ten-thousandth of the territory of the Ituri. In the rest of the
2 territory, an armed conflict raged between non-state armed group. The
3 character of the conflict is not altered by the Uganda's military
4 occupation in that minuscule proposition of Ituri territory. And as
5 submitted, they did not exercise overall control over any of the
6 organised armed groups, including those based in Bunia.

7 Finally, the non-international armed conflict did not end when
8 Uganda withdrew its forces from the DRC in May 2003. Now, whilst there
9 was certainly a reduction in scale and intensity, there were ongoing and
10 devastating massacres of civilians and other acts perpetrated against the
11 civilians population, including after May 2003 when the Ugandan troops
12 withdrew their forces. There was not peaceful settlement achieved prior
13 to the end of the period of the charges.

14 The presence of multinational forces between June and
15 September 2003 and the increase of MONUC's mandate to encompass the use
16 of force under Chapter 7 of the UN Charter on 28 July 2003 both indicate
17 that as far as the international community was concerned, the conflict
18 was ongoing. A non-international armed conflict continued throughout the
19 entire period covered by the charges, and the involvement of Uganda,
20 Rwanda, or the Congolese government did not alter the legal character of
21 the conflict in which the UPC/FPLC forces was engaged.

22 Moving to the next contextual element for war crimes,
23 your Honours. The nexus.

24 The evidence of the attack on the civilian population as detailed
25 indicates on substantial grounds to believe that a nexus existed between

1 this state of armed conflict and the crimes committed by the UPC in the
2 DRC.

3 In the eight assaults as described in the presentation on crimes
4 against humanity as well as in the other assaults as described, all of
5 the crimes were committed in the context of a UPC assault on the
6 locations.

7 Finally, dealing with the contextual element relating to
8 knowledge, at all times Bosco Ntaganda was aware of the existence of an
9 armed conflict in the DRC. He well knew of this because as previously
10 described of his role, from an early stage in the creation of the UPC and
11 then subsequently as a result of his role as deputy chief of staff and
12 operational commander of the UPC forces as well as his direct involvement
13 in the conflicts against the opposing Lendu-Ngiti militia.

14 And secondly, because of the well publicised accounts of the
15 criminal activities and the conflicts raging between the UPC forces and
16 opposing Lendu-Ngiti militia as reported by the UN Security Council,
17 local and international media, and human rights organisations.

18 In conclusion, Madam President, your Honours, the Prosecution
19 submits that there are substantial grounds to believe that the contextual
20 elements of both war crimes and crimes against humanity have been met. I
21 thank you.

22 JUDGE TRENDABILOVA: On behalf of the Bench, I also thank you,
23 Ms Luping, for being concise and to the point.

24 And now we have 40 minutes left. Who will be the next --

25 MS SAMSON: Your Honour, I --

1 JUDGE TRENDAFILOVA: -- member of your team, Ms Samson, to
2 proceed further on with your presentation?

3 MS SAMSON: Yes, Madam President, that concludes the
4 Prosecution's presentation of the contextual evidence of war crimes and
5 crimes against humanity. We are well ahead of schedule. Mr van der Werf
6 is here to commence the Prosecution's presentation of evidence on the
7 constituent elements of the crimes. Should your Honours decide that he
8 should start today, he is here to do so.

9 JUDGE TRENDAFILOVA: Yes, we have sufficient time to proceed
10 until 6.00 and tomorrow the presentation in this regard will be
11 finalised.

12 (Trial Chamber and Court Officer confer)

13 MR van der WERF: Madam President, your Honours, on behalf of the
14 Prosecution I will now present the first part of the Prosecution's
15 submissions on the crimes committed by the Bosco Ntaganda during the
16 assault on the collectivité of Banyali-Kilo in November and
17 December 2002.

18 In doing so, I will present count 3, the war crime of directing
19 attacks against civilians; counts 1 and 2, murder as a war crime and as a
20 crime against humanity; and counts 12 and 13, the crime against humanity
21 of forcibly transferring a population and the war crime of displacing
22 civilians.

23 Considering that my colleague, Dianne Luping, has already
24 addressed your Honours in the contextual elements of these crimes, I will
25 address only their specific constituent elements.

1 During this presentation, I will show you two excerpts of a video
2 and these excerpts can both be shown publicly.

3 Your Honours, between 15 November and 15 December 2002,
4 Bosco Ntaganda's troops launched an assault on several towns and
5 villages of the Banyali-Kilo collectivité, including Pluto, Mongbwalu,
6 Sayo, Nzebi, and Kilo. Before I start with the presentation of the
7 evidence that crimes were committed during this assault, I will first
8 briefly describe the assault itself. And I will now display satellite
9 images -- satellite image showing part of Ituri, including the
10 Banyali-Kilo collectivité and the locations I have just mentioned.

11 The accounts of three soldiers who fought for Bosco Ntaganda
12 during the assault, Witnesses P17, P38, and P768, establish that on or
13 about 21 November 2002 Bosco Ntaganda ordered two of his brigades to
14 attack Mongbwalu. One brigade, under the command of Salumu Mulenda first
15 attacked Mongbwalu from the east; whilst a second brigade, led by
16 commander Emmanuel Ndungutse, attacked from the north.

17 On the evening of the first day of the operation, the two
18 brigades converged in the centre of Mongbwalu. There, the military
19 commanders met with Bosco Ntaganda who gave his orders for the next day.
20 On the second day of the assault, Bosco Ntaganda's troops set up a
21 roadblock on the road to Kilo in the south-east of Mongbwalu to prevent
22 the civilian population from fleeing. His troops then completed the
23 occupation of the hills surrounding Mongbwalu and continued their assault
24 on to Sayo and Nzebi to the west, taking both villages on the third day.

25 Days later on or about 6 December 2002, Bosco Ntaganda's troops

1 attacked and took nearby Kilo. The evidence I will present establishes
2 substantial grounds to believe that during and in the aftermath of this
3 large scale assault, the UPC/FPLC troops under Bosco Ntaganda's command,
4 under Bosco Ntaganda's orders, intentionally attacked civilians,
5 capturing and killing those attempting to flee and those who were too
6 weak to flee and causing thousands to flee their homes.

7 Your Honours, the war crime of attacking civilians has three
8 specific constituent elements. First, the perpetrator must have directed
9 the attack. Second, the object of the attack must have been the civilian
10 population as such or individuals not taking direct part in the
11 hostilities. Lastly, the perpetrator must have intended the civilian
12 population to be the object of the attack. I will start with the first
13 and the third of these elements.

14 The evidence shows that Bosco Ntaganda planned, co-ordinated, and
15 executed a large scale assault on Banyali-Kilo collectivité with the
16 intention to eliminate every person that his troops would encounter and
17 to cleanse the area of the non-Hema civilian population. Three insider
18 witnesses, P17, P38, and P768, who participated in the assault confirmed
19 that Bosco Ntaganda was the overall commander during the operation, that
20 he was physically present and in constant communication with his
21 subordinates, giving them specific orders regarding their deployments and
22 their targets.

23 Your Honours, I will now play two brief excerpts of one video,
24 taken some days after the assault on Mongbwalu. A transcript and a
25 translation of this video have also been disclosed to the Defence. In

1 the first excerpt, you will see a journalist introduce Bosco Ntaganda as
2 sector commander. Bosco Ntaganda then interrupts him and correct him,
3 stating that he is the chief of staff of the UPC.

4 (Video-clip played)

5 MR van der WERF: Madam President, your Honours, I will now play
6 the second excerpt.

7 (Video-clip played)

8 MR van der WERF: The second excerpt shows a discussion between
9 the journalist and Bosco Ntaganda. Bosco Ntaganda confirms that the UPC
10 attacked Mongbwalu in two groups and that the assault only lasted a few
11 days.

12 (Video-clip played)

13 MR van der WERF: Madam President, your Honours, these excerpts
14 demonstrate Bosco Ntaganda's presence in Mongbwalu at the time of the
15 attack and his involvement in the attack as senior commander.

16 The three insider witnesses I have mentioned earlier in my
17 presentation, Witnesses P17, P38, P768, further confirm that
18 Bosco Ntaganda both at meetings prior to the assault and on the ground
19 during the assault gave instructions to target and kill civilians. They
20 also confirm that Bosco Ntaganda targeted and killed civilians himself.

21 Witness P38, a soldier who participated in the assault in the
22 heavy weapons unit under Bosco Ntaganda's direct command was present at
23 the military parade in Mabanga just days prior to the attack, during
24 which Bosco Ntaganda briefed his soldiers. At this parade,
25 Bosco Ntaganda told his troops that everyone they would encounter in

1 Mongbwalu was the enemy, and his order was to kill everyone. He repeated
2 such orders on the second day of the assault during a meeting in his
3 headquarters in Mongbwalu.

4 Witness P768, a senior military insider who was present,
5 witnessed Bosco Ntaganda repeatedly stating to his subordinates that the
6 Lendu were their enemies and that they had to be exterminated. After
7 this meeting, Bosco Ntaganda and his troops -- sorry, Bosco Ntaganda and
8 his brigade commanders went to the front lines to raise the morale of
9 their troops and encouraged them to kill everyone. Using the Swahili
10 phrase, "Lendu wote ni maadui," "All Lendu are enemies."

11 Your Honours, these orders were repeated, relayed, and followed
12 by Bosco Ntaganda's subordinates. On the second day of the assault, in
13 Sayo, Witness P17, a soldier also in a heavy weapons unit, was himself
14 ordered by his immediate commander to fire a grenade launcher towards the
15 population that was fleeing the UPC's advance. Later that day, when
16 reaching the end of Sayo Bosco Ntaganda himself again ordered Witness P17
17 to fire on the people who were fleeing.

18 The Prosecution submits that the accounts of these three
19 witnesses who participated in the assault in different units and who each
20 received direct instructions from Bosco Ntaganda to target and eliminate
21 civilians establish substantial grounds to believe that Bosco Ntaganda
22 directed an attack and intended the civilian population of Banyali-Kilo
23 to be its object.

24 Bosco Ntaganda's intention is further evidenced by the very
25 nature of the material acts establishing that there was, indeed, an

1 attack on the civilian population.

2 I will now turn to the second specific constituent element of the
3 crime of attacking civilians, and at the same time to the presentation of
4 the crime of murder.

5 The commission of this crime as well as the other crimes
6 committed against non-Hema civilians, which my colleagues will present,
7 establish that there was an attack against the civilian population. The
8 war crime and crime against humanity of murder and attempted murder have
9 one specific constituent element in common: The perpetrator must have
10 killed one or more persons. Additionally, the war crime of murder
11 requires such person or persons to be *haut de combat*, civilians, medical
12 personnel, or religious personnel taking no active part in the
13 hostilities.

14 Madam President, your Honours, the evidence establishes
15 substantial grounds to believe that Bosco Ntaganda and his troops and the
16 troops under his command killed scores of non-Hema civilians during and
17 in the aftermath of the assault on Banyali-Kilo. Witness P315, an NGO
18 researcher who conducted fact-finding missions shortly after the attack
19 on Mongbwalu and spoke to dozens of eye-witnesses and victims of crimes
20 committed by Bosco Ntaganda's troops, documented at least 200 of
21 civilians killed as a result of the assault on Banyali-Kilo.

22 The accounts of these witnesses show that the killings of
23 civilians started as soon as Bosco Ntaganda's troops arrived in the
24 collectivité via the north and the east. One eye-witness met by P315
25 stated: "I fled from Mongbwalu and ran to --" sorry, "I fled from Pluto

1 and ran to Mongbwalu. As I was running, I saw people being hit by
2 bullets. Women and children were following. Some people did not run and
3 hid in their houses in Pluto. I heard afterwards that these people were
4 all slaughtered. Around the same time, Bosco Ntaganda's troops attacked
5 Mongbwalu's airfield from the south-east, killing more than 30 people."

6 Another witness by -- another eye-witness met by Witness P315
7 described the UPC's assault as follows: "There were two groups of Hema
8 militia, one with fire-arms, the other with machetes, spears, and knives.
9 The second group was killings civilians who hadn't fled. The victims
10 were Lendu and Djajambo (* phon). They slashed them with machetes and
11 killed them.

12 According to Witness P17, Hema civilians participated in the
13 Mongbwalu -- in the Mongbwalu and Sayo attack with machetes and knives.
14 They followed the UPC and FPLC troops at a good distance and advanced
15 once there was a lull in the fighting.

16 In Mongbwalu, the Hema civilians helped to transport equipment,
17 ammunition, and food, or once UPC/FPLC established camp, to fetch water.
18 According to P17, they actively engaged in pillaging. P38 also stated
19 that civilians either accompanied voluntarily or were forcibly recruited
20 to transport ammunition and to pillage. P38 corroborates P17, stating
21 that during the attacks Hema civilians remained behind the UPC/FPLC
22 troops and helped transporting ammunition. And in the Mongbwalu
23 operation, many civilians from Mabanga participated.

24 According to P38, some UPC/FPLC commanders had asked civilians to
25 pillage for them as a share of the booty.

1 Bosco Ntaganda's troops killed civilians as they advanced towards
2 Mongbwalu and Sayo. Witness P38, who fought for Bosco Ntaganda during
3 the attack, confirms having seen the bodies of those civilian victims who
4 were killed in Mongbwalu and states: "The victims had either been shot
5 or decapitated with machetes, axes, knives." Among these bodies,
6 Witness P38 saw women, children, and elderly people. Those who could not
7 flee were eliminated, and I quote his statement in French:
8 "(Interpretation) There are elderly persons who do not have the strength
9 to leave with the others. All these people have been coldly killed."
10 (In English) (* Previous translation continues)... also states that he
11 witnessed many killings and saw many bodies on the side of the roads of
12 Mongbwalu.

13 When referring to those dead bodies, P768 said that
14 Bosco Ntaganda had given the order to kill all Lendu civilians, and I
15 quote, again in French: "(Interpretation) Bosco executed all the
16 civilians who appeared to be Lendu. He gave the order for them to be
17 executed on sight." (* Previous translation continues)... that
18 Bosco Ntaganda also armed Hema civilians to participate in the assault
19 and kill the Lendu.

20 Witnesses P17 and P768 state that many civilians from Sayo were
21 killed as a result of the systemic shelling of the village undertaken by
22 Bosco Ntaganda when he deployed his heavy weapons in Mongbwalu on the
23 second day of the assault. Witness P17 fought as a soldier in a heavy
24 weapons unit and was ordered by Bosco Ntaganda to fire with his grenade
25 launcher on Sayo as the troops made their advance, including on civilians

1 coming out of their houses in an attempt to flee.

2 At this time Witness 17 noticed that Bosco Ntaganda had a video
3 camera in his hands and was filming the assault. Witness P768 also
4 confirms that Bosco Ntaganda was filming the assault. And Bosco Ntaganda
5 later showed this video to another witness, another insider witness, P55,
6 who was in Bunia during the attack. On the video, Witness P55 saw UPC
7 troops deploy on to Mongbwalu via the airfield. He also saw several dead
8 bodies including bodies of women.

9 Witness P768 visited Sayo on the third day and found many dead
10 bodies of civilians, some of whom had been killed by artillery fire in
11 their houses.

12 Your Honours, these were not victims of collateral damages.
13 These killings were intentional, deliberate. Witnesses P17 and P38 state
14 that as Bosco Ntaganda's troops advanced through Mongbwalu and Sayo, they
15 conducted house-by-house searches. Anyone attempting to flee was shot or
16 killed with machetes. The eye-witnesses and victims met by Witness P315,
17 when she conducted fact-finding missions shortly after the attack,
18 confirmed that Bosco Ntaganda's troops went from house to house to
19 identify Lendu. They tested them by asking their parents' names, their
20 region of origin, and their language abilities. Those who were
21 considered to be Lendu were executed.

22 The troops advancing through Mongbwalu and Sayo killed all those
23 who remained; men, women, and children. In particular, those who could
24 not flee or took refuge. On one such occasion in Sayo, Bosco Ntaganda
25 and his body-guards found women, children, and elderly people and priests

1 hiding in a church. Witness P17 was present when Bosco Ntaganda's
2 body-guards took one man from the church and fired on him. At the same
3 time, Witness P17 saw Bosco Ntaganda with his camera in his hands. He
4 was filming the civilians who were lying on the ground in the church.
5 Witness P17 later learned that all those who were hiding in the church
6 had been killed with bladed weapons.

7 Witnesses met by Witness P315 confirmed that these civilians who
8 tried to hide as the troops advances were slaughtered in that church.

9 Bosco Ntaganda's soldiers also killed those who stayed at the
10 Sayo health centre and could not flee. Witness P800 was present at the
11 health centre at the time of the attack and states that when he had to
12 flee, three injured Lendu combatants and several civilians, including one
13 woman with her two-year-old daughter, were left behind. Upon his return
14 to Sayo in March 2003, he found black pools of blood and cartridges on
15 the ground as well as the semi-buried body -- sorry, the semi-buried
16 bones of the woman and her child.

17 Witness P17 states that on the day of the attack on Sayo, he
18 passed a medical clinic and saw a woman and her child who had been
19 killed. Witnesses P17 and P768 also state that many civilians were
20 captured and brought to Bosco Ntaganda's residence in Mongbwalu. They
21 were imprisoned at that residence. These civilians were interrogated and
22 often executed.

23 Witness P768 personally heard Bosco Ntaganda ordering the
24 execution of captured Lendus. Witness P17, who resided close to
25 Bosco Ntaganda's residence, states that the prisoners included civilians

1 who were suspected of supporting the enemy solely because they were not
2 of Hema ethnicity or did not support the UPC/FPLC.

3 Witness P38 states, and I quote in French: "(Interpretation) The
4 people who were very important were questioned, but those who weren't
5 important were executed immediately. The bodies were put into a mass
6 grave. We didn't make a difference between the civilian and military
7 prisoners. Everybody were killed. Everybody was killed. As it was a
8 tribal war, they couldn't even leave babies." (In English) (* Previous
9 translation continues) ... first forced to dig graves for the bodies
10 before being executed themselves.

11 Witness P38 was present when three young civilians were executed
12 in this manner in Sayo. One of these captured civilians was a priest
13 from Mongbwalu, Abe Boniface Bwanalonga. On the second day of the
14 assault, Bosco Ntaganda went to the church in Mongbwalu and arrested the
15 priest as well as three women, and he took them to his residence. The
16 priest was arrested on the grounds that documents were found in the
17 church that aimed at raising awareness on the dangers of the Hema-Tutsi
18 hegemony in Ituri. After interrogating the priest on these documents,
19 Bosco Ntaganda got angry, insulted, and personally shot the priest in the
20 head with his revolver. Afterwards, he shot at him again, four or five
21 times. He then ordered his body-guards to throw his body in the bush
22 behind the house in the centre of Mongbwalu. Witness P768 is an
23 eye-witness of this murder.

24 Bosco Ntaganda targeted any civilians attempting to return to
25 their homes. Witness P768 was present on the third day of the attack

1 when two Lendu civilians tried to return to their house in Nzebi and were
2 shot and killed by Bosco Ntaganda's body-guards after Bosco Ntaganda had
3 ordered them to do so. The killings of civilians continued when
4 Bosco Ntaganda's troops attacked Kilo, south of Mongbwalu, on or about
5 the 6th of December, 2002.

6 Witness P315 spoke to victims and eye-witnesses of this attack
7 who confirmed that the troops captured Lendu men, women, and children and
8 ordered them to dig their own graves before killing them. One such
9 eye-witness states -- stated: "I saw many people tied up, ready to be
10 executed. The UPC said they were going to kill them all. They made the
11 Lendu dig their own graves. They would kill them by hitting them on the
12 head with sledgehammers." Witness P22 was a Lendu survivor of these
13 systemic executions. She fled Mongbwalu to Kilo, where she was forced to
14 hide in the bush with many other civilians as the UPC had taken Kilo.
15 Forced to come out of the bush under an UPC threat to shell those who
16 were hiding, she went to Kilo. There, she witnessed some young Lendu
17 being forced to dig mass graves. When she was captured, UPC soldiers
18 tied her up and put her into a prison, a hole in the ground. The next
19 day, she was taken out of prison to be executed.

20 Allow me, your Honours, to quote her statement in French:

21 "(Interpretation) The militia took me towards the grave where I
22 saw their bodies with their throats cut of Ngiti prisoners. And even at
23 the same time a bit later, I saw another militia who was executed with a
24 knife, pregnant woman who was with me in the prison, and she was thrown
25 into the same mass grave. And indicating the two bodies, the militia

1 member told me that I was also going to sleep. I therefore understood
2 that I was going to die. And he made me lie on the ground and he turned
3 me on to my side, and then he started to cut me slowly. As I was
4 bleeding a lot, he thought that I had to be dead and then he through me
5 into the grave."

6 (In English) (* Previous translation continues)... the select
7 evidence I have just referred to illustrates only a few examples of the
8 killings committed by Bosco Ntaganda and his troops during the military
9 assault on Banyali-Kilo. This evidence establishes substantial grounds
10 to believe that there was indeed an attack on a civilian population and
11 that during this attack non-Hema civilians were systematically targeted,
12 captured, and executed.

13 I will now turn to the presentation of the Prosecution's core
14 evidence showing that during this attack Bosco Ntaganda ordered his
15 troops to displace the non-Hema civilian population.

16 JUDGE TRENDAFILOVA: Just a moment, Mr van der Werf. Thank you
17 very much for your presentation so far. We have four minutes left and I
18 don't find it pertinent that you start now with a new area of the
19 evidence. I will consult my colleagues.

20 (The Trial Chamber confers)

21 JUDGE TRENDAFILOVA: Of course, the Bench would like to ask you
22 how much time it will take for the analysis that you intend to undertake.

23 MR van der WERF: I estimate that the end of this presentation --
24 that is part of this presentation will take between five and ten minutes.

25 JUDGE TRENDAFILOVA: Then we will proceed with the agreement of

1 the interpreters. Thank you so much.

2 MR van der WERF: Thank you, Madam President.

3 JUDGE TRENDABILOVA: Yes, please proceed, Mr van der Werf.

4 MR van der WERF: Thank you.

5 Madam President, your Honours, the war crime of displacing
6 civilians requires the perpetrator to order the displacement of a
7 civilian population. It further requires that the perpetrator be in a
8 position to effect such displacement by giving such order and that this
9 order was not justified by the security of the civilians involved or by
10 military necessity. The crime against humanity of forcible transfer of
11 population requires that the perpetrator forcibly transferred, without
12 grounds permitted under international law, one or more persons to another
13 location by expulsion or other coercive acts.

14 Additionally, such person or persons must have been lawfully
15 present in the area from which they were transferred.

16 Your Honours, I've already described how Bosco Ntaganda, the most
17 senior military commander on the ground, ordered his subordinates,
18 officers and soldiers, including Witnesses P17, P38, and P768 to target
19 and eliminate non- -- the non-Hema civilians of Banyali-Kilo. I have
20 also described how Bosco Ntaganda and, as a result of his orders, UPC
21 soldiers, shot at fleeing men, women, and children, and how those who
22 could not flee or returned to their homes were executed. This evidence
23 establishes substantial grounds to believe that Bosco Ntaganda issued an
24 order to cleanse the area of its non-Hema civilian population.

25 As a result of the assault launched by the UPC in late 2002 and

1 2003, including the assaults on the Banyali-Kilo and the Walendu-Djatsi
2 collectivité, Witness P315 estimates that over 140.000 people were
3 displaced. Thousands of civilians were forced to stay in the forests and
4 the bush as the roads were not safe. The UPC had set up roadblocks where
5 civilians were selected on ethnic grounds and killed. One eye-witness,
6 met by Witness P315, is reported to have seen UPC combatants kill 120
7 people at a roadblock at Yedi (* phon), north of Pluto.

8 At Banyali-Kilo, civilians fled as the UPC progressed in its
9 assault from Pluto to Mongbwalu, from Mongbwalu to Sayo, and Nzebi in the
10 west and towards Kilo in the south. From Kilo, thousands fled to the
11 collectivité of Walendu-Djatsi, among them were Witnesses P804 and P805.
12 Several witnesses, including P18, P19, P105, P121, P300, and P792 who
13 were in Walendu-Djatsi at that time all witnessed the arrival of
14 inaugural refugees in the perimeter between Kilo, Kobu, Nyangaray, Lipri,
15 Monga and Nbutsi (* phon). Witness P19 recalls, and I quote her
16 statement in French: "They were so numerous that some who moved had to
17 sleep in the roost. Some displaced persons had to sleep in the street.
18 And among them were people of all ethnic groups, such as the Alur, the
19 Bakongo, the Nande, and the Miyali (* phon) as well, as well as the Lendu
20 who were the majority. Among these fugitives, there were also injured
21 persons. Some had machete cuts, others had projectile wounds."

22 (In English) (* Previous translation continues)... already
23 victimised during the UPC assault on Banyali-Kilo would shortly
24 thereafter become the target of the UPC assault on the collectivité of
25 Walendu-Djatsi.

1 Your Honours, turning now to the last remaining specific
2 constituent element of these crimes; namely, the absence of a possible
3 justification for the displacement and forcible transfer of civilians,
4 the evidence I have just presented speaks for itself. The non-Hema
5 civilians who were chased away were lawfully present in the Banyali-Kilo
6 collectivité and Bosco Ntaganda intended to remove them in order to
7 control the region and exploit its natural resources. Nothing under
8 international law or the law of this court justifies that civilians be
9 intentionally targeted, hunted down, captured, and executed.

10 Madam President, your Honours, this concludes this part of my
11 presentation on the crimes of attacking civilians, murder, displacement
12 of civilians, and forcible transfer committed by Bosco Ntaganda in the
13 Banyali-Kilo collectivité. Thank you, Madam President.

14 JUDGE TRENDABILOVA: Thank you very much, Mr van der Werf, for
15 being really to the point and quite useful I hope for the Defence and for
16 the legal representatives and for the Chamber as well. You may be
17 seated.

18 This brings us to the end of today's hearing. Tomorrow, we shall
19 now -- we shall adjourn the hearing and tomorrow we shall again resume
20 with further presentation on the part of the Prosecutor's Office. I
21 would like to thank very much the parties, the legal representatives, the
22 interpreters, the stenographers, the court reporters, the security
23 officers, and I would like to wish everyone a good evening.

24 (The hearing ends in open session at 6.03 p.m.)