

**Cour
Pénale
Internationale**



**International
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Court**

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PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

**Public
With Public Annex**

**Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of
the Prosecutor Against Bosco Ntaganda**

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

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PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court, (the “ICC” or the “Court”) hereby renders this decision pursuant to article 61(7)(a) and (b) of the Rome Statute (the “Statute”) on the charges of the Prosecutor against Bosco Ntaganda (“Mr. Ntaganda”).

I. PROCEDURAL HISTORY

1. On 22 August 2006¹ and on 13 July 2012,² two warrants of arrest were issued against Mr. Ntaganda.
2. On 22 March 2013, Mr. Ntaganda voluntarily surrendered to the Court³ and on 26 March 2013, the suspect made his first appearance before the Chamber.⁴
3. On 10 January 2014, the Prosecutor filed the Document Containing the Charges (the “DCC”),⁵ together with the list of evidence,⁶ and, on 17 January 2014,⁷ the Prosecutor also filed the consolidated in-depth analysis chart.⁸
4. On 24 January 2014, the Defence filed its list of evidence⁹ and in-depth analysis chart.¹⁰ An amended version of the in-depth analysis chart was filed on 7 February 2014.¹¹
5. The confirmation of charges hearing (the “Hearing”) was held from 10 to 14 February 2014.¹²
6. On 7 March 2014, the Prosecutor¹³ and 1,120 participating victims¹⁴ lodged their final written submissions. On 8 April 2014, the Chamber received the final written Defence submissions.¹⁵

II. JURISDICTION, ADMISSIBILITY AND OTHER PROCEDURAL ISSUES

7. The Chamber is satisfied that, pursuant to article 19(1) of the Statute, the present case continues to fall within the jurisdiction of the Court and is admissible.

8. With a view to rendering its final determination pursuant to article 61(7) of the Statute, the Chamber bases its findings on a comprehensive analysis of the evidence contained in the lists of evidence, the DCC, the in-depth analysis charts, the submissions made during the Hearing, and the final written submissions of the parties and participants.

9. As article 61(7) of the Statute dictates, the Chamber “shall, on the basis of the hearing, determine whether there is sufficient evidence to establish *substantial grounds to believe* that the person committed each of the crimes charged”. Thus, to meet this intermediate evidentiary threshold,¹⁶ the Chamber must be “thoroughly satisfied that the [Prosecutor’s] allegations are sufficiently strong to commit [the person] for trial”.¹⁷ Pre-Trial Chambers have consistently held that to meet the evidentiary burden of “substantial grounds to believe”, the Prosecutor must “offer concrete and tangible proof demonstrating a clear line of reasoning underpinning [the] specific allegations”.¹⁸ All findings of the Chamber in the present decision are made on the basis of the statutory standard applicable at this stage of the proceedings.

10. In its assessment of the evidence, the Chamber has been guided by articles 21, 64, 67 and 69 of the Statute and rules 63, 64, 68, 70, 71, 76 to 78, 121 and 122 of the Rules of Procedure and Evidence, as well as the evidentiary principles as interpreted in previous decisions of the Court.¹⁹

11. The present decision represents the result of the Chamber’s assessment of the Prosecutor’s allegations in light of the evidence presented by the parties, as referred to in the endnotes to the present decision. The Defence challenges to the Prosecutor’s evidence have been considered throughout this assessment. Where necessary, the Chamber provides a separate response to the challenges raised.

III. FINDINGS ON THE CRIMES CHARGED

A. Findings on the Contextual Elements of the Crimes Against Humanity

12. On the basis of the evidence presented the Chamber concludes the following:

There are substantial grounds to believe that as early as the beginning of August 2002, the *Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo* (the “UPC/FPLC”)²⁰ adopted an organisational policy²¹ to attack part of the civilian population,²² belonging to ethnic groups other than the Hema (the “non-Hema”)²³ and to expel them from Ituri Province, in the Democratic Republic of the Congo (the “DRC”). Pursuant to this policy, between on or about 6 August 2002 and on or about 27 May 2003, the UPC/FPLC perpetrated a widespread and systematic attack²⁴ against the non-Hema civilian population, in the locations identified in section A of the decision.

Lacking sufficient evidence, the Chamber does not find substantial grounds to believe that such attack continued after on or about 27 May 2003.

13. The Chamber clarifies that the findings in paragraph 12 above are more specifically supported by the facts presented in each subsection of Section A.

*The UPC/FPLC as an Organisation*²⁵

14. The evidence indicates that the UPC/FPLC was an organisation with an established hierarchy headquartered in Bunia.²⁶ The UPC was formally established on 15 September 2000 when the “UPC Statuts” on its objectives and organisation were signed.²⁷ The President of the UPC had the power to issue decrees appointing and dismissing members of the organisation, including its executive members.²⁸

15. The UPC’s military wing, *i.e.* the FPLC,²⁹ was formally established on or about 1 September 2002³⁰ and was headed by its Commander in Chief,³¹ Floribert Kisembo as Chief of Staff³² and Mr. Ntaganda as Deputy Chief of Staff in charge of operations.³³ Although the FPLC was not formally established before September 2002, the evidence demonstrates that the UPC, as a “*mouvement politico-militaire*”³⁴,

had a military wing before that date.³⁵ UPC/FPLC troops were divided into sectors, brigades, battalions, companies, platoons and sections,³⁶ headed by subordinate commanders.³⁷ The UPC/FPLC had staff officers in charge of different matters, including administration, intelligence, operations, logistics and political affairs.³⁸ Meetings were held in order to discuss and organise the operations.³⁹ Discipline was maintained and soldiers who deserted, refused to execute an order from above or committed offences were punished accordingly.⁴⁰

16. The UPC/FPLC also had an effective system of communication. Orders were transmitted down the chain of command from the headquarters to the field⁴¹ and superior commanders and chiefs of staff received daily reports⁴² through satellite phones⁴³ and by way of “*Radio-phonie*” (“manpacks”).⁴⁴ Messages transmitted by manpack were recorded in personal logbooks.⁴⁵ These channels of communication made it possible to inform the various levels of the UPC/FPLC of the situation on the ground and to convey instructions from above.⁴⁶

17. The UPC/FPLC also had the means and the capability to carry out military operations over a prolonged period of time. The UPC/FPLC had several sources of funding such as: (i) money from Gegere (north Hema)⁴⁷ businessmen,⁴⁸ (ii) money from gold or oil extraction contracts;⁴⁹ and (iii) taxation imposed on the population.⁵⁰ UPC/FPLC troops were numerous⁵¹ and well-trained as they received military training in several camps such as Mandro, Mongbwalu, Bule and Rwampara.⁵² The soldiers were well-armed with sufficient ammunition and several types of heavy weapons, such as rocket launchers, mortars and grenade launchers,⁵³ mostly originating from Rwanda.⁵⁴

18. Furthermore, on or about 20 November 2002 onwards, groups of Hema civilian supporters were integrated in the organisational structure of the UPC/FPLC which had established a “system of war”.⁵⁵ Under that system, civilian supporters, mostly Gegere, accompanied UPC/FPLC troops “in most or even all the operations”,⁵⁶

carrying supplies and “burning down the houses and taking away the roofing and all that”, upon instructions by superiors in the UPC/FPLC.⁵⁷ Mr. Ntaganda armed some of these Hema civilians and instructed them “to go and kill [...] Lendus”.⁵⁸

The UPC/FPLC Adopted a Policy

19. The evidence indicates that as early as the beginning of August 2002, the UPC/FPLC adopted an organisational policy to attack civilians perceived to be non-Hema. The Chamber notes that in the course of a meeting in Kampala in early June 2002,⁵⁹ high-ranking members of the UPC discussed the need to evict from Ituri those perceived to be *non-originaires* and to raise awareness within and seek support from the population regarding a military operation to this effect.⁶⁰ The non-Hema civilian population to be targeted was selected primarily on the basis of ethnic origin, such as the Lendu, Bira and Nande ethnic groups.⁶¹ The UPC/FPLC also intended to target anyone siding with those perceived to be non-Hema, regardless of whether the former belonged to the Hema ethnic group.⁶²

20. At the Hearing, the Defence asserted that the UPC/FPLC was a multi-ethnic organisation and, as such, it could not have developed a policy to attack the civilian population based on ethnic grounds.⁶³ However, the Chamber considers that the alleged multi-ethnic composition of the UPC/FPLC, including the fact that some of its members belonged to ethnic groups that were the object of the attack, cannot in and of itself rule out the fact that the organisation conceived a policy to attack those perceived to belong to ethnic groups other than Hema. In addition, the evidence indicates that non-Hema members of the UPC/FPLC had “little or no influence in the organization”⁶⁴ and were sometimes forced to join the organisation and pursue its goals.⁶⁵

21. The general message conveyed in the context of the attack by UPC/FPLC superiors to their troops and, as the case may be, to the civilian supporters, was to consider the non-Hema, in particular the Lendu, as the enemies and, thus, to kill

them.⁶⁶ For example, before attacking Lendu inhabited areas, UPC/FPLC soldiers “never warned them, we just [...] attacked them [...] because the war was between the Lendu and Hema”.⁶⁷ Mr. Ntaganda, in his official capacity within the UPC/FPLC, regularly raised awareness among the troops and Hema civilians, in person or by radio, of the need to exterminate the Lendu and chase them away from the territory under the control of the UPC/FPLC, regardless of whether they were taking part in hostilities or not.⁶⁸ The evidence further shows that when addressing UPC/FPLC troops at a military parade in Mabanga, in November 2002, Mr. Ntaganda used the expression “*piga na kuchaji*” or “*kupiga na kuchaji*”,⁶⁹ which meant that troops should fight and pillage everything,⁷⁰ including “women”.⁷¹ Another high-ranking official, Commander Salumu Mulenda (“Mr. Mulenda”), also employed this expression at a UPC/FPLC meeting in Lalo village, in preparation for the attack on Mongbwalu on or about 20 November 2002.⁷² The evidence further indicates that before attacking the town on or about 6 May 2003, the UPC/FPLC instructed the Hema civilian population to leave Bunia, as all remaining people would be considered to be the enemy.⁷³

The “Widespread” or “Systematic” Attack

22. From on or about 6 August 2002 to on or about 27 May 2003, an attack against the non-Hema civilian population pursuant to the organisational policy depicted above took place in several locations in Ituri. This attack is more specifically demonstrated by a series of assaults discussed in the paragraphs below. These assaults, viewed as a whole, form a course of conduct involving the multiple commissions of acts referred to in article 7(1) of the Statute and, consequently, constitute an attack within the meaning of that provision.

23. In this respect, the Defence argued at the Hearing that the Prosecutor cannot “limit [the] charges to two clearly defined events and then suggest [...] that Mr. Ntaganda also was guilty of such crimes on many other occasions and ask

[the Chamber] [...] to consider these facts [...]”.⁷⁴ The Chamber recalls that according to article 7(2)(a) of the Statute, an “attack” denotes a course of conduct involving the multiple commission of acts referred to in paragraph (1) of the same provision. As the charged crimes must take place within an “attack”, the Prosecutor is free to present further additional acts to the ones charged, with a view to demonstrating that an “attack” within the meaning of articles 7(1) and 7(2)(a) of the Statute took place, as illustrated below in paragraphs 24 to 30.

24. The Chamber further finds that the attack against the civilian population was widespread, as it resulted in a large number of civilian victims, in a broad geographical area, over the period between on or about 6 August 2002 and on or about 27 May 2003. It also finds that the attack was systematic, following a regular pattern. Locations with a predominantly non-Hema population were targeted and this part of the civilian population, once identified, was made the object of an attack.⁷⁵ Moreover, in its operations, the UPC/FPLC followed a recurrent *modus operandi*, including the erection of roadblocks, the laying of land mines, and coordinated the commission of the unlawful acts, as found above, in order to attack the non-Hema civilian population. These findings are more specifically demonstrated in the following paragraphs.

25. According to the evidence, UPC soldiers with the support of some elements of the Ugandan People’s Defence Force (the “UPDF”)⁷⁶ attacked Bunia on or about 6 August 2002.⁷⁷ The UPC/FPLC encountered armed resistance by the *Armée du Peuple Congolais* (the “APC”).⁷⁸ The UPC killed non-Hema civilians,⁷⁹ including those attempting to flee at roadblocks.⁸⁰ Some were targeted on the basis of a pre-established list of people to be killed.⁸¹ In the course of the assault on Bunia, UPC forces: (i) carried out arbitrary arrests;⁸² (ii) raped non-Hema women;⁸³ (iii) forcibly expelled non-Hema civilians from their homes; and (iv) destroyed their property.⁸⁴

26. On 31 August 2002, the UPC/FPLC attacked the village of Songolo⁸⁵ – one of the strongholds of the *Force de Résistance Patriotique en Ituri* (the “FRPI”),⁸⁶ a Lendu force – with heavy weapons, including mortars and rockets,⁸⁷ before making an incursion on foot and killing non-Hemas,⁸⁸ without distinguishing between civilians and fighters.⁸⁹ During the assault, UPC/FPLC soldiers: (i) raped and kept women as sex slaves;⁹⁰ (ii) pillaged the village;⁹¹ and (iii) destroyed civilian property.⁹² Some people were killed by land mines which were laid by UPC/FPLC troops.⁹³

27. On 15 and 16 October 2002, UPC/FPLC soldiers, with the support of elements of the UPDF, attacked the village of Zumbe, a FRPI stronghold, and stayed there for two days.⁹⁴ UPC/FPLC soldiers: (i) killed a number of civilians in Zumbe and in the surrounding villages;⁹⁵ (ii) pillaged;⁹⁶ (iii) destroyed more than 500 buildings, including health centres and schools;⁹⁷ and (iv) raped women.⁹⁸ As in Songolo, some people were killed by land mines laid by the UPC/FPLC.⁹⁹

28. Between October and December 2002, UPC/FPLC soldiers, together with the *Mouvement de Libération du Congo* (the “MLC”) and the *Rassemblement Congolais pour la Démocratie/National* (the “RCD-N”) carried out joint attacks on Mambasa, Komanda and Eringeti,¹⁰⁰ often referred to as “*Opération Effacer le Tableau*”.¹⁰¹ The goal of the operation was to take over the whole area controlled by the *Rassemblement Congolais pour la Démocratie-Kisangani/Mouvement de Libération* (the “RCD-K/ML”).¹⁰² UPC/FPLC soldiers committed a series of criminal acts against the non-Hema civilian population in Komanda, including killings, cannibalism, rapes and pillaging.¹⁰³

29. Between on or about 20 November 2002 and on or about 6 December 2002, the UPC/FPLC attacked a number of villages in Banyali-Kilo *collectivité* as identified by the Chamber (the “*First Attack*”),¹⁰⁴ during which the UPC/FPLC faced armed resistance from the *Front des Nationalistes Intégrationnistes* (the “FNI”)/FRPI and the APC.¹⁰⁵ Between on or about 12 February and on or about 27 February 2003,

the UPC/FPLC attacked a number of villages in Walendu-Djatsi *collectivité* as identified by the Chamber (the “*Second Attack*”),¹⁰⁶ during which the UPC/FPLC faced armed resistance from the FNI/FRPI and the APC.¹⁰⁷ Both attacks, as defined, resulted in a number of criminal acts against civilians as specified in Section C of this decision.

30. After the UPC/FPLC soldiers were overwhelmed at the beginning of March 2003 by the UPDF and the FNI/FRPI – a Lendu force – and were thus forced to withdraw from Bunia,¹⁰⁸ they attempted to retake control of the town¹⁰⁹ on or about 6 May 2003.¹¹⁰ The UPC/FPLC instructed the Hema civilian population to leave Bunia, as all remaining people would be considered to be the enemy.¹¹¹ The fighting continued until on or about 27 May 2003, “when the UPC drove the Lendu combatants out of Bunia”.¹¹² UPC/FPLC forces targeted non-Hema civilians,¹¹³ which resulted in killings,¹¹⁴ disappearances¹¹⁵ and looting.¹¹⁶ Rapes continued after Bunia fell.¹¹⁷

B. Findings on the Contextual Elements of the War Crimes

31. On the basis of the evidence presented the Chamber finds that:

There are substantial grounds to believe that the UPC/FPLC constituted an organised armed group within the meaning of article 8(2)(f) of the Statute¹¹⁸ and that between on or about 6 August 2002 and on or about 31 December 2003, it engaged in an armed conflict not of an international character¹¹⁹ in Ituri Province, in the DRC, against other organised armed groups (“*Non-International Armed Conflict*”).

32. The findings in paragraph 31 above are more specifically supported by the facts presented in paragraphs 14-18 and 22-30 as well as those in the following paragraphs of the present Section.

33. The evidence indicates, as also found by Trial Chamber II, that the Ugandan armed forces, the UPDF, occupied Ituri between August 2002 and May 2003, thereby rendering the law of international armed conflict applicable.¹²⁰ Along with the occupation by Ugandan forces of this part of the territory of the DRC, the Chamber

finds that an armed conflict not of an international character was ongoing in Ituri between on or about 6 August 2002 and on or about 31 December 2003. During that period, repeated acts of hostilities of a certain level of intensity took place in several locations across Ituri Province between the UPC/FPLC,¹²¹ sometimes supported by other entities, and various other organised armed groups, including the FNI/FRPI, the APC, the *Parti pour l'unité et la sauvegarde de l'intégrité du Congo* (the "PUSIC") and the *Forces armées du peuple congolais* (the "FAPC").¹²² The hostilities, albeit to a lesser extent, continued after May 2003 and until 31 December 2003, as demonstrated by a number of clashes in Kasenyi on 11 June, 23 July and 31 October 2003;¹²³ Tchomia on 15 July and at the end of October and the beginning of November 2003;¹²⁴ Nizi on 20 July 2003 and 23 August 2003;¹²⁵ Fataki on 19-20 July and on 31 July 2003;¹²⁶ Kachele on 6 October 2003;¹²⁷ and Lingabo on 26 November 2003.¹²⁸

34. The UPC/FPLC encountered armed resistance from the opposing armed groups, which formed ever changing alliances in the course of the *Non-International Armed Conflict* and were sufficiently organised to repulse the UPC/FPLC on more than one occasion and to retain control of certain areas in Ituri.¹²⁹ The Chamber also considers that the steps taken by the United Nations Security Council with regard to the situation in the DRC¹³⁰ as well as the repeated diplomatic efforts undertaken by the parties with a view to ending hostilities constitute further indicia of the existence of the *Non-International Armed Conflict*.¹³¹

C. Findings on the Specific Crimes in Counts 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 17, 18

35. The Chamber clarifies that Section C of this decision contains its findings on the crimes charged in the context of the *First Attack* and the *Second Attack*, whereas Section D contains the findings on the crimes committed against child soldiers under the age of fifteen years at various places in Ituri and throughout the period of the *Non-International Armed Conflict*.

36. On the basis of the evidence, the Chamber finds that:

There are substantial grounds to believe that, as part of the widespread and systematic attack against the non-Hema civilian population, pursuant to or in furtherance of the organisational policy adopted by the UPC/FPLC, and in the context of the *Non-International Armed Conflict*, UPC/FPLC soldiers, including, as the case may be, supporting civilians, committed the following acts in the course of the *First Attack*:

- (i) murder and attempted murder (counts 1 and 2) in Mongbwalu, Pluto, Nzebi, Sayo and Kilo;
- (ii) attacking civilians (count 3) in Mongbwalu and Sayo;
- (iii) rape (counts 4 and 5) in Mongbwalu, Kilo and Sayo;¹³²
- (iv) persecution (count 10) in Mongbwalu, Pluto, Nzebi, Sayo, Kilo;
- (v) pillaging (count 11) in Mongbwalu and Sayo;
- (vi) forcible transfer of population and displacing civilians (counts 12 and 13) in Mongbwalu and Nzebi;
- (vii) attacking protected objects (count 17) in Mongbwalu and Sayo;
- (viii) destroying the enemy's property (count 18) in Mongbwalu and Sayo.

There are substantial grounds to believe that Mr. Ntaganda himself committed the following acts in the course of the *First Attack*:

- (i) murder (counts 1 and 2) in Mongbwalu;
- (ii) attacking civilians (count 3) in Sayo;
- (iii) persecution (count 10) in Mongbwalu and Sayo
- (iv) pillaging (count 11) in Mongbwalu and Sayo;
- (v) attacking protected objects (count 17) in Mongbwalu and Sayo.

There are substantial grounds to believe, that as part of the widespread and systematic attack against the non-Hema civilian population, pursuant to or in furtherance of the organisational policy adopted by the UPC/FPLC, and in the context of the *Non-International Armed Conflict*, UPC/FPLC soldiers, including, as the case may be, supporting civilians, committed the following acts in the course of the *Second Attack*:

- (i) murder and attempted murder (counts 1 and 2) in Kobu, Sangi, Bambu, Lipri, Tsili, Ngongo and Jitchu;
- (ii) attacking civilians (counts 3) in Bambu, Kobu, Lipri, Jitchu, Camp P.M., Buli, Djuba, Sangi, Tsili, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali and Ngabuli;
- (iii) rape (counts 4 and 5) in Lipri, Kobu, Bambu, Sangi and Buli;

- (iv) sexual slavery (counts 7 and 8) in Kobu, Sangi, Buli, Jitchu, and Ngabuli;
- (v) persecution (count 10) in Kobu, Sangi, Bambu, Lipri, Tsili, Ngongo, Jitchu, Buli, Nyangaray, Gutsi, Camp P.M., Djuba, Sangi, Katho, Gola, Mpetsi/Petsi, Avetso, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali and Ngabuli;
- (vi) pillaging (count 11) in Bambu, Kobu, Lipri and Jitchu;
- (vii) forcible transfer of population and displacing civilians (counts 12 and 13) in Lipri, Kobu, Bambu, Nyangaray, Tsili, Buli, Jitchu and Gutsi;
- (viii) attacking protected objects (count 17) in Bambu;
- (ix) destroying the enemy's property (counts 18) in Kobu, Lipri, Bambu, Camp P.M., Buli, Jitchu, Djuba, Sangi, Tsili, Katho, Gola, Mpetsi/Petsi, Avetso, Nyangaray, Pili, Mindjo, Langa, Dyalo, Wadda, Goy, Dhepka, Mbidjo, Thali and Ngabuli.

37. The Chamber clarifies that the findings in paragraph 36 above are more specifically supported by the facts presented in each of the following subsections.

*Counts 1 and 2: Murder and Attempted Murder as a Crime Against Humanity (Article 7(1)(a) of the Statute) and a War Crime (Article 8(2)(c)(i) of the Statute)*¹³³

38. The evidence shows that in the course of the *First Attack*, at least 200 civilians¹³⁴ were killed¹³⁵ in and around Mongbwalu by UPC/FPLC soldiers.¹³⁶ More specifically, the evidence demonstrates that UPC/FPLC soldiers killed civilians at Mongbwalu airfield,¹³⁷ at the hospital¹³⁸ as well as in the Gangala area of Mongbwalu.¹³⁹ Further, during the *First Attack* a number of civilians, who were held prisoners in Mr. Ntaganda's apartment/camp ("Mr. Ntaganda's camp") in Mongbwalu, were killed.¹⁴⁰ In addition, priest Boniface Bwanalonga was arrested and taken to Mr. Ntaganda's camp in Mongbwalu where he was killed on or about 26 November 2002¹⁴¹ by Mr. Ntaganda, who shot him several times in the head with his revolver.¹⁴²

39. UPC/FPLC soldiers also killed a number of fleeing civilians and those who hid in their houses in Pluto.¹⁴³ Two other civilians were killed in Nzebi by Mr. Ntaganda's bodyguards.¹⁴⁴

40. In Sayo, UPC/FPLC soldiers killed civilians,¹⁴⁵ including, on one occasion, women, children and members of the clergy who were hiding in Mungu Samaki church in Sayo.¹⁴⁶ UPC/FPLC soldiers also killed civilians in Sayo health centre.¹⁴⁷ Moreover, UPC/FPLC soldiers attempted to kill P-0800 in Sayo.¹⁴⁸

41. On or about 6 December 2002, UPC/FPLC soldiers attacked Kilo,¹⁴⁹ killing civilians,¹⁵⁰ after forcing some of them to dig their own graves.¹⁵¹ UPC/FPLC soldiers also attempted to kill a number of civilians,¹⁵² including P-0022.¹⁵³

42. As part of the *Second Attack*, after the UPC/FPLC had taken control of Kobu, UPC/FPLC patrols were organised and every civilian considered to be an enemy in Kobu was killed immediately or taken to Mr. Mulenda's compound and executed there upon his orders.¹⁵⁴ In particular, a man and a woman were executed in that compound by UPC/FPLC soldiers, including Commander Simba,¹⁵⁵ and three Lendu men were also killed there by UPC/FPLC soldiers.¹⁵⁶ Moreover, on or about 26 February 2003 in Kobu, UPC/FPLC soldiers attempted to kill P-0019, while she was trying to flee from Mr. Mulenda's compound, where she was being held prisoner.¹⁵⁷

43. The evidence also shows that a pacification meeting was convened by Mr. Mulenda on or about 25 February 2003 in Sangi,¹⁵⁸ in the presence of around 50 Lendu civilians, including prominent persons.¹⁵⁹ Those attending the meeting were either killed on the same day in Sangi¹⁶⁰ or taken to Kobu the next day and killed by Commander Simba and other UPC/FPLC soldiers in a banana field behind Hotel Paradiso.¹⁶¹ Furthermore, UPC/FPLC soldiers attempted to kill P-0018 in Sangi on or about 27 February 2003.¹⁶²

44. UPC/FPLC soldiers also committed acts of killing in Bambu, Lipri, Tsili and Ngongo, more specifically: (i) a civilian woman of Bira ethnicity was killed in Ngongo on 18 February 2003 and an aged man heading to Lipri on 21 February 2003;¹⁶³ (ii) another man was killed in Tsili on 19 February 2003;¹⁶⁴ (iii) a woman and

her child were chopped to death with machetes in Bambu on 25 February 2003;¹⁶⁵ (iv) one woman and six children were killed in Bambu by a bomb fired from the Hema village of Mabanga and another woman was captured and slaughtered in Bambu.¹⁶⁶ In Jitchu, “some 92” persons were killed in the centre of the village and in the surrounding forest on 26 February 2003 by the UPC/FPLC soldiers.¹⁶⁷

Count 3: Attacking Civilians as a War Crime (Article 8(2)(e)(i) of the Statute)¹⁶⁸

45. The war crime of attacking civilians belongs to the category of offences committed during the actual conduct of hostilities by resorting to prohibited methods of warfare.¹⁶⁹ Article 8(2)(e)(i) of the Statute requires that an attack is directed against a civilian population as such or individual civilians who do not take direct part in hostilities.¹⁷⁰ For the purposes of this war crime, the Chamber considers it appropriate to interpret the term “attack” referred to in element 1¹⁷¹ of the relevant Elements of Crimes in light of article 13(2) of Protocol II Additional to the Geneva Conventions of 1949 (“APII”).¹⁷² According to this provision, “attack” means any “acts of violence against the adversary, whether in offence or in defence”.¹⁷³ Accordingly, in order to be held criminally responsible for the war crime of attacking civilians, the perpetrator must direct one or more acts of violence (an “attack”) against civilians not taking direct part in the hostilities, before the civilians have fallen into the hands of the attacking party, thus establishing a sufficiently close link between the “attack” against civilians and the conduct of the hostilities.

46. In light of the above legal framework, the Chamber is of the view that the definition of “attack” does not exhaustively list which underlying acts of violence can be considered for the purpose of the war crime of attacking civilians under article 8(2)(e)(i) of the Statute. In characterizing a certain conduct as an “attack”, what matters is the *consequences* of the act, and particularly whether injury, death, damage or destruction are *intended* or *foreseeable consequences* thereof. Accordingly, the Chamber considers that, in principle, any conduct, including shelling, sniping,

murder, rape, pillage, attacks on protected objects and destruction of property, may constitute an act of violence for the purpose of the war crime of attacking civilians, provided that the perpetrator resorts to this conduct as a method of warfare and, thus, that there exists a sufficiently close link to the conduct of hostilities.¹⁷⁴

47. In this respect, the Chamber underlines that this sufficiently close link between acts of violence underlying the “attack” and the actual conduct of hostilities does not exist when the acts of violence (such as murder, rape, pillage or destruction of property) are committed against civilians that have fallen into the hands of the attacking party or are committed far from the combat area. This could be, for example, the case of violent acts committed in a detention camp located away from the frontline or at a location that has fallen under the control of the attacking party following an actual combat action against the adverse party. Thus, in these circumstances, these acts of violence may not be considered as methods of warfare¹⁷⁵ and, by implication, do not constitute the war crime of attacking civilians pursuant to article 8(2)(e)(i) of the Statute. This is, however, without prejudice to these acts being classified as war crimes under other appropriate legal provisions, provided that the nexus to the armed conflict existed at the time of their commission.¹⁷⁶

48. Applying the above interpretation to the charges presented by the Prosecutor, and taking into account the Chamber’s findings in relation to counts 2 (murder and attempted murder), 5 (rape), 11 (pillaging), 17 (attacking protected objects) and 18 (destroying the enemy’s property), the Chamber considers that the above acts of violence qualify as the underlying conduct of the war crime of attacking civilians. The UPC/FPLC resorted to them as methods of warfare and they were committed against civilians not taking direct part in hostilities that occurred in the course of the *First Attack* and the *Second Attack*.¹⁷⁷ Factors that were taken into consideration by the Chamber in this respect were, *inter alia*, whether superiors ordered or instructed subordinates to use this conduct in a military operation and whether the soldiers effectively resorted to this conduct in the field to take control of a certain location.¹⁷⁸

*Counts 4 and 5: Rape as a Crime Against Humanity (Article 7(1)(g) of the Statute) and as a War Crime (Article 8(2)(e)(vi) of the Statute)*¹⁷⁹

49. The evidence shows that as part of the *First Attack*, during the takeover of Mongbwalu and Sayo, civilians who were accompanying the UPC/FPLC committed rape against civilian women,¹⁸⁰ resulting in vaginal or anal penetration of the body of the victim, with the invasion having been committed by force, threat of force or coercion against the victim.¹⁸¹ After the takeover of Mongbwalu, UPC/FPLC soldiers also committed acts of rape against civilian women in Mongbwalu.¹⁸² This is demonstrated by the following facts. A girl of about 20 years old was taken by a UPC/FPLC soldier to Mr. Mulenda's military camp where she was raped by that soldier.¹⁸³ Further, on or about 25 November 2002, Mr. Ntaganda and his bodyguards arrested three nuns and took them to Mr. Ntaganda's camp in Mongbwalu,¹⁸⁴ where they were raped.¹⁸⁵

50. UPC/FPLC soldiers also committed rape during the attack on Kilo.¹⁸⁶ More specifically, P-0022 was imprisoned by a UPC/FPLC soldier in Kilo-Etat, with another eight detainees.¹⁸⁷ While in prison, UPC/FPLC soldiers "*ont ordonné aux hommes détenus avec nous de coucher avec les femmes*".¹⁸⁸ Following the order, one of the prisoners "*a introduit son poignet*" into P-0022's genital organs.¹⁸⁹

51. In the context of the *Second Attack*, members of the UPC/FPLC raped a number of civilians during the attacks on the villages of Lipri, Kobu and Bambu.¹⁹⁰ For example, in Lipri a girl was raped by three UPC/FPLC soldiers.¹⁹¹ In Bambu, a woman was captured and raped by UPC/FPLC members and subsequently killed.¹⁹² Also, on or about 25 February 2003, in Sangi, UPC/FPLC soldiers forcibly took more than five women to a forest and raped them.¹⁹³ Also in Sangi, on or about 27 February 2003, a UPC/FPLC soldier penetrated the vagina of witness P-0018 with his penis while threatening to kill her.¹⁹⁴ Another five women were repeatedly raped by UPC/FPLC soldiers in Sangi.¹⁹⁵ Further, on or about 26 February 2003, P-0113 was vaginally

raped by a UPC/FPLC soldier in Buli.¹⁹⁶ On the same day, P-0113 was vaginally raped by another UPC/FPLC soldier on the road from Buli to Kobu, under the threat of death.¹⁹⁷ Once in Kobu, on the evening of the same day, P-0113 was forcibly taken by a soldier into Mr. Mulenda's room, where the latter raped her.¹⁹⁸

52. On or about 26 February 2003, P-0019 was raped in Kobu, several times, by UPC/FPLC Commander Linganga. He penetrated her vagina as well as her anus with his penis.¹⁹⁹ His gun was beside him throughout this time.²⁰⁰ Three men who had been arrested were also anally raped at the same place by a group of UPC/FPLC soldiers.²⁰¹ On or about the same day, some of the women who were part of the Lendu delegation to the pacification meeting²⁰² were raped by UPC/FPLC soldiers, including Simba, before being executed in the banana field in Kobu.²⁰³ The soldiers also forced "*les prisonniers de coucher entre eux*".²⁰⁴ UPC/FPLC soldier Simba also had sexual intercourse with a 12 years old girl,²⁰⁵ after threatening her, at the camp where he was residing in Kobu.²⁰⁶

Counts 7 and 8: Sexual Slavery as a Crime Against Humanity (Article 7(1)(g) of the Statute) and as a War Crime (Article 8(2)(e)(vi) of the Statute)²⁰⁷

53. The Chamber concludes that there are substantial grounds to believe that the UPC/FPLC soldiers committed acts of sexual slavery only in the *Second Attack*, but not in the *First Attack*. In determining whether the perpetrator exercised powers attaching to the right of ownership over the victim, as a requisite element of the crime of sexual slavery, the Chamber has examined the nature of such relationship²⁰⁸ by considering various factors²⁰⁹ collectively. Thus, in regard to the *First Attack*, the Chamber is not satisfied that the evidence reveals such relationship, the more so compared with the facts and evidence concerning the *Second Attack*. In particular, the Chamber does not consider that in the absence of other factors, mere imprisonment or its duration are sufficient to satisfy the element of ownership over the victim of the crime of sexual slavery.

54. With regard to the *Second Attack*, the crime of sexual slavery is more specifically demonstrated by the following findings. On or about 25 February 2003, P-0019 was arrested by a group of UPC/FPLC soldiers in Sangi together with other prisoners.²¹⁰ The soldiers regularly beat them and called them “animals”.²¹¹ Afterwards P-0019 was made to carry pillaged goods from Sangi to Kobu,²¹² where she was raped repeatedly by UPC/FPLC Commander Linganga.²¹³ She was held captive until on or about 27 February 2003.²¹⁴

55. P-0018 was captured in Jitchu by UPC/FPLC soldiers and detained from on or about 26 February to on or about 27 February 2003.²¹⁵ She was forced to carry pillaged goods to Buli and Sangi, together with other prisoners.²¹⁶ UPC/FPLC soldiers repeatedly raped and beat women among the prisoners, including P-0018.²¹⁷

56. On or about 26 February 2003, P-0113 was captured near Ngabuli and taken to Buli,²¹⁸ where she had to cook for UPC/FPLC commanders²¹⁹ and to carry pillaged goods to Kobu.²²⁰ Under death threats, she was held captive in the house of a UPC/FPLC commander in Kobu and in Bunia.²²¹ During her captivity, P-0113 was raped several times by UPC/FPLC soldiers, including by Mr. Mulenda.²²² She escaped on or about 28 February 2003.²²³

57. During the attack on Kobu, a Lendu girl of about 12 years old was taken prisoner by a UPC/FPLC soldier to his camp, where she was raped.²²⁴ He then took her with him to Bunia and continued to have sexual intercourse with her.²²⁵ The girl continued to live with the soldier seemingly for the purpose of protection against other soldiers.²²⁶ She escaped after the March 2003 operation in Bunia.²²⁷

Count 10: Persecution as a Crime Against Humanity (Article 7(1)(h) of the Statute)²²⁸

58. The Chamber recalls its findings in relation to the crimes described in counts 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 17 and 18 of the DCC²²⁹ and considers that these acts constituted severe deprivations of fundamental rights, contrary to international law,

namely the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment and the right to private property.²³⁰ Further, the evidence shows that in the course of the *First Attack* and *Second Attack* the UPC/FPLC and, as the case may be, supporting civilians, perpetrated these crimes against the non-Hema civilian population, as found in the present decision, by reason of their ethnic origin.²³¹

Count 11: Pillaging as a War Crime (Article 8(2)(e)(v) of the Statute)²³²

59. In making its determination on the count of pillaging,²³³ the Chamber has evaluated, on the basis of the evidence available, whether the appropriations by UPC/FPLC troops, including by Mr. Ntaganda, were for private or personal use as opposed to appropriations justified by military necessity.²³⁴ In this respect, the Chamber has been guided by information in the evidence that UPC/FPLC soldiers: (i) were instructed to take any goods that they wanted in the course of an operation;²³⁵ (ii) systematically burnt down and destroyed houses and properties after breaking into them;²³⁶ and (iii) arrested civilians and forced them to carry the looted goods from one location to another or otherwise used aircrafts to carry voluminous items.²³⁷

60. In the course of the *First Attack*, UPC/FPLC soldiers as well as the civilians accompanying them, systematically appropriated property in the town of Mongbwalu.²³⁸ The goods, in particular valuable items taken in Mongbwalu such as DVD players, computers, “*matériel de bureau*” and motorcycles, were transported to Bunia by aircrafts on several flights²³⁹ and were seen at the residences of Mr. Ntaganda and Mr. Mulenda.²⁴⁰ Mr. Ntaganda had a team of UPC/FPLC officers who took civilian property on his behalf and subsequently transported the property to his residence in Bunia.²⁴¹ Mr. Ntaganda himself broke into shops and pillaged goods in Mongbwalu,²⁴² including a Land Cruiser Jeep from the parish church and medical equipment and medications from a hospital in Mongbwalu.²⁴³

61. In Sayo, UPC/FPLC soldiers systematically appropriated property belonging to civilians.²⁴⁴ Mr. Ntaganda, along with his troops, personally removed certain items from the church in Sayo.²⁴⁵

62. In the context of the *Second Attack*, in Bambu, the UPC/FPLC took property from “the offices of Kilo-Moto, the largest gold-mining company in the region, the hospitals, schools, an orphanage and religious structures”.²⁴⁶ They also removed and took away the roofs of houses in Bambu,²⁴⁷ Kobu²⁴⁸ and Lipri.²⁴⁹ In particular, the evidence further indicates that also Gegere civilians accompanying the UPC/FPLC and acting under their control took away the roofs of private houses in Bambu, Kobu and Lipri.²⁵⁰

63. UPC/FPLC soldiers also arrested people in Jitchu on 26 February 2003, and civilians in neighbouring villages, and forced them to carry goods that were taken away by the UPC/FPLC.²⁵¹ These items included mattresses, clothes, kitchen utensils and bicycles.²⁵²

Counts 12 and 13: Forcible Transfer of Population and Displacement of Civilians²⁵³ as a Crime Against Humanity (Article 7(1)(d) of the Statute) and as a War Crime (Article 8(2)(e)(viii) of the Statute)²⁵⁴

64. The Chamber clarifies at the outset that, contrary to the submissions of the Defence,²⁵⁵ for the purposes of the war crime of displacing civilians, the conduct by which the perpetrator(s) force(s) civilians to leave a certain area is not limited to an order, as referred to in element 1 of the relevant Elements of Crimes.²⁵⁶ The Chamber considers that, should this not be the case, the actual circumstances of civilian displacement in the course of an armed conflict would be unduly restricted. This is specifically reflected in the general introduction to the Elements of Crimes, which states that “[t]he elements [...] apply ‘*mutatis mutandis*’ to all those whose criminal responsibility may fall under articles 25 and 28 of the Statute”.

65. The evidence shows that during the *First Attack*, UPC/FPLC soldiers evicted the civilian population from Mongbwalu. Due to its strategic importance in the gold market, the UPC/FPLC's goal was to provide security for the mostly Hema, Gegere and Nande traders and "to push out the Lendu in Mongbwalu".²⁵⁷ As a result of the assault on Mongbwalu, a considerable number of civilians, mostly Lendu, were forced to leave the area and to take refuge in the surrounding villages.²⁵⁸ Some of them were injured by machetes or by bullets.²⁵⁹ Displaced civilians were forced to live in the bush "*de façon quasi permanente [...] dans l'insécurité la plus complète*".²⁶⁰ Civilians displaced from Mongbwalu would have been killed had they attempted to return to their houses.²⁶¹ Similarly, civilians displaced from Nzebi as a result of the *First Attack* by the UPC/FPLC soldiers would have been killed had they attempted to return to their houses.²⁶²

66. As a result of the *Second Attack*, including the shelling of populated areas and the killing of people, civilians residing in Lipri,²⁶³ Kobu²⁶⁴ and Bambu²⁶⁵ fled to the surrounding bush or to other villages. The evidence indicates that the UPC/FPLC used heavy weapons with no specific target in order to disperse the population; they subsequently caused considerable damage by setting fire to houses, so as to clean the area of the enemy and prevent the population from returning.²⁶⁶ According to the evidence, civilians displaced from Lipri, Kobu and Bambu would have been killed had they attempted to return to their houses.²⁶⁷

67. The UPC/FPLC also forcibly transferred civilians from villages surrounding Lipri, Kobu and Bambu, during the *Second Attack*. For example, before being attacked, Lipri accommodated approximately 1,200 persons displaced from, *inter alia*, Nyangaray, which were attacked by the UPC/FPLC shortly before Lipri.²⁶⁸ On or around 18 February 2003, the population of Tsili fled to other locations such as Petsy, Buli, Goy and Katho, on account of the assault by the UPC/FPLC.²⁶⁹ Civilians living in Buli, Jitchu and Gutsi were also forced to take refuge in the forest or on the hills following the assault by the UPC/FPLC on or around 25 February 2003.²⁷⁰

68. Taking into consideration that the UPC/FPLC evicted the civilian population from the above-mentioned locations, and absent any indication to the contrary in the evidence, the Chamber considers that the civilians displaced in the course of the *First Attack* and the *Second Attack* were lawfully residing in the locations identified above. The evidence further indicates that the acts of displacement perpetrated by UPC/FPLC soldiers during the *First Attack* and the *Second Attack* were not justified by the security of the civilians involved or by military necessity, as there is no indication of any precautionary measures having been taken before these acts of displacement were carried out or any reasons linked to the conduct of military operations. In addition, the means used during the *First Attack* and the *Second Attack* and the *modus operandi* show that the UPC/FPLC soldiers were in a position to displace civilians, as further demonstrated by the large number of civilians who were in fact displaced.

Count 17: Attacking Protected Objects as a War Crime (Article 8(2)(e)(iv) of the Statute)²⁷¹

69. In the course of the *First Attack*, Mr. Ntaganda and the UPC/FPLC soldiers under his command, directed an attack against protected objects as was the case with the hospital and the church in Mongbwalu, by pillaging property that they found in those buildings.²⁷² In Sayo, UPC/FPLC troops together with Mr. Ntaganda attacked the church known as “Mungu Samaki” by pillaging goods therein and damaging the infrastructure.²⁷³ As part of the attack on Sayo, UPC/FPLC troops opened fire on the health center,²⁷⁴ where they pillaged the building, including the property of some civilians.²⁷⁵

70. Similarly, during the *Second Attack*, the UPC/FPLC pillaged “the hospital, all religious structures, the orphanage and the schools [in Bambu], targeting mainly civilian support structures”.²⁷⁶ More particularly, the hospital was pillaged by UPC/FPLC soldiers and, as a result, “everything was systematically destroyed: from beds

*to cupboards. Nothing was functional”.*²⁷⁷ The evidence shows that UPC/FPLC troops targeted Bambu, destroying and pillaging property in order to “*completely eliminate all chances for the population of the region to have social assistance*”.²⁷⁸

71. The Chamber considers that the evidence placed before it does not indicate that the protected objects targeted in the course of the *First Attack* and the *Second Attack* constituted military objectives, as there is no information about their use related to the armed conflict by the opposing party.

Count 18: Destroying the Enemy’s Property as a War Crime (Article 8(2)(e)(xii) of the Statute)²⁷⁹

72. In the course of the *First Attack*, destruction of property of the adversary, which was protected from that destruction under international law of armed conflict, took place.²⁸⁰ More specifically, the UPC/FPLC troops used heavy weapons such as mortars²⁸¹ in the attack on Mongbwalu, inhabited by a majority of Lendu²⁸², which resulted in the destruction of many infrastructures.²⁸³ Shortly after, UPC/FPLC troops systematically shelled Sayo, a predominantly Lendu village,²⁸⁴ using heavy weapons.²⁸⁵ UPC/FPLC soldiers also used incendiary grenades and burned houses while people were inside.²⁸⁶ The attack resulted in the destruction of many houses and buildings in Sayo.²⁸⁷ The evidence does not indicate that the UPC/FPLC made a distinction between military objectives and civilian objects while shelling the densely populated villages of Mongbwalu and Sayo.²⁸⁸ Consequently, the Chamber finds that the destruction of infrastructures was not required by military necessity.

73. In the course of the *Second Attack*, UPC/FPLC troops were ordered to “flatten” the villages of Kobu, Bambu, Lipri and their surrounding villages.²⁸⁹ In carrying out that order, UPC/FPLC troops and Hema civilian supporters²⁹⁰ set fire to the straw houses and destroyed permanent structures mostly by removing their metal roofs in Kobu,²⁹¹ Lipri,²⁹² Bambu,²⁹³ Camp P.M.,²⁹⁴ Buli,²⁹⁵ Jitchu,²⁹⁶ Djuba,²⁹⁷ Sangi,²⁹⁸ Tsili,²⁹⁹ Katho,³⁰⁰ Gola,³⁰¹ Mpetsi/Petsi,³⁰² Avetso,³⁰³ Nyangaray,³⁰⁴ Pili, Mindjo, Langa, Dyalo,

Wadda, Goy³⁰⁵, Dhepka,³⁰⁶ Mbidjo,³⁰⁷ Thali³⁰⁸ and Ngabuli³⁰⁹. Furthermore, UPC/FPLC troops destroyed fields in Kobu,³¹⁰ Camp P.M.³¹¹ and Lipri.³¹² In the Chamber's view, the evidence demonstrates that most of the destroyed property belonged to the civilian population and in particular to the Lendu which was the predominant ethnic group in Walendu-Djatsi *collectivité*.³¹³ Further, the evidence shows that the UPC/FPLC destroyed and burned the villages after the departure of the adverse party.³¹⁴ Consequently, the Chamber finds that the destruction was not required by military necessity.

D. Findings on the Specific Crimes in Counts 6, 9, 14, 15 and 16

74. On the basis of the evidence presented, the Chamber finds that:

There are substantial grounds to believe that in the context of the *Non-International Armed Conflict*, the UPC/FPLC soldiers committed acts of enlistment, including Mr. Ntaganda himself, as well as acts of conscription of children under the age of 15 years between on or about 6 August 2002 and 31 December 2003, in Ituri, in the DRC.

There are also substantial grounds to believe that the UPC/FPLC soldiers used children under the age of 15 years to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003, including Mr. Ntaganda himself, between on or about 6 August and March 2003, in Ituri, in the DRC.

There are substantial grounds to believe that the UPC/FPLC soldiers committed acts of rape and sexual slavery against child soldiers under the age of 15 years between on or about 6 August 2002 and 31 December 2003, in Ituri, in the DRC.

75. The Chamber clarifies that the findings in paragraph 74 above are more specifically supported by the facts presented in each subsection related to counts 6, 9, 14, 15 and 16.

Counts 6 and 9: Rape and Sexual Slavery of Child Soldiers as War Crimes (Article 8(2)(e)(vi) of the Statute)

76. With regard to counts 6 and 9, the Chamber notes that the Prosecutor charges Mr. Ntaganda with the rape and sexual slavery of “UPC/FPLC child soldiers under the age of 15”.³¹⁵ The Chamber also notes the Defence argument according to which the crimes of rape and sexual slavery against these persons are not foreseen by the Statute, as international humanitarian law (“IHL”) does not protect persons taking part in hostilities from crimes committed by other persons taking part in hostilities on the same side of the armed conflict.³¹⁶ Accordingly, the Chamber shall first consider whether, as a matter of law, the Court may exercise jurisdiction over alleged acts of rape and/or sexual slavery committed by members of the UPC/FPLC against UPC/FPLC child soldiers under the age of 15 years.

77. The Chamber takes note of common article 3 of the 1949 Geneva Conventions, the relevant part of which sets forth that “[p]ersons taking no active part in the hostilities [...] shall in all circumstances be treated humanely”. The Chamber also notes the relevant parts of article 4(1) and (2) of APII, which stipulate that “[a]ll persons who do not take a direct part or who have ceased to take part in hostilities [...] shall in all circumstances be treated humanely” and that the following acts against these persons “are and shall remain prohibited at any time and in any place whatsoever: [...] (e) outrages upon personal dignity, in particular [...] rape, enforced prostitution and any form of indecent assault”. Accordingly, in order to determine whether UPC/FPLC child soldiers under the age of 15 years are entitled to protection against acts of rape and sexual slavery by other members of the UPC/FPLC, the Chamber must assess whether these persons were taking direct/active part in hostilities at the time they were victims of acts of rape and/or sexual slavery.

78. In this regard, the Chamber is guided by the prohibition under article 4(3)(c) of APII to recruit and use children under the age of 15 years to take part in hostilities,

as reflected in article 8(2)(e)(vii) of the Statute. In the view of the Chamber, the direct/active participation in hostilities of children under the age of 15 years must be assessed in the light of this specific prohibition. Accordingly, the mere membership of children under the age of 15 years in an armed group cannot be considered as determinative proof of direct/active participation in hostilities, considering that their presence in the armed group is specifically proscribed under international law in the first place. Indeed, to hold that children under the age of 15 years lose the protection afforded to them by IHL merely by joining an armed group, whether as a result of coercion or other circumstances, would contradict the very rationale underlying the protection afforded to such children against recruitment and use in hostilities.

79. Nonetheless, in the view of the Chamber, children under the age of 15 years lose the protection afforded by IHL only during their direct/active participation in hostilities. That said, the Chamber clarifies that those subject to rape and/or sexual enslavement cannot be considered to have taken active part in hostilities during the specific time when they were subject to acts of sexual nature, including rape, as defined in the relevant Elements of Crimes.³¹⁷ The sexual character of these crimes, which involve elements of force/coercion or the exercise of rights of ownership, logically preclude active participation in hostilities at the same time.³¹⁸

80. Accordingly, the Chamber finds that UPC/FPLC child soldiers under the age of 15 years continue to enjoy protection under IHL from acts of rape and sexual slavery, as reflected in article 8(2)(e)(vi) of the Statute. The Chamber is, therefore, not barred from exercising jurisdiction over the crimes in counts 6 and 9.

81. The crimes under counts 6 and 9 are demonstrated by the following findings of the Chamber. Witness P-0758, aged 13 at the time,³¹⁹ was abducted by UPC/FPLC soldiers in or around July-August 2002³²⁰ and raped in several UPC/FPLC camps, including Lingo camp, where she underwent training.³²¹ The rapes continued throughout her training which lasted around 3 months.³²² Two other girls, one aged

9 and another under 13 were raped in Lingo camp during the training period of witness P-0758.³²³ They were unable to escape from the camp as there were soldiers around³²⁴ and “they shot at people who tried to flee”.³²⁵ Also, women in the UPC/FPLC camps, and this included children under the age of 15 years, were likened to a “*guduria*”, a large cooking pot, to express the fact that any soldiers could sleep with them at any time.³²⁶

82. Further, Abelanga, a UPC/FPLC soldier, raped a girl under the age of 15 years who was his bodyguard from November 2002 until at least March-May 2003.³²⁷ Around mid-August – beginning of September 2002,³²⁸ young girls, including under the age of 15 years,³²⁹ were raped in Mandro camp.³³⁰ They were “domestic servants” and they “combined cooking and love services.”³³¹ Another girl, aged 13 years, was recruited by the UPC/FPLC and continuously raped by Kisembo, a UPC/FPLC soldier, until he was killed in Mongbwalu.³³²

Counts 14, 15 and 16: Conscripting or Enlisting Children under the Age of Fifteen Years into Armed Forces or Groups or Using them to Participate Actively in Hostilities as War Crimes (Article 8(2)(e)(vii) of the Statute)

83. Before making its findings on each of the crimes charged by the Prosecutor in counts 14, 15 and 16, the Chamber will address some of the issues raised by the Defence relating to all three counts. Regarding the Defence challenge in respect of the temporal and territorial scope of these charges,³³³ the Chamber considers that in light of the continuous nature of the crimes under article 8(2)(e)(vii) of the Statute, coupled with the fact that the UPC/FPLC was continually on the move between various locations in the Province of Ituri, it may be permissible for the Prosecutor not to identify specific locations and dates of enlistment, conscription or use of children under the age of 15 years to participate actively in hostilities,³³⁴ provided it is demonstrated that a child was integrated in the armed group or was used to participate actively in hostilities within the temporal and geographical framework of

the charges. Thus, in the context of the present case, where recruitment³³⁵ into the UPC/FPLC did not occur in one single place, but rather at various locations throughout Ituri on unspecified dates,³³⁶ the Chamber has considered evidence of conscription, enlistment and use of children under the age of 15 years to participate actively in hostilities throughout the Province of Ituri, for the period as charged.

84. In response to the Defence claim that the age assessment be grounded on objective and verifiable criteria,³³⁷ and its contention that the burden of proof has been reversed with respect to some pieces of evidence,³³⁸ the Chamber indicates that it has considered for the purpose of the present determination, *inter alia*, evidence from several witnesses who observed children under the age of 15 years at training camps, within the ranks of the UPC/FPLC, or at demobilization centres. In this regard, the Chamber highlights that it has not relied exclusively on the age estimates provided by the witnesses, but has also considered their description of the children's behaviour and/or physical appearance supporting the conclusion that the individuals were under the age of 15 years.³³⁹ Nevertheless, the Chamber has remained mindful of possible uncertainties in age estimates based on physical appearance and/or behaviour, as opposed to an objective proof of age, and has exercised caution and allowed for a margin of error.³⁴⁰ The same holds true for video material and photographs.³⁴¹ Finally, the Chamber has not used evidence related to child soldiers where it was not satisfied that such evidence referred to persons under the age of 15 years, unless corroborated by other pieces of evidence providing more precision on the age of the children.

85. Regarding counts 14 and 15,³⁴² the evidence shows that at least as of August 2002, the UPC/FPLC implemented a policy to recruit³⁴³ members into its armed wing, be it on a coercive or voluntary basis,³⁴⁴ without placing any restrictions on the minimum age of the recruits. New recruits, including children under the age of 15 years, would be enlisted and accepted at training camps if they were considered able to carry and fire a weapon and undergo training.³⁴⁵

86. As part of its recruitment campaign, the UPC/FPLC also implemented a policy of asking Hema families to contribute a child to the movement.³⁴⁶ The Chamber notes that some parents would send their children for training voluntarily, as a form of support for the UPC/FPLC.³⁴⁷ However, when families refused to provide children to the UPC/FPLC, the calls to contribute took the form of an obligation.³⁴⁸ Failing to provide children for recruitment purposes could result in imprisonment,³⁴⁹ or in the community as a whole being left unprotected from future enemy attacks, as in the case of the village of Bogoro.³⁵⁰ The evidence shows that the recruitment method described above resulted in the conscription of children under the age of 15 years, as parents felt pressured to send them into the UPC/FPLC.³⁵¹

87. Children, including under the age of 15 years, were also abducted by UPC/FPLC soldiers from schools, streets or marketplaces.³⁵² For example, in July or August 2002,³⁵³ witness P-0758, aged 13 at the time,³⁵⁴ was abducted by UPC/FPLC soldiers at a roadblock and taken to Lingo camp for training.³⁵⁵ She remained with the armed group until the arrival of the “*Operation Artemis*” contingent,³⁵⁶ in July 2003.³⁵⁷ In August 2002, a boy aged 13 was recruited by force in or around Mudzipela by six UPC/FPLC soldiers and taken to Mandro training camp.³⁵⁸ On 8 November 2002, the UPC/FPLC entered the *École Primaire* of Mudzipela and forcibly rounded up the entire fifth grade, approximately forty children, for military service.³⁵⁹ Further, on 15 February 2003,³⁶⁰ between fifty and sixty people, including children aged as young as 10, were taken by force from Ndrele market by UPC/FPLC soldiers, put in a truck, and sent to the training camp at Mont Awa.³⁶¹ On 20 February 2003, a boy aged 12 was recruited in Mahagi-Port by a UPC/FPLC commander, while his mother resisted the recruitment.³⁶² During the same month, a 14-year-old boy was recruited by force on the road to Mongbwalu market by Mr. Lubanga himself and six other soldiers, and sent to Mandro training camp.³⁶³

88. Children under the age of 15 years also voluntarily joined the UPC/FPLC.³⁶⁴ In particular, in August 2002, a 10-year-old boy joined the UPC/FPLC at Mandro camp,

where he undertook 5 months of military training.³⁶⁵ In October 2002, a 14-year-old boy voluntarily joined the UPC/FPLC at Mandro camp, under the command of Chef Kawa.³⁶⁶ In January 2003, a girl from Bunia voluntarily joined the UPC/FPLC at 14 years of age.³⁶⁷ She underwent one month of military training and was deployed in February 2003 at the office of the Chief of Staff.³⁶⁸ A boy aged 14 was voluntarily integrated into the UPC/FPLC after a fighting in Bogoro in March 2003.³⁶⁹ Further, Mr. Ntaganda himself enlisted several children under the age of 15 years who underwent military training at Mandro camp before the *First Attack*.³⁷⁰

89. The Chamber finds that following enlistment or conscription by the UPC/FPLC, children under the age of 15 years, boys and girls, were present in a number of UPC/FPLC training camps, between 6 August 2002 and August 2003: (i) at Mandro, from August 2002 until July 2003;³⁷¹ (ii) at Rwampara, until August 2003 at the latest;³⁷² (iii) at Lingo, until after the battle of Lonyo;³⁷³ and (iv) in Mongbwalu, until August 2003³⁷⁴. During training no distinction was made between children and adults.³⁷⁵

90. In addition to training in camps, the Chamber finds that children below 15 years of age also received training at the UPC/FPLC Headquarters in Bunia, at least between 30 July and 20 August 2002.³⁷⁶ Further, between the end of 2002 and the beginning of 2003, four boys under 15 years of age were trained in radio communications at Mr. Ntaganda's residence, in Bunia.³⁷⁷

91. Once they had completed their training, the recruits, including children under the age of 15 years, were given a weapon and a uniform and assigned to a battalion or brigade, to the UPC/FPLC Headquarters or the presidency, and some remained at the training camps.³⁷⁸ The presence of children under the age of 15 years within the ranks of the UPC/FPLC is specifically evidenced by the fact that on 12 February 2003, a letter concerning the selection of 13 child soldiers aged 10 to 15/16 years old for demobilisation purposes (the "12 February 2003 letter"),³⁷⁹ was sent by the UPC

National Secretary for Education to the G5 Commander of the FPLC³⁸⁰. Further, in the spring of 2003 approximately 45 children, some younger than 15 years of age, were selected from among the UPC/FPLC troops and placed in a “*Kadogo Unit*”,³⁸¹ stationed at the General Staff in Mamedu.³⁸²

92. Apart from the 12 February 2003 letter, the UPC/FPLC issued throughout the timeframe of the charges a series of orders aimed at demobilizing soldiers under the age of 18 years, namely on 21 October 2002,³⁸³ 27 January 2003,³⁸⁴ and 1 June 2003³⁸⁵. The Chamber finds that the UPC/FPLC did not genuinely consider implementing a plan for the demobilization of children from its ranks.³⁸⁶ To the extent that demobilization measures were taken, such actions either concerned only a limited number of individuals,³⁸⁷ or children were re-armed soon after being demobilized.³⁸⁸ Children under the age of 15 years remained within the UPC/FPLC after each demobilisation order,³⁸⁹ throughout the year 2003.³⁹⁰ Further, demobilisation centres recorded the arrival of children under the age of 15 years from the UPC/FPLC at least until the end of the year 2003.³⁹¹

93. With regard to count 16,³⁹² the Chamber finds that children under the age of 15 years were used by the UPC/FPLC to participate actively in hostilities³⁹³ at different locations throughout the Province of Ituri, including for active participation in combat-related activities, such as support for combatants,³⁹⁴ as military guards,³⁹⁵ informants,³⁹⁶ escorts or bodyguards.³⁹⁷

94. Children under the age of 15 years participated actively in hostilities in: (i) Bunia, in August 2002,³⁹⁸ March 2003,³⁹⁹ and May 2003;⁴⁰⁰ (ii) Zumbe, in October 2002;⁴⁰¹ (iii) Komanda, in October 2002;⁴⁰² (iv) Mongbwalu⁴⁰³ and Kilo, in November-December 2002;⁴⁰⁴ and (v) during the Lipri,⁴⁰⁵ Bambu, Kobu operation, in February-March 2003.⁴⁰⁶

95. Between 30 July and 20 August 2002, children between the ages of 7 and 13 years were used by the UPC/FPLC leadership as informants, “to spy on the enemies”.⁴⁰⁷

Between 29 and 30 October 2002, two “*kadogos*” aged around 10 to 12 years guarded witness P-0024 while he was detained by the UPC/FPLC in Bunia.⁴⁰⁸ Witness P-0758 took part in night patrols during her time in the UPC/FPLC.⁴⁰⁹ She also worked as a guard at a roadblock, in a place called Kosovo.⁴¹⁰

96. Furthermore, boys and girls under the age of 15 years were used in the UPC/FPLC as bodyguards and escorts.⁴¹¹ Between August 2002 and March 2003, Mr. Ntaganda himself had child-soldiers bodyguards under the age of 15 years,⁴¹² as young as 8.⁴¹³ Children under the age of 15 years were also seen guarding his residence in Bunia, from the end of 2002 until the beginning of 2003.⁴¹⁴ The children in Mr. Ntaganda’s escort participated alongside him in hostilities.⁴¹⁵ Similarly, other UPC commanders and officials used children under the age of 15 years as bodyguards.⁴¹⁶ Children under 15 years of age were also seen guarding Mr. Lubanga’s residence, at least from October 2002 until on or about 30 May 2003.⁴¹⁷

IV. FINDINGS ON INDIVIDUAL CRIMINAL RESPONSIBILITY

97. On the basis of the evidence presented the Chamber finds that:

There are substantial grounds to believe that Mr. Ntaganda is criminally responsible for the crimes specified below according to the modes of liability set out hereafter:

indirect co-perpetration, pursuant to article 25(3)(a) of the Statute, for the crimes committed and set forth in:

- (i) counts 1 to 5, 10 to 13, 17 and 18 during the *First Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (ii) counts 1 to 5, 7, 8, 10 to 13 and 18 during the *Second Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (iii) counts 6, 9 and 14 to 16 during the *Non-International Armed Conflict*;

direct perpetration, pursuant to article 25(3)(a) of the Statute, for the crimes committed and set forth in:

- (i) counts 1 to 3, 10, 11 and 17 during the *First Attack*;

- (ii) counts 15 and 16 during the *Non-International Armed Conflict*;

ordering, pursuant to article 25(3)(b) of the Statute, for the crimes committed and set forth in:

- (i) counts 1 to 5, 10 to 13 and 17 during the *First Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (ii) counts 1 to 5, 7, 8, 10 and 11 during the *Second Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (iii) count 16 during the *Non-International Armed Conflict*;

inducing, pursuant to article 25(3)(b) of the Statute, for the crimes committed and set forth in:

- (i) counts 1 to 5, 10 to 13 and 17 during the *First Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (ii) counts 1 to 5, 7, 8, 10 and 11 during the *Second Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (iii) count 16 during the *Non-International Armed Conflict*;

contributing to the commission or attempted commission of crimes by a group of persons acting with a common purpose in any other way, pursuant to article 25(3)(d) of the Statute, in respect of:

- (i) counts 1 to 5, 10 to 13, 17 and 18 during the *First Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (ii) counts 1 to 5, 7, 8, 10 to 13, 17 and 18 during the *Second Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (iii) counts 6, 9 and 14 to 16, during the *Non-International Armed Conflict*;

acting as a military commander, pursuant to article 28(a) of the Statute, for the crimes committed and set forth in:

- (i) counts 1 to 5, 10 to 13, 17 and 18 during the *First Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;
- (ii) counts 1 to 5, 7, 8, 10 to 13, 17 and 18 during the *Second Attack*, including the acts of attempted murder in conformity with article 25(3)(f) of the Statute;

(iii) counts 6, 9 and 14 to 16, during the *Non-International Armed Conflict*.

There are no substantial grounds to believe that Mr. Ntaganda is criminally responsible as a direct co-perpetrator for any of the crimes charged under counts 1 to 18.

98. The Chamber clarifies that the findings in paragraph 97 above are more specifically supported by the facts presented in each of the following subsections. Taking into consideration that the Prosecutor charged Mr. Ntaganda with 18 counts of crimes against humanity and war crimes on the basis of 7 modes of responsibility, the Chamber deems it appropriate, for ease of reference, to provide a chart annexed to this decision to clarify for which crimes Mr. Ntaganda is responsible and under which particular mode(s) of responsibility.

99. The Chamber notes that the Prosecutor has charged Mr. Ntaganda with the crimes contained in counts 1 to 18 pursuant to, as the case may be, articles 25(3)(a) (direct perpetration and direct or indirect co-perpetration), 25(3)(b) (ordering or inducing), 25(3)(d)(i) or (ii), 25(3)(f) and/or 28(a) of the Statute.⁴¹⁸ According to the Prosecutor, “[c]onfirming charges for alternative modes of liability promotes judicial efficiency and reduces the potential disruptive effect at the trial stage of notification that the legal characterisation of the facts may change”.⁴¹⁹ The Defence argues that the approach of the Prosecutor results in a failure to clearly support the charges against Mr. Ntaganda, including the relevant mode of liability.⁴²⁰

100. As held previously by the Chamber, “the Prosecutor may generally charge in the alternative”.⁴²¹ At this stage of the proceedings, the Chamber is not called upon to engage in a full-fledged trial and to decide on the guilt or innocence of the person charged. Rather, the mandate of the Pre-Trial Chamber is to determine which cases should proceed to trial. Additionally, the Chamber may be presented with facts, supported with evidence, which may satisfy different modes of responsibility. Accordingly, the Chamber considers that at this stage of the proceedings it may

confirm alternative charges presented by the Prosecutor as long as each charge is supported by sufficient evidence to establish substantial grounds to believe that the suspect has committed one or more of the crimes charged. In this regard, the Chamber recalls article 61(5) of the Statute, which levies on the Prosecutor to support “each charge” with sufficient evidence. Whether or not the Prosecutor has done so is a question to be assessed by the Chamber in light of its determination under article 61(7) of the Statute. Accordingly, the Prosecutor’s “failure” to support the charges against Mr. Ntaganda, as asserted by his Defence, is mainly an evidentiary question which should be resolved under this article. Should the Chamber determine that the Prosecutor has not supported each charge with sufficient evidence to the required evidentiary threshold, the result is, *inter alia*, to decline to confirm one or more of the charges. It follows that the Defence argument must be rejected.

A. Article 25(3)(a) of the Statute – Indirect Co-Perpetration

101. The Chamber recalls that, in order to make a finding on Mr. Ntaganda’s criminal responsibility in compliance with the mode of liability of indirect co-perpetration, the objective and subjective elements of article 25(3)(a) of the Statute must be fulfilled.

102. Based on the evidence presented, the Chamber finds that, jointly with other persons, Mr. Ntaganda committed the crimes in counts 1 to 18⁴²² “through another person”, namely UPC/FPLC members and/or Hema civilians, to the extent specified below. Accordingly, the Chamber finds that Mr. Ntaganda bears criminal responsibility as an indirect co-perpetrator, and not as a direct co-perpetrator, under article 25(3)(a) of the Statute for the crimes set forth in said counts.

103. Furthermore, the Chamber considers that the findings in relation to this mode of liability also concern the attempted acts of murder, as described previously in the present decision.⁴²³ In addition, the Chamber finds that the instances of attempted murder resulted from the implementation of the common plan and that the crime of

murder did not occur because of circumstances independent of the perpetrator's intentions, as stipulated in article 25(3)(f) of the Statute. Therefore, the Defence argument that Mr. Ntaganda cannot be linked to the instances of attempted murder must be dismissed.⁴²⁴

Objective Elements

104. The Chamber recalls that the objective elements of the mode of liability of indirect co-perpetration under article 25(3)(a) of the Statute⁴²⁵ are the following:

(a) the suspect must be part of a common plan or an agreement with one or more persons; (b) the suspect and the other co-perpetrator(s) must carry out essential contributions in a coordinated manner which result in the fulfilment of the material elements of the crime; (c) the suspect must have control over the organisation; (d) the organisation must consist of an organised and hierarchical apparatus of power; (e) the execution of the crimes must be secured by almost automatic compliance with the orders issued by the suspect.

Common Plan

105. From 6 August 2002 onwards and throughout the period relevant to the charges, Mr. Ntaganda was part of a common plan amongst members of the UPC/FPLC to assume military and political control over Ituri. As part of the common plan, Mr. Ntaganda and others sought to take over non-Hema dominated areas and expel the non-Hema civilian population, particularly the Lendu, from Ituri. Further, the Chamber is satisfied that the common plan contained an element of criminality,⁴²⁶ as evidenced by the crimes described previously in Sections C and D.

106. After meeting with other persons to discuss the military preparations for the assault on Bunia,⁴²⁷ Mr. Ntaganda took part in this assault as of 6 August 2002.⁴²⁸ Moreover, Mr. Ntaganda, who was appointed Deputy Chief of Staff of the UPC/FPLC at the beginning of September 2002,⁴²⁹ regularly took part in meetings between different organs of the UPC/FPLC⁴³⁰ and habitually informed his superiors

of military developments.⁴³¹ Furthermore, in relation to the *First Attack*, Mr. Ntaganda was assigned responsibility for capturing Mongbwalu at a meeting of the UPC/FPLC military high command.⁴³² With regard to the *Second Attack*, Mr. Ntaganda attended a meeting with several other UPC/FPLC members in Mr. Lubanga's office a few days before the start of this attack.⁴³³ In this meeting: (i) it was agreed to open the road between Bunia and Mongbwalu as it had been blocked by the Lendu;⁴³⁴ (ii) the logistics of the operation were discussed;⁴³⁵ and (iii) the participants were allotted different tasks - for instance, brigade commanders were assigned an area to attack, one person was designated to control the operation, and others were placed in charge of fighting on the ground.⁴³⁶ In addition, Mr. Ntaganda communicated closely with UPC/FPLC troops throughout the *First Attack*⁴³⁷ and the *Second Attack*.⁴³⁸ Accordingly, the concerted action of Mr. Ntaganda and other persons⁴³⁹ leads the Chamber to conclude that they entered into a common plan to assume military and political control over Ituri as of at least 6 August 2002.

107. The Defence denies the existence of such a common plan and claims that the UPC/FPLC was not "a group of Hemas" and that it "had as objective to protect the entire population and all ethnic groups".⁴⁴⁰ However, on the basis of the evidence set out above, the Chamber concludes that these arguments cannot refute the existence of the common plan.

Essential Contribution

108. Mr. Ntaganda, as Deputy Chief of Staff of the UPC/FPLC, together with other persons involved in the common plan, provided an essential contribution resulting in the fulfilment of the material elements of the crimes charged. The Chamber also considers that, in the absence of Mr. Ntaganda's essential contribution, the common plan would have been frustrated.⁴⁴¹ Mr. Ntaganda was instrumental in the organisation, coordination and execution of the aforementioned crimes, as set out below. In addition, he was described as "really absolutely necessary" within the

UPC/FPLC.⁴⁴² However, in relation to the *Second Attack* specifically, the Chamber will not assess whether the essential contribution provided by Mr. Ntaganda resulted in the fulfilment of the material elements of the war crime set forth in count 17, considering that, for the reasons provided below,⁴⁴³ he lacked the *mens rea* for this crime.

109. With regard to the *First Attack*, the Chamber is satisfied that Mr. Ntaganda provided an essential contribution resulting in the fulfilment of the material elements of the crimes against humanity described in counts 1, 4, 10 and 12⁴⁴⁴ and the war crimes set forth in counts 2, 3, 5, 11, 13, 17 and 18.⁴⁴⁵ As specified below, the Chamber finds that Mr. Ntaganda played an overall coordinating role before and during the execution stage of the crimes.⁴⁴⁶

110. More specifically, in preparation for the *First Attack*, Mr. Ntaganda: (i) arranged for weapons to be transported by aircraft from Bunia to Aru and distributed them to the troops;⁴⁴⁷ (ii) travelled from Aru to Bunia to secure additional troops for the attack;⁴⁴⁸ and (iii) liaised with subordinates.⁴⁴⁹

111. Furthermore, at a parade in Mabanga in November 2002 before the *First Attack*, Mr. Ntaganda told UPC/FPLC troops that everyone encountered in Mongbwalu was to be considered an enemy, which was generally interpreted to mean that all human beings should be killed.⁴⁵⁰ At this parade, Mr. Ntaganda also used the expression “*piga na kuchaji*”,⁴⁵¹ which was taught to UPC/FPLC troops during training⁴⁵² and which means to fight and take any goods encountered, including women.⁴⁵³ Accordingly, the fighters were free to decide what to do with these women.⁴⁵⁴ Moreover, at a briefing with a subordinate and General Jérôme in the latter’s residence in Aru before the *First Attack*, Mr. Ntaganda issued instructions to chase away the Lendu.⁴⁵⁵

112. Also in the course of the *First Attack*, Mr. Ntaganda commanded the troops,⁴⁵⁶ took part in the fighting,⁴⁵⁷ provided instructions to troops⁴⁵⁸ and communicated

with subordinates.⁴⁵⁹ He further: (i) repeatedly told his subordinates to eliminate all Lendu, without distinguishing between those who were taking a direct part in hostilities and those who were not;⁴⁶⁰ (ii) armed young Hema civilians and instructed them to kill and chase away the Lendu;⁴⁶¹ (iii) instructed UPC/FPLC troops to remove goods after Mongbwalu was taken;⁴⁶² (iv) told a subordinate to take any goods from Mongbwalu church and, if necessary, to destroy the church;⁴⁶³ (v) sent his bodyguards to rape three Lendu nuns who were held in his apartment in Kilo-Moto;⁴⁶⁴ and (vi) instructed subordinates to kill two Lendu prisoners at his compound⁴⁶⁵ as well as two Lendu civilians returning to their homes in Nzebi.⁴⁶⁶

113. In relation to the *Second Attack*, Mr. Ntaganda provided an essential contribution resulting in the fulfilment of the material elements of the crimes against humanity described in counts 1, 4, 7, 10 and 12⁴⁶⁷ and the war crimes set forth in counts 2, 3, 5, 8, 11, 13 and 18.⁴⁶⁸ As described below, the Chamber concludes that Mr. Ntaganda assumed a coordinating role before the execution stage of the crimes.⁴⁶⁹

114. At a meeting in Mr. Lubanga's office a few days before the start of the fighting on 12 February 2003,⁴⁷⁰ it was, *inter alia*, agreed that Mr. Ntaganda was to "control the fighting as it was happening" from Bunia.⁴⁷¹ In this regard, he: (i) was in contact with the troops through a manpack and a Motorola;⁴⁷² (ii) received updates on the situation in the field;⁴⁷³ and (iii) issued operational orders concerning the fighting.⁴⁷⁴

115. In addition, in respect of Mr. Ntaganda's instructions issued at the Mabanga parade,⁴⁷⁵ a UPC/FPLC insider explains that: "[l]'ordre, c'était toute personne rencontrée là-bas doit être exécutée. À part MONGBWALU, je peux dire même à KOBU".⁴⁷⁶ This conclusion is further supported by the fact that Mr. Mulenda, a subordinate of Mr. Ntaganda who was present at the Mabanga parade,⁴⁷⁷ issued almost identical instructions at a parade in Kilo a few hours before the *Second Attack*. Mr. Mulenda told UPC/FPLC troops to shoot at everything and used the expression "*kupiga na*

kuchaji”,⁴⁷⁸ meaning that they should fight and pillage everything, including women.⁴⁷⁹

116. The evidence also reveals that Mr. Ntaganda provided an essential contribution resulting in the fulfilment of the material elements of the war crimes set forth in counts 6, 9, 14, 15 and 16 during the *Non-International Armed Conflict*.⁴⁸⁰ Mr. Ntaganda oversaw the recruitment, training and deployment of troops in the UPC/FPLC. In this regard, the Chamber recalls that the UPC/FPLC had children under the age of 15 years within its ranks⁴⁸¹ and that girls under the age of 15 years were placed in camps under the authority of male UPC/FPLC members.⁴⁸²

117. Mr. Ntaganda was officially in charge of recruitment⁴⁸³ and training in the UPC/FPLC.⁴⁸⁴ In this capacity, he regularly visited UPC/FPLC training camps where, *inter alia*, children under the age of 15 years underwent training.⁴⁸⁵ These visits, for example, included: (i) the UPC headquarters in Bunia in, *inter alia*, August 2002 on a nearly daily basis;⁴⁸⁶ (ii) Mandro on two occasions in late August 2002 or the beginning of September 2002;⁴⁸⁷ (iii) Lingo in or around October 2002;⁴⁸⁸ and (iv) Rwampara on 12 February 2003⁴⁸⁹ and at one point in June, July or August 2003.⁴⁹⁰ During such visits, he verified the recruits’ progress in respect of their training,⁴⁹¹ encouraged them by stressing their importance to the UPC/FPLC and its goals,⁴⁹² provided them with food,⁴⁹³ and promised them uniforms for completing their training.⁴⁹⁴ Mr. Ntaganda also specifically instructed a radio-communications expert to “train his ‘children’”, including those who were under the age of 15 years, in his Bunia residence in late 2002.⁴⁹⁵ Further, Mr. Ntaganda decided on the deployment of those trained in UPC/FPLC camps to different sectors, including children under the age of 15 years.⁴⁹⁶ Some of these children were subsequently sent off to fight.⁴⁹⁷

Control Over an Organised and Hierarchical Apparatus of Power and Execution of the Crimes by Almost Automatic Compliance with the Orders

118. Based on the evidence presented, the Chamber finds that the remaining three objective elements pertaining to indirect co-perpetration have also been fulfilled.

119. As described in more detail above, the UPC was a structured political organisation and the FPLC functioned as a fully-fledged military force.⁴⁹⁸ In these circumstances, the Chamber considers that, for the same reasons, the UPC/FPLC constituted an organised and hierarchical apparatus of power. The Chamber further specifies that the active recruitment pursued by the UPC/FPLC⁴⁹⁹ ensured that it had fungible individuals capable of being replaced by others.⁵⁰⁰

120. Moreover, the Chamber concludes that Mr. Ntaganda had control over the UPC/FPLC and that his orders were complied with almost automatically. Mr. Ntaganda was appointed Deputy Chief of Staff at the beginning of September 2002⁵⁰¹ and officially became Chief of Staff in December 2003.⁵⁰² He was considered to be the military expert in the UPC/FPLC⁵⁰³ and, accordingly, had significant military responsibilities, such as developing and implementing military strategies⁵⁰⁴ and securing weapons from, *inter alia*, Rwanda.⁵⁰⁵ In addition, Mr. Ntaganda routinely issued instructions to subordinates⁵⁰⁶ and specifically insisted on compliance with his orders.⁵⁰⁷ He also ensured respect for discipline by ordering the arrest and imprisonment of disobedient subordinates⁵⁰⁸ and went as far as personally shooting⁵⁰⁹ or ordering the execution⁵¹⁰ of insubordinate UPC/FPLC members.

Subjective Elements

121. The Chamber recalls that, in order to attribute criminal responsibility to Mr. Ntaganda for the crimes set out in the counts above, the following subjective elements,⁵¹¹ must also be met:

(a) the suspect must satisfy the subjective elements of the crimes namely (i) intent and knowledge within the meaning of article 30 of the Statute, unless otherwise provided in the Statute or the Elements of Crimes; (ii) and specific intent (*dolus specialis*) where required; (b) the suspect and the other co-perpetrators must be mutually aware and accept that implementing the common plan will result in the fulfilment of the material elements of the crimes; and (c) the suspect must be aware of the factual circumstances enabling him to exercise joint control over the commission of the crime through another person(s).

Mens Rea for Crimes Against Humanity Committed in the First Attack and the Second Attack

122. Based on a review of the evidence, the Chamber finds that Mr. Ntaganda was aware that the crimes against humanity committed in the course of the *First Attack* and the *Second Attack*⁵¹² were part of a widespread and systematic attack directed against the civilian population, namely the non-Hema group, and that he fulfils the other subjective elements of the crimes against humanity set forth in: (i) counts 1, 4, 10 and 12 in the *First Attack*; and (ii) counts 1, 4, 7, 10 and 12 in the *Second Attack*. Moreover, the Chamber clarifies that Mr. Ntaganda also fulfils the specific subjective element related to count 10.⁵¹³

123. The Chamber, more specifically, finds that Mr. Ntaganda acted with *dolus directus* in the first degree⁵¹⁴ concerning the crimes against humanity committed during the *First Attack*. Mr. Ntaganda repeatedly instructed UPC/FPLC members to carry out acts of murder⁵¹⁵ and forcible transfer against the Lendu⁵¹⁶ and, on one occasion, he provided instructions to young Hema civilians in Mongbwalu to commit identical acts⁵¹⁷ (counts 1 and 12). Furthermore, Mr. Ntaganda used the expression "*piga na kuchaji*",⁵¹⁸ which provided his subordinates with a *carte blanche* concerning any women encountered. This entails the raping of women and can be particularly inferred from the fact that he specifically sent his bodyguards to rape three Lendu nuns (count 4).⁵¹⁹

124. The Chamber further finds that, in relation to the *Second Attack*, Mr. Ntaganda acted with *dolus directus* in the second degree.⁵²⁰ He knew that the crimes against humanity in counts 1, 4, 7, and 12 would be the almost inevitable outcome of the implementation of the common plan. More specifically, following the commission of these crimes in the course of the *First Attack*: (i) Mr. Ntaganda participated in the preparation of the *Second Attack*;⁵²¹ (ii) directed the fighting from Bunia;⁵²² and (iii) his criminal instructions issued at the Mabanga parade remained applicable to the *Second Attack*.⁵²³

125. Moreover, the Chamber finds that Mr. Ntaganda was also aware of the factual circumstances that established the lawfulness of the presence of the civilians in the locations covered by the *First Attack* and the *Second Attack* (count 12). The evidence shows that these locations were regularly inhabited by persons of different ethnicities⁵²⁴ and there is no indication in the evidence that their presence was unlawful.⁵²⁵

126. The Chamber further specifies that Mr. Ntaganda acted with *discriminatory intent*, in respect of the *First Attack* and the *Second Attack* (count 10). Mr. Ntaganda repeatedly expressed hostility towards the non-Hema, in particular the Lendu group,⁵²⁶ and sought to attack a particular part of the civilian population on ethnic grounds by way of the crimes specified above.

Mens Rea for War Crimes Committed in the First Attack and the Second Attack

127. Based on the evidence, the Chamber finds that Mr. Ntaganda was aware of the factual circumstances that established the existence of the *Non-International Armed Conflict*⁵²⁷ and that he fulfils the other subjective elements concerning the commission of the war crimes contained in: (i) counts 2, 3, 5, 11, 13, 17 and 18 in the *First Attack*; and (ii) counts 2, 3, 5, 8, 11, 13 and 18 with regard to the *Second Attack*. Moreover, the Chamber clarifies that Mr. Ntaganda also fulfils the specific subjective elements related to counts 3, 11 and 17.⁵²⁸

128. With regard to the *First Attack*, the Chamber finds that Mr. Ntaganda acted with *dolus directus* in the first degree in respect of the crimes set forth in counts 2, 3, 5, 11, 13 and 17. As described above,⁵²⁹ Mr. Ntaganda issued instructions concerning acts of murder,⁵³⁰ displacement of civilians,⁵³¹ as well as rape⁵³² (counts 2, 5 and 13). Furthermore, since he repeatedly ordered subordinates to eliminate the Lendu, whether or not they were taking a direct part in hostilities,⁵³³ Mr. Ntaganda also intended to direct attacks against the civilian population as such or against individual civilians not taking direct part in hostilities (count 3). Moreover, Mr. Ntaganda stated, on several occasions, that UPC/FPLC members could appropriate any goods encountered (count 11).⁵³⁴ In respect of the pillage of Mongbwalu church, Mr. Ntaganda added that this building could be destroyed, if necessary⁵³⁵ (count 17). The Chamber further finds that Mr. Ntaganda acted with *dolus directus* in the second degree in relation to the crime of destroying the property of an adversary (count 18). He was aware that the commission of said crime would be the almost inevitable outcome of the implementation of the common plan in respect of the *First Attack*, considering (i) his aforementioned orders; and (ii) the use of heavy weapons by UPC/FPLC troops under his command.⁵³⁶

129. In relation to the *Second Attack*, the Chamber finds that Mr. Ntaganda acted with *dolus directus* in the second degree in respect of the crimes set forth in counts 2, 3, 5, 8, 11, 13 and 18. He was aware that their commission would be the almost inevitable outcome of the implementation of the common plan. As described previously,⁵³⁷ Mr. Ntaganda took part in preparing and controlling the *Second Attack* and his criminal instructions issued at the Mabanga parade continued to apply. However, the Chamber is of the view that Mr. Ntaganda does not fulfil the requisite subjective elements pertaining to the war crime set forth in count 17 in respect of the *Second Attack*, since it has not been established that he intended buildings protected under article 8(2)(e)(iv) of the Statute to be the object of an attack.

130. Mr. Ntaganda was also aware of the factual circumstances that established the status of these persons as civilians taking no active part in hostilities in the *First Attack* and the *Second Attack* (count 2); his aforementioned criminal orders were either directed expressly against the Lendu,⁵³⁸ or failed to distinguish between those who were taking a direct part in hostilities and those who were not.⁵³⁹ Moreover, since Mr. Ntaganda was aware of the factual circumstances that established the lawfulness of the presence of the civilians at the locations covered by the *First Attack* and the *Second Attack*,⁵⁴⁰ the Chamber also finds that he knew that the displacement of civilians was neither justified by the security of the civilians nor by military necessity (count 13). In relation to the *First Attack*, Mr. Ntaganda also knew of the nature and purpose of the Mongbwalu church as a building dedicated to religion since he had been at this location in person (count 17).⁵⁴¹ In addition, with regard to the *First Attack* and *Second Attack*, Mr. Ntaganda was also aware (i) that the destroyed property belonged to the Lendu; (ii) of the factual circumstances establishing the status of the property as protected under the law of armed conflict; and (iii) that the destruction thereof was not required by military necessity (count 18). This conclusion is based on evidence establishing that (i) crimes were committed against the Lendu in particular;⁵⁴² (ii) the destruction of property was massive and indiscriminate;⁵⁴³ and (iii) Mr. Ntaganda was physically present during the *First Attack*⁵⁴⁴ and remained in close communication with UPC/FPLC troops during the *Second Attack*.⁵⁴⁵

131. The Chamber now turns to the specific subjective elements related to counts 3, 11 and 17. It is established by the evidence presented that Mr. Ntaganda intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack (count 3); his aforementioned criminal orders were either directed expressly against the Lendu⁵⁴⁶ or failed to distinguish between those who were taking a direct part in hostilities and those who were not.⁵⁴⁷ Concerning the crime of pillaging (count 11), the Chamber specifies that

Mr. Ntaganda possessed the specific intent to deprive the rightful owner of his or her property and to appropriate it for private or personal use. His use of the expression “*piga na kuchaji*”⁵⁴⁸ specifically concerns the appropriation of goods as it means to fight and pillage everything.⁵⁴⁹ Moreover, as this expression extends to any goods encountered,⁵⁵⁰ it necessarily precludes appropriations limited to those justified by military necessity. Finally, Mr. Ntaganda intended the Mongbwalu church to be the object of the attack (count 17), as reflected by his instruction to a subordinate to destroy the church, if necessary.⁵⁵¹

Mens Rea for War Crimes Against UPC/FPLC Child Soldiers

132. On the basis of the evidence and the reasoning developed below, the Chamber finds that Mr. Ntaganda was aware of the factual circumstances that established the existence of the *Non-International Armed Conflict*⁵⁵² and that he fulfils the other subjective elements concerning the crimes under counts 6, 9, 14, 15 and 16, as specified below.

133. Mr. Ntaganda acted with *dolus directus* in the first degree in relation to the crimes contained in counts 14 to 16,⁵⁵³ in view of the continued exercise of his responsibilities concerning recruitment,⁵⁵⁴ training⁵⁵⁵ and deployment of troops in the UPC/FPLC,⁵⁵⁶ which had children under the age of 15 years in its ranks.⁵⁵⁷ Moreover, Mr. Ntaganda, at least, should have known that these children were under the age of 15 years,⁵⁵⁸ considering that he personally visited training camps where children manifestly below this age were trained.⁵⁵⁹

134. Furthermore, Mr. Ntaganda acted with *dolus directus* in the second degree concerning the war crimes of rape and sexual slavery of UPC/FPLC child soldiers (counts 6 and 9). He was aware that the commission of these crimes would be the almost inevitable outcome of the implementation of the common plan, since girls below the age of 15 years were placed in UPC/FPLC camps together with male commanders and fighters,⁵⁶⁰ despite the fact that Mr. Ntaganda was in possession of

information of sexual violence committed against young girls by UPC/FPLC members.⁵⁶¹

Remaining Subjective Elements for Indirect Co-Perpetration

135. Lastly, the Chamber finds that the evidence establishes that the following two subjective elements for indirect co-perpetration have also been met: Mr. Ntaganda was aware and accepted that implementing the common plan would result in the fulfilment of the material elements of the crimes. As established previously, Mr. Ntaganda: (i) adopted the common plan together with other UPC/FPLC members;⁵⁶² (ii) regularly met those persons in the course of the implementation of the common plan;⁵⁶³ and (iii) acted with the requisite *mens rea* for the crimes by which the common plan was to be achieved to the extent specified above.⁵⁶⁴ Moreover, based on Mr. Ntaganda's high-ranking position in the UPC/FPLC⁵⁶⁵ and his dominant role as set out previously,⁵⁶⁶ he was also aware of the factual circumstances enabling him to exercise joint control over the commission of the crimes through other persons.

B. Article 25(3)(a) of the Statute – Direct Perpetration

136. The Chamber recalls that, in order to make a finding on Mr. Ntaganda's criminal responsibility based on the mode of liability of direct perpetration, it must be established that he physically carried out an objective element of the offence⁵⁶⁷ and that he acted with: (i) intent and knowledge pursuant to article 30 of the Statute, unless another subjective element is provided in the Statute or the Elements of Crimes; and (ii) a specific subjective element (*dolus specialis*) when required by a particular crime.

137. Based on the evidence presented, the Chamber finds that, along with his responsibility as an indirect co-perpetrator, Mr. Ntaganda bears criminal responsibility as a direct perpetrator under article 25(3)(a) of the Statute for the

crimes set forth in: (i) counts 1, 2, 3, 10, 11 and 17 in relation to particular instances in the *First Attack*; and (ii) counts 15 and 16 in relation to particular instances in the *Non-International Armed Conflict*. Moreover, as established previously,⁵⁶⁸ Mr. Ntaganda: (i) knew that his conduct was part of the widespread or systematic attack against the non-Hema civilian population or intended his conduct to be part thereof; and (ii) was aware of the factual circumstances that established the existence of the *Non-International Armed Conflict*. However, the Chamber does not find substantial grounds to believe that Mr. Ntaganda bears criminal responsibility as a direct perpetrator for the crimes contained in counts 1 to 3, 10 to 13, 17 and 18 in respect of the *Second Attack*.⁵⁶⁹

138. In relation to the *First Attack*, Mr. Ntaganda directly perpetrated murder (counts 1 and 2). He shot priest Boniface Bwanalunga several times in the head with a revolver behind his apartment in Kilo-Moto.⁵⁷⁰ The Chamber finds that Mr. Ntaganda acted with *dolus directus* in the first degree, considering that the use of a firearm against an unarmed person establishes that he meant to cause his death.⁵⁷¹ In addition, with respect to count 2, Mr. Ntaganda was aware of the factual circumstances establishing the status of the priest as a civilian taking no active part in hostilities, as the priest was: (i) taken by Mr. Ntaganda from Mongbwalu parish; (ii) dressed in civilian attire; and (iii) well-known in Mongbwalu.⁵⁷²

139. In addition, Mr. Ntaganda intentionally directed attacks against the civilian population as such or against civilians not taking direct part in hostilities in the course of the *First Attack* (count 3). During the UPC/FPLC advance on Sayo, many bodies were found in houses “because BOSCO [Ntaganda] had deployed his artillery” and he was “shooting at everything that was moving”.⁵⁷³ The Chamber finds that Mr. Ntaganda acted with *dolus directus* in the first degree and intended the civilian population as such to be the object of the attack, since he stated that everyone in Mongbwalu was to be considered an enemy⁵⁷⁴ and he subsequently put these words into effect by employing heavy weaponry without distinction.

140. Mr. Ntaganda also directly perpetrated pillaging during the *First Attack* (count 11). He appropriated: (i) a Land Cruiser jeep from Mongbwalu parish and other items;⁵⁷⁵ (ii) medical equipment and medication from a hospital in Mongbwalu;⁵⁷⁶ (iii) audio and video equipment, seen at his residence in Mongbwalu;⁵⁷⁷ and items from the church in Sayo.⁵⁷⁸ The Chamber finds that, in addition to *dolus directus* in the first degree, Mr. Ntaganda “specifically intended to deprive the owner of the property and to appropriate it for private or personal use”.⁵⁷⁹ In this regard, the evidence demonstrates that Mr. Ntaganda: (i) at a UPC/FPLC parade in Mabanga prior to the *First Attack*, used the expression “*piga na kuchaji*”, which specifically relates to the appropriation of property and precludes appropriations limited to military necessity because of its broad scope;⁵⁸⁰ and (ii) arranged for appropriated property to be transported from Mongbwalu to Bunia by aircraft.⁵⁸¹

141. In respect of count 17, the evidence pertaining to the pillaging of the parish and the hospital in Mongbwalu and the church in Sayo establishes, at the same time, that Mr. Ntaganda acted with *dolus directus* in the first degree. He specifically singled out these buildings to be targeted and subsequently attacked them. Moreover, as he had been at these places in person,⁵⁸² Mr. Ntaganda knew of the status of these objects as buildings dedicated to religion and a hospital.

142. As to count 10, the evidence reveals that Mr. Ntaganda directly committed the crime of persecution. By way of his direct perpetration of the aforementioned crimes in the *First Attack*,⁵⁸³ in conjunction with his overtly expressed hostility towards the Lendu,⁵⁸⁴ Mr. Ntaganda targeted the non-Hema group as such, and particularly the Lendu group, based on ethnic grounds.

143. The Chamber further finds that Mr. Ntaganda is a direct perpetrator of the crimes of enlisting and using children under the age of 15 years to participate actively in hostilities (counts 15 and 16). Several children under the age of 15 years from Bunia “were recruited by the UPC and, more precisely, by Bosco

NTAGANDA".⁵⁸⁵ These children went on to attend training at Mandro camp and took part in the *First Attack*.⁵⁸⁶ In addition, Mr. Ntaganda used children under the age of 15 years to participate actively in hostilities. Children below this age were under his direct command⁵⁸⁷ or in his escort.⁵⁸⁸ He used some of these children, for instance, to guard his places of residence⁵⁸⁹ and in combat operations, such as in: (i) Zumbe in October 2002;⁵⁹⁰ (ii) the *First Attack*;⁵⁹¹ and (iii) Bunia in March 2003.⁵⁹² Mr. Ntaganda acted with *dolus directus* in the first degree, in view of his persistent conduct over a prolonged period of time. In addition, Mr. Ntaganda, at least, should have known that these children were under the age of 15 years,⁵⁹³ since he interacted with them closely in his personal escort.

144. Finally, the Chamber finds that there are no substantial grounds to believe that Mr. Ntaganda can be held responsible as a direct perpetrator for any of the remaining crimes that he is charged with. The Prosecutor has not charged Mr. Ntaganda as a direct perpetrator of any of the crimes set forth in counts 4 to 9.⁵⁹⁴ Furthermore, the Prosecutor has not brought forward sufficient evidence establishing that Mr. Ntaganda carried out any of the objective elements of the crimes set forth in (i) counts 12, 13 and 18 in respect of the *First Attack*;⁵⁹⁵ and (ii) count 14 in respect of the *Non-International Armed Conflict*.⁵⁹⁶

C. Article 25(3)(b) of the Statute – Ordering

145. The Chamber recalls that, in order to make a finding on Mr. Ntaganda's criminal responsibility based on the mode of liability of ordering, the following objective and subjective elements must be fulfilled:

(a) the person is in a position of authority, (b) the person instructs another person in any form to either: (i) commit a crime which in fact occurs or is attempted or (ii) perform an act or omission in the execution of which a crime is carried out, (c) the order had a direct effect on the commission or attempted commission of the crime, and (d) the person is at least aware that the crime will be committed in the ordinary course of events as a consequence of the execution or implementation of the order.⁵⁹⁷

146. Based on the evidence presented, the Chamber finds that, in the alternative, Mr. Ntaganda ordered, pursuant to article 25(3)(b) of the Statute, the crimes set forth in: (i) counts 1 to 5, 10 to 13, and 17 during the *First Attack*; (ii) counts 1 to 5, 7, 8, 10, and 11 during the *Second Attack*; and (iii) count 16 during the *Non-International Armed Conflict*.

147. The Chamber finds that the first element pertaining to this mode of liability has been fulfilled.⁵⁹⁸ As described previously, Mr. Ntaganda occupied a high-ranking position in the UPC/FPLC, held significant responsibility, and ensured that breaches of the disciplinary rules of the UPC/FPLC were punished.⁵⁹⁹ Moreover, Mr. Ntaganda's position of authority also extended to Hema civilians, since he armed such persons and ordered them to engage in hostilities.⁶⁰⁰

148. The Chamber further finds that the second element has also been met. As stated previously, in connection with the *First Attack*, Mr. Ntaganda ordered UPC/FPLC members to commit: (i) murder (counts 1 and 2);⁶⁰¹ (ii) attacks against the civilian population as such or individual civilians not taking direct part in hostilities (count 3);⁶⁰² (iii) rape of civilians (counts 4 and 5);⁶⁰³ (iv) pillaging (count 11);⁶⁰⁴ (v) forcible transfer of population and displacement of the civilian population (counts 12 and 13);⁶⁰⁵ and (vi) attacks against buildings protected under article 8(2)(e)(iv) of the Statute (count 17).⁶⁰⁶ Moreover, during the *First Attack*, Mr. Ntaganda ordered young Hema civilians to commit murder (counts 1 and 2) and forcible transfer of population and displacement of the civilian population (counts 12 and 13).⁶⁰⁷ Considering that most of these orders were specifically directed against non-Hema civilians,⁶⁰⁸ Mr. Ntaganda also ordered persecution (count 10). Furthermore, the orders issued by Mr. Ntaganda at the Mabanga parade to shoot everybody and appropriate everything, including women,⁶⁰⁹ also applied to the *Second Attack*.⁶¹⁰ Thus, the Chamber finds that, in respect of the *Second Attack*, Mr. Ntaganda ordered UPC/FPLC members to commit: (i) murder (counts 1 and 2); (ii) intentionally directing attacks against the civilian population as such or against

individual civilians not taking direct part in hostilities (count 3); (iii) rape and sexual slavery of civilians (counts 4, 5, 7 and 8); (v) persecution (count 10); and (iv) pillaging (count 11). In addition, in the course of the *Non-International Armed Conflict*, Mr. Ntaganda ordered UPC/FPLC members to use children under the age of 15 years to participate actively in hostilities (count 16).⁶¹¹

149. The Chamber further concludes that the third element has also been established. In this regard, the Chamber recalls that, within the hierarchical structure of the UPC/FPLC,⁶¹² Mr. Ntaganda specifically required compliance with his orders⁶¹³ and even went as far as ordering the execution of disobedient subordinates or even executing them himself.⁶¹⁴ The fact that UPC/FPLC members committed these crimes⁶¹⁵ and also attempted to commit murder⁶¹⁶ further supports this conclusion, since it establishes that Mr. Ntaganda's orders were acted upon.

150. The Chamber finds that the fourth element has also been satisfied. Mr. Ntaganda repeatedly and unequivocally stated that the objective of his orders was the commission of the crimes described above.⁶¹⁷

151. Furthermore, the Chamber considers that the findings in relation to this mode of liability also concern the attempted acts of murder, as described previously in the present decision.⁶¹⁸ In addition, the Chamber finds that the instances of attempted murder resulted from Mr. Ntaganda's orders and that the crime of murder did not occur because of circumstances independent of the perpetrator's intentions, as stipulated in article 25(3)(f) of the Statute.

152. However, the Chamber notes that the Prosecutor has not provided sufficient evidence indicating that Mr. Ntaganda ordered others either to commit the following crimes or to perform acts in the course of which these crimes were committed: (i) count 18⁶¹⁹ during the *First Attack*; (ii) counts 12-13,⁶²⁰ 17⁶²¹ and 18⁶²² during the *Second Attack*; and (iii) counts 6 and 9,⁶²³ and 14-15⁶²⁴ during the *Non-International Armed Conflict*.

D. Article 25(3)(b) of the Statute – Inducing

153. The Chamber recalls that, in order to make a finding on Mr. Ntaganda's criminal responsibility for the mode of liability of inducing, the following objective and subjective elements must be fulfilled:

(a) the person exerts influence over another person to either commit a crime which in fact occurs or is attempted or to perform an act or omission as a result of which a crime is carried out; (b) the inducement has a direct effect on the commission or attempted commission of the crime; and (c) the person is at least aware that the crimes will be committed in the ordinary course of events as a consequence of the realisation of the act or omission.⁶²⁵

154. Based on the evidence presented, the Chamber finds that, in the alternative, pursuant to article 25(3)(b) of the Statute, Mr. Ntaganda induced the commission and/or the attempted commission of the crimes specified in the section on the mode of liability of ordering, as described below.

155. The Chamber finds that the first element pertaining to the mode of liability of inducing has been fulfilled. More specifically, the Chamber considers that the evidence relevant to the orders issued by Mr. Ntaganda to UPC/FPLC members and/or Hema civilians to commit crimes shows, alternatively, that Mr. Ntaganda exerted influence over them to commit these crimes,⁶²⁶ which in fact occurred⁶²⁷ and, in the case of murder, were also attempted.⁶²⁸ This conclusion is further supported by the fact that Mr. Ntaganda created an environment in which crimes against the Lendu in particular were encouraged or officially approved.⁶²⁹ The evidence establishes that, in his capacity as a high-ranking UPC/FPLC official, Mr. Ntaganda: (i) physically perpetrated crimes;⁶³⁰ (ii) openly used derogatory language against the Lendu;⁶³¹ and (iii) failed to take all necessary and reasonable measures to prevent and/or repress such crimes, as will be addressed below.⁶³²

156. On the basis of its previous findings in relation to the mode of liability of ordering,⁶³³ the Chamber also finds that the remaining two elements of the mode of liability of inducing have also been established.

157. Finally, the Chamber considers that the findings in relation to this mode of liability also concern the attempted acts of murder, as described previously in the present decision.⁶³⁴ In addition, the Chamber finds that the instances of attempted murder resulted from Mr. Ntaganda's inducement and that the crime of murder did not occur because of circumstances independent of the perpetrator's intentions, as stipulated in article 25(3)(f) of the Statute.

E. Article 25(3)(d) of the Statute – Contributing in any other way

158. The Chamber recalls that, in order to make a finding on Mr. Ntaganda's criminal responsibility based on the mode of liability set forth in article 25(3)(d) of the Statute, the following objective and subjective elements must be fulfilled:

- (a) a crime within the jurisdiction of the Court was attempted or committed;
- (b) a group of persons acting with a common purpose attempted to commit or committed this crime; (c) the individual contributed to the crime, in any way other than those set out in article 25(3)(a) to (c) of the Statute; (d) the said contribution was intentional; and (e) was made either (i) with the aim of furthering the criminal activity or criminal purpose of the group; or (ii) in the knowledge of the intention of the group to commit the crime.⁶³⁵

159. On the basis of the evidence presented, the Chamber finds that, in the alternative, Mr. Ntaganda is criminally responsible pursuant to article 25(3)(d) of the Statute for the crimes set forth in: (i) counts 1 to 5, 10 to 13, 17 and 18 during the *First Attack*; (ii) counts 1 to 5, 7, 8, 10 to 13, 17 and 18 during the *Second Attack*; and (iii) counts 6, 9 and 14 to 16, during the *Non-International Armed Conflict*.

160. The Chamber recalls its previous findings establishing that, during the period relevant to the charges, the crimes set out in counts 1 to 18 have been committed⁶³⁶ and/or attempted⁶³⁷ by UPC/FPLC forces and Hema civilians. Moreover, the

Chamber reiterates that the common plan agreed upon by various UPC/FPLC members to assume military and political control over Ituri was to be achieved through the commission of the crimes charged.

161. Further, the Chamber recalls its findings revealing that Mr. Ntaganda: (i) played an overall coordinating role before and during the *First Attack* (counts 1-5, 10-13 and 17-18);⁶³⁸ (ii) took part in devising the *Second Attack* and controlled the fighting from a distance (counts 1-5, 7-8, 10-13 and 17-18);⁶³⁹ and (iii) was responsible for the recruitment, training and deployment of troops within the UPC/FPLC,⁶⁴⁰ which had children under the age of 15 years within its ranks,⁶⁴¹ and where girls under the age of 15 years were placed in camps under the authority of male UPC/FPLC commanders⁶⁴² (counts 6, 9 and 14-16).

162. Moreover, the Chamber concludes that Mr. Ntaganda's contribution was intentional and that it was made, at least, in the knowledge of the intention of the group to commit the crimes set forth in counts 1 to 18, in view of the nature of the contribution provided by Mr. Ntaganda to said crimes and his continuous communication with his subordinates⁶⁴³ and persons from the group acting with a common purpose⁶⁴⁴ during the period relevant to the charges.

163. Finally, the Chamber clarifies that the findings in relation to this mode of liability also concern the acts of murder that were attempted, as described previously.⁶⁴⁵ The Chamber further specifies that its findings concerning the instances of attempted murder demonstrate that they resulted from the implementation of the common plan and that, in accordance with article 25(3)(f) of the Statute, the crime of murder did not occur because of circumstances independent of the perpetrator's intentions.

F. Article 28(a) of the Statute – Acting as a Military Commander

164. The Chamber recalls that, in order to make a finding on Mr. Ntaganda's criminal responsibility based on the mode of liability set forth in article 28(a) of the Statute, the following objective and subjective elements must be fulfilled:

(a) the suspect must be either a military commander or a person effectively acting as such; (b) the suspect must have effective command and control, or effective authority and control over the forces (subordinates) who committed one or more of the crimes set out in articles 6 to 8 of the Statute; (c) the crimes committed by the forces (subordinates) resulted from the suspect's failure to exercise control properly over them; (d) the suspect either knew or, owing to the circumstances at the time, should have known that the forces (subordinates) were committing or about to commit one or more of the crimes set out in article 6 to 8 of the Statute; and (e) the suspect failed to take the necessary and reasonable measures within his or her power to prevent or repress the commission of such crime(s) or failed to submit the matter to the competent authorities for investigation and prosecution.⁶⁴⁶

165. Based on the evidence presented, the Chamber finds that, in the alternative, Mr. Ntaganda is criminally responsible pursuant to article 28(a) of the Statute for the crimes set forth in: (i) counts 1 to 5, 10 to 13, 17 and 18 during the *First Attack*; (ii) counts 1 to 5, 7, 8, 10 to 13, 17 and 18 during the *Second Attack*; and (iii) counts 6, 9 and 14 to 16, during the *Non-International Armed Conflict*.

166. The Chamber concludes that, taken together, the first two elements have been satisfied. As stated previously, Mr. Ntaganda was a military commander in the UPC/FPLC and had effective command and control over the UPC/FPLC troops during the period relevant to the charges.⁶⁴⁷ The Chamber further specifies that, contrary to the submissions presented by the Defence,⁶⁴⁸ Mr. Ntaganda's command and control also extended over the civilians within the UPC/FPLC, considering that he possessed the capacity to order them to engage in hostilities.⁶⁴⁹ Mr. Ntaganda described certain of these civilians as "our combatants"⁶⁵⁰ and, in addition, he armed and instructed some of them to kill and oust the Lendu.⁶⁵¹

167. The Chamber further finds that the fourth element has also been met. For the reasons set out below, the evidence reveals that Mr. Ntaganda knew that UPC/FPLC members and/or Hema civilians were committing or about to commit the crimes specified by the Chamber previously.

168. In respect of the crimes committed during the *First Attack* and the *Second Attack*, the Chamber underlines that they were perpetrated over the course of several days, covered an extensive geographical area, and involved numerous victims.⁶⁵² Moreover, the evidence establishes that Mr. Ntaganda was physically present and commanded the UPC/FPLC troops in the *First Attack*.⁶⁵³ During the *Second Attack*, he controlled the fighting from Bunia,⁶⁵⁴ communicated with the troops on the ground,⁶⁵⁵ and informed his superiors of the progress of the operation.⁶⁵⁶

169. In addition, Mr. Ntaganda directly observed certain crimes committed by his subordinates or was informed thereof. Mr. Ntaganda knew of “*tous les viols, assassinats, les massacres, et tout ça*” committed by UPC/FPLC members.⁶⁵⁷ For example, during the *First Attack*, Mr. Ntaganda: (i) was present when UPC/FPLC troops shot a young girl who was fleeing and fired a heavy weapon at houses in Sayo;⁶⁵⁸ (ii) saw a civilian being removed from Sayo church and executed by his own bodyguards;⁶⁵⁹ and (iii) ordered pillaging by UPC/FPLC members to be halted after Mongbwalu was taken.⁶⁶⁰ In relation to the *Second Attack*, he became aware of the massacre committed under the direction of Mr. Mulenda in Kobu.⁶⁶¹ Moreover, in February 2003, Mr. Ntaganda ordered that the “wives” of UPC/FPLC members had to leave all UPC/FPLC camps.⁶⁶²

170. Further, with regard to the crimes of conscripting, enlisting and using children under the age of 15 years to participate actively in hostilities, as well as rape and sexual slavery of UPC/FPLC child soldiers, the Chamber reiterates that they continued over several months against a large number of victims.⁶⁶³ The UPC/FPLC also had an entire unit made up of children, some of whom were under the age of

15 years.⁶⁶⁴ In addition, Mr. Ntaganda interacted closely with other senior UPC/FPLC officials who had children below this age in their escorts.⁶⁶⁵ The evidence further reveals that Mr. Ntaganda: (i) “believed that there were children in the UPC movement”;⁶⁶⁶ (ii) was aware of the recruitment process of the UPC/FPLC;⁶⁶⁷ and (iii) regularly visited training camps,⁶⁶⁸ where, *inter alia*, children under the age of 15 years were trained.⁶⁶⁹ Furthermore, Mr. Ntaganda knew of sexual violence against UPC/FPLC child soldiers⁶⁷⁰ and he was, in particular, aware of the rape of a 12 or 13-year-old girl from his escort by his chief of security.⁶⁷¹

171. Finally, the Chamber also finds that, considered collectively, the third and fifth elements have been established. According to the evidence, Mr. Ntaganda either failed to react to crimes or took inadequate measures, in spite of his influential position in the UPC/FPLC and his demonstrated ability to adopt far-reaching measures.⁶⁷²

172. Mr. Ntaganda did not: (i) reprimand anyone for attacks against Lendu civilians during UPC/FPLC operations; (ii) act to prevent any crimes against Lendu civilians through, for instance, orders not to harm them; or (iii) investigate crimes committed against civilians.⁶⁷³ More specifically, in the *First Attack*, acts of rape⁶⁷⁴ and killing⁶⁷⁵ went unpunished and Mr. Ntaganda did not prevent the killing of prisoners.⁶⁷⁶ In addition, with regard to the *Second Attack*, not a single subordinate,⁶⁷⁷ including Mr. Mulenda,⁶⁷⁸ was punished for the Kobu massacre. Furthermore, in respect of the crimes of conscripting, enlisting and using children under the age of 15 years to participate actively in hostilities, as well as rape and sexual slavery of UPC/FPLC child soldiers, Mr. Ntaganda: (i) did not order the demobilisation of children under the age of 15 years;⁶⁷⁹ and (ii) protected his chief of security after the latter had raped a 12 or 13 year old girl from his own escort.⁶⁸⁰

173. The Chamber further finds that the limited measures taken by Mr. Ntaganda fall short of necessary and reasonable measures within his power. Disciplinary

measures were adopted to redress the failure of UPC/FPLC members to comply with orders⁶⁸¹ or because some of them were suspected enemies⁶⁸² and they were, therefore, not taken in response to the crimes charged. In particular, whilst Mr. Ntaganda ordered the arrest of several UPC/FPLC members suspected of attempted rape on 21 December 2002,⁶⁸³ he subsequently informed one of these persons that he was promoted on 11 February 2003,⁶⁸⁴ which indicates, at least, that this person was not subject to punishment. In addition, despite Mr. Ntaganda's order to halt pillaging in the *First Attack*,⁶⁸⁵ high-ranking UPC/FPLC commanders continued to pillage and no one was in fact punished for such conduct.⁶⁸⁶

174. The aforementioned failures of Mr. Ntaganda increased the risk of the commission of crimes by UPC/FPLC members during the time-frame relevant to the charges.⁶⁸⁷ As a powerful military commander,⁶⁸⁸ he omitted to act in response to serious crimes against non-Hema civilians, which rendered the disciplinary system of the UPC/FPLC⁶⁸⁹ or any other measures ineffective in relation to such conduct.

175. Finally, the Chamber considers that the findings in relation to this mode of liability also concern the attempted acts of murder, as described previously in the present decision.⁶⁹⁰ In addition, the Chamber finds that the instances of attempted murder resulted from the acts of Mr. Ntaganda's subordinates and that the crime of murder did not occur because of circumstances independent of the perpetrators' intentions, as stipulated in article 25(3)(f) of the Statute.

FOR THESE REASONS THE CHAMBER HEREBY:

- a) **decides** that it has jurisdiction over the present case and **determines** that the case is admissible; and
- b) **decides** to confirm, pursuant to article 61(7) of the Statute, the charges presented by the Prosecutor against Bosco Ntaganda to the extent specified in paragraphs 12, 31, 36, 74 and 97 of the present decision and to commit Bosco Ntaganda to a Trial Chamber for trial on the charges as confirmed.

Done in both English and French, the English version being authoritative.



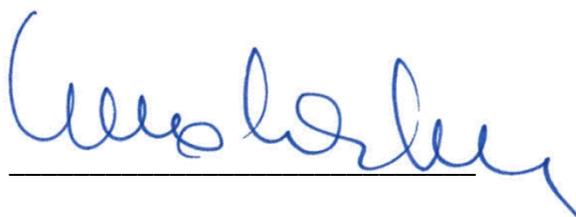
Judge Ekaterina Trendafilova

Presiding Judge



Judge Hans-Peter Kaul

Judge



Judge Cuno Tarfusser

Judge

Dated this Monday, 9 June 2014

At The Hague, The Netherlands

¹ Pre-Trial Chamber I, “Decision on the Prosecution Application for a Warrant of Arrest”, 22 August 2006, ICC-01/04-02/06-1-US-Exp-tEN; a redacted version is also available, see Pre-Trial Chamber I, “[Decision on the Prosecution Application for a Warrant of Arrest](#)”, 6 March 2007, ICC-01/04-02/06-1-Red-tENG. A warrant of arrest was issued alongside this decision, see Pre-Trial Chamber I, “[Mandat d’arrêt](#)”, 22 August 2006, ICC-01/04-02/06-2; and “[Warrant of Arrest](#)”, 22 August 2006, ICC-01/04-02/06-2-Anx-tENG. The warrant of arrest was initially issued under seal. On 28 April 2008, Pre-Trial Chamber I decided to unseal the warrant of arrest, see “[Decision to Unseal the Warrant of Arrest against Bosco Ntaganda](#)”, ICC-01/04-02/06-18. A redacted version of the initially under seal warrant of arrest had also been issued by Pre-Trial Chamber I at the time. The redacted warrant of arrest was made public upon instruction of Pre-Trial Chamber I dated 29 September 2010, see “[Mandat d’arrêt – Corrigendum](#)”, 7 March 2007, ICC-01/04-02/06-2-Corr-Red; an English version is also available, see “[Warrant of arrest – Corrigendum](#)”, ICC-01/04-02/06-2-Corr-tENG-Red.

² Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-02/06-36-Conf-Exp; a public redacted version is also available, see Pre-Trial Chamber II, “[Decision on the Prosecutor’s Application under Article 58](#)”, 13 July 2012, ICC-01/04-02/06-36-Red.

³ Pre-Trial Chamber II, “[Decision on Setting the Date for the Initial Appearance and Related Issues](#)”, 22 March 2013, ICC-01/04-02/06-41, para. 7.

⁴ Pre-Trial Chamber II, [Transcript of Hearing](#), 26 March 2013, ICC-01/04-02/06-T-2-ENG.

⁵ DCC, [ICC-01/04-02/06-203-AnxA](#).

⁶ [ICC-01/04-02/06-203-AnxB](#).

⁷ Pre-Trial Chamber II, “[Decision on the Defence Urgent Request of 14 January 2014](#)”, 14 January 2014, ICC-01/04-02/06-209.

⁸ ICC-01/04-02/06-217-Conf-AnxC.

⁹ [ICC-01/04-02/06-227-AnxA](#).

¹⁰ ICC-01/04-02/06-227-Conf-AnxB.

¹¹ ICC-01/04-02/06-253 with one public and one confidential annex.

¹² Pre-Trial Chamber II, “[Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’ and Setting a New Calendar for the Disclosure of Evidence between the Parties](#)”, 17 June 2013, ICC-01/04-02/06-73, p. 19; Pre-Trial Chamber II, [Transcript of Hearing](#), 10 February 2014, ICC-01/04-02/06-T-7-ENG; Pre-Trial Chamber II, [Transcript of Hearing](#), 10 February 2014, ICC-01/04-02/06-T-7Bis-ENG; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8-Red-ENG; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG; Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG; Pre-Trial Chamber II, [Transcript of Hearing](#), 13 February 2014, ICC-01/04-02/06-T-10-Red-ENG; Pre-Trial Chamber II, [Transcript of Hearing](#), 14 February 2014, ICC-01/04-02/06-T-11-ENG. See also the presentations of evidence of the parties at the Hearing as filed in the case record, see [ICC-01/04-02/06-258](#) with fifteen public annexes and four confidential annexes; [ICC-01/04-02/06-263](#) with two public annexes and four confidential annexes.

¹³ ICC-01/04-02/06-276-Conf with confidential annexes A, B and C. A public redacted version was filed on 24 March 2014, see [ICC-01/04-02/06-276-Red](#).

¹⁴ [ICC-01/04-02/06-273](#); [ICC-01/04-02/06-275](#).

¹⁵ ICC-01/04-02/06-292-Conf-Exp. A confidential redacted version is also available, see ICC-01/04-02/06-292-Conf-Red; a public redacted version of said document was filed on 14 April 2014, see [ICC-01/04-02/06-292-Red2](#).

¹⁶ For the threshold of substantial grounds to believe, see, for example, Appeals Chamber, “[Judgment on the appeal of the Prosecutor against the ‘Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir’](#)”, 3 February 2010, ICC-02/05-01/09-73, para. 30; Pre-Trial Chamber II, “[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)”, 23 January 2012, ICC-01/09-02/11-382-Red, para. 52; Pre-Trial Chamber I,

["Decision adjourning the hearing on the confirmation of charges pursuant to article 61\(7\)\(c\)\(i\) of the Rome Statute"](#), 3 June 2013, ICC-02/11-01/11-432, para. 17.

¹⁷ Pre-Trial Chamber I, ["Decision on the confirmation of charges"](#), 29 January 2007, ICC-01/04-01/06-803-tENG, para. 39.

¹⁸ See, for example, Pre-Trial Chamber II, ["Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo"](#), 15 June 2009, ICC-01/05-01/08-424, para. 29; Pre-Trial Chamber II, ["Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute"](#), 23 January 2012, ICC-01/09-02/11-382-Red, para. 52; Pre-Trial Chamber I, ["Decision adjourning the hearing on the confirmation of charges pursuant to article 61\(7\)\(c\)\(i\) of the Rome Statute"](#), 3 June 2013, ICC-02/11-01/11-432, para. 17.

¹⁹ For the relevant evidentiary principles, see, for example, Pre-Trial Chamber I, ["Decision on the confirmation of charges"](#), 29 January 2007, ICC-01/04-01/06-803-tENG; Pre-Trial Chamber I, ["Decision on the confirmation of charges"](#), 30 September 2008, ICC-01/04-01/07-717; Pre-Trial Chamber II, ["Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo"](#), 15 June 2009, ICC-01/05-01/08-424, paras 45-62; Pre-Trial Chamber II, ["Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute"](#), 23 January 2012, ICC-01/09-02/11-382-Red, paras 66-92; Appeals Chamber, ["Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges'"](#), 30 May 2012, ICC-01/04-01/10-514; Appeals Chamber, ["Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 3 June 2013 entitled 'Decision adjourning the hearing on the confirmation of charges pursuant to article 61\(7\)\(c\)\(i\) of the Rome Statute'"](#), 16 December 2013, ICC-02/11-01/11-572.

²⁰ For the purposes of the decision, the Chamber has used the acronyms UPC, FPLC and UPC/FPLC interchangeably, thus referring to one and the same entity.

²¹ See paragraph 3, third sentence, of the Introduction to Crimes against Humanity in the Elements of Crimes and related footnote 6.

²² For the notion of civilians or civilian population, see, for example, Pre-Trial Chamber II, ["Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo"](#), 15 June 2009, ICC-01/05-01/08-424, paras 77-78; Pre-Trial Chamber I, ["Decision on the confirmation of charges"](#), 30 September 2008, ICC-01/04-01/07-717, para. 399.

²³ The Chamber points out that the evidence refers to the non-Hema targeted population either by identifying the precise ethnic groups that were targeted (such as Lendu, Bira, Ngiti) or by using the expression *non-originaires*, namely persons who were perceived to be historically not from the territory of Ituri.

²⁴ For the notion of widespread or systematic attack, see, for example, Pre-Trial Chamber II, ["Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo"](#), 15 June 2009, ICC-01/05-01/08-424, para. 83; Pre-Trial Chamber II, ["Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya"](#), 31 March 2010, ICC-01/09-19-Corr, paras 95-96; Pre-Trial Chamber I, ["Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir"](#), 4 March 2009, ICC-02/05-01/09-3, para. 81; Pre-Trial Chamber I, ["Decision on the confirmation of charges"](#), 30 September 2008, ICC-01/04-01/07-717, paras 394-398; Pre-Trial Chamber II, ["Corrigendum to 'Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire'"](#), 15 November 2011, ICC-02/11-14-Corr, paras 53-54.

²⁵ The Chamber clarifies that, in this section of the decision it makes findings on facts for the purposes of establishing the existence of an organization within the meaning of article 7 of the Statute.

²⁶ "Union Des Patriotes Congolais, UPC, Statuts", 15 September 2000, EVD-PT-OTP-01543, at 0039, at 0042-0046; Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4739; "Examens de test UPC/RP", 9 December 2002, EVD-PT-OTP-01690, at 0704.

²⁷ “Union Des Patriotes Congolais, UPC, Statuts”, 15 September 2000, EVD-PT-OTP-01543, at 0039; “Examens de test UPC/RP”, 9 December 2002, EVD-PT-OTP-01690, at 0704.

²⁸ Trial Chamber I, [“Judgment pursuant to Article 74 of the Statute”](#), 14 March 2012, ICC-01/04-01/06-2842, paras 81, 1115-1116; “UPC letter transmitting a UPC decree”, 9 June 2003, EVD-PT-OTP-00958; “UPC decree”, 2 December 2002, EVD-PT-OTP-00938; “UPC decree”, 3 September 2002, EVD-PT-OTP-02544, at 0055-0056.

²⁹ Trial Chamber I, [“Judgment pursuant to Article 74 of the Statute”](#), 14 March 2012, ICC-01/04-01/06-2842, para. 1115; Transcript of testimony of witness P-0016, EVD-PT-OTP-06139, at 1348; Statement of witness P-0005, EVD-PT-OTP-04084, at 0087, para. 142; “Examens de test UPC/RP”, 9 December 2002, EVD-PT-OTP-01690, at 0704.

³⁰ Trial Chamber I, [“Judgment pursuant to Article 74 of the Statute”](#), 14 March 2012, ICC-01/04-01/06-2842, para. 1115.

³¹ Trial Chamber I, [“Judgment pursuant to Article 74 of the Statute”](#), 14 March 2012, ICC-01/04-01/06-2842, para. 1115; Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1450; Statement of witness P-0005, EVD-PT-OTP-04084, at 0087, para. 142.

³² Trial Chamber I, [“Judgment pursuant to Article 74 of the Statute”](#), 14 March 2012, ICC-01/04-01/06-2842, para. 1172; Transcript of interview of witness P-0055, EVD-PT-OTP-04623, at 0337; Transcript of testimony of witness P-0012, EVD-PT-OTP-06125, at 0118; Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1451; Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1941; Diagram by witness P-0005, “Structure et Organisation de l’UPC”, EVD-PT-OTP-04085; Statement of witness P-0005, EVD-PT-OTP-04084, at 0088, para. 151.

³³ Trial Chamber I, [“Judgment pursuant to Article 74 of the Statute”](#), 14 March 2012, ICC-01/04-01/06-2842, para. 1172; Transcript of interview of witness P-0055, EVD-PT-OTP-04623, at 0337 and EVD-PT-OTP-06506, at 1063-1064; Transcript of testimony of witness P-0012, EVD-PT-OTP-06125, at 0118; Diagram by witness P-0005, “Structure et Organisation de l’UPC”, EVD-PT-OTP-04085, at 0126; Statement of witness P-0005, EVD-PT-OTP-04084, at 0088, para. 151; Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0092.

³⁴ See UPC, “Aide Mémoire à l’intention du Sir Ketumile Masire Facilitateur Neutre du Dialogue Intercongolais”, 22 October 2002, EVD-PT-OTP-00414, at 0271; UPC, “Déclaration officielle de l’UPC/RP N° UPC-RP/05/2002 à propos de la tenue du dialogue inter congolais global et inclusif”, 22 October 2002, EVD-PT-OTP-03785, at 0452.

³⁵ Statement of witness P-0016, EVD-PT-OTP-02701, at 0427, para. 34; Transcript of testimony of witness D-0037, EVD-PT-D18-00004, at 0213; Transcript of testimony of witness P-0014, EVD-PT-OTP-06129, at 0490 and 0493, EVD-PT-OTP-06130, at 0567-0568.

³⁶ Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4734-4735; Transcript of interview of witness P-0017, EVD-PT-OTP-04144, at 0079-0084; Transcript of interview of witness P-0055, EVD-PT-OTP-04627, at 0443-0446; Diagram by witness P-0005, “Armée de l’UPC/FPLC”, EVD-PT-OTP-04088; Statement of witness P-0005, EVD-PT-OTP-04084, at 0092, para. 184; Statement of witness P-0290, EVD-PT-OTP-04028, at 0314, para. 47; Logbook messages, EVD-PT-OTP-03975, at 1076 and 1078.

³⁷ Transcript of interview of witness P-0017, EVD-PT-OTP-04133, at 1542 and EVD-PT-OTP-04144, at 0079-0084; Statement of witness P-0016, EVD-PT-OTP-02701, at 0435-0436, para. 76; Transcript of interview of witness P-0055, EVD-PT-OTP-04627, at 0440-0442, at 0448-0449.

³⁸ The evidence refers to these staff members as G staff, T staff (at the level of brigades) and S staff (at the battalion level). See Statement of witness P-0005, EVD-PT-OTP-04084, at 0092, paras 185-186; Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1941, 1943-1945; Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4733-4734; Transcript of interview of witness P-0055, EVD-PT-OTP-04623, at 0335-0340.

³⁹ Transcript of interview of witness P-0055, EVD-PT-OTP-04626, at 0413-0415, EVD-PT-OTP-04642, at 0767-0772; Transcript of interview of witness P-0768, EVD-PT-OTP-06482, at 0469, EVD-PT-OTP-06489, at 0622-0623.

⁴⁰ Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2357-2361; Statement of witness P-0016, EVD-PT-OTP-02701, at 0432, para. 55; Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0519-0522, EVD-PT-OTP-06485, at 0547-0548; Statement of witness P-0290, EVD-PT-OTP-04357, at 0425 commenting on the logbook message, EVD-PT-OTP-00263, at 0058; Logbook message, EVD-PT-OTP-03975, at 1070, third message.

⁴¹ Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4747; Statement of witness P-0805, EVD-PT-OTP-06380, at 1097, para. 16; Transcript of interview of witness P-0290, EVD-PT-OTP-06408, at 1252, commenting on the logbook message EVD-PT-OTP-03975, at 1107.

⁴² Statement of witness P-0290, EVD-PT-OTP-04028, at 0315, para. 53; Transcript of interview of witness P-768, EVD-PT-OTP-06483, at 0488-0491; Statement of witness P-0016, EVD-PT-OTP-02701, at 0463, para. 236; Transcript of interview of witness P-0055, EVD-PT-OTP-04627, at 0453-0455.

⁴³ Statement of witness P-0014, EVD-PT-OTP-03854, at 1057, paras 257-258; Transcript of interview of witness P-0017, EVD-PT-OTP-04144, at 0084 and 0096, EVD-PT-OTP-04133, at 1557; Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2172; Statement of witness P-0016, EVD-PT-OTP-02701, at 0452, para. 173, at 0467, paras 260 and 264; Transcript of interview of witness P-0055, EVD-PT-OTP-04627, at 0450; Transcript of interview of witness P-768, EVD-PT-OTP-06493, at 0710-0711; Statement of witness P-0758, EVD-PT-OTP-06335, at 0206-0207, paras 75, 78; Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4747-4748.

⁴⁴ Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2361-2365, EVD-PT-OTP-04144, at 0084; Statement of witness P-0016, EVD-PT-OTP-02701, at 0467, para. 264; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1052-1056; Transcript of testimony of witness P-0055, EVD-PT-OTP-06213, at 7471-7472.

⁴⁵ Logbook, EVD-PT-OTP-00263 and EVD-PT-OTP-03975 (translation); Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2361-2365; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1052-1056, EVD-PT-OTP-04627, at 0455-0457; Transcript of testimony of witness P-0055, EVD-PT-OTP-06213, at 7475-7476.

⁴⁶ Transcript of interview of witness P-0038, EVD-PT-OTP-03732, at 2722-2723; Statement of witness P-0016, EVD-PT-OTP-02701, at 0452, para. 173; Transcript of interview of witness P-0017, EVD-PT-OTP-04137, at 1671-1673.

⁴⁷ With the expression “north Hema”, the Chamber refers to Gegere individuals, who represent the northern branch of the Hema ethnic group, a sub-clan of the Hema. See in this regard Human Rights Watch Report, “The Curse of Gold Democratic Republic of Congo”, 2005, EVD-PT-OTP-00781, at 0650, footnote 2.

⁴⁸ Statement of witness P-0014, EVD-PT-OTP-03854, at 1003, para. 15; Human Rights Watch Report, “Ituri: ‘Covered in blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0825; Statement of witness P-0016, EVD-PT-OTP-02701, at 0439, para. 97; Statement of witness P-0041, EVD-PT-OTP-03268, at 0017, para. 89, at 0018, para. 94, at 0021, para. 111; Transcript of interview of witness P-0055, EVD-PT-OTP-04624, at 0379; Statement of witness P-0012, EVD-PT-OTP-01890, at 0112, para. 151; Statement of witness P-0043, EVD-PT-OTP-02686, at 0092, para. 35.

⁴⁹ Statement of witness P-0041, EVD-PT-OTP-03268, at 0024, para. 132; Statement of witness P-0005, EVD-PT-OTP-04084, at 0116-0117, paras 325 and 329; Statement of witness P-0016, EVD-PT-OTP-02701, at 0454-0455, paras 187-193.

⁵⁰ Statement of witness P-0012, EVD-PT-OTP-01890, at 0110-0111, paras 141 and 147; Transcript of interview of witness P-0055, EVD-PT-OTP-04625, at 0387-0388; Statement of witness P-0024, EVD-PT-OTP-02698, at 0197, para. 40; Statement of witness P-0005, EVD-PT-OTP-04084, at 0118, para. 334.

⁵¹ Handwritten notes by witness P-0017, EVD-PT-OTP-03936; Transcript of interview of witness P-0017, EVD-PT-OTP-04144, at 0083-0084; Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0478-0479; MONUC document, 9 October 2003, EVD-PT-OTP-04792, at 1666; Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4742-4743; Transcript of interview of witness P-

0290, EVD-PT-OTP-06417, at 1477-1478; Human Rights Watch Report, "Ituri: 'Covered in blood', Ethnically Targeted Violence in Northeastern DR Congo", July 2003, EVD-PT-OTP-00782, at 0851; Statement of witness P-0005, EVD-PT-OTP-04084, at 0092, para. 185.

⁵² Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4742, EVD-PT-OTP-06182, at 4832, EVD-PT-OTP-06183, at 4856; Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1964; Transcript of interview of witness P-0017, EVD-PT-OTP-04140, at 0015; Transcript of interview of witness P-0055, EVD-PT-OTP-04633, at 0581-0585; Statement of witness P-0005, EVD-PT-OTP-04084, at 0095, para. 201; Statement of witness P-0014, EVD-PT-OTP-03854, at 1039, para. 173.

⁵³ Statement of witness P-0005, EVD-PT-OTP-04084, at 0093, para. 191; Notes of witness P-0017, EVD-PT-OTP-06115, at 0030-0036; Transcript of interview of witness P-0017, EVD-PT-OTP-06285, at 0751-0761; Statement of witness P-0012, EVD-PT-OTP-01890, at 1006, paras 118 and 120; Statement of witness P-0758, EVD-PT-OTP-06335, at 0207, para. 80; Statement of witness P-0016, EVD-PT-OTP-02701, at 0455, para. 195; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0531, EVD-PT-OTP-06492, at 0692-0694, EVD-PT-OTP-06489, at 0610-0614.

⁵⁴ Transcript of interview of witness P-0017, EVD-PT-OTP-04135, at 1615; Transcript of testimony of witness P-0012, EVD-PT-OTP-06125, at 0116; Statement of witness P-0014, EVD-PT-OTP-03854, at 1052, para. 233; Statement of witness P-0016, EVD-PT-OTP-02701, at 0446, para. 130; Transcript of interview of witness P-0055, EVD-PT-OTP-06503, at 0976-0978; Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0662.

⁵⁵ Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1072.

⁵⁶ Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1078.

⁵⁷ Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1072, 1075-1077;

⁵⁸ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0517-0519, EVD-PT-OTP-06483, at 0499.

⁵⁹ Trial Chamber I, "[Judgment pursuant to Article 74 of the Statute](#)", 14 March 2012, ICC-01/04-01/06-2842, para. 89; Transcript of testimony of witness P-0014, EVD-PT-OTP-06130, at 0561-0563.

⁶⁰ Transcript of testimony of witness P-0014, EVD-PT-OTP-06130, at 0570-0571.

⁶¹ Statement of witness P-0014, EVD-PT-OTP-00702, at 0023, para. 103; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0436-0437, para. 37.

⁶² Transcript of testimony of witness P-0014, EVD-PT-OTP-06132, at 0752; Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0644.

⁶³ Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG, pp. 75-77.

⁶⁴ Statement of witness P-0014, EVD-PT-OTP-03854, at 1003, para. 12.

⁶⁵ Statement of witness P-0014, EVD-PT-OTP-03854, at 1003, para. 12; Statement of witness P-0012, EVD-PT-OTP-01890, at 0116, para. 169; Statement of witness P-0043, EVD-PT-OTP-02686, at 0090-0091, para. 26; Statement of witness P-0005, EVD-PT-OTP-04084, at 0085, para. 132.

⁶⁶ Statement of witness P-0016, EVD-PT-OTP-02701, at 0436, paras 80-83; Transcript of interview of witness P-0038, EVD-PT-OTP-03734, at 2764-2765, EVD-PT-OTP-06236, at 0143; Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0519, EVD-PT-OTP-06483, at 0499; Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1071; Amnesty International Report, "Democratic Republic of Congo, Ituri: A need for protection, a thirst for justice", 21 October 2003, EVD-PT-OTP-00301, at 0159-0160.

⁶⁷ Statement of witness P-0758, EVD-PT-OTP-06335, at 0210, para. 101.

⁶⁸ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0498-0501, EVD-PT-OTP-06486, at 0564-0567, EVD-PT-OTP-06422, at 1633, EVD-PT-OTP-06484, at 0517-0518, EVD-PT-OTP-06423, at 1642.

⁶⁹ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094.

⁷⁰ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1026-1028; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0502-0504.

⁷¹ Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0502-0504; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1028. From an overall assessment of the evidence, the Chamber understands the order to pillage everything, including women, as applying exclusively to the property and women perceived to belong to the non-Hema population.

⁷² Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0504-0505.

⁷³ “Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004”, EVD-PT-OTP-04905, at 0313.

⁷⁴ Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG, p. 73, lines 10-13.

⁷⁵ See paras 25-30.

⁷⁶ Statement of witness P-0012, EVD-PT-OTP-01890, at 0107, paras 125-126; Statement of witness P-0014, EVD-PT-OTP-00702, at 0020, para. 92.

⁷⁷ Statement of witness P-0012, EVD-PT-OTP-01890, at 0107, paras 123-126; Statement of witness P-0014, EVD-PT-OTP-00702, at 0019-0020, paras 87-88, 90.

⁷⁸ The APC was the armed wing of the *Rassemblement Congolais pour la Démocratie-Kisangani/Mouvement de Libération* (which was already known as RCD/ML). For the purpose of this decision the Chamber refers to the APC as the armed wing of this political party, although in some sources of evidence it is referred to as RCD-K/ML or RCD/ML. See Statement of witness P-0031, EVD-PT-OTP-03746, at 0013, para. 42; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0439, paras 46, 49; “En Ituri, les affrontements ne sont pas interethniques”, EVD-PT-OTP-00992, at 0444; Amnesty International, Democratic Republic of Congo, “On the precipice: the deepening human rights and humanitarian crisis in Ituri”, March 2003, EVD-PT-OTP-03498, at 1315.

⁷⁹ Statement of witness P-0014, EVD-PT-OTP-00702, at 0023-0024, paras 103, 105; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0436, para. 37, at 0455, para. 119; UN Joint Mission Analysis Center Profile of Bosco Tanganda, EVD-PT-OTP-03304, at 0437-0438; Human Rights Watch Report, “UPC Crimes in Ituri (2002 2003)”, 8 November 2006, EVD-PT-OTP-04498, at 1313; Human Rights Watch Report, “Ituri: ‘Covered in Blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0823-0825; Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0296, para. 25; Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0449-0450, para. 411.

⁸⁰ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0439, para. 49.

⁸¹ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0439, para. 47, at 0455, para. 119.

⁸² UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0455, para. 119.

⁸³ Statement of witness P-0014, EVD-PT-OTP-00702, at 0028, para. 127; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0436-0437, para. 37.

⁸⁴ Statement of witness P-0014, EVD-PT-OTP-00702, at 0023, paras 103-104; Human Rights Watch Report, “Ituri: ‘Covered in Blood’ Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0823-0824; Human Rights Watch Report, “UPC Crimes in Ituri (2002 2003)”, 8 November 2006, EVD-PT-OTP-04498, at 1313; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0439-0440, paras 47, 49.

⁸⁵ Statement of witness P-0056, EVD-PT-OTP-03530, at 0419, para. 58; UN Ntaganda Profile, EVD-PT-OTP-00064, at 0079, paras 13-14; “Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004”, EVD-PT-OTP-04905, at 0311.

⁸⁶ Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0451.

⁸⁷ “Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004”, EVD-PT-OTP-04905, at 0311; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0440, para. 51; Human Rights Watch Report, “Ituri: ‘Covered in Blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0827.

⁸⁸ UN Joint Mission Analysis Center Profile of Bosco Tanganda, EVD-PT-OTP-03304, at 0437; “Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004”, EVD-PT-OTP-04905, at 0311; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0440, para. 51; Human Rights Watch Report, “Ituri: ‘Covered in Blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0827.

⁸⁹ Statement of witness P-0012, EVD-PT-OTP-01890, at 0148-0149, para. 347.

⁹⁰ Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0539, para. 605.

⁹¹ “Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004”, EVD-PT-OTP-04905, at 0311; Human Rights Watch Report, “Ituri: ‘Covered in Blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0827; Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0451; Letter to the President of RCD-K/ML, 15 November 2002, EVD-PT-OTP-04760, at 0350.

⁹² Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0451; “Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004”, EVD-PT-OTP-04905, at 0311.

⁹³ Human Rights Watch Report, “Ituri: ‘Covered in Blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0827.

⁹⁴ Statement of witness P-0046, EVD-PT-OTP-06242, at 0243, para. 80, at 0246, para. 1140; MONUC Report, “Individual Case Story – Bunia (Ituri)”, 26 March 2003, EVD-PT-OTP-05006, at 0286; Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0452, para. 414; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0442-0443, paras 62-63.

⁹⁵ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0442-0443, paras 62-63 (125 civilians reported as killed); Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0452, para. 414 (180 people, including civilians reported killed); International Crisis Group Report, “Congo: Quatre priorités pour une paix durable en Ituri”, 13 May 2008, EVD-PT-OTP-06059, at 0062.

⁹⁶ Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la

République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0452, para. 414; Letter to the President of RCD-K/ML, 15 November 2002, EVD-PT-OTP-04760, at 0351.

⁹⁷ Rapport du Projet Mapping concernant les violations les plus graves des droits de l'homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0452, para. 414; Letter to the President of RCD-K/ML, 15 November 2002, EVD-PT-OTP-04760, at 0351.

⁹⁸ Rapport du Projet Mapping concernant les violations les plus graves des droits de l'homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0452, para. 414.

⁹⁹ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0442-0443, paras 62-63; List of victims from Bedu-Ezekere groupement, EVD-PT-OTP-00022, at 0004.

¹⁰⁰ Statement of witness P-0046, EVD-PT-OTP-06242, at 0240, para. 112, at 0242, para. 123, at 0246, para. 140; MONUC Report, "Individual Case Story – Bunia (Ituri)", 26 March 2003, EVD-PT-OTP-05006, at 0314, at 0316, at 0346; UN MONUC, Final Report of the Special Investigation Team on the Events of Mambasa 31 December 2002 to 20 January 2003, EVD-PT-OTP-01844, at 0317, para. 6; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452-0454, paras 105-112.

¹⁰¹ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452-0453, paras 105-106.

¹⁰² UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452-0453, para. 106.

¹⁰³ Statement of witness P-0046, EVD-PT-OTP-06242, at 0233-0234, paras 77, 79; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0453, para. 108-109; UN MONUC, Final Report of the Special Investigation Team on the Events of Mambasa 31 December 2002 to 20 January 2003, EVD-PT-OTP-01844, at 0318, paras 9-10, at 0324, para. 43, at 0326-0327, paras 56-61, at 0332, para. 96.

¹⁰⁴ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452, para. 102; Letter from Abbé Roger Tsorovesorov "De la disparition de l'Abbé Boniface Bwanalongba à la paroisse de Mongbwalu du diocèse de Bunia en République Démocratique au Congo", 18 January 2003, EVD-PT-OTP-02721, at 0118; Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0666.

¹⁰⁵ See Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4750; Transcript of interview of witness P-0768, EVD-PT-OTP-06486, at 0559-0561, EVD-PT-OTP-06483, at 0492; Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1999, line 22; Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0642; MONUC, Daily Report 22-24 November 2002, 25 November 2002, EVD-PT-OTP-00635, at 0333, para. 11; "En Ituri, les affrontements ne sont pas interethniques", EVD-PT-OTP-00992, at 0444.

¹⁰⁶ Statement of witness P-0018, EVD-PT-OTP-01816, at 0119-0124, paras 16-38, EVD-PT-OTP-06083, at 0178, para. 14; Statement of witness P-0019, EVD-PT-OTP-03978, at 1518-1520, paras 22-37; Rapport final d'investigation sur les événements de Drodoro du 03 avril 2003, EVD-PT-OTP-05000, at 0252.

¹⁰⁷ See Statement of witness P-0127, EVD-PT-OTP-02687, at 0114, para. 39; Rapport du Projet Mapping concernant les violations les plus graves des droits de l'homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0454-0455, para. 418.

¹⁰⁸ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0445, para. 73; "Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004", EVD-PT-OTP-04905, at 0312; Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2307.

¹⁰⁹ The UPC/FPLC was sided by the *Parti pour l'unité et la sauvegarde de l'intégrité du Congo* (the "PUSIC"). See Video Material, EVD-PT-OTP-02634, at 0007; Transcript of Video Material, EVD-PT-OTP-04155, at 0348, lines 3-4; MONUC, Weekly Report 12-18 May 2003, 18 May 2003, EVD-PT-OTP-00633, at 0180.

¹¹⁰ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0446, para. 77; Rapport du Projet Mapping concernant les violations les plus graves des droits de l'homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0458, para. 423.

¹¹¹ "Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004", EVD-PT-OTP-04905, at 0313.

¹¹² UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0446, para. 77.

¹¹³ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0436, para. 37.

¹¹⁴ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0447, para. 78 (killing of 260 civilians by the UPC reported "UPC killed at random, although possibly targeting non-natives and some professionals like police officers and taxi drivers"); Rapport du Projet Mapping concernant les violations les plus graves des droits de l'homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0458-0459, paras 423-424 ("les miliciens de l'UPC ont tué plusieurs centaines de civils, pour la plupart des Lendu de Ngiti et des Jajambo originaires d'autres districts, notamment des Nande"); Mission History of MONUC, EVD-PT-OTP-00074, at 0005 (on 15 May 2003 – 14 people reportedly killed); "L'UPC de Lubanga se livre aux actes de cannibalisme à Bunia! Congo : Actes de cannibalisme (22/05/2003), Près de 300 corps mutilés découverts dans le nord-est", EVD-PT-OTP-00391, at 0077; Justice Plus Report, "Ituri: La violence au-delà du clivage ethnique", July 2003, EVD-PT-OTP-00568, at 0008 ("the victims were majority Lendu, Bira and people coming from other regions in Congo"); Amnesty International Report, "Democratic Republic of Congo, Ituri: A need for protection, a thirst for justice", 21 October 2003, EVD-PT-OTP-00301, at 0159-0161.

¹¹⁵ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0436-0437, para. 37.

¹¹⁶ Looting took place in particular in "Mudzipela or Nyankazansa". See Statement of witness P-0046, EVD-PT-OTP-06242, at 0238, para. 99.

¹¹⁷ Human Rights Watch Report, "Seeking Justice: The Prosecution of Sexual Violence in the Congo War", March 2005, EVD-PT-OTP-06064, at 0517-0518; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0447, para. 80.

¹¹⁸ For the notion of organised armed group, see Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, paras 232-236; Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 29 January 2007, ICC-01/04-01/06-803-tEN, paras 232-234; Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 30 September 2008, ICC-01/04-01/07-717, para. 239; Trial Chamber I, "[Judgment pursuant to Article 74 of the Statute](#)", 14 March 2012, ICC-01/04-01/06-2842, paras 536-537; Trial Chamber II, "[Jugement rendu en application de l'article 74 du Statut](#)", 7 March 2014, ICC-01/04-01/07-3436, para. 1186.

¹¹⁹ For the notion of non-international armed conflict, see Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, para. 231; Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 29 January 2007, ICC-01/04-01/06-803-tEN, paras 231-232; Trial Chamber I, "[Judgment pursuant to Article 74 of the Statute](#)", 14 March 2012, ICC-01/04-01/06-2842, para. 538 ;

Trial Chamber II, [“Jugement rendu en application de l’article 74 du Statut”](#), 7 March 2014, ICC-01/04-01/07-3436, para. 1187.

¹²⁰ For a description of the occupation by Uganda, see Trial Chamber II, [“Jugement rendu en application de l’article 74 du Statut”](#), 7 March 2014, ICC-01/04-01/07-3436, paras 1198-1205. See also Statement of witness P-0012, EVD-PT-OTP-01890, at 0107, para. 125; Statement of witness P-0014, EVD-PT-OTP-00702, at 0020, para. 92.

¹²¹ The Chamber recalls its findings in Section A of the decision in order to find substantial grounds to believe that the UPC/FPLC qualified, at the time of the armed conflict, as an armed group within the meaning of article 8(2)(f) of the Statute.

¹²² See findings in Section A of the present decision. See also Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2307; Statement of witness P-0014, EVD-PT-OTP-00702, at 0019; Transcript of interview of witness P-0017, EVD-PT-OTP-06111, at 0609 (referring to the foreseeable difficulties of the operation in Kobu); Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0499 (mentioning the operational strategy to conquer the hills surrounding Mongbwalu in order to defeat the RDC/K-ML); “Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004”, EVD-PT-OTP-04905, at 0312; Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0457, para. 421; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0425-0427, at 0429-0433, 0445; Interim report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, 24 October 2003, EVD-PT-OTP-02800, at 0260-0263; Human Rights Watch Report, “Ituri: ‘Covered in blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0823-0825.

¹²³ Statement of witness P-0017, EVD-PT-OTP-01890, at 0155, para. 384; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0449, paras 89-90; Final Report of the MONUC Special Investigation Team on Abuses Committed in Ituri territories of Irumu, Mahagi and Aru from May to August 2003, EVD-PT-OTP-04874, at 330, para. 6; Communiqué de presse no 013/003 (PUSIC), 6 November 2003, EVD-PT-OTP-02162, at 0286.

¹²⁴ Statement of witness P-0012, EVD-PT-OTP-01890, at 0149-0150, paras 349-354, at 0154-0155, paras 378-381; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0449, para. 87; Final Report of the MONUC Special Investigation Team on Abuses Committed in Ituri territories of Irumu, Mahagi and Aru from May to August 2003, EVD-PT-OTP-04874, at 0329-0330, para. 6; Fourteenth Report of the Secretary-General of the United Nations Organization Mission in the Democratic Republic of the Congo, 17 November 2003, EVD-PT-OTP-00776, at 0217, para. 9; Communiqué de presse no 013/003 (PUSIC), 6 November 2003, EVD-PT-OTP-02162, at 0286 ; Rapport sur la situation générale en Ituri présenté par l’organe exécutif intérimaire à l’Assemblée Spéciale Intérimaire de l’Ituri lors de sa 5^{ème} session, November 2003, EVD-PT-OTP-01554, at 0241; Rapport d’opération sur Tchomia “Opération EFFACER PUSIC”, EVD-PT-OTP-00254; Diary of events under Chapter VII AUG 2003 – JAN 2004, EVD-PT-OTP-04791, at 1654-1655.

¹²⁵ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452, paras 103-104.

¹²⁶ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0449-0450, paras 91-92; “The Ituri Conflict: A Background Study”, June 2008, EVD-PT-OTP-04866, at 0112.

¹²⁷ Diary of events under Chapter VII AUG 2003 – JAN 2004, EVD-PT-OTP-04791, at 1652; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0450, para. 93.

¹²⁸ Diary of events under Chapter VII AUG 2003 – JAN 2004, EVD-PT-OTP-04791, at 1658.

¹²⁹ Transcript of interview of witness P-0017, EVD-PT-OTP-06111, at 0609 (referring to the foreseeable difficulties of the operation in Kobu); UN Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0445, para. 73; “Compte rendu des entretiens avec Camp Ndoromo, Bunia, RDC, les 14, 15 et 16 avril 2004”, EVD-PT-OTP-04905, at 0312; Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0570.

¹³⁰ UN SC Resolution 1484 (2003), EVD-PT-OTP-03483, 30 May 2003, at 0671-0672; UN SC Resolution 1493 (2003), EVD-PT-OTP-02813, 28 July 2003, at 0162-0163.

¹³¹ For the factors concerning the determination of the existence of an armed conflict, see Trial Chamber II, [“Jugement rendu en application de l’article 74 du Statut”](#), 7 March 2014, ICC-01/04-01/07-3436, para. 1187; UN Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0446-0447, para. 77; The Kampala understanding between RCD-ML and UPC, 15 November 2002, EVD-PT-OTP-02124, at 0187-0188; “RDC: L’UPC refuse de signer un accord de cessez-le-feu”, 19 March 2003, EVD-PT-OTP-00746, at 0024; Agreement on Re-Engagement of Ituri Peace Process, 16 May 2003, EVD-PT-OTP-00607, at 0021-0024.

¹³² There is no evidence to establish substantial grounds to believe that sexual slavery was committed by the UPC/FPLC soldiers in the *First Attack*.

¹³³ DCC, [ICC-01/04-02/06-203-AnxA](#), pp. 56-57.

¹³⁴ Human Rights Watch Report, “Ituri: ‘Covered in blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0829; Human Rights Watch Report, “UPC Crimes in Ituri (2002 2003)”, 8 November 2006, EVD-PT-OTP-04498, at 1314; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452, para. 102.

¹³⁵ For the elements of the crime of murder as a crime against humanity and a war crime, see Pre-Trial Chamber II, [“Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”](#), 15 June 2009, ICC-01/05-01/08-424, paras 131-134, 273-274; Trial Chamber II, [“Jugement rendu en application de l’article 74 du Statut”](#), 7 March 2014, ICC-01/04-01/07-3436, paras 767-769, 786-791.

¹³⁶ Transcript of interview of witness P-0768, EVDD-PT-OTP-06423, at 1652; Statement of witness P-0315, EVD-PT-OTP-06363, at 1013, para. 129; Transcript of interview of witness P-0038, EVD-PT-OTP-06235, at 0115; Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0644; Transcript of interview of witness P-0768, EVD-PT-OTP-06486, at 0573; Human Rights Watch Report, “Ituri: ‘Covered in blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0829; Human Rights Watch Report, “The Curse of Gold Democratic Republic of Congo”, 2005, EVD-PT-OTP-00781, at 0665.

¹³⁷ Human Rights Watch Report, “Ituri: ‘Covered in blood’, Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0828.

¹³⁸ Statement of witness P-804, EVD-PT-OTP-06391, at 1132, paras 19-20; UN Joint Mission Analysis Center Profile of Bosco Tanganda, EVD-PT-OTP-03304, at 0437.

¹³⁹ Statement of witness P-0804, EVD-PT-OTP-06391, at 1132, para. 20 (these civilian victims were workers of the Kilo Moto company).

¹⁴⁰ Transcript of interview of witness P-0768, EVD-PT-OTP-06424, at 1671-1672 (the witness speaks about “l’appartement de BOSCO”); Transcript of interview of witness P-0017, EVD-PT-OTP-06109, at 0538 (mentioning “le camp de BOSCO”); Transcript of interview of witness P-0038, EVD-PT-OTP-06235, at 0111-0113 (speaking of “au camp de BOSCO”); Transcript of interview of witness P-0055, EVD-PT-OTP-06507, at 1116; Statement of witness P-0315, EVD-PT-OTP-06363, at 1014, para. 132 (mentioning other sources, who referred to “les appartements”). For the sake of clarity, the Chamber will refer to “Mr Ntaganda’s camp”.

¹⁴¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06422, at 1635-1636, EVD-PT-OTP-06423, at 1638-1640; Statement of witness P-0041, EVD-PT-OTP-03268, at 0015, para. 80; Statement of witness

P-0315, EVD-PT-OTP-06363, at 1015, para. 135; Transcript of interview of witness P-0038, EVD-PT-OTP-06235, at 0112-0113; Statement of witness P-804, EVD-PT-OTP-06391, at 1132, para. 20.

¹⁴² Statement of witness P-0768, EVD-PT-OTP-06422, at 1635-1636, EVD-PT-OTP-06423, at 1638-1640.

¹⁴³ Human Rights Watch Report, "Ituri: 'Covered in blood', Ethnically Targeted Violence in Northeastern DR Congo", July 2003, EVD-PT-OTP-00782, at 0828.

¹⁴⁴ Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1706, EVD-PT-OTP-06486, at 0574.

¹⁴⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1701, at 1703-1704; Transcript of interview of witness P-0038, EVD-PT-OTP-06240, at 0198-0199; Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2166; Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0644; Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0665-0666; Statement of witness P-0315, EVD-PT-OTP-06363, at 1015, para. 136.

¹⁴⁶ Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2168-2169; Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0580-0584; Human Rights Watch Report, "Ituri: 'Covered in blood', Ethnically Targeted Violence in Northeastern DR Congo", July 2003, EVD-PT-OTP-00782, at 0829; Statement of witness P-0315, EVD-PT-OTP-06363, para. 136; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452, para. 102.

¹⁴⁷ Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0643-0644; Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0586; Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2166.

¹⁴⁸ Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0643.

¹⁴⁹ Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0666.

¹⁵⁰ Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0666; Statement of witness P-0022, EVD-PT-OTP-01862, at 0033-0034, paras 37-41.

¹⁵¹ Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0666-0667.

¹⁵² Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0666.

¹⁵³ Statement of witness P-0022, EVD-PT-OTP-01862, at 0034, paras 41-42; Forensic report concerning witness P-0022, EVD-PT-OTP-00867.

¹⁵⁴ Transcript of interview of witness P-0038, EVD-PT-OTP-03732, at 2726-2727, EVD-PT-OTP-03733, at 2731-2732.

¹⁵⁵ Transcript of interview of witness P-0017, EVD-PT-OTP-06285, at 0772-0778, EVD-PT-OTP-06286, at 0781-0783.

¹⁵⁶ Statement of witness P-0019, EVD-PT-OTP-06123, at 0064, para. 16.

¹⁵⁷ Statement of witness P-0019, EVD-PT-OTP-02447, at 0149, paras 36-37.

¹⁵⁸ "Rapport des attaques de l'UPC dans les villages Lendu", February-March 2003, EVD-PT-OTP-00691 (Translation: EVD-PT-OTP-06248); Statement of witness P-0127, EVD-PT-OTP-02687, at 0113-0114, paras 36-39; Statement of witness P-0792, EVD-PT-OTP-06327, at 0146-0147, paras 60-63; Statement of witness P-0105, EVD-PT-OTP-00736, at 0388, para. 33; Statement of witness P-0019, EVD-PT-OTP-02447, at 0145, para. 20; Statement of witness P-0106, EVD-PT-OTP-01801, at 0078-0080, paras 21-27; Transcript of interview of witness P-0055, EVD-PT-OTP-04642, at 0776-0778; Statement of witness P-0768, EVD-PT-OTP-06494, at 0724; Statement of witness P-0317, EVD-PT-OTP-06473, at 0294-0295, paras 51 and 68.

¹⁵⁹ Statement of witness P-0105, EVD-PT-OTP-00736, at 0389, para. 37.

¹⁶⁰ Statement of witness P-0019, EVD-PT-OTP-02447, at 0146, para. 25.

¹⁶¹ Transcript of interview of witness P-0038, EVD-PT-OTP-06237, at 0149-0152, EVD-PT-OTP-06239, at 0190, EVD-PT-OTP-06241, at 0208-0209, EVD-PT-OTP-03733, at 2750-2758, EVD-PT-OTP-03734, at

2763-2770; Transcript of interview of witness P-0017, EVD-PT-OTP-04139, at 1713-1722, EVD-PT-OTP-06287, at 0815-0817, EVD-PT-OTP-06151, at 2300-2301, EVD-PT-OTP-06237, at 0149-0152; Statement of witness P-0046, EVD-PT-OTP-06242, at 0225, paras 27-31.

¹⁶² Statement of witness P-0018, EVD-PT-OTP-06083, at 0185, para. 90, EVD-PT-OTP-01816, at 0123-0124, para. 38.

¹⁶³ Statement of witness P-0105, EVD-PT-OTP-00736, at 0388, paras 31-32.

¹⁶⁴ Statement of witness P-0127, EVD-PT-OTP-02687, at 0113, para. 34.

¹⁶⁵ Statement of witness P-0046, EVD-PT-OTP-06242, at 0229, para. 57.

¹⁶⁶ Statement of witness P-0804, EVD-PT-OTP-06391, at 1133, paras 24-25.

¹⁶⁷ Statement of witness P-0107, EVD-PT-OTP-01814, at 0106, para. 31; Statement of witness P-0046, EVD-PT-OTP-06242, at 0229, para. 53; Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0303, para. 63.

¹⁶⁸ DCC, [ICC-01/04-02/06-203-AnxA](#), p. 57.

¹⁶⁹ For the notion of war crimes committed in the conduct of hostilities, see Pre-Trial Chamber I, [“Decision on the confirmation of charges”](#), 30 September 2008, ICC-01/04-01/07-717, para. 267. See also G. Werle, *Principles of International Criminal Law*, The Hague, Asser (2009), at 426-428; A. Cassese, *International Criminal Law*, Oxford, Oxford University Press (2013), at 73; See A. Cassese, G. Acquaviva, M. Fan, A. Whiting, *International Criminal Law. Cases and Commentary*, Oxford, Oxford University Press (2011), at 138.

¹⁷⁰ For the elements of the war crime of attacking civilians, see Pre-Trial Chamber I, [“Decision on the confirmation of charges”](#), 30 September 2008, ICC-01/04-01/07-717, para. 265; Trial Chamber II, [“Jugement rendu en application de l’article 74 du Statut”](#), 7 March 2014, ICC-01/04-01/07-3436, paras 799-802.

¹⁷¹ Element 1 of the Elements of Crime for the war crime of attacking civilians reads: “[t]he perpetrator directed an *attack*” (emphasis added).

¹⁷² Article 13(2) APII states that “the civilian population as such, as well as individual civilians, shall not be the object of attack”; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977) 1125 UNTS 609. See also Trial Chamber II, [“Jugement rendu en application de l’article 74 du Statut”](#), 7 March 2014, ICC-01/04-01/07-3436, paras 797-798.

¹⁷³ See C. Pilloud *et al.*, *Commentary of the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, Martinus Nijhoff (1987), commentary to article 13(2) APII, p. 1453, at 4783. According to the commentary “[P]rotocol I defines attacks. This term has the same meaning in Protocol II”.

¹⁷⁴ In support of the view that conduct other than the classic methods of warfare (shelling, bombarding, sniping) may constitute methods of warfare see for example: France, *Manuel de droit des conflits armés*, Ministère de la Défense, Direction des Affaires Juridiques, Sous-Direction du droit international humanitaire et du droit européen, Bureau du droit des conflits armés, 2001, p. 85; Russian Federation, *Regulations on the Application of the Rules of International Humanitarian Law by the Armed Forces of the Russian Federation*, Ministry of Defence of the Russian Federation, Moscow, 8 August 2001, para. 7; Ukraine, *Manual on the Application of IHL Rules*, Ministry of Defense, 11 September 2004, paras 1.3.2 and 1.8.6; Cameroon, *Droits des conflits armés et droit international humanitaire*, Manuel de l’instructeur en vigueur dans les forces de défense, Ministère de la Défense, Présidence de la République, Etat-major des Armées, 2006, p. 183, para. 493.A.; Djibouti, *Manuel sur le droit international humanitaire et les droits de l’homme applicables au travail du policier*, Ministère de l’Intérieur, Direction Générale de la Police, 2004, p. 23; UN SC Resolution 1820 (2008), S/RES/1820, 19 June 2008; UN SC Resolution 1590 (2005), S/RES/1590, 24 March 2005; UN SC Resolution 1468 (2003), S/RES/1468, 20 March 2003; Germany, *Statement before the UN Security*

Council, UN Doc. S/PV.5100, 14 December 2004, pp. 18-19. See the ICRC database, available at: http://www.icrc.org/customary-ihl/eng/docs/v2_rul.

¹⁷⁵ See for examples the findings of the Chamber in counts 1 and 2 (murder and attempted murder) concerning the killings of civilians held prisoners at Mr. Ntaganda's camp and the killings that took place after the UPC/FPLC took control of Kobu. See also for example the findings in counts 4 and 5 (rape) on rapes committed after the takeover of Mongbwalu.

¹⁷⁶ Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 30 September 2008, ICC-01/04-01/07-717, para. 269.

¹⁷⁷ See for example the findings of the Chamber in respect of counts 1 and 2 (murder and attempted murder) in connection to the *First Attack*, in particular the killings at Mongbwalu airfield, the hospital and in the Gangala area; in the *Second Attack* see the killings of 7 persons by a bomb fired from the village of Mabanga. With regard to count 5 (rape), see the findings on the rapes committed *during* the takeover of Mongbwalu. As for count 11 (pillaging), see the findings in the *First Attack* and *Second Attack*. With regard to count 17 (attacking protected objects), see the findings in the *First Attack* and the *Second Attack*. As for count 18 (destroying the enemy's property), see the findings in the *First Attack* and the *Second Attack*.

¹⁷⁸ See for example the findings of the Chamber in connection to count 18 concerning the orders received by the UPC/FPLC soldiers in the field to flatten the villages of Kobu, Bambu, Lipri and surrounding villages and on the execution of this order by the troops, which set fire to the straw houses and destroyed infrastructures. See also the findings made in respect of the mode of liability of ordering and inducing under article 25(3)(b) of the Statute.

¹⁷⁹ DCC, [ICC-01/04-02/06-203-AnxA](#), p. 57.

¹⁸⁰ Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0508, line 466 to 0509, line 503, at 0512, line 620 to 0514, line 716. See also EVD-PT-OTP-06107, at 0517, line 835 to 0518 line 847, where the witness explains that when speaking about rape he refers to the following act: "vous allez jusqu'à obliger à une personne à partager cet acte sexuel sans la volonté de la personne, contre sa volonté".

¹⁸¹ For the elements of the crime of rape as a crime against humanity and a war crime, see Trial Chamber II, "[Jugement rendu en application de l'article 74 du Statut](#)", 7 March 2014, ICC-01/04-01/07-3436, paras 961-968; Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, para. 162; Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 30 September 2008, Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 30 September 2008, ICC-01/04-01/07-717, para. 440.

¹⁸² Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0514, line 717 to 0515, line 745, at 0516, lines 767-783; Transcript of interview of witness P-0038, EVD-PT-OTP-06235, at 0121, lines 447-460.

¹⁸³ Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0516, line 784 to 0518, line 847, EVD-PT-OTP-06108, at 0526, line 9 to 0528, line 102.

¹⁸⁴ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0505, lines 58-61, at 0506, line 112 to 0507, line 124.

¹⁸⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06422, at 1636, lines 944-948, EVD-PT-OTP-06484, at 0508, line 187 to 0510, line 252

¹⁸⁶ Transcript of interview of witness P-0017, EVD-PT-OTP-06108, at 0530, line 184 to 0532, line 272, EVD-PT-OTP-06112, at 0614, line 9 to 0615, line 68, at 0616, lines 106-116, at 0618, lines 170-176.

¹⁸⁷ Statement of witness P-0022, EVD-PT-OTP-01862, at 0031-0032, paras 29-31.

¹⁸⁸ Statement of witness P-0022, EVD-PT-OTP-01862, at 0032-0033, para. 34.

¹⁸⁹ Statement of witness P-0022, EVD-PT-OTP-01862, at 0033, para. 35. See Trial Chamber II, "[Jugement rendu en application de l'article 74 du Statut](#)", 7 March 2014, ICC-01/04-01/07-3436, para. 963.

- ¹⁹⁰ Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1029, lines 356-368; Rapport du Projet Mapping concernant les violations les plus graves des droits de l'homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo, August 2010, EVD-PT-OTP-06057, at 0588, para. 756.
- ¹⁹¹ Transcript of interview of witness P-0055, EVD-PT-OTP-06504, at 1008, line 605 to 1011, line 712.
- ¹⁹² Statement of witness P-0804, EVD-PT-OTP-06391, at 1133, para. 25.
- ¹⁹³ Statement of witness P-0019, EVD-PT-OTP-03978, at 1518, paras 27-28.
- ¹⁹⁴ Statement of witness P-0018, EVD-PT-OTP-06083, at 0185, para. 90.
- ¹⁹⁵ Statement of witness P-0018, EVD-PT-OTP-01816, at 0122-0123, paras 32-34, EVD-PT-OTP-06083, at 0183-0184, paras 75-79.
- ¹⁹⁶ Statement of witness P-0113, EVD-PT-OTP-06378, at 1079-1080, paras 29-31.
- ¹⁹⁷ Statement of witness P-0113, EVD-PT-OTP-06378, at 1081, para. 42.
- ¹⁹⁸ Statement of witness P-0113, EVD-PT-OTP-06378, at 1083, para. 51.
- ¹⁹⁹ Statement of witness P-0019, EVD-PT-OTP-06123, at 0063, paras 12-13.
- ²⁰⁰ Statement of witness P-0019, EVD-PT-OTP-06123, at 0063, para. 13.
- ²⁰¹ Statement of witness P-0019, EVD-PT-OTP-06123, at 0064, para. 16.
- ²⁰² See para. 43.
- ²⁰³ Transcript of interview of witness P-0038, EVD-PT-OTP-06241, at 0204, line 73 to 0205, line 79, at 0205, line 109 to 0209, line 235.
- ²⁰⁴ Transcript of interview of witness P-0038, EVD-PT-OTP-06241, at 0207, lines 155-160.
- ²⁰⁵ See Elements of Crimes, footnotes 16 and 64.
- ²⁰⁶ Transcript of interview of witness P-0017, EVD-PT-OTP-06286, at 0798, line 741 to 0800, line 799.
- ²⁰⁷ DCC, [ICC-01/04-02/06-203-AnxA](#), p. 58.
- ²⁰⁸ For the nature of the relationship of ownership between the perpetrator and the victim, see ICTY, *Prosecutor v. Kunarac et al.*, Case No. IT-96-23 & IT-96-23/1-A, "[Judgment](#)", 12 June 2002, para. 121.
- ²⁰⁹ The Chamber has taken into account the existence of a combination of factors such as, the detention or captivity in which the victim was held and its duration, the limitations to the victim's free movement, measures taken to prevent or deter escape, the use of force, threat of force or coercion, and the personal circumstances of the victim, including his/her vulnerability. See Trial Chamber II, "[Jugement rendu en application de l'article 74 du Statut](#)", 7 March 2014, ICC-01/04-01/07-3436, paras 973-980; Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 30 September 2008, ICC-01/04-01/07-717, paras 430-432.
- ²¹⁰ Statement of witness P-0019, EVD-PT-OTP-03978, at 1516-1517, paras 22-23.
- ²¹¹ Statement of witness P-0019, EVD-PT-OTP-03978, at 1517-1518, paras 24-25, 29.
- ²¹² Statement of witness P-0019, EVD-PT-OTP-03978, at 1518-1519, para. 30.
- ²¹³ Statement of witness P-0019, EVD-PT-OTP-03978, at 1519, para. 32. See also para. 52 of the present decision.
- ²¹⁴ Statement of witness P-0019, EVD-PT-OTP-03978, at 1518-1520, paras 22-37.
- ²¹⁵ Statement of witness P-0018, EVD-PT-OTP-01816, at 0121, para. 26, at 0123-0124, paras 37-39, EVD-PT-OTP-06083, at 0185, para. 90.
- ²¹⁶ Statement of witness P-0018, EVD-PT-OTP-01816, at 0121, para. 27, EVD-PT-OTP-06083, at 0181, para. 54.
- ²¹⁷ Statement of witness P-0018, EVD-PT-OTP-06083, at 0185, para. 90, EVD-PT-OTP-01816, at 0122, para. 30, at 0123, para. 36.
- ²¹⁸ Statement of witness P-0113, EVD-PT-OTP-01793, at 0041-0042, paras 25-27,31.
- ²¹⁹ Statement of witness P-0113, EVD-PT-OTP-06378, at 1079, para. 28.
- ²²⁰ Statement of witness P-0113, EVD-PT-OTP-01793, at 0043, para. 33.
- ²²¹ Statement of witness P-0113, EVD-PT-OTP-01793, at 0044-0045, para. 40, EVD-PT-OTP-06378, at 0183, para. 53.
- ²²² See para. 51.

²²³ Statement of witness P-0113, EVD-PT-OTP-01793, at 0046, para. 44, EVD-PT-OTP-06378, at 0183, para. 54.

²²⁴ Transcript of interview of witness P-0017, EVD-PT-OTP-06286, at 0798, line 741 to 0800, line 799, at 0800, line 798, at 0801, line 863.

²²⁵ Transcript of interview of witness P-0017, EVD-PT-OTP-06286, at 0800, lines 789-814.

²²⁶ Transcript of interview of witness P-0017, EVD-PT-OTP-06286, at 0801, line 859 to 0802, line 874.

²²⁷ Transcript of interview of witness P-0017, EVD-PT-OTP-06286, at 0802, lines 876-882.

²²⁸ DCC, [ICC-01/04-02/06-203-AnxA](#), pp. 58-59.

²²⁹ DCC, [ICC-01/04-02/06-203-AnxA](#), pp. 56-60.

²³⁰ See articles 6(1), 7 and 8 of the International Covenant on Civil and Political Rights.

²³¹ See the findings of the Chamber in Section C concerning the specific crimes charged.

²³² DCC, [ICC-01/04-02/06-203-AnxA](#), p. 59.

²³³ For the elements of the war crime of pillaging, see Pre-Trial Chamber II, [“Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”](#), 15 June 2009, ICC-01/05-01/08-424, paras 316-318; Pre-Trial Chamber I, [“Decision on the confirmation of charges”](#), 30 September 2008, ICC-01/04-01/07-717, paras 328-330; Trial Chamber II, [“Jugement rendu en application de l’article 74 du Statut”](#), 7 March 2014, ICC-01/04-01/07-3436, paras 904-910.

²³⁴ See Elements of Crimes, footnote 62.

²³⁵ UPC/FPLC commanders, including Mr. Ntaganda, often used the expression "*piga na kuchaji*" or "*kupiga na kuchaji*", which meant that troops should fight and pillage everything, including women (Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1026-1028; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0502-0505; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0532-0533).

²³⁶ Statement of witness P-0100, EVD-PT-OTP-01792, at 0024-0025, paras 20-25; Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1071; Statement of witness P-0127, EVD-PT-OTP-02687, at 0112-0113, para. 31; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0532-0535, EVD-PT-OTP-06487, at 0581-0583;

²³⁷ Statement of witness P-0018, EVD-PT-OTP-01816, at 0121, para. 27, EVD-PT-OTP-06083, at 0181, para. 54; Statement of witness P-0107, EVD-PT-OTP-01814, at 0106, para. 30; Statement of witness P-0016, EVD-PT-OTP-02701, at 446, para. 132; Transcript of interview of witness P-0768, EVD-PT-OTP-06487, at 0587.

²³⁸ Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2172; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0496-0500 (mentioning the acts of appropriation carried out by the population); Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0532-0535; Transcript of interview of the witness P-0038, EVD-PT-OTP-06235, at 0121 (referring to civilians carrying out acts of appropriation); Statement of witness P-0804, EVD-PT-OTP-06391, at 1132, para. 20.

²³⁹ Statement of witness P-0016, EVD-PT-OTP-02701, at 446, para. 132; Transcript of interview of witness P-0768, EVD-PT-OTP-06487, at 0587.

²⁴⁰ Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0561.

²⁴¹ Transcript of interview of witness P-0038, EVD-PT-OTP-06241, at 0216-0217.

²⁴² Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0532-0535.

²⁴³ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0502, EVD-PT-OTP-06485, at 0535, EVD-PT-OTP-06491, at 0670-0671, EVD-PT-OTP-06484, at 0515-0517; Statement of witness P-0017, EVD-PT-OTP-06110, at 0558-0559.

²⁴⁴ Transcript of interview of witness P-0768, EVD-PT-OTP-06487, at 0583; Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0644; Transcript of interview of witness P-0038, EVD-PT-OTP-03731, at 2657.

- ²⁴⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06487, at 0581-0582.
- ²⁴⁶ Statement of witness P-0317, EVD-PT-OTP-06473, at 0294, para. 48; Statement of witness P-0046, EVD-PT-OTP-06242, at 0225, para. 32, at 0229, paras 54-55; Department of State, Report on Human Rights Practices, 25 February 2004, EVD-PT-OTP-00299, at 0121; Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0287, para. 6; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0444, para. 69; UN Joint Mission Analysis Center Profile of Bosco Tanganda, EVD-PT-OTP-03304, at 0438.
- ²⁴⁷ Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1071-1072.
- ²⁴⁸ Statement of witness P-0805, EVD-PT-OTP-06380, at 1102, para. 44.
- ²⁴⁹ Statement of witness P-0105, EVD-PT-OTP-00736, at 0392, para. 52.
- ²⁵⁰ Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1072-1079.
- ²⁵¹ Statement of witness P-0018, EVD-PT-OTP-01816, at 0121, para. 27, EVD-PT-OTP-06083, at 0181, para. 54; Statement of witness P-0107, EVD-PT-OTP-01814, at 0106, para. 30.
- ²⁵² Statement of witness P-0018, EVD-PT-OTP-01816, at 0121, para. 27; Statement of witness P-0107, EVD-PT-OTP-01814, at 0106, para. 30.
- ²⁵³ In its findings on counts 12 and 13, the Chamber retains the discretion to use the expressions “forcible transfer” or “displacement” interchangeably, in order to refer to the same conduct put in place by the UPC/FPLC to drive civilians out of certain areas. This does not affect the legal characterization of this conduct as either the crime against humanity of forcible transfer or the war crime of displacement of civilians or both, should all respective elements of crimes be met.
- ²⁵⁴ DCC, [ICC-01/04-02/06-203-AnxA](#), p. 59.
- ²⁵⁵ [ICC-01/04-02/06-292-Red2](#), paras 267-268.
- ²⁵⁶ See Elements of Crimes of the war crime of displacing civilians (article 8(2)(e)(viii) of the Statute), p. 39.
- ²⁵⁷ Transcript of testimony of witness P-0016, EVD-PT-OTP-06143, at 1641.
- ²⁵⁸ Statement of witness P-0019, EVD-PT-OTP-02447, at 0144, para. 16; Statement of witness P-0805, EVD-PT-OTP-06380, at 1096-1097, paras 12-15; Screening of witness P-0300, EVD-PT-OTP-03362, at 0289, para. 7;
- ²⁵⁹ Statement of witness P-0019, EVD-PT-OTP-02447, at 0144, para. 16.
- ²⁶⁰ Statement of witness P-0022, EVD-PT-OTP-01862, at 0030, paras 22-23.
- ²⁶¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06486, at 0573.
- ²⁶² Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1706.
- ²⁶³ Statement of witness P-0127, EVD-PT-OTP-02687, at 0112, para. 28; Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2187-2188; Statement of witness P-0105, EVD-PT-OTP-00736, at 0386-0387, paras 24-29.
- ²⁶⁴ Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2187-2188; Statement of witness P-0804, EVD-PT-OTP-06391, at 1133-1135, paras 26-35; Statement of witness P-0300, EVD-PT-OTP-06265, at 1322, para. 41.
- ²⁶⁵ Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2187-2188.
- ²⁶⁶ Transcript of interview of witness P-0017, EVD-PT-OTP-06284, at 0747-0748, EVD-PT-OTP-06285, at 0770-0771.
- ²⁶⁷ Transcript of interview of witness P-0055, EVD-PT-OTP-06357, at 0858-0859.
- ²⁶⁸ Statement of witness P-0105, EVD-PT-OTP-00736, at 0385-0386, paras 23-24.
- ²⁶⁹ Statement of witness P-0127, EVD-PT-OTP-02687, at 0112, para. 28.
- ²⁷⁰ Statement of witness P-0300, EVD-PT-OTP-06265, at 1323, para. 48; Statement of witness P-0018, EVD-PT-OTP-01816, at 0120-0121, para. 24 (mentioning that the population of Jitchu had already left when she arrived there and that only young Lendu were present to defend the village).
- ²⁷¹ DCC, [ICC-01/04-02/06-203-AnxA](#), p. 60.

²⁷² See para. 60. See also Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0670-0671, EVD-PT-OTP-06484, at 0515-0517, EVD-PT-OTP-06483, at 0502; Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0558, 0560, 0562.

²⁷³ Transcript of interview of witness P-0768, EVD-PT-OTP-06487, at 0581-0582.

²⁷⁴ Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0643-0644; Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0586, EVD-PT-OTP-06149, at 2166-2167.

²⁷⁵ Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0644.

²⁷⁶ Statement of witness P-0046, EVD-PT-OTP-06242, at 0225, para. 32, at 0229, paras 54-55; Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0287, para. 6, at 0303-0304, para. 64.

²⁷⁷ Statement of witness P-0046, EVD-PT-OTP-06242, at 0225, para. 32, at 0229, paras 54-55. See also Statement of witness P-0317, EVD-PT-OTP-06473, at 0294, para. 48; Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0303-0304, para. 64; UN Joint Mission Analysis Center Profile of Bosco Tanganda, EVD-PT-OTP-03304, at 0438.

²⁷⁸ Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0303-0304, para. 64.

²⁷⁹ DCC, [ICC-01/04-02/06-203-AnxA](#), p. 60.

²⁸⁰ For the elements of the war crime of destroying the enemy's property, see Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 30 September 2008, ICC-01/04-01/07-717, paras 310-314.

²⁸¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0531; Statement of witness P-0103, EVD-PT-OTP-01884, at 0173-0174, para. 19; Statement of witness P-0804, EVD-PT-OTP-06391, at 1132, para. 18; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452, para. 102.

²⁸² Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0660.

²⁸³ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0452, para. 102; UN Joint Mission Analysis Center Profile of Tanganda, EVD-PT-OTP-03304, at 0437.

²⁸⁴ Transcript of interview of witness P-0768, EVD-PT-OTP-06486, at 0568-0569; Statement of witness P-0315, EVD-PT-OTP-06363, at 1015, para. 136.

²⁸⁵ Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2166-2167; Transcript of interview of witness P-0768, EVD-PT-OTP-06486, at 0569, at 0578; Statement of witness P-0315, EVD-PT-OTP-06363, at 1015, para. 136.

²⁸⁶ Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0665-0666.

²⁸⁷ Transcript of interview of witness P-0768, EVD-PT-OTP-06486, at 0578; Transcript of interview of witness P-0038, EVD-PT-OTP-06236, at 0134; Summary of statement of witness P-0800, EVD-PT-OTP-06476, at 0644.

²⁸⁸ Transcript of interview of witness P-0038, EVD-PT-OTP-03728, at 2559.

²⁸⁹ Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2187.

²⁹⁰ Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1071-1072.

²⁹¹ Transcript of interview of witness P-0038, EVD-PT-OTP-03730, at 2635; Statement of witness P-0105, EVD-PT-OTP-00736, at 0392, para. 52; Statement of witness P-0113, EVD-PT-OTP-01793, at 0043-0044, para. 36; Investigator's note on witness P-0121, EVD-PT-OTP-03358, at 0259-0260, para. 10; Statement of witness P-0103, EVD-PT-OTP-01884, at 0179, para. 46.

²⁹² Statement of witness P-0105, EVD-PT-OTP-00736, at 0392, para. 52; Statement of witness P-0113, EVD-PT-OTP-01793, at 0045, para. 41; Statement of witness P-0127, EVD-PT-OTP-02687, at 0112, para. 29; "Rapport des attaques de l'UPC dans les villages Lendu", February-March 2003, EVD-PT-OTP-00691, at 0003.

²⁹³ Analysis of Satellite Imagery for Democratic Republic of Congo: Preliminary Report, EVD-PT-OTP-06478, at 0340; Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1071-1072; Statement of witness P-0113, EVD-PT-OTP-01793, at 0040, para. 22.

²⁹⁴ Statement of witness P-0100, EVD-PT-OTP-01792, at 0024-0025, paras 20-26.

²⁹⁵ Transcript of interview of witness P-0038, EVD-PT-OTP-03730, at 2635; Statement of witness P-0105, EVD-PT-OTP-00736, at 0390, para. 44.

²⁹⁶ Statement of witness P-0018, EVD-PT-OTP-01816, at 0121, paras 25-27, EVD-PT-OTP-06083, at 0181, para. 51; Statement of witness P-0105, EVD-PT-OTP-00736, at 0390, para. 44.

²⁹⁷ Statement of witness P-0105, EVD-PT-OTP-06325, at 0006, para. 25.

²⁹⁸ Statement of witness P-0113, EVD-PT-OTP-06378, at 1081, para. 38; Statement of witness P-0018, EVD-PT-OTP-06083, at 0182, para. 60.

²⁹⁹ Statement of witness P-0127, EVD-PT-OTP-02687, at 0115, para. 42, EVD-PT-OTP-06267, at 1339, para. 81; Statement of witness P-0105, EVD-PT-OTP-06325, at 0006, para. 25; "Rapport des attaques de l'UPC dans les villages Lendu" written by P-0127, February-March 2003, EVD-PT-OTP-00691, at 0003.

³⁰⁰ Statement of witness P-0127, EVD-PT-OTP-06267, at 1335, para. 44, at 1339, para. 81; Statement of witness P-0105, EVD-PT-OTP-06325, at 0006, para. 25.

³⁰¹ Statement of witness P-0106, EVD-PT-OTP-01801, at 0081, para. 31.

³⁰² Statement of witness P-0105, EVD-PT-OTP-06325, at 0006, para. 25; Statement of witness P-0113, EVD-PT-OTP-01793, at 0040, para. 22.

³⁰³ Statement of witness P-0105, EVD-PT-OTP-06325, at 0006, para. 25.

³⁰⁴ Statement of witness P-0113, EVD-PT-OTP-01793, at 0040, para. 22.

³⁰⁵ Statement of witness P-0105, EVD-PT-OTP-00736, at 0390, para. 44.

³⁰⁶ Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0302, para. 59; "Rapport des attaques de l'UPC dans les villages Lendu", February-March 2003, EVD-PT-OTP-00691, at 0003; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0444, para. 69.

³⁰⁷ Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0302, para. 59; "Rapport des attaques de l'UPC dans les villages Lendu", February-March 2003, EVD-PT-OTP-00691, at 0003; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0444, para. 69.

³⁰⁸ Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0302, para. 59; "Rapport des attaques de l'UPC dans les villages Lendu", February-March 2003, EVD-PT-OTP-00691, at 0003; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0444, para. 69.

³⁰⁹ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0444, para. 69; Final Report of the MONUC Special Investigation Team on the Abuses Committed in Ituri from January to March 2003, 20 June 2003, EVD-PT-OTP-03424, at 0303, para. 63.

³¹⁰ Statement of witness P-0105, EVD-PT-OTP-00736, at 0392, para. 52; Investigator's note on witness P-0121, EVD-PT-OTP-03358, at 0259-0260, para. 10.

³¹¹ Statement of witness P-0100, EVD-PT-OTP-01792, at 0024-0025, paras 20-26.

³¹² Statement of witness P-0105, EVD-PT-OTP-00736, at 0392, para. 52.

³¹³ UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0428-0429, paras 13 and 15; Statement of witness P-0105, EVD-PT-OTP-00736, at 0387, paras 28-29; Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2186; Statement of witness P-0018, EVD-PT-OTP-01816, at 0119, para. 18.

³¹⁴ Statement of witness P-0127, EVD-PT-OTP-02687, at 0112, paras 26-29, EVD-PT-OTP-06267, at 1334, para. 39; Statement of witness P-0105, EVD-PT-OTP-00736, at 0387, para. 27.

³¹⁵ DCC, [ICC-01/04-02/06-203-AnxA](#), para. 108.

³¹⁶ [ICC-01/04-02/06-292-Red2](#), 14 April 2014, paras 251-263.

³¹⁷ Elements of Crimes, article 8(2)(e)(vi)-1, elements 1-2, pp 36-37; article 8(2)(e)(vi)-2, element 2, p. 37.

³¹⁸ For a similar assessment, see: SCSL, *Prosecutor v. Charles Ghankay Taylor*, Case No. (SCSL-03-01-T), "[Judgment](#)", 30 May 2012, paras 1179, 1206(vii), 1207 and 1451.

³¹⁹ Statement of witness P-0758, EVD-PT-OTP-06335, at 0196, para. 7; Statement of witness P-0761, EVD-PT-OTP-06223, at 8284, para. 8; Statement of witness P-0773, EVD-PT-OTP-06309, at 0128, para. 9; Statement of witness P-0806, EVD-PT-OTP-06379, at 1089, para. 8; Birth certificates of witness P-0758, EVD-PT-OTP-06074 and EVD-PT-OTP-06224.

³²⁰ Witness P-0758 recalled that she was abducted in July 2002, "on a date and time that [she did] not remember", Statement of witness P-0758, EVD-PT-OTP-06335, at 0196, para. 8. According to her father's recollection, she was abducted on 5 August 2002, Statement of witness P-0761, EVD-PT-OTP-06223, at 8285, para. 12.

³²¹ Statement of witness P-0758, EVD-PT-OTP-06335, at 0197-0198, paras 17-19, at 0200, para. 30, at 2011-2012, paras 106-111.

³²² Statement of witness P-0758, EVD-PT-OTP-06335, at 0203, paras 48-49.

³²³ Statement of witness P-0758, EVD-PT-OTP-06335, at 0201, para. 34, at 0203, para. 51.

³²⁴ Statement of witness P-0758, EVD-PT-OTP-06335, at 0203, para. 47.

³²⁵ Statement of witness P-0758, EVD-PT-OTP-06335, at 0198, para. 21.

³²⁶ Statement of witness P-0758, EVD-PT-OTP-06335, at 0204, para. 55.

³²⁷ Transcript of testimony of witness P-0038, EVD-PT-OTP-06183, at 4867-4869; Transcript of interview of witness P-0017, EVD-PT-OTP-04140, at 0021.

³²⁸ Transcript of testimony of witness P-0016, EVD-PT-OTP-06139, at 1348; Transcript of interview of witness P-0016, EVD-PT-OTP-06141, at 1449, at 1455-1459.

³²⁹ Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1472-1474.

³³⁰ Transcript of testimony of witness P-0016, EVD-PT-OTP-06145, at 1795-1797, at 1810.

³³¹ Transcript of testimony of witness P-0016, EVD-PT-OTP-06145, at 1795-1797.

³³² "Report on Children associated with armed groups in Ituri", February 2004, EVD-PT-OTP-03422, at 0261-0262.

³³³ Pre-Trial Chamber II, [Transcript of Hearing](#), 13 February 2014, ICC-01/04-02/06-T-10-Red-ENG, p. 13, lines 11-24.

³³⁴ For the notion of active participation in hostilities, see SCSL, *Prosecutor v. Charles Ghankay Taylor*, Case No. (SCSL-03-01-T), "[Judgment](#)", 30 May 2012, paras 117-119 and 1357.

³³⁵ The term "recruitment" captures both conscription and enlistment.

³³⁶ Transcript of testimony of witness P-0055, EVD-PT-OTP-06213, at 7487, lines 9-23.

³³⁷ Pre-Trial Chamber II, [Transcript of Hearing](#), 13 February 2014, ICC-01/04-02/06-T-10-Red-ENG, p. 14, line 5 to p. 17, line 4.

³³⁸ Pre-Trial Chamber II, [Transcript of Hearing](#), 13 February 2014, ICC-01/04-02/06-T-10-Red-ENG, p. 17, lines 5-25.

³³⁹ See Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1961, lines 14-25; Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1462, line 20 to 1463, line 8; Transcript of testimony of witness P-0014, EVD-PT-OTP-06129, at 0514, line 21 to 0515, line 21; Statement of witness P-0290, EVD-PT-OTP-04028, at 0309-0310, paras 18 and 21; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0541, lines 496-506.

³⁴⁰ For the criteria governing the assessment of the age of child soldiers, see Trial Chamber I, "[Judgment pursuant to Article 74 of the Statute](#)", 14 March 2012, ICC-01/04-01/06-2842, para. 643; See also, SCSL, *Prosecutor v. Charles Ghankay Taylor*, Case No. (SCSL-03-01-T), "[Judgment](#)", 30 May 2012, para. 1361; *Prosecutor v. Sesay, Kallon and Ghao*, Case No. (SCSL-04-15-T), "[Judgment](#)", 2 March 2009, paras 1627-1628.

- ³⁴¹ See Trial Chamber I, "[Judgment pursuant to Article 74 of the Statute](#)", 14 March 2012, ICC-01/04-01/06-2842, para. 644.
- ³⁴² DCC, [ICC-01/04-02/06-203-AnxA](#), paras 92-97 and pp. 59-60.
- ³⁴³ Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0546, lines 659-669, EVD-PT-OTP-06491, at 0667, lines 479-484; Statement of witness P-0014, EVD-PT-OTP-03854, at 1036, para. 156; Transcript of testimony of witness P-0014, EVD-PT-OTP-06133, at 0833, line 16 to 0834, line 3, at 0852, lines 3-6.
- ³⁴⁴ Trial Chamber I, "[Judgment pursuant to Article 74 of the Statute](#)", 14 March 2012, ICC-01/04-01/06-2842, paras 607-608, and 618; Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 29 January 2007, ICC-01/04-01/06-803-tEN, paras 246-248.
- ³⁴⁵ Transcript of interview of witness P-0055, EVD-PT-OTP-04632, at 0540, line 115 to 0542, line 193.
- ³⁴⁶ Statement of witness P-0046, EVD-PT-OTP-03812, at 0075-0076, paras 95-98; Transcript of testimony of witness P-0031, EVD-PT-OTP-06171, at 3787, lines 15-22, EVD-PT-OTP-06177, at 4309, lines 16-23.
- ³⁴⁷ Transcript of testimony of witness P-0014, EVD-PT-OTP-06129, at 0481, line 7 to 0482, line 6, at 0484, line 13 to 0489, line 19, EVD-PT-OTP-06133, at 0824, line 21 to 0829, line 4.
- ³⁴⁸ Statement of witness P-0046, EVD-PT-OTP-03812, at 0075-0076, paras 98-99; Transcript of testimony of witness P-0031, EVD-PT-OTP-06171, at 3788, lines 13-20; Statement of witness P-0041, EVD-PT-OTP-03268, at 0028, paras 162-164; Statement of witness P-0014, EVD-PT-OTP-03854, at 1036, para. 156.
- ³⁴⁹ Statement of witness P-0041, EVD-PT-OTP-03268, at 0028, para. 164.
- ³⁵⁰ Transcript of testimony of witness P-0055, EVD-PT-OTP-06213, at 7487, line 23 to 7489, line 2; Transcript of interview of witness P-0055, EVD-PT-OTP-04636, at 0666, lines 739-742.
- ³⁵¹ Transcript of testimony of witness P-0031, EVD-PT-OTP-06171, at 3790, line 9 to 3791, line 16.
- ³⁵² Transcript of testimony of witness P-0031, EVD-PT-OTP-06171, at 3776, line 19 to 3777, line 21, at 3786, line 17 to 3787, line 14, at 3791, lines 14-16.
- ³⁵³ Witness P-0758 recalled that she was abducted in July 2002, "on a date and time that [she did] not remember", Statement of witness P-0758, EVD-PT-OTP-06335, at 0196, para. 8. According to her father's recollection, she was abducted on 5 August 2002, Statement of witness P-0761, EVD-PT-OTP-06223, at 8285, para. 12.
- ³⁵⁴ Statement of witness P-0758, EVD-PT-OTP-06335, at 0196, para. 7; Statement of witness P-0761, EVD-PT-OTP-06223, at 8284, para. 8; Statement of witness P-0773, EVD-PT-OTP-06309, at 0128, para. 9; Statement of witness P-0806, EVD-PT-OTP-06379, at 1089, para. 8; Birth certificates of witness P-0758, EVD-PT-OTP-06074 and EVD-PT-OTP-06224.
- ³⁵⁵ Statement of witness P-0758, EVD-PT-OTP-06335, at 0196, para. 8, at 0197, para. 14, at 0199, paras 25 and 28.
- ³⁵⁶ Statement of witness P-0758, EVD-PT-OTP-06335, at 0213, paras 113-115. Witness P-0758 states that she remained with the UPC/FPLC until "the arrival of the French troops". The Chamber understands this to refer to the arrival of the Operation Artemis contingent.
- ³⁵⁷ According to "Report on Children associated with armed groups in Ituri", February 2004, EVD-PT-OTP-03422, at 0262, the Artemis Operation began in July 2003.
- ³⁵⁸ MONUC Report, "Histoires Individuelles – Bunia (Ituri) : Enfants – Soldats", EVD-PT-OTP-03423, at 0282, para. 30.
- ³⁵⁹ Human Rights Watch Report, "Ituri: 'Covered in Blood': Ethnically Targeted Violence in Northeastern DR Congo", July 2003, EVD-PT-OTP-00782, at 0851.
- ³⁶⁰ Transcript of testimony of witness P-0046, EVD-PT-OTP-06203, at 6768, lines 6-11.
- ³⁶¹ Statement of witness P-0046, EVD-PT-OTP-03812, at 0068, para. 68.
- ³⁶² Statement of witness P-0046, EVD-PT-OTP-03812, at 0069, para. 70.
- ³⁶³ MONUC Report, "Investigation Mission – Ituri: Child soldiers issues", EVD-PT-OTP-04854, at 0771-0772, reference 20.
- ³⁶⁴ Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1461, line 17 to 1462, line 3.

³⁶⁵ MONUC Report, “Individual Case Story – Bunia (Ituri)”, 26 March 2003, EVD-PT-OTP-05006, at 0297, reference 42.

³⁶⁶ MONUC Report, “Histoires Individuelles – Bunia (Ituri): Enfants – Soldats”, EVD-PT-OTP-03423, at 0280, reference 26.

³⁶⁷ MONUC Report, “Individual Case Story – Bunia (Ituri)”, 26 March 2003, EVD-PT-OTP-05006, at 0340-0341, reference 160.

³⁶⁸ MONUC Report, “Individual Case Story – Bunia (Ituri)”, 26 March 2003, EVD-PT-OTP-05006, at 0340-0341, reference 160. See also Statement of witness P-0046, EVD-PT-OTP-06242, at 0240, para. 112.

³⁶⁹ Transcript of testimony of witness P-0046, EVD-PT-OTP-06203, at 6725, line 22 to 6726, line 5.

³⁷⁰ Transcript of interview of witness P-0768, EVD-PT-OTP-06430, at 1788, at 1793-1795; Photograph, EVD-PT-OTP-06344.

³⁷¹ Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1461, line 4 to 1463, line 8, at 1470, line 6 to 1471, line 15; Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1960, line 4 to 1961, line 25; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0541, line 487 to 0543, line 575; Statement of witness P-0046, EVD-PT-OTP-06242, at 0242-0243, paras 124-125; Human Rights Watch Report, “Ituri: ‘Covered in Blood’: Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0851; MONUC Report, “Individual Case Story – Bunia (Ituri)”, 26 March 2003, EVD-PT-OTP-05006, at 0303, reference 58, at 0307, reference 70, at 0313, reference 94; MONUC Report, “Report on Child Soldiers in Ituri: Notes on Training – Military Camps”, EVD-PT-OTP-03421, at 0251-0252.

³⁷² Transcript of interview of witness P-0055, EVD-PT-OTP-04632, at 0558, line 810 to 0559, line 848; Transcript of testimony of witness P-0031, EVD-PT-OTP-06173, at 3978, line 9 to 3982, line 12, EVD-PT-OTP-06175, at 4189, line 22 to 4192, line 16; Video Material, EVD-PT-OTP-02612, at 00:01:14-00:01:17, 00:02:10-00:02:40, 00:02:50-00:02:55, 00:05:08-00:05:10, 00:09:09-00:09:11, 00:10:08-00:10:16, 00:11:33-00:12:03, 00:16:26 and 00:17:07-00:17:09; Statement of witness P-0030, EVD-PT-OTP-06161, at 2979, line 5 to 2981, line 20, at 2986, lines 4-11; Human Rights Watch Report, “Ituri: ‘Covered in Blood’: Ethnically Targeted Violence in Northeastern DR Congo”, July 2003, EVD-PT-OTP-00782, at 0851.

³⁷³ Statement of witness P-0758, EVD-PT-OTP-06335, at 0199-0211, paras 23-104.

³⁷⁴ Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1965, line 11 to 1966, line 3, at 1961, lines 12-13; Transcript of testimony of witness P-0038, EVD-PT-OTP-06183, at 4854, line 21 to 4855, line 14.

³⁷⁵ Transcript of testimony of witness P-0038, EVD-PT-OTP-06183, at 4855, lines 6-14; Statement of witness P-0016, EVD-PT-OTP-02701, at 0465-0466, para. 253; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0543, lines 575-576.

³⁷⁶ Statement of witness P-0014, EVD-PT-OTP-03854, at 1037-1039, paras 163-172; Transcript of testimony of witness P-0014, EVD-PT-OTP-06129, at 0490, lines 21-25, at 0511, line 4 to 0512, line 7.

³⁷⁷ Statement of witness P-0290, EVD-PT-OTP-04028, at 0308-0310, paras 12-13, 18, 21-24, at 0307-0308, paras 6 and 9.

³⁷⁸ Transcript of interview of witness P-0055, EVD-PT-OTP-04633, at 0586, line 645 to 0589, line 751; Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1503, line 9 to 1506, line 13; Statement of witness P-0758, EVD-PT-OTP-06335, at 0205, para. 64, at 0206, para. 69.

³⁷⁹ G5 represented the political commissioner of the UPC/FPLC concerned with relations between soldiers and civilians, and morale issues (Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1944, lines 12-13; Transcript of interview of witness P-0055, EVD-PT-OTP-04623, at 0335.

³⁸⁰ UPC/FPLC letter, dated 12 February 2003, EVD-PT-OTP-02545.

³⁸¹ According to certain witnesses, the term “kadogo” was used in the UPC/FPLC to refer to soldiers who were children; See Transcript of interview of witness P-0055, EVD-PT-OTP-04633, at 0569, lines 46-54; Transcript of interview of witness P-0768, EVD-PT-OTP-06430, at 1798, lines 480-490. With reference to the “Kadogo Unit” specifically, witness P-0017 stated that the persons in the unit “were

kadogos. They were less than 15 years old”; Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2313, line 6.

³⁸² Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2312, line 17 to 2314, line 5, at 2315, lines 23-24.

³⁸³ UPC/FPLC order, dated 21 October 2002, EVD-PT-OTP-00344.

³⁸⁴ UPC/FPLC order, dated 27 January 2003, EVD-PT-OTP-00345.

³⁸⁵ UPC/FPLC decree, dated 1 June 2003, EVD-PT-OTP-03404.

³⁸⁶ Transcript of testimony of witness P-0046, EVD-PT-OTP-06193, at 5847, line 15 to 5850, line 8; Transcript of testimony of witness P-0031, EVD-PT-OTP-06171, at 3801, lines 10-16.

³⁸⁷ Transcript of testimony of witness P-0024, EVD-PT-OTP-06157, at 2650, line 15 to 2652, line 11.

³⁸⁸ Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2342, line 13 to 2345, line 23.

³⁸⁹ Statement of witness P-0046, EVD-PT-OTP-06193, at 5847, line 15 to 5850, line 8; Statement of witness P-0031, EVD-PT-OTP-06171, at 3801, lines 10-16; Transcript of testimony of witness P-0024, EVD-PT-OTP-06157, at 2650, line 15 to 2652, line 11.

³⁹⁰ Transcript of testimony of witness P-0017, EVD-PT-OTP-06147, at 1999, line 19 to 2000, line 3, at 2001, line 7 to 2002, line 8; Transcript of testimony of witness P-0046, EVD-PT-OTP-06201, at 6639, line 2 to 6640, line 23, EVD-PT-OTP-06203, at 6724, line 22 to 6726, line 5; Statement of witness P-0041, EVD-PT-OTP-03268, at 0028, para. 167; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0541, line 487 to 0542, line 527; Photograph, EVD-PT-OTP-06344; Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0658, lines 147-175, at 0662, lines 287-303, at 0663, line 324 to 0664, line 395; Video Material, EVD-PT-OTP-02612, at 00:06:56-00:07:01.

³⁹¹ Transcript of testimony of witness P-0031, EVD-PT-OTP-06171, at 3766, line 24 to 3767, line 3, EVD-PT-OTP-06175, at 4151-4163; Logbook, EVD-PT-OTP-03652.

³⁹² DCC, [ICC-01/04-02/06-203-AnxA](#), paras 98-99 and p. 60.

³⁹³ For the notion of using children under the age of 15 years to participate actively in hostilities, see Trial Chamber I, “[Judgment pursuant to Article 74 of the Statute](#)”, 14 March 2012, ICC-01/04-01/06-2842, paras 619-628; Trial Chamber II, “[Jugement rendu en application de l’article 74 du Statut](#)”, 7 March 2014, ICC-01/04-01/07-3436, paras 1043-1046.

³⁹⁴ For the notion of using children under the age of 15 years as support for combatants, see Trial Chamber I, “[Judgment pursuant to Article 74 of the Statute](#)”, 14 March 2012, ICC-01/04-01/06-2842, paras 621, 627-628. See also Pre-Trial Chamber I, “[Decision on the confirmation of charges](#)”, 29 January 2007, ICC-01/04-01/06-803-tEN, paras 261-263.

³⁹⁵ For the notion of using children under the age of 15 years as military guards, see Trial Chamber I, “[Judgment pursuant to Article 74 of the Statute](#)”, 14 March 2012, ICC-01/04-01/06-2842, paras 835-838, 915-916.

³⁹⁶ For the notion of using children under the age of 15 years as informants, see Pre-Trial Chamber I, “[Decision on the confirmation of charges](#)”, 29 January 2007, ICC-01/04-01/06-803-tEN, para. 261.

³⁹⁷ For the notion of using children under the age of 15 years as escorts or bodyguards, see Trial Chamber I, “[Judgment pursuant to Article 74 of the Statute](#)”, 14 March 2012, ICC-01/04-01/06-2842, paras 839-869, 915-916.

³⁹⁸ Statement of witness P-0046, EVD-PT-OTP-06242, at 0240-0241, para. 114.

³⁹⁹ Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2307, line 14 to 2309, line 20; Statement of witness P-0290, EVD-PT-OTP-04028, at 0312, para. 33.

⁴⁰⁰ Transcript of testimony of witness P-0012, EVD-PT-OTP-06125, at 0146, line 1 to 0150, line 11. Statement of witness P-0046, EVD-PT-OTP-06242, at 0245, para. 138.

⁴⁰¹ Statement of witness P-0046, EVD-PT-OTP-06242, at 0239, para. 110. P-0046 states that the child she interviewed said he had fought “at Zumbe in September 2002 against the FNI Lendu militia”. The Chamber understands this to refer to the 15-16 October 2002 attack on Zumbe.

⁴⁰² Statement of witness P-0046, EVD-PT-OTP-06242, at 0240, para. 112, at 0244, para. 131 (see also MONUC Report, "Individual Case Story – Bunia (Ituri)", 26 March 2003, EVD-PT-OTP-05006, at 0316, reference 104).

⁴⁰³ Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4753, line 13 to 4754, line 3; Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 665, line 408 to 666, line 446; Statement of witness P-0046, EVD-PT-OTP-06242, at 0241-0242, paras 119 and 121, at 0244, para. 131, at 0244-0245, para. 135.

⁴⁰⁴ Statement of witness P-0046, EVD-PT-OTP-06242, at 0240, para. 113.

⁴⁰⁵ Statement of witness P-0046, EVD-PT-OTP-06242, at 0242-0243, para. 124.

⁴⁰⁶ Statement of witness P-0046, EVD-PT-OTP-06242, at 0235, para. 87.

⁴⁰⁷ Statement of witness P-0014, EVD-PT-OTP-03854, at 1041, paras 183-184; Transcript of testimony of witness P-0014, EVD-PT-OTP-06129, at 0512, lines 5-18.

⁴⁰⁸ Transcript of testimony of witness P-0024, EVD-PT-OTP-06157, at 2668, lines 16-17, at 2671, line 18 to 2675, line 8.

⁴⁰⁹ Statement of witness P-0758, EVD-PT-OTP-06335, at 0211, para. 106.

⁴¹⁰ Statement of witness P-0758, EVD-PT-OTP-06335, at 0212, para. 112, at 0213, para. 113.

⁴¹¹ Transcript of testimony of witness P-0038, EVD-PT-OTP-06181, at 4737, lines 5-20; Transcript of testimony of witness P-0041, EVD-PT-OTP-06187, at 5252, line 15 to 5254, line 25; Transcript of testimony of witness P-0046, EVD-PT-OTP-06193, at 5816, line 6 to 5817, line 22.

⁴¹² Statement of witness P-0290, EVD-PT-OTP-04028, at 0311, para. 28, at 0318-0319, paras 76-77; Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0665, lines 408-432; Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2307, line 14 to 2309, line 10; Statement of witness P-0041, EVD-PT-OTP-03268, at 0029, para. 173; Transcript of testimony of witness P-0030, EVD-PT-OTP-06161, at 2974, lines 1-12.

⁴¹³ Statement of witness P-0014, EVD-PT-OTP-03854, at 1040, para. 179.

⁴¹⁴ Statement of witness P-0290, EVD-PT-OTP-04028, at 0318-0319, paras 76-77, at 0308, para. 9, at 0313, para. 43.

⁴¹⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0666, lines 434-446.

⁴¹⁶ Statement of witness P-0057, EVD-PT-OTP-03366, at 0365, para. 52; Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1481, line 22 to 1482, line 15; Statement of witness P-0041, EVD-PT-OTP-03268, at 0029, para. 173; Statement of witness P-0014, EVD-PT-OTP-03854, at 1039-1040, paras 176-177; Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2312, line 17 to 2314, line 16; Statement of witness P-0041, EVD-PT-OTP-03268, at 0029, para. 173; Transcript of testimony of witness P-0041, EVD-PT-OTP-06187, at 5246, line 25 to 5248, line 21; Transcript of testimony of witness P-0030, EVD-PT-OTP-06161, at 2974, lines 1-12; Transcript of testimony of witness P-0031, EVD-PT-OTP-06171, at 3798, line 19 to 3800, line 22.

⁴¹⁷ Transcript of testimony of witness P-0031, EVD-PT-OTP-06171, at 3794, line 4 to 4796, line 20; Transcript of testimony of witness P-0046, EVD-PT-OTP-06193, at 5841, lines 8-18, at 5842, line 24 to 5844, line 5; Transcript of testimony of witness P-0030, EVD-PT-OTP-06161, at 2969, line 11 to 2972, line 18, at 2958, lines 6-15.

⁴¹⁸ DCC, [ICC-01/04-02/06-203-AnxA](#), para. 109 and pp 56-60.

⁴¹⁹ DCC, [ICC-01/04-02/06-203-AnxA](#), para. 110.

⁴²⁰ [ICC-01/04-02/06-292-Red2](#), paras 338-346; Pre-Trial Chamber II, [Transcript of Hearing](#), 13 February 2014, ICC-01/04-02/06-T-10-Red-ENG, pp 34-36.

⁴²¹ Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, paras 284-285; Pre-Trial Chamber II, "[Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang](#)", 8 March 2011, ICC-01/09-01/11-1, para. 36.

⁴²² DCC, [ICC-01/04-02/06-203-AnxA](#), pp 56-60.

⁴²³ See paras 40-43.

⁴²⁴ [ICC-01/04-02/06-292-Red2](#), paras 387-389.

⁴²⁵ For the objective elements of indirect co-perpetration, see Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, paras 292, 333.

⁴²⁶ For the notion of element of criminality of the common plan, see Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 29 January 2007, ICC-01/04-01/06-803-tEN, para. 344; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, para. 301; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-02/11-382-Red, para. 399.

⁴²⁷ Statement of witness P-0012, EVD-PT-OTP-01890, at 0106, para. 118, at 0107, paras 123-124.

⁴²⁸ MONUC Report, "Individual Case Story – Bunia (Ituri)", 26 March 2003, EVD-PT-OTP-05006, at 0320 (the reference to "Commander Bosco" is to Bosco Ntaganda. See: Statement of witness P-0046, EVD-PT-OTP-06242, at 0238-0239, paras 104-105, at 0241, para. 117); "Compte rendu des entretiens avec camp Ndoromo, Bunia, RDC, les 14, 15 et 16 Avril 2004", EVD-PT-OTP-04905, at 0310; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16 July 2004, EVD-PT-OTP-00779, at 0439, para. 47; UN Joint Mission Analysis Centre Profile of Bosco Tanganda, EVD-PT-OTP-03304, at 0437.

⁴²⁹ Transcript of interview of witness P-0012, EVD-PT-OTP-06125, at 0118; Transcript of interview of witness P-0055, EVD-PT-OTP-04623, at 0336 – 0337.

⁴³⁰ Statement of witness P-0005, EVD-PT-OTP-04084, at 0088, paras 148-152.

⁴³¹ Statement of witness P-0016, EVD-PT-OTP-02701, at 0441, para. 103; Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1530-1532; Statement of witness P-0290, EVD-PT-OTP-04028, at 0314, para. 50.

⁴³² Statement of witness P-0014, EVD-PT-OTP-03854, at 1028, para. 119.

⁴³³ Transcript of interview of witness P-0055, EVD-PT-OTP-04642, at 0768-0770.

⁴³⁴ Transcript of interview of witness P-0055, EVD-PT-OTP-04625, at 0397.

⁴³⁵ Transcript of interview of witness P-0055, EVD-PT-OTP-04642, at 0768.

⁴³⁶ Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1046.

⁴³⁷ Transcript of interview of witness P-0768, EVD-PT-OTP-06428, at 1753-1755, EVD-PT-OTP-06483, at 0493-0494; Transcript of interview of witness P-0017, EVD-PT-OTP-04144, at 0083, EVD-PT-OTP-06111, at 0596-0597; Transcript of interview of witness P-0038, EVD-PT-OTP-06239, at 0173.

⁴³⁸ Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1051-1055, EVD-PT-OTP-06507, at 1099-1100; Transcript of interview of witness P-0290, EVD-PT-OTP-06413, at 1392; Logbook Message, EVD-PT-OTP-03975, at 1065 (first message on the page).

⁴³⁹ For the notion of concerted action, see Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 29 January 2007, ICC-01/04-01/06-803-tEN, para. 345; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, para. 301; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-02/11-382-Red, para. 399.

⁴⁴⁰ Pre-Trial Chamber II, [Transcript of Hearing](#), 13 February 2014, ICC-01/04-02/06-T-10-Red-ENG, p. 38; Also: [ICC-01/04-02/06-292-Red2](#), para. 356.

⁴⁴¹ For the notion of essential contribution, see Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, para. 308; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-02/11-382-Red, para. 404.

⁴⁴² Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1454.

⁴⁴³ See para. 129.

⁴⁴⁴ DCC, [ICC-01/04-02/06-203-AnxA](#), pp 56-59.

⁴⁴⁵ DCC, [ICC-01/04-02/06-203-AnxA](#), pp 56-60.

⁴⁴⁶ For the notion of coordinating role, see Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 30 September 2008, ICC-01/04-01/07-717, para. 526; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, para. 306; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-02/11-382-Red, para. 402.

⁴⁴⁷ Transcript of interview of witness P-0768, EVD-PT-OTP-06482, at 0470-0471; Transcript of interview of witness P-0055, EVD-PT-OTP-06502, at 0947-0948.

⁴⁴⁸ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0486-0488.

⁴⁴⁹ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0487.

⁴⁵⁰ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0100.

⁴⁵¹ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094.

⁴⁵² Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1027.

⁴⁵³ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1027-1028; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0502-0504.

⁴⁵⁴ Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0503-0504; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1028.

⁴⁵⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06482, at 0469.

⁴⁵⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0480-0481; Transcript of interview of witness P-0017, EVD-PT-OTP-06111, at 0596-0597; Transcript of interview of witness P-0038, EVD-PT-OTP-06239, at 0173.

⁴⁵⁷ Transcript of interview of witness P-0017, EVD-PT-OTP-06106, at 0482; Transcript of interview of witness P-0038, EVD-PT-OTP-06239, at 0173-0174.

⁴⁵⁸ Transcript of interview of witness P-0768, EVD-PT-OTP-06428, at 1753-1755; Transcript of interview of witness P-0017, EVD-PT-OTP-04144, at 0083; Transcript of interview of witness P-0038, EVD-PT-OTP-06239, at 0173.

⁴⁵⁹ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0493-0494; Transcript of interview of witness P-0017, EVD-PT-OTP-06111, at 0596-0597.

⁴⁶⁰ Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1703-1704, EVD-PT-OTP-06483, at 0499, EVD-PT-OTP-06486, at 0565-0568.

⁴⁶¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06423, at 1652-1653, EVD-PT-OTP-06484, at 0517.

⁴⁶² Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0532.

⁴⁶³ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0515.

⁴⁶⁴ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0509-0510.

⁴⁶⁵ Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0522-0524.

⁴⁶⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06486, at 0574.

⁴⁶⁷ DCC, [ICC-01/04-02/06-203-AnxA](#), pp 56-59.

⁴⁶⁸ DCC, [ICC-01/04-02/06-203-AnxA](#), pp 56-60.

⁴⁶⁹ For the notion of coordinating role, see Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 30 September 2008, ICC-01/04-01/07-717, para. 526; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, para. 306; Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-02/11-382-Red, para. 402.

⁴⁷⁰ Transcript of interview of witness P-0055, EVD-PT-OTP-04642, at 0768-0769.

⁴⁷¹ Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1051.

⁴⁷² Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1051-1053.

- ⁴⁷³ Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1053-1055.
- ⁴⁷⁴ Transcript of interview of witness P-0290, EVD-PT-OTP-06413, at 1392-1393; Logbook message, EVD-PT-OTP-03975, at 1065 (first message from the top).
- ⁴⁷⁵ See para. 111.
- ⁴⁷⁶ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0101.
- ⁴⁷⁷ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093.
- ⁴⁷⁸ Transcript of interview of witness P-0038, EVD-PT-OTP-06236, at 0143; Transcript of interview of witness P-0055, EVD-PT-OTP-06356, at 0823-0824.
- ⁴⁷⁹ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1027-1028; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0502-0504.
- ⁴⁸⁰ DCC, [ICC-01/04-02/06-203-AnxA](#), pp 57-60.
- ⁴⁸¹ See paras 83-96.
- ⁴⁸² See paras 81-82.
- ⁴⁸³ Transcript of interview of witness P-0768, EVD-PT-OTP-06430, at 1792; Statement of witness P-0041, EVD-PT-OTP-03268, at 0028, para. 166.
- ⁴⁸⁴ Transcript of testimony of witness P-0014, EVD-PT-OTP-06129, at 0490-0491; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0544.
- ⁴⁸⁵ See paras 89-90.
- ⁴⁸⁶ Statement of witness P-0014, EVD-PT-OTP-03854, at 1037, paras 162-163, at 1038, para. 168.
- ⁴⁸⁷ Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1455-1457, 1459, 1466.
- ⁴⁸⁸ Statement of witness P-0758, EVD-PT-OTP-06335, at 0196, para. 8, at 0203, para. 48, at 0204, para. 59, at 0205, para. 63.
- ⁴⁸⁹ Transcript of Video Material, EVD-PT-OTP-02615, at 0306-0307.
- ⁴⁹⁰ Transcript of testimony of witness P-0031, EVD-PT-OTP-06175, at 4190-4191.
- ⁴⁹¹ Statement of witness P-0014, EVD-PT-OTP-03854, at 1038, para. 168.
- ⁴⁹² Statement of witness P-0758, EVD-PT-OTP-06335, at 0205, para. 63; Transcript of Video Material, EVD-PT-OTP-02615, at 0306-0307.
- ⁴⁹³ Statement of witness P-0758, EVD-PT-OTP-06335, at 0205, para. 63.
- ⁴⁹⁴ Statement of witness P-0758, EVD-PT-OTP-06335, at 0205, para. 63.
- ⁴⁹⁵ Statement of witness P-0290, EVD-PT-OTP-04028, at 0308-0309, paras 8, 9, 12, 13.
- ⁴⁹⁶ Transcript of interview of witness P-0055, EVD-PT-OTP-04633, at 0569-0570, 0586-0589.
- ⁴⁹⁷ Transcript of interview of witness P-0055, EVD-PT-OTP-04633, at 0587-0588.
- ⁴⁹⁸ See paras 14-18.
- ⁴⁹⁹ Transcript of testimony of witness P-0038, EVD-PT-OTP-06183, at 4871-4872; Transcript of interview of witness P-0038, EVD-PT-OTP-06236, at 0138-0139; Transcript of testimony of witness P-0055, EVD-PT-OTP-06213, at 7484-7485; Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2174-2175; Transcript of testimony of witness P-0014, EVD-PT-OTP-06133, at 0830-0833; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0547.
- ⁵⁰⁰ For the notion of fungible individuals capable of being replaced by others, see Pre-Trial Chamber I, [“Decision on the confirmation of charges”](#), 30 September 2008, ICC-01/04-01/07-717, para. 516.
- ⁵⁰¹ Trial Chamber I, [“Judgment pursuant to Article 74 of the Statute”](#), 14 March 2012, ICC-01/04-01/06-2842, para. 1214; Transcript of testimony of witness P-0012, EVD-PT-OTP-06125, at 0118; Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0092; Diagram by witness P-0005, “Structure et organisation de l’UPC” EVD-PT-OTP-04085.
- ⁵⁰² “Déclaration militaire des FPLC”, 6 December 2003, EVD-PT-OTP-00253, at 0136; MONUC, “L’UPC responsable des attaques contre la Brigade de l’Ituri”, 22 January 2004, EVD-PT-OTP-03477, at 0648.

⁵⁰³ Statement of witness P-0315, EVD-PT-OTP-06363, at 1013, para. 128; Statement of witness P-0014, EVD-PT-OTP-03854, at 1028, para. 119; Statement of witness P-0016, EVD-PT-OTP-02701, at 0434, paras 63-65, at 0453-0454, para. 181.

⁵⁰⁴ Transcript of interview of witness P-0055, EVD-PT-OTP-04623, at 0349; Transcript of interview of witness P-0017, EVD-PT-OTP-06106, at 0472; Statement of witness P-0016, EVD-PT-OTP-02701, at 0434, para. 65; Statement of witness P-0315, EVD-PT-OTP-06363, at 1013, para. 128.

⁵⁰⁵ Transcript of testimony of witness P-0055, EVD-PT-OTP-06213, at 7493; Transcript of interview of witness P-0055, EVD-PT-OTP-06503, at 0976-0978; Statement of witness P-0012, EVD-PT-OTP-01890, at 0117-0118, para. 176; Statement of witness P-0016, EVD-PT-OTP-02701, at 0455-0456, paras 194-197.

⁵⁰⁶ Transcript of interview of witness P-0055, EVD-PT-OTP-04624, at 0372; Logbook messages, EVD-PT-OTP-03975, at 1075 (first message on the page), at 1099 (third message on the page), at 1106 (first message on the page), at 1107 (second message on the page).

⁵⁰⁷ Transcript of interview of witness P-0038, EVD-PT-OTP-03725, at 2489-2490; Logbook message, EVD-PT-OTP-03975, at 1070 (third message on the page).

⁵⁰⁸ Logbook messages, EVD-PT-OTP-03975, at 1099 (first two messages on the page); Letter from Mr. Ntaganda, 6 August 2003, EVD-PT-OTP-04059, at 0518.

⁵⁰⁹ Statement of witness P-0046, EVD-PT-OTP-06242, at 0239, para. 106; MONUC Report, "Individual Case Story – Bunia (Ituri)", 26 March 2003, EVD-PT-OTP-05006, at 0290.

⁵¹⁰ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0519-0522; Transcript of interview of witness P-0038, EVD-PT-OTP-06239, at 0165-0167.

⁵¹¹ For the subjective elements of indirect co-perpetration, see Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, paras 292, 333.

⁵¹² See Section C.

⁵¹³ This subjective element concerns the discriminatory intent for the crime against humanity of persecution.

⁵¹⁴ For the notion of *dolus directus* in the first degree, see Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, paras 357-358.

⁵¹⁵ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0100; Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1703-1704, EVD-PT-OTP-06483, at 0499, EVD-PT-OTP-06486, at 0565-0568, 0574; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0522-0524.

⁵¹⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06482, at 0469.

⁵¹⁷ Transcript of interview of witness P-0768, EVD-PT-OTP-06423, at 1652-1653, EVD-PT-OTP-06484, at 0517.

⁵¹⁸ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094.

⁵¹⁹ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0509-0510.

⁵²⁰ For the notion of *dolus directus* in the second degree, see Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, paras 357, 359.

⁵²¹ Transcript of interview of witness P-0055, EVD-PT-OTP-04625, at 0397, EVD-PT-OTP-04642, at 0768-0770, EVD-PT-OTP-06505, at 1046.

⁵²² Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1051-1053, EVD-PT-OTP-06507, at 1100; Transcript of interview of witness P-0290, EVD-PT-OTP-06413, at 1392; Logbook message, EVD-PT-OTP-03975, at 1065 (first message on the page).

⁵²³ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0101, EVD-PT-OTP-06236, at 0143; Transcript of interview of witness P-0055, EVD-PT-OTP-06356, at 0823-0824.

⁵²⁴ Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1072; Statement of witness P-0019, EVD-PT-OTP-02447, at 0144, para. 16; Statement of witness P-0105, EVD-PT-OTP-00736, at 0386-0387, paras 24, 28-29; UN SC Special Report on the events in Ituri, January 2002-December 2003, 16

July 2004, EVD-PT-OTP-00779, at 0428, para. 13; Human Rights Watch Report, "Ituri: 'Covered in Blood', Ethnically Targeted Violence in Northeastern DR Congo", July 2003, EVD-PT-OTP-00782, at 0817, 0822; Human Rights Watch Report, "The Curse of Gold Democratic Republic of Congo", 2005, EVD-PT-OTP-00781, at 0660.

⁵²⁵ See para. 68.

⁵²⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0501; Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0580-0582.

⁵²⁷ See Section B.

⁵²⁸ These crimes are: intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities (count 3); pillaging a town or place, even when taken by assault (count 11); and intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives (count 17).

⁵²⁹ See paras. 111-112.

⁵³⁰ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0100; Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1703-1704, EVD-PT-OTP-06483, at 0499, EVD-PT-OTP-06484, at 0517, EVD-PT-OTP-06486, at 0565-0568, 0574; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0522-0524.

⁵³¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06482, at 0469, EVD-PT-OTP-06484, at 0517.

⁵³² Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0509-0510.

⁵³³ Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1703-1704, EVD-PT-OTP-06483, at 0499, EVD-PT-OTP-06486, at 0565-0568.

⁵³⁴ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0515, EVD-PT-OTP-06485, at 0532.

⁵³⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0515.

⁵³⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1703; Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0572-0573.

⁵³⁷ See para. 113-114.

⁵³⁸ Transcript of interview of witness P-0768, EVD-PT-OTP-06423, at 1653, EVD-PT-OTP-06425, at 1703-1704, EVD-PT-OTP-06483, at 0499, EVD-PT-OTP-06484, at 0517, EVD-PT-OTP-06486, at 0565-0568.

⁵³⁹ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094.

⁵⁴⁰ See para. 68.

⁵⁴¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0515.

⁵⁴² See para. 58.

⁵⁴³ See paras 72-73.

⁵⁴⁴ See para. 112.

⁵⁴⁵ See para. 114.

⁵⁴⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06423, at 1653, EVD-PT-OTP-06425, at 1703-1704, EVD-PT-OTP-06483, at 0499, EVD-PT-OTP-06484, at 0517, EVD-PT-OTP-06486, at 0565-0568.

⁵⁴⁷ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094.

⁵⁴⁸ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094.

⁵⁴⁹ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1026-1028; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0502-0504.

⁵⁵⁰ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0502-0504.

⁵⁵¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0515.

⁵⁵² See Section B.

⁵⁵³ For the *mens rea* applicable to article 8(2)(e)(vii) of the Statute, see Pre-Trial Chamber I, [“Decision on the confirmation of charges”](#), 29 January 2007, ICC-01/04-01/06-803-tEN, para. 359.

⁵⁵⁴ Transcript of interview of witness P-0768, EVD-PT-OTP-06430, at 1792; Statement of witness P-0041, EVD-PT-OTP-03268, at 0028, para. 166.

⁵⁵⁵ Transcript of testimony of witness P-0014, EVD-PT-OTP-06129, at 0490-0491; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0544.

⁵⁵⁶ Transcript of interview of witness P-0055, EVD-PT-OTP-04633, at 0569-0570, 0586-0587.

⁵⁵⁷ See paras 85-96.

⁵⁵⁸ For the *mens rea* applicable to article 8(2)(e)(vii) of the Statute, see Pre-Trial Chamber I, [“Decision on the confirmation of charges”](#), 29 January 2007, ICC-01/04-01/06-803-tEN, para. 359.

⁵⁵⁹ Statement of witness P-0014, EVD-PT-OTP-03854, at 1037, paras 162-163, at 1038, para. 168; Statement of witness P-0758, EVD-PT-OTP-06335, at 0196, para. 8, at 0203, para. 48, at 0204, para. 59, at 0205, para. 63; Transcript of testimony of witness P-0016, EVD-PT-OTP-06141, at 1466, 1469-1471; Transcript of testimony of witness P-0031, EVD-PT-OTP-06175, at 4190-4191; Transcript of Video Material, EVD-PT-OTP-02615, at 0306-0307.

⁵⁶⁰ See paras 81-82.

⁵⁶¹ Transcript of interview of witness P-0038, EVD-PT-OTP-06241, at 0204-0205; Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0548-0551.

⁵⁶² See paras 105-106.

⁵⁶³ See para. 106.

⁵⁶⁴ See paras 122-134.

⁵⁶⁵ See para. 120.

⁵⁶⁶ See paras 110-117.

⁵⁶⁷ For the objective element of direct perpetration, see Pre-Trial Chamber I, [“Decision on the confirmation of charges”](#), 29 January 2007, ICC-01/04-01/06-803-tEN, para. 332.

⁵⁶⁸ See paras 122, 127.

⁵⁶⁹ Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8-Red-ENG, pp 4-17 (counts 1-3 and 12-13); Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG, pp 39-42 (count 10); Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8-Red-ENG, pp 50-52 (counts 11, 17, 18); Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG, pp 36-39 (direct perpetration).

⁵⁷⁰ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0505-0508.

⁵⁷¹ For the inference of intent for murder through the use of a firearm against an unarmed person, see Pre-Trial Chamber II, [“Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”](#), 15 June 2009, ICC-01/05-01/08-424, para. 138.

⁵⁷² Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0505, at 0512.

⁵⁷³ Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1703.

⁵⁷⁴ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0100.

⁵⁷⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0535.

⁵⁷⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0670-0671.

⁵⁷⁷ Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0561.

⁵⁷⁸ Transcript of interview of witness P-0768, EVD-PT-OTP-06487, at 0581-0582.

⁵⁷⁹ For the *mens rea* for the war crime of pillaging, see Pre-Trial Chamber II, [“Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”](#), 15 June 2009, ICC-01/05-01/08-424, para. 320.

⁵⁸⁰ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094.

⁵⁸¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06487, at 0586-0587; Statement of witness P-0016, EVD-PT-OTP-02701, at 0446, para. 132.

⁵⁸² Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0535, EVD-PT-OTP-06491, at 0670-0671.

⁵⁸³ See paras 140-141.

⁵⁸⁴ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0501; Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0580-0582.

⁵⁸⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06430, at 1788, at 1793; Photograph, EVD-PT-OTP-06344.

⁵⁸⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06430, at 1788, at 1794-1795.

⁵⁸⁷ Statement of witness P-0046, EVD-PT-OTP-06242, at 0240, para. 112, at 0241, para. 116, at 0243, para. 125.

⁵⁸⁸ Statement of witness P-0290, EVD-PT-OTP-04028, at 0311, para. 28, at 0318-0319, paras 76, 78; Transcript of interview of witness P-0038, EVD-PT-OTP-03736, at 2823-2825; Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0665-0666; Statement of witness P-0014, EVD-PT-OTP-03854, at 1040, para. 179; Transcript of interview of witness P-0017, EVD-PT-OTP-04145, at 0110; Transcript of interview of witness P-0055, EVD-PT-OTP-04633, at 0570-0571; Statement of witness P-0041, EVD-PT-OTP-03268, at 0029, para. 173.

⁵⁸⁹ Statement of witness P-0290, EVD-PT-OTP-04028, at 0318, para. 76.

⁵⁹⁰ Statement of witness P-0046, EVD-PT-OTP-06242, at 0239, para. 110.

⁵⁹¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0665-0666; Statement of witness P-0046, EVD-PT-OTP-06242, at 0240, para. 113.

⁵⁹² Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2307-2309.

⁵⁹³ For the *mens rea* applicable to article 8(2)(e)(vii) of the Statute, see Pre-Trial Chamber I, "[Decision on the confirmation of charges](#)", 29 January 2007, ICC-01/04-01/06-803-tEN, para. 359.

⁵⁹⁴ DCC, [ICC-01/04-02/06-203-AnxA](#), pp 57-58; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG, pp 36-39.

⁵⁹⁵ Pre-Trial Chamber II, [Transcript of Hearing](#), 10 February 2014, ICC-01/04-02/06-T-7Bis-ENG, p. 59 (counts 12 and 13); Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8-Red-ENG, pp 46-47 (count 18); Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG, pp 36-39 (direct perpetration).

⁵⁹⁶ Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG, pp 4-13 (count 14); Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG, pp 36-39 (direct perpetration).

⁵⁹⁷ For the objective and subjective elements of the mode of liability of ordering, see Pre-Trial Chamber II, "[Decision on the Prosecutor's Application under Article 58](#)", 13 July 2012, ICC-01/04-01/12-1-Red, para. 63 (footnotes omitted).

⁵⁹⁸ In this regard, the Chamber finds that article 25(3)(b) of the Statute does not require a formal superior-subordinate relationship and concurs with the Appeals Chamber of the *ad hoc* tribunals that "[i]t is sufficient that there is proof of a position of authority [...] that would compel another person to commit a crime in following the [...] order". See: ICTR, Appeals Chamber, *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, "[Judgement](#)", 20 May 2005, para. 361; ICTY, Appeals Chamber, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, "[Judgement](#)", 17 December 2004, para. 28; ICTY, Appeals Chamber, *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-A, "[Judgement](#)", 19 May 2010, para. 164.

⁵⁹⁹ See para. 120.

⁶⁰⁰ Transcript of interview of witness P-0768, EVD-PT-OTP-06423, at 1652-1653.

⁶⁰¹ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0100; Transcript of interview of witness P-0768, EVD-PT-OTP-06425, at 1703-1704, EVD-PT-OTP-06486, at 0565-0568, at 0574; Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0522-0524.

- ⁶⁰² Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0499.
- ⁶⁰³ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0509-0510.
- ⁶⁰⁴ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094; Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0515, EVD-PT-OTP-06485, at 0532.
- ⁶⁰⁵ Transcript of interview of witness P-0768, EVD-PT-OTP-06482, at 0469.
- ⁶⁰⁶ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0515.
- ⁶⁰⁷ Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0517.
- ⁶⁰⁸ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0501, EVD-PT-OTP-06486, at 0564-0567.
- ⁶⁰⁹ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0093-0094, at 0100. Also see: Transcript of interview of witness P-0017, EVD-PT-OTP-06107, at 0503-0504.
- ⁶¹⁰ Transcript of interview of witness P-0038, EVD-PT-OTP-06234, at 0101, EVD-PT-OTP-06236, at 0143; Transcript of interview of witness P-0055, EVD-PT-OTP-06356, at 0823-0824.
- ⁶¹¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0662-0665.
- ⁶¹² See paras 14-18.
- ⁶¹³ Transcript of interview of witness P-0038, EVD-PT-OTP-03725, at 2489-2490; Statement of witness P-0046, EVD-PT-OTP-06242, at 0239, para. 106; MONUC Report, "Individual Case Story – Bunia (Ituri)", 26 March 2003, EVD-PT-OTP-05006, at 0290; Logbook message, EVD-PT-OTP-03975, at 1070 (third message on the page).
- ⁶¹⁴ Transcript of interview of witness P-0038, EVD-PT-OTP-06239, at 0165-0167; Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0519-0522; Statement of witness P-0046, EVD-PT-OTP-06242, at 0239, para. 106; MONUC Report, "Individual Case Story – Bunia (Ituri)", 26 March 2003, EVD-PT-OTP-05006, at 0290.
- ⁶¹⁵ See Section C and paras 93-96.
- ⁶¹⁶ See paras 40-43.
- ⁶¹⁷ See paras 111-112.
- ⁶¹⁸ See paras 40-43.
- ⁶¹⁹ DCC, [ICC-01/04-02/06-203-AnxA](#), paras 63-91; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8-Red-ENG, pp 46-47, 51-52; Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG, pp 13-22.
- ⁶²⁰ DCC, [ICC-01/04-02/06-203-AnxA](#), paras 76, 78-79, 81, 83-84, 86-87; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8-Red-ENG, pp 15-17; Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG, pp 13-22.
- ⁶²¹ DCC, [ICC-01/04-02/06-203-AnxA](#), paras 78, 81; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8-Red-ENG, pp 50-51; Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG, pp 13-22.
- ⁶²² DCC, [ICC-01/04-02/06-203-AnxA](#), paras 63-91; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8-Red-ENG, pp 46-47, 51-52; Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG, pp 13-22.
- ⁶²³ DCC, [ICC-01/04-02/06-203-AnxA](#), paras 100-108; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG, pp 24-34; Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG, pp 13-22.
- ⁶²⁴ DCC, [ICC-01/04-02/06-203-AnxA](#), paras 92-99; Pre-Trial Chamber II, [Transcript of Hearing](#), 11 February 2014, ICC-01/04-02/06-T-8Bis-Red-ENG, pp 2-13; Pre-Trial Chamber II, [Transcript of Hearing](#), 12 February 2014, ICC-01/04-02/06-T-9-Red-ENG, pp 13-22.
- ⁶²⁵ For the objective and subjective elements of the mode of liability of instigation, see ICTY, Appeals Chamber, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, "[Judgement](#)", 17 December 2004, paras 27, 32; ICTR, Appeals Chamber, *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, "[Judgement](#)", 28 November 2007, para. 480; ICTR, Appeals Chamber, *Prosecutor v. Nchamihigo*, Case

No. ICTR-2001-63-A, "[Judgement](#)", 18 March 2010, para. 61. In this regard, the Chamber underlines that the Statute "does not accommodate a lower standard than the one required by *dolus directus in the second degree*" (Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, para. 360). In addition, the Chamber finds that, in accordance with the jurisprudence on ordering, the causal link between the inducement and the conduct of another person must consist of a "direct effect" (Pre-Trial Chamber II, "[Decision on the Prosecutor's Application under Article 58](#)", 13 July 2012, ICC-01/04-01/12-1-Red, para. 63).

⁶²⁶ See para. 148.

⁶²⁷ See Section C and paras 93 – 96.

⁶²⁸ See paras 40-43.

⁶²⁹ The Chamber clarifies in this regard that "inducement" is not confined to a specific form and may, *inter alia*, be express or implied and consist of an act or omission. See: ICTY, Trial Chamber, *Prosecutor v. Blaškić*, Case No. IT-95-14-T, "[Judgement](#)", 3 March 2000, para. 270; ICTY, Trial Chamber, *Prosecutor v. Brđanin*, Case No. IT-99-36-T, "[Judgement](#)", 1 September 2004, para. 269; ICTY, Trial Chamber, *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, "[Judgement](#)", 30 November 2005, para. 514; ICTY, Trial Chamber, *Prosecutor v. Orić*, Case No. IT-03-68-T, "[Judgement](#)", 30 June 2006, para. 273.

⁶³⁰ See paras 138 – 143.

⁶³¹ See paras 21, 112.

⁶³² See paras 164 – 175.

⁶³³ See paras 145 – 152.

⁶³⁴ See paras 40 - 43.

⁶³⁵ For the objective and subjective elements of the mode of liability set forth in article 25(3)(d) of the Statute, see Pre-Trial Chamber II, "[Decision on the Confirmation of Charges Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)", 23 January 2012, ICC-01/09-01/11-373, para. 351.

⁶³⁶ See Sections C and D.

⁶³⁷ See paras 40 - 43.

⁶³⁸ See paras 109 – 112.

⁶³⁹ See para. 114.

⁶⁴⁰ See para. 117.

⁶⁴¹ See paras 85 – 96.

⁶⁴² See paras 81 – 82.

⁶⁴³ See paras 106, 110, 112, 114.

⁶⁴⁴ See paras 106, 114.

⁶⁴⁵ See paras 40 – 43.

⁶⁴⁶ For the objective and subjective elements of the mode of liability set forth in article 28(a) of the Statute Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, para. 407.

⁶⁴⁷ See para. 120.

⁶⁴⁸ [ICC-01/04-02/06-292-Red2](#), paras 397-398, 407-412.

⁶⁴⁹ For the factors concerning a superior's position of authority and effective control, see Pre-Trial Chamber II, "[Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#)", 15 June 2009, ICC-01/05-01/08-424, para. 417.

⁶⁵⁰ Transcript of interview of witness P-0055, EVD-PT-OTP-06506, at 1076.

⁶⁵¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0499, EVD-PT-OTP-06484, at 0517-0518.

⁶⁵² See Section C.

- ⁶⁵³ Transcript of interview of witness P-0768, EVD-PT-OTP-06483, at 0480-0481; Transcript of interview of witness P-0017, EVD-PT-OTP-06111, at 0596-0597; Transcript of interview of witness P-0038, EVD-PT-OTP-06239, at 0173; Video Material, EVD-PT-OTP-06338, at 00:07:08.
- ⁶⁵⁴ Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1051; Transcript of interview of witness P-0768, EVD-PT-OTP-06494, at 0725.
- ⁶⁵⁵ Transcript of interview of witness P-0055, EVD-PT-OTP-06505, at 1051-1053, EVD-PT-OTP-06507, at 1099-1102; Transcript of interview of witness P-0290, EVD-PT-OTP-06413, at 1392.
- ⁶⁵⁶ Logbook message, EVD-PT-OTP-03975, at 1065 (first message on the page).
- ⁶⁵⁷ Transcript of interview of witness P-0055, EVD-PT-OTP-06241, at 0210.
- ⁶⁵⁸ Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0572-0573.
- ⁶⁵⁹ Transcript of testimony of witness P-0017, EVD-PT-OTP-06149, at 2168.
- ⁶⁶⁰ Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0560.
- ⁶⁶¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06494, at 0724; Transcript of interview of witness P-0055, EVD-PT-OTP-06507, at 1114-1115.
- ⁶⁶² Logbook message, EVD-PT-OTP-03975, at 1079 (second message on the page).
- ⁶⁶³ See Section D.
- ⁶⁶⁴ Transcript of testimony of witness P-0017, EVD-PT-OTP-06151, at 2312-2314.
- ⁶⁶⁵ Transcript of testimony of witness P-0041, EVD-PT-OTP-06187, at 5252-5254; Statement of witness P-0014, EVD-PT-OTP-03854, at 1039, paras 175, 176, 178; Statement of witness P-0290, EVD-PT-OTP-04028, at 0319, para. 83.
- ⁶⁶⁶ Statement of witness P-0315, EVD-PT-OTP-06363, at 1005, para. 87.
- ⁶⁶⁷ Transcript of testimony of witness P-0055, EVD-PT-OTP-06213, at 7484.
- ⁶⁶⁸ See para. 117.
- ⁶⁶⁹ See paras 86 - 92.
- ⁶⁷⁰ Transcript of interview of witness P-0038, EVD-PT-OTP-06241, at 0204-0205.
- ⁶⁷¹ Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0548-0551.
- ⁶⁷² See para. 120.
- ⁶⁷³ Statement of witness P-0016, EVD-PT-OTP-02701, at 0461, paras 222, 224.
- ⁶⁷⁴ Transcript of interview of witness P-0017, EVD-PT-OTP-06108, at 0532-0533.
- ⁶⁷⁵ Transcript of interview of witness P-0038, EVD-PT-OTP-03728, at 2560.
- ⁶⁷⁶ Transcript of interview of witness P-0017, EVD-PT-OTP-06109, at 0555-0556.
- ⁶⁷⁷ Transcript of interview of witness P-0768, EVD-PT-OTP-06494, at 0728; Transcript of interview of witness P-0038, EVD-PT-OTP-06237, at 0152.
- ⁶⁷⁸ Statement of witness P-0016, EVD-PT-OTP-02701, at 0451, para. 168; Transcript of interview of witness P-0055, EVD-PT-OTP-06509, at 1133; Transcript of interview of witness P-0768, EVD-PT-OTP-06494, at 0728.
- ⁶⁷⁹ Transcript of interview of witness P-0768, EVD-PT-OTP-06491, at 0661.
- ⁶⁸⁰ Transcript of interview of witness P-0768, EVD-PT-OTP-06485, at 0550-0551.
- ⁶⁸¹ Transcript of interview of witness P-0038, EVD-PT-OTP-03728, at 2540, EVD-PT-OTP-06239, at 0165-0167; Transcript of interview of witness P-0055, EVD-PT-OTP-06509, at 1143-1144.
- ⁶⁸² Transcript of interview of witness P-0768, EVD-PT-OTP-06484, at 0519-0522.
- ⁶⁸³ Logbook messages, EVD-PT-OTP-03975, at 1097 (last message on the page); 0960 (last message on the page).
- ⁶⁸⁴ Logbook message, EVD-PT-OTP-03975, at 1079 (first message on the page).
- ⁶⁸⁵ Transcript of interview of witness P-0017, EVD-PT-OTP-06110, at 0560.
- ⁶⁸⁶ Transcript of interview of witness P-0017, EVD-PT-OTP-04145, at 0116-0119, EVD-PT-OTP-06110, at 0560-0562; Transcript of interview of witness P-0038, EVD-PT-OTP-03728, at 2560.
- ⁶⁸⁷ For the level of causality between crimes by subordinates and the superior's failure to take reasonable and necessary measures, see Pre-Trial Chamber II, ["Decision Pursuant to Article 61\(7\)\(a\)"](#)

[and \(b\) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo](#),
15 June 2009, ICC-01/05-01/08-424, paras 425 – 426.

⁶⁸⁸ See para. 120.

⁶⁸⁹ See paras 15, 171-172.

⁶⁹⁰ See paras 40 - 43.